

Multiple news sources reported Wednesday that the Obama Administration has floated the first identified candidate the President is considering nominating to the U.S. Supreme Court to replace Justice Antonin Scalia, who died unexpectedly earlier this month. That candidate is a most intriguing and unconventional one: Nevada Governor Brian Sandoval—a Republican.



Nevada Governor Brian Sandoval

Sandoval, 52, received his law degree from Ohio State University and practiced law in Reno, Nevada for over a decade. Sandoval began his political career when he was elected to the Nevada State Assembly in 1994, and he ran successfully for Nevada Attorney General in 2002.

In 2005, Sandoval was nominated by President George W. Bush to the U.S. District Court for the District of Nevada. Actively supported across party lines by then-Senate Majority Leader Harry Reid, Sandoval was confirmed unanimously as a district court judge by the U.S. Senate shortly thereafter.

Sandoval resigned from the federal bench in 2009 to run for Governor of the State of

Nevada. He won a lopsided victory in 2010—ironically, defeating Democratic candidate Rory Reid, Senator Harry Reid's son. Governor Sandoval won re-election in 2014 in a landslide victory, earning over 70% of the vote.

The politically popular Sandoval is that most threatened of political species—a moderate Republican who over his career has both cultivated and obtained bipartisan support. That's one of the reasons he's caught the eye of President Obama as the President and his aides vet Supreme Court candidates.

If Obama were to nominate Sandoval to the Court, it would elicit groans from the liberal wing of the Democratic Party, which desperately hopes the President will settle on a truly progressive candidate. But in many ways, Sandoval would be an inspired political choice: a popular, articulate and smart governor who would be the first Latino justice in Supreme Court history.

Senate Republicans who control the Senate Judiciary Committee have closed ranks behind Committee Chairman Charles Grassley, announcing that they will not even grant a Senate committee hearing—much less a floor vote—to anyone President Obama nominates to the Supreme Court. But could and would Senate Republicans adhere to that obdurate position if the President were to nominate one of their own? Republican Senators are already on the political defensive, given their politicized and intransigent stance over the current Supreme Court vacancy—and justifiably so. Whether they would go so far as to deny Republican Governor Sandoval a committee hearing and full Senate vote seems unlikely even in this increasingly bizarre presidential election year—at least to this observer.

Turning to the most likely question on the minds of Legal Planet readers: what kind of environmental credentials and philosophy would a Justice Sandoval bring to the Court?

It's always risky to predict how a Supreme Court justice will decide future cases based on his or her record before being appointed to the Court. (Just think of President Eisenhower's nomination of Chief Justice Earl Warren or, more recently, President George H. W. Bush's selection of Justice David Souter.) But here's how I read the Sandoval tea leaves: based on his record as state legislator, Nevada Attorney General and Governor, Sandoval would likely be a moderate to strong voice on environmental issues coming before the Supreme Court.

While a member of the Nevada State Assembly, Sandoval served as a member of the Governing Board of the Tahoe Regional Planning Agency, the bistate entity with planning and regulatory responsibility for the Lake Tahoe Basin. In that capacity, he charted a fairly moderate course, helping to direct an agency that over the past few decades has been a

reasonably good steward of Lake Tahoe's spectacular environmental resources.

As Nevada's Attorney General, Sandoval worked across party lines to successfully block the federal government's efforts to build and operate a national nuclear waste repository near Las Vegas. And I have personal knowledge of the fact that Attorney General Sandoval's deputies partnered closely and well with the California Attorney General's Office on several bipartisan and bistate legal initiatives to preserve the Lake Tahoe Basin from undue development threats.

In his two terms as Governor, Sandoval has similarly pursued moderate environmental policies. Recently he's earned the ire of some Nevada solar advocates by not, in their view, sufficiently supporting increased deployment of solar energy projects in the Silver State.

But Governor Sandoval has played a key role in steering Nevada away from its previous dependence on coal-fired electricity, and he partnered with 16 other state governors who earlier this month pledged to jointly pursue clean energy goals.

Contrary to many Western governors, Sandoval has cultivated a good working relationship with U.S. Secretary of the Interior Sally Jewell, and he's steered clear of the state-federal clashes over federal lands policies that have arisen among some Republican governors vis-a-vis the Obama Administration. (Approximately 90% of Nevada's surface area consists of federally-owned lands.) Finally, last year Sandoval met with California Governor Jerry Brown at Lake Tahoe to announce joint gubernatorial initiatives to protect the Lake Tahoe Basin environment.

In sum, Governor Brian Sandoval, if nominated and confirmed to the Supreme Court, seems likely to be a moderate voice (and vote) on the Court. That assessment holds, and has some significant empirical support, when it comes to the myriad environmental issues and cases that will inevitably come before the justices in the near future.

A Justice Sandoval would doubtless be more conservative than President Obama's previous two nominees to the Supreme Court, Sonia Sotomayor and Elena Kagan. But Sandoval likely would be far more moderate when it comes to environmental law and policy than was Justice Scalia in his three decades on the Court. That's probably the more important benchmark to keep in mind.

Politics, it's often said, is the art of the possible. Brian Sandoval may well be the best candidate President Obama can possibly hope to get confirmed by the Senate to serve on the Supreme Court before Obama leaves office. Based on Sandoval's past record in public service, Obama—and the American people—could do a lot worse.

**UPDATE:** On February 25th, Governor Sandoval requested that President Obama no longer consider him for appointment to fill the Supreme Court vacancy. In a statement Sandoval said, "The notion of being considered for a seat on the highest court in the land is beyond humbling and I am incredibly grateful to have been mentioned."

Earlier reports indicated that Governor Sandoval *had* been interested in being considered for the Supreme Court. So why the change of heart? This is pure speculation, but my hunch is that Republican Party leaders leaned-hard-on Sandoval to withdraw as a candidate for appointment to the Court, thereby saving them and the party from a most awkward political position; Republican Congressional leaders maintain their stance to deny a Senate hearing and vote to Obama's eventual nominee to fill the Supreme Court vacancy created by Justice Scalia's death.

