

## INVITEES-ONLY HEARING ON NEW JUDGE CRITICIZED

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ALBANY — Critics Tuesday wrapped a state Senate panel's decision to allow only those who have been invited to testify at a confirmation hearing for a woman nominated to sit on the state's highest court.

The Senate Judiciary Committee is expected Wednesday morning to recommend the confirmation of Victoria Graffeo, 48, an appellate-division judge in Albany since 1998 and former state solicitor general, to a 14-year term on the Court of Appeals. She was also the chief lawyer for Assembly Republicans from 1984 to 1994.

The Senate is slated to take up the nomination Wednesday afternoon, when she is almost sure to be confirmed. She was nominated for the post by Gov. George Pataki earlier this month.

"Why stifle the debate?" asked Sen. Richard Dollinger, D-Brighton, Monroe County, a member of the Judiciary Committee. "The Senate could clearly free up enough time so I don't see why we should cut off testimony about her fitness or judicial qualities."

"It's an affront," said Robert Schulz, a frequent state-government critic who asked to testify and was turned down by the committee. "Not to be able to testify, having it closed...this is clearly wrong. The process is a corrupt one."

But the committee chairman, Sen. James Lack, R-Suffolk County, said anyone would be free to testify — as long as they had something to contribute to the debate.

"Anybody who has anything positive to contribute to the proceedings is absolutely invited to speak," he said. But he cautioned, "This is supposed to be a positive experience and not a circus."

Lack said Schulz and another person who asked to testify and was turned down, Elena Sassower, were not likely to add to the committee's knowledge about Graffeo.

"They're not there to constructively add to confirmation proceedings, as opposed to turning it into a circus for whatever cause they're advocating," he said.

But Schulz and Sassower said they wanted to talk about the way Graffeo was chosen.

"The thrust of my presentation is addressed to the process," said Sassower, who is affiliated with a White-Plains-based group called the Center for Judicial Accountability.

"But that's not the point," she added. "There was no inquiry by the Judiciary Committee about this ahead of time."

Schulz, a non-lawyer who has sued the state and won several cases, said he wanted to talk about what he sees as a lack of information about Graffeo.

"We would argue that they should not approve the nomination, that they should send the report back to the (screening) commission and ask the commission to include the findings that related to each candidates' character, temperament, professional attitude and so forth," he said.

But Lack said Graffeo has already been thoroughly vetted.

"All that staff work done by my staff and Judiciary Committee for any nominee, was on top of everything the governor's office did, on top of everything done by the screening committee," he said.

"By the time somebody is sitting before me in a confirmation proceeding, there have been three layers of investigation on the qualification before anybody opens their mouth," he said.

Court of Appeals judges, who are paid \$151,200 a year, were elected statewide until 1978, when the system was changed to a so-called "merit selection" based

on a review by a panel of the qualifications of applicants. The governor then picks from a group found qualified by the screening committee.

The deputy director of the Fund for Modern Courts, a Manhattan-based non-profit group that works to improve the state's judiciary, said the right way to proceed is allowing anyone to speak but then set time limits.

"We think openness is good," said the fund's Barbara Reed. "The more information the public has the better. The public has a right to know what's going on in these kinds of hearings."

On the other hand, she said, "Anybody that is conducting hearings of this sort has every right to put certain reasonable time limits on testimony."