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Article

Democrats Excoriate GOP Nominees for U.S. Bench

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WASHINGTON -- Republicans were dealt setbacks on two fronts involving judicial nominations on Tuesday, as emboldened Democrats berated one nominee and agreed to postpone the seemingly doomed confirmation of another.

Just as conservatives and liberals alike were ready to write off the increasingly polarizing nomination of Charles W. Pickering for the 5th U.S. Circuit Court of Appeals, Minority Leader Trent Lott, R-Miss., a friend of the nominee, stepped in to request a delay in the Judiciary Committee's vote on him.

Committee Chairman Patrick J. Leahy, D-Vt., granted the delay as a "courtesy" to Lott.

Lott gave as his reason the fact that Pickering and the Department of Justice are still working to answer written questions from committee members -- including 50 questions from Sen. Joseph Biden, D-Del. -- following Pickering's second confirmation hearing.

But Democratic sources, speaking on condition of anonymity, say Lott might be looking for a graceful way out of the Pickering debacle, since it appears the committee's 10 Democrats are opposed to the nomination.

"There is virtually unanimous opinion on the Democratic side of the Judiciary Committee that [Pickering] will not be confirmed," Sen. Dianne Feinstein, D-Calif., told NBC's "Meet The Press" on Sunday. "In other words, he will not be voted out of the Judiciary Committee."

Sources say Feinstein portrayed the Democrats' stand accurately.

Advocates on both sides said they weren't sure what the postponement of Thursday's planned vote meant. But they suggested Lott could be trying to sway a committee Democrat to vote for Pickering's nomination.-

To date, only Feinstein and Sen. Charles Schumer, D-N.Y., have said they would oppose Pickering's nomination because of his record on civil rights issues.

Critics point to a 1959 law review article he wrote about Mississippi's ban on interracial marriage and his ex parte communications with prosecutors in a cross-burning case that came before him as a U.S. district judge. Pickering's defenders say he is a reformed white segregationist and once testified against the Ku Klux Klan in the 1960s.

Richard Samp, chief counsel at the conservative Washington Legal Foundation, said there is a political downside to voting against a nomination, which even Democrats must realize. Voting against every controversial judge could be damaging, he said.

"But there is not the same downside to delaying a nomination," Samp said.

Meanwhile, Democrats led by Sens. Biden and Russell Feingold of Wisconsin strongly questioned the ethics and politics of D. Brooks Smith, a district court judge nominated by President Bush for the 3rd Circuit in Philadelphia, during a confirmation hearing Tuesday.

Feingold demanded that Smith explain the unusually large number of expensive junkets he has accepted in recent years.

Feingold and other lawmakers have introduced legislation that would restrict federal judges from traveling to resorts for seminars that are "intellectually stimulating," as Smith stated in his own defense of the trips.

But it was Biden who leveled the most blistering attack on Smith for his views on the Violence Against Women Act, which Biden helped make law. He criticized a speech Smith

gave to the conservative Federalist Society in 1993, in which Smith suggested the federal government did not have constitutional domain in prosecuting domestic violence cases.

"My problem is that you think like these guys, you're going to be on the Circuit Court of Appeals, and I am very worried about that," Biden said.

Smith had no opportunity to respond before Biden ran out of time and excused himself, promising to return to question Smith after other senators had their say.

Sen. Arlen Specter, R-Pa., told Biden that his time had expired and that he was through questioning the Bush nominee. But Biden scolded him.

"The day is long - and we're in the majority," Biden said to a roar of laughter in the committee room.

However, the hearing quickly ended without a second round of questioning by Biden.

Democrats seem confident in the post-Jim Jeffords Senate, where the defection of one Vermont Republican last year took away control from the GOP.

With such a narrow majority, Democrats have had difficulty challenging President Bush on a number of issues, primarily because he has risen to become a hugely popular wartime chief executive.

Even so, judicial nominations steadily have become one of the key political sideshows where Democrats have been able to assert their political muscle, according to Sen. Orrin Hatch, R-Utah.

"It is an election year, and some on the left won't hesitate to flex their muscle," he said in his opening statement at Tuesday's hearing for Smith and three other less controversial judicial nominees.

Hatch criticized those who have shifted their attacks from Pickering to Smith.

Most significant in emboldening Democrats has been their apparent success in defeating, hand in hand with liberal judicial advocacy groups, Pickering's nomination.

Nan Aron, president of the liberal nonprofit Alliance For Justice, said the postponement of Thursday's hearing was "a very positive sign that this nomination is in trouble."

Aron said it would be premature to count Pickering out, but she said liberals are "encouraged that senators are showing a real concern about the quality of nominees for the federal bench."

But some on the right say defeating Pickering's nomination, and possibly Smith's, is pure politics.

"This was not about Charles Pickering," Thomas Jipping, the director of judicial nominations monitoring at the conservative Free Congress Foundation, said. "He was a political piñata. He was like an emery board for [liberals] to sharpen their claws."

Jipping said the Pickering and Smith fights are a prelude to possible major battles against conservative nominations Bush might make to the Supreme Court.

A senior White House official said Senate Democrats run a risk of slamming the door on Bush's judicial nominees.

"There clearly will be consequences for 'Borking' well-qualified nominees," said the source, referring to the failed Reagan-era nomination of Judge Robert Bork to the Supreme Court.

Predictably, liberals reject that notion.

"If Bush is really serious about moving nominations, they should be looking for mainstream nominees," Glenn Sugameli, a senior lawyer at EarthJustice Legal Defense Fund, said.

Sheldon Goldman, a University of Massachusetts at Amherst political science professor and author of "Picking Federal Judges," said Judiciary Committee Democrats could wind up on political thin ice if they delay votes on nominees.

"What they ought not to do," Goldman said, "is go behind the scenes to sabotage a candidacy."

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