

June 13, 2008

Puryear's judicial appointment in peril

By *BILL THEOBALD*

Tennessean Washington Bureau

WASHINGTON — A year ago today, Gustavus "Gus" Puryear IV was nominated for a federal judgeship in Nashville and appeared headed to an easy confirmation.

Now Puryear's confirmation seems unlikely. In addition to questions raised about his qualifications and actions as general counsel for Corrections Corporation of America, Puryear's fate is now caught in intense election-year battles between Republicans and Democrats in the Senate over lifetime judicial appointments.

Senate Democrats are looking to approve as few of Republican President Bush's appointments as they can before his term expires, hoping Democratic Sen. Barack Obama of Illinois wins the presidency. Republicans did the same during the final months of the Democratic Clinton administration.

Sen. Joe Biden, D-Del., a longtime member of the Senate Judiciary Committee, which vets nominees, said at a committee hearing Thursday that this practice is simply the "fact of the matter."

"It is legitimate," Biden said. "These are lifetime appointments."

Judiciary Committee Chairman Pat Leahy, D-Vt., said at the end of the hearing, which included approval of three judicial nominees, that no more judges would be confirmed unless there is agreement among him and ranking committee Republican Arlen Specter of Pennsylvania and the Democratic and Republican leaders of the Senate.

Even Tennessee's two Republican senators, who signed off on Puryear's nomination, acknowledge his confirmation is in trouble.

"Gus Puryear is a qualified nominee who deserves an up-or-down vote in the Senate, and we're continuing to pursue every option to that end," Sen. Bob Corker said in a written statement. "The current atmosphere in the Senate makes his confirmation more difficult — not impossible, just increasingly more difficult as we approach the fall elections."

Sen. Lamar Alexander said he was still hopeful. "But the Democrats have slowed confirmation of President Bush's nominees to a ridiculous extent," Alexander said in a recent interview.

CCA spokesman Steve Owen, responding to a request for Puryear to comment, said the company has "no way of knowing what the outcome of the confirmation process will be. We continue to believe that Mr. Puryear would make an excellent federal judge. He has served the company admirably and with great integrity as general counsel."

The Judiciary Committee held a hearing on Puryear's nomination in February but has not scheduled a vote on whether to send his name to the full Senate for a vote.

Reasons cited by opponents as to why Puryear should not be confirmed include: a lack of trial and judicial experience, his role as chief lawyer for the country's largest private prison company, and the company's handling of the 2004 death of Estelle Richardson while she was in the Metro Detention Facility in Nashville.

Among those opposing Puryear's confirmation are: The Alliance for Justice, an umbrella group of national civil rights and other organizations, Private Corrections Institute Inc., which opposes prison privatization and the American Federation of State, County and Municipal Employees.

Democrats target him

Brian Fitzpatrick, former special counsel for Supreme Court nominees for Sen. John Cornyn, R-Texas, said he was told that the Democrats on the Judiciary Committee had placed Puryear in a group of "controversial" district court nominees.

"This means it will be very difficult for him to get through this year unless the Republicans decide to make his nomination a high-profile fight," said Fitzpatrick, now an assistant professor of law at Vanderbilt University. He said that without a strong push by Corker and Alexander, "I would say it is unlikely he will be confirmed."

At the same time, Fitzpatrick thinks Puryear deserves to be confirmed and "would make a very fine judge."

"Far too often these days, outstanding nominees are held hostage and the federal courts left understaffed purely for partisan purposes," he said referring to both GOP and Democratic nominees.

Puryear's friends are not giving up. Ed Haden, a Birmingham, Ala., attorney clerked for a federal appeals court judge at the same time Puryear clerked for a judge across the hall. He also served as nominations counsel for Sen. Orrin Hatch, R-Utah, when he chaired the Senate Judiciary Committee.

"Based on my experience on how deals are made at the end of Congress, I know there will be general leverage applied by leadership and specific leverage by the home state senators," Haden said. "Deals are going to be made."