

SCOTUS A GO GO

✖ Time waits for no one, and it won't wait for President-Elect Barack Obama. Poor man doesn't even have his cabinet fleshed out and people are already musing over who his Supreme Court nominees might be. You think maybe some of the robed ones might be saying "But I'm not dead yet!"?

No matter; speculate we must. It's our duty. Salon gives the set up:

Barack Obama might have as much power to shape a new court as Reagan. Like Reagan, Obama could appoint as many as three justices before Inauguration Day 2013. John Paul Stevens, 88, and Ruth Bader Ginsburg, 75, are of retirement age, and Ginsburg is a colon cancer survivor. David Souter, 69, has reportedly expressed an interest in returning to his home in New Hampshire. (Kennedy, who has twice had minor heart procedures, is 72, as is Scalia.)

So will an Obama presidency usher in a new liberal era on the court? The short answer: probably not (and not just because the president-elect's apparent choice for attorney general, Eric Holder, is one more sign that he does not fear the taint of Clintonism). Since the justices most likely to retire are from the court's liberal wing, Obama will have less of an opportunity to tilt the court's ideological orientation. Currently, the court has a rough balance of power, with four conservative justices, four liberal and a swing vote in Justice Kennedy.

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"The real question is: Is Obama going to appoint significantly more liberal judges than President Clinton did? Or appoint justices that are center-left

like Ginsburg and Breyer?" said Thomas Goldstein, head of the Supreme Court practice for the law firm Akin Gump Strauss Hauer & Feld.

Obama has not tipped his hand in this regard, but the Senate's second-most-powerful Republican, John Kyl of Arizona, promised earlier this month to filibuster any Supreme Court nominee that Republicans deem too liberal.

This is a what have you done for me lately world. And Barack Obama not only hasn't done anything lately for the progressive segment of the citizenry, he has not done anything period.

Salon goes on to delineate a "Top Ten" list of potential Obama Supreme Court picks. A rather uninspiring list in many regards. Let us do our own rundown of potential, and desired, picks for the vacancies that Obama will face.

First though, it should be noted that Democrats, especially progressives, do not have the organized minor league feeder programs, and promotional schemes, like the right wing Federalist Society, nor does the left engage in the relentless seeding and intentional grooming of future justices like the right does. This is not inherently a bad thing, in fact, the institutional indoctrination, dogmatizing, and car salesman like glossy packaging the right injects into the process is quite demeaning and reprehensible to the dignity of the process. Demeaning and reprehensible is not a bug to the right, however, it is a feature.

So, off to the salt mines we go, let's get to work:

Cass Sunstein: I'll be honest, since long before he even won the nomination, I have suspected that Barack Obama would appoint his friend, colleague and advisor, Cass Sunstein to the Supreme Court bench. I still feel that he will do just that. It is a singularly horrid choice; he is a dyed in the wool Chicago School drooling

idiot. Remember Obama's FISA cave and lie? This is one of the men behind it and that went out cravenly apologizing and rationalizing it. If Sunstein doesn't have any more respect for the Constitution than that, he has no place on the final arbitration panel interpreting it. Sunstein is a Constitutional opportunist; he will bend and shape it to fit his own little and petty business centric view of the world. Nuff said; the man is patently unfit. Sunstein is the most likely Obama nominee; he may also be the worst. Oh mamas and papas, no Cass please.

Erwin Chemerinsky: For my money, Erwin Chemerinsky would be an ideal, if not the ideal pick. He is everything that the weasel Sunstein is not. Chemerinsky is principled, consistent, a Constitutional scholar of the highest order, understands that it is critical to provide access and justice for the afflicted and downtrodden as much as for the rich and powerful (something wholly lacking with too many on the Court today), and he is a staunch advocate for the individual liberty, privacy and civil rights that we understand are paramount, including the much neglected as of late Fourth Amendment. One of my friends here at the Lake says of Chemerinsky "we'll never get him because he's too outspoken". But yet another says "Too outspoken? And Scalia is a shrinking violet?" The right wingnuts would literally howl, but Erwin Chemerinsky would be a simply breathtaking and outstanding selection. Obama should send him up to the Hill and then use his muscle to get him though; we need men like Chemerinsky on the Court to counteract the right wingnuts Bush has burrowed into the bench for decades to come.

Senator Russ Feingold: There is not much discussion needed for Russ Feingold, the readers of FDL know him, and his strengths, well. A Feingold on the Court would also provide the unique benefit of interjecting some working knowledge of Congress and the legislative process. There has become a distressing paradigm where the Court punts issues with the hope that Congress will take care of it and vice versa. A

healthy dose of insight into the real sausage making of legislation would be a good thing for the SCOTUS collective. Feingold also brings that good old mid-west sensibility and ability to see through issues and problems and see the people affected, which would be an extraordinarily good thing for the bench.

Valerie Jarrett: Since one of the early vacancies is likely to be Ruth Bader Ginsberg's chair. That means to maintain a female presence on the Court, which likely must and should be done, Obama will have to appoint another woman. Two prominent women that Salon discussed are Elena Kagan and Maria Sotomayor, both currently sitting Federal judges. Quite frankly, both look far too centrist, and actually center right in some aspects, for my taste. I think Obama's longtime friend and advisor Valerie Jarrett might be a possibility. She is brilliant, a proven calm consensus building type of personality that would be very effective on the Court, and has an incredibly diverse background. She is also related to Vernon Jordan; never discount that factor. As both a woman and a minority, Jarrett could cover two important niches. I would like to know much more about her legal philosophies (although remember blank slates sometimes are better these days to the eye of the idiots in the press and the Senate), but I find her a very intriguing possibility.

Jennifer Granholm and/or Janet Napolitano:

Jennifer Granholm is a distinct possibility for an Obama appointment, but not on the first round of two openings that, between Stevens, Ginsberg, Kennedy and Breyer collectively, are bound to come quite quickly, likely perhaps even in the first year. She is governor of Michigan and that state's former attorney general; however, has no bench experience and, as a Catholic, people would feel free to hit her hard on choice and she might be squishy on things like late term abortion. She's got to do time at the Circuit, first, which is good, bc our circuit could use some Dems. I would suspect an appointment in the next year to the circuit, putting John Cherry in the Gov's mansion in time to run as an incumbent

in 2010.

Far more likely, would be Janet Napolitano. She has the governorship and attorney general resume entries that Granholm does, but a heck of a lot more experience along the way. Napolitano is well versed and experienced with constitutional law and civil rights, having been mentored as the hand picked protege of one of the country's great Constitutional scholars and authorities, John P. Frank, one of the two legal fathers of the Miranda decision. And, by the time the nomination might be contemplated, Napolitano would also likely have some experience as DHS Secretary (which may or may not be problematic; time will tell). Janet would be a simply outstanding choice.

Other possibilities mentioned are Harold Hongju Koh, Deval Patrick, Diane Wood, Ruben Castillo, Merrick Garland and Amelia Kearse.

Who do you suggest? Discuss and argue Passionately!