



HUMAN  
RIGHTS  
CAMPAIGN<sup>™</sup>

May 23, 2007

Re: Leslie Southwick

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 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,<sup>1</sup> Judge Southwick (now in private practice) participated in a custody case involving a lesbian mother.<sup>2</sup> 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.

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1 (1995-2006)

2 *S.B. v. L.W.*, 793 So. 2d 656 (Miss. Ct. App. 2001)

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 202-572-8959, [david.stacy@hrc.org](mailto:david.stacy@hrc.org), or Legal Director Lara Schwartz at 202-216-1578, [lara.schwartz@hrc.org](mailto:lara.schwartz@hrc.org).

Sincerely,



Allison Herwitt  
Legislative Director

WORKING FOR LESBIAN, GAY, BISEXUAL AND TRANSGENDER EQUAL RIGHTS

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