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Packing the Courts: President Bush's Nominees to Lifetime Federal Judgeships Threaten the Environment

FILIBUSTERED (Senate cloture votes fell short of 60 needed to force a final vote)

NOMINATION WITHDRAWN OR LAPSED

Miguel Estrada: (D.C. Circuit nomination withdrawn (Sept. 4, 2003) after 7th failed cloture vote, 55-43)

- **Sixteen Senators cited environmental concerns in successfully opposing efforts to force a vote on the Estrada nomination. Fourteen national environmental groups opposed Estrada's confirmation** due to his limited public record on many of the key issues before the DC Circuit; the lack or unavailability of writings that would reveal his qualifications; and his stonewalling during testimony before the Senate Judiciary Committee.

Carolyn Kuhl: Ninth Circuit nomination blocked; cloture denied, 53-43 (Nov. 14, 2003), nomination lapsed

- **In briefing and arguing UAW v. Brock for the Reagan Administration, Ms. Kuhl urged the Supreme Court to overturn well-settled constitutional precedents in order to bar environmental and other groups from going to court to protect their members.**
- As a judge, Kuhl was unanimously reversed by the California Court of Appeals after **she issued a ruling that would have made it easier for industry to punish those who blow the whistle on polluters.** *Liu v. Moore.*

Charles W. Pickering, Sr.: Fifth Circuit nomination blocked; cloture denied, 54-43 (Oct. 30, 2003), retired in December 2004 after expiration of temporary recess appointment

- The Senate Judiciary Committee defeated the nomination of Mississippi federal trial Judge Charles Pickering in 2002 on a 10-9 vote. President Bush re-nominated him on January 2, 2003 to the same Fifth Circuit Court of Appeals seat. **On Jan. 16, 2004, President Bush gave him a recess appointment through the end of 2004.**
- **Judge Pickering had a record of unjustifiably denying citizens access to the courts to seek redress for environmental and other harms.** He was reversed repeatedly by the Fifth Circuit for improperly dismissing claims filed by victims in toxic-tort cases concerning an EPA Superfund site. *Abram v. Reichhold Chemicals.*
- In another case, **Judge Pickering issued a remarkable ruling in favor of a developer that filed a preemptive suit to forestall any challenges to a proposed major casino project in one of the most productive and important estuarine habitats of North America.** *Pine Hills Dev. P'ship v. Gulf Island Conservancy.*
- Three Judicial Ethics experts have concluded that, as a U.S. District Judge, **Charles Pickering violated ethical requirements in order to reduce the sentence of a man convicted of burning a cross on the lawn of an interracial couple.** *United States v. Swan.*

BLOCKED under "Gang of 14" agreement which specifies that "extraordinary circumstances" are NOT required for continuing filibuster of William Myers

William G. Myers III: Ninth Circuit nomination blocked; cloture denied, 53-44 (July 20, 2004)

- Myers' nomination generated record environmental and Native American opposition including from the National Wildlife Federation, and the National Congress of American Indians, representing over 250 tribal governments, neither of which have ever opposed any other federal judicial nominee.
- Myers is a former ranching- and mining-industry lobbyist. **As the Interior Department's top lawyer, Myers repudiated his predecessor's legal opinion to clear the way for a rejected cyanide heap-leach gold mine** that would devastate sacred tribal lands. Myers ignored Interior's trust responsibility to tribes by meeting with the mining company but failing to consult with the affected tribe, which had requested a meeting.

- The Interior Department reversed another Myers' position after discovering that he had supported giving valuable public land to a mining company without even checking with the local Interior office, which strongly opposed the giveaway because land records showed the company lacked any lawful claim to the land. *L.A. Times* 3/8/04.

CONFIRMED under "Gang of 14" agreement after they were blocked in the previous Congress

Janice Rogers Brown: *D.C. Circuit nomination blocked; cloture denied, 53-43 (Nov. 14, 2003); confirmed 56-43 (June 8, 2005)*

- **California Supreme Court Justice Brown wrote lone dissenting opinions that would have unjustifiably made taxpayers pay businesses to obey basic zoning, environmental, and other laws.**
- Justice Brown **supported returning to the universally denounced pre-New Deal Lochner-era** when courts elevated business interests over individual rights. ***She believes that the Supreme Court's refusal to invalidate the New Deal in 1937 "marks the triumph of our own socialist revolution."***

William H. Pryor, Jr.: *Eleventh Circuit nomination blocked; second cloture vote failed, 51-43 (Nov. 6, 2003); confirmed 53-45 (June 9, 2005)*

- **On Feb. 20, 2004, President Bush gave Pryor a recess appointment through the end of 2005.**
- **William Pryor is among the nation's most extreme opponents of congressional authority**, including Congress' ability to protect the environment. **Mr. Pryor repeatedly filed briefs in which Alabama was alone among the 50 states in arguing against federal authority.** For example, Pryor's was the only state brief to argue to the Supreme Court that the federal government lacked constitutional Commerce Clause authority to protect waters and wetlands that provide habitat for migratory birds. *SWANCC v. U.S. Army Corps of Engineers*
- **Mr. Pryor testified to Congress that EPA invaded states' rights by enforcing the Clean Air Act** to protect downwind states from pollution caused by dirty coal-burning power plants.

Priscilla Owen: *Fifth Circuit nomination blocked; cloture denied, 53-42 (Nov. 14, 2003); confirmed 55-43 (May 25, 2005)*

- Texas Supreme Court Justice Priscilla Owen **wrote dissenting opinions that would have exempted big business from municipal clean-water safeguards and from state health-and-safety protections.** In one of these cases, after Owen wrote a separate dissent focusing on her belief in a property right to pollute, then-Justice (and now *White House Counsel*) Alberto Gonzales' majority opinion stated: **"Most of Justice Owen's dissent is nothing more than inflammatory rhetoric, and thus merits no response."**

CONFIRMED (not Filibustered)

Jeffrey Sutton: *Sixth Circuit nomination confirmed, 52-41 (April 29, 2003)*

- Although the Senate confirmed Jeffrey Sutton to the Sixth Circuit Court of Appeals, he received the lowest number of votes (52) in decades—41 voted NO, plus 5 Senators who missed the vote would have voted NO.
- In his briefs, writings and speeches, Mr. Sutton advanced extreme states' rights views that pit the federal government against the states. These views do violence to the cooperative federalism that underlies most federal health and safety legislation, as well as a wide range of environmental safeguards.

Victor Wolski: *Court of Federal Claims nomination confirmed, 54-43 (July 9, 2003)*

- Victor Wolski was narrowly confirmed to the Court of Federal Claims, which decides whether companies must be paid to comply with environmental safeguards. Opposition included 13 national environmental groups and Sen. Ben Nelson (D-NE), who had previously not opposed a Bush administration judicial nominee.
- Mr. Wolski told *National Journal* in 1999: **"Every single job I've taken since college has been ideologically oriented, trying to further my principles,"** which he called a **'libertarian' view on the very property rights issues he will decide** as a CFC judge. Mr. Wolski spent the bulk of his legal career bringing sweeping challenges to environmental protections on behalf of the extreme Pacific Legal Foundation (PLF).

For comprehensive information on federal judicial nominations and the environment see: www.earthjustice.org