



June 7, 2007

The Honorable Patrick Leahy  
Chairman, Senate Judiciary Committee  
433 Russell Senate Office Building  
Washington, DC 20510

The Honorable Arlen Specter, Ranking Member  
Senate Judiciary Committee  
711 Hart Building  
Washington, DC 20510

Chairman Leahy and Ranking Member Specter:

On behalf of Legal Momentum, the nation's oldest advocacy organization that works to define and defend the rights of women and girls, I urge you to oppose the nomination of Judge Leslie Southwick to the US Court of Appeals for the 5<sup>th</sup> Circuit. While much of Judge Southwick's record remains unknown due to lack of publishing and incomplete Committee records, what has been revealed is disheartening for those who look to the federal courts to uphold and enforce laws barring discrimination on the basis of race, sex, national origin and religion.

Historically, the 5<sup>th</sup> Circuit Court of Appeals has served as a bulwark for the protection of civil rights. However, Judge Southwick displays a continued absence of dedication to upholding certain essential civil rights protections. In the case of *Richmond v. Mississippi Department of Human Services*, 1998 Miss. App. LEXIS 637 (Miss. Ct. App. 1998), *reversed*, 745 So. 2d 254 (Miss. 1999), Judge Southwick joined a 5-4 ruling upholding the reinstatement of a white state social worker, Bonnie Richmond, who had been fired for referring to an African American co-worker as "a good ole n\*\*\*\*\*" at an employment-related conference. The Mississippi Supreme Court unanimously reversed this ruling. Similarly, Judge Southwick's rulings on race discrimination in jury selection give us pause. A review of his decisions reveals a disturbing pattern in which Judge Southwick routinely rejects defense claims regarding racially motivated prosecutors who strike African-American jurors but upholds claims of prosecutors that defense attorneys are striking white jurors on the basis of their race. The 5<sup>th</sup> Circuit, which includes Louisiana, Mississippi and Texas, has the highest concentration of racial and ethnic minorities in the country. There is no room at any level of the judiciary for Southwick's troubling and seemingly biased approach to the enforcement of civil rights laws.

In another case, *S.B. v. L.W.*, 793 So.2d 656 (Miss. App. Ct. 2001), Judge Southwick wrote a separate concurring opinion positing that a "homosexual lifestyle" could be used to deprive a parent of the custody of her own child. His concurrence, a unwarranted and hurtful piece of work, took great pains to elaborate upon the punitive "consequences" that could be imposed on individuals in homosexual relationships, including the loss of custody of a child.<sup>1</sup> Grounding his beliefs in the principles of "federalism", he promoted limiting the rights of gay and lesbian parents in the area of family law and characterized the participation in a homosexual relationship as a "choice" and an "exertion of a perceived right."<sup>2</sup>

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<sup>1</sup> *S.B. v. L.W.*, 793 So. 2d 656, 663 (Miss. App. Ct. 2001) (Payne, J., concurring).

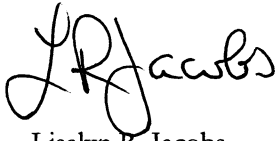
<sup>2</sup> *Id.*

Discussing an issue not raised by either party in the case and citing incomplete legal analysis, the concurrence also identified a policy position of the Mississippi legislature that would limit the custody rights of homosexual parents. His opinion cited the Supreme Court's decision in *Bowers v. Hardwick*,<sup>3</sup> which upheld criminal penalties for sodomy, but ignored the more recent decision in *Romer v. Evans*,<sup>4</sup> in which the attempt to deny anti-discrimination protections to gays and lesbians via ballot initiative was found not to further a proper legislative end, but deemed a means to make them unequal and consequently struck down.<sup>5</sup> His contorted and selective analysis showcases a distinct lack of the judicial impartiality necessary in appeals court judges.

Lastly, we cannot accept the possibility that there are no qualified African-Americans to serve on this Circuit's Court of Appeals. President Bush's glaring lack of racially diverse nominations remains unfathomable, and unacceptable to our organization, specifically in a region that displays such a long history of racial apartheid and disenfranchisement and continues to need integration at every level, particularly in the federal judiciary.

Given the arguments listed above, it is clear that the Senate Judiciary Committee must defeat Judge Southwick's nomination. He does not possess the requisite abilities to merit a life-tenured position in the federal judiciary. In rejecting Southwick's nomination, please urge President Bush to nominate a well-qualified individual with the appropriate judicial temperament to dispense justice as intended by our Constitution and a demonstrated respect for fundamental constitutional rights.

Sincerely,



Lisalyn R. Jacobs  
Vice-President for Government Relations

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<sup>3</sup> *Bowers v. Hardwick*, 478 U.S. 186 (1986).

<sup>4</sup> *Romer v. Evans*, 517 U.S. 620 (1996).

<sup>5</sup> *Id.* at 635.