

COURTS: Enviros call for tighter scrutiny with Bush's judge selections

A green group coalition announced a new campaign Wednesday to monitor President Bush's judicial nominees based on their environmental and public health records. Citing past court rulings and what they call a "growing number of anti-environmental judges," the groups say they are collecting information that will help lawmakers heighten their scrutiny of potential federal judges.

There are currently 112 vacancies on the federal bench; Bush so far has announced 29 nominations. Doug Kendall, executive director of the Community Rights Counsel, said there is a "backlog of research that needs to be done" regarding those Bush nominees and their environmental backgrounds. He added that joint research teams are already working together to provide lawmakers and other interest groups with the information. He added that each environmental group has the final say in determining its position on individual candidates.

One of the most contested courtrooms for environmental issues is the District of Columbia Court of Appeals. So far, Bush has nominated two people to that court, Miguel Estrada and John Roberts. While environmental groups have not taken an official stance on either man, Buck Parker, executive director of the Earthjustice Legal Defense Fund, said there is concern over Roberts' previous statements on the issue of private property "takings."

In fact, takings is one of several issues the environmental groups ticked off as a sort of laundry list they'd like to see considered by lawmakers during the nomination process. In their recently released report *Hostile Environment: How Activist Federal Judges Threaten Our Air, Water and Land*, the green groups wrote that some judges have recently "abandoned any pretense of restraint and instead embrace a virulent strain of judicial activism that has weakened our environmental protections." With regards to the takings provision, they said recent rulings have amounted to "paying polluters not to pollute."

Among the other issues they say judges should be quizzed on: whether they think the 11th Amendment should be interpreted to prevent citizens who want to sue their own state for environmental violations; whether environmental issues have equal status with an industry's compliance costs; and whether green groups should be granted "standing" in such cases where the applicable statute contains a provision allowing citizens to sue.

Charli Coon, a senior policy analyst for energy and environmental issues at the Heritage Foundation, took issue with the environmental groups' nomination campaign, calling it a "sour grapes" effort based on court cases they have recently lost. She said a judge should be judged on his or her background, education and experience, and whether laws will be interpreted consistent with the Constitution. A judge should not have to meet a "list of criteria for a special interest group before that person is qualified to serve," she added.

Asked if environmental groups are concerned they might oppose a judge who someday will preside over one of their cases, Kendall said the environmental community will "pick its shots wisely." Parker added that the length of time a judge will sit on the bench "outweighs by far the damage we might do to ourselves and to our cases."

Sen. Russ Feingold, a Wisconsin Democrat who sits on the Judiciary Committee, joined the Natural Resources Defense Council, Endangered Species Coalition, Friends of the Earth, National Audubon Society and others in support of the campaign. He said he would continue his practice of questioning nominees on their environmental views. "Federal judges need to be prepared to deal with complicated natural resource and environmental quality issues, particularly those arising under federal law," he said, adding that "the opinions of federal judges carry weight, not only in the third branch of government, but in this branch as well, and we should thoroughly understand nominees' views on these issues."

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