

FEDERAL JUDICIARY: Rehnquist's death scrambles Senate schedule

President Bush moved quickly yesterday to name a replacement for deceased Supreme Court Chief Justice William Rehnquist, nominating John Roberts to lead the court, a decision that essentially ensures the court will remain at full strength when it convenes in early October.

Less than 36 hours after Rehnquist's death, Bush announced that Roberts -- who was originally nominated to replace retiring Associate Justice Sandra Day O'Connor -- is his pick to become the 17th chief justice in U.S. history. The Senate was already scheduled to begin Robert's confirmation hearing this afternoon, but that schedule will be altered because of Rehnquist's death.

Still, Bush called on the Senate to stick to its original goal of placing Roberts on the bench by the start of the court's October term.

"It is in the interest of the court and the country to have a chief justice on the bench on the first full day of the fall term," Bush said from the Oval Office yesterday. "The Senate is well along in the process of considering Judge Roberts' qualifications. They know his record and his fidelity to the law. I'm confident that the Senate can complete hearings and confirm him as chief justice within a month."

Roberts has long been rumored as a potential successor to Rehnquist, and court observers speculated prior to the chief justice's death that Roberts would be bumped up to the top spot once Rehnquist leaves the court.

Beside his legal philosophy, one item that appeared to make Roberts a strong candidate for the top spot is his age. At only 50 years of age, Roberts will be able to steer the court for several decades in much the same way Rehnquist guided an increasingly conservative court for almost 20 years.

Senate leaders have already decided to postpone Roberts confirmation hearings by at least two days because of Rehnquist's funeral, which is scheduled for tomorrow. The hearings will now begin either on Thursday or Monday, although details of the schedule must still be worked out between the two parties. All told, the hearings -- including Roberts' opening statement, questioning by the committee and statements from witnesses -- are expected to take four to five days.

Judiciary Committee aides said late last week that the original schedule called for the committee to complete hearings on Roberts by the end of this week and then vote him out of committee Sept. 15. The nomination would then move to the floor within a week and Roberts would be voted on by the full Senate by the end of the month.

While the schedule now will certainly slip by a few days, Senate Majority Leader Bill Frist (R-Tenn.) said yesterday he still expects Roberts to be on the bench by the time the court convenes. Frist is expected to announce this morning the exact schedule for the hearings, but he expects the full Senate to vote on the nomination during the last week of September.

"Everybody I've talked to has said we need to have Judge Roberts in that position by Oct. 3," Frist said.

Despite the two vacancies, if Roberts confirmation does stay on schedule, that would most likely mean the full 9-member court will be available to consider cases in October. O'Connor said when she first announced her retirement in July that she would stay on the court until her replacement is confirmed.

Senate Democrats indicated they would like to see a delay of longer than two days in light of Roberts' elevation to the top position on the court and the existence of dual vacancies for the first time in more than 30 years.

"Before the Senate acts on John Roberts' new nomination, we should know even more about his record, and we should know whom the president intends to nominate as a replacement for Sandra Day O'Connor," said Sen. Ted Kennedy (D-Mass.), a member of the Judiciary Committee. "The American people care deeply about the overall balance of their highest court, and its dedication as an institution to the protection of their rights."

Senate Minority Leader Harry Reid (D-Nev.) also called on Senate Republicans to keep their focus this week on providing relief for victims of Hurricane Katrina and stated that the Senate "must be vigilant in considering this nomination."

The comments of Senate Democrats were echoed yesterday by several liberal interest groups who argued the committee should receive additional time to examine Roberts' record and again called on the White House to release documents from his time working for the first President Bush.

While Senate Democrats have promised a thorough examination of Roberts' record, thus far there has been no outright opposition to his nomination and barring any significant revelations he is widely expected to receive confirmation.

Bush has given no indication when he will name O'Connor's replacement and much of the White House's work currently appears focused on the response to Hurricane Katrina. Bush again visited Louisiana yesterday, and the White House has spent much of the week dealing with criticism over the federal government's response to the emergency.

But long before O'Connor announced her resignation, White House officials had already interviewed several potential candidates for the Supreme Court in anticipation that there will be at least one vacancy this year. O'Connor's new successor is widely expected to come from the list of previously considered nominees and includes such names as Attorney General Alberto Gonzales and appeals court judges Michael Luttig, Edith Jones, Edith Brown Clement and Emilio Graza.

Enviros remain unsure of Roberts' record

Although several liberal interest groups have come out in opposition to Roberts' nomination in recent weeks, environmental groups have remained largely on the sidelines, saying they do not have enough information about Roberts' record to make a decision on whether to oppose the nominee.

A coalition of seven environmental groups -- including the Sierra Club, **Earthjustice** and Defenders of Wildlife -- sent a letter late last week to Senate Judiciary Chairman Arlen Specter (R-Pa.) and ranking member Pat Leahy (D-Vt.) expressing their concern over the nomination but stopping short of outright opposition.

In that letter the environmentalists said their concern about Roberts revolved around two issues -- his position on congressional authority under the Commerce Clause to implement national environmental laws and his view on the rights of citizens to bring environmental cases before federal courts.

Specifically, environmentalists are concerned over his dissent in a 7-2 decision by the full D.C. appeals court not to reconsider a ruling in *Rancho Viejo LLC v. Norton*, which upheld a Fish and Wildlife Service decision to prevent a construction project that biologists said would jeopardize the endangered arroyo southwestern toad. Roberts wrote that the Endangered Species Act -- which is based on the federal government's power to regulate interstate commerce -- cannot be used to protect "a hapless toad that, for reasons of its own, lives its entire life in California."

Roberts' dissent on that case has emerged as the single biggest environmental issue surrounding his nomination, as environmentalists argue it may indicate he would rule to overturn the Endangered Species Act and other environmental laws.

"It is not clear how Judge Roberts would rule on environmental Commerce Clause challenges if confirmed to the Supreme Court, but his one opinion on the issue as a D.C. Circuit judge -- indeed the first opinion he wrote as a member of the bench -- warrants close examination by the committee and gives us serious concern," stated the letter.

While many other liberal interest groups have built their opposition to Roberts largely from documents released from his tenure in the Reagan administration, Sierra Club attorney David Bookbinder said nothing in those documents was relevant to environmental policy and his group will wait until after the hearing to stake out a position on the nomination.

It appears that Roberts' environmental views will be considered to some extent during the hearing. Specter has indicated he will ask Roberts questions concerning his views on the Commerce Clause, although not specifically relating to environmental laws. Senate Democrats included former EPA Administrator Carol Browner in their list of witnesses for the Roberts hearing.

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