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## Liberal Activists Say Access To Courts Key; Dems to press Roberts over right to sue gov't, curbs on federal courts

**By Sean Higgins**

Critics of Judge **John Roberts'** nomination to the **Supreme Court** have a lot of questions they want senators to ask him next week. One is where he stands on "access to courts."

While rather obscure outside of legal circles, it is a key issue for many on the left. Democrats have made clear they intend to pursue it during next week's hearings.

"The role "access to courts' plays in Roberts' thinking is definitely on our radar," said Tracy Schmaler, spokeswoman for Vermont Sen. Pat Leahy, the ranking Democrat on the Judiciary Committee.

"Access to courts" encompasses a number of issues relating to how far the power of the courts extends. Most commonly, it refers to when a person has legal standing in court to sue, especially in cases involving the government.

It also includes the question of "court stripping" -- whether Congress has the right to limit the federal courts' jurisdiction, preventing them from ruling on certain issues.

Left-Right Divide

The left has long favored a broad definition of access, arguing that it is a fundamental right. Most view broad standards of court access as crucial to advancing their goals.

The right has favored a narrower definition, arguing that's more in line with the Constitution. Broad access has resulted in the courts usurping the role of legislatures, they argue.

For activists on both sides -- and wavering senators -- how Roberts explains his stance will be a key insight into what he would do as a justice.

Curt Levey, general counsel for the Committee for Justice, a conservative group, said liberal groups are raising the issue as part of a scare campaign.

"One way to scare the American people is to say that civil rights and environmental laws are going to be rolled back," he said.

Roberts' record does suggest he favors a more restrictive view of access. In the first Bush administration, he won cases before the **Supreme Court** that limited the ability of people to sue the government on environmental issues.

The most important was a 1992 **Supreme Court** case that involved a nonprofit group's effort to overturn an Interior Department decision regarding the Endangered Species Act.

Roberts successfully argued that the group had no standing to sue because it couldn't show any real damage to its members from the government's decision -- only a "hypothetical one" based on alleged environmental damage.

That ruling made it harder for green groups to challenge the government in federal court, prompting an outcry on the left.

Roberts defended it in a 1993 Duke Law Journal article, saying it prevented federal courts from being overwhelmed by frivolous cases and from exercising power that should belong only to Congress.

The courts, he wrote, should not be allowed "to exercise such oversight responsibility at the behest of any John Q. Public who happens to be interested in the issues."

He said this was an "apolitical limitation on judicial power."

He won other cases in the first Bush administration with the same basic argument.

As a lawyer in the Reagan administration, Roberts also argued in favor of court stripping, an idea long favored by many on the right.

In a 1984 case involving busing, Roberts wrote in a memo "it is within Congress' authority" to "prohibit the federal courts from ordering" busing.

**"There seems to be a pattern throughout his career where he has tried to deny people access to courts. We're trying to get that out to people," said Terrill North,**

**lobbyist for Earthjustice, a nonprofit law firm affiliated with the Sierra Club.**

Those concerns are echoed by other groups heavily involved in opposing Roberts' nomination, such as People for the American Way.

To Roberts' supporters, his actions are easily defensible on their merits. He was trying to strike the right balance between the courts and the government while upholding the Constitution, they argue.

"As for stripping courts of their jurisdiction, I think that (argument) is misleading," said the Committee for Justice's Levey.

It's not that you would not have access to courts, Levey noted. It's just that state courts, not federal ones, would handle these issues.

Roberts Not Seen As Radical

Roberts' views on access to courts mirror those of the Rehnquist court, Levey says. While conservative, the court has not sought to roll back many precedents, so Roberts might not shift it much anyway.

"There has really only been one justice on that court that has shown any interest in rolling back the post-New Deal agenda, and that is (Clarence) Thomas," Levey said. "So unless Bush appoints four more Thomases, that's not going to happen."