



## Garland record: too deferential to government

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March 16, 2016

This is a surprising nomination, and I still can't decide whether it's politically savvy, regardless of the merits of the nominee himself.

Merrick Garland is without doubt a solid liberal vote on most issues, but he's about the least ideological, "safest" candidate on the left's legal bench. He's also a 63-year-old white man. His age means he wouldn't be expected to stay on the court for nearly as long as other contenders and his gender and ethnicity make him less exciting to the Democratic base than other contenders.

In that sense, he's a "compromise" candidate: a sort of olive branch to the Senate. Could it be that President Obama does sincerely want to depoliticize confirmation battles?

On the other hand, by nominating someone who for Republicans is the best possible outcome from a Democratic president — someone who would be easily confirmed in other circumstances — Obama puts pressure on Majority Leader Mitch McConnell and his caucus and lends credence to the "do your job" protesters. Will the GOP maintain its principled position that this isn't about any particular nominee, but about giving the American people the opportunity to weigh in on the direction of the Supreme Court?

This [#NoHearingNoVote](#) stance is not without its own political risks, of course: This nominee is without question more "moderate" than anyone Hillary Clinton would appoint, particularly if she has a Democratic Senate. And so, the question of whether the Senate holds its line may largely depend on election polls as we approach November.

From my own perspective, Garland has shown an alarming amount of deference to the government in his years on the important D.C. Circuit, which handles appeals from administrative agencies. I also fear that he won't represent the check on ever-expanding federal power and executive actions to the same extent as Scalia. And if you're a civil libertarian, his solicitude for law enforcement makes him much less appealing than other judges who had been under consideration.

In the end, however, this debate won't be about Garland, but about when and whether he and his sterling resumé will be evaluated. In this unpredictable political year, we have one more unpredictable political variable.

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