

The Pickering nomination: political warfare flares in Washington

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21 March 2002

The Senate Judiciary Committee voted March 15 to kill the nomination of Judge Charles Pickering to the Fifth Circuit Court of Appeals. By straight party-line votes of ten-to-nine, the panel rejected Pickering's nomination and then barred the nomination from going to the full Senate for a vote.

The committee action came despite a last-minute appeal by President Bush, in the opening statement at his March 13 press conference. Bush called for the committee to allow a floor vote in the Senate on the nomination despite the committee's negative recommendation, a procedure that has been followed in the past for Supreme Court nominations, but rarely for a lower court position.

Senate Democratic leaders opposed a floor vote because of concerns that three southern Democrats, Zell Miller of Georgia, Ernest Hollings of South Carolina and John Breaux of Louisiana, might join with the Republicans to push through the nomination. The Democrats hold a narrow 50-49 margin in the Senate, which has one independent, former Republican James Jeffords of Vermont.

It is a measure of how far to the right the official political spectrum has shifted in the US that a man of Pickering's record could be nominated at all, let alone come close to Senate confirmation. From his youthful support to segregation, to his judicial intervention to defend a convicted cross-burner in the 1990s, Pickering has been a consistent backer of the southern white political establishment.

The 64-year-old federal district court judge from Hattiesburg, Mississippi exemplifies an increasingly common political type—the right-wing partisan disguised in a jurist's robes. Far from maintaining even the pretense of judicial impartiality or nonpartisanship, he has the closest ties to the Republican Party establishment: he is himself a longtime crony of Trent Lott, the Senate minority leader, while his son “Chip” Pickering is a Republican congressman from the state.

Pickering is a hunting companion of Supreme Court Justice Antonin Scalia, the leader of the extreme-right faction on the Court. Scalia spearheaded the notorious 5-4

decision in December 2000 that awarded the presidency to George W. Bush. He recently showed his regard for the Pickering family by intervening in a redistricting dispute in Mississippi to support the interests of Congressman Pickering, the judge's son.

Scalia, who handles appeals from the Fifth Circuit to the Supreme Court, used a procedural maneuver to ensure that the 2002 congressional election will be conducted with district boundaries drawn to favor Pickering against Democratic Congressman Ronnie Shows, by reducing the percentage of black voters in their newly combined district from 38 percent to 30 percent.

Pickering's nomination was opposed by the National Association for the Advancement of Colored People (NAACP), the Leadership Conference on Civil Rights, the National Organization for Women, People for the American Way and other civil rights and civil liberties groups, who cited both his right-wing record on civil rights and his repeated attempts to conceal this record from the public and from the Senate.

In 1959, at age 21, Pickering wrote a law journal article supporting stronger laws against miscegenation (interracial marriage) in Mississippi. The state legislature later took action along the lines he recommended. In 1964, Pickering quit the Mississippi Democratic Party when it was forced to integrate its delegation to the Democratic National Convention, in the aftermath of the famous “Freedom Democratic Party” dispute. Like many reactionary white southerners opposed to the civil rights movement, he transferred his allegiance to the Republican Party.

In an effort to portray him as a civil rights “moderate,” Pickering's supporters cite his stance in 1967, when he signed a statement opposing Ku Klux Klan violence in his hometown of Laurel, Mississippi. The statement was drafted by the moneyed establishment of the town, which opposed Klan terrorism as bad for business, however much they sympathized with the goals. The letter actually declared its support for defending “our southern way of life”—i.e., the system of Jim Crow racial segregation—and denounced

“outside agitators” promoting integration.

Pickering did testify that year against a Klan leader, Sam Bowers, charged in the firebombing death of civil rights leader Vernon Dahmers. Subsequently, he was defeated for reelection as county attorney of Jones County. This political setback was not permanent, however, and Pickering was later elected to the state senate. There he was associated with the Mississippi Sovereignty Commission, a state-supported group that carried on a campaign against desegregation well into the 1970s, in the guise of defending “states’ rights.”

Pickering became an ally of Trent Lott during this period, as Lott began a political career that took him to Congress and then the US Senate. At the 1976 Republican National Convention, Pickering was active in a campaign to put a plank in the party platform calling for an anti-abortion amendment to the US Constitution.

His long history in right-wing politics led to Pickering’s nomination to the federal bench by the first President Bush in 1990, when he was confirmed by the Senate without opposition. This was partly due to the cowardice and lack of principle in the Democratic Party, which had a comfortable majority in the Senate at that time, and partly due to Pickering’s barefaced lying: among other things, he told the Judiciary Committee under oath that he never had any contact with the Mississippi Sovereignty Commission and knew little of its activities.

His conduct as a federal judge gave further ammunition to those opposing his elevation to the second highest court. In a 1993 case he criticized the Supreme Court’s historic “one-person, one-vote” decision of the 1960s, calling it “obtrusive,” as well as expressing concern over the burdens the Voting Rights Act placed on local governments in the South.

The most serious issue raised by Pickering’s judicial record was his intervention at the 1994 trial of a man who was convicted as the ringleader of a cross-burning outside the home of an interracial couple. The attackers fired bullets into the couple’s home, endangering them and their two-year-old daughter.

Federal sentencing guidelines required a seven-year prison term for an assault involving arson, but Pickering opposed this as too severe, and met privately with the prosecutors to pressure them to drop the most serious charge and make a lighter sentence possible. In the course of this campaign, Pickering had highly unusual—and generally improper—*ex parte* communication with the Justice Department, and eventually succeeded in getting the racist attacker sentenced to only 27 months.

This is the man whom President Bush described, with unintended irony, as someone who shares “my philosophy that judges should interpret the law, not try to make law

from the bench.”

Senate Democrats said the defeat of Pickering was a warning not to send up a similar nominee for any upcoming vacancy on the Supreme Court. Charles Schumer of New York said that Bush was trying to “stack the courts with Scalias and Thomases,” referring to the two most right-wing figures on the Court.

Richard Durbin of Illinois pointed out that many of the vacancies Bush was now trying to fill had been created by the formerly Republican-controlled Senate, which had refused over the previous six years to approve judicial nominees of the Clinton administration. In the Fifth Circuit, which covers Texas, Louisiana and Mississippi, and has the largest minority population of any judicial circuit, Clinton’s three nominees in 1997-99 were denied even a hearing, let alone a vote, by the Republican-controlled Judiciary Committee.

Senate Republicans ignored their own record in blocking judicial nominations and issued hysterical denunciations of the vote sidelining Pickering’s nomination. Charles Grassley of Iowa condemned “outside liberal left-wing groups,” adding, “It’s a dark day for the Senate when these attack groups ... can destroy a decent and well-qualified nominee.” Orrin Hatch of Utah called the vote a “lynching.”

Trent Lott threatened to tie up the Senate indefinitely with procedural disputes in retaliation for the defeat of his crony. His first actions were to stall the nomination of an aide to Majority Leader Tom Daschle to a vacancy on the Federal Communications Commission and block an additional \$1.5 million in funding for the Judiciary Committee to finance special hearings into the conduct of US intelligence agencies before the September 11 terrorist attacks.



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