

June 6, 2007

The Honorable Patrick J. Leahy
Chair
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Arlen Specter
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy and Senator Specter:

We are writing to express our strong opposition to the nomination of Judge Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit. A large portion of Judge Southwick's record remains unexamined, as he has failed to provide to the Senate Judiciary Committee the unpublished opinions he joined while serving more than a decade on the Mississippi. The record he has produced reflects a harsh insensitivity to the politically powerless, a serious hostility to plaintiffs in employment cases, and an acceptance of the radical theory of "the Constitution in Exile," which could undercut the ability of the Federal government to use regulations to protect the rights of disabled individuals. From his past decisions and academic writings, we do not believe that Judge Southwick will adequately provide equal justice under the law or fairly interpret federal statutory protections for the disabled. He should not be confirmed to a lifetime appointment on a court that regularly decides crucial issues of federal law.

Judge Southwick's record of prioritizing corporate interests ahead of those of individual citizens, along with his blatant disregard for the interests of the less powerful, indicate that he would follow the recent trend of undercutting the Americans with Disabilities Act through judicial fiat. While on the Mississippi Court of Appeals, he sided with employers and business interests 89 percent of the time in published split-decision torts and state employment law cases. In his hearing before the Senate Judiciary Committee, when specifically asked by Senator Durbin if he could think of one time in his career, including the more than 7000 opinions that he wrote or joined, in which he had made an unpopular decision in favor of the powerless, the poor, minorities or the dispossessed, Judge Southwick responded that he could not. He has also gone well out of his way to insert his personal views into employment cases, including extolling the doctrine of at-will employment in a lengthy aside unnecessary to the case before him. Combined, Judge Southwick's troubling record and performance before the Committee indicate that if confirmed he would not put aside his personal opinion and fairly interpret the Americans with Disabilities Act and other federal legislation.

In addition to his unwillingness to objectively balance the rights of employees with the needs of employers, in his academic writings Judge Southwick has implied his approval of the “Constitution in Exile” judicial philosophy. This extreme vision of the law seeks to undermine Congressional power to legislate on a variety of issues, including protecting the rights of the disabled, minorities, and women. In one article, he compared the Supreme Court’s recent federalism jurisprudence, which rolled back the power of Congress to legislate under the Commerce Clause, to a Christian following the Scripture. Confirming a judge with Leslie Southwick’s philosophy to a lifetime appointment on a Federal Circuit Court would undermine Congress’ ability to preserve the robust guarantees of the Americans with Disabilities Act and other important federal laws.

Because his record demonstrates hostility towards those who are less powerful and ambivalence about federal statutory rights, ADA Watch strongly opposes the nomination of Judge Leslie Southwick to the Fifth Circuit Court of Appeals and urges the Senate not to confirm him.

ADA Watch is a coalition of national, state and local disability, civil rights and social justice organizations united to defend and strengthen the Americans with Disabilities Act (ADA) and the human rights of children and adults with physical, mental, developmental, cognitive and sensory disabilities. ADA Watch's positions on judicial nominations, while reached through the majority consensus of our Board of Directors, do not necessarily represent the views and opinions of every individual partner organization.

Sincerely,

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