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## Shaping high court is social issues key

**Election winner could appoint up to 4 justices**

**By Scott Simonson**  
ARIZONA DAILY STAR

The upcoming presidential election comes with a special, limited-time-only bonus offer:

Act by Nov. 2, and you also get to choose the future of the U.S. Supreme Court.

The winner of the presidential election could nominate as many as four justices, experts say, and to a court expected to face weighty decisions on some major social issues.

By choosing justices, the president could affect laws regarding gay marriage, partial-birth abortion, the use of the words "under God" in the Pledge of Allegiance, and other issues.

"I think the prospect of having several vacancies is very high," said professor Robert Glennon, who teaches constitutional law at the University of Arizona law school.

Supreme Court appointments, and their decisions on social issues, may become one of the lasting legacies of the president during the next four years. President Bush and John Kerry have supported very different positions on some social issues, including gay marriage and abortion.

Richard Nixon's influence on the Supreme Court is still felt, and Nixon died 10 years ago. However, one of his nominees, Chief Justice William Rehnquist, turned 80 on Friday.

Rehnquist isn't the only justice whose age, or health problems, cause experts to anticipate changes on the court.

Justice John Paul Stevens is 84. Justice Sandra Day O'Connor is 74.

The court hasn't added a new member since 1994. By the standards of Supreme Court history, Glennon said, that's an awfully long time.

It has been about 180 years since the court's roster stayed intact for this long.

"So this," Glennon said, "is big news."

How big is the potential ideological difference between the Republican and Democrats when it comes to potential nominees for the high court?

Glennon offered an example. If the president seeks to nominate somebody with a background in both law and high political office, two Arizonans could be potential nominees - Republican Sen. Jon Kyl, and Democratic former Gov. and Secretary of the Interior Bruce Babbitt.

Here's a look at how Bush and Kerry would chart different courses for the country on some social issues.

### **Gay marriage/gay rights**

Glennon said gay marriage is a hot-button issue that the court may face in an upcoming session.

### **Series**

- This is the second in a three-part series.

I Sunday: Health care

I Today: Social issues

I Tuesday: Fighting terror

Last year, in a 6-3 ruling, the court struck down a Texas sodomy law, ruling that the government has no right to control the private lives of homosexuals.

In the next wave of gay rights litigation - gay adoptions, for example, or federal recognition of Massachusetts' same-sex marriages - the justices may divide differently, making the views of even one or two new justices important.

Bush's re-election could allow him to continue to advocate a constitutional amendment to ban gay marriage, said Maurice Grossman, 77, co-chairman of the Southern Arizona Stonewall Democrats. The organization promotes equal rights regardless of sexual orientation or gender identity.

However, the president would play only an ancillary role in actual passage of any constitutional amendment on marriage, which would chiefly be accomplished by the legislative branch and by the states, said Len Munsil, president of the Center for Arizona Policy. The center's goals include "restoring traditional moral principles" to public policy.

Kerry has expressed support for laws that would allow gay and lesbian couples to enter civil unions, Munsil said, which would be almost equal to marriages.

"He's basically for gay marriage," Munsil said, "just without the name 'marriage.'"

Grossman said Bush's Supreme Court appointments would push the court to the right.

"A Supreme Court that's moderate or in the middle," he said, "would be the preferable one we would want, to not look through cases through narrow eyes, not through narrow thoughts. Our lives are at stake. Our lives as gay people are at stake."

Opponents of gay marriage view the current Supreme Court, and other federal courts, as out of step with the values of most Americans.

Bush has regularly decried "activist judges," and in his speech to the Republican National Convention, he tied that to the controversy over gay marriage.

"I support the protection of marriage against activist judges. And I will continue to appoint federal judges who know the difference between personal opinion and the strict interpretation of the law," Bush said.

Kerry generally mentions the court only in passing. In a speech in August to the Congressional Black Caucus, he said "everything is on the line" in the November election - "our jobs, our health care, our role in the world, the character of our country, the Supreme Court of the United States."

On Friday, the American Civil Liberties Union asked the Supreme Court to hear its challenge to Florida's ban on adoptions by gays.

The Supreme Court is expected to decide whether to hear the appeal by early January.

## **Abortion**

Even with new conservative justices supported by Bush, Glennon said, a challenge to Roe v. Wade is extremely unlikely.

"The Supreme Court has now reaffirmed its Roe v. Wade decision a dozen times," Glennon said. "It is settled law."

C. Ward Kischer, president of the board of Tucson Right to Life, an anti-abortion group, agreed with Glennon, saying the mood of the country doesn't favor an effort to make abortion illegal.

Kischer, also an associate professor emeritus at the Department of Cell Biology and Anatomy at the UA College of Medicine, said changes in the membership of the Supreme Court could decide the fate of the Partial-Birth Abortion Ban Act.

Bush signed the Partial-Birth Abortion Ban Act last year. Three federal judges have ruled the act is unconstitutional. The Supreme Court may eventually decide the fate of the law.

"One of the factors will be the possibility of appointing justices to take the place of those planning to retire," Kischer said. "If Kerry gets in, he's already stated he will only appoint those who favor abortion."

Bush has not said he would appoint only anti-abortion judges to the Supreme Court, but Bush has said he opposes abortion.

Patti Caldwell, president and CEO of the Planned Parenthood of Southern Arizona Action Fund, said Bush's re-election could lead to less funding or more restrictions on some family-planning services for low-income women in Southern Arizona.

The action fund is a political arm of Planned Parenthood and supports pro-choice, pro-family planning policies.

In Southern Arizona, re-election of Bush could cause Planned Parenthood to lose \$250,000 in federal subsidies for family-planning services, Caldwell said. That's because Bush could support a new rule to restrict federal funding of organizations that offer abortions with non-federal money raised locally.

Caldwell said Bush may also institute rules that would prevent Planned Parenthood and the Pima County Health Department, another recipient of federal funds, from discussing abortion as an option when advising some low-income clients.

Kerry has so far avoided talking about abortion, but throughout his political career he's been largely opposed to any restrictions on abortions.

### **Other issues**

The justices on the Supreme Court will also take up cases involving the constitutionality of the juvenile death penalty, and the clash of federal and state laws over use of medical marijuana.

- **Affirmative action:** In August, Bush said that he opposes quotas, and that all institutions should strive for diversity.

In college admissions, Bush said "race-neutral admissions policies ought to be tried. If they don't work, to achieve an objective which is diversification, race ought to be a factor."

Kerry signed a brief to the U.S. Supreme Court supporting the University of Michigan's use of affirmative action policies in college admissions.

Kerry also touts at least four instances where he has voted against bans on affirmative action.

- **Faith-based initiatives:** Bush has worked to remove the separation of church and state as a reason to prevent faith-based groups from competing for government social-service grants.

Bush has proposed a \$600 million voucher program to allow faith-based groups to offer treatment for substance abuse.

Kerry's Web site says: "John Kerry will strengthen the role of faith-based organizations in meeting challenges like homelessness, youth violence, and other social problems. At the same time, he will honor First Amendment protections and not allow public funds to be used to proselytize or discriminate."

- *The Associated Press, Hearst Newspapers and Newhouse News Service contributed to this story.*

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