



Written by [Ann Shiber](#) on May 5, 2009

## Obama's Hunt for Supreme Court Replacement

The president has made it quite clear after last week's announcement that [he is looking for "empathy"](#) in his first Supreme Court nominee — someone who could identify with "people's hopes and struggles." During the campaign, he said, "If we can find people who have life experience and they understand what it means to be on the outside, what it means to have the system not work for them, that's the kind of person I want on the Supreme Court."



Senator Dick Durbin said on *Fox News Sunday*, "What I hear in President Obama's statement is that he wants the justices of the court to try to understand the real world we live in and the impact of some of these decisions. Apply the law, but do it in a sensible fashion."

Now-Democrat Sen. Arlen Specter hinted that perhaps a non-lawyer could be chosen: "With the right person — it would have to be the right person.... I think it's a possibility. Listen, the framers didn't require a lawyer." This sentiment was echoed by Sen. Pat Leahy (D-Vt.), who said he "would like to see more people from outside the judicial monastery, somebody who has some real-life experience," fill the post.

Still, the few names to come up have largely been lawyers and judges.

Appeals Court Judge Sonia Sotomayor's name is being bandied about. Being a female Hispanic would be a very politically correct choice. However, Sotomayor (Princeton and Yale) was a bit of a judicial activist in her zeal for promoting her affirmative action agenda in a case of a New Haven firefighters' promotion test that itself is going before the Supreme Court, and that may come back to haunt her.

Stanford Law School Dean Kathleen Sullivan is another name that's been mentioned. Her nomination would almost certainly interject homosexuality into the debate, since she is openly lesbian.

Leah Ward Sears, chief justice of the Georgia Supreme Court, [has emerged as another top pick](#). Once considered by the Clinton administration for an appeals court seat in Georgia, Sears was fined for violating state ethics laws, having accepted campaign contributions over the legal limit. Yet, she is touted as a "trailblazer" for breaking gender and racial barriers, and as a role model for women lawyers.

Another possibility mentioned is Diane Wood (University of Texas Law School). Wood is a proponent of the "living Constitution" philosophy, believing that a judge's interpretation of what the Constitution means has to "grow with the times." She has long ties to Obama, having been a colleague of his at the Chicago Law School for 12 years. She also seems to be pro-abortion, having said, "The law's requirement that women receive certain advice 'in the presence' of 'the physician who is to perform the



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abortion, the referring physician or a physician assistant' ... amounts to an unconstitutional 'undue burden' on the abortion decision."

And finally there's Solicitor General Elena Kagan (Princeton and Harvard), a former Clinton White House official and former dean of Harvard Law School who has never been a judge. Kagan opposes the "don't ask, don't tell" policy adopted by the military, believing that homosexuals should be able to serve openly. She has been oddly labeled as somewhat of a "traditionalist" by the [Wall Street Journal](#) for wanting to be properly addressed as "General."

What is evident from the top choices is that a pattern is emerging as to what the criteria for President Obama's pick is: someone from an elitist university, female, liberal, and an activist willing to interpret the Constitution to fit a particular circumstance, issue or agenda.

What we're not likely to see is someone who, as Alexander Hamilton said in *The Federalist Papers*, understands that, "A Constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute."



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