

## Gay activists oppose appeals federal appeals court nominee

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By John Wright Staff Writer

Judiciary Committee approves Southwick, who critics say sided with majority on racist, homophobic reasonings rulings

LGBT and other civil rights groups are calling on the Senate to reject President Bush's latest nominee to the U.S. Court of Appeals for the 5th Circuit, which covers Texas, Louisiana and Mississippi.

The groups say nominee Leslie Southwick, a former Mississippi Court of Appeals judge, has sided with a majority of that panel in racist and homophobic rulings.

Southwick received a favorable recommendation, 10-9, on Aug. 2 from the Judiciary Committee, and a vote on his nomination by the full Senate could come at any time.

**Groups opposing Southwick's nomination include the National Gay and Lesbian Task Force, the Human Rights Campaign, People for the American Way, the Congressional Black Caucus and the Leadership Conference on Civil Rights.**

**"It would be unconscionable for Congress to confirm Leslie Southwick to a lifetime seat on the federal bench. The fact that this nomination has gotten this far is an outrage, given his highly troubling civil rights record," said Matt Foreman, executive director of NGLTF. "A nominee to the federal bench bears the burden of demonstrating a commitment to rigorously enforce the principles of equal protection and due process for all Americans. Southwick's judicial record makes clear that he cannot meet that burden. It also makes clear that the individual and equal protection rights of lesbian, gay, bisexual and transgender families would be in real jeopardy if he is confirmed."**

**Foreman and others base their criticism of Southwick primarily on two cases.**

In the first, *Richmond v. Mississippi Department of Human Services* (1999), Southwick joined the majority in upholding a decision to reinstate a white employee who had been fired for referring to a black co-worker as a "good ole nigger."

In the other, *S.B. v. L.W.* (1999), Southwick joined a decision to grant sole custody of an 8-year-old girl to her father in part because her mother was a lesbian. Southwick also was the only member of the court to sign a concurring opinion in *S.B. v. L.W.* written by Judge Payne.

The concurring opinion implied that being gay is a choice and cited Mississippi law prohibiting same-sex couples from adopting children, as well as the state's anti-sodomy statute, which later was invalidated by the Supreme Court's 2003 ruling in *Lawrence v. Texas*.

"I do recognize that any adult may choose any activity in which to engage; however, I also am aware that such person is not thereby relieved of the consequences of his or her choice," the concurring opinion states. "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."

If confirmed, Southwick would replace Judge Charles Pickering, who retired at the end of 2004.

Bush nominated Southwick to a position on the U.S. District Court for the Southern District of Mississippi in 2006. However, Southwick did not receive a vote by the full Senate before Congress adjourned, and his nomination was returned to the president.

Southwick did not run for re-election to the Mississippi Court of Appeals and left the panel after 12 years at the end of 2006.

Bush nominated Mississippi attorney Michael Wallace to the vacancy on the U.S. Court of Appeals for the Fifth Circuit last year, but Wallace's nomination stalled in Congress due to opposition from Democrats.

U.S. Courts of Appeal hear appeals from district courts within their circuit, as well as appeals of the decisions of federal administrative agencies. Decisions of the Courts of Appeal can be appealed only to the Supreme Court.