

# **The BLACK C o M M e n t a t o r**

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analysis and investigations on issues affecting  
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## **Cover Story Who Do You Want Picking The Next Supreme Court Justices? The African World By Bill Fletcher, Jr. BC Editorial Board**

Alright, team, it is time to get down to brass tacks. The polls indicate that the situation is one of rough parity between the presidential candidates. The only thing surprising about this is that in a situation where there is an economic crisis, Romney still has not been able to dominate the election.

Given the polls, one thing that is clear is that every vote will count and, in my humble opinion, every state is a swing state. By this last point I mean that the situation remains volatile, not just at the presidential level, but all the way down the list. The Presidency is not the only office being filled. The volatility is largely rooted in two factors: one, will Obama's base actually vote, and, two, what percentage of the white electorate will decide, in effect, that they have given the black guy a chance and now it is time to go back to the white guy. This last point is something that we can discuss at length at another moment.

In watching the debates and the various ads, however, something kept coming back to me. A Canadian friend of mine verbalized my anxiety: he asked, "have people thought about who will appoint the next Supreme Court justices?"

In many respects this is enough of an argument to vote for Obama. I remember having a discussion with the late labor leader Tony Mazzocchi years before his passing about this question of who gets to appoint Supreme Court justices. He suggested that it was not about

the president but about the level of social movement activity that pushed presidents to make various appointments. I think that his point is a truism, but with all due respect, was not and is not helpful. Presidents appoint Supreme Court justices based on various factors, not the least being pressure from within THEIR own constituencies. Let's take the case of Justice Clarence Thomas. He was appointed to replace outgoing Justice Thurgood Marshall. There was no way that George H. W. Bush was going to appoint someone with the capability, let alone politics of a Marshall. He appointed a black guy who reflected the politics of his administration. Yes, it is possible for someone to change once they are appointed, e.g., Justice Earl Warren, but it is not something that one can bet upon, as many people who had great hope in Justice Thomas, once he received an appointment to a forever position, discovered.

Who gets to appoint the next several Supreme Court justices could have an impact for decades. We have already seen the damage done by George W. Bush's appointments to the Supreme Court in the form of the ***Citizen's United*** decision on campaign spending. In looking at the cases that are moving to the Supreme Court or have been taken under their jurisdiction, e.g., the Texas affirmative action case, I sure wish that there was a different balance on the Supreme Court.

These considerations are important when one realizes that progressive forces in the USA remain on the defensive. If we had the initiative there might be a different discussion. But at the moment we are trying to hold off some of the worst elements of an increasingly barbaric capitalism. No, Obama does not open the road to fundamental social transformation, but to tell you the truth, if he can shift the Supreme Court balance even slightly that will be an important victory; a victory with a potentially lasting impact.

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