

**SPECIAL REPORT
LEGISLATIVE PREVIEW**

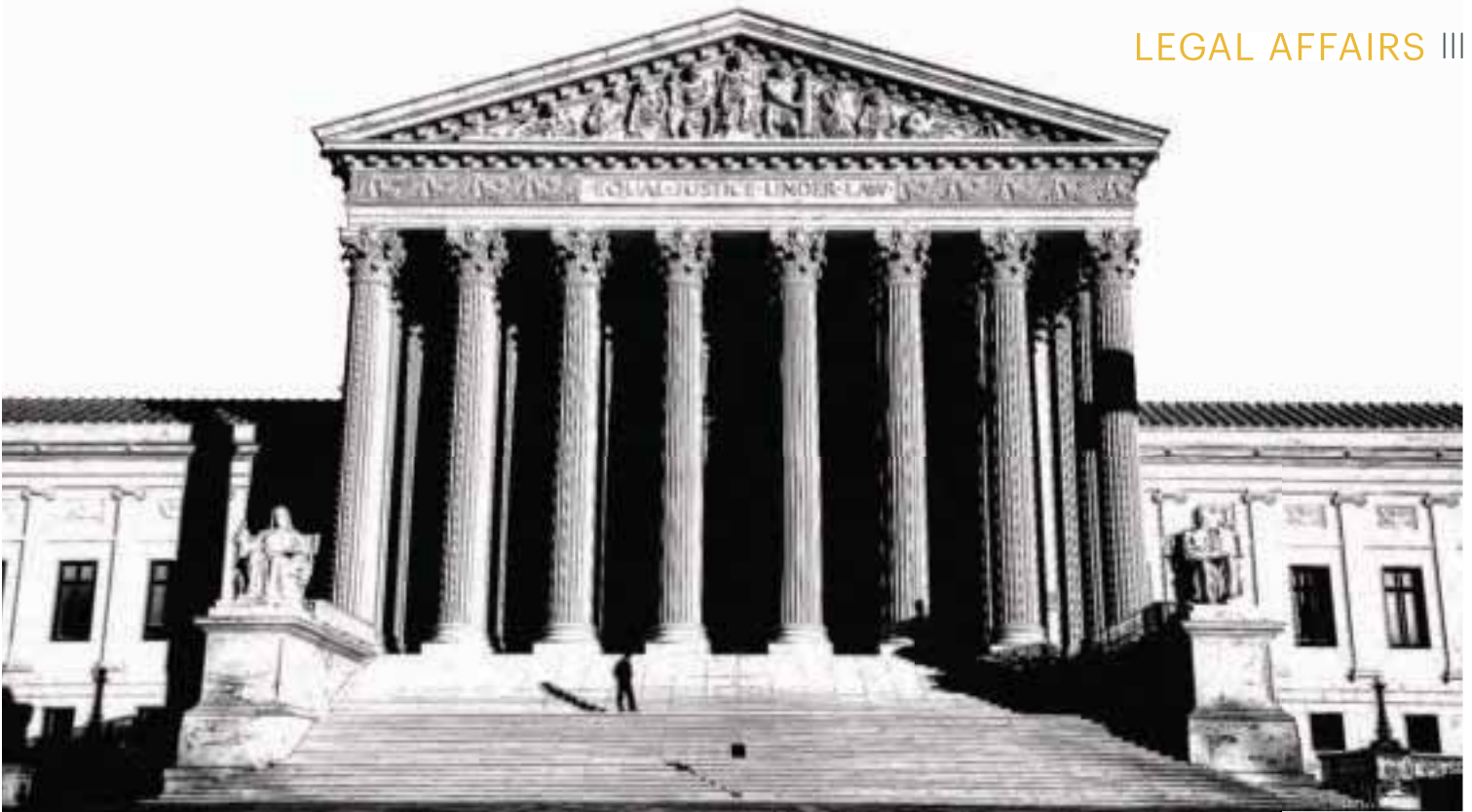
CQ
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GOP RIDES THE WAVE

**SMOOTH SAILING OR
POSSIBLE WIPEOUT?**

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GAME OF ROBES

Rampant speculation over a Supreme Court pick

By **TODD RUGER**

A website dedicated to the Supreme Court's closest watchers launched a new poll when Donald Trump won the White House, tapping the legal community's wisdom on who the Republican would choose from his list of 21 potential nominees to fill the vacancy on the high court.

And why not? Back in 2010, visitors to FantasySCOTUS — think fantasy football but for the high court — correctly predicted that President Barack Obama would select Elena Kagan to fill the seat of retired Justice John Paul Stevens.

Trump is widely believed to be the first presidential candidate to release such a list of potential Supreme Court picks before an election, and there are a number of approaches he could use to make his final pick.

Appointing an outsider could fulfill promises to “drain the swamp” in Washington. An insider could smooth what promises to be a bumpy Senate confirmation process in a chamber where Trump's party only holds 52 seats. A hard-right conservative could annoy Senate Democrats the most.

“Who knows what Trump will do?” says Josh Blackman, a professor at the South Texas College of Law in Houston who created the site. “But we do know he loves polls!”

More than 2,500 votes cast in this latest poll, called the FantasyJustice market, somewhat surprisingly gives the edge to U.S. Circuit Judge Neil Gorsuch of Colorado, a George W. Bush appointee. That selection is possible, of course. Trump's improbable win left behind a pile of discarded predictions based on conventional political wisdom as high as Trump Tower.

But there's another potential reason for

Gorsuch's rise: The poll has faced “coordinated and sophisticated efforts to flood certain judges with votes from ostensibly unique IP addresses,” Blackman said. (Russia? Is it Russia? Blackman's not saying, yet.)

There aren't many clear signals coming from Trump or his transition team. Trump told Sean Hannity of Fox News in December that he narrowed down his choices to “probably three or four” candidates. Two weeks later, incoming White House Chief of Staff Reince Priebus said Trump hasn't interviewed any candidates and would make an announcement closer to his inauguration on Jan. 20.

If Trump doesn't use the FantasyJustice market to guide his Supreme Court selection, here are five approaches he might use to narrow the field and the potential picks who would fit them:

TRUMP'S BENCH PRESS

A FAVORITE

William Pryor, 54, Alabama

Diane Sykes, 58, Wisconsin

A discussion about Trump's most likely picks must include two federal appeals court judges appointed by Bush who are popular among conservatives.

During primary debates in February, Trump mentioned by name William H. Pryor Jr. of Alabama, who sits on the 11th Circuit, and Diane S. Sykes of Wisconsin, who sits on the 7th Circuit.

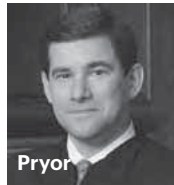
That suggests Trump is most familiar with those names. Pryor and Sykes also topped Blackman's poll of The Federalist Society's annual conference in November. The conservative group, which helped Trump put together his list of 21 names, has Trump's ear. Its executive vice president, Leonard Leo, met with Trump after the election at Trump Tower and said he expects Trump to stick to the list of 21 judges.

Pryor and Sykes could also be good choices if Trump wants to pick a fight with Senate Democrats, who would need only 41 votes to use a filibuster to thwart Trump's Supreme Court pick. That could prompt Senate Republicans to eliminate the filibuster for Supreme Court nominees, as Senate Democrats did in 2013 for other federal judicial picks.

Liberal groups criticize Sykes, a former Wisconsin Supreme Court justice confirmed by the Senate to the federal bench on a 70-27 vote in 2004, for decisions on voting rights, gay rights and birth control.

Pryor, formerly Alabama's attorney general, was one of seven Bush appeals court nominees that Democrats blocked via filibusters, but he eventually got a vote after the Gang of 14 struck a deal in 2005. Pryor's critics at the time were troubled by his views on abortion rights, gay rights and environmental law. He was confirmed on a 53-45 vote in 2005.

One of Pryor's defenders in the Senate was Republican Sen. Jeff Sessions of Alabama, Trump's pick to be attorney general who has fostered a close relationship with the president-elect.



Pryor



Sykes

AN OUTSIDER

Joan Larsen, 48, Michigan

Allison Eid, 51, Colorado

Trump, a Washington outsider, repeated the mantra "drain the swamp" during the final weeks of his campaign. If that meant changing the status quo, then the Supreme Court would be one place to start.

The current Supreme Court justices lack diversity in several ways. They all attended Ivy League law schools, and all but one served as a federal judge before their appointment. They are all either Catholic or Jewish. And the middle of the country is left out: five are from New York or New Jersey, two from California and one from Georgia.

Michigan Supreme Court Justice Joan Larsen and Colorado Supreme Court Justice Allison Eid would break those patterns.

Eid went to the University of Chicago Law School and was Colorado's solicitor general and a law professor before her appointment in 2006.

Larsen got her law degree from Northwestern University School of Law and was a law professor at the University of Michigan before her appointment in 2015.

Both have conservative credentials. Eid clerked for Justice Clarence Thomas, who pushed for her nomination to the Colorado Supreme Court. Larsen clerked for Justice Antonin Scalia, whose death in February left the current vacancy on the high court. Trump said Scalia would be his model for a court pick.

A bonus: Picking a woman would put four women on the Supreme Court for the first time.



Larsen



Eid

AN ENTERTAINER

Don Willett, 50, Texas

Texas Supreme Court Justice Don Willett took to Twitter one day in the nascent days of Trump's presidential campaign:

"Donald Trump haiku—

Who would the Donald

Name to #SCOTUS? The mind reels.

weeps — can't finish tweet

Nearly a year later, Willett would appear on Trump's initial list of potential Supreme Court nominees. The mind reels indeed, but Willett's inclusion also makes sense for a president-elect who himself goes on Twitter to deliver messages apparently with no filter.

Willett's Twitter feed, mixing cultural references and family moments, has earned him an impressive 71,400 followers on the social media site. It's clearly a direct-to-the-people style that Trump, with 18.8 million followers, embraces.

And Trump's consideration of former rivals for his Cabinet shows that's not an automatic disqualifier — even if Willett was a repeat offender.

During the NCAA men's basketball tournament in March, Willett tweeted a gif of pop music star Taylor Swift getting hit in the head with a basketball, along with a parody of Trump's Twitter style:

"Low-energy Trump University has never made it to #MarchMadness. Or even to the #NIT. Sad!"



AN INSIDER

Mike Lee, 45, Utah

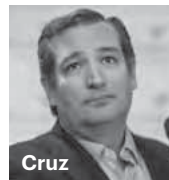
Ted Cruz, 45, Texas

Trump has looked to the Hill for several of his Cabinet picks, and he's got a sitting senator on his list that many think would make a good Supreme Court justice.

Sen. Mike Lee of Utah expressed a lack of interest in being included on Trump's list, but he did go to Trump Tower in December to meet with the president-elect. Lee's inclusion as a potential court pick in September was a central part of why Sen. Ted Cruz, a former GOP presidential rival, changed gears and backed Trump.

Not only would a senator have an advantage in the confirmation process, Lee has conservative legal bona fides that would put him on many lists of potential court nominees by a Republican president. His father, Rex Lee, was a solicitor general during the Reagan administration. The senator sits on the Judiciary Committee, remains a regular visitor to the Supreme Court and is eager to talk about constitutional law.

Cruz isn't on the list, but the former Texas solicitor general has experience arguing before the Supreme Court. And he met with Trump during the transition, and was coy when asked about whether the former rivals had discussed the possibility of Cruz on the high court.



A HAWKEYE

Steve Colloton, 53, Iowa

Edward Mansfield, 59, Iowa

Senate Judiciary Chairman Charles E. Grassley of Iowa is a main reason there's still a Supreme Court vacancy for Trump to fill.

The 83-year-old farmer stood up to pressure from Democrats for months and refused to hold confirmation hearings for Merrick Garland, who President Barack Obama nominated in March to fill Scalia's seat.

Grassley easily won re-election, remains chairman of the committee and has a focus on the interests of Iowans. Trump could simultaneously reward Grassley for holding open the Supreme Court slot and guarantee his full support by picking one of the potential nominees from Iowa.

Steve Colloton, a Yale Law School graduate and former federal prosecutor, is on the U.S. Court of Appeals for the 8th Circuit.

Edward Mansfield, also a Yale Law School graduate, was appointed to the Iowa Supreme Court in 2011 by Gov. Terry Branstad, Trump's choice to be ambassador to China.

In a news conference in Iowa after the election, Grassley said it's not his personal mission to see an Iowan put on the Supreme Court for the third time in history, the Cedar Rapids Gazette reported.

"I only have a personal stake in just one thing, and that's getting strict constructionists on the Supreme Court," Grassley said.



Trump's List of Potential Justices

Keith Blackwell, Georgia Supreme Court
Charles Canady, Florida Supreme Court, U.S. House of Representatives
Steve Colloton, 8th Circuit
Allison Eid, Colorado Supreme Court
Neil Gorsuch, 10th Circuit
Raymond Gruender, 8th Circuit
Thomas Hardiman, 3rd Circuit
Raymond Kethledge, 6th Circuit
Joan Larsen, Michigan Supreme Court
Mike Lee, U.S. senator from Utah
Thomas Lee, Utah Supreme Court
Edward Mansfield, Iowa Supreme Court

Federico Moreno, U.S. District Court, Florida
William Pryor, 11th Circuit
Margaret Ryan, U.S. Court of Appeals for the Armed Forces
David Stras, Minnesota Supreme Court
Diane Sykes, 7th Circuit
Amul Thapar, U.S. District Court for the Eastern District of Kentucky
Timothy Tymkovich, 10th Circuit
Don Willett, Texas Supreme Court
Robert Young, Michigan Supreme Court