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High court pick says he supports separation of powers

By **MARK JOHNSON**, Associated Press

Last updated: 8:06 p.m., Thursday, September 14, 2006

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 Fourth 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 1/2-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.

In 2003, the Court of Appeals ruled that Albany's method of distributing education money using a series of complex formulas denied students in the city a "sound basic education." The court ruled that New York City, which serves a large population of poor, underprivileged students, should have gotten more money to hire better teachers, improve facilities and take care of other needs.

Pataki is appealing the decision that would cost the state \$4.7 billion a year more in aid to New York City schools. He argues the courts can't dictate spending policy.

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 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.

Pigott is a Republican who was chosen after being a top candidate for openings in 2002 and 2003.

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 1994. Smith, the court's only black judge, heard his last arguments Thursday.

Sen. Malcolm Smith, the ranking Democrat on the Senate Judiciary Committee, said that while Pigott was well qualified to be on the court, he and other Democrats would like to see more diversity in the next governor's appointments.

"This is actually about a much bigger issue," he said. "A judiciary which reflects the broad diversity of our state will enhance public confidence in our justice system."

Pigott, who said he's known George Bundy Smith for a long time, said he "will certainly be missed."

If the Senate confirms Pigott's nomination, his 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 Friday.

On the Net:

Court of Appeals: <http://www.courts.state.ny.us/ctapps/>

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