million. In this bill, we increase funding for NIH by $1 billion.

The President requests that we reduce the Head Start program by $100 million, which would cut tens of thousands of children from the Head Start roles. This bill increases funding for Head Start by a modest $200 million.

Despite predictions of record energy prices this winter, Mr. Bush requests that we cut the Low Income Home Energy Assistance Program for poor people by $379 million. In this bill, we maintain LIHEAP funding at last year's level.

Mr. Bush requests that we eliminate the community services block grant, the safety net that includes job training, housing, and emergency food assistance. In this bill, we increase the community service block grant by a modest $40 million.

In each of these program areas, the bill includes modest, reasonable increases in order to keep pace with inflation or to prevent significant cuts in essential services. This remains a barebones, no-frills bill that conforms to a very conservative budget allocation.

For 5 years, Congress has appropriated countless billions of U.S. taxpayer dollars for schools, job programs, hospitals, and human services in Iraq. Democrats and Republicans on the committee agree that it's time to look after those same needs in this country. And that is exactly what we do in this bill.

As I said, we tried hard to accommodate the President's concerns. There has been so much division and partisanship in Washington in recent months. This bill offers a great opportunity for Congress and the President to show the American people that we can resolve our differences with compromise and bipartisan goodwill. We have met the President halfway—in my opinion, more than halfway. Now it is time for him to respond in kind, and to rescind his veto threat.

It is important that we send a strong, bipartisan message to the American people that, at a time when we are spending enormous sums on wars in Iraq and Afghanistan, we will not neglect or shortchange essential, lifesaving, and life-supporting programs and services here at home. I urge my colleagues to vote yes on this important bill. And I urge the President to join us in supporting this bipartisan bill.

I know Senators are eager to vote and go home. I just want to thank all of the Senators for their many kindnesses and their courtesies in bringing this bill to a close. It was 5 days, but it was 5 days of good debate and good amendments. We have a strong bipartisan bill. I hope we will pass it with a strong bipartisan vote, go to conference, and get it to the President's desk as soon as possible.

The PRESIDING OFFICER. The bill having been read the third time, the questions is, Shall the bill pass?

Mr. HARKIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. The yeas and nays have been requested. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New York (Mrs. CLINTON), the Senator from Connecticut (Mr. DODD), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote ''yea.''

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 75, nays 19, as follows:

[Rollcall Vote No. 391 Leg.]

YEAS—75

Akaka	Feingold	Murkowski
Alexander	Feinstein	Murray
Baucus	Grassley	Nelson (FL)
Bayh	Hagel	Nelson (NE)
Bennett	Harkin	Pryor
Bingaman	Hatch	Reed
Bond	Hutchison	Reid
Boxer	Inouye	Roberts
Brown	Isakson	Rockefeller
Byrd	Johnson	Salazar
Cantwell	Kerry	Sanders
Cardin	Klobuchar	Schumer
Carper	Kohl	Shelby
Casey	Landrieu	Smith
Chambliss	Lautenberg	Snowe
Cochran	Leahy	Specter
Coleman	Levin	Stabenow
Collins	Lieberman	Stevens
Conrad	Lincoln	Sununu
Craig	Lott	Tester
Crapo	Lugar	Voinovich
Dole	McCaskill	Warner
Domenici	McConnell	Webb
Dorgan	Menendez	Whitehouse
Durbin	Mikulski	Wyden

NAYS—19

Allard	Cornyn	Kyl
Barrasso	DeMint	Martinez
Brownback	Ensign	Sessions
Bunning	Enzi	Thune
Burr	Graham	Vitter
Coburn	Gregg	
Corker	Inhofe	

NOT VOTING—6

Biden	Dodd	McCain
Clinton	Kennedy	Obama

The bill (H.R. 3043), as amended, was passed.

(The bill will be printed in a future edition of the RECORD.)

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. HARKIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate insists on its amendment and requests a conference with the House, and the Chair appoints the following conferees.

The Presiding Officer appointed Mr. HARKIN, Mr. INOUYE, Mr. KOHL, Mrs. MURRAY, Ms. LANDRIEU, Mr. DURBIN, Mr. REED, Mr. LAUTENBERG, Mr. BYRD, Mr. SPECTER, Mr. COCHRAN, Mr. GREGG, Mr. CRAIG, Mrs. HUTCHISON, Mr. STEVENS, Mr. SHELBY, and Mr. DOMENICI conferees on the part of the Senate.

EXECUTIVE SESSION

NOMINATION OF LESLIE SOUTHWICK TO BE U.S. CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDING OFFICER (Mr. SALAZAR). Under the previous order, the Senate will go into executive session and the clerk will report the nomination.

The legislative clerk read the nomination of Leslie Southwick, of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. The Republican leader.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I send a cloture petition to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 291, the nomination of Leslie Southwick, of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

Mitch McConnell, Arlen Specter, Wayne Allard, Johnny Isakson, Richard Burr, Norm Coleman, David Vitter, Kay Bailey Hutchison, George V. Voinovich, John Thune, Jim DeMint, Tom Coburn, Michael B. Enzi, Elizabeth Dole, Jeff Sessions, Jim Bunning, John Barrasso, Trent Lott, Thad Cochran.

The PRESIDING OFFICER. Who yields time?

The Senator from Vermont.

Mr. LEAHY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, today, the Senate considers the controversial nomination of Leslie Southwick to the United States Circuit Court of Appeals for the Fifth Circuit. Unlike so many of President Clinton's nominees, Mr. Southwick was accorded a hearing on his nomination.

I refused to ambush Leslie Southwick the way Republicans ambushed Ronnie White in 1999. Thus, despite my opposition to this nomination, I made sure that Mr. Southwick was treated fairly and that his nomination was debated and voted upon by the Judiciary Committee. The process has been open and fair and the rights of every Senator Democratic or Republican have been respected.

During the Clinton administration, several outstanding nominees to the Fifth Circuit were pocket filibustered successfully by the Republicans. They included Judge Jorge Rangel of Texas, Enrique Moreno of Texas, and Alston Johnson of Louisiana. They were pocket filibustered without a hearing or committee consideration.

This is a seat on the Fifth Circuit that would have been filled long ago but for a series of troubling nominations. In the last Congress, President Bush nominated Michael Wallace to this seat, the first circuit court nomination since 1982 to receive a unanimous rating of ''not qualified'' from the American Bar Association.

This is the seat to which President Bush had previously used a recess appointment to put Charles Pickering on the bench, after his nomination was voted down by the Judiciary Committee in 2002. President Bush announced that appointment, as I recall, on the Martin Luther King Jr. holiday weekend in 2004, despite the significant concerns and open debate about that controversial nomination.

Those concerns included Judge Pickering's intervention with the Department of Justice in an attempt to get the sentence of a convicted cross burner reduced.

The nomination we consider today has engendered significant opposition. Those opposing this nomination include: the Leadership Conference on Civil Rights, the Human Rights Campaign, the Mississippi State Conference of the NAACP, the NAACP Legal Defense Fund, Lambda Legal, the National Employment Lawyers Association, the Magnolia Bar Association, the National Organization of Women, the National Urban League, the AFL–CIO, the Congressional Black Caucus, and many more.

A number of members of the Judiciary Committee spoke eloquently about their concerns and doubts during committee consideration on August 2.

I have given careful consideration to Mr. Southwick's record. Many share with me my concern about Judge Southwick's deciding vote in Richmond v. Mississippi Department of Human Services, 1998. This decision reinstated a white state social worker who had been fired for using a racial epithet what has come to be known colloquially as ''the n word'' in referring to an African-American coworker during a meeting with high-level company officials.

That epithet was called by one Fifth Circuit opinion ''a universally recognized opprobrium, stigmatizing African-Americans because of their race.'' Yet the hearing officer at her appeal before the State Employee Appeals Board suggested that the use of the racial slur ''was in effect calling the individual a 'teacher's pet.''' I am not sure any African American would consider it being called a ''teacher's pet.''

Judge Southwick provided the deciding vote to uphold the hearing officer's conclusion, the opinion he joined finding that the racial slur was ''not motivated out of racial hatred or animosity directed at her co-worker or toward blacks in general, but was, rather, intended to be a shorthand description of her perception of the relationship existing between the [co-]worker and [a] DHS supervisor.''

In dissent, two judges criticized this opinion for presenting a ''sanitized version'' of the facts and for suggesting that ''absent evidence of a near race riot, the remark is too inconsequential to serve as a basis of dismissal.'' The dissent found that this racial epithet is ''inherently offensive, and [its] use establishes the intent to offend.'' The dissent was right.

In my view, the Mississippi Supreme Court did the right thing in reversing that decision and I commend them. There is no place for ''the n word'' in the workplace or in use by a supervisor to and about an employee. None. Just as there is no place for it in this body or anywhere else. I am not naive enough not to know the word is used in parts of America, but it should be condemned by all wherever it is used, and it certainly is by me.

If, as Mr. Southwick now says, his view of the Richmond case was the narrow, technical, legalistic one that he now says justifies his providing the deciding vote to the majority opinion, he could have said so back then, in a separate opinion.

He could have noted that he felt such use of ''the n word'' was inexcusable, but that he felt constrained by his limited role on appeal to apply a standard of review that compelled him to reverse Judge Graves of the Circuit Court and reaffirm the Employee Appeals Board's reinstatement of the offending supervisor with back pay. That is not what he did, however.

In the face of a cogent dissent, he provided the deciding vote to uphold the decision excusing that remark.

Likewise I am troubled by Judge Southwick's actions in S.B. v. L.W, in which he voted to uphold a decision taking an 8-year-old child away from her biological mother due to her mother's sexual orientation and the fact that she was living with a female partner.

My concern is not just that Judge Southwick joined the majority opinion but that he went out of his way to sign on to a concurring opinion that suggested that sexual orientation is an individual ''choice'' and an individual must accept that losing the right of custody over one's child is one of the ''consequences flowing from the free exercise of such choice.''

I also have concerns about his approach in some cases involving allegations of race discrimination in jury selection, such as his opinion in a 1997 case, Brock v. Mississippi upholding a criminal conviction where the prosecution struck an African-American juror, purportedly because he lived in a high crime area.

The dissenting judge criticized Judge Southwick's opinion for accepting a strike which ''on its face appears geared toward a racially identifiable group.'' In another case involving jury discrimination, Bumphis v. State, 1996, three judges criticized Judge Southwick's majority opinion for ''establishing one level of obligation for the state, and a higher one for defendants on an identical issue.''

His legal writing also points to a narrow view of the role of the Federal courts in upholding protections against race discrimination. In one article, he found ''compelling'' a statement of a Mississippi Supreme Court Justice that ''the judiciary is not the avenue to effectuate the removal of the Confederate battle flag from public property.''

I have questions whether he would be balanced in protecting the rights of employees given the overwhelming number of cases 160 out of 180 written decisions—in which he has offered a narrow interpretation of the law to favor protecting business and corporate interests at the expense of the rights of workers and consumers.

In one 1999 case, Dubard v. Biloxi, H.M.A., Judge Southwick authored a dissent expressing the virtues of a legal doctrine that would allow employers to fire employees for any reason, even though such an analysis was not relevant in the case before him.

My concerns about his bias are heightened by a law review article he wrote characterizing litigation against tobacco companies led by former Mississippi Attorney General Michael Moore as destabilizing and posing separation of powers concerns.

As I said in opposing this nomination in committee, this is not a decision I come to lightly. I take seriously the strong support of Senator COCHRAN and Senator LOTT whom I respect, and I have expressed my concerns directly to them as well as to the White House.

I also take seriously Mr. Southwick's answers to my questions and to those of others in connection with his hearing. I was glad to see that he now acknowledged the offensiveness of the racial epithet used in the Richmond case and also that human rights law has evolved since 2001 when he joined the decision in the child custody case.

Still, I share the deep disappointment of members of the African-American and civil rights communities that this administration continues to renege on a reported commitment to appoint an African American to the Mississippi Federal bench.

In more than 6 years, President Bush has failed to do so. He has appointed only 20 African-American judges to the Federal bench, compared to 52 African-American judges appointed by President Clinton in his first 6 years in office.

With an ever-growing number of outstanding African-American lawyers in Mississippi, the State with the highest percentage of African Americans in the country, it is not as if there is a dearth

of qualified candidates. Nonetheless, President Bush has now submitted 10 nominees to the Federal bench in Mississippi, seven at the district level and three to the United States Court of Appeals for the Fifth Circuit, and none of these nominees has been African American.

Our Nation's diversity is one of its greatest strengths, and I am disappointed that the President has missed yet another opportunity to reflect this great strength in our Federal courts. Many of us believe that diversity makes America what it is. It is the diversity in our States, our courts, this body, and our families that makes us stronger.

When viewed against his record on the bench, the importance of this seat on the Fifth Circuit, and the troubling lack of diversity on that court, I am not convinced that he is the right nominee for this vacancy at this time. I shall vote no on cloture and, if it is invoked, no on this nomination.

I ask unanimous consent that letters of opposition and others be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LANGROCK SPERRY & WOOL, LLP,
Middlebury, VT, June 5, 2007.

Hon. PATRICK J. LEAHY,
Senate Russell Office Building,
Washington, DC.

DEAR PAT: I understand the nomination of Leslie Southwick to the 5th Circuit Court of Appeals is coming up for a vote this Thursday. The little I know about Judge Southwick absolutely frightens me. His attitude towards lesbian parents is just totally inconsistent with Vermont philosophy and with respect for human dignity. I also understand he has been involved in some cases which would indicate insensitivity to African Americans. I would certainly hope that your Committee does not approve him.

Sincerely yours,

PETER F. LANGROCK.

LEADERSHIP CONFERENCE
ON CIVIL RIGHTS,
Washington, DC, October 23, 2007.

DEAR SENATOR: 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 confirmation of Leslie H. Southwick, a former Mississippi Court of Appeals judge, to the United States Court of Appeals for the Fifth Circuit. His record raises too many questions about his commitment to civil and human rights for him to be entrusted with a lifetime appointment to the federal judiciary. We urge you to vote no on cloture on the Southwick nomination.

The federal courts of appeal are the courts of last resort in most federal cases. Moreover, the Fifth Circuit has the highest percentage of minority residents of all the federal circuits, making Judge Southwick's record on matters of civil rights particularly important. Unfortunately, Judge Southwick's decisions as a state court judge, along with his hearing testimony, indicate that he favors the interests of the powerful over the interests of minorities, working people, and others who depend on judges to stand up for them. This record warrants the rejection of Judge Southwick's nomination to the Fifth Circuit.

In Richmond v. Mississippi Dep't of Human Services, Judge Southwick joined a 5–4 ruling upholding the full reinstatement order of the state's Employee Appeals Board (EAB) of a white state social worker who had been fired for calling an African-American coworker ''a good ole nigger.'' The ruling he joined had declared that, taken in context, this slur was an insufficient ground to terminate the white plaintiffs employment in part because it ''was not motivated out of racial hatred or racial animosity directed toward a particular co-worker or toward blacks in general.'' Moreover, the EAB decision upheld by the Court of Appeals decision trivialized the use of the words ''good ole nigger'' by comparing them to the expression ''teacher's pet.'' The Court of Appeals did nothing to distance itself from this aspect of the EAB decision.

The reasoning offered by Judge Southwick and his colleagues in the majority is nothing short of baffling. As two dissenters in the 5–4 decision rightfully pointed out: ''The word 'nigger' is, and has always been, offensive. Search high and low, you will not find any nonoffensive definition for this term. There are some words, which by their nature and definition are so inherently offensive, that their use establishes the intent to offend.''

Fortunately the Supreme Court of Mississippi reversed the decision, stating that the EAB should not simply be upheld, but rather that the matter should be remanded to the EAB for consideration of whether full reinstatement was truly justified under the circumstances or whether some other penalty short of discharge might be appropriate.

In another case, S.B. v. L.W., Judge Southwick joined an opinion that upheld the removal of an eight-year-old girl from the custody of her bisexual mother. In addition to joining the majority opinion, he was the lone judge to join a colleague's gratuitously antigay concurring opinion. The concurrence argued the ''choice'' to engage in homosexuality comes with consequences, up to and including the consideration of ''the homosexual lifestyle'' as a determining factor in child custody cases. The views expressed in the concurring opinion raise doubts about Judge Southwick's interest in ruling fairly in cases that involve the civil rights of gays and lesbians.

In Dubard v. Biloxi, H.M.A., Judge Southwick wrote a dissenting opinion in which he extolled the virtues of employment-at-will, a doctrine that provides that employers should be able to fire employees for virtually any reason, even though his analysis was not relevant to reaching a decision in the case. He wrote that ''I find that employment at will, for whatever flaws a specific application may cause, is not only the law of Mississippi but it provides the best balance of the competing interests in the normal employment situation. 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.'' His gratuitous comments raise questions about his ability to separate his own views from his duty to follow the law in labor and employment cases.

Judge Southwick also has a poor record in cases involving race discrimination in jury selection. He has routinely rejected defense claims that prosecutors struck African-American jurors based on race. At the same time, however, he has usually upheld allegations by prosecutors that defendants tried to strike white jurors on the basis of race. One of Judge Southwick's own colleagues, in response, accused him of ''establishing one level of obligation for the State, and a higher one for defendants on an identical issue.''

His record also shows a troubling tendency, in state employment law and tort cases, to favor business and insurance interests over injured parties. He did so in 160 out of 180 such published cases in . which at least one judge dissented, giving him an 89 percent pro-business voting record.

When asked by Senator Durbin (D- IL) during live questioning at his hearing if he could think of one example of an unpopular decision he made in favor of the powerless, the poor, minorities, or the dispossessed, Judge Southwick responded that he could not. In response to a follow-up written question posed by Senator Durbin, Judge Southwick indicated that he could not find a single nonunanimous case, of the more than 7000 opinions that he wrote or joined, in which he voted in favor of a civil rights plaintiff or wrote a dissent on behalf of a plaintiff.

Given the tremendous impact that federal judges have on civil rights and liberties, and because of the lifetime nature of federal judgeships, no judge should be confirmed unless he or she demonstrates a solid commitment to protecting the rights of all Americans. Because Judge Southwick has failed to meet this burden, we urge senators to vote no on cloture on the nomination.

Thank you for your consideration. If you have any questions, please contact Nancy Zirkin, Vice President and Director of Public Policy, at 202–263–2880, or Paul Edenfield, Counsel and Policy Analyst, at 202–263–2852.

Sincerely,

WADE HENDERSON,
President & CEO.
NANCY ZIRKIN,
Vice President, Director of Public Policy.

HUMAN RIGHTS CAMPAIGN,
Washington, DC, May 23, 2007.

DEAR MEMBERS OF THE COMMITTEE ON THE JUDICIARY: I am writing on behalf of the Human Rights Campaign and our 700,000 members and supporters to oppose the nomination of Leslie Southwick to the United States Court of Appeals for the Fifth Circuit. As a Mississippi Judge, Southwick demonstrated a serious lack of understanding of gay people and families. His statements during his hearing before this Committee and his written responses to your questions do not satisfy us that his positions have evolved nor that he would fairly judge cases involving the rights of gay, lesbian, bisexual, and transgender (''GLBT'') Americans.

During his tenure on the Mississippi Court of Appeals, Judge Southwick (now in private practice) participated in a custody case involving a lesbian mother. The majority decision, which Southwick joined, took an eight-year-old child from the mother, citing in part that the mother had a ''lesbian home.'' The opinion further denigrates what it calls the ''homosexual lifestyle'' and the ''lesbian lifestyle.''

More disturbingly, Judge Southwick joined a concurrence written by Judge Payne—completely unnecessary to effectuate the result—that emphasized Mississippi's public policy against lesbian and gay parents (using only the term ''homosexuals''). Judge Southwick was the only judge in the majority to join Judge Payne's concurrence, which is rife with misconceptions and biases.

The concurrence does not even refer to gay individuals, but rather focuses on ''the practice of homosexuality.'' It then cites Mississippi's law prohibiting same-sex couples from adopting children—even though this was not an adoption case, but rather a case regarding a biological mother's right to retain custody of her child. The opinion even goes so far as to cite the state's sodomy law (subsequently invalidated by the Supreme Court's decision in *Lawrence* v. *Texas*).

Perhaps most troublingly, the concurrence states that even if the mother's sexual acts are her choice, she must accept the fact that losing her child is a possible consequence of that ''choice.'' This statement underscores Judge Southwick's disregard for commonly accepted psychiatric and social science conclusions. The American Psychological Association (APA) has made clear that sexual orientation is not a choice. The APA, along with every other credible psychological and child welfare group, has also concluded that lesbian and gay people are equally successful parents as their heterosexual counterparts. This disregard for widely accepted social science conclusions has ramifications not only for cases involving gay and lesbian people, but also in any case where respect for science comes into play—whether this involves reproductive choice, people with disabilities, environmental studies, to name a few.

No parent should face the loss of a child simply because of who they are. If he believes that losing a child is an acceptable ''consequence'' of being gay, Judge Southwick cannot be given the responsibility to protect the basic rights of gay and lesbian Americans.

When questioned before this Committee about why he joined this offensive concurrence, Southwick gave the unsatisfactory response that he did not write it. He further stated that the concurrence reflected Mississippi's public policy, but did not indicate why he joined the concurrence that his colleagues deemed unnecessary. He did not distance himself from the concurrence or the language that it contains.

In his written responses to questions about this case and about the rights of gay and lesbian Americans, Southwick did not provide adequate reassurance that his position has changed or that his understanding has evolved. Although he repeatedly indicated that *Lawrence* v. *Texas* is now controlling precedent, having overruled *Bowers* v. *Hardwick*, this is an insufficient answer. Although we are hopeful that Lawrence will bring about greater equality for GLBT Americans, Southwick's promise to adhere to that precedent does not address the question of whether he believes that gay people should have the same parenting rights as others.

The United States Court of Appeals for the Fifth Circuit has historically paved the way for civil rights advances. We believe that Judge Southwick's nomination is inconsistent with this important legacy, and would turn back the tide of progress by denying equal protections to GLBT Americans.

We therefore oppose his nomination and request that you vote against his confirmation. Only a judge who has demonstrated that he can be a fair and impartial judge for all Americans, regardless of their sexual orientation, is entitled to confirmation on this important court. For more information, please contact Senior Public Policy Advocate David Stacy at *david.stacy@hrc.org*, or Legal Director Lara Schwartz at *lara.schwartz@hrc.org*.

Sincerely,

ALLISON HERWITT,
Legislative Director.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
MISSISSIPPI STATE CONFERENCE,
Jackson, MS, May 9, 2007.

Hon. PATRICK LEAHY,
Dirksen Senate Office Building,
Washington, DC.
Hon. ARLEN SPECTER,
Dirksen Senate Office Building,
Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SPECTER: The Mississippi State Conference of the NAACP is strongly opposed to the nomination of Leslie Southwick to the Fifth Circuit Court of Appeals.

As you are well aware, previous nominations to this particular seat on the Fifth Circuit have raised serious civil rights problems. In reviewing this history, we cannot help but conclude that this Administration is determined to place a person hostile to civil rights in the Mississippi seat on the Fifth Circuit. Judge Charles Pickering was nominated in 2001. The Senate refused to confirm him, largely based on his civil rights record. President Bush then nominated Michael Wallace to the same seat. The American Bar Association found Mr. Wallace to be ''unqualified,'' due to his judicial temperament regarding civil rights issues. Wallace withdrew his nomination at the end of 2006. Now, President Bush has named yet a third nominee with a troubling civil rights record.

We note that the Southwick nomination does nothing to ameliorate the egregious problem with the lack of diversity on Mississippi's federal bench. Mississippi has the highest African-American population of any state (36%). Yet there has never been an African American appointed to represent Mississippi on the Fifth Circuit. African-American representation on the federal district court in Mississippi has been limited to one judge, Judge Henry Wingate, appointed over twenty years ago. In his two terms, President Bush has made ten nominations to the federal bench in Mississippi—district and appellate. None were African American. This is extremely disturbing to many Mississippians, who believe the State should be fairly represented on the federal bench.

The civil rights record of Judge Southwick on the Mississippi Court of Appeals gives us great pause. We are deeply troubled by his rulings on race discrimination in the areas of employment and jury selection.

Judge Southwick participated in a truly stunning decision, *Richmond* v. *Mississippi Dep't of Human Services*. He joined a ruling that a Mississippi state agency could not terminate an employee for using the word ''nigger'' toward an African-American coworker. At a business conference, the white employee had called the black employee ''a good ole nigger,'' and then used the same term toward the employee the next day at the office. The state agency fired the white employee. But a hearing officer reinstated the employee, finding that calling the employee ''a good ole nigger'' was equivalent to calling her ''teacher's pet.'' Southwick upheld the reinstatement.

The opinion endorsed by Southwick makes outrageous conclusions about the use of the term ''nigger'' in the workplace. The opinion states: ''[The white employee] presented proof that her remark, though undoubtedly ill-advised and indicative of a rather remarkable insensitivity on her part, was not motivated out of racial hatred or racial animosity directed toward a particular co-worker or toward blacks in general.'' Astonishingly, the court credited the white employee's testimony that her remark was intended to be ''a shorthand description'' of the relationship between an employee and a supervisor.

Two of Southwick's colleagues strongly dissented. They stated that it ''strains credulity'' to compare calling the employee ''a good ole nigger'' with ''teacher's pet.'' The dissent wrote: ''The word 'nigger' is, and has always been offensive. . . . There are some words, which by their nature and definition are so inherently offensive, that their use establishes the intent to offend. . . . The character of these terms is so inherently offensive that it is not altered by the use of modifiers such as 'good ole.' . . . [The rulings] seem to suggest that absent evidence of a near race riot, the remark is too inconsequential to serve as a basis for dismissal. Such a view requires a level of myopia inconsistent with the facts and reason.'' Indeed, the Mississippi Supreme Court *unanimously* reserved the ruling joined by Southwick to uphold the reinstatement of the white employee.

Additionally, we are disturbed by Judge Southwick's rulings on race discrimination in jury selection. Dozens of such cases reveal a pattern by which Southwick rejects claims that the prosecution was racially motivated in striking African-American jurors while upholding claims that the defense struck white jurors on the basis of their race. In Bumphis v. State, an appellate colleague accused Southwick of ''establishing one level of obligation for the State, and a higher one for defendants on an identical issue.''

Finally, on issues affecting workers, consumers and personal injury victims, Judge Southwick rules overwhelmingly in favor of employers and corporations. We question his ability to be a fair and impartial decisionmaker in these cases as well. Mississippians need to be confident that they will receive equal justice before the federal courts.

Respectfully yours,

DERRICK JOHNSON,
President.

CONGRESSIONAL BLACK CAUCUS,
Washington, DC, June 6, 2007.

Hon. PATRICK J. LEAHY,
Russell Senate Office Building,
Washington, DC.
Hon. ARLEN SPECTER,
Hart Senate Office Building,
Washington, DC.

DEAR MR. LEAHY AND MR. SPECTER: We write to be clear concerning the strong opposition of the Congressional Black Caucus to moving Leslie Southwick, formerly of the Mississippi Court of Appeals, through committee for the Fifth Circuit Court of Appeals. We are enclosing the press release that the Caucus issued just before Memorial Day recess asking that Leslie Southwick not be listed for a vote in committee. We understand that, nevertheless, Mr. Southwick may have a vote in committee on Thursday, June 7, 2007. We are astonished that the committee would seriously consider this nominee on a circuit that hears cases affecting more Blacks and Hispanics than any circuit in the country. Mr. Southwick's long record, revealing inexcusably insensitive and hostile views on race and on other issues that have directly harmed people of color, should spell the end of his consideration for the Fifth Circuit.

The enclosed release mentions the most obvious and overt racial example, involving Mr. Southwick's concurrence in Richmond v. Mississippi Department of Human Services, 1998 Miss. App. LEXIS 637 (Miss. Ct. App. 1998), allowing the use of a racial slur that was unanimously overruled, but importantly refers to many other areas of equally deep concern to us because they involved average Mississippi residents who typify the Black, Hispanic, and white residents of the Circuit.

Mr. Southwick's record provides nothing less than a case study of a judge with a closed mind and fixed far-right views. In no area of law have we been able to find decisions that did not seem to be entirely predicted by an ideological predisposition. We believe that the committee should be impressed by the frequency with which Southwick's opinions and concurrences have been overruled. Our investigation of 10 years of Southwick decisions reveals a one-sided animus against workers and consumers, in particular, with rulings almost always favoring business and insurance interests and almost never for working people and consumers.

Our Caucus is most concerned about Mr. Southwick's ability to afford equal justice under law in the Circuit where racial discrimination has always been most pronounced. The Southwick decisions show a remarkable predisposition to rule for whites alleging improper use of peremptory challenges and against Blacks who make similar allegations regarding peremptory challenges. Nothing could be more disturbing today, considering that Congress has allowed racially unfair mandatory minimums and sentencing guidelines to remain in tact, virtually destroying a generation of African American men. Rep. BENNIE THOMPSON's Mississippi constituents were profoundly and negatively injured during Southwick's tenure in virtually every area of state law. We ask that you avoid elevating Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit, where he is likely to do the same harm to residents of three states—Texas, Louisiana, as well as Mississippi.

We want to be clear that the Congressional Black Caucus could not be more troubled by the transformation of the Fifth Circuit by judges that make it difficult to believe in the fairness, balance and openness of the judiciary. Five members of the CBC represent constituents in this circuit, the largest number members in anyone circuit. The Fifth Circuit presides over the largest percentage of minority residents (44%) of any circuit and Mississippi has the highest African-American population (36%) of any state in the country. We therefore would take very seriously the reach to place yet another farright judge with offensive racial views on the Fifth Circuit so late in President Bush's last term. We ask that you reject Leslie Southwick.

Sincerely,

CAROLYN C. KILPATRICK,
Chairperson, Congressional Black Caucus.
BENNIE THOMPSON,
CBC Member—Mississippi.

Mr. LEAHY. I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I urge my colleagues to vote to cut off debate—that is, to invoke cloture—on the pending nomination of Judge Leslie H. Southwick for the U.S. Court of Appeals for the Fifth Circuit and then to vote to confirm him.

Judge Southwick comes to this nomination with an outstanding record. He received his bachelor's degree cum laude from Rice University and a J.D. from the University of Texas law school in 1975.

He was a law clerk for Judge John Onion, Jr., of the Texas Court of Criminal Appeals. He was a law clerk for Judge Charles Clark of the Fifth Circuit Court of Appeals. He practiced law from 1977 through 1989. He was a Deputy Assistant Attorney General for the U.S. Department of Justice, Civil Division, from 1989 to 1993. He has been a judge on the Mississippi Court of Appeals, which is an intermediate court, for some 12 years.

Judge Southwick has participated in about 6,000 cases and has personally authored some 985 opinions.

In a very remarkable move, when Judge Southwick was 53 years old—he had been in the Army Reserve since he was 42, when he obtained an age waiver in order to join the Army Reserve—and in the year 2003, when he was 53 years old, he volunteered to transfer to a line combat unit. He was deployed to Iraq, serving as a staff judge advocate in forward operating bases near Najaf.

Major General Harold Cross, Judge Southwick's commanding officer, said:

This was a courageous move; as it was widely known at the time that the 155th was nearly certain to mobilize for overseas duty in the near future.

Judge Southwick was voted out of the Judiciary Committee on August 2 of this year on a bipartisan basis with a favorable recommendation.

Judge Southwick's critics have pointed to only two cases—where he was in a concurrence and did not write the opinions. One case involved the issue of the punishment for someone in Civil Service who used a very derogatory racial term. When that case was reviewed, it was decided that since the individual had made only an isolated remark, and immediately apologized, that it would be excessive to fire that person but that the penalty should be something less. That case was reviewed by the Mississippi Court of Appeals on a very constricted standard as to whether the finding was arbitrary and capricious—which is a very high standard—and that applicable standard determined that firing was excessive.

The case then went to the Supreme Court of Mississippi, and it agreed with the appellate court's conclusion that the dismissal was unwarranted. In this case they said:

[w]e find that the harsh penalty of dismissal . . . from her employment is not warranted under the circumstances.

Now, I emphasize that in both of these cases, Judge Southwick did not write the opinions but only concurred in the result. While some might say it would have been preferable to take a different position, in the context of deciding some 6,000 cases and having written some 985 opinions, that is very little to pick at.

The second case was a matter where the issue of custody came up. After an extensive hearing, the trial judge awarded custody to the father, and there was a reference to the fact that the mother was a lesbian. Here again, the references in the opinion—again, not written by Judge Southwick—might have been somewhat more sensitive. In the overall context, it is hardly the basis for denying confirmation to Judge Southwick.

I met with Judge Southwick at length, had a long talk with him about his approach to the judiciary, about his legal background. He is a very mild-mannered, very temperate man, who on the credentials, in black and white, has an outstanding record and in person was very impressive.

It is worth noting that a number of former African-American clerks have spoken out in solid support of Judge Southwick.

La'Verne Edney, a distinguished African-American woman who is a partner at a prominent Jackson, MS, law firm and a member of the Magnolia Bar Association, the Mississippi Women Lawyers' Association, and a member of the Mississippi Task Force for Gender Fairness, stated this:

When I finished law school . . . I believed that my chances for landing a clerkship were slim because there was only one African-American Court of Appeals judge on the bench at the time and there were very few Caucasian judges during the history of the Mississippi Supreme Court or the Court of Appeals . . . who had ever hired African-American law clerks. . . .While Judge Southwick had many applicants to choose from, he saw that I was qualified for the position and granted me the opportunity.

As a clerk, Ms. Edney observed:

It did not matter the parties' affiliation, color or stature—what mattered was what the law said and Judge Southwick worked very hard to apply it fairly.

Patrick Beasley, a practicing attorney in Jackson, MS, who also is African American, endorsed Judge Southwick for his quality of being fair to minorities. Mr. Beasley wrote:

I speak from personal experience that Leslie Southwick is a good man who has been kind to me for no ulterior reason. I am not from an affluent family and have no political ties. While I graduated in the top third of my law school class, there were many individuals in my class with higher grade point averages and with family ''pedigrees'' to match. Yet, despite all of the typical requirements for the clerkship that I lacked, Judge Southwick gave me an opportunity. Despite [those who criticize him], Judge Southwick is a fair man and this is one of the qualities that makes him an excellent choice for the Fifth Circuit. . . .

Judge Southwick has ruled numerous times in favor of workers, the so-called little guy.

For example, in Sherwin Williams v. Brown, Judge Southwick held that a 45-year-old carpet layer was permanently and totally industrially disabled due to an onsite injury and that the carpet layer made reasonable efforts to obtain other employment.

In United Methodist Senior Services v. Ice, Judge Southwick affirmed the award of workers' compensation benefits to a woman who hurt her back while working as a certified nursing assistant, despite her first employer's claim that she exacerbated the injury during her subsequent employment.

In Kitchens v. Jerry Vowell Logging, Judge Southwick reversed the Workers' Compensation Commission's decision that a truck driver from a logging company did not suffer a permanent loss of wage earning capacity and remanded the case for further consideration.

In McCarty Farms, Inc. v. Caprice Banks, Judge Southwick concurred with an opinion affirming the Workers' Compensation Commission's award of permanent partial disability benefits for a woman who experienced a 70-percent industrial disability to her right arm and a 30-percent loss to her left.

Indeed, contrary to some suggestions, Judge Southwick has spoken out in dissent in favor of workers' rights.

In Total Transportation Inc. v. Shores, Judge Southwick joined with three other dissenters in a 6-to-4 decision, which would have upheld an award of workers' compensation benefits for a truck driver's widow, while the majority ruled in favor of the employer.

In Burleson v. Hancock County Sheriff's Department—a 6-to-3 decision—Judge Southwick wrote a dissent in which he argued that a public employee was improperly terminated without sufficient due process under the U.S. Constitution, while the majority ruled in favor of the employer.

Judge Southwick has ruled in favor of tort victims and against businesses in many cases. Illustrative are Ducksworth v. Wal-Mart Stores, Breland v. Gulfside Casino Partnership, Martin v. BP Exploration & Oil, and Wilkins v. Bloodsaw.

Mr. President, I ask unanimous consent that a description of these cases be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

In Ducksworth v. Wal-Mart Stores, Judge Southwick joined his colleagues in reversing the trial court's directed verdict against a customer who had slipped on an unknown substance at a Wal-Mart.

In Breland v. Gulfside Casino Partnership, Judge Southwick joined an opinion for the court that reversed summary judgment for a casino in a slip and fall action brought by a patron who had suffered multiple injuries falling down the casino's staircase.

In Martin v. BP Exploration & Oil, Judge Southwick joined his colleagues in reversing summary judgment against a plaintiff who injured her ankle upon exiting a gas station's restroom on an allegedly poorly constructed access ramp.

In Wilkins v. Bloodsaw, Judge Southwick joined an opinion for the court that reversed a grant of summary judgment in favor of a Pizza Hut, which was sued by a mother who was injured when her disabled son fell as she tried to help him exit the restaurant.

Mr. SPECTER. Judge Southwick has voted in favor of criminal defendants on numerous occasions, often in dissent. I cite a series of cases: Jones v. State, Parker v. State, Mills v. State, and Harris v. State, and ask unanimous consent that a description of these cases be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

In Jones v. State (a 5–5 decision), Judge Southwick dissented, arguing for reversing a conviction because the indictment did not provide the defendant with sufficient clarity and specificity to know with certainty what crime was being charged.

In Parker v. State (a 6–4 decision), Judge Southwick dissented (in an opinion joined by some of his Democratic brethren), arguing that a murder conviction should be reversed because the trial judge failed to give a proper jury instruction.

In Mills v. State (a 6–3 decision), Judge Southwick dissented from the majority opinion affirming a drug conviction on the grounds that the court should not have admitted a statement by the defendant's four-year-old son, and the state failed to disclose a piece of evidence against the defendant that it had in its possession.

In Harris v. State (a 5–4 decision), Judge Southwick dissented from the majority opinion affirming a DUI conviction on the grounds that the trial court erroneously allowed the state to avoid proving all the elements charged in the indictment.

Mr. SPECTER. Further, Judge Southwick has voted in favor of the so-called underdogs. The suggestion that he is biased against women and homosexuals is contradicted by a number of cases: Curtis v. Curtis, Kmart Corp. v. Lee, Hughey v. State of Mississippi. Again, I ask unanimous consent that a description of these cases be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

In Curtis v. Curtis, Judge Southwick wrote for a divided court and upheld the trial court's grant of divorce in favor of the wife on the grounds of adultery. The dissent would have reversed and remanded.

In Kmart Corp. v. Lee, Judge Southwick wrote an opinion upholding the lower court's decision to award $500,000 to a woman who slipped on antifreeze in a Kmart. Judge Southwick sympathized with the woman, stating: ''Before the fall, Lee was a hard working, independent woman who was able to take care of many problems at the apartment complex she managed herself. . . . now she is unable to work a full day . . .''

In Hughey v. State of Mississippi, Judge Southwick affirmed the trial court's decision to disallow cross-examination as to the victim's sexual preference. He recognized that whether the victim was homosexual was not relevant to the defense and that such a line of inquiry would produce undue prejudice.

Mr. SPECTER. That is a very short statement of the qualifications of Judge Southwick. I believe if Judge Southwick were under consideration for any circuit court of appeals except for the Fifth Circuit—which has had a history of difficulties in obtaining confirmation and has had an overtone of concern about civil rights—if he were up for any other circuit, there would be no hesitancy.

This man ought to be judged on the basis of his own record and his own qualifications. But he has demonstrated fairness and an appreciation for the rule of law and for equality regardless of race, color, creed and regardless of standing and has been willing to stand up for plaintiffs in tort cases and defendants in criminal cases and, as stated earlier, women and those of a different choice of sexual orientation, so that on the record he is deserving of confirmation.

It is my hope he will be judged as an individual. That is the American way. By that standard, he certainly would be confirmed.

Mr. President, how much time did I consume in my speech?

The PRESIDING OFFICER. The Senator has consumed 14 minutes.

Mr. SPECTER. I thank the Chair.

I now yield 20 minutes to the distinguished Senator from California and then 10 minutes to the Senator from Mississippi, Mr. LOTT. And if Senator—

Mr. CARDIN. Mr. President, there are still some requests on our side for time. I would hope we would have a chance—

Mr. SPECTER. Mr. President, I ask Senator CARDIN, how much time would the Senator like?

Mr. CARDIN. Mr. President, I will be speaking for about 10 minutes.

Mr. SPECTER. Mr. President, 10 minutes to Senator CARDIN. And if Senator COCHRAN desires time: unlimited time, if he so desires.

Mr. COCHRAN. Five minutes.

Mr. SPECTER. Mr. President, Senator COCHRAN asks for 5 minutes.

I thank the Chair and yield the floor.

Mr. CARDIN. Mr. President, parliamentary inquiry: I was under the impression that time was divided between the proponents and opponents.

The PRESIDING OFFICER. The Senator is correct.

Mr. SPECTER. Mr. President, may I inquire if Senator CARDIN is speaking in opposition?

Mr. CARDIN. Mr. President, I will be speaking in opposition to the nomination.

Mr. SPECTER. Mr. President, I think Senator CARDIN needs his time from Senator LEAHY, but I am sure there would be no difficulty in having 5 minutes.

Mr. CARDIN. I understand that. I wonder if we would follow the normal practice of allowing those in opposition to be able to speak in regular order rather than having to wait for the time.

Mr. SPECTER. I ask the Senator, do you want to speak now?

Mr. CARDIN. Yes, I would prefer to have an opportunity to speak.

Mr. SPECTER. I think that would be acceptable, if it is OK with the Senator from California.

Mrs. FEINSTEIN. That is fine.

Mr. SPECTER. Mr. President, I ask consent that Senator CARDIN be recognized now and then Senator FEINSTEIN be recognized next, and if others appear, it is appropriate, as Senator CARDIN suggested, that we alternate.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. CARDIN. I thank Senator SPECTER for the courtesy. I notice Senator LEAHY is not on the floor, and I appreciate my colleague from Pennsylvania organizing the debate on the floor.

I appreciate that.

This is a unique body, the Senate of the United States. One of our most important responsibilities is the advice and consent on Presidential appointments on the confirmation of Federal judges. The Constitution envisions that we will use independent judgment in order to make these decisions. Article III, section 2, clause 2 of the Constitution gives us the power to confirm Federal judges.

I know all of my colleagues know these are lifetime appointments, so this is our one chance in order to evaluate those who will serve as Federal judges. We are talking about the U.S. Court of Appeals. For most Federal cases, this will be the final decision on a case that is brought in the

Federal court. Very few in percentages of the cases reach the Supreme Court of the United States. So the Court of Appeals is responsible for much of our laws in this country as far as the final judicial determination.

When I sought to become a Member of this body, I went over with the people of Maryland the standards I would use in trying to decide whether to vote to confirm a judge. I talked about judicial temperament and experience, but I also talked about a standard that I think is very important, which is a judge's or potential judge's passion for the Constitution of this country in order to protect every individual. I think it is important that we take a look at that, particularly when we talk about an individual who will serve on the U.S. Court of Appeals.

I have sat in the confirmation hearings. I am a member of the Judiciary Committee. I had a chance to listen to Judge Southwick. I had a chance to listen to the questions that were posed back and forth. I must tell my colleagues I cannot support this confirmation. I will vote against it, and I would like to give the reasons why.

Senator SPECTER talked about some of the opinions that Judge Southwick participated in or some of his rulings, and I think that is what we should be looking at. For Judge Southwick, we do have an idea about his passion for the Constitution and what his priorities will be by looking at the type of cases he ruled on, the opinions he joined, and the opinions he wrote. So let me talk about the two opinions Senator SPECTER raises, because I think they are important opinions in order to get some insight as to this judge's passion for the Constitution.

The 1998 case of Richmond v. Mississippi Department of Human Services was an important case. It was very offensive to not just the minority community but the entire community. The racial term that was used should never be used, as Senator LEAHY said, in the workplace or anyplace else. The dissent of that opinion, of that decision, got it right, where it said that the racial epithet is inherently offensive and its use establishes the intent to offend. Unfortunately, that was the minority opinion in that court. On appeal it was overturned, but Judge Southwick joined the majority. The rationale in the majority opinion I think is important, because it speaks to what Judge Southwick used to reach his conclusions. In that opinion he said the absence of evidence of a near race riot, the remark is too inconsequential to serve as a basis of dismissal.

I find that very offensive. I think we do have to be held accountable to where we allow our name to be added. Fortunately, as I said, that was corrected, but it took an appellate court to do that.

In 2001, we have S.B. v. L.W. where a 12-year-old child is taken away from her mother. It was done because she was a lesbian. The language in the opinion is very offensive. It talks about a homosexual lifestyle, words that I think we all know bring out bigotry in our society. But Judge Southwick went further in that case. He joined a concurring opinion that said your sexual orientation is a matter of choice and any adult may choose any activity in which to engage. That person is not thereby relieved of the consequences of his or her choice.

No wonder Judge Southwick is being challenged by many respected national groups. Upon questioning within our committee on confirmation, I didn't get a sense that there was a retraction by Judge Southwick of these decisions. He stuck by the decisions.

At the confirmation hearing, Senator DURBIN asked him a pretty simple question. He asked him a question about whether during his life or career, he ever took an unpopular point of view on behalf of those who were powerless or vulnerable and needed someone to stand up for their rights when it was not a popular position. That, to me, is a softball question: When did you stand up for someone else's rights? Judge Southwick couldn't think of a single example throughout his entire career.

So there is no wonder that there is concern about whether this potential judge on the court of appeals will protect all of our rights as the cases come before him and why there is so much concern about his confirmation.

But I want to go on to another issue that Senator LEAHY raised, and that is the issue of diversity. Diversity is very important. We expect all of our citizens will live according to the rule of law and will have confidence that the laws we make and the Court's rulings on those laws will be fair to all communities, so they have a right to expect that there will be equal access to participation in all branches of Government. Looking at the record in the Fifth Circuit, there is reason for concern. The Fifth Circuit is Mississippi, Louisiana, and Texas—the highest percentage of minority population in the country of any circuit outside of the District of Columbia—44 percent minority. Of the 10 nominees President Bush has submitted to the Federal bench from Mississippi and the Fifth Circuit—10—none have been African American. Mississippi has the largest percentage of African Americans of any State in the Nation: 36 percent. Of the 19 Federal judges on the Fifth Circuit, only one is African American. These are important issues to the people of that circuit and to the people of this country.

So there are many organizations that are opposing Judge Southwick's nomination. I ask unanimous consent that the letters of opposition and concern from the J. Franklin Bourne Bar Association and the National Organization for Women, the Legal Momentum, and the Jewish Alliance for Law and Social Action be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

J. FRANKLYN BOURNE
BAR ASSOCIATION, INC.,
Upper Marlboro, MD, June 7, 2007.

Re: Nomination of Leslie Southwick.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: The J. Franklyn Bourne Bar Association, Inc. opposes the nomination of Leslie Southwick to the United States Court of Appeals for the Fifth Circuit.

Established in 1977, the Bourne Bar was formed to advance the status of African-American attorneys who work and/or live in Montgomery and Prince George's Counties, Maryland. The organization is named in honor of the Honorable J. Franklyn Bourne, the first African-American District Court judge in Prince George's County. The Bar Association's mission includes assisting in the development of African-American communities through the vehicle of law, educating the general public about legal issues of concern to all, and insuring the continuation of African-Americans in the legal profession. It is in the spirit of our mission that we register our opposition to the Leslie Southwick's nomination.

A representative democracy is a must in a free society, and as such the residents of the state of Mississippi, Texas and Louisiana are deserving of a federal judiciary that reflects the composition of their respective citizenry. More importantly, as federal judgeships are lifetime positions, each candidate for such an appointment must he closely scrutinized. Judge Southwick's pattern of approving preemptory challenges that exclude Blacks from juries while approving challenges when whites allege discrimination from such challenges is particularly troubling; so to is the decision Judge Southwick joined in the case Richmond v. Mississippi Department of Human Services which would have reinstated a white woman who used the phrase ''good ole nigger'' about an African American coworker.

The Senate Judiciary is constitutionally tasked with the responsibility of approving nominations by the President following fair deliberations. In that regard, the Bourne Bar Association is confident that its opposition outlined above will be duly noted.

Thank you for your attention.

Sincerely,

ABIGALE BRUCE-WATSON,
President.

NATIONAL ORGANIZATION FOR WOMEN,
Washington, DC, June 6, 2007.

Senator PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: The National Organization for Women strongly opposes the nomination of Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit. We urge you to oppose this nomination both in the Judiciary Committee and on the floor of the Senate.

Judge Southwick has a disturbing record and an appalling lack of sensitivity on women's rights, racial justice, and discrimination based on sexual orientation. He demonstrates the usual Bush nominee bias toward big business and against consumers and individuals.

In the 2006 election, the voters clearly rejected right wing extremism. The National Organization for Women expects that those Senators who were elected by the votes of women will take their ''advise and consent'' role seriously and not put our rights in jeopardy by confirming such an individual to one of the highest courts in the land.

As we have learned from many past judicial battles, a ''yes'' vote in committee which allows a nomination to reach the floor of the Senate is tantamount to a vote for confirmation regardless of a subsequent ''no'' vote on the floor. We urge you to stand firm and to vote to stop this nomination in its tracks—in the Judiciary committee.

Sincerely,

KIM GANDY,
NOW President.

JEWISH ALLIANCE FOR LAW AND SOCIAL ACTION
Boston, MA, June 8, 2007.

Re Maintaining an Independent Judiciary

Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: As an organization devoted to upholding constitutional protections against racial and religious discrimination, we write to urge that you and your colleagues on the Judiciary Committee and in the Senate oppose the appointment to the Fifth Circuit Court of Appeals of Leslie Southwick.

Judge Southwick has demonstrated his disdain for equal rights and equal protection under the law. While on the Mississippi State Court of Appeals, he joined a decision that upheld the reinstatement, without any punishment whatsoever, of a white state employee who was fired for calling an African American co-worker a ''good ole nigger'', finding that this was not an offensive term. In another case, Mr. Southwick went out of his way to go beyond the majority decision against a lesbian mother, in a concurrence that was not only gratuitous but gratuitously anti-gay.

While the current President has tried to fill this seat on the Fifth Circuit with other appointees equally out of the mainstream, this is the first nomination since the Democratic Party has regained its Congressional majority. Now is the time to deliver a strong message that Democrats will protect the American people, the Constitution and the judiciary from the prospect of even more extremist right wing judges who will continue to undermine the judiciary's crucial role in preserving our bedrock constitutional protections.

We at JALSA urge you not only to reject this nomination but to do so in a way that makes clear that the Senate will protect the independence of the judiciary, and will no longer allow this administration to pack the courts in order to legislate an extremist agenda of bigotry and hatred.

Yours truly,

ANDREW FISCHER,
Chair, Judicial Nominations Committee.

LEGAL MOMENTUM,
Washington, DC, June 7, 2007.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee,
Washington, DC.
Hon. ARLEN SPECTOR,
Ranking Member, Senate Judiciary Committee,
Washington, DC.

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 5th 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 5th 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 5th 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. 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.''

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, which upheld criminal penalties for sodomy, but ignored the more recent decision in Romer v. Evans, 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. 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.

Mr. CARDIN. Mr. President, I am going to quote very briefly from the letter from the Bourne Bar Association where it says:

A representative democracy is a must in a free society, and as such the residents of the State of Mississippi, Texas, and Louisiana are deserving of a Federal judiciary that reflects the composition of their respective citizenry.

Ten nominees from this area; none African American.

The National Organization for Women states:

Judge Southwick has a disturbing record and an appalling lack of sensitivity on women's rights, racial justice, and discrimination based on sexual orientation.

The Jewish Alliance for Law and Social Action:

Judge Southwick has demonstrated his disdain for equal rights and equal protection under the law.

So I am not convinced Judge Southwick is the best that we can find for the court of appeals. I am not going to give the President a blank check, and I will vote against the confirmation of Judge Southwick.

Once again, I thank my friend from Pennsylvania for his courtesy.

Mrs. BOXER. Mr. President, I plan to vote against cloture on the nomination of Judge Southwick, and, if cloture is invoked, against the nomination itself.

The Fifth Circuit serves one of the most racially diverse regions in the country. It is especially important, therefore, that a nominee to this court possess an unshakable commitment to equal justice and a willingness to protect the rights of all. Unfortunately, President Bush has chosen a nominee who does not pass this simple test.

During his tenure with the Mississippi State court, Judge Southwick joined a ruling that reinstated a State employee who used a very charged racial slur about another worker. That decision was unanimously reversed by the Mississippi Supreme Court. In another case, Judge Southwick joined in an opinion that took into consideration the sexual orientation of a mother rather than her love for her child when deciding to deny her custody. On other occasions, he voted against the concept of ''a jury of our peers.''

I am deeply disappointed that President Bush has once again attempted to fill the Fifth Circuit vacancy with a nominee holding views far to the right of most Americans, and I do not support the nomination of Judge Southwick to the Fifth Circuit.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I too rise to discuss the nomination of Judge Leslie Southwick and to explain why I will vote in favor of cloture and in favor of confirming him to the Fifth Circuit Court of Appeals.

There has seldom been an appellate nominee to whom I have given more thought than I have given to Judge Southwick. I am very much aware of the concerns many on my side of the aisle, in the House of Representatives, and in the community feel.

I have reviewed Judge Southwick's record and the transcript of his confirmation hearing. I have read the many letters, both pro and con, and I have spent about an hour or more talking with him in person.

What emerged for me was an understanding that Judge Southwick is a qualified, sensitive, and circumspect person. I think the personal qualities of an individual often get lost in our debates about judicial nominees. These nominees are not just a collection of prior writings or prior judicial opinions. They are, first and foremost, people; and the kind of person they are is, in fact, important. In my conversations with Judge Southwick, I have gotten a sense of the type of person that I believe him to be. He is not either insensitive or a racist but one who is thoughtful and analytical and a strong believer in the law. As an appellate court judge, he evaluates the specific legal issues of the case before him, not necessarily the veracity of the parties involved as would a trial judge.

I know some of my colleagues are opposed to this nomination. Concerns have been raised about his judicial record, particularly with regard to civil rights and the rights of gays and lesbians. I assure my colleagues that I have taken these concerns seriously. I gave them careful consideration and made my best judgment, which is all any of us can do.

While I respect the views of my colleagues who oppose this nomination, I also respectfully disagree. I think Judge Southwick made mistakes by concurring in the two opinions in question, but I don't think those rulings define his views. I don't believe they outweigh the other factors that suggest Judge Southwick should be confirmed.

As I see it, there are three factors that weigh in favor of confirmation. They are:

First, the qualifications and character of the judge himself;

Second, the need to fill this longtime vacancy in the Fifth Circuit which the judicial branch has designated as a judicial emergency;

And third, my very strong belief that when a future Democratic President sends up a judicial nominee who becomes controversial, the test should be whether the nominee is within the judicial mainstream and is qualified by education, experience, and temperament to be a sound judge or Justice in the Federal court system of our great country.

When I weighed those factors against the concerns I have heard, I decided to vote in favor of Judge Southwick in committee. They also will form the basis for my vote on Judge Southwick tomorrow.

The first factor I wish to address is his qualifications and character. I don't think anyone disagrees that Judge Southwick is an experienced appellate court judge. He sat on the State court of appeals in Mississippi for 11 years, from January 1995 to December of 2006. He has heard roughly 7,000 appeals.

How many judges have we confirmed without nearly that kind of experience? This is a large number of cases.

There is no organization better positioned to evaluate the performance of judges in Mississippi than the Mississippi State bar, and they awarded Judge Southwick their Judicial Excellence Award in 2004, after he had been on the State court bench for 10 years. That award describes him as: ''A leader in advancing the quality and integrity of justice,'' and as ''a person of high ideals, character, and integrity.''

Isn't that the kind of judge we want to see on the bench?

I think those views from the bar association from his home State are important. I also think it is significant that the American Bar Association, which evaluates every judicial nominee that comes to the Senate for confirmation, unanimously rated Judge Southwick ''well qualified''—their highest rating. In fact, the evaluation by the ABA for him to serve on the Fifth Circuit is stronger than it was when he was nominated to a district court last year.

For that nomination, the ABA was not unanimous in finding him ''well qualified.'' But they were for the appellate court.

The Judiciary Committee approved that nomination, but the 109th Congress ended without further action on it. Now, Judge Southwick stands before us with a unanimous recommendation for the Fifth Circuit from the ABA.

I am also impressed, as Senator SPECTER spelled out, by his record of military service to our country. I find it singular among the judges in the 15 years I have served on the Judiciary Committee.

This judge joined the U.S. Army Reserves in 1992 at the age of 42. To do that, he had to get an age waiver.

How many would do that?

He had already achieved professional success as a lawyer. At the time, he was serving as the Deputy Assistant Attorney General in the Civil Division of the Department of Justice. Still, he felt a sense of duty to his country, and he did not let his age or his promising civilian legal career stop him.

He volunteered in 2004 for a unit that was going to be deployed to Iraq. That unit, the 155th Brigade Combat Team, was, in fact, deployed, and he was with it.

Judge Southwick was 53 years old at the time. He had a wife and family and a prestigious job as a judge on the State court of appeals. Yet, from January to December 2005, he served in Iraq—first as a Deputy Staff Judge Advocate at Forward Operating Base Duke, and then as Staff Judge Advocate for the 155th Brigade at Forward Operating Base Kalsu.

How many judges have done that? Shouldn't that count for something?

Well, it counts to me, Mr. President. To me, it is a clear indication of the character of the man, and I deeply respect him for this military service.

The second factor that is important, in my judgment, is the need to fill this vacancy on the Fifth Circuit. It has been vacant for 7 out of the last 8 years. Judge Southwick is the third nominee for the position—not the first or the second, but the third.

The vacancy opened in August 1999—7 years ago—and went unfilled for more than 4 years. Then, in 2004, the President used a recess appointment to place Charles Pickering on the bench. The Senate did not confirm Judge Pickering to the seat, and since the end of 2004, it has been vacant again. Michael Wallace was nominated for it, but that nomination wasn't approved by the Judiciary Committee.

So at this time the Administrative Office of the U.S. Courts has declared this seat to be a ''judicial emergency.''

Now, I am not suggesting that we should confirm whomever the President nominates just because a seat has been vacant for a long time, or because the seat has been designated a judicial emergency. But I hope this urgent need to fill a longtime vacancy will help tip the balance in the nominee's favor. By any measure, 7 years is too long for a vacancy to remain open.

The third factor that weighs in favor of confirmation for me is my strong belief that we have seen too much delay and controversy over qualified nominees for too many years.

There are plenty of examples of long delays in the confirmation process when President Clinton was in office and the Senate was under the Republican control. For example, when Ronnie White had the support of Senator BOND and was voted favorably out of the Judiciary Committee twice, it took more than 2½ years for the nomination to come to the floor, and then the nomination was rejected.

William Fletcher was a well-qualified Ninth Circuit nominee in the 1990s. Unlike Judge White, at least Judge Fletcher was confirmed by the Republican Senate—thanks in large measure to Senator HATCH—but not until he had waited for 3½ years.

During that period of time, I had calls from prospective judges, saying: I don't know what to do. Do I stay the course, or withdraw? What do I do about my family? These are real problems and we ought to respond to them.

I also share the views of my colleague, Senator LOTT, that we must improve the confirmation process. He recently wrote an op-ed column in which he explained his vote to confirm Justice Ruth Bader Ginsburg to the Supreme Court. Since the Senator is sitting here, let me quote him:

I probably wouldn't agree with Justice Ginsburg on any philosophical issue, but she

was qualified to serve by education, experience, and temperament. Elections have consequences, and she had President Clinton's confidence.

That is the way it was. I have used the same analysis to arrive at my position on Judge Southwick. I probably would not agree with him on certain philosophical issues, but I think he is qualified to serve by education, by experience, and by temperament.

Critics of this nomination have pointed to two opinions: one that reinstated an employee who had been fired for using an egregious racial slur, and another that denied a woman custody of her child for reasons that included—but were not limited to—her involvement in a same-sex relationship.

These are 2 opinions out of 7,000 cases that he heard or that he sat on. They are opinions he joined, not ones he wrote. One was a majority opinion joined by four other judges on his court, and one was a concurring opinion in a case where he also joined the majority opinion.

Ultimately, the case involving the racial slur was reversed by the State supreme court and remanded for consideration of a different penalty. The ruling of Judge Southwick's court in the child custody case apparently was not appealed to the State's high court.

Critics of Judge Southwick have also pointed to certain rulings that, in their view, suggest that Judge Southwick will be hostile to workers, minorities, and those who lack power and privilege in our society. These are serious concerns. But I don't think these cases accurately reflect Judge Southwick's views. This is only my best judgment, based on my own discussions with him.

The racial slur case, Richmond v. Mississippi Department of Human Services, involved, as has been stated, a State employee who had used a racial slur in reference to an African-American coworker. The State agency fired the employee, and she appealed to an administrative board, which ordered her reinstated.

Judge Southwick joined a majority opinion that upheld the board's decision to reinstate the employee. The opinion stated that there was sufficient evidence in the record to support the decision of the board.

I believe he should not have joined the court's opinion, but I don't think his decision to concur in that opinion should disqualify him from being a Federal judge.

After our meeting in person, I asked the judge to put his thoughts in writing, and he did. I found the letter convincing.

Mr. President, I will quote some of this letter:

> The court said that the use of the word ''cannot be justified'' by any argument. It could have gone far beyond that legalistic statement. Captured in this one terrible word is a long, dark, sad chapter in our history. This racial slur is unique in its impact and painful to hear for many, including myself. I said at my hearing that this is the worst of all racial slurs. Its use is despicable. All people of good will should make their rejection of the word clear. The opinion had an opportunity to express more fully and accurately the complete disgust that should greet the use of this word. Such a statement would certainly be consistent with my own beliefs that this is the worst kind of insult. As I testified, everyone took this issue extraordinarily seriously. I regret that the failure to express in more depth our repugnance of the use of this phrase has now led to an impression that we did not approach this case with sufficient gravity and understanding of the impact of this word.

The letter goes on to say:

> I always tried to treat everyone who came before me as a judge with respect. I gave a memorandum to each of my law clerks that they were to use no disparaging words towards anyone in a draft opinion, no matter what the appeal was about. From the bench and in my opinions, I followed that same rule. I believe that everyone whom I encounter, whether as a judge or in some purely private capacity, is deserving of my respect.
>
> I took a broad view in looking for staff. I was one of the original ten judges on the Court of Appeals, taking office in January 1995. In my second year on the court, I became the first white judge to hire an African-American law clerk on that court. I could not have been more pleased with her work, and she went on to be a partner in a major Mississippi law firm. I was equally pleased with the two additional African-American clerks I hired before I left the court.

Judge Southwick concludes by saying:

> Until the last two months, my fairness and temperament had not been subject to criticisms. The recent concern may have arisen from the fact that only one piece of evidence was being used, namely, the racial slur opinion. A much better explanation of my own abhorrence of this slur clearly could have been written. I have tried in this explanation to express my disgust for the use of that word and to present some of the evidence from my own life to prove my commitment to furthering the civil rights of all.

In the second case, the child custody case, which is called S.B. v. L.W., Judge Southwick's court affirmed a decision to deny custody of a child to a mother who was in a same-sex relationship. The lower court had based its opinion on several different factors, such as employment, financial stability, and stability of the environment, and not just the sexual orientation of the mother.

In fact, a major concern in the case was that the mother was planning to move to a new city, and the mother had admitted that the move was not in the daughter's best interest. She said she did not know where her daughter would attend school, and also that she would be devoting a lot of time to starting a new business after the move.

Judge Southwick joined the majority opinion, upholding a lower court's decision that the best interests of the child would be better served by being in the father's custody. He also joined a concurring opinion written by another judge.

When asked about the case at his hearing, Judge Southwick said that he had joined the concurring opinion because it followed State law at the time, which was governed by Supreme Court precedent that has since been overruled. Judge Southwick conceded at the hearing that under current law the analysis of the case, and perhaps the result, would be different.

Again, the question is whether his decision to join the opinion is grounds for disqualifying him from a Federal judgeship. To me, simply stated, it is not.

So I am voting in favor of Judge Southwick because I think, based on the letter he wrote to me, on my discussions with him, and on his record, he is not outside of the judicial mainstream.

That is the primary criterion I use when evaluating an appellate nominee, and I expect future nominees of Democratic Presidents to be treated in the same way.

I believe the concerns that have been raised about Judge Southwick are outweighed by his record of service to our country, his long experience as an appellate court judge, and the temperament I have come to know in my discussions with him.

Mr. President, I ask unanimous consent that the mandatory quorum required under rule XXII with respect to the Southwick nomination be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I obviously rise in support of the cloture motion and in support of the nomination of Judge Leslie Southwick to be confirmed to the Fifth Circuit Court of Appeals.

I begin by thanking Senator REID for allowing this nomination to be called up and even considered. He doesn't have to do that as our leader, but he should be commended by those of us who support Judge Southwick for his willingness to allow the nomination to be debated and considered.

Mr. President, I wish to express my appreciation to the very studied and careful job that Senator FEINSTEIN has done with regard to this nominee. I know it has not been easy, but I also know that she has taken time, she has been patient, she has done her homework. I am sure she has endured criticism. She has shown tonight that she is truly one of the outstanding lions or lionesses, I guess, is the correct word, of the Senate. She has shown courage.

She and I have worked together. Sometimes we have lost when we have worked together, and sometimes we have succeeded. But we have tried to do the right thing for the Senate and for our country. I have nothing but the utmost admiration and appreciation for the position she has taken. I actually am hesitant to proceed after her comments because they were so careful and so well thought out and presented.

I do think that I would like to put a few remarks into the RECORD tonight,

and I will add additional items tomorrow. I thank Senator FEINSTEIN so much. What she did tonight with regard to this nominee and how she is going to vote tomorrow is the kind of thing, I believe, that will affect in a positive way the nominations of other men and women in the future in the Senate. We have worked together on nominees from California in the past, and I stood against a filibuster then, and I am proud I did. I have voted for nominees, such as Justice Ginsburg, because I thought it was right.

I also have been a party to and have observed conduct in the Senate by my colleagues on this side of the aisle that I am sorry about, I regret. But how do we ever stop the slide downhill by the Republicans and then by the Democrats and then again by the Republicans? When can we rise above that type of personal and partisan attack and consider these nominations and legislation in a more respectful and responsible way?

I believe Senator FEINSTEIN has taken that first step that can lead to other steps, and we will stop this slide I have observed occurring more and more each year for 10 years. Now maybe this is the moment, maybe this will be the catalyst that will lead to other steps on this side of the aisle and on the other side of the aisle so that we will treat these nominations and legislation in a proper way.

I thank the Senator for staying and allowing me to commend her. I hope it doesn't get her into too much trouble, but I admire the Senator very much.

I do want to recognize the remarks made by Senator SPECTER of Pennsylvania and the thorough job he did in referring to particular cases. I don't want to repeat the cases that have been mentioned here tonight, or go over his whole resume again, but I wish to take a moment to maybe highlight some of the parts of that resume of this very distinguished nominee.

I also want to note the presence of the senior Senator from Mississippi, my colleague Senator COCHRAN. He and I have been in the Congress for 35 years. We were in the House together. He came to the Senate, and 10 years later I came to the Senate. One of the things I did when I came to the Senate, I sat down and talked to Senator COCHRAN about how to consider nominees for the Federal judiciary, because he was on the Judiciary Committee. He had some very good, helpful, and simple advice. Basically, he said if they are from your State, certainly if they are personally repugnant, you can vote against them. But basically, he said, if they are qualified by education and by experience and by temperament, you should be supportive. Kind of simple, but it was a thoughtful suggestion to me that came from this experienced member of the Judiciary Committee, and I have tried to do that, and I will continue to do so.

I do believe very strongly that this nominee is obviously well qualified. One of the things that was noted about his outstanding academic record was that he graduated cum laude from Rice University, a well-known and well-respected academic institution. He didn't just graduate with honors, he graduated cum laude, right at the top. He later graduated from the University of Texas School Of Law, where he also had an outstanding record academically.

When he came to the State of Mississippi, he continued that record of success. He worked with one of the most revered members of the Fifth Circuit, Chief Judge Charles Clark, one of the most outstanding jurists I have ever observed in my career of watching our Federal judiciary.

When he went to work for a law firm, he didn't go with just any law firm, he went with one of the State's very best—Brunini, Grantham, Grower, and Hewes, where he became a partner. At every step along his career, he didn't do just well, he excelled in how he handled himself in the positions he had, and he continued that when he went on the court of appeals.

A lot has been made about the fact that he has served in the Mississippi National Guard. He reached the rank of lieutenant colonel. He didn't just serve as a reservist to meetings of the National Guard, he was actively involved with the 155th Separate Armored Brigade. And, of course, he went with the 155th Brigade Combat Team and was mobilized in Operation Iraqi Freedom. So even there he took risks. He was involved in a way at his age that wouldn't ordinarily have been expected. This further shows that he is a unique individual in terms of his education and his experience.

But more than anything else, with rare exception, I have never seen a more qualified nominee to be an appellate court judge; not just a Federal judge, but an appellate court judge. His experience has been in the Mississippi appellate court system, where he presided or participated over 7,000 cases. That point has already been made, but that is an extraordinarily large number of cases for him to be involved with over these several years that he was a member of the appellate court in Mississippi.

In terms of the kind of man he is, let me read one part of one letter from one of the most revered and respected former Governors of our State of Mississippi, a Governor who has a very progressive record of leadership and of civil rights issues, and who has continued until this very day to work for racial reconciliation and heads an organization at the University of Mississippi dedicated to that purpose. This is a Democrat. This is what most people would acknowledge in Mississippi would be one of your more moderate to liberal Democrats. Knowing him, he probably doesn't like those labels, but he has a record of involvement in those areas where this nominee has been challenged or criticized. This is what William Winter, our former Governor, said:

> I further know him to be a very intelligent, conscientious, ethical and hard-working member of the legal profession. I have a great deal of personal respect for him and based upon my association with him I believe he will reflect fairness and objectivity in his approach to all matters which may come before him as a judge.

I don't know what higher recommendation you could have from our State, from a member of the opposite party, and a former Governor of our State. So he knows the background of this nominee.

Mr. President, I ask unanimous consent to have printed in the RECORD the entirety of the letter of William F. Winter.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WATKINS LUDLAM WINTER & STENNIS, P.A.,
Jackson, Mississippi, June 13, 2007.

HON. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: I join a number of my colleagues in the Mississippi Bar in expressing support for the nomination of the Honorable Leslie Southwick for a seat on the U.S. Court of Appeals for the Fifth Court.

I personally know Judge Southwick as a highly regarded attorney and jurist in Jackson, Mississippi. I further know him to be a very intelligent, conscientious, ethical and hard-working member of the legal profession.

While it is generally known in this community that he and I do not share the same views on some public issues. I have a great deal of personal respect for him and based on my association with him I believe that he will reflect fairness and objectivity in his approach to all matters which may come before him as a Judge.

I, therefore, commend him to you as one whose personal character and professional record make him worthy of your favorable consideration for this important position.

Respectfully yours,
WILLIAM F. WINTER.

Mr. LOTT. Judge Southwick was awarded the Judicial Excellence Award by the Mississippi State Bar Association, and he was rated not just well qualified but unanimously well qualified by the American Bar Association. This is supposed to be the gold standard. The previous nominee for this position was not given that. He was given a ''not qualified'' rating by the bar association. So they don't just rubberstamp nominees, they look very closely at them.

If there is a question about his temperament, if there is a question about his record on civil rights issues, or anything else, they would have found it and they would have included it in their recommendations. And, by the way, this is the same nominee who, 1 year ago, was unanimously referred by the Judiciary Committee to be a Federal district judge. Now, 1 year later, there are those who question the same record they had a chance to review last year.

Of the opinions he actually authored, there is no criticism of the more than

1,000 decisions where he actually wrote the opinion. I assure you, they were scrubbed and reviewed very carefully. There are two decisions in 7,000 where he concurred but did not write the decision, where questions have been raised.

I know we all make mistakes, and we choose to associate sometimes with situations or people we regret later. I know he would do some of his decisions differently now if he had them to do over again. But this is a long distinguished record, with only a couple of phrases in two decisions that, obviously, are troublesome.

Now, beyond those qualifications, he also has the temperament. He is mild mannered, he is very judicious, he is moderate in his approach to being a judge and in his life; not to say that he won't be conservative in a lot of his rulings. I think he will. But I am talking about demeanor and temperament. Clearly, he has what Senator COCHRAN and I thought the Senate indicated they desired.

This is the third nominee for this vacancy. The other two didn't make it. We heard what the Senate had to say regarding these past nominees and we came up with a judge we thought met the criteria that was expressed by a lot of our colleagues here in the Senate. But I also want to emphasize this. I have stood on this floor and argued to my own colleagues that we should not set the precedent of filibustering qualified judicial nominees——

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LOTT. Mr. President, I ask unanimous consent for 2 additional minutes, if my colleague, Senator COCHRAN, would yield me those 2 to wrap up.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, I have argued we should not filibuster Federal judges. One time when I sat in that seat as majority leader, my colleagues actually voted to filibuster a judge and opposed cloture. Senator HATCH and I took to the floor and said we are not going to do this. This is wrong. If you want to vote against him, vote against him, but we are not going to filibuster these judges. Those judges were Judges Paez and Berzon in 2000. We had a second vote, reversed the previous vote which opposed cloture, invoked cloture, and then voted on those nominees. I voted against them both, but I thought they deserved an up-or-down vote.

Here tonight and tomorrow, when we vote, at the very minimum we should not filibuster this nomination. We should allow this judge to have an up-or-down vote. One of the speakers tonight indicated he would vote against him. Fine, if that is what your conscience dictates. But first, we have to deal with this question of should we start down this trail of filibustering qualified judges because we disagree with some philosophical position. We shouldn't do that. If we do it here, we will do it again later. If we do it in this administration, we will do it in another administration. Give the man an up-or-down vote. I believe—I am absolutely convinced—that he will be confirmed.

I will have a few more remarks probably in the morning, but let me say to you, Mr. President, and to my colleagues in the Senate, I have never before done this, but I can vouch on my honor to this institution that I have served for many years now and in leadership positions, this is a good and qualified nominee who will reflect credit on the institution that confirms him and in the court in which he serves.

The judicial confirmation process has always shown strong deference to the opinions of home State Senators. There is good reason for this. Home State Senators are uniquely positioned to know the personalities, qualifications, and reputations of the nominees from their state. The fact that this traditional courtesy of the Senate is being ignored should be cause for concern for every Senator in this Chamber.

I respected this traditional courtesy when I served as majority leader. In the last few years of the Clinton administration, a Republican Senate confirmed a string of highly controversial appeals court nominees who nonetheless had the backing of their home State Senators.

When the controversial nominations of Paez and Berzon where debated in 2000, I filed cloture on both of their nominations. While many on my side of the aisle opposed the nominations, I upheld my promise to bring their nominations to an up-or-down vote.

We are in danger of establishing an ill-advised precedent that could have longstanding negative ramifications on not just the legislative branch but also upon the judicial branch. Should this body block a clearly qualified nominee based on a ''perceived controversy''?

Every Senator in this body needs to understand what is at stake here. This isn't a simple case of controversial nominee being taken down in a partisan fight.

This is a mainstream nominee to a seat that has been declared a judicial emergency, with the strong support of both home State Senators, with a ''unanimously well qualified'' rating from the ABA—the supposed gold standard for my colleagues on the other side of the aisle—who was reported out of the Judiciary Committee unanimously for a lower court nomination less than 12 months ago, and a military judge who courageously served in Iraq.

This isn't just about Judge Lesile Southwick. This is about the standard that is being set for the future. Every Senator in this Chamber will have judicial nominees that come from their home State, and they will expect those qualified nominees—with home State Senator support—to be confirmed. Well, that is not the precedent that we are establishing here. Next time, this could be your nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, under the order, I think there were 5 minutes, and 2 of the minutes I yielded to my colleague and distinguished Senator, so it is my intention to proceed with 3 minutes.

The PRESIDING OFFICER. There is 9 minutes remaining on the Senator's side.

Mr. COCHRAN. I will use the balance of that in the morning.

The purpose of my being here tonight was to be sure I was available to hear the comments of all Senators who wanted to speak on this confirmation. This has been a very frustrating experience for me personally, because, as my colleague pointed out, we have confronted difficulties in submitting names for the consideration of the Senate for this particular position. Two he pointed out have been nominated by the President and, in fact, rejected. Names were withdrawn because of delays that made it clear those judicial nominees were unacceptable. So we put our heads together, we talked about what the other options were, and decided Leslie Southwick was the epitome of someone who had to be acceptable to the Senate. Not only is he an experienced judge in an appellate court position, but he is a person of great integrity, widely respected, even though he has been a Republican and active in politics in our State, supporting candidates that he thought were the best in his party who were available to be nominated and elected. He is a person who is widely respected by Democrats, as proven by William Winter's very generous letter complimenting him and pointing out his personal qualities. That should be instructive to the Senate in its consideration of this nomination.

I don't know of any situation I have confronted since I have been in the Senate that has been more frustrating than watching and listening to the criticism of this nominee who has been totally unjustified, totally unjustified on the record. Viewing his career as I have observed it, it is not the same person I hear described by those I hear criticizing and objecting to this nomination, reaching through 7,000 opinions trying to find something he had said or done or indicating a view that was unacceptable in a Federal judge. And they come up with two opinions that he didn't write, and they are fully explained by him, and totally contradictory, in the way they have interpreted, to his personality, his good judgment, and the way he has lived his life.

I think it is a lot more instructive if you could have been with me yesterday in Natachez, MI, dedicating a new Federal court building, the shock, I guess, that others might find, that the Presiding Officer at that ceremony was United States District Court Judge

Henry Wingate, an African American I had recommended 20 years ago for the Federal bench, who is now the chief judge of the Southern District in the United States District Court.

There are several other judges, all of whom were there. Edith Jones of the Fifth Circuit, who is the chief judge now of the Fifth Circuit Court of Appeals, was our principal speaker on this occasion. And I noticed that the person who is a U.S. marshal for the Southern District of Mississippi is Nehemiah Flowers, whom I had recommended many years ago and has served in that job with distinction and reflected credit on African Americans of our State, but also as an individual in his own right who is the chief keeper of the peace and law enforcement official in the Federal District Court, I was proud to be there on the podium with him.

Leslie Southwick is totally well qualified and ought to be confirmed by the Senate. I have spoken on the Senate floor a couple of times at great length about it and put into the RECORD letters from people all over our State commending him and vouching for him, talking about his experiences as a judge and my familiarity with him as a person. He has a record that would be the envy of anyone who would aspire to be admired and respected as a judge or a lawyer or a citizen. I can't believe that he is being challenged as harshly as he is by some in this body, and I urge the Senate to confirm him as a United States Court of Appeals judge tomorrow.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, how much time remains?

The PRESIDING OFFICER. Four minutes.

Mr. BROWNBACK. Mr. President, I want to speak in favor of Judge Southwick and the nomination and would take up that 4 minutes.

A couple of quick points I want to make on this because the time is short, the hour is late, and I appreciate the Presiding Officer staying. I have met and I have gotten to know Judge Southwick. I have worked with him. I have seen him now through two Senates, the last Senate and this Senate. This is an honorable man. This is a good man. I think this is a smear campaign that people are trying to do on him, on a good man.

I think if he came up in different circumstances everybody would say: Why, absolutely he is the right person for it.

Part of the reason I say that is you look at the last Congress when he came up in front of the Senate Judiciary Committee. Judge Southwick came up in the last Congress, and he was unanimously approved by the Judiciary Committee, seen as a consensus nominee who should move forward. He has been through these parts before. Why is it he was unanimous last time around and now he is a controversial candidate? Why is it you are looking at 7,000 opinions and somehow now we found something in a couple of opinions but didn't find those last year when people were fly-specking it?

I think this is kind of a sign of the times and where we are and the President's time period and the President's approval ratings. He is in his last 2 years and people are looking and saying we don't want to get these many circuit court judges approved. But if you look at the record, this is not fair to this judge.

Look at the diversity issue. I just want to put a chart up on the diversity of the Fifth Circuit because that issue has been raised, the number of appointees to the Fifth Circuit. Under President Clinton and Bush: Women appointed under President Clinton, zero; President Bush appointed two; African Americans, one under Clinton, none under Bush; Hispanics, one under Clinton, one under Bush, and actually there was a third woman appointed under Bush. I don't think that stands the review and test of us being honorable and honest with what the situation is.

This is a judicial emergency situation. Senator LEAHY has previously stated if a vacancy is deemed to be a judicial emergency, it should be addressed quickly. This is a judicial emergency, as determined by the nonpartisan Administrative Office of the Courts. They have declared the seat to which Judge Southwick has been nominated a judicial emergency.

Senator LEAHY, for whom I have a great deal of respect and worked with on a number of additional issues other than this, has also said it is important whether the two home State Senators support the nominee. You have just heard from the two home State Senators who strongly support this nominee.

I think the criteria that have been previously set to fill a circuit court position have been met, in many cases even exceeded. Yet we have a controversy over a person who was seen, one Senate ago, one Congress ago, as a consensus candidate. This seems to be much more reflective of the time rather than the person, and I don't think that is meritorious of this body, to decide something on, OK, it is in this session of Congress rather than the prior session of Congress.

Here is an honorable, good man. If you have qualms with one of the nominees, fine. But let's make it a real set of qualms and let's not make it something that we invent this session, during this Congress, and try to take it out on somebody who is a good candidate.

Here is a person who served honorably in the military, even asked that his age be waived so he could join the Army Reserves at age 42. In 2002, at the age of 53, he volunteered to transfer to a line combat unit that was widely anticipated to deploy to Iraq.

This is an honorable man. I urge my colleagues to actually look past the way he is being painted and look to the reality of the facts and to the longevity of his service and what he seeks to do and to vote and to support this nominee.

I yield the floor.

LEGISLATIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL INTEREST ELECTRIC TRANSMISSION CORRIDOR

Mr. CASEY. Mr. President, I rise today to address not only a major public policy issue for the State of Pennsylvania but also a fundamental issue of fairness and the proper role of Government, which I think will have an impact on the country as a whole.

Recently, the U.S. Department of Energy designated 52 counties—52 out of Pennsylvania's 67 counties—as part of a power transmission corridor, more formally known as the National Interest Electric Transmission Corridor. This means the Government will be able to turn three-quarters of the State of Pennsylvania into a superhighway of transmission towers.

Their authority to designate this corridor was granted in the Energy bill passed in 2005 in the previous Congress. This designation would allow the Federal Government to override State authority and construct high-voltage power transmission lines wherever they please—virtually wherever the Federal Government pleases. They could place the lines on farmland, through neighborhoods, through someone's backyard, and, for example, through a beautiful vineyard such as the one I saw most recently in Greene County in the furthermost southwestern corner of Pennsylvania, so virtually anywhere in the Commonwealth and anywhere in the country.

Earlier this year, the Department had a public comment period where I and other public officials and most importantly my constituents spoke out loudly in opposition to the draft corridor plan. That draft plan is virtually identical to the final plan.

Let me give my colleagues a sense of what we are talking about here. This is a map which depicts the draft Mid-Atlantic and Southwest area national corridor. There are people in Washington who for years have been talking about creating opportunities for more power, and this is a national priority, they say. Yet we can see just by the dotted areas that there are a lot of States in the Northeast that will be impacted—obviously, New York and Pennsylvania, West Virginia, Maryland, and a few others, and then out West in the furthermost reaches of the Southwest of our country, principally in the State of California. So for all of the talk about a national priority, there is very little that impacts the middle of our country.

I sent letters, as Senator SPECTER did, to the Department of Energy, but so far, I am not happy to report the Department of Energy has ignored my