

Clinton and Trump's Supreme Court Strategies

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What will happen to Merrick Garland?

President Obama's Supreme Court nomination possible outcomes

Background

- A month after the death of Antonin Scalia on February 13th, President Obama nominated Merrick Garland to the Supreme Court.
- Senate Republicans have refused to meet with Garland on the principle that Obama should not be allowed a high court choice in his final year.

Confirm before end of year?

- Many Senate Republicans were surprised that President Obama nominated a more moderate judge who has some conservative appeal.
- **Hillary Clinton would have to win the election for Senate Republicans to consider confirming Garland before the end of the year.** Many speculate that Clinton would instead nominate a more liberal judge in Garland's place, leading some senators to believe that they should confirm Garland while he's available.



Merrick Garland
Supreme Court Appointee

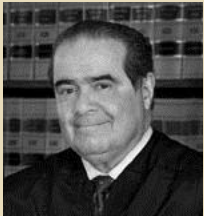
No confirmation for Garland?

- Hillary Clinton has not ruled out the possibility of re-nominating Garland if she wins; **however, there is growing pressure from progressives for a more left-leaning nominee.** Senate Republicans may face a much more contentious confirmation battle should they pass on Garland in the case of a Clinton election win.
- If Donald Trump were to win the presidency, the Senate would almost certainly let Garland's nomination expire as Trump would likely nominate a right-leaning judge.

Sources: Lydia Wheeler, "Clinton's court shortlist emerges," *The Hill*, July 30, 2016; Ben Geman and Sam Baker, "How Hillary Clinton would handle the Supreme Court," *National Journal Daily*, July 28, 2016.

Next president could be responsible for as many as four Supreme Court nominations

SCOTUS appointment timeline and Clinton's strategy



Following Antonin Scalia's death, a still empty seat needs to be filled

- Merrick Garland is the name currently on the table for confirmation by the Senate, however Republicans have made it clear that they do not plan on confirming Garland before the election.
- **Should Hillary Clinton win the election, there has been growing pressure for her to nominate a more liberal-leaning judge.** Clinton has not written off the possibility of re-nominating Garland, but doing so would likely anger progressives and "Bernie" Democrats that are becoming essential to a Clinton election win.



Ruth Bader Ginsburg, at 83, is most likely to retire next

- While Democrats have no "official" strategy for filling the seat of liberal-leaning Justice Ginsburg, **many believe that Clinton would be committed to finding a female replacement.**
- Several names including **Patricia Millet (DC Circuit Court)** and **Jane Kelly (8th Circuit)** have been floated as possible female, left-leaning judges that would be suitable for the Supreme Court.



Breyer and/or Kennedy could retire before the 2020 election

- While neither has indicated an intent to retire, Justice Breyer and Justice Kennedy will both be in their 80s by the 2020 election.
- Should either of the men vacate their seat unexpectedly, many believe Clinton would consult President Obama's previous shortlist including standouts such as **Paul Watford (9th Circuit)** or **Sri Srinivasan (DC Circuit Court)**.

Sources: Lydia Wheeler, "Clinton's court shortlist emerges," *The Hill*, July 30, 2016; Ben Geman and Sam Baker, "How Hillary Clinton would handle the Supreme Court," *National Journal Daily*, July 28, 2016.

Liberals continue to push for a more left-leaning nominee

Preferred liberal picks for the Supreme Court



Goodwin Liu, Associate Justice of the Supreme Court of California

- Former Professor of Law at U.C. Berkeley, Liu's nomination by Obama to the 9th Circuit Court of Appeals was blocked in 2011 by Republicans due to his widely known liberal leanings
- Liu would be the first Asian-American to serve on the court



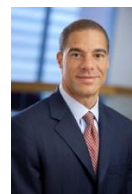
Robert Wilkins, U.S. Court of Appeals for the District of Columbia Circuit Judge

- In 1993, Wilkins sued Maryland in one of the first successful "Driving While Black" racial profiling lawsuits in *Wilkins v. Maryland State Police*
- Wilkins is a highly respected judge who has received many accolades for his legal and judicial practice



Jane Kelly, U.S. Court of Appeals for the Eighth Circuit Judge

- Considered by Obama as a possible Scalia replacement, Kelly was criticized by conservatives for her work as a public defender representing certain unappealing clients
- Kelly was confirmed in a 96-0 vote by the Senate in 2013



Paul Watford, U.S. Court of Appeals for the Ninth Circuit Judge

- Also considered as a replacement for Scalia, Watford was praised by judges on both sides of the aisle when Obama nominated him to the 9th circuit in 2011
- SCOTUS has ruled in favor of all of Watford's opinions that have come before them, including a critical criminal-justice decision regarding warrants and hotel guest records



Nina Pillard, U.S. Court of Appeals for the District of Columbia Circuit Judge

- Pillard, a former Georgetown law professor, now sits on the second highest court in the nation
- Pillard was part of the legal team that successfully argued to eliminate Virginia Military Institute's discriminatory policies against women in 1996

Sam Baker, "Liberals' ideal Supreme Court pick," *National Journal*, September 6, 2016.

Donald Trump’s list of potential nominees meets expectations, largely white and conservative

Donald Trump’s Supreme Court shortlist



Steven M. Colloton (IA)
8th Circuit of US Court of Appeals



Dian S. Sykes (WI)
7th Circuit of US Court Appeals



Raymond W. Gruender (MO)
8th Circuit of US Court of Appeals

None of Donald Trump’s possible nominees are people of color.



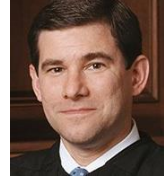
Thomas M. Hardiman (PA)
3rd Circuit of US Court of Appeals



Raymond M. Kethledge (MI)
6th Circuit of US Court of Appeals



Joan L. Larsen (MI)
Michigan Supreme Court



William H. Pryor Jr. (AL)
11th Circuit of US Court of Appeals



Thomas R. Lee (UT)
Utah Supreme Court



Allison H. Eid (CO)
Colorado Supreme Court



David R. Stras (MN)
Minnesota Supreme Court



Don R. Willett (TX)
Texas Supreme Court

Sources: Donald J. Trump, “Donald J. Trump releases list of potential United States Supreme Court justices,” Trump Campaign, May 18, 2016; Matt Flegenheimer, “Donald Trump’s docket: a look at his Supreme Court wish list,” NY Times, May 18, 2016.