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Unanimous Appeals Court ruling preserves White House privilege

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WASHINGTON - The unanimous ruling on private energy policy meetings was a major legal and political victory for the White House, further solidifying the president's power to deliberate and seek advice behind closed doors without disclosing details.

The eight judges supported the administration's contention that forcing the executive branch to produce information about its internal deliberations is unnecessarily intrusive and violates the president's constitutional powers.

"The president must be free to seek confidential information from many sources, both inside the government and outside," Judge Raymond Randolph wrote for the U.S. Court of Appeals for the District of Columbia Circuit. The court, prompted by a 2004 ruling by the U.S. Supreme Court, stressed the necessity of protecting the separation of powers for the executive branch.

In lawsuits filed four years ago, the advocacy groups Judicial Watch and Sierra Club contended there was evidence that members of large energy corporations and industry groups effectively became members of Cheney's energy task force and helped write the administration's energy policy, parts of which are now before Congress. Suing under the Open Meetings Act, the two groups sought minutes of task force meetings and records of who attended.

But the court concluded that the groups failed to show that people other than federal officials were members of the energy task force under the court's admittedly narrow definition. Randolph noted that White House officials had testified that industry members offered opinions only at advisory meetings and did not have a vote or veto in writing the administration's recommendations. Therefore, he wrote, Cheney had no duty to disclose details of internal meetings.

"What this court decision does ... is to preserve the confidentiality of internal deliberation among the president and his advisers that the Constitution protects as essential to wise and informed decision-making," said Steve Schmidt, a senior Cheney adviser.

But environmentalists and advocates of open government called the decision a double blow.

"As a policy matter, we see the Bush administration has succeeded in its efforts to keep secret how industry crafted the administration's energy policy," said David Bookbinder, the Sierra Club's lead attorney on the case. "As a legal matter, it's a defeat for efforts to have open government and for the public to know how their elected officials are conducting business."

The decision is unusual for two reasons, according to law professors and lawyers involved in the case. First, it was unanimous, an atypical result for a court whose members are not hesitant to disagree. Some experts say unanimity is the judges' way of signaling that their court should not be used to settle political scores.

"Rightly or wrongly, this is their view of the way to get good government: to have discussions in secret," said Richard Lazarus, a Georgetown University law professor. "At a time when the judiciary is under attack for being partisan, and in this very high-profile case, they made clear they were speaking with one voice."

The decision also hinges on accepting assertions by two senior administration officials who said industry members were not task force members.

Randolph wrote that Karen Knutson, who was one of Cheney's deputy assistants for energy policy, said in her affidavit that industry members participated in smaller stakeholder meetings but that these "were simply forums to collect individual views rather than to bring a collective judgment to bear."

"The only individuals the president named to the (task force) were federal officials; only federal officials signed the final report," he wrote.

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