

COURTS: Nominee Smith approved; enviros eye fight over Owen, others

The Senate approved the controversial judicial nomination of D. Brooks Smith yesterday, 64-35, despite strong opposition from environmental and other advocacy groups.

Senators approved the nomination of Smith to serve on the 3rd Circuit Court of Appeals. Environmental groups have criticized Smith, claiming he has a skewed view of the federal government's role ([Greenwire](#), Feb. 14). The Earthjustice Legal Defense Fund, Community Rights Counsel, Defenders of Wildlife and others wrote to the Senate Judiciary Committee May 16, citing Smiths' "advocacy of a judicial philosophy which favors severe limits on government's power to protect the rights of individual Americans against abuse."

"We're disappointed by the result of the vote," said Glenn Sugameli, senior legislative counsel for Earthjustice, "but there were a number of senators who specifically recognized the environmental issues." Judiciary Committee Chairman Patrick Leahy (D-Vt.) and Sens. Charles Schumer (D-N.Y.) and Edward Kennedy (D-Mass.) made "strong statements" about the issue on the floor, he said.

Smith is the only appeals court nominee environmentalists have formally opposed so far, Sugameli said, but many groups have serious concerns about the nomination of Priscilla Owen to the 5th Circuit Court of Appeals, the body responsible for cases in Louisiana, Mississippi and Texas. "Very few cases go to the Supreme Court," said Sugameli, so the vast majority of environmental cases are determined at the appellate court level. With lifetime nominations, "there is a growing recognition in the environmental community that this is very important." Owen, a Texas Supreme Court justice, has had several questionable rulings, he said.

"Justice Owen's opinions would elevate the rights of polluters over the rights of neighbors and the public, restrict the public's access to public information, and limit common law remedies for injured consumers," Earthjustice, Defenders of Wildlife, Friends of the Earth and other environmental groups wrote the Judiciary Committee on July 16. "We believe her record in these and other cases warrant the highest level of scrutiny by the United States Senate."

The groups point to Owen's dissenting opinion in *FM Properties Operating Co. v. City of Austin*, which was "focused on protecting the special interests of large landowners who wanted to write their own ticket, at the expense of the property and other rights of neighbors and those downstream," they wrote.

But property rights groups say Owen is hardly an extremist. "She is as much in the mainstream as any judge I have ever known," said Allan Parker, CEO of the Texas Justice Foundation, a group that represents property owners and has argued several cases before Owen. "I wish President Bush was appointing judges who were more property rights-oriented than she is."

Parker continued: "It is an example of incredible extremism on the other side that they would attack her. She has never gone out of her way to articulate some new theory of property rights or anti-environmental law. She has ruled against property owners in many cases."

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