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## Judicial Nominee Under Attack

By Robert Iafolla, Daily Journal Staff Writer

WASHINGTON The top Republican on the Senate Judiciary Committee signaled Tuesday that the GOP may block U.S. Magistrate Judge Edward M. Chen's nomination to become a district court judge in California's Northern District.

Speaking from the Senate floor, Alabama Sen. Jeff Sessions said he and his Republican colleagues "intend to give nominees fair hearings and allow a vast majority their up-or-down votes promptly," but he promised Chen and other nominees would face a "difficult time" being confirmed.

Session's floor speech came just two days after a Washington Times editorial critical of Chen sparked attacks against him in the conservative blogosphere. The blog hosted by the conservative magazine the American Spectator, for example, called Chen "yet another horribly radical lefty that Obama is trying to foist on us."

Chen absorbed harsh criticism earlier this month from Sessions and Sen. Tom Coburn, R-Tex., when he cleared the Judiciary Committee. All the Republicans voted against him, while he received unanimous support from the panel's Democrats.

That same day, the committee approved by voice vote three other district judge nominees: U.S. Magistrate Judge Richard Seeborg for California's Northern District; and Los Angeles-based attorney Dolly M. Gee and Los Angeles County Superior Court Judge Jacqueline H. Nguyen for California's Central District.

Unless the White House pushes back, it appears Chen could fall into confirmation limbo, as Senate Republicans have used parliamentary procedures to keep several nominees - from prospective judges to the pick for ambassador to Brazil - languishing for months waiting for a vote.

Any one senator can place an anonymous hold on a nominee, thus preventing the nominee from getting a floor vote. These holds work with the tacit acceptance of the Senate's Democratic leadership, one of the "arcane bylaws" that allow for reciprocal arrangements between senators in which they trade support in behind-the-scenes deal-making, said Russell Wheeler, a visiting fellow specializing in the federal judiciary at the Brookings Institution, a non-partisan think-tank.

President Barack Obama's first judicial pick, U.S. District Judge David F. Hamilton of Indiana, has been waiting since June for a vote to join the 7th U.S. Circuit Court of Appeals. Last spring, several legal analysts told the Daily Journal that Hamilton was a safe, non-controversial pick, as evidenced by Indiana Republican Sen. Richard G. Lugar's vocal support of his nomination.

But on Tuesday, Sessions characterized Hamilton as "clearly controversial" and "outside the mainstream of even President Obama's nominees."

In his critique of Chen, Sessions argued that the California jurist is one of the Obama administration's judicial nominees who "believes it's legitimate to look outside the law" and factor personal policy preferences into the decision making process. Sessions also blasted Chen for saying he enjoys contributing to case law, particularly when it agrees with his view of justice.

"A judge is supposed to be a neutral umpire," Sessions said, echoing familiar Republican rhetoric on the role of the judiciary. "If they'd like to write laws, let them come down here and run for Congress."

Sessions didn't touch on Chen's 16-year stint as a staff attorney for the American Civil Liberties Union, but the Alabama senator had previously used stances of that organization to criticize him.

Although Chen declined to comment for this article, his supporters - including California Democrat Sen. Dianne Feinstein, whose bipartisan selection committee recommended Chen to the White House - pointed to his eight-year career as a federal magistrate judge as evidence that he's made the transition from zealous advocate to impartial judge.

The fact that Chen was reappointed to the bench by a review committee further shows his quality as a jurist, said Vincent Eng, the deputy director for the Asian American Justice Center.

Dale Minami, a partner with Minami Tamaki in San Francisco who has known Chen for decades, said Sessions took quotes out of context "to discredit him."

**Glenn Sugameli, a senior legislative counsel working on judicial selection matters with [Judging the Environment], said it was unusual for the Republicans to oppose Chen, a district court nominee, as well as moderate, well-qualified appellate court nominees like Hamilton and U.S. District Judge Andre M. Davis of Maryland.**

**"It seems to me that they're being used as pawns in a bigger game," Sugameli said.**

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