

Starting over after Miers' withdrawal: As search begins again, some believe name may change, but issues won't

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October 28, 2005

The Dallas Morning News

WASHINGTON – The fight for the philosophical soul of the U.S. Supreme Court took a new and different direction Thursday, as Harriet Miers – the president's friend and lawyer – withdrew her nomination to replace Justice Sandra Day O'Connor.

Her decision was accepted with reluctance by the embattled President Bush, with jubilation by anxious conservatives and with suspicion by Democrats who accused the president of "caving in" to right wing of the Republican Party.

Any relief at the White House over the end of the controversial nomination is likely to be short-lived. Attention now turns to a new choice for the critical high court – a choice that could just as easily disappoint enough moderate Republicans to trigger another tough fight. The White House said a new nominee would be named "quickly" but did not elaborate.

Ms. Miers, who is expected to return to her job as White House counsel, said she was honored to have been nominated, "however, I am concerned that the confirmation process presents a burden for the White House and our staff that is not in the best interest of the country."

The withdrawal is widely considered a victory for religious and philosophical conservatives who had regarded Ms. Miers with varying degrees of disappointment, citing either her lack of judicial experience or her lack of overt conservative credentials.

"It is not often that you have the opportunity to correct a bad decision, but this is exactly the opportunity afforded to the president," said Matthew Staver, president of Liberty Counsel, a conservative advocacy group.

Democrats said the nomination's failure betrays deep problems in the White House.

"It's an astonishing spectacle," said Ralph Neas, president of People for the American Way. "President Bush's complete capitulation to the far-right interest groups is astounding."

Sen. Edward Kennedy, D-Mass., said the president may now feel the political need to appease those political conservatives who had complained about Ms. Miers.

"The historic way that political leaders move when they're faced with these challenges is to go back to their base, and it certainly does appear that this is where this president is headed," Mr. Kennedy said.

Conservatives have longed for a philosophical conservative to replace Justice O'Connor, who has represented a moderate swing vote on issues dear to them, such as abortion, gay rights and the death penalty.

The Bush administration tried hard to sell Ms. Miers to its conservatives supporters – to the point that they had been accused of making improper assurances that, if confirmed, Ms. Miers would vote to their liking.

Both the White House and Ms. Miers denied making any such assurances, and, in absence of judicial experience, almost nothing seemed to convince conservatives that Ms. Miers was a nominee they could support wholeheartedly.

Timing isn't good

Ms. Miers' decision to withdraw comes at an especially bad time for the White House. The Bush administration is stung by declining support for the war in Iraq and declining overall job approval. It is facing the possibility that some of its top advisers could be indicted by a federal grand jury investigating a leak of a CIA operative's identity.

Ms. Miers apparently made no hint of her intention outside the White House before she told the president of her decision in a phone call Wednesday evening. She formally ended her 24-day-old nomination in a letter of withdrawal delivered to the Oval Office early Thursday, citing a potential conflict with the Senate involving privileged White House documents.

"While I believe that my lengthy career provides sufficient evidence for consideration of my nomination, I am convinced the efforts to obtain Executive Branch materials and information will continue," Ms. Miers said in her letter.

President Bush said he understood her concerns about the confirmation process, and he said he intends for her to continue in her role as White House counsel.

"I am grateful for Harriet Miers' friendship and devotion to our country," the president said.

Former GOP Sen. Daniel Coats of Indiana, the administration's guide for Ms. Miers on Capitol Hill, spent the entire day with her on Wednesday but said he didn't learn of her decision until a meeting Thursday morning.

"It was a growing accumulation of things that resulted in her finally coming to the decision," he said.

"No senator, Democrat or Republican, had come out against her. She was doing very well in the moot court preparations, but she found herself in a very difficult situation. ... There was some handwriting on the wall."

Yet, the confirmation process was still moving forward Wednesday. Just before midnight – hours after Ms. Miers' call to the president – the White House delivered eight boxes of requested documents to the Senate Judiciary Committee, including her revised answers to a committee questionnaire requested by the committee's ranking members.

The committee had asked Ms. Miers to resubmit her answers to questions concerning constitutional law, presidential power and potential conflicts of interest regarding her relationship to the president. The request was made by the committee, both Republicans and Democrats, who found her original answers unrevealing or incomplete.

The unusual request was emblematic of her ill-fated nomination, one that was criticized most heartily by some of the president's own supporters as ill-considered cronyism.

Perhaps the final blow came in a Wednesday meeting between Mr. Bush and Senate Majority Leader Bill Frist, R-Tenn. He said Thursday that he told the president, and later White House chief of staff Andrew Card, that he could not guarantee enough Republican votes to confirm her.

Sen. Trent Lott, R-Miss, said he agreed with that assessment. He said senators who were lukewarm to her nomination had come away even less impressed after visits with the nominee.

"The talk among my colleagues was, 'Is this the best choice?' " Mr. Lott said.

"Let's move on," he said. "In a month, who will remember the name Harriet Miers?"

Documents at issue

A tussle over White House documents was virtually assured when Mr. Bush recounted Ms. Miers' work for him as evidence of her fitness to sit on the court. Although senators promised to avoid issues of attorney-client privilege, the committee questioned her in detail on specific work she had done for the president.

Last week, prominent conservatives began to suggest that an impasse over documents could provide an honorable excuse for her withdrawal. And Mr. Bush seemed to lay the groundwork for the move last week when he vowed not to turn over to the Senate committee any documents he deemed privileged.

Sen. Charles Schumer, D-N.Y., said White House concerns over potential violations of attorney-client privilege were a simply a pretext to withdraw an ill-fated nomination for a candidate favored by "the extreme right."

"Harriet Miers is a fine person," Mr. Schumer said. "But it was clear in all of the interviews she had with both Democrats and Republicans on the Judiciary Committee that she was not versed at all in the constitutional law, which is what a nominee has to do.

"She had virtually no record outside the documents, so everyone was going on tea leaves."

Sen. Arlen Specter, R-Pa., who heads the Senate Judiciary Committee, lamented what he called the "one-sided debate" regarding her nomination. He said she hadn't had a chance to sell herself in confirmation hearings.

"Whether she would have been confirmed remains an open question. But at least she would have had the major voice in determining her own fate," Mr. Specter said.

The withdrawal of the Miers nomination, however, may do little to head off confrontation over any new nomination. Though the name changes, both sides say the issues won't.

Miers supporter Jay Sekulow, chief counsel of the Washington-based American Center for Law and Justice, said he hopes the new nominee will be unambiguously conservative.

"I have no doubt that the president will put forth a nominee who has a conservative judicial philosophy – someone who will not legislate from the bench," Mr. Sekulow said.

Mr. Kennedy said: "If he [the president] wants to have a political battle, he can have a political battle. The American people are looking for way to be brought together."

Staff Writer Todd J. Gillman contributed to this report.