



May 31, 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:

No nominee to a lifetime seat on our federal courts is entitled to a presumption of confirmation. As Senator Leahy 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." Were the Senate to confirm Judge Leslie Southwick to a lifetime appointment on the Fifth Circuit, it will in fact have placed in jeopardy the rights of many of the most vulnerable of our fellow citizens. As a judge on the Mississippi Court of Appeals, Judge Southwick assembled a deeply troubling record in cases involving the interests of vulnerable parties, consistently favoring corporations, insurance companies, and other powerful interests over vulnerable workers and consumers. His record also calls into question his commitment to equal dignity and equal justice for minorities.

Judge Southwick's published opinions reveal that he voted *89 percent of the time* against injured workers and consumers in divided employment and torts decisions. In a number of these cases, Judge Southwick harshly interpreted laws and precedents to favor corporate defendants. In *Goode v. Synergy Corporation*, Judge Southwick voted to deny a family, who sued the propane company after their grandchild was killed in a fire, a new trial even though there was new evidence, previously undisclosed by the company, showing that the company's conduct may have caused the fire.

Although there are few cases that shed light on Judge Southwick's views on civil rights, those that do are profoundly troubling. Astonishingly, in one of his exceedingly rare decisions in favor of an employee, he joined the court's 5-4 opinion in *Richmond v.*

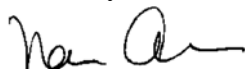
Mississippi Dep't of Human Services, which upheld an Employee Appeals Board decision to reinstate, with full back pay, a woman who used a racial slur in reference to a coworker, calling her a “good ole n*****.” In neither the opinion he joined, nor in his answers to questions at his confirmation hearing, did he express doubts about the decision he joined in *Richmond*. He and his colleagues on the majority also declined to remand the case to the Board for assessment of a lesser penalty – as one dissenting opinion urged and the Mississippi Supreme Court later ordered in reversing the Court of Appeals. Judge Southwick and the majority would have allowed the employee full reinstatement with back pay in spite of the epithet.

In *S.B. v. L.W.*, Judge Southwick joined a homophobic concurrence arguing that sexual orientation was a perfectly legitimate basis on which to deny a parent custody of one’s child. At his hearing, he attempted to explain this opinion as a reflection of the intent of the legislature as to the rights of gay parents. However, a dissenting opinion in *S.B.*, along with a subsequent Mississippi Supreme Court decision stating that sexual orientation was not a basis on which to deny child custody, demonstrate that Judge Southwick’s attempt to deflect criticism to the state legislature is questionable indeed.

The Senate must be especially wary of Judge Southwick’s nomination because the president, in his six years in office thus far, has engineered a transformation of the federal courts to reflect an ideology that is hostile to the rights of minorities and our society’s most vulnerable members. Moreover, the president has shown little willingness to promote diversity on the bench. Astonishingly, there has never been an African-American Fifth Circuit judge from Mississippi, a state with a population that is 37% African-American. Thus, it is particularly troubling that the president has now nominated someone to this Mississippi seat whose record raises such grave doubts about his racial sensitivity and his commitment to equal justice for all Americans.

President Bush and his Senate allies have exploited every opportunity to confirm the nominees of the hard right, steamrolling venerable Senate rules and traditions to achieve this goal. The current Senate now faces a choice: stand up to nominees who will make our courts even less friendly to our most vulnerable citizens; or inherit a share of President Bush’s disturbing legacy of remaking the courts in the partisan image of his right wing base. Judge Leslie Southwick represents a crossroads, and the Senate should choose to reject his nomination and insist that the president submit a nominee with a demonstrated commitment to equal rights and fairness to all Americans, regardless of their race, sexual orientation or economic status.

Sincerely,



Nan Aron
President