

# Political Intelligence



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## Getting a say on Souter retirement

Posted by Foon Rhee, deputy national political editor May 1, 2009 09:58 AM

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Advocacy groups of different stripes are weighing in today on Supreme Court Justice David Souter's retirement -- and his possible replacement.

A selection:

Nancy Keenan, president of NARAL Pro-Choice America: "Speculation regarding Justice David Souter's possible retirement is yet another stark reminder of the important role the Supreme Court plays in our everyday lives. In the event of a vacancy, President Obama will have the opportunity to nominate a fair-minded individual who, like him and the majority of Americans, supports the constitutional right to privacy as reflected in the landmark *Roe v. Wade* decision. The president has consistently voiced his support for these fundamental American principles, which created a clear contrast between him and his opponent in last year's presidential race.

"As legal observers discussed at length during that campaign, today's Court is in a tenuous position. With the addition of President Bush's appointees, Chief Justice John Roberts and Justice Samuel Alito, the Court has moved in a direction hostile to a woman's right to choose. Justice Anthony Kennedy, regarded as the key swing vote on cases related to reproductive rights, has sided with Justices Antonin Scalia and Clarence Thomas in the last two major choice-related cases. These changes in the Court's composition further underscore why, in the event of Justice Souter's retirement, it will be critical for President Obama to nominate—and for the U.S. Senate to confirm—a successor who will uphold American liberties, like those set forth in *Roe*, that respect individual freedom and prevent politicians from interfering in our most personal, private decisions.

"Without a doubt, opponents of women's freedom and privacy will use a vacancy on the Court as an opportunity to further their attacks on nominees who have taken pro-choice positions. America's pro-choice majority will fight back."

Alliance for Justice president Nan Aron: "Justice Souter's retirement is also a reminder of the legacy a president leaves with his appointments. Justice Souter remained on the bench long after the president who appointed him left office. President Obama now has the opportunity to nominate someone worthy of his own historic legacy. The president can look to a broad array of legal talent to select a nominee who not only has an excellent record in the law, but also a respect for core constitutional values and a commitment to equal justice for all, not just a few."

Roger Pilon, vice president of legal affairs at the Cato Institute: "In choosing a Supreme Court nominee to replace Justice Souter, President Obama will have an opportunity to avoid the partisanship he promised to reduce on the campaign trail, which his legislative agenda has thus far only exacerbated. But given the way Bush nominees were treated by Senate Democrats, it won't be easy. After the stormy confirmation hearings for Judges Bork and Thomas, President Clinton's nominations of Judges Ginsburg and Breyer sailed through the confirmation process with little opposition and even less acrimony. With the return of Republican nominees after the election of George W. Bush, however, Senate Democrats resumed their scorched earth practices, starting with appellate court nominees and continuing to the nominations of Judges Roberts and Alito to the High Court. Hearings were never held, filibusters were threatened, and characters were assassinated. The question now for Senate Republicans will be, is turnabout fair-play? The answer may turn on just who President Obama selects. At the least, given this recent history, there is no reason Senate Republicans need to be unduly deferential to the

president's nominee. We will need to know both the judicial philosophy and the constitutional philosophy of the nominee. That will require respectful but sharp questioning by members of the loyal opposition. Their duty under the Constitution requires nothing less."

Marjorie Dannenfelser, president of the Susan B. Anthony List: "Elections have consequences, and the upcoming Supreme Court confirmation battle is likely to further entrench President Obama's dedication to the abortion agenda. The President has said he would like 'common ground' on abortion policy. This is an especially relevant objective when you consider yesterday's release of public opinion data by the Pew Research Center showing a sharp decline in support for legal abortion. Choosing a judicial nominee who wants to enshrine the right to an unrestricted abortion in the United States Constitution would certainly be a step in the wrong direction. Appointing an abortion extremist to replace Justice Souter on our nation's highest court will continue the trend of activist court decisions do little reduce abortion in our nation."

Kelly Shackelford, chief counsel of Liberty Legal Institute: "President Obama ran as a moderate, not an extremist. Now, the spotlight is on. If he picks a liberal activist judge instead of a moderate, the American people will know it, and they won't like it. We hope he won't make that mistake. Judicial activism robs the power of self-government from the American people."

Traditional Values Coalition Executive Director Andrea Lafferty: "The U.S. Supreme Court is on the verge of taking a huge lurch to the far left with the exit of Justice Souter from the Court. Souter is certainly no loss for Constitutionals, but he will most likely be replaced with someone far worse. During the election, President Obama stated that he wanted to appoint judges who had "empathy" and who understood what it was to be poor, black or gay. He clearly stated that he wanted judges who would not confine themselves to the Constitution or to the original intent of the Founding Fathers.

"From Obama's public statements, it is clear that he will appoint a Justice who views the U.S. Constitution like a Wikipedia entry that can be edited, revised and distorted for the political agenda of the Justice. Obama wants a Supreme Court nominee who will ignore the Constitution; use his "feelings" to determine legal decisions; use foreign law to impose a liberal political agenda; and use the power of the Court to redistribute the wealth. The President has stated that he believes the Courts should be used to promote "economic justice," – code for judge-ordered income distribution.

"President Obama once mentioned former Chief Justice Earl Warren as the ideal person to serve on his Supreme Court. Warren was one of the most notorious left-wing judicial activists in our nation's history. The President is likely to appoint a Justice who believes in the use of foreign law in interpreting cases that come before the Court. The use of foreign law in issuing rulings in American court cases will undermine self-government and destroy our Constitutional government. Republicans and Democrats on the Senate Judiciary Committee have an important role in advising and consenting to such nominations. They must seriously challenge the political views of anyone chosen by Obama for this lifetime appointment to the Supreme Court. No nominee who believes in using foreign law in making court decisions has any place on the Court. Our self-government depends upon it."

Leadership Conference on Civil Rights: "We appreciate the service that Justice Souter has given the high court and the nation. Unlike recent judicial appointees, his conservatism was never at odds with his desire to uphold the rule of law and dispense justice equitably and fairly. We wish him well on his return to private life, knowing that his judicial knowledge has supported our highest ideals of justice. We expect President Obama to draw upon the nation's deep pool of highly qualified legal talent for his replacement, someone who esteems the rule of law over ideology, and who will keep faith with our Constitution and provide justice fairly and for all."