



## ML Strategies Legislative Update

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### **MLS 2017 Outlook: Supreme Court**

Soon after he takes office, President-elect Donald J. Trump will have to make a big decision: Who will he nominate to be the next justice on the U.S. Supreme Court? Before the election, Trump vowed to name a conservative to the bench. Now he is expected to deliver on his word, with an announcement that he has said will come during the first two weeks of his presidency. Some Democrats have called on Trump to re-nominate Judge Merrick Garland, President Obama's choice for the high court, but their pleas likely will fall on deaf ears. The Court's four-four deadlock probably will continue until at least April (and perhaps until June when its current term ends). Yet thereafter the Court's conservative faction is poised to regain the majority it had from 1970 up until Justice Antonin Scalia's passing early last year.

All this, of course, assumes that the Senate approves Trump's nominee, which may not be a sure bet. This Congress, Senate Republicans have a slim 52-seat majority. They would need at least eight Democratic votes to defeat a filibuster of a nomination to the Supreme Court under existing Senate rules. Those votes may be hard to get. Democrats are still bitter that Republicans refused to consider Garland's nomination. In all likelihood, most of them will be in no mood to let bygones be bygones to cement a conservative Court for years to come. However, some of them may feel strong pressure to support Trump's nominee. Among them: The ten Democrats up for reelection in 2018 in states that Trump carried. Other Democrats (e.g., institutionalists in the caucus) may also support Trump's nominee to try to save their right to filibuster future Supreme Court nominations. Democrats could have more leverage in fights over subsequent vacancies (particularly of those seats now held by liberals). Yet that will not be the case if Republicans axe the filibuster (which some Democrats fear could happen if they block Trump's upcoming pick to the Court).

Trump's transition team is still in the process of vetting potential nominees, yet the following eight judges reportedly head the team's shortlist:

- 1) Judge Thomas Hardiman of the 3rd U.S. Circuit Court of Appeals;
- 2) Judge Raymond Kethledge of the 6th U.S. Circuit Court of Appeals;
- 3) Judge Diane Sykes of the 7th U.S. Circuit Court of Appeals;
- 4) Judge Raymond Gruender of the 8th U.S. Circuit Court of Appeals;
- 5) Judge Steven Colloton of the 8th U.S. Circuit Court of Appeals;

- 6) Judge Neil Gorsuch of the 10th U.S. Circuit Court of Appeals;
- 7) Judge William H. Pryor Jr. of the 11th U.S. Circuit Court of Appeals; and
- 8) Justice Joan Larsen of the Michigan Supreme Court.

Others thought to be in contention include:

- 9) Judge Margaret Ryan of the United States Court of Appeals for the Armed Forces
- 10) Judge Amul Thapar of the United States District Court for the Eastern District of Kentucky;
- 11) Justice David Stras of the Michigan Supreme Court;
- 12) Justice Don Willett of the Texas Supreme Court; and
- 13) U.S. Senator Mike Lee of Utah.

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