



Who Will Donald Trump Nominate to the Supreme Court?

Whether he sticks to his conservative list, aims for the middle or leans to the left, the president-elect's faces a political minefield.

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November 11, 2016

At the second presidential debate in October, Donald Trump gave a tacit thumbs-up to Senate Republicans' decision to hold open the Supreme Court vacancy left by the death of Justice Antonin Scalia in May. He vowed to fill the seat with a rock-ribbed conservative, and boasted about the list of them he'd placed on his campaign website.

"I've actually picked 20 of them so that people would see, highly respected, highly thought of, and actually very beautifully reviewed by just about everybody," Trump said.

Now that Trump is now president-elect, however, that list has vanished from his website.

While some analysts see that as a sign that Trump, a billionaire-turned-reality-show host-turned-politician, might have been pandering to the right when he posted the list, conservatives say they expect Trump to keep his promise, nominate a hardcore ideological conservative and prepare to move the nation's highest court further to the right at the next opportunity.

"I imagine we'll see an announcement even before the inauguration" to replace Judge Merrick Garland, President Barack Obama's nominee to replace Scalia, says Ilya Shapiro, a lawyer and legal analyst with the Cato Institute, a libertarian group, praising the "fabulous" list of judges Trump put forward during the campaign.

The president-elect has said two deeply conservative organizations -- the Heritage Foundation think tank, and the Federalist Society legal organization, helped him compile the list. Besides vowing to replace Scalia with an ideological twin, Trump said, his pick will seek to overturn *Roe vs. Wade* and be a strong supporter of the Second Amendment.

Yet the mercurial Trump -- a political rookie who's held positions on both sides of the culture-wars battlefield -- will assume power amid public protests against him and with a nation highly polarized by his campaign. While he'll take office with a Republican majority in the Senate, it's a razor-thin one, and the Democrats said they'll filibuster any nominee they consider objectionable, triggering a nasty fight that could make the national divide even wider.

Ultimately, it's a near-certainty that the court will soon return to its now-familiar 5-4 conservative majority; it's probably going to take at least several more vacancies, experts say, for the Supreme Court's balance to shift far enough to the right to overturn landmark decisions on issues like abortion or capital punishment. Additionally, a conservative court could help liberals by providing a check on President Trump, curbing a rapid expansion of presidential power, and the new president likely will have more than one shot to put his stamp on the bench.

Still, anyone Trump nominates in the short term could come at a political price.

Choose someone too far to the right and he risks more national and political conflict, experts say, and he'll endanger the effectiveness of his new presidency. Nominate a centrist, however, and Trump risks a backlash from once-skeptical conservatives poised to play a significant role in his success -- or failure -- as an untested president.

Nominating Scalia's replacement "puts a lot of things in play that might not be good for Trump," says Caroline Fredrickson, president of the left-leaning American Constitution Society.

"I think a President Trump is going to have to consider the composition of the Senate, and the fact that it's so closely divided," Fredrickson says. Trump's allies, she says, would probably have to overcome a Democratic filibuster if he nominated someone from the far right, and the move could be politically damaging for the new administration with a long list of agenda items.

"That will moderate his choices," she says. "It's certainly going to be a more conservative court than it would have been if President Obama had been able to make the appointment, and certainly if a President [Hillary] Clinton had made it."

Trump's liberal opponents say they'll go to the mat if Trump picks a far-right judge who has abortion rights in his or her crosshairs.

"President-elect Trump has publicly pledged to overturn Roe and promised punishment for the one in three American women who will have an abortion in her lifetime," Nancy Northup, president of the Center for Reproductive Rights, told the Washington Post..

But Shapiro says Trump can't afford to antagonize conservatives, many of whom doubted his credentials when he launched his bid for president.

"He needs the support for various agenda items," Shapiro says. "Beyond that, it's an open question."

Not exactly, says TownHall.com, a conservative online magazine.

"He said he was going to pick someone from this list. He promised conservative judges; judges that will certainly decide on cases relating to pro-life, pro-Second Amendment, and constitutional issues," Matt Vespa writes, mirroring a widely held view among conservatives.

"Let's hope he doesn't go off the reservation and pull a George Bush," he wrote, referencing Bush's Supreme Court nomination of Harriet Meier, who was forced to withdraw her nomination under withering fire from the right, which considered Meier too much of a moderate for the bench.

But sticking to his list could also prove problematic for Trump.

"Given that many of the conservatives on his list are more in the traditional conservative mold than Trump himself, they might not simply write him a blank check" when it comes to presidential power, Elizabeth Wydra, the president of the Constitutional Accountability Center, told the New York Times. "As is the case during every administration of either party, the court will inevitably be asked to step in and serve the judicial branch's role as a check on the political branches."

At the same time, Shapiro says, it's likely the Democrats, if they promise to filibuster a far-right nominee, may be holding a weak hand. Senate Majority Leader Mitch McConnell likely will launch a preemptive strike by eliminating the filibuster under chamber rules, he says, but others predict the Kentucky Republican may want to avert a confrontation that would upend Senate tradition.

Nevertheless, it's possible that the new president will nominate someone like Justice Anthony Kennedy, a center-right jurist who occasionally votes with the court's liberal minority. The ACS's Fredrickson says a like-minded candidate would be a "model" selection, palatable to conservatives but acceptable enough to avoid provoking a fight with Democrats still smarting over McConnell's unprecedented decision to side-track Garland's nomination.

As a liberal, "It's never a given that Anthony Kennedy is on your side, but he's seen as someone who's thoughtful and not rigid in his ideology," Fredrickson says.

And with several justices in the twilight of their careers -- liberal Justice Ruth Bader Ginsburg, who survived pancreatic cancer, is 83, Justice Stephen G. Breyer is 78, Kennedy is 80 and Justice Clarence Thomas, a conservative, is 68 but has talked of retiring -- it's likely Trump will have more opportunities to remake the court during his first term.

"Certainly Ginsburg and Breyer would not leave voluntarily during the next four years but time may catch up with them," Shapiro says. "Thomas [has said] he doesn't plan to die in office. There will be vacancies -- maybe not within four years but certainly within eight years."