

FEDERAL JUDICIARY: Senate approves Owen to 5th Circuit, eyes Myers for cloture vote

By Alex Kaplun

The Senate on a near party-line 55-43 vote yesterday passed the nomination of Texas Supreme Court Justice Priscilla Owen for the 5th U.S. Circuit Court of Appeals -- making her the first of the previously stalled nominees to receive confirmation under the bipartisan agreement struck this week.

Sens. Robert Byrd (D-W.Va.) and Mary Landrieu (D-La.) -- who were both part of the group that brokered the deal -- voted with 53 Republicans to approve the nomination. Sen. Lincoln Chafee (R-R.I.) was the only Republican to vote against the nomination.

But even as the Senate gave approval to a nominee whose confirmation has been blocked for more than four years, the two sides traded shots on what would happen if the Democrats attempt future filibusters.

Senate Majority Leader Bill Frist (R-Tenn.) warned minutes after the vote that if Democrats block future nominees, he will again consider using the "nuclear" or "constitutional" option to change the Senate rules.

"This vote should mark a new beginning here in the Senate," Frist said. "Though it remains my hope that the constitutional option does not become necessary, we must give fair up or down votes to other previously blocked nominees."

Liberal groups -- which largely supported the compromise -- criticized the vote, again arguing that Owen's judicial views make her too "extreme" to hold a life-time seat on the federal bench. Environmentalists claim her stances on property rights would favor individual polluters over the public at-large and that her opinions on the Texas bench favored barring state law claims often used in litigation involving air and water pollution.

"Anti-environmental judges like Priscilla Owen are the price the American people have to pay when President Bush refuses to consult with the Senate in a spirit of bipartisanship," said Earthjustice attorney Glenn Sugameli in a statement.

Senate Minority Leader Harry Reid (D-Nev.), meanwhile, attempted to brush aside more talk of the judicial nominations fight, saying he wanted the Senate to start focusing on legislative items.

Frist is expected to move relatively quickly on several other judges mentioned in the moderates' compromise. Frist is expect to file for cloture by the end of the week on

at least one and possibly all three of the most controversial nominees -- D.C. Circuit nominee Janice Rogers Brown, 11th Circuit nominee William Pryor and 9th Circuit nominee William Myers.

The seven Democrats who signed the compromise will vote for cloture on both Brown and Pryor, meaning they will likely be confirmed by the Senate. But Myers was not included in the deal, and Reid said early this week that Democrats will continue to filibuster his nomination.

But GOP senators have been told by Republican negotiators of the deal that Myers was not included, at least in part, because they believed cloture is possible on him regardless of the agreement, according to a Republican aide.

Senate Judiciary Chairman Arlen Specter (R-Pa.) has said that he could have rounded up the 60 votes needed to end the Myers filibuster if Democratic leaders had not put increased pressure on their caucus members as the "nuclear" controversy escalated.

The GOP aide added that if a cloture vote on Myers is unsuccessful, some Republican senators will likely press Frist to implement the nuclear option. All seven Republicans who signed the deal and Sen. Ben Nelson (D-Neb.) -- the chief Democratic negotiator -- voted for cloture on Myers during the last session of Congress.