



# Leadership Conference on Civil Rights

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September 26, 2006

The Honorable Arlen Specter, Chairman  
The Honorable Patrick J. Leahy, Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Specter and Ranking Member Leahy:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to the nomination of Mr. Michael B. Wallace to the U.S. Court of Appeals for the Fifth Circuit. Mr. Wallace's professional record not only shows him to be well outside of the mainstream on fundamental issues of civil rights law, but also raises serious doubts about his overall commitment to dealing with minority and underserved populations in a fair and impartial manner.

Since Mr. Wallace has no prior judicial experience, LCCR's concerns are based upon the policy decisions he made in his own discretion and by extremist legal opinions he has adopted as his own. In particular, throughout his career, Mr. Wallace has shown a remarkably troubling opposition to enforcement of the Voting Rights Act of 1965, often hailed as the most effective and important civil rights law our nation has ever enacted. As a congressional staffer, he sought to weaken the law during its 1982 reauthorization so that alleged violations under Section 2 of the Act would require a showing of discriminatory intent, an often-impossible standard to meet. Congress decisively rejected this approach. But Mr. Wallace asserted, during his 1983 confirmation hearing to serve on the Board of the Legal Services Corporation, and contrary to both the plain language of the statute and its extensive legislative history, that the new language now included "an intent test . . . and I am very satisfied that the Supreme Court will so hold when the time comes."<sup>1</sup>

Subsequently, as a member and later Chairman of the Board of the Legal Services Corporation (LSC), Mr. Wallace sought to prevent LSC's local service providers from enforcing the law. In time, under his leadership, LSC ceased Voting Rights Act enforcement actions altogether. Later, Mr. Wallace stated that he resented the fact that states like Mississippi were required, under Section 5 of the law, to obtain prior approval from the Department of Justice for redistricting decisions,<sup>2</sup> and later protested that "the new black judges" elected in Mississippi "have much less legal experience" and were less

<sup>1</sup> Alliance for Justice and People For the American Way, *Report on the Nomination of Michael B. Wallace to the U.S. Court of Appeals for the Fifth Circuit* (Sept. 25, 2006), at 8.

<sup>2</sup> Anne Kornhauser, *Voting-Rights Cases Declared Off-Limits by LSC*, *Legal Times*, Apr. 24, 1989, at 9.

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likely to be “sympathetic to business interests.”<sup>3</sup> Not only do Mr. Wallace’s comments suggest a strong antipathy toward the Voting Rights Act, but they also seem to indicate a troubling belief that judges should be “sympathetic” to any side in a legal dispute.

These aspects of Mr. Wallace’s record clearly go beyond what might be considered an attorney’s duty to zealously represent a legal client or employer. His personal views on other important civil rights matters are equally troubling. For example, while discussing the case of Bob Jones University during his 1983 confirmation hearing, a case in which the Department of Justice argued that the school should retain tax-exempt status even though it barred students from interracial dating, Mr. Wallace stated that he personally agreed with the legal position: “I personally believe that the interpretation of the Internal Revenue Code advanced by the Department of Justice was correct.”<sup>4</sup> The Supreme Court, of course, sharply rejected this view in an 8-1 decision.<sup>5</sup> When asked in another hearing why he opposed the Legal Service Corporation’s minority recruiting goals at the Legal Services Corporation, Mr. Wallace told the Senate that “I am opposed to race-conscious government action, and I believe the law prohibits it”<sup>6</sup> – even though the Supreme Court had made clear both before and after his statement that race *could* in fact be used as a factor for the purpose of remedying past discrimination and in promoting diversity.<sup>7</sup>

LCCR’s concerns with Mr. Wallace’s record can perhaps best be summed up by his justification, during his tenure at Legal Services Corporation, for supporting reduced funding, discontinuing specific projects, and even calling for the outright abolition of the Corporation. In his 1985 testimony, Mr. Wallace suggested that civil rights matters such as voting rights and prison conditions cases should be addressed through “elections,” on the ground that “poor people vote,”<sup>8</sup> too. . Such an assertion reveals not mere insensitivity toward civil rights plaintiffs but a callous misunderstanding of the role our constitutional system plays in protecting minority and individual rights against the “tyranny of the majority.” Indeed, we are reluctant to imagine how little progress our nation would have made if civil rights matters were simply left to the mercy of “elections,” as Mr. Wallace apparently suggests.

It is the role of a judge to approach cases with an open and unbiased mind, genuinely listen to the arguments of both sides, and only then, render decisions based upon existing law. When it comes to some of the most critical areas of civil rights law, however, it appears to us that Mr. Wallace’s mind is already made up.

Finally, we note that the American Bar Association unanimously rated Mr. Wallace as “not qualified” to be confirmed to the Fifth Circuit, based primarily on its assessment of Mr. Wallace’s judicial temperament. While our concerns with Mr. Wallace’s nomination center

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<sup>3</sup> Michael B. Wallace, *The Voting Rights Act and Judicial Election*, in *The State Judiciaries and Impartiality, Judging the Judges* (Roger Clegg and James D. Miller eds., 1996), at 112.

<sup>4</sup> *Nominations: Hearing Before the Senate Subcommittee on Labor and Human Resources*, 98<sup>th</sup> Congress 109 (1983).

<sup>5</sup> *Bob Jones University v. United States*, 461 U.S. 574 (1983)

<sup>6</sup> *Nominations: Hearing Before the Senate Subcommittee on Labor and Human Resources*, 99<sup>th</sup> Congress 32 (1985).

<sup>7</sup> See, e.g. *United Steelworkers v. Weber*, 443 U.S. 193 (1979); *Regents of the Univ. of California v. Bakke*, 438 U.S. 265 (1978); *Grutter v. Bollinger*, 539 U.S. 306 (2003).

<sup>8</sup> *Nominations: Hearing Before the Senate Subcommittee on Labor and Human Resources*, 99<sup>th</sup> Congress 32 (1985).



largely on his legal philosophy, a factor not assessed by the ABA, this rating – the first such ABA rating of a federal appellate court nominee in 25 years – gives us additional reason to be concerned.

For these reasons, we urge you to oppose the confirmation of Michael B. Wallace. Thank you for your consideration. If you have any questions, please contact Rob Randhava, LCCR Counsel, at 202-466-6058, or Nancy Zirkin, LCCR Deputy Director, at 202-263-2880.

Sincerely,

Wade Henderson  
Executive Director

Nancy Zirkin  
Deputy Director