

## **Controversy Over Judicial Nominees Derails Energy Bill**

**By J.R. Pegg**

**WASHINGTON, DC**, July 31, 2003 (ENS) - This was supposed to be the week that the Senate focused on developing the nation's energy policy. But the bitter partisan divide over several of the Bush administration's judicial nominees has undermined attempts to move forward with the energy bill, which is now unlikely to be completed before the Senate leaves for its August recess.

"It is clear we are not going to be able to finish the energy bill this week," said Majority Leader Bill Frist, a Tennessee Republican. "The Democrats are bringing progress on this critically important issue of energy to a screeching halt."

"This is flat out obstruction," Frist said.

Democrats counter that Frist derailed the process by scheduling debate on trade legislation but moreover by insisting on cloture votes for four of the Bush administration's nominees to federal appeals courts.

"If we really wanted to finish the bill, we would not have had these other diversions," said Minority Leader Tom Daschle, a South Dakota Democrat.

**Senate Republicans do not have the votes to force the Senate to vote on confirmation of Alabama Attorney General Bill Pryor to a lifetime federal judgeship.** (Photo courtesy [Alabama Attorney General's office](#))

The nominees Republicans are pressing the Democrats to vote on are some of the most controversial to come before the Senate, Daschle said, and opponents of the nominees have a duty to protest.

administration's nominee for the U.S. Court of Appeals for the 11th Circuit, which oversees cases in Alabama, Florida and Georgia.

Sixty votes are required to end debate and force a vote on judicial nominees, but only 53 votes were mustered in favor of a vote on Pryor.

"Pryor is the most extreme nominee we have been asked to support," said Senator Charles Schumer, a New York Democrat. "He is not a mainstream conservative. He is the Frankenstein nominee - a stitching together of the worst parts of the most troubling nominees we have seen."

Much has been made of Pryor's statement that his views are the product of his deeply held religious beliefs, but there is nothing in these religious beliefs that can explain Pryor's views on the federal government's role in protecting the environment, says Glenn Sugameli, senior legislative counsel for the environmental law firm Earthjustice.

As Alabama Attorney General, Pryor challenged the constitutionality of two major federal environmental statutes - the Clean Water Act and the Endangered Species Act (ESA).

Pryor argued that the Constitution's Commerce Clause does not give Congress the authority to protect waters and wetlands that provide habitat for migratory birds.

The basis of his constitutional challenge to ESA had previously been rejected by the author of the Fourth Circuit's ruling because they would "place in peril the entire federal regulatory scheme for wildlife and natural resource conservation."

In addition, Pryor testified before Congress that "EPA invaded the province of the States" by enforcing the Clean Air Act to prevent uncontrolled pollution increases at coal-burning power plants and oil refineries.

**Pryor questions the Constitutional right of Congress to protect waters and wetlands that provide habitat for migratory**

**birds.** (Photo by Stephan Dobert courtesy [U.S. Fish and Wildlife Service](#))

"The only consistency in his record is favoring big corporate polluters," said Sugameli, whose organization is one of 16 national environmental and planning groups that signed a letter opposing Pryor's nomination.

Today's vote on Pryor follows failed efforts earlier this week to force confirmation votes on two other controversial nominees to federal appeals courts, Miguel Estrada and Priscilla Owen. A cloture vote on a fourth federal appellate court nominee, California judge Carolyn Kuhl, is scheduled for Friday.

Democrats rebuffed criticism that they are needlessly holding up the process, noting that some 140 Bush nominees to the federal judiciary have been confirmed.

Speaking during today's debate over Pryor, Massachusetts Senator Ted Kennedy, a Democrat, said "the question is why, when there are so many qualified attorneys in the state of Alabama, the President would choose such a divisive nominee?"

Senator Barbara Boxer, a California Democrat, weighed in with her opposition to Kuhl, who she says is outside of the mainstream on nearly every issue - including women's health, environmental protection, corporate fraud and public participation in court cases.

"Her nomination was ill advised from the start," said Boxer. "Why choose someone so far from the center?"

The current situation reflects that the Senate process for considering nominees has gone astray, Boxer said.

Senators from the home state of potential nominees were traditionally given the opportunity to recommend whether the nomination should proceed, Boxer says, but that is no longer the case.

All four nominees under debate this week would serve on the 13 federal appeals courts, which take cases from courts with their jurisdictions.

This level of the judiciary is only superceded by the U.S. Supreme Court, which only chooses to hear less than some 100 cases a year.

**California Senator Barbara Boxer, a Democrat, blasted the Republican leadership trying to force votes on controversial judicial nominees.**  
(Photo courtesy [Senator Boxer's office](#))

These 13 courts very often provide the final decision on legal challenges to environmental rules and regulations and their judges are appointed for life.

Environmentalists are increasingly worried that the Bush administration is trying to stack the federal courts with ideologues such as Pryor who have records of extreme hostile to environmental protections.

Several nominees who drew the ire of environmentalists have already been confirmed to federal courts, including Jeffrey Sutton.

Sutton was narrowly confirmed by a vote of 52 to 41 in April to the 6th Circuit Court of Appeals. He has argued, for example, that the federal government does not have the authority to enforce the Clean Water Act.

In another brief, Sutton argued against the federal

government's authority over state officials charged with enforcing federal law. Sutton, a lawyer from Ohio, had never been a judge prior to his confirmation.

Rising concerns about nominees to federal courts has coincided with increased documentation of the key role these courts play in the protection of the nation's environment. Seldom does an environmental rule or regulation move forward without a lawsuit by environmental groups or by affected industries.

A report issued in 2001 by the Natural Resources Defense Council, Community Rights Counsel and Alliance for Justice found that the increasing activism of federal judges has harmed environmental protection efforts.

"Environmental statutes are suffering a death from a thousand cuts in non-constitutional cases as anti-environmental judges ignoring the intent of Congress expressed in statutory text and legislative history," according to the report, titled "Hostile Environment: How Activist Judges Threaten Our Air, Water and Land."

"Nobody is asking [the administration] to appoint anyone they would not accept," Sugameli said. "But there is a difference between someone who is a fair minded conservative judge and an active ideologue."

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[news@ens-news.com](mailto:news@ens-news.com)

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