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High court pick backs separation of powers

Backdrop: Pataki is appealing that court's ruling that says Albany's education-money distribution is wrong.

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By Mark Johnson
The Associated Press

Albany Gov. George Pataki's pick to fill an open position on the state's highest court cast himself Thursday as a jurist with a firm belief in the separation of powers who would defer to the Legislature and governor's intent in judging whether a law was constitutional.

Judge Eugene F. Pigott Jr. was chosen by Pataki last month for the Court of Appeals from a list of seven candidates recommended in July by a state commission. He heads the Appellate Division of state Supreme Court's 4th Department, which hears appeals of cases west of Syracuse. He would be the first high court judge from the Buffalo area in 20 years.

"I approach each case with a great deal of humility because I don't think I'm much smarter than this body, the governor or another court," Pigott, 59, told members of the state Senate Judiciary Committee during his 1-hour confirmation hearing. "Your providence, your prerogative as legislators in drafting these statutes and the governor's in approving them has got to be the basis for any decision we make."

Separation of powers has been a concern among lawmakers in recent years, particularly as it involves a 2003 case in which the Court of Appeals ruled Albany's way of distributing education money denied some students a "sound" education. Pataki is appealing that decision.

While Pigott was praised by several colleagues and senators, Elena Ruth Sassower of the Center for Judicial Accountability, objected to his selection. She said the Republican-led committee was not conducting a proper inquiry of Pigott's views and qualifications.

"We view it as the governor's latest manipulation of the judicial appointments process, which we documented time, after time, after time involving appointments at all levels of the judiciary," she said.

She said the committee should have required Pigott, a Republican, to submit a publicly available questionnaire that includes his background and significant decisions.

"This is a sham," she said, carrying stacks of documents, after she was ordered back to her seat in the gallery.

Only a few senators questioned the nominee, none about any specific issue or court decision.

Passed over by the Republican governor was the current judge in the seat, George Bundy Smith, a Democrat who sought to continue his service on the court for another year. Smith was

an appointee of former Democratic Gov. Mario Cuomo, who was defeated by Pataki in 1994. Smith was the court's only black judge; he heard his last arguments Thursday.

If the Senate confirms his nomination, Pigott's term would last until Dec. 31, 2016, when he reaches the mandatory retirement age of 70.

The full Senate is scheduled to vote on Pigott's nomination today.

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