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GOP Divided Over Justices' Ballot Presence

George-Chin Campaign: Will It Hurt Lungren?

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ANAHEIM — The Republican Party committee created to evaluate appellate justices on the fall election ballot has found itself confronting a novel strategic question:

Can conservatives oppose the retention of two Republican-appointed Supreme Court justices and still elect the GOP's Daniel Lungren governor?

The party's ultimate decision on whether to endorse appellate judicial candidates could prove significant. The courts in recent years have opened the way for partisan endorsements of these nonpartisan candidates. And in recent elections, the numbers of voters who vote "no" in judicial confirmation races have been steadily increasing.

The Democrats, like the Republicans, have not yet decided whether to endorse such candidates.

Fear of a Split Party

At the GOP committee hearing Saturday, Shawn Steel, the party's treasurer, warned that joining anti-abortion forces in a campaign against Chief Justice Ronald M. George and Associate Justice Ming W. Chin could split the party and discourage moderate Republican voters from going to the polls in November, hurting Lungren.

But those who oppose the justices strongly disagreed, predicting the judicial elections will have little or no effect on other races.

Still others, though, viewed the high court's controversial parental-consent abortion decision as the issue to solidify the conservative vote and help Lungren win the gubernatorial election.

Originally, the Supreme Court upheld a state law requiring parental or judicial consent for unmarried minors. Then, with the addition of two appointees by Gov. Pete Wilson, a revamped court, in an opinion by George, reversed itself and struck down the law. Anti-abortion groups vowed to oppose George and Chin in their bid for voter confirmation in the fall.

Four Justices on Ballot

Four of the court's seven justices, George, Chin, Stanley Mosk and Janice Rogers Brown, face retention election in November. All but Mosk were appointed to their current seats by Wilson and confirmed by a panel that included Lungren, the attorney general and the Republican's choice for governor.

Yet conservative Republican critics are focusing on George and Chin for their votes against the law. *American Academy of Pediatrics v. Lungren*, 16 Cal.4th 307 (1997).

Although Lungren opposes abortion, he has said he will not oppose George and Chin in their retention bids.

Three days before the foundation's debate, supporters of George and Chin pulled out. Earlier, the George and Chin campaigns also declined to participate.

So the audience heard only San Diego lawyer Mark S. Pulliam and former Loyola law professor Gideon Kanner criticize

GOP Strategists Worry About George, Chin Efforts

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George and Chin.

Pulliam, a partner in the San Diego office of Latham & Watkins, urged the public not to compare George and Chin to former Chief Justice Rose Bird, a liberal defeated along with two other justices in the 1986 election.

"Rose Bird is not the benchmark for evaluating judges," he said. "Being better or worse than Rose Bird is not, or at least should not be, a recognized defense to criticism."

Pulliam called George's parental-consent decision "as arrogant, as intellectually dishonest and as brazenly disrespectful of precedent as any single decision written by Rose Bird, [9th U.S. Circuit Court of Appeal Justice] Stephen Reinhardt, [U.S. District Judge] Thelton Henderson or any other liberal activist judge you are to name."

George relied on the state, not federal, Constitution in declaring the law unconstitutional — which, Pulliam said "is the same trick Rose Bird used to pull with the death penalty ... to get around inconvenient federal court precedent."

Pulliam and Kanner, however, each declined to publicly call for the defeat of the two justices they criticized.

Ironically, neither speaker was as harsh on Mosk, the only sitting justice appointed by a Democratic governor, as they were on George and Chin.

Mosk, after all, wrote the first opinion in

the parental-consent case upholding the law. But the case was reconsidered by the George court after Chief Justice Malcolm M. Lucas and Justice Armand Arabian retired, changing the high court's dynamic.

And Brown, perhaps the court's most conservative justice, was hailed as the best justice by Pulliam.

In the first straw poll among Republicans, party members attending Saturday's hearing overwhelmingly opposed George and Chin.

The advisory, nonbinding poll taken Saturday showed that 47 of the 50 people who voted believe the Republican Party should oppose George and Chin. Brown won support among 37 voters, and Mosk garnered the support of 20 voters.

The poll, for the first time, documents some public sentiment toward the justices who overturned the parental-consent law. It is sure to be considered by members of the party's judicial evaluations committee.

Sen. Ray Haynes, R-Riverside, who chairs the Republican Party committee, called Saturday's public hearing, although the committee membership has not yet been named.

Tony Bell, a spokesman for the state Republican Party, said Monday that letters to members "have gone out" and the full committee list is "forthcoming."

Haynes said Saturday he was invited by the California Public Policy Foundation, a conservative organization, to piggyback on their scheduled debate on the justices

Haynes has authored a letter signed by 20 Republican lawmakers opposing George and Chin.

"My opinion is that the justices in a variety of cases, particularly Justices Chin and George, have gone beyond what I believe is an appropriate role of a judge in a free society," he said.

Haynes said he plans to hold at least three committee meetings. The first would be to determine "the yardstick" against which to measure judges. The second would be to evaluate the judges. And the third would report the evaluation committee's findings to the Republican Party in the fall.

The issue, he said, "is that we have to set up the yardstick and measure those judges against how we believe those judges ought to act. Oftentimes, an appointee will leave the reservation."

In remarks from the audience, Haynes was urged to encourage lawmakers to more frequently use the impeachment process against judges, change the state Constitution to shorten the 12-year term for appellate justices, establish term limits for judges and appoint nonlawyers as judges.

Attempting to broaden the criticism of the justices beyond a single issue, abortion, panelists also took aim at their decisions on property rights and tort law.

Yet the public discussion kept returning to the parental-consent decision.

And tables in the back of the room

were filled with anti-abortion literature — mostly from the Christian Coalition and the sponsors, the California Public Policy Foundation — criticizing the Supreme Court's parental-consent ruling.

Speakers who opposed abortion said they would not vote for the justices. A few attendees said they were told of the meeting through anti-abortion networks.

One speaker compared the parental-consent decision to the death penalty decisions that led to the 1986 defeat of former Chief Justice Rose Bird.

"It was the death penalty that galvanized the public and resulted in the recall of Rose Bird," said Donald Wagner, an Irvine lawyer.

"I'd like to suggest to the panel that the [abortion] decision may, in fact, serve as the same catalyst in regards to Ron George and Ming Chin," Wagner said.

Another, unidentified speaker added: "Isn't this potentially a wonderful way for Dan Lungren to distinguish himself against [Democratic gubernatorial candidate] Gray Davis? ... Dan Lungren can push this and run against the court and not look 'extreme' on the issue of abortion."

But another unidentified speaker asked about the consequences of defeating the justices if Lungren loses and a Democratic governor is allowed to name their successors, who could decide the politically hot issue of congressional reapportionment in 2000.