

## Specter seeks vote on top-court TV

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By Daniel Malloy, Post-Gazette Washington Bureau

WASHINGTON -- Sen. Arlen Specter says he has been promised a floor vote on his proposal to televise U.S. Supreme Court proceedings, an initiative he described as central to his final months in the Senate.

"I've got a good chance to get this legislation passed," the Pennsylvania Democrat said Wednesday. "I want to do it before I leave because I'm the only one who's been pushing it."

Mr. Specter lost a primary race in May to Rep. Joe Sestak, D-Delaware County, and has been particularly focused on Judiciary Committee matters since then. For years, he has advocated putting Supreme Court oral arguments on TV in the interest of transparency.

Mr. Specter said Majority Leader Harry Reid, D-Nev., has promised him a vote on legislation to compel the court to go on television, and he is working in the House with Majority Leader Steny Hoyer, D-Md., and Judiciary Committee Chairman John Conyers, D-Mich., to get a vote there.

The bill would require the court to televise oral arguments. Congress has the power to dictate administrative matters -- such as the court's schedule and the number of justices -- Mr. Specter said. But the court, which has long resisted cameras, could rule the law an unconstitutional breach of separation of powers.

Lyle Denniston, a journalist who has covered the court for more than a half-century and now tracks it for the website SCOTUSblog, said justices are all but certain to strike down the law if it passes.

"I don't think that the court would any more follow Congress' guidance on this than the Senate would if the court were to tell the Senate it couldn't hold public hearings on Supreme Court nominations," Mr. Denniston said.

Statutes governing court administration were drafted in a different time, Mr. Denniston said.

"What we're talking about here is a quite different constitutional environment in which the Supreme Court has a lot greater institutional self-confidence to resist these outside efforts, should Congress undertake to do them," he said.

Televising the Supreme Court has been an issue for Mr. Specter for more than a decade, and he has increased his focus on it this year. In April, two bills he co-sponsored -- one compelling the Supreme Court to go on television, the other a "sense of the Senate" resolution asking it to do so -- cleared the Judiciary Committee with some Republican support.

Mr. Specter quizzed the court's newest nominee, Elena Kagan, on the issue during her confirmation hearing and said her positive response to televising the court was a key reason why he supports her confirmation. A final vote on Ms. Kagan is expected today.

Mr. Specter said televising the court is important for democracy to give more people access to a body that often seems shrouded in secrecy. He frequently cites a recent CSPAN poll showing 65 percent of respondents support televising the court -- numbers that he said should outweigh the justices' misgivings.

"They want to run their own show," he said.

"The best they can say is it would interfere with the collegial dynamics, and [Justice Anthony] Kennedy says some justice is going to reach for a 30-second sound bite. I think that is unlikely because it would be embarrassing for them to do it. But at worst it's better than having them operate secretly."

The court allows reporters in the chamber during arguments and when decisions are read, but they cannot record audio or video. The court produces its own audio recordings and releases a same-day written transcript of arguments, but the audio typically is not released for weeks.

In a sign of his resistance, Chief Justice John Roberts this year denied several requests to release audio of arguments in high-profile cases on the day they were heard.

"If they're that touchy about audio broadcasting, you can imagine how they'd feel about cameras," said University of

Virginia professor A.E. Dick Howard, a constitutional law scholar. "If the question is how likely is the court to accept the idea of cameras in the courtroom, I think it's as far off as it ever was."

Still, the younger the court gets, the more at ease it will be with television. Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute, said Justice David Souter was known as the fiercest opponent of cameras in the courtroom, but he retired last year.

"All the justices grew up with television at this point, and they're familiar with it," Mr. Shapiro said. "It probably will happen eventually, just because more and more things tend to be televised, but I think it just depends on the individual justices and their particularities."

Mr. Denniston said he could envision a scenario in which the Supreme Court agrees to go on TV -- but it won't be by congressional edict. He said if a television network requested and was denied access to record oral arguments, then sued by claiming a violation of its First Amendment rights, there is precedent to justify a ruling in favor of opening the court to cameras.

"I imagine [Mr. Specter] will go back into private practice" when he leaves the Senate, Mr. Denniston said of the attorney and former district attorney of Philadelphia. "He could fashion that lawsuit himself."

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