

## Muckraker: Base-brawl

### Dems block anti-enviro nominee, and conservatives are lovin' it

When Senate Majority Leader **Bill Frist** (R-Tenn.) fell seven votes short on Tuesday of forcing a confirmation vote on Bush judicial nominee **William G. Myers III** -- widely considered the most anti-environment judicial candidate Bush has ever put forward -- it might have seemed like a big blow to the GOP.

But Frist and his fellow right-wing Republicans got precisely what they were aiming for.

True, environmentalists had every right to call it a major win for their side. "We're thrilled!" said **Glenn Sugameli**, senior legislative counsel for **Earthjustice**. "Myers became the seventh lifetime Bush judicial nominee to be officially blocked by Senate Democrats -- and the first blocked chiefly for environmental reasons."

Myers is, after all, the former mining and cattle industry lobbyist who compared the government's management of public lands to the "tyrannical actions of **King George**"; who said federal migratory-bird protections lead to "despotic intrusion by the federal government over every brook, creek, cattle tank, mud puddle, slough, or damp spot in every landowner's backyard"; and who called the Clinton-era roadless rule "a narrow path toward economic and environmental destruction." A [report by Earthjustice \[PDF\]](#) shows that he continued to promote an industry agenda in legal opinions he wrote as the Interior Department's chief attorney, a post to which he was appointed by Bush. [Editor's note: For more on Myers' record, check out this past [Muckraker column](#).]

In other words, Myers wouldn't exactly fit in on the San Francisco-based **U.S. 9th Circuit Court of Appeals** to which he's been nominated. The 9th Circuit, which has the largest jurisdiction in the nation and hears many critical environmental cases, is generally considered the most progressive federal appeals court. That's precisely why the Bushies picked Myers -- to shift the balance of power.

But Myers' rhetoric and record are so controversial that Frist and other Republican leaders have known full well since April, when every Democratic member of the **Senate Judiciary Committee** voted against his nomination, that their nominee was dead in the water.

"Everyone knew this nomination was a non-starter," said **David Carle**, spokesperson for Sen. **Patrick Leahy** (D-Vt.), the ranking member on the Judiciary Committee.

The opposition has been overwhelming -- and not just from Senate Democrats. It was also the 180-some environmental, Native American, civil-rights, and other organizations that have joined forces to push for Myers' defeat, including nonpartisan organizations like the **National Wildlife Federation**, which has never before in its 68-year history opposed a judicial nominee.

So why would Frist force a cloture vote when it was clear that he would fail?

The simple answer is election-year GOP shenanigans. "This wasn't about Myers," explained Carle. "Votes like this are about throwing red meat to the GOP's core right-wing voter base."

Installing extreme right-wing judicial nominees happens to be a top priority of the Bush administration -- and tracking these nominations happens to be a favorite pastime of their core conservative supporters. So when Frist and his colleagues advocate these nominees on the Senate floor -- and force the Democrats to block them -- it's like staging a pep rally on Capitol Hill for their biggest fans.

It wasn't a surprise, then, when just a day or two after the scuttling of the Myers nomination, Frist kept the rally rolling by queuing up cloture votes on three more controversial judicial nominees -- **Henry Saad, David McKeague, and Richard Griffin** -- for the **6th Circuit Court of Appeals**. All three were brought up for a Senate floor vote and blocked by Democrats today.

**Sierra Club** Senior Attorney **David Bookbinder** said Frist's maneuvering is designed to give the president a round number to work with when he's campaigning on the issue of judicial nominees: "Basically they thought seven [blocked nominations] would sound too trivial. Now they've got 10 to complain about -- they're in double digits and it sounds important. It's hard to believe that the GOP leadership is willing to waste so much time on this election-year stunt when there are so many far more pressing issues for Congress to address."

White House Counsel **Alberto Gonzales** cast some light on the GOP fixation with judicial nominees earlier this month on "[Ask the White House](#)," an online question-and-answer feature on the White House website. Appointing federal judges, Gonzales wrote, "is perhaps a president's most lasting legacy. Many of a president's policies and programs may be revised with a new administration or Congress, but a president's decision to appoint a man or woman to the federal bench lasts a lifetime."

What better way for Bush to immortalize his radical presidency than by leaving behind radical federal judges who will carry out his vision for decades to come?

Earlier this month, when the president went to North Carolina on the campaign circuit -- just after **John Edwards** was tapped as **John Kerry's** VP -- he worked the crowd into a lather by complaining, "[My judicial] nominations are being held up, and it's not right and it's not fair." And, later in the speech, "Sen. Edwards will not allow two of the nominees to whom I referred to even get to the committee for a hearing." He then ratcheted the urgency up a notch, saying one of the seats he is trying to fill has been "designated a 'judicial emergency' by the Judicial Conference of the U.S. ... [which] means there's a shortage of judges!"

What the president neglected to point out, however, is that the number of judicial vacancies is now at its lowest point since 1988. Whether a vacancy is

given emergency status depends on the length of time a seat has been empty and the caseloads at that court. But even in this category, "emergencies" are at a minimum. "We inherited 28 emergency vacancies when Bush came into office," said a senior Democratic staff member for the Judiciary Committee who asked to remain unnamed, "largely because Republicans blocked Clinton's efforts to fill them. Now there are only 14. Meaning, we've cut emergency vacancies by half."

And while GOP leaders criticize the Dems for blocking Bush's nominees -- as of today, 10 -- they fail to mention that during Clinton's tenure, Republicans blocked more than 60 nominees from getting a confirmation vote, according to Carle. They also gloss over the fact that the Democrats in the Senate have ushered through 198 lifetime judicial nominees since Bush has been in office -- compared to the 175 lifetime appointments that were confirmed in Clinton's second term -- in the interest of solving the very problem the GOP is now trying to lay in their laps.

Equally misleading were comments from Republican leaders in Tuesday's Senate debate over Myers, as they attempted to pass the buck on exploiting the Myers nomination for political reasons. "[Democrats] were going to use [Myers] to demonstrate before their environmental constituencies that he was their token and they would bring him down," said Sen. **Larry Craig** (R-Idaho).

And this is only the beginning, according to an article published this week in the Capitol Hill newspaper *Roll Call*. "Senate Republicans are preparing for a major floor action in the fall [on judicial nominations] highlighting their allegations of unprecedented Democratic obstructionism," read the article, which detailed the election-year motivations behind this effort.

Carle told Muckraker the Dems are prepared for the attack. "We expect them to bring up rerun votes in September of many of their most controversial judicial nominations -- **[Charles] Pickering, [William] Pryor, [Carolyn] Kuhl**, even the Myers nomination could come up again -- simply to try to foster their message that Democrats are obstructionist," he said.

But Democratic strategists are confident that this effort will backfire: If the left counters by highlighting the extreme views of these nominees, it could do more to dissuade swing voters from casting a red ballot than it does to energize the Republican base.

The Sierra Club is already on the job. The group has joined with more than two dozen progressive groups to run [television ads](#) on CNN in the Washington, D.C., area spotlighting the far-from-mainstream records of seven of Bush's judicial nominees. Call it a point-counterpoint to the stunts the Republicans are trying to pull on the Senate floor.

"In the end, this GOP effort to push extreme judicial nominees is making both sides of the aisle happy," said Bookbinder. "Both sides believe it is energizing their bases."