



Some Republicans Open to Giving an Obama SCOTUS Nominee a Hearing

After the GOP Senate leadership and most presidential candidates voiced strong opposition to the prospect of President Obama selecting a replacement for the late Supreme Court Justice Antonin Scalia, some Republicans said they are open to at least giving an Obama nominee a hearing.



Senate Majority Leader Mitch McConnell (R-Ky.) issued a press release on February 13, shortly after Scalia's death had been announced, in which he said: "The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new President."

However, Senator Chuck Grassley (R-Iowa), the chairman of the Senate Judiciary Committee, which would hold confirmation hearings and vote on whether to send a High Court nominee to the full Senate, has been less firm than McConnell and several others. One statement he made suggested that he was opposed to beginning the confirmation process before the presidential election:

This president, above all others, has made no bones about his goal to use the courts to circumvent Congress and push through his own agenda. It only makes sense that we defer to the American people who will elect a new president to select the next Supreme Court Justice.

Other statements that Grassley made sent mixed messages. In a February 16 interview with Radio Iowa, he appeared to make an extraordinary effort to appear to be nonpartisan, saying: "I would wait until the [nomination] is made before I would make any decisions. In other words, take it a step at a time. This is a very serious position to fill and it should be filled and debated during the campaign and filled by either Hillary Clinton, Senator Sanders or whoever is nominated by Republicans."

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Another Republican senator, Thom Tillis of North Carolina, also took a wait-and-see position. "I think we fall into the trap if [we] just simply say, sight unseen, we fall into the trap of being obstructionists," Tillis said on the Tyler Cralle show broadcast on North Carolina-based radio station WAAV.

Tillis also added, concerning a hypothetical Obama nominee, "If he puts forth someone that we think is in the mold of President Obama's vision for America, then we'll use every device available to block that nomination."

One Republican who seemed amenable to holding hearings, if not a vote, on an Obama nominee is liberal Senator Susan Collins of Maine — who scored just 30 percent on *The New American's* latest Freedom Index. Said Collins, in a statement reported by Politico:

More than any other appointment upon which the Senate is called to pass judgment, nominees to



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the Supreme Court warrant in-depth consideration given the importance of their constitutional role and their lifetime tenure. Our role in the Senate is to evaluate the nominee's temperament, intellect, experience, integrity, and respect for the Constitution and the rule of law.

In next-door New Hampshire, Republican Senator Kelly Ayotte (who also scored just 30 percent on the Freedom Index) took a position more in line with McConnell's:

We're in the midst of a consequential presidential election year, and Americans deserve an opportunity to weigh in given the significant implications this nomination could have for the Supreme Court and our country for decades to come. I believe the Senate should not move forward with the confirmation process until the American people have spoken by electing a new president.

The president delivered his own response to some of the Republican voices seeking to delay a confirmation hearing on a Supreme Court nominee until the next president takes office. Speaking at a news conference at the conclusion of a summit meeting with the Association of Southeast Asian Nations (ASEAN) in Rancho Mirage, California, on February 15, Obama said: "I'm amused when I hear people who claim to be strict interpreters of the Constitution suddenly reading into it a whole series of provisions that are not there. The Constitution is pretty clear about what is supposed to happen now."

While the Constitution stipulates that the president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint ... Judges of the supreme Court," the document does not mandate any specific time period for either the president's nomination or the Senate's consent.

It is therefore a considerable stretch to say that the Constitution is "clear" about Republican attempts to delay confirmation hearings when the document is silent on the timing of the confirmation process.

During the press conference, Obama painted a very general picture about his preferred choice of a candidate to succeed Scalia, saying:

We're going to find somebody who is an outstanding legal mind, somebody who cares deeply about our democracy and cares about rule of law. I'm going to present somebody who indisputably is qualified for the seat, and any fair-minded person, even somebody who disagrees with my politics, would say would serve with honor and integrity on the court.

When a reporter asked the president directly if his description meant he would choose a "moderate" candidate, Obama answered, "No."

Considering that the term "moderate" is a broad enough phrase to cover most of the political spectrum, Obama's reluctance to be pinned down even that much suggests that his ideal candidate might be too liberal to qualify even for that vague description. The president's two previous appointees currently sitting on the court are Sonia Sotomayor and Elena Kagan. Both of these justices have consistently voted on the "liberal" side of judicial decisions where an ideological issue was at stake, including *Obergefell v. Hodges*, which held that the right to marry is guaranteed to same-sex couples by both the Due Process and the Equal Protection Clause of the 14th Amendment.

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