



Civil rights and environmental groups raise the alarm on a key judicial nomination

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Civil rights leaders and environmentalists are calling on the Senate to reject President Trump's choice of Andrew Oldham for the U.S. Court of Appeals for the Fifth Circuit when it votes on the nomination Thursday.

During a press call on Wednesday, top brass for national civil rights and environmental advocacy organizations accused Oldham, 39, the top legal adviser to Texas Gov. Greg Abbott, of fighting against voting rights, reproductive rights and government efforts to safeguard the environment and the public health. As Abbott's general counsel, Oldham repeatedly helped the Lone Star State join then-Oklahoma Attorney General Scott Pruitt's lawsuits against the Environmental Protection Agency (EPA).

Tiernan Sittenfeld, the senior vice president of government affairs at the League of Conservation Voters, said Oldham challenged the EPA's ability to implement the Clean Air Act and advocated overruling the landmark Massachusetts v. EPA decision that directed the agency to limit carbon pollution.

"But it's not just that. Oldham is so extreme that he doesn't just disagree with federal protections; he actually questions their constitutionality," Sittenfeld said. "He said, and I quote, 'One of the reasons why the administrative state is enraging is not that you disagree with what the EPA does — although I do disagree with a lot of what it does. That's not the thing that makes it enraging. It's the illegitimacy of it.'"

When contacted for comment, the Office of the Texas Governor told Yahoo News via email, "Andrew Oldham has an impressive and extensive background, as well as a robust understanding of the Constitution and the rule of law. Mr. Oldham has served with dedication and distinction as chief legal adviser in the General Counsel's office, and the justice system would be well-served

by his appointment to the U.S. Court of Appeals for the Fifth Circuit. Governor Abbott wholeheartedly supports his appointment to the court.”

Even without a Supreme Court vacancy, Trump is reshaping the judiciary with his nominations to the U.S. Court of Appeals, which comprises 11 circuit courts with jurisdiction over different regions of the country. All of the speakers on the press call expressed concern for what Oldham’s confirmation would mean for the Fifth Circuit, which covers Texas, Louisiana and Mississippi.

Yahoo News asked whether Oldham’s ascent would have implications outside those states.

Joanne Spalding, the chief climate counsel for the Sierra Club, replied that the Fifth Circuit’s decisions are not binding for other regions, but they are persuasive and could be cited in any other district. “There are many extreme decisions that are never actually reviewed by the Supreme Court. They stand and are binding by the states,” she said.

Nan Aron, president of the Alliance for Justice, added that the Supreme Court used to release opinions on about 150 cases a year but that this figure has been chopped roughly in half over the decades. That means, she said, that appeal courts more often issue rulings that become the law of the land.

“It is also why the administration is focusing on and prioritizing filling seats on the courts of appeal because they know how critically important and powerful these judges and courts are, particularly given the fewer number of cases heard by the Supreme Court.”

Aron noted that if he is confirmed by the Senate, Oldham would be Trump’s fifth appointee to the circuit courts. “It’s extremely worrisome and reflects an extreme case of court-packing,” she said.

Kristine Lucius, executive vice president for policy for the Leadership Conference on Civil and Human Rights, said key civil rights questions — such as voting rights and educational opportunities — have historically been raised in the Fifth Circuit, whose population includes more people of color than any other circuit.

“What we also saw in the DACA and DAPA cases is that there was forum shopping, and people go to that circuit and are able to get nationwide injunctions. So, to the extent your question is about implications outside those states, we have very recent cases as examples where cases were brought but had nationwide impact,” Lucius said.

The Obama administration introduced DACA (Deferred Action for Childhood Arrivals) in June 2012 and DAPA (Deferred Action of Parents of Americans and Lawful Permanent Residents) in November 2014. DACA protected some undocumented immigrants who were brought to the U.S. as children. DAPA granted deferred action status to some undocumented immigrants who have lived in the U.S. since 2010 and have children who are American citizens or lawful residents. Texas and 35 other states sued the federal government, and the Fifth Circuit blocked these executive orders on immigrations from then-President Barack Obama in 2015.

The Alliance for Justice said Oldham was “the architect of Texas’s strategy to block the expansion of DACA to additional Dreamers and parents of U.S. citizens or green card holders across the country.”

Daniel Goldberg, legal director for the Alliance for Justice, said Oldham is just one of many “narrow-minded elitists” appointed by Trump to “erode and eviscerate” critical rights and legal protections. He said that Trump knows his legislative agenda is going nowhere and that if he introduced legislation to repeal the Clean Air Act, millions of people would be outraged.

Instead, Goldberg suggested, Trump is stacking the courts with young ideologues who will destroy the Clean Air Act, the Clean Water Act and worker protections through their rulings.

“This is a very conscious strategy of Donald Trump and the far right to weaken our laws through stacking the courts,” he told Yahoo News.

Goldberg said past presidents, such as Obama, consulted with senators from the other party and nominated mainstream jurists who enjoyed broad, bipartisan support. Rather than finding consensus nominees, he continued, Trump is nominating jurists with clear ideological records of chipping away at legal rights.

Trump nominated John Bush, who spread “birther” conspiracies on an anonymous blog, to the U.S. Court of Appeals for the Sixth Circuit. He nominated Damien Schiff, who said Justice Anthony Kennedy was akin to a “judicial prostitute,” to the U.S. Court of Federal Claims. He nominated Wendy Vitter, who promoted the idea that taking birth control increases a woman’s chance of being attacked or murdered and wouldn’t say whether Brown v. Board of Education was rightly decided, to the Eastern District of Louisiana.

“These are not individuals past presidents would have nominated,” Goldberg said. “These are individuals who are being nominated for one purpose, and that’s to get on the court so they can weaken our constitutional rights and critical laws.”

Ilya Shapiro, a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the Cato Supreme Court Review, said these “cry-wolf” accusations are commonly brought against Republican judicial nominees by liberal advocacy groups. Shapiro had worked with Oldham on the DAPA litigation because CATO had filed amicus briefs and had helped to craft the legal arguments.

“I think he’s a very bright lawyer, a skilled lawyer. His commitment to originalism and textualism is clear, and that can be said of most of the Trump judicial nominees, certainly at the circuit court” level, Shapiro told Yahoo News.

The goal of Trump’s White House Counsel’s office, he continued, is to nominate originalists and textualists (adherents of philosophies that lean toward a strict reading of the letter of the Constitution and statute law) with a track record of intellectual rigor and commitment to their philosophies.

“Every president tries to reshape the judiciary and should! This is a very big power that every president has over judicial nominations,” Shapiro said. “I would argue that, at least in the

domestic sphere, it's the biggest presidential power because executive actions can be rescinded, as we've seen. Regulations can be repealed, legislation can be sunsetted or changed, but federal judges are for life."

Senate Majority Leader Mitch McConnell blocked President Obama's nomination to fill a Supreme Court vacancy for nearly a year, leaving the seat open for Trump to make an appointment.

Shapiro said the Trump administration has had a record number of circuit judges confirmed, indicating that this issue is a priority.

Regardless of his standing among civil rights advocates, Oldham came highly recommended to Trump from Texas's Republican senators, Ted Cruz and John Cornyn.

"Andy is a dedicated public servant who has spent a career defending Texas and the Constitution. His expertise and commitment to the rule of law will make him a strong addition to the bench, and I look forward to his speedy confirmation in the Senate," Cruz said in a statement last February when Trump nominated Oldham to fill Judge Edward Prado's seat in the western district of Texas. (Trump had nominated Prado to become the U. S. ambassador to Argentina a month earlier.)

Cornyn agreed: "Andy's distinguished record of public service at the state and federal level makes him eminently qualified to serve on the Fifth Circuit."

According to the White House, Oldham previously worked as deputy solicitor general for Texas, an attorney at Kellogg Hansen Todd Figel & Frederick, a law clerk at the Supreme Court, a law clerk for the U.S. Court of Appeals for the District of Columbia Circuit and an attorney-adviser in the Office of Legal Counsel at the U.S. Department of Justice.

The Senate Judiciary Committee, before whom Oldham appeared on April 25, is expected to vote on Oldham's nomination Thursday.