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Trump's proposed border wall sees new courtroom scrutiny

By Lee Ross | Fox News

PASADENA, Calif. — The fate of President Trump's proposed border wall returned on Tuesday morning to a California courtroom, where it appears likely to survive another round of judicial scrutiny.

In a 40-minute hearing that went deep into the legal morass of which courts could properly hear challenges to the controversial plan, there seemed to be little appetite by the three appellate judges to rule that the administration's Department of Homeland Security (DHS) has overstepped its authority.

Earlier this year a federal judge in San Diego said the president and the DHS were within their powers to erect new border wall prototypes and replace several sections of existing wall along the U.S.-Mexico border. That ruling also cleared the way for the government to waive any environmental laws that could impede construction of the wall, which Trump wants built to further secure the nation's southern border from illegal immigrants hailing from Mexico and Latin America. (The wall was a cornerstone of Trump's 2016 presidential campaign.)

The state of California and several environmental groups joined together to challenge that decision, asking the court to reverse course. They claim the current use of border fence laws passed during the George W. Bush administration as authority for the new construction is improper.

They specifically point to provisions that expired in 2008. "It was never designed for that purpose," California Deputy Attorney General Noah Golden-Krasner told the court.

The four environmental groups joining California are the Center for Biological Diversity, the Animal Legal Defense Fund, the Sierra Club and Defenders of Wildlife. Collectively they expressed concern that the wall is “being constructed in a “global biodiversity hotspot that includes multiple fragile and sensitive habitats," imperiling rare plant species and water quality.

Center for Biological Diversity lawyer J.P. Rose told reporters he was hopeful the judges would rule on behalf of the environmental interests where the Trump administration's plan for a southern border wall is concerned. (Fox News)

But those concerns weren't addressed in court Tuesday as the judges focused on the scope of executive authority and other more technical issues. Judge M. Margaret McKeown said she looked at the language of the Illegal Immigration Reform and Immigrant Responsibility Act (1996), and found that it provides the administration with the broad authority to erect border barriers.

“It doesn't say anywhere you should only do what's listed,” the appointee of President Bill Clinton said.

Justice Department lawyer H. Thomas Byron III twice said the government's actions fell squarely “in the heartland” of what Congress intended by giving the executive branch wide latitude for border security.

Following the hearing, Center for Biological Diversity lawyer J.P. Rose told reporters he was hopeful the judges would rule on behalf of the environmental groups. There is no timetable for a decision.

Also hearing the case were Judges Consuelo Callahan and Jacqueline Nguyen who were appointed to the court by Presidents George W. Bush and Obama respectively.