

Obama's Choice to Replace Scalia on Supreme Court Had Won Republican Praise

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In a Rose Garden ceremony Wednesday morning, President Barack Obama announced his nomination of Merrick Garland, the chief judge on the District of Columbia Circuit Court of Appeals, to fill the Supreme Court seat vacated by Antonin Scalia's sudden death on February 13. If confirmed, Garland would become the 113th Supreme Court justice, bringing the membership to its traditional number of nine.

As expected, within minutes of Obama's announcement, Republican Mitch McConnell of Kentucky, the Senate majority leader, reiterated his earlier vow that there would be no Senate vote on any Obama Supreme Court nominee prior to the presidential election in November.

Because there are not likely to be any Senate confirmation hearings before Obama's term expires, Garland's selection is being viewed in large measure as a political maneuver to bolster the Democrats' electoral fortunes by exposing Republican obstructionism. Obama has named an individual, previously backed by leading Republicans as well as Democrats, who has qualifications and politics that in previous periods would have ensured speedy confirmation by the Senate.

More immediate electoral calculations aside, the choice underscores the essentially right-wing orientation of the Democratic White House.

Garland, 63, is both the oldest and most conventional of those said to have been on Obama's "short list" to replace Scalia. A descendant of Jewish immigrants from Russia who settled in Chicago, Garland graduated at the top of his class at both Harvard University and Harvard Law School.

He first clerked for federal appellate Judge Henry J. Friendly of New York and then for Supreme Court Justice William J. Brennan, Jr., both appointees of Republican President Dwight Eisenhower during the late 1950s who became noted liberals while on the bench.

Garland spent his first two years in practice as a special assistant to the Carter administration's last attorney general, Benjamin Civiletti. With the inauguration of Ronald Reagan in 1981, Garland left the government to join Arnold & Porter in Washington, D.C., which was then growing into one of the largest law firms in the world by representing corporate clients, including Philip Morris Company, sued for covering up the health consequences of smoking cigarettes.

During his eight years with the firm, Garland represented various business interests and

became a published authority on antitrust law. He left private practice in 1989 to spend four years as a federal prosecutor. After rejoining Arnold & Porter briefly, Garland became an official in the Clinton administration's Department of Justice, where he supervised several high-profile "domestic terrorism" investigations and prosecutions, including those of the "Unabomber" and Oklahoma City federal building bomber Timothy McVeigh.

President Bill Clinton nominated Garland to the United States Court of Appeals for the District of Columbia Circuit in 1995, but Republican opposition to filling the seat delayed Garland's confirmation until 1997, when he was finally approved by a vote of 76-23, with 32 Republicans voting in his favor.

For the last 19 years, Garland has been a judge of the DC Circuit, the court of appeals responsible for reviewing a high percentage of cases involving federal criminal prosecutions and disputes with federal regulatory agencies. As a result of a rotation based on seniority, Garland is now the Circuit's chief judge.

Garland's reputation is as a polite and skilled judicial "moderate," which in today's skewed political terms puts him far to the right of his mentors Friendly and Brennan. Garland's rulings have evinced some sympathy for civil rights and environmental concerns, and he has not been a knee-jerk defender of corporate interests in regulatory disputes, but he is perceived as tending to side with the prosecution in cases relating to the rights of people accused of crimes.

Preliminary examinations of Garland's judicial record have provided little indication of how he might vote on so-called hot-button issues such as abortion and affirmative action that have attracted much attention on the Supreme Court over the last several years.

In one notorious case, Garland joined with two other DC Circuit judges to deny habeas corpus to prisoners detained by the United States military at Guantanamo Bay, Cuba. That decision was later reversed by a 6-3 decision of the Supreme Court. In other cases, however, Garland wrote decisions slamming the Central Intelligence Agency for refusing to confirm that it had records of drone assassinations, and ordering the release of an ethnic Uighur from military detention.

In his Rose Garden remarks announcing the appointment, Obama placed heavy emphasis on Garland's years as a prosecutor and repeatedly referred to past praise lavished on Garland by right-wing Republicans such as Utah Senator Orin Hatch. There was no attempt to portray the nomination as an effort to shift the Supreme Court in the direction of defending democratic rights.

In one particularly telling moment, Obama, rather than referring explicitly to Garland's tenure with Judge Brennan, who was perhaps the most outstanding judge on the liberal Chief Justice Earl Warren Court of the 1960s, said only that Garland had clerked for "a Republican-appointed Supreme Court judge."

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