

# Senate Democrats cave in on right-wing judges

*By Hazel Trice Edney  
Special to Sentinel-Voice*  
WASHINGTON (NNPA) - Democrats and Republicans, seeking to avert the "nuclear option" of limiting debate in the Senate on President Bush's most extreme judicial nominees, agreed to let three of Bush's nominees — Janice Rogers Brown, William Pryor and Priscilla R. Owen — come to a floor vote, leaving the fate of William Myers and Henry Saad in limbo.

"The Congressional Black Caucus strongly opposes the 'deal' that trades judges who opposed our civil rights for a temporary filibuster ceasefire. This is more of a capitulation than a compromise," said Congressional Black Caucus Chairman Melvin L. Watt (D-N.C.).

"The only way to make a bad deal worse would be for these judges to succeed in getting the 51 percent of the Senate votes they will need for confirmation."

Monday night's compromise, engineered by moderate Senators in both parties, was crafted to avert a showdown Tuesday over whether the Senate would alter its long-standing rules on filibusters, a maneuver employed by the party out of power. Under Senate rules, it takes 60 votes to end a filibuster, known as cloture. Senate Majority Leader Bill Frist was moving to allow a simple majority to curtail filibusters because Democrats were holding up some of Bush's more extreme nominees.

Although billed as a compromise, some political observers saw this as a clear-cut victory because they were able to obtain a floor vote for the three judges that had been the central target of progressives: Janice Rogers Brown, William Pryor and Priscilla Owen.

Ralph Neas, president of People for the American Way in a letter to Senate Judiciary Committee Chairman Arlen Specter said, "Owen has an extremely disturbing record of judicial activism on the Texas Supreme Court in favor of corporations and against consumers and individual rights. In fact, her own fellow justices on the court, including current [Texas] Attorney General Alberto Gonzales, have criticized a number of her opinions as improperly seeking to 'judicially amend' Texas law or



*Federal appeals court nominees Priscilla Owen and Janice Rogers Brown at the White House with President Bush. The nominees nearly caused a government shutdown.*

constituting 'an unconscionable act of judicial activism.'

"Janice Rogers Brown has a long, disturbing record of activist legal extremism and disregard of precedent on the California Supreme Court, particularly in the areas of civil rights and protection from discrimination, consumer and employees' rights, and property rights."

Brown, Owen and Pryor were re-nominated by President Bush after they failed Senate confirmations during his last term. Civil rights organizations have strongly assailed Brown's anti-affirmative record, the California case of Hi-Voltage Wire Works v. City of San Jose.

"Brown's opinion stated that affirmative action is at odds with federal law, despite consistent Supreme Court rulings finding that, under the right circumstances, affirmative action is permissible under Title VII of the Civil Rights Act of 1964 and the Constitution," says an analysis by the Leadership Conference on Civil Rights, a coalition of more than 180 civil and human rights groups.

In the Hi-Voltage case, even California Chief Justice Ronald George, a White, conservative Republican appointee, said her written opinion minimized or ignored the reality of racial discrimination.

"The general theme that runs through the majority opinion's historical discussion that there is no meaningful distinction between discriminatory racial policies — that were imposed for the clear purpose of establishing and preserving racial segregation, on the one hand, and race-conscious affirmative action programs whose aim is to break down or eliminate the continuing effects of such segregation and discrimina-

tion, on the other hand — represents a serious distortion of history and does a grave disservice to the sincerely held views of a significant segment of our populace," George wrote.

The Leadership Conference also states, "In a 2002 housing discrimination case, *Konig v. Fair Employment and Housing Commission*, Brown's lone dissent argued that the state's Department of Fair Employment and Housing Commission, unlike the courts, did not have the authority to award damages for emotional distress. This rule, if adopted by the court, would have seriously limited the redress options available to victims of discrimination."

In a case involving the use of racial epithets in the workplace, Brown argued that racially discriminatory speech — even when it rises to the

level of illegal racial harassment — is protected by the First Amendment. A majority of the Republican-dominated court disagreed.

In a housing discrimination case, Brown was the only member of the court to find that the California Fair Employment and Housing Commission did not have the authority to award damages to housing discrimination victims. The commission had awarded \$10,000 to a Black female off-duty police officer who was refused rental housing by a White woman, who accused her of coming there to break in.

Civil rights groups went to great lengths to make their case about Brown.

Sen. Orrin Hatch (R-Utah), chairman of the Senate Judiciary Committee during Brown's first nomination hearing, angrily pointed to a

cartoon displayed on BlackCommentator.com that he called an offensive example of attacks against Brown by liberals because of her refusal to "parrot their ideology." The cartoon was really of conservative Supreme Court Justice Clarence Thomas in drag.

"Justice Brown's record does not demonstrate the commitment to fundamental constitutional and civil rights principles that should be shown by a nominee to an important lifetime position on the federal court of appeals for the D. C. Circuit," states a report by the NAACP and People For the American Way.

"To the contrary, again, according to the California state bar evaluation of her in 1996, she is often prone to inserting conservative political views into her appellate opinions in an effort to remake the law."

The record of Priscilla Owen's nomination to the Fifth Circuit Court of Appeals is just as bad. According to a People For the American Way report:

• While on the Texas Supreme Court, Owen accepted campaign contributions from major corporations, including Enron and Halliburton, and then issued rulings in their favor.

• In Montgomery Independent School District v. Davis, the Texas Supreme Court agreed with the right of a teacher, whose contract

had been terminated, to be reinstated to his/her job after a state board hearing, even after the school board established additional findings and reinstated the firing. Owen dissented, holding that the board had a right to make the additional findings despite the state board's ruling. The court's majority said Owen's view was not even based on the applicable statute: "Nowhere in the specific provisions of [the statute] has the Legislature provided for a school board to find facts in addition to those found by the hearing examiner."

• When a liquor retailer sold alcohol to an obviously intoxicated customer, who then caused a car accident that permanently brain-damaged 9-year-old Ashley, Duenez, Owen wanted to exonerate the liquor retailer.

"Nothing since the initial rejection of Owen's nomination by the Committee in 2002 supports a different result today," stated Neas in a letter last month to Sen. Judiciary chairman Arlen Specter (R-Penn.) and ranking Democrat, Patrick Leahy (D-Vt.).

The two women at the center of the filibuster debate have failed to win the backing of major women's groups.

"Justices Owen's and Brown's deplorable records on women's rights make them unacceptable for lifetime appointments to the fed-

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