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Contenders line up for 'best job'

U. S. Supreme Court

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Jerome Delay, AFP, Getty Images Files

Long before he announced he was stepping down from U. S. Supreme Court, David Souter described his role as "the world's best job in the world's worst city."

As the speculation mounts about his successor, Mr. Souter's maxim becomes even more resonant: names are already being floated, their bodies of opinions vivisected --and for good measure, there are the inevitable references to "Borking" and a personal follicle Clarence Thomas found in a can of Coke.

While the reclusive Mr. Souter delivered his formal announcement to the White House yesterday, female contenders seem to have the upper

hand. Ruth Bader Ginsburg is the only woman currently on the U. S.'s top court and she has been in ill.

At the forefront is Sonia Sotomayor, an appellate judge appointed by George H. W. Bush who would give the Democrats a two-for-one among women and Latinos.

Still, Republicans would likely seize some of her hard-left opinions on affirmative action and a reputation among some lawyers as a bully.

Other contenders include Elena Kagan, Barack Obama's new solicitor general, and Diane Wood of the Seventh Circuit Court of Appeals in Chicago, both of whom know the president personally.

Other names that have come up are Seth Waxman, solicitor general in the Clinton administration, and dark-horse Jennifer Granholm, the Canadian-born Michigan Governor who was once the state's attorney general.

While the Obama administration has had a mixed record in vetting nominees, analysts say the Republicans will have a tall task in confronting whomever the White House dispatches to a confirmation hearing.

They are discovering the wedge issues such as same-sex marriage may be not as potent as they used to be. More important, the Democrats control both houses.

"[T]here is really nothing Republicans can do to prevent President Obama from appointing whomever he wants," wrote Matthew J. Franck on the conservative Web site National Review Online. "He need only satisfy his own party, and that shouldn't be hard."

Mr. Franck suggests vigorous scrutiny of the candidates' records.

"Pointed questions about controversial past decisions are definitely in the strike zone, in my opinion (and I said so when George W. Bush's nominees had their innings too). The more a nominee's fitness is probed, the more unacceptable he or she might be made to look to the American people," he said.

"This is not Borking," he goes on, referring to Robert Bork, whom conservatives believe was the victim of unfair and vicious personal attacks when the Reagan administration unsuccessfully nominated him to the Supreme Court.

Other thinkers are advocating a more measured approach.

"This is a teachable moment for the American people," said Ilya Shapiro, editor-in-chief of the Cato Supreme Court Review. "It's a matter of repositioning the debate."

Mr. Shapiro, who is affiliated with the libertarian-leaning Cato Institute, said time-honoured questions on issues such as gun control or abortion rights may not be the most effective way to build new support.

"You'll fire up your base, but it's not a long-term strategy," he said.

Instead, he suggests tackling a candidate's judicial philosophies on social justice or international law. "Do you want foreign law to be used to interpret U. S. law?," he asked, referring to the views of another possible nominee, Harold Koh, dean of Yale Law School.

Mr. Shapiro suggested timing is also crucial.

"When it's not in the heat of an election campaign, they need to be sowing the fields for a future campaign by showing the differences in judicial philosophy."

But this is only if a moderate is nominated. He did not rule out the possibility of "demagoguing," a term both sides use to describe to bullying one's point home.

"If it's an extremist, then all bets are off and it will be a huge culture war. And I'm going to get even more media than I'm getting today."

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WHO WILL REPLACE SOUTER?

U. S. President Barack Obama has a range of choices to replace Justice David Souter.

Sonia Sotomayor, 54 Federal judge in New York Pro: Moderate appointed by George H. W. Bush; would be a huge gesture to Latinos and women.

Con: Republicans will seize on a perception she's a bully.

Elena Kagan, 48 U. S. solicitor general

Pro: Former dean of Harvard Law School; already vetted. Con: No experience as a judge and is it smart to yank her so quickly?

Diane Wood, 58

Federal judge in Chicago Pro: Good bipartisan pick; former State/Justice department attorney.

Con: Perception among Christian right that she's no friend of religious groups

Jennifer Granholm, 50 Michigan governor

Pro: Dark-horse political nominee would break with tradition of picking off the bench. Con: Little experience.

Seth Waxman, 57

Washington, D. C., lawyer Pro: Bill Clinton's Solicitor general.

Con: To chagrin of some Republicans, successfully argued *Boumediene v. Bush* before Supreme Court, which upheld habeas corpus rights for Guantanamo Bay detainees.