

U.S. Dist. Judge Bernice Donald faces confirmation hearing today

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WASHINGTON -- If Republicans are looking for an issue to help torpedo U.S. Dist. Judge Bernice B. Donald's nomination to the Sixth Circuit Court of Appeals, they may look at that court's reversal of her 2007 ruling in a school desegregation case.

Donald ruled that the Shelby County Schools had not created a unitary system after 44 years of Justice Department-supervised efforts and rejected a motion to dismiss the 1963 case filed by both the defendants and plaintiffs. The Sixth Circuit opinion said Donald's court had "abused its discretion," but there was a dissenting opinion too.

That was one of 28 published cases where a Donald ruling was appealed to the higher court in Cincinnati and not affirmed, records show.

Donald's nomination by President Barack Obama goes before the Senate Judiciary Committee today after both of Tennessee's Republican senators, Lamar Alexander and Bob Corker, said they had no objection.

Although both have met with Donald, neither has said how he'll vote should her nomination reach the floor. A hint comes in Alexander's plan to introduce her to the committee this afternoon.

"I don't think she's controversial," said Prof. Carl Tobias of the University of Richmond School of Law and an expert on appellate court nominations. "I think it's likely to be pretty quiet."

Among the other judges being considered at today's hearing is J. Paul Oetken, an openly gay nominee for a U.S. District Court judgeship in New York, and two other district court nominees.

Tobias speculated that, if Donald is confirmed, she will likely improve the overall temperament of a court that has a reputation for its lack of collegiality -- often expressed in opinions in which members are critical of others' reasoning.

The court hears appeals from Tennessee, Ohio, Michigan and Kentucky. Judge Julia S. Gibbons of Memphis also serves on the court.

Donald, a federal judge in Memphis for 15 years, was first nominated in December, but the Senate could not act before adjourning. She was renominated in January.

Prior to that, she worked with A C Wharton at Memphis Area Legal Services and at the

public defenders' office, then became the first elected black woman in Tennessee to serve as a Shelby County General Sessions Court judge, in 1982.

She was the first black woman appointed to the U.S. Bankruptcy Court, in 1988. She is a graduate of then-Memphis State and its law school. She was nominated to her present district judgeship by President Bill Clinton.

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