



# Americans for Democratic Action

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*Where it's more than just politics. It's about taking a stand.*

June 6, 2007

Dear Senator:

On behalf of Americans for Democratic Action, we write to oppose the confirmation of Judge Leslie H. Southwick, a former Mississippi Court of Appeals judge, to the United States Court of Appeals for the Fifth Circuit. His disclosed professional records show negative positions in regard to human and civil rights.

Southwick is a poor choice for the Fifth Circuit, which includes several states (Louisiana, Mississippi and Texas) that have a high concentration of minorities. Southwick's record demonstrates his insensitive and even hostility towards minorities and women.

His positions targeted African Americans, workers, gays and women showing that Mr. Southwick is not committed to basic principles of equality and justice, indispensable for any judge. Certainly, he is not committed to the vigorous defense of civil and human rights, so necessary for the life-time appointment as Judge to the Fifth Circuit.

Some of his decisions that demonstrate our concerns are highlighted as follow:

In the case Richmond v. Mississippi Dept of Human Services<sup>1</sup> Judge Southwick joined a 5-4 majority decision stating that a social worker who had called a colleague "a good ole n\*\*\*\*\*" and had been fired should be reinstated, because his statement according to the Court "was not motivated out of racial hatred or racial animosity directed toward a particular co-worker or toward Blacks in general", and because it did not give rise to workplace problems other than offending the coworker who was called a n\*\*\*\*\*." The Mississippi Supreme Court reversed the decision. It is remarkable that Southwick failed to acknowledge the inherently, negative, explosive, and incendiary connotation of the use of the 'n' word.

His decisions in workers' rights cases show him to be a strong supporter of the employment-at-will doctrine that allows employers to fire employees for virtually any reason. He expressed his personal opinion unnecessary to the conclusion in the case of

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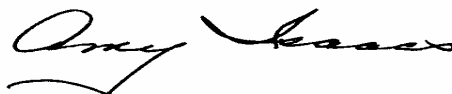
<sup>1</sup> 1998 Miss. App. 637 (Miss. Ct. App 1998) Rev'd 745 S.2d. 254 (Miss 1999)

Dubard v. Biloxi H. M. A.<sup>2</sup>, in which he delivered the dissenting opinion adding that: “I find that employment at will, for whatever flaws a specific application may cause, is not only the law of Mississippi but it provides the best balance of the competing interests in the normal employment situation. It has often been said about democracy, that it does not provide a perfect system of government, but just a better one than everything else that has ever been suggested. An equivalent view might be seen as the justification for employment at will.” This case raises serious doubts about Mr. Southwick’s capacity to separate his personal opinions from his legal and professional duties to apply and interpret the law on issues of workers’ rights.

His decision concerning women’s rights and sexual orientation in, SB v. LW<sup>3</sup>, Southwick not only joined the majority opinion deciding to take away from a bisexual mother an eight-year-old girl and grant guardianship to her father who had never lived with the child, but he also joined a manifestly anti-gay concurrent opinion which states that “any adult may choose any activity in which to engage; however, [...] such person is not thereby relieved of the consequences of his or her choice. [...]As with the present situation, the mother may view her decision to participate in a homosexual relationship as an exertion of her perceived right to do so. However, her choice is of significant consequence, as described before in the discussion of our State's policies, in that her rights to custody of her child may be significantly impacted.” In SB v. LW<sup>4</sup>, the mother was being punished, for being a lesbian. Southwick maintained a discriminatory position against gays and lesbians, as he joined in the opinion that – allowed sexual orientation alone to be a legitimate reason to deny the mother custody of her children.

In addition, a justice of the Court of Appeals need not only have a superior legal mind, superb legal credentials, have the highest integrity, be an outstanding member of the Bar. He or she also must be committed to equal justice and a willingness to apply the law fairly to all parties without discrimination. Careful scrutiny of Judge Southwick’s record dictates that his nomination to the United States Court of Appeals for the Fifth Circuit be opposed.

Sincerely,



National Director

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Secretary Maria Wilkinson \* NLDA Chair Joanna Buckoltz \*President Emeritus Jim Jontz  
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<sup>2</sup> 1999 Miss. App 468 (Miss. Ct. App. 199), Rec.’d 778 So.2d 113, 114 (Miss 2000)

<sup>3</sup> 793. So. 2d 656 (Miss. Ct. App. 2001)

<sup>4</sup> 793. So. 2d 656 (Miss. Ct. App. 2001)