

COURTS: Enviros criticize third judicial nomination, two others head to Senate

As two controversial appeals court nominations head before the Senate Judiciary Committee this week, environmental groups are raising concerns about President Bush's nomination for the U.S. Court of Federal Claims. Bush's pick is an extremist when it comes to decisions related to the Fifth Amendment's takings clause, according to the groups, though property rights advocates say the nominee actually holds moderate views.

In a letter to Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.), 23 environmental groups, including Defenders of Wildlife, American Rivers and Friends of the Earth, expressed concerns about Lawrence Block, nominated to the Court of Federal Claims. The court is almost solely responsible for many takings decisions, said Glenn Sugameli, senior legislative counsel for the Earthjustice Legal Defense Fund, another of the groups involved in the letter. Property owners often argue a 'taking' occurs when a government regulation or seizure causes a major loss in revenue or development ability, though there is no set rule for what constitutes a taking. Conservation groups worry that changing definitions of takings would force state and federal governments to pay landowners for meeting environmental standards.

"Mr. Block's record and his answers to the Senate Judiciary Committee Questionnaire for Judicial Nominees suggest... that he would apply an extreme approach to takings law that would conflict with unanimous Supreme Court rulings," the groups said in the letter. "An ultra-conservative interpretation of the Takings Clause could be extremely damaging, redefining property rights at the expense of neighboring property, public health, and the environment. Federal Claims Court rulings could require that taxpayers fund prohibitively expensive windfall payments to property owners who obey pollution-control and other laws. The cost of these payments would chill enforcement and implementation of a wide array of laws that protect the American people."

Sugameli called Block a "very strong, outspoken advocate of expansive private property takings provisions." As senior counsel to former Judiciary Committee Chairman Orrin Hatch (R-Utah), Block worked on a bill backed by the National Home Builders Association, said Sugameli. That bill "would have changed the standards and procedures for takings claims against local governments," he said, and if passed, would have been "a hammer to the head of local officials."

Sugameli said he fears Block would not follow precedents, based on strong opinions he has put forth in personal statements, during his time with Hatch, and in the nominees questionnaire. "The problem is he either is unable to tell what precedent is or unwilling to admit it," said Sugameli.

But conservative groups say Earthjustice and the others are exaggerating Block's record. Chuck Cushman, executive director of the American Land Rights Association, said he didn't think the Bush administration would nominate an extremist to any court. "They don't have a record of appointing extremists to anything," he said. Environmentalist claims accusing Block of extremism are "nonsense," said Cushman. "I don't have any sense of that at all."

Cushman said he had spoken to Block on a number of occasions when Block was with Hatch and called constituents. "I have a sense of his views on some of these things," said Cushman. "He sounds like a pretty moderate guy to me."

Other conservative groups similarly supported Block. "What I find shocking about those environmentalists who oppose property rights is how little they understand the issue," said Roger Pilon, vice president of legal affairs for the Cato Institute. "They don't seem to appreciate that environmentalism is rooted in property rights theory. The whole of nuisance law -- which is environmentalism writ small -- is about protecting the rights of some property owners from the abuses that might follow from the uses that other owners of their property. Property rights constitute the foundation of environmental protection," he added.

Pickering, Brooks go before Senate

Though Block will not go before the Senate Judiciary Committee for several weeks, two other controversial appeals court nominations are slated for review this week.

Judge Charles Pickering, the Bush administration's pick for the Fifth Circuit Court of Appeals, goes before the committee Thursday. Pickering has a history of denying citizens access to federal courts, according to Earthjustice, such as when he dismissed "claims filed by victims in toxic tort cases concerning an EPA Superfund site." The real controversy surrounding Pickering, however, is related to his civil rights record, which could prevent his passage. Sen. Dianne Feinstein (D-Calif.) said on NBC's "Meet the Press" that the 10 Democrats on the committee will oppose Pickering's nomination.

Environmental groups have also criticized Judge D. Brooks Smith, nominated to the Third Circuit Court of Appeals, saying he is lax on punishing polluters ([Greenwire](#), Feb. 14).

But similar to Pickering's situation, other aspects of Smith's background may prevent his affirmation. In 1997, Smith presided over an investment fraud case for nearly a month, without revealing that his wife and he had a financial interest in the case, as was reported in the *Washington Post* and other papers. Smith appeared before the committee yesterday and was questioned on the fraud case and his views opposing the Violence Against Women Act, according to David Carle, press secretary to Chairman Patrick Leahy (D-Vt.). A vote on Smith's confirmation has not yet been scheduled, he said.