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Liberals to choose their battles on judge nominees.

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WASHINGTON - On Nov. 6, the very day that the GOP takeover of the Senate was sealed, Kate Michelman of the National Abortion and Reproductive Rights Action League convened a series of all-day strategy meetings for NARAL leaders across the nation on judicial nominations.

The agenda was "to put a plan of action into motion to protect against a sweep of our courts by the far right," says NARAL President Michelman, "and to educate pro-choice Americans that the freedom to choose is at risk."

At the same time, Nan Aron, president of the Alliance for Justice, was in San Francisco addressing a previously scheduled conclave of liberal organizations. In the wake of the GOP shocker, Aron says, that meeting became "energized" with talk about how liberals can organize on the judicial confirmation issue under a Republican Senate.

Clearly, the situation has changed dramatically for Aron, Michelman, and other advocates who had a profound impact on the nominations process for the last 18 months.

In the wake of the Republican win in the Senate, President George W. Bush immediately sent unmistakable signals that things will look very different very quickly under GOP control. Controversial choices who had been bottled up in committee under the Democrats will start to move forward.

It's a return to early 2001, the few months after the new administration took office, when the GOP controlled the Senate before Vermont Sen. James Jeffords' May 2001 decision to quit the Republican Party.

Until the Jeffords switch put Democrats in charge, liberal activists and their Senate allies lacked the necessary votes to block Bush's nominees and had to resort to parliamentary procedure. Now, after more than a year of being in control of the Judiciary Committee, they will have to take that defensive stance again, and they will have plenty of battles to wage.

"I think we'll see the conveyor belt moving rapidly," says one administration official.

There will be quick and positive committee action, this source says, on conservative nominees such as Miguel Estrada, picked for the D.C. Circuit U.S. Court of Appeals, and Michael McConnell, selected for the Denver-based 10th Circuit. Both have had hearings but no committee votes.

In a Nov. 7 speech, Bush urged the Senate to give a second chance to Texas Supreme Court Justice Priscilla Owen and U.S. District Judge Charles Pickering, both Fifth Circuit nominees who were rejected earlier this year on party-line votes in the Senate Judiciary Committee.

Bush supporters say the election was at least in part an endorsement of the president's conservative choices for the federal bench. The administration official says that when Democratic senators and liberal groups mobilized to help defeat Owen and Pickering and

to slow down Estrada, McConnell and others, they antagonized Bush and indirectly brought about the Republican triumph.

"The Democrats didn't count on the fact that they made the president believe that they were not acting fairly," says this official. "There was a consequence. This galvanized him to speak out on the issue."

Says a top GOP aide on Capitol Hill: "The president said, 'Judges, judges, judges' at 17 stops in 15 states in the last week. That played in the South very well."

NARAL President Michelman, for one, rejects the idea that the electorate responded to the clashes between the administration and Senate Democrats over judicial nominations.

"This election was about national security and the war on terrorism," says Michelman. "The American people don't realize what actually happened here. This will mean a restructuring of the government, with the far right in charge of all three branches, including the Supreme Court."

Michelman says NARAL's next step will be to expand brainstorming sessions to include leaders of environmental and civil rights groups, among others. But the longstanding liberal activist coalition can no longer focus so tightly on soon-to-be former Judiciary Committee Chairman Patrick Leahy and other Democratic committee members.

Instead, the focus will turn to the Senate floor, where the "blue slip" process, filibusters, and legislative horse-trading may give liberal interest groups their best shot at influencing the process.

The liberal groups "will have to decide, on a case-by-case basis, which nominees to oppose and to what degree," says Elliot Mincberg, legal director of People for the American Way. That decision will be based in part, Mincberg says, on the soundings that the groups take in each nominee's home state and circuit.

The key players in the judicial confirmation wars on Capitol Hill - Leahy and prospective Judiciary Committee Chairman Orrin Hatch - were lying low last week, awaiting guidance from party leadership. It was too early, their spokespersons said, to discuss the prospects for action on specific circuit court nominees.

But one tactic that liberals are certain to use when they can is the Senate's time-honored "blue slip" tradition, which effectively gives home-state senators veto power over judicial nominees from their state. If a blue slip is not returned, the nomination doesn't move.

Sen. Barbara Boxer, D-Calif., has blocked Bush's Ninth Circuit nomination of California State Judge Carolyn Kuhl in this way, and Sen. John Edwards, D-N.C., has done the same to the Fourth Circuit nomination of U.S. District Judge Terrence Boyle.

This procedure is a Senate custom, not a law, and some speculate that as chairman, Hatch will curtail its use. Margarita Tapia, a Hatch spokeswoman, declines comment on the issue.

But blue slips could become a victim of a judicial nominations plan presented by the president just before the election. On Oct. 30, Bush outlined a proposal under which sitting judges would give a one-year notice of their plans to step down, the Senate Judiciary Committee would have a confirmation vote within 90 days of a nomination, and the full Senate would act in no more than 180 days.

The plan didn't mention the elimination of blue slips, but it would by implication end the blue-slip tradition.

Blue slips would, in any case, not stand in the way of many pending nominations, like those of Gibson, Dunn & Crutcher partner Estrada and Hogan & Hartson partner John Roberts Jr. for the D.C. Circuit.

However, Michigan's Democratic senators, Carl Levin and Deborah Stabenow, have held up two Sixth Circuit choices who hail from Ohio - Jones, Day, Reavis & Pogue partner Jeffrey Sutton and Ohio State Supreme Court Justice Deborah Cook. These holds could be difficult to sustain in a Republican Senate.

Glenn Sugameli, senior legislative counsel at the Earthjustice Legal Defense Fund, says he expects Republicans to try to limit the blue-slip procedure to nominees from a senator's own state.

"On the other hand, senators are always unwilling to give up their ability to influence things," Sugameli adds. "The senators involved might well wish to filibuster those nominees."

Filibusters, which require 60 votes to break, are relatively rare in the Senate these days and are seen as an aggressive tactic that can backfire. But the threat of a filibuster is often present beneath the surface in any hotly contested issue in a closely divided Senate.

Sugameli says a filibuster is a plausible weapon that can be used in the case of a judicial nominee who "is really not qualified to serve."

In addition to blue slips and the threat of filibusters, the Senate's byzantine procedures may also permit Democrats to take advantage of "holds," under which a single senator can prevent floor action on a nomination.

Some liberals say that in a vigorous floor debate, they might even be able to persuade a couple of moderate Republican senators to buck their party and provide the votes to sink a conservative nominee or two. Sens. Arlen Specter, R-Pa., Lincoln Chafee, R-R.I., and Susan Collins, R-Maine, have been mentioned.

"We've been here before," says Aron. "We were involved in nominations in the 1980s, under President [Ronald] Reagan and a Republican Senate. The new Senate demands new strategies, more intense organizing, and more extensive research."

Adds Mincberg: "There is some leverage available to Democrats. The question is when and where will they use it."

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