

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS



815 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20006

JOHN J. SWEENEY
PRESIDENT

RICHARD L. TRUMKA
SECRETARY-TREASURER

LINDA CHAVEZ-THOMPSON
EXECUTIVE VICE-PRESIDENT

LEGISLATIVE ALERT!

(202) 637-5090

June 6, 2007

The Honorable Patrick Leahy,
Chairman
Senate Committee on Judiciary
Washington, D.C. 20510

Dear Chairman Leahy:

On behalf of the AFL-CIO, I am writing to express our opposition to the nomination of Leslie Southwick for a lifetime appointment to the United States Court of Appeals for the Fifth Circuit. We are troubled that Mr. Southwick has ruled overwhelmingly against workers and consumers, and in favor of business interests, in divided cases decided during his tenure on the Mississippi Court of Appeals. We urge you to reject his nomination when it comes before the Senate Judiciary Committee, and to insist on a mainstream consensus nominee who can garner broad support.

Judge Southwick's record of consistently ruling against workers seeking compensation for injuries suffered on the job, often in dissent when his colleagues ruled otherwise, raises questions about his fairness and his ability to impartially evaluate worker claims. His dissenting opinion in *Cannon v. Mid-South X-Ray Co. and E. I. Du Pont de Nemours & Co.*, 738 So. 2d 274 (1999) illustrates the basis for our concern. Annie Cannon worked as a darkroom technician and used a variety of toxic chemicals in the course of her job. She began having health problems, including burning eyes, extreme nausea, and severe headaches, and later developed severe seizures. Cannon sought medical treatment for these problems, but it was not until 1993 that a doctor associated her illnesses with her exposure to chemicals at work. Eight judges on the court of appeals voted to allow Cannon to bring suit over her injuries, ruling that the statute of limitations on her claim did not begin to run until she learned that her injuries were work-related. But Judge Southwick dissented and would have dismissed Cannon's claim as time-barred, saying that the statute of limitations began to run when she first became ill, even if she was unaware that her job was causing her illness. This narrow view of workers' right to recover damages for work-related injuries is extremely troubling.

Much attention has been given to the opinion Judge Southwick joined in *Richmond v. Mississippi Dep't of Human Services*, 1998 Miss. App. LEXIS 637 (Miss. App. Ct. 1998), *rev'd* 745 So. 2d 254 (Miss. 1999), upholding the reinstatement of a state social worker who had been fired for using an ugly racial epithet in a condescending reference to a co-worker. The AFL-CIO is very disturbed by this decision, which was unanimously reversed by the Mississippi Supreme Court. In our view, the decision reveals a disturbing lack of appreciation for the negative impact of this sort of language in the workplace.

We are also troubled by Judge Southwick's dissent in *Dubard v. Biloxi H.M.A. Inc.*, 1999 Miss. App. LEXIS 468 (1999), in which he went out of his way to endorse the doctrine of "employment at will," under which workers can be terminated by their employers for any reason at all, no matter how unfair or arbitrary. Judge Southwick wrote that "employment at will . . . provides the *best balance* of the competing interests in the normal employment situation." He continued, "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 sweeping endorsement raises questions about how vigorously Mr. Southwick would enforce laws such as the National Labor Relations Act, Title VII of the Civil Rights Act, and other laws enacted by Congress to regulate the employment relationship and curtail "employment at will."

The federal courts of appeals play a critically important role in enforcing a broad array of rights and protections for American workers, including the right to minimum wages and overtime compensation, the right to a safe workplace, the right to a workplace free from discrimination on grounds of race, gender, age, disability, or other prohibited factors, and the right to form a union and engage in collective bargaining with employers over pay and working conditions. Increasingly, the federal courts of appeal are the final word on key legal questions, given how few cases the U.S. Supreme Court hears each year. It is imperative, therefore, that nominees to the federal courts of appeal be individuals of distinction who understand the important role of the courts in upholding and enforcing key statutory and constitutional rights, and who have a demonstrated commitment to these principles.

Judge Southwick has demonstrated no such commitment. On the contrary, he is yet another highly controversial and divisive nominee to the Fifth Circuit with a troubling record in worker rights and civil rights cases. We urge you to reject his nomination and give President Bush an opportunity to nominate a moderate consensus candidate for this seat.

Thank you for your consideration of our views.

Sincerely,



William Samuel, Director
DEPARTMENT OF LEGISLATION

c: Members of the Senate Committee on Judiciary