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## Political clash looms as Rehnquist nears retirement

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WASHINGTON - While the battle rages over Senate Republican threats to end filibusters of judicial confirmations, speculation persists that Chief Justice William Rehnquist is finally ready to retire next month at the end of the current Supreme Court term.

The confluence of these events portends a political brawl over a successor to Rehnquist, 80, who has been the focus of stepped-up retirement talk since he disclosed last fall that he had thyroid cancer.

"Who knows" what Rehnquist intends, said Herman Schwartz, a professor at the American University's Washington College of Law. Schwartz noted that Rehnquist for years has confounded those who have predicted he was about ready to resign.

But this time, Schwartz said, Rehnquist's frailty and age make his possible retirement seem likely, "raising the whole business of Democrat opposition to judicial nominations to a higher pitch."

Supreme Court spokeswoman Kathy Arberg said Tuesday that the nation's 16th chief justice, who is a widower, remains quiet about his plans. Rehnquist spent the early part of his legal career in Phoenix and has spoken of retiring to Arizona some day.

In anticipation that Rehnquist's resignation could come at the end of the Supreme Court's current term, politicians, interest groups and lobbyists are girding for a nomination battle for an open Supreme Court seat even before knowing if one might occur or whom President Bush might nominate.

"There's absolutely no question the filibuster fight is entirely due to the expected nomination of a new chief justice and, possibly, a new associate justice," said Jonathan Turley, who teaches constitutional law at George Washington University in Washington.

Rehnquist would put Bush in a "bad position" if he were to delay his retirement beyond the end of June, Turley said, because a second-term president rapidly loses clout.

Turley said that although the public has been fed a steady diet of debate in recent weeks over whether Democrats have abused the filibuster to unfairly deny votes on some of Bush's appellate court nominees, "what's really driving the debate is that (presidential adviser) Karl Rove clearly wants the filibuster rule dead by June, as we look to Supreme Court openings."

Elliot Minberg, legal director at the liberal People for the American Way, says he believes that what "the folks on the right" are really focusing on is an attempt to seal

the direction of the nation's highest court for decades, in part by diminishing comment from Democrats.

People for the American Way is one of the groups opposing efforts by Senate Majority Bill Frist, R-Tenn., to prevent filibusters of judicial nominees.

It now takes 60 votes to cut off a filibuster in the Senate, where Democrats hold 44 of 100 seats. But under Frist's proposed rule change, a simple majority in the Senate, just 51 votes, could ensure a vote on a nominee.

Rehnquist's anticipated departure after 33 years on the high court is just part of the picture. There are as many as three other justices who also have been speculated as retiring soon: Arizonan Sandra Day O'Connor, 75; John Paul Stevens, 85; and Ruth Bader Ginsburg, 72.

In fact, the high court's nine-seat roster hasn't changed since Aug. 3, 1994.

Topics the court may address over the next four years could affect a range of areas on which the Supreme Court has been narrowly divided, from abortion rights and privacy issues to states' rights and restrictions on federal power, immigration, separation of church and state and rules surrounding arrests, searches and seizures.

Rehnquist is among five justices who often vote as a conservative bloc, and it's generally thought that Bush would nominate someone with similar views to replace him.

Much of that speculation centers on the high court's two most conservative members, Clarence Thomas, 56, and Antonin Scalia, 69, both of whom Bush has praised as model judges.

Less frequently talked about is O'Connor, whose age and health, Schwartz said, leave her an unlikely choice for a president who wants to leave his mark on the high court for a long time.

Although the White House has refused to comment, other top contenders for chief justice that have been reported to be on various administration short list include J. Harvie Wilkinson, 60, and Michael Luttig, 50, both of whom are on a federal appeals court based in Richmond, Va.; Samuel Alito Jr., 54, of an appeals court based in Philadelphia; John Roberts, 50, on an appeals court in Washington, D.C.; and Michael McConnell, 49, on a Denver-based appeals court. All are said to be as conservative as Rehnquist.

The idea of Bush choosing Thomas to be the nation's first Black chief justice, or his choosing Scalia, raises the prospect of a political firestorm, as both are polarizing figures because of strict constructionist or archconservative holdings and penchants for controversy.

They also oppose *Roe vs. Wade*, which overruled laws against abortion.

Both would draw a barrage of attacks from the left.

"It is absolutely worth it. I would hope they would be the type of jurists this administration wants," said Family Research Council President Tony Perkins, one of the conservative groups supporting Frist's efforts to scrap the judicial filibuster.

The judicial filibuster, for Thomas, in particular, must be eliminated if he "is ever to see the inside of the chief justice's office," Turley said. It is unclear, though, if Thomas would even be interested in the job. When he was nominated to the court 14 years ago, he was accused of sexual harassment in what he called a "high-tech lynching."

But not everyone agrees that Democrats would allow themselves to be drawn into a long and ugly fight over either a Thomas or Scalia nomination to chief justice.

Mark Tushnet, a professor at Georgetown University Law Center in Washington, said Democrats will fight hard over a Bush nominee to succeed the conservative Rehnquist.

But he doubts those efforts will reach the level of Democratic filibustering of a nominee, saying Democrats in the Senate realize the Supreme Court "is a different order of public concern and magnitude."

Anyhow, he said, a Rehnquist successor will not upset the current balance on the court if he is simply replaced with another conservative.

The real congressional battles will come, he said, if either the more liberal Ginsburg or Stevens steps down.

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