

US Senate confirms right-wing judge to federal appeals court

Naomi Spencer
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The US Senate on Wednesday confirmed Leslie Southwick to the Fifth Circuit Court of Appeals, overseeing Texas, Louisiana and Mississippi. Senate Democrats, clasp hands with the far right, enabled the lifetime appointment of the judge known for his bigoted decisions in exchange for Republican support on spending bills.

Southwick, 57, is well connected to the current administration and has ties to the military. He was appointed deputy assistant attorney general in the Justice Department during George H.W. Bush's second term, where he defended the government from suits filed against it. He was a member of the right wing Federalist Society from 1990 to 1998. From 1995 through 2006, Southwick served on the Mississippi Court of Appeals. In 2005, he also served in the National Guard in Iraq as a military judge.

Southwick was nominated by President Bush in January to fill the seat left vacant by Judge Charles Pickering, a Republican judicial henchman who was notorious for supporting the policy of racial segregation into the 1970s. After the Senate denied confirmation in 2002, Bush appointed Pickering to a temporary term that expired in 2004.

Civil rights and labor groups, including the NAACP, the AFL-CIO and the National Organization for Women, along with numerous environmental and human rights organizations, opposed Southwick's confirmation on similar grounds, pointing to a number of cases in which Southwick displayed a reactionary ideological bent.

Most cited has been a 1998 decision of the Mississippi Employee Appeals Board, upheld by the state's appeals court, to reinstate a white state employee who was fired for referring to a black co-worker as a "good ole nigger." Southwick concurred with the majority opinion that supported the Employee Appeals Board opinion that the slur "was in effect calling the individual a 'teacher's

pet'" and only "somewhat derogatory." The state Supreme Court later unanimously reversed this decision.

In 2001, Southwick joined in the majority opinion upholding a lower court decision to grant sole custody of an eight-year-old girl to her father in part because her single mother was a lesbian who had had two different partners during the child's lifetime. In Mississippi, homosexuality can be cited as one reason for stripping a parent of custody, even in cases where the child is reared by a single parent.

Southwick was the only judge hearing the case to sign onto a concurrence written by another member of the court that exhibited the breathtaking homophobia behind the ruling, and others that have shaped Mississippi custody laws: "I do recognize that any adult may choose any activity in which to engage," wrote Judge Mary Libby Payne. "However, I also am aware that such person is not thereby relieved of the consequences of his or her choice. It is a basic tenet that an individual's exercise of freedom will not also provide an escape of the consequences flowing from the free exercise of such a choice. As with the present situation, the mother may view her decision to participate in a homosexual relationship as an exertion of her perceived right to do so. However, her choice is of significant consequence, as described before in the discussion of our State's policies, in that her rights to custody of her child may be significantly impacted."

While these two cases demonstrate Southwick's marked intolerance to civil rights, his career has tacked consistently against ordinary working and poor plaintiffs.

The Mississippi Court of Appeals is an intermediate court consisting of 10 judges, primarily involved in state law cases, such as workers' compensation claims, contracts and torts cases. A review of Southwick's opinions by the Leadership Conference on Civil Rights coalition found that 89 percent of the time the judge ruled

against injured workers and consumer suits. In 160 out of 180 published decisions involving torts and employment law, in which at least one judge issued a dissenting opinion, Southwick voted in favor of business interests.

In fact, Southwick received the highest rating of any judge on the appeals court by a Mississippi business advocacy group. In a 1999 worker compensation suit brought against Du Pont corporation and an X-ray company, Southwick issued a dissenting opinion that an employee, who had no way of knowing until years later that her substantial medical problems were caused by toxic substances she was exposed to at work, should be barred from suing for compensation by the statute of limitations. Southwick argued that the plaintiff's symptoms, which began in 1983 but were not diagnosed until 1993, exceeded the three-year limit in which an injured employee could file a suit.

In another case, the Mississippi Appeals Court heard a suit brought by a family against Synergy Corporation. The family sued after their propane heater exploded, destroying their home and killing their granddaughter. Synergy maintained it had not performed any work on the heater to cause a leak, and the jury found for the company. Later an employee came forward with contradictory evidence, and the family filed an appeal. Dismissing the case, Southwick argued that the family did not exercise due diligence in uncovering evidence prior to trial, disregarding the fact that Synergy had withheld this evidence and did not disclose it under oath.

The Fifth Circuit has jurisdiction over a higher percentage of minority residents than any other circuit court in the country. As the ongoing Jena Six case has plainly demonstrated, the Deep South continues to suffer from racism in its criminal justice system.

This entrenchment has been fortified by federal nominations. In the circuit court's 138-year history, only two members of the court have been black. No Mississippi judges who have served on the court have been African-American, although blacks make up nearly 40 percent of the state's population.

Judge Southwick was confirmed in the Senate by a 59 to 38 vote. Democrats, now the clear majority, are cooperating with Republicans in a cynical agreement not to block Bush's judicial nominations except in "extraordinary" circumstances—a determination that has become decidedly more elastic. In the face of opposition from civil rights and labor groups aligned with them, the Democrats pushed through Southwick's nomination process at every step.

In August, California Democratic Senator Dianne Feinstein sided with Republicans to cast the deciding vote in a 10 to 9 Judiciary Committee vote to endorse the judge. This brought the nomination to the Senate floor for an up-or-down vote.

In the vote to consider confirmation on Wednesday, the Senate was divided 62 to 35, a margin wide enough to preclude the possibility of filibuster. Voting along with all 49 Republicans and Joseph Lieberman were nine Democrats: Feinstein; Ben Nelson of Nebraska; Daniel Akaka of Hawaii; Robert Byrd of West Virginia; Tim Johnson of South Dakota; both Arkansas Senators, Blanche Lincoln and Mark Pryor; and both North Dakota Senators, Kent Conrad and Byron Dorgan.

Leading Democrat Harry Reid of Nevada issued a perfunctory denunciation of Southwick. The *New York Times* quoted the Senator's pre-vote statements Wednesday. "It took the courageous action of judges on the Fifth Circuit to carry out the Supreme Court's desegregation decisions and destroy the vestiges of the Jim Crow era... Yet Judge Southwick's record gives us no reason to hope that he will continue this tradition of delivering justice to the aggrieved."

The *Times* noted that the Capitol Hill paper *Roll Call* said Reid "did not work hard to corral other Democrats to vote 'no.'" Mississippi Republican Senator Trent Lott, on the other hand, "had worked for weeks rounding up wavering Democrats" in return for Republican votes on Democratic spending measures, the paper noted. Epitomizing the unprincipled political maneuvering at work in the Senate, Lott told *Roll Call*, "Good-faith efforts on one side beget good-faith efforts on the other side."



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