

# Our next justice should be 'her honor'



**Amy Miller**

VIEWPOINT

The passing of U.S. Supreme Court Associate Justice Antonin Scalia has led to significant debate as to how the president and the Senate should proceed (or not) in filling the post given that President Obama is in his final year in office.

Discussion and interpretation of constitutional law is flowing from all along our nation's political spectrum. There is gnashing of teeth from conservatives who assert that the next president should make the appointment, presumably in the hope that a conservative will prevail in the presidential election and appoint a philosophical conservative justice.

Conversely, liberals are equally fervent in their view that President Obama should proceed with naming Scalia's successor, hoping to take advantage of the opportunity to move the court to a more-liberal lean.

Eventually though, all the ideological posturing will give way to the constitutionally prescribed process. The Constitution of the United States of America, Article II, Section 2, says with regard to appointing Supreme Court justices that the President "shall nominate." It doesn't say he can or may or that he may only up to a

specific point in his term; it says he "shall." President Obama will make a nomination because the Constitution requires him to. Once named, the nominee will go to the Senate for confirmation and, given the cavernous divide between the president and Senate leadership, it seems unlikely that any nominee put forward by the president will be confirmed.

So at the end of the day POTUS 45, whoever he or she may be, will most likely end up naming the new Supreme Court justice.

For all the talk of conservative or liberal, Democrat appointee or Republican, there is yet another potential shift — more of a potential nudge really — in the Court's composition. That's the nudge that brings our nation's highest court as close as the nine-person bench can get to gender parity. With Justice Scalia, the court was comprised of six men and three women. A five-man, four-woman court could be the standard-bearer which leads to a paradigm shift in the role of women at all levels of our nation's judiciary.

It should be noted that 101 U.S. Supreme Court justices were named over a period of 191 years before women broke that particular glass ceiling. In 1981, when Sandra Day O'Connor became the first female justice on the court, there were only 43 full-time women appellate and district court judges, just 7.3 percent of the total. Today, according to the Federal Judicial Center, women hold 407 of 874 total federal judgeships. That's 46.5 per-

cent.

While O'Connor's breakthrough didn't come until 1981, public support for the appointment of women to the court dates back to at least 1930 when an editorial in the Christian Science Monitor encouraged President Hoover to consider Ohio Supreme Court Justice Florence Allen, the first woman to sit on any state Supreme Court, or Assistant U.S. Attorney General Mabel Willebrandt. Neither woman reached the Supreme Court, but Allen was later appointed to the U.S. Court of Appeals for the Sixth Circuit.

Besides O'Connor and the current triumvirate of Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan, the only other woman to be nominated was Harriet Miers, whose nomination to succeed O'Connor by President George W. Bush was withdrawn under fire.

Women have come a long way in the 35 years since O'Connor's naming, but there's much ground yet to cover before true parity is achieved. There are many outstanding and accomplished women jurists who deserve to be considered for appointment to the U.S. Supreme Court. We encourage the president, whether the current one or the next, to thoughtfully consider them all and select one to take her place alongside her contemporaries on this most august body.

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