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Bush Faces Pressure to Diversify Supreme Court

Hispanic Group Says Votes Are at Stake as Some Conservatives Urge a Nomination on Philosophy Only

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As John G. Roberts Jr. sails toward almost certain confirmation as the 17th chief justice of the United States, President Bush faces conflicting pressures about how much race and sex should factor into his deliberations for filling the second vacancy on the high court.

With Bush poised to make another nomination as soon as this week, he is hearing growing demands to name a woman or minority to the vacancy created by the pending retirement of Justice Sandra Day O'Connor, Republican political and legal strategists said.

Laura Bush twice has said that she would like to see a woman succeed O'Connor, the first woman on the Supreme Court. A number of Latino group officials have publicly urged the president to name the first Hispanic to the high court.

But the pressure is also self-imposed by a president and White House that have made outreach to the Latino community among their most visible political priorities.

Hector Flores, president of the League of United Latin American Citizens (LULAC), said the Hispanic vote helped reelect Bush in November and that there could be political consequences for the Republicans if Bush twice passes over Hispanic judges in his first two court nominations.

"If the Republican Party wants to continue attracting voters to them, they're also going to have to deliver on the most crucial and important position in this country, which is the next vacancy," he said.

White House officials have said political calculations will have little influence on Bush's decision, but other GOP strategists said there is no way for the president and his advisers to insulate themselves from political factors. "Given that you're replacing the first female justice, issues of race and gender certainly have to be a factor at this point," one GOP official said.

Many conservative activists, however, are urging Bush to focus only on appointing the most reliable conservative to fill a vacancy that could tip the court's delicate balance on contentious issues such as affirmative action, the reach of federal power over states, and the role of religion in public life.

"I think things such as race and gender were much more important when we were breaking new ground," said Wendy E. Long, counsel of the Judicial Confirmation Network, a conservative group formed to campaign for Bush's judicial nominees. "I feel like we've broken through that ceiling. And that's liberating, because it allows people to be considered strictly on the merits."

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Two members of the U.S. Commission on Civil Rights, Jennifer C. Braceras and Abigail Thernstrom, joined by former commissioner Linda Chavez, sent a letter yesterday to all 100 senators urging them to focus only on judicial philosophy in evaluating court nominees.

While the president's choice could determine the direction of the court for the foreseeable future, it would also help define Bush's legacy. The religious conservatives who form the core of Bush's supporters are hoping for a justice who can be counted on to vote to limit, and eventually overturn, the right to abortion. At the same time, Bush has been at the forefront of trying to broaden the GOP's appeal among minorities and women.

"He is genuinely committed to diversity on the federal bench," said Brad Berenson, a lawyer who worked for the Bush administration for two years identifying and vetting potential court appointees. "It was explicit. He wanted his staff to find qualified women and minorities."

Many of the women and minorities mentioned as possible candidates for the high court are regarded as committed conservatives. They include federal appeals court judges Janice Rogers Brown, Consuelo Maria Callahan and Priscilla R. Owen and Michigan Supreme Court Judge Robert P. Young Jr., and Larry D. Thompson, general counsel of PepsiCo Inc., who served as the top deputy to then-Attorney General John D. Ashcroft.

Speculation continues to swirl around the question of whether Bush will name Attorney General Alberto R. Gonzales. Bush and Gonzales, the former White House counsel, have a close relationship, dating back to their days in Texas. But conservative groups have expressed opposition to Gonzales on ideological grounds, and Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) publicly recommended that Bush not appoint Gonzales.

Some Bush advisers believe the opposition to Gonzales makes his nomination a nonstarter, but in this case Bush's relationship with the attorney general -- not to mention the political dilemma that he would present to Democrats -- may outweigh the groups' opinions.

Gonzales, perhaps more than any other prospective nominee, would split Senate Democrats, and Democratic strategists privately say that he could win confirmation without a bloody fight. Flores said Gonzales should be Bush's choice. "We think the attorney general is the best qualified," he said.

When he was nominated for attorney general, Gonzales was supported by several Latino organizations and prominent Democrats, and he has been gauging possible support within the Hispanic community, according to two sources.

Gonzales has been told, however, that apparent efforts to make himself more acceptable to conservative groups could compromise support among more liberal Latino groups. One person familiar with the attorney general's outreach said a Latino leader told Gonzales, "The community wants to be for you, but you're making it harder. You can't decide whether you want to be left of center or right of center. . . . You've got to be careful that they [White House officials] don't try to paint you as so far right."

With senators from both parties predicting that confirmation hearings for Bush's next nomination will be more contentious, some GOP strategists are convinced that a female or minority candidate could blunt the opposition.

One Republican with close ties to the White House, who declined to speak for the record to discuss more freely the possible considerations by administration officials, said, "This second one [confirmation battle] is going to be so politicized that, if it's not a woman, Latino or African American, then that's a hook for the Democrats to get real negative, which may be a battle he wants to fight. But it's easier to fight when your approval ratings are at 55 percent." Bush's approval ratings currently are in the low 40s.

Leonard A. Leo, executive vice president of the Federalist Society, a conservative legal group, said Bush's decision should come down to a candidate's intellectual heft and judicial philosophy.

"The tenor of Supreme Court nominations these days is a lot like political campaigns," he said. "It matters far less what one's race or sex is. It is all about ideology. You won't get much of a political bump for any of those kinds of physical characteristics."

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