

Environmental Group Cites Partisanship in the Judiciary Study Shows Divide Between Democratic, GOP Appointees

By Juliet Eilperin
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Federal judges appointed by Democratic presidents are several times as likely as Republican appointees to rule in favor of plaintiffs who sue the government claiming violations of environmental law, according to a report issued yesterday by the nonpartisan Environmental Law Institute.

The authors of the study -- which examined 325 judicial rulings between Jan. 21, 2001, and June 30, 2003 -- said the results show the degree to which ideological polarization over the environment has influenced the federal judiciary. The nonprofit institute, which researches environmental law but does not litigate or lobby, focused on cases brought under the National Environmental Policy Act, a 35-year-old law requiring agencies to assess how proposed federal policies and programs affect the environment.

Environmental groups -- and sometimes developers -- often challenge federal actions on the grounds that they violate NEPA, which requires environmental impact statements and public input for proposed projects.

On the district court level, according to the survey, Democratic appointees ruled for environmental plaintiffs a little less than 60 percent of the time, while Republican-appointed judges favored environmentalists 28 percent of the time. GOP-appointed district judges, on the other hand, sided with pro-development forces nearly 60 percent of the time while Democratic appointees ruled for them 14 percent of the time.

The contrast was even starker on the appellate level, where Democratic-majority panels favored environmental plaintiffs 58 percent of the time, but GOP-majority panels sided with these groups in just 10 percent of cases.

District judges selected by President Bush were less sympathetic to environmentalists' pleadings than those appointed by previous Republican presidents, the survey found, ruling in favor of environmental challenges 17 percent of the time.

"We were greatly surprised to find the degree of polarization among the parties," said Jay E. Austin, a senior attorney at the Environmental Law Institute. "We obviously find that troubling."

Other legal advocacy groups have examined recent environmental rulings by Bush-appointed judges, but the institute's study marked the first comprehensive study of decisions by judges selected by presidents dating as far back as Jimmy Carter.

Todd True, a staff attorney for the environmental litigation group Earthjustice, who successfully challenged logging projects in the Pacific Northwest in the 1990s under NEPA, said he had won cases with both Republican- and Democratic-appointed judges but worried about the tendencies revealed in the survey.

"An independent judiciary is central to the functioning of our democracy, and its neutrality needs to be protected," True said.

Several conservative analysts said the discrepancies show that GOP-appointed judges have a stricter interpretation of the law. American Enterprise Institute resident scholar Steven Hayward said that in many cases the government's efforts to comply with NEPA "bear little relation to protecting the environment" and the study demonstrates "judges are applying some tougher standards to these NEPA lawsuits."

"If you reported these results in Utah, they would stand up and cheer," Hayward said.

C. Boyden Gray, a partner at Wilmer Cutler Pickering Hale and Dorr who was White House counsel for President George H.W. Bush, said the results were significant only if as a result of a ruling "some development destroyed an important preserve on public land out West."