

June 20, 2002

Re: Nomination of D. Brooks Smith to the U.S. Third Circuit Court of Appeals

Dear Senator:

We are writing to express our opposition to the confirmation of Judge D. Brooks Smith to the U.S. Court of Appeals for the Third Circuit. Our organizations have serious concerns about how Judge Smith's rulings, views, and overall record threaten a broad range of important legal and constitutional rights and interests, including those affecting consumers, women, minorities, people with disabilities, health, safety, and the environment.

These concerns include Judge Smith's improper membership in a discriminatory club and other violations of judicial ethics; his troubling record of reversals and decisions in cases concerning civil and individual rights; and his advocacy of a judicial philosophy which favors severe limits on government's power to protect the rights of individual Americans against abuse.

While a district court judge, Judge Smith continued his membership for over a decade in a discriminatory, males-only club. Smith acknowledged his ethical obligation to resign from the club at his 1988 district court confirmation hearing before the Senate Judiciary Committee, but he nevertheless continued to be a member through 1999. This was despite the fact that by 1992, ethical rules for federal judges made clear that he should resign from such discriminatory clubs within two years.

A number of Smith's decisions have violated established rules of law and higher court precedents in order to dismiss claims of corporate or government abuse brought by individuals and have been unanimously reversed on appeal. For example, Smith was unanimously reversed for dismissing a discrimination claim that a school district's family leave policy improperly allowed only women, not men, to take unpaid leave for "childrearing."

Smith has expressed a judicial philosophy in decisions and speeches that would restrict government's authority to safeguard the rights of individuals. In 1993, Smith criticized the Violence Against Women Act, then pending before Congress, as unconstitutional. He stated that, in his view, "the enumerated powers of the national government did not extend to the point necessary to support a Violence Against Women Act." Smith has also issued decisions that support a reinterpretation of the Fifth Amendment that would require taxpayers to pay industry for government protections, such as anti-pollution measures.

Judicial nominees, particularly those nominated to the influential courts of appeals, must meet appropriate standards of judicial conduct and demonstrate respect for both individual liberties and the constitutional role of government in protecting individual rights. Judge Smith has not met these requirements and should be rejected by the Senate. We ask that you vote against Judge Smith's confirmation.

Sincerely,

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