

Panel Politics

Jason McLure

10-09-2006

When Judge Anna Diggs Taylor, a Jimmy Carter appointee, ruled President George W. Bush's warrantless surveillance program illegal and unconstitutional this summer, conservatives were quick to criticize the ruling as the product of a liberal-activist judicial appointee. But Bush supporters have reason to take heart in the composition of the three-judge appellate panel that will hear the government's appeal from the U.S. District Court for the Eastern District of Michigan. Hearing the appeal in the Cincinnati-based U.S. Circuit Court of Appeals for the 6th Circuit will be George H.W. Bush appointee Judge Alice Batchelder, George W. Bush appointee Judge Julia Smith Gibbons, and Bill Clinton appointee Judge Ronald Lee Gilman. The 6th Circuit has a reputation for being the nation's most bitterly divided appellate court, with a roughly equal number of conservatives and liberals grouped into two warring camps. Batchelder, whose name was briefly floated last year as a possible replacement for U.S. Supreme Court Justice Sandra Day O'Connor, played a key role in the court's most public blowup. That came in the court's 2001 handling of the University of Michigan Law School's affirmative action case, *Grutter v. Bollinger*, which later reached the Supreme Court. In the 6th Circuit's decision in that case, which upheld the program, Batchelder joined a harshly worded dissent by a fellow conservative jurist that accused the court's then-chief judge, Boyce Martin Jr., of misconduct for delaying an en banc hearing in the case until after two conservative judges took senior status. The Clinton-appointed Gilman, who voted against the affirmative action program in *Grutter*, is viewed as the court's swing vote. "That's probably a very good panel from the perspective of the administration," says Richard Samp, a lawyer with the conservative [Washington Legal Foundation](#). Last week the panel agreed to stay Taylor's decision pending the appeal. Oral arguments are expected this winter.

Jason McLure can be contacted at jmclure@alm.com.