



## **PRELIMINARY REPORT ON THE NOMINATION OF CATHARINA HAYNES TO THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT**

On July 17, 2007, President Bush nominated Catharina Haynes, a partner at Baker Botts, L.L.P., and a former state trial court judge in Texas, to the United States Court of Appeals for the Fifth Circuit. The American Bar Association's Standing Committee on the Federal Judiciary has rated Judge Haynes as well qualified with one abstention.

### **BRIEF BACKGROUND ON THE FIFTH CIRCUIT**

In order to be confirmed to a lifetime seat on the federal bench, nominees must have a demonstrated commitment to equal justice. Judge Haynes' views are especially critical because the Fifth Circuit has been subject to extraordinary partisan engineering: during the Clinton administration the Republican Senate blocked two moderate nominees to that court to hold seats open for the next president. For one of the seats, President Clinton first submitted a nominee in mid-1997; for the other he submitted a nominee in early 1999. Benefiting from this obstructionism, President George W. Bush exploited the opportunity to appoint deeply conservative judges like Priscilla Owen and Edith Brown Clement to the court. In addition, the Senate recently confirmed two of President Bush's nominees to the Fifth Circuit. The first, Jennifer Elrod, failed to provide the Senate with any documents upon which to evaluate her abilities or judicial philosophy, while the latter, Leslie Southwick, was confirmed despite admitting to the Senate that he could not cite a single instance when he ever took an unpopular point of view on behalf of those who were powerless or vulnerable. Of the sixteen active judges currently sitting on the Fifth Circuit, twelve were appointed by Republican presidents, including five by President George W. Bush. Confirmation of Judge Haynes, whose record provides no assurances of a commitment to equal justice under law, would further jeopardize the administration of justice in a circuit that contains the highest percentage of minority residents and is notorious for its hostility to civil rights and equal justice under the law.

### **BRIEF BIOGRAPHY OF JUDGE CATHARINA HAYNES**

#### **A. Education & Career**

Catharina Haynes was born in 1963 in Melbourne, Florida. She earned a B.S. in psychology with highest honors from the Florida Institute of Technology in 1983 and received her J.D. with distinction from Emory University School of Law in 1986. Immediately after graduating law school, Judge Haynes served as an associate at the law firm of Thompson & Knight. In 1988, she joined the law firm of Baker Botts, L.L.P., as an associate in its Dallas office, and she became a partner in that firm in 1994. In 1999, Haynes successfully ran as a Republican for a seat on the 191<sup>st</sup> Civil District Court of

Dallas County and was re-elected in November 2002. In 2006, Judge Haynes lost her re-election bid. She has since rejoined her old law firm, Baker Botts.

## **B. Political Activity**

Judge Haynes was elected to the bench as a Republican, and in 2006 she raised nearly \$175,000 in campaign contributions for her unsuccessful re-election campaign. Judge Haynes has held numerous leadership positions in various Republican clubs, including the Greater Garland Republican Organization, Southwest Dallas Pachyderm Club, Greater Dallas Pachyderm Club, and the Dallas Republican Career Women. In addition, within the last ten years Judge Haynes has been a member of Team Dallas/Republican Eagles, Southeast Pachyderm Club, Park Cities Republican Women's Club, the First Ladies Republican Women's Club, and the now defunct Garland Area Republican Women's Club.<sup>1</sup> Since 1998, Judge Haynes has donated nearly \$6,000 to various Republican campaigns, with most going to the Republican Party of Dallas County.<sup>2</sup>

## **C. Published Writings**

While Judge Haynes has published numerous papers and step-by-step guides on advancing one's legal career and on proper courtroom procedure,<sup>3</sup> she has not written or spoken extensively on constitutional or federal statutory law issues during her career, nor has she published much that sheds light on her own views of the law. In 2007, Judge Haynes published a paper and presentation entitled "The Rise and Fall of Sweetheart Deals: Agreements and Assignments after *Gandy*," in which she detailed the state of pre-verdict and post-verdict assignments and settlements in insurance law in the ten years after the *Gandy* decision.<sup>4</sup> While in law school, Judge Haynes authored a law review article entitled "The Psychotherapist-Client Testimonial Privilege: Defining the Professional Involved," which laid out the policy justifications for this privilege and addressed the more difficult issue of defining which professions should be included within the category of "psychotherapist."<sup>5</sup>

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<sup>1</sup> Catharina Haynes, *United States Senate Committee on the Judiciary: Questionnaire for Judicial Nominees*, October 2007 ("Haynes Questionnaire").

<sup>2</sup> The Center for Responsive Politics, *OpenSecrets.org*, October 28, 2007, available at <http://www.opensecrets.org/indivs/search.asp?key=28KHZ&txtName=Haynes,%20Catharina&txtState=TX&txtAll=Y&Order=N>.

<sup>3</sup> See, e.g., "Constructing a Jury Charge: Perspectives from the Bench," *Advocate*, State Bar of Texas, Litigation Section, Winter 2004; "Do's and Don'ts for the Advocate in the Courtroom," 19th Annual Advanced Evidence and Discovery Course, State Bar of Texas, Dallas, May 2006; "Traps for the Wary: What Every Young Lawyer Should Know," Dallas Association of Young Lawyers, Dallas, Apr. 2005; "The Three R's of Professionalism for the Newer Lawyer," Dallas Association of Young Lawyers, Dallas, Sept. 2004.

<sup>4</sup> "The Rise and Fall of Sweetheart Deals: Agreements and Assignments After *Gandy*," 4th Annual Advanced Insurance Law Course, State Bar of Texas, Dallas, March 2007; *State Farm Fire and Casualty v. Gandy*, 925 S.W.2d 696 (Tex. 1996) (landmark decision eliminating the use of "sweetheart deals" in bad faith cases).

<sup>5</sup> Catharina Haynes, "The Psychotherapist-Client Testimonial Privilege: Defining the Professional Involved," 34 *Emory L. J.* 777 (1985).

Additionally, in her capacity as presiding judge of the civil district courts in 2005, Judge Haynes signed a letter on behalf of all Dallas district judges objecting to proposed changes to the Texas Code of Judicial Conduct. Judge Haynes and her colleagues objected to changes in the code that would ban judges from speaking as guests of honor at charitable fund-raising events. They argued that this proposed change “would send a message to the community that judges must be isolated from the community as a whole.” The judges also opposed a change to Canon 2.C., which forbids judicial membership in groups that discriminate based on race, sex, religion or national origin. The proposed change would have re-worded the prohibition from banning membership in groups that practice discrimination “prohibited by law” to a prohibition on membership in groups that practice “invidious” discrimination. The judges felt this change “would create an ambiguous standard that could chill membership in legitimate and appropriate organizations.”<sup>6</sup>

As a candidate for district court judge and as an active member of numerous Republican clubs, Judge Haynes delivered many short speeches that might provide more insight into her judicial philosophy. However, Judge Haynes informed the Senate Judiciary Committee in her questionnaire that she does not have copies of these remarks.

#### **D. Significant Litigation**

Before being elected to the District Court of Texas, Judge Haynes was a partner in the litigation department of the law firm of Baker Botts. In this capacity, Judge Haynes handled cases involving commercial litigation, complex consumer litigation, insurance coverage, and bad faith litigation. In two cases, she submitted briefs to the United States Supreme Court opposing petitions for writs of *certiorari*.<sup>7</sup>

### **RECORD ON THE BENCH**

Judge Haynes served as a district court judge for eight years. Though her law firm biography boasts that Judge Haynes has presided over “hundreds of trials and thousands of hearings involving the full range of civil (non-family) topics,” Judge Haynes has never written a judicial opinion.<sup>8</sup> On her questionnaire, she explained that as a district court judge, she did not write opinions but rather “wrote orders (a few with explanations), jury charges and findings of fact/conclusions of law.”<sup>9</sup> Her orders have been reversed by higher courts at least twelve times and have been partially reversed on at least six occasions.<sup>10</sup> No opinions are available for these reversals.

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<sup>6</sup> Haynes *Questionnaire*.

<sup>7</sup> *Brandon v. Travelers Ins. Co.*, 513 U.S. 1081 (1995) (Respondents’ Brief in Opposition to Petition for Writ of Certiorari) (No. 940825); *Askew v. Chiles*, 502 U.S. 1005 (1991) (Respondents’ Brief in Opposition to Petition for Writ of Certiorari) (No. 91-647).

<sup>8</sup> Baker Botts Website Biography, available at <http://www.bakerbotts.com/lawyers/detail.aspx?id=ffe5c25f-3abd-4ffe-a630-0622c0a7ed35>.

<sup>9</sup> Haynes *Questionnaire*.

<sup>10</sup> *Id.*

## CONCLUSION

No nominee comes to the Senate Judiciary Committee with a presumption of confirmation. As committee Chairman Patrick Leahy (D-VT) has stated, the Senate's constitutional "advice and consent" role is a serious responsibility, by which "those 100 of us privileged to serve in the Senate are entrusted with protecting the rights of 280 million of our fellow citizens." Therefore, the committee must thoroughly review each nomination in order to uphold the integrity of this constitutional duty.

The Bush administration has pursued a widely acknowledged and largely successful campaign of court packing over the past seven years. In recent months the Senate has confirmed two of President Bush's nominees to the Fifth Circuit. In total, five of the active judges of the Fifth Circuit were nominated by President George W. Bush. Confirmation of another nominee whose chief qualification is loyalty to the political agenda of the White House would further decimate the Fifth Circuit's commitment to equal justice under law and cast doubt on the independence of this court of last resort for many Americans. In a speech at Marquette University Law School earlier this year, Fifth Circuit Judge Carolyn Dineen King observed, "[I]deologically committed judges on [intermediate federal appellate court] benches can make an enormous difference in the outcomes of hundreds of cases each year. Too, it would be a mistake to think that ideologically committed judges affect the outcomes only in cases that involved the so-called hot button issues... My own observations suggest that these judges cast a much wider net."<sup>11</sup> In light of the history of the Fifth Circuit and its unique role in enforcing civil rights laws in an area of the country with the highest percentage of minority residents, the stakes of judicial politicization are extraordinarily high.

Judge Haynes has never written a single judicial opinion and she has almost no experience with criminal law. The published writings she provided to the committee mainly consisted of writings explaining the workings of a courtroom, a topic which reveals little about her judicial philosophy. Though Judge Haynes thrice ran for district court judge, she claimed to have no record of any of the speeches she delivered as a candidate. Similarly, she could not produce the text of or notes from any of the numerous speeches she has given before various Republican groups. Judge Haynes' inability to produce substantive legal writings for review by the committee leaves no record upon which to evaluate her judicial capabilities and consequently undermines the advice and consent role of the Senate in judicial nominations.

After reviewing the documents submitted to the committee, Alliance for Justice does not believe that Catharina Haynes is qualified to serve on the U.S. Circuit Court of Appeals for the Fifth Circuit. The committee should perform its constitutional duty and reject this nomination.

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<sup>11</sup> The Honorable Carolyn Dineen King, Judge of the U.S. Court of Appeals for the Fifth Circuit, 2007 E. Harold Hallows Distinguished Lecture at Marquette University Law School, "A Challenge to Judicial Independence: The Politicization of Federal Judicial Appointments" (Feb. 20, 2007).