

## **Bush's Anti-Environmental Judicial Nominees Not Off the Hook**

**WASHINGTON, DC**, May 25, 2005 (ENS) - After days of intense negotiations, a bipartisan coalition of 14 senators agreed Tuesday not to change Senate rules to eliminate the minority's right to filibuster controversial judicial nominees. The agreement is viewed as a partial victory for the environment as several of the nominees have adopted anti-environmental positions in the past. Several nominees such as Justice Priscilla Owen will get a vote on the Senate floor. Others will not.

The most controversial of these is former Interior Department Solicitor William Myers, whose hostility toward environmental protections and work as lobbyist for mining and ranching interests has prompted record opposition from groups around the country.

Senate Minority Leader Harry Reid, a Nevada Democrat who helped broker the agreement, announced that Senate Democrats will continue to block Myers' nomination. Republicans by and large support Myers.

"The decision of moderate senators to reach a compromise that allows them to step back from the brink of all-out partisan 'nuclear' warfare in the United States Senate is a victory for democracy, and for our nation's protections for clean air, clean water, and special natural places," said Glenn Sugameli, who heads the Judging the Environment project for the nonprofit law firm Earthjustice.

"The fact that William Myers will not be allowed to be confirmed shows how important environmental protections have become to the issue of maintaining fair and independent courts," Sugameli said.

**Conservationists fear that former Interior Solicitor William Myers is viewed as an anti-environmental activist by conservation groups.** (Photo courtesy [DOI](#))

Myers, who has advocated against environmental groups, is in line to join the appellate court that rules on Western land use litigation, the 9th Circuit Court of Appeals.

Myers has served as a lawyer for a number of anti-environmental interests and has argued that the Clean Water Act and Endangered Species Act are unconstitutional and should be abolished.

The American Bar Association has rated Myers as "not qualified."

"If confirmed to the 9th Circuit, Myers would make decisions that directly affect the fate of Oregon's public lands, fish, wildlife, and clean water," said the Oregon Natural Resources Council, which opposes his nomination.

The seven Republican and seven Democrats from the Senate agreed not to support any effort to eliminate judicial filibusters during the 109th Congress.

Under the agreement, seven Senate Republicans would agree to reject the efforts of Majority Leader Bill Frist, a Tennessee Republican, to break Senate rules and traditions in order to force the confirmation of right-wing activist judges.

The agreement leaves intact the ability of a minority of senators to filibuster controversial nominees, and thereby invoke a requirement that 60 senators must agree to support a confirmation vote.

The ability of the Senate to filibuster controversial nominees has served as an important check and balance on the power of the Executive Branch for more than 200 years.

"This agreement recognizes how truly nuclear Senator Frist's proposal to break longstanding rules really was," Sugameli said. "Thankfully, seven Republican Senators had the backbone to stand up to Senator Frist and support the Senate's long tradition of hearing all voices on these crucial lifetime judgeships."

**William Pryor is a former Alabama attorney general.** (Photo courtesy Office of the AG)

The agreement to abide by Senate rules and leave the filibuster rules intact come at a high price, however. Under the agreement, Senate Democrats who previously voted to filibuster right-wing activist nominees William Pryor,

Priscilla Owen, and Janice Rogers Brown would reverse those votes, and agree to proceed to confirmation votes on those nominees.

Pryor, a former Alabama attorney general, was nominated by President George W. Bush in April 2003 to fill a lifetime seat on the 11th Circuit Court of Appeals, which hears appeals of federal environmental cases in Florida, Georgia, and Alabama.

Pryor has been criticized by conservationists for his aggressive attacks on core national environmental safeguards. He was alone among 50 state attorneys general in challenging the constitutionality of significant portions of the Clean Water Act and the Endangered Species Act.

In testimony before Congress, Pryor said that the EPA had “invaded the province of the states” by using its Clean Air Act authority to reduce pollution from coal-burning power plants and oil refineries - even though the pollution harms downwind states. He has also demonstrated hostility to claims of environmental injustice, having stated unequivocally that, “environmental justice claims should fail generally.”

On February 14, 2005, President Bush formally renominated Priscilla Owen to the 5th Circuit Court of Appeals. Based in New Orleans, this court decides environmental cases from Louisiana, Mississippi and Texas.

As a Justice of the Texas Supreme Court, opinions that Owen has written would elevate the rights of polluters over the rights of neighbors and the public, and restrict the public’s access to public information about pollution.

Many of Owen's critics cite her dissenting opinion in *FM Properties Operating Co. v. City of Austin*, as an example of her anti-environmental bias. Sugameli wrote in an analysis of her rulings that this opinion has "especially disturbing implications for water pollution, for the ability of special interests to exempt themselves from environmental, land use and other vital safeguards, and for the property and other rights of neighbors and the public.

The majority opinion of the Supreme Court of Texas, written by Justice Baker and joined by Chief Justice Phillips, Justice

Enoch, Justice Hankinson, Justice O'Neill and Justice Alberto Gonzales, currently U.S. attorney general, stated that, "Most of Justice Owen's dissent is nothing more than inflammatory rhetoric, and thus merits no response. We note only that the two legal arguments Justice Owen does make are both based on a flawed premise."

The Texas law at issue in the FM Properties case allowed large landowners to exempt themselves from otherwise applicable municipal regulations, including water quality safeguards, "land use ordinances, nuisance abatement, platting and subdivision requirements, pollution control and abatement programs or regulations, and any environmental regulations."

The majority opinion found the law to be unconstitutional because it provided "no meaningful governmental review of the landowners' actions," and "allows the landowners to create part of the regulatory scheme that they choose."

Justice Owen's dissent attempted to portray the majority decision as a sweeping assault on property rights, her critics say.

On February 14, 2005, President Bush renominated California Supreme Court Justice Janice Rogers Brown to the DC Circuit Court of Appeals. This Circuit typically has the final say on whether national health, safety, and environmental protections stand or fall, and except for the handful of cases that the U.S. Supreme Court agrees to review, is the most powerful appeals court in the country.

Dozens of environmental and community groups have expressed their opposition to Brown's nomination.

Community Rights Counsel's Executive Director Doug Kendall said, "Brown is a judicial activist with views that lie far outside the mainstream of even conservative legal thinking. Her views put in jeopardy our nation's bedrock environmental protections along with many other hallmark legislative achievements of the 20th century. This nomination should trouble conservatives and liberals alike."

A list of 35 environmental groups signed a letter to Senate leaders that objects to Justice Brown in part because she has

testified that property rights “are entitled to the same level of protection as what is called fundamental rights or fundamental liberties.”

"Earthjustice will continue to strongly oppose the nominations of Pryor, Owen, and Brown, and urge the Senate to reject them," Sugameli said. "Based on their records, these nominees still do not deserve lifetime seats on the federal bench."

The Memorandum of Understanding signed by the 14 moderate senators encourages President Bush to "consult with members of the Senate, both Democratic and Republican, prior to submitting a judicial nomination to the Senate for consideration."

Reid said the Senate Republicans had their eye on the U.S. Supreme Court when attempting to delete the right of the majority to filibuster - that is to argue loud and long - against nominees they believe are wrong for the country.

“The integrity of future Supreme Courts has been protected from the undue influences of a vocal, radical faction of the right that is completely out of step with mainstream America," said Reid late Monday night. "That was the intent of the Republican 'nuclear option' from the beginning. Tonight, the Senate has worked its will on behalf of reason, responsibility and the greater good."

Republican Senator Olympia Snowe of Maine, one of the 14 senators who crafted the agreement, was pleased with the outcome. "Today," she said, "we have reaffirmed that, while our constitutional democracy is premised on majority rule, it is also grounded in a commitment to minority rights."