

COURTS: Bush gets second shot at bench nominations

The GOP takeover in the Senate means that President Bush will have a much better chance at moving his judicial nominations through the Senate. That could mean new life in 2003 for two appellate judges rejected by the Senate Judiciary Committee this session, and environmentalists worry that those nominations could foretell a swing to the right for the nation's federal courts.

Two of Bush's nominations for the Fifth Circuit Court of Appeals -- Mississippi District Court Judge Charles Pickering and Texas Supreme Court Justice Priscilla Owen -- were shot down in the committee. Nine senators voted to approve Pickering, with 10 senators opposed, on Feb. 14, and Owen was defeated by the same party-line margin on Sept. 5.

Pickering was defeated in committee largely on concerns surrounding his civil rights record, with groups including the National Association for the Advancement of Colored People of Mississippi, AFL-CIO labor unions, and the National Abortion Rights Action League lobbying against his nomination. But Pickering also has a history of denying citizens access to federal courts, according to Earthjustice Legal Defense Fund, Defenders of Wildlife and other groups.

Pickering "was reversed repeatedly by the Fifth Circuit for improperly dismissing claims filed by victims in toxic tort cases concerning an EPA Superfund site," the groups wrote in a letter to the committee on Feb. 7. "We are also concerned with Judge Pickering's apparently sweeping view of the 11th Amendment, which activist judges have used to bar citizens from obtaining relief in federal court in environmental and other cases."

But Todd Young, spokesman for the Southeastern Legal Foundation, a conservative group that supports Pickering, said the Judiciary Committee Democrats who rejected Pickering due to civil rights concerns and other specific matters should be looking at "likely judicial temperament," choosing "judges that will interpret existing law and not venture forth to make new law."

"The entire process ought to be depoliticized in terms of litmus testing on either side," said Young. Pickering has "demonstrated through his experience that his decisions are based almost entirely on the concept of what existing law says," he said.

Of Owen, environmentalists wrote to the committee on July 16: "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." 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 have said 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. "I wish President Bush was appointing judges who were more property rights-oriented than she is ([Greenwire](#), Aug. 1).

"I think that she is still a wonderful nominee," said Parker. "The people of Texas have certainly spoken about her qualifications," he said. Owen was never given a vote before the full Senate, said Parker, and with the new configuration, he predicted her nomination would pass.

Democrats can still try to filibuster votes on Owen and Pickering's nominations, but will have less of a chance as the minority party.

A White House aide said Bush has not yet decided whether to resubmit Pickering and Owen's nominations to the Senate next session.

Enviros continue to monitor other nominations

With the GOP takeover, "the courts are going to be a particularly important place to challenge attempts to rollback environmental protections," said Glenn Sugameli, senior legislative counsel for Earthjustice.

Environmentalists are monitoring nominations at several levels of the courts, said Sugameli. There is "a very good likelihood" that a Supreme Court justice may retire at the end of this term, he said. That justice, rumored to be Sandra Day O'Connor or Chief William Rehnquist, could have a huge effect on a closely divided court, he said. O'Connor has been a "major moderating force on environmental issues," he said.