

Replacing Justice John Paul Stevens

Michael Sean Winters | Apr. 9, 2010 NCR Today

It is strange to think that Justice John Paul Stevens, who was put on the Supreme Court by President Gerald Ford, will likely be replaced by someone less liberal than himself. Stevens became not only the senior vote on the Court, but its most stalwart liberal. It is doubtful anyone with his current ideological credentials could win Senate confirmation.

The most likely choice is Elena Kagan, currently the Solicitor General of the United States. Kagan was confirmed for that post last year by the Senate on a vote of 61-31, with conservative Republicans such as Senators Kyl and Lugar joining moderate Republicans like Senators Snowe and Collins voting in favor of the nomination. South Carolina Senator Lindsay Graham did not vote on the confirmation, but he can be expected to follow the position he took in support of last year's nomination of Sonia Sotomayor. Sen. Grahah has stated that elections should have consequences and while he would not have nominated Sotomayor, a president's selection should be respected provided the nominee is qualified for the post.

It is unfortunate that there is no elected official who leaps to mind for the opening on the Court. One of the deficiencies of the present bench is that none of the justices has any experience in either the legislative or executive branches of government. Justice Sandra Day O'Connor was the last justice to have served in a legislature. Last year, I suggested President Obama nominate Al Gore to the Court, a choice that would be electrifying for obvious reasons. The former vice-president, however, is as unlikely a choice now as he was then.

In addition to picking someone who is qualified, the President needs to choose someone who is exceedingly likely to win GOP support. The last thing the country needs right now is a bruising, partisan battle over this seat. The nominee, if confirmed, will not shift the Court to the Left, so the Republicans should be careful about trying to score political points. Obama, who is proving to be supremely cautious in the exercise of his office, is unlikely to nominate the liberal equivalent of a Robert Bork. Odds are Obama will choose Kagan and odds are she will be sitting on the Court next October.

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