

Originally published 04:00 a.m., April 22, 2010, updated 12:09 p.m., April 22, 2010

Battle lines forming over court short-list

[Ben Conery](#) and [Kara Rowland](#)

Members of both political parties began drawing battle lines Wednesday after President Obama met with Senate leaders to discuss his pending nominee for Supreme Court justice.

While Mr. Obama gave no hint as to whom he intends to nominate, he did say a decision should be made in a matter of weeks.

In the meantime, speculation continues to abound regarding the president's presumed shortlist. And Mr. Obama did offer a single, if not unexpected, clue about the beliefs of the person he will nominate: The nominee will almost undoubtedly support abortion rights.

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The president said he "believes that women should have the ability to make often very difficult decisions about their own bodies and issues of reproduction," but added that he doesn't have "litmus tests around any of these issues."

"But I will say that I want somebody who is going to be interpreting our Constitution in a way that takes into account individual rights, and that includes women's rights," Mr. Obama said in response to a reporter's question before his meeting with the Senate leadership.

"And that's going to be something that's very important to me, because I think part of what our core constitutional values promote is the notion that individuals are protected in their privacy and their bodily integrity, and women are not exempt from that," he said.

At the top of Mr. Obama's rumored shortlist are Judge Diane Wood, a federal appeals court judge in Chicago, Solicitor General Elena Kagan, and Judge Merrick Garland, a federal appeals court judge in Washington. All three served in the Clinton administration.

Judge Wood worked in the Justice Department's Antitrust Division and later taught with Mr.

Obama at the University of Chicago; Ms. Kagan, a former Harvard Law School dean who also taught at the University of Chicago, worked as associate White House counsel; and Judge Garland was a top Justice Department official who oversaw the Unabomber and Oklahoma City bombing investigations.

Others mentioned as potential successors to Justice John Paul Stevens, an appointee of President Ford who is retiring after 35 years on the high court, include Michigan Gov. Jennifer Granholm, Homeland Security Secretary Janet Napolitano and Leah Ward Sears, a retired chief justice of the Georgia state Supreme Court.

Republicans have vowed to review the nominee's record "diligently and respectfully with the goal of ensuring that the American people can be confident that the nominee will be able to fulfill the judicial oath, which is to 'faithfully and impartially' administer justice.' "

After the meeting with the president - which included Senate Majority Leader Harry Reid of Nevada and Judiciary Committee Chairman Patrick J. Leahy, Vermont Democrat, as well as Senate Minority Leader Mitch McConnell of Kentucky and Sen. Jeff Sessions, Alabama Republican and ranking member of the Judiciary Committee - both sides released statements calling for a nominee who would apply the law fairly.

"Judges must apply the Constitution and laws evenhandedly," Mr. Sessions and Mr. McConnell said in a joint statement. "They should not enter the courtroom with preconceived outcomes in mind, or work to arrive at the preferred result of any president or political party. A Supreme Court justice must not be a rubberstamp or policy arm for any administration."

While Republicans worry about judicial activism from a liberal justice, Mr. Leahy released a statement charging such activism already is at work on the conservative side.

"A recent pattern has emerged of Supreme Court decisions by a slim, activist conservative majority," Mr. Leahy said. "These opinions have not followed the law, but have overridden congressional intent and misconstrued laws designed to protect the American people, tilting the scales of justice in favor of corporate rights and against the rights of individual citizens."

White House press secretary Robert Gibbs said Mr. Obama is looking for "somebody who understands how the law affects real people in the real world, not just in a classroom, not just in a school," but wouldn't directly say whether that could include someone with no actual legal experience.

He also notably avoided using the word "empathy," which Mr. Obama used in describing his first search for a nominee - a word that later was downplayed by Justice Sonia Sotomayor.

Instead, Mr. Gibbs stressed the president is looking for "somebody who has a fidelity to the law, somebody who is independent and somebody who, you know, has the legal stature necessary."

Justice Sotomayor was confirmed last year by a 68-31 Senate vote. Nine of those votes came from Republicans.

Mr. Gibbs said the final list probably would include current and former judges, and those who are not or have not been judges. He said Mr. Obama will have an opportunity to "select from a broad diversity of experience." He would not say how many candidates are being considered but that the list is expanding, not winnowing, to ensure Mr. Obama has as many choices as possible.

Justice Sotomayor's confirmation hearing was largely free of drama, and it remains to be seen how hard either side is willing to fight over a new nominee. With the Senate election of Republican Scott Brown in January in Massachusetts erasing the Democrats' filibuster-proof majority, Republicans could unite to block a vote on the next confirmation if all 41 were to agree.

Robert Langran, a Villanova University political science professor who specializes in constitutional law, said Judge Wood might face the toughest road to confirmation among the three presumed top picks. He said that as a judge, she has a paper trail of opinions that outline her liberal positions, making her "the easiest to attack."

Mr. Langran said Judge Garland may be the safest bet because he is less liberal and has a background in law enforcement.

"It'd be hard for law-and-order people to blast him for being a flaming liberal or anything like that," Mr. Langran said.

But Dave Kopel, an associate policy analyst at the libertarian Cato Institute and an adjunct professor at the Denver University's law school, said that in at least one case, Judge Garland showed a "signal of real hostility toward gun-owner's rights."

In a 2000 case, Judge Garland ruled as part of a 2-1 majority against the National Rifle Association (NRA) in its challenge of a Justice Department regulation to temporarily retain information gathered during background checks for firearms purchases.

The NRA had argued that the Brady Act, which set up the system of background checks, required that records from the checks be destroyed immediately. Judge Garland ruled the law

allows that information to be retained by the Justice Department "temporarily."

Mr. Kopel said the case should cause concern that Judge Garland "reinvents statutes judicially."

"I think that's a dangerous signal about his views on privacy rights and more broadly that he's willing to twist a statute's plain meaning in furtherance of a policy agenda," Mr. Kopel said.

Ms. Kagan, on the other hand, doesn't have much of a paper trail and may face less resistance as a result, Mr. Langran said.

She did come under fire during her confirmation hearing for solicitor general because she supported as Harvard Law School's dean the school's ban on military recruiters on campus, which the school imposed over the military's ban on open gays.

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