



March 31, 2008

Hon. Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Hon. Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Re: Catharina Haynes

Dear Senator Leahy and Senator Specter:

I am writing on behalf of People For the American Way and our nationwide membership regarding the nomination of Catharina Haynes to the United States Court of Appeals for the Fifth Circuit. For the reasons discussed below, the Committee should not proceed with this nomination.

Historically, the Fifth Circuit has played a critical role in social justice progress in America. Because the states within that court's jurisdiction (Mississippi, Louisiana, and Texas) have the highest percentage of minorities in the country, it is particularly critical that a nominee's record on civil rights issues and equality under the law be known and evaluated. Indeed, as more than 200 law professors wrote to the Judiciary Committee in 2001, the criteria for *any* judicial nominee must include a "record of commitment to the progress made on civil rights, women's rights and individual liberties."<sup>1</sup>

It is also important to note in considering a nominee to the Fifth Circuit that this court during the administration of President Bush has become one of the most ideologically unbalanced in the nation. Twelve of the 16 active judges on the court were nominated by Republican presidents, five of those by President Bush. The court is also lacking any

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<sup>1</sup> See Law Professors' Letter of July 13, 2001. A full copy of this letter, which elaborates further on these criteria, is available at <http://media.pfaw.org/PDF/LawProfessorsLetterOf071301.pdf>.

semblance of racial diversity, a concern on any court but a particular concern here, given the population that the Fifth Circuit serves.

Against this backdrop, President Bush has nominated someone who would not help diversify the court and someone who essentially has no record with respect to significant prerequisites for confirmation, particularly including a record of commitment to civil rights progress in this country. As the Committee is aware, Judge Haynes, now a partner in the law firm of Baker Botts in Dallas, Texas, was elected to the state trial court in Dallas County in 1998 and served on that court from 1999 until 2006, when she lost a re-election bid. Because the judges on that court do not write opinions, Judge Haynes has come before the Committee -- and the American public -- seeking a lifetime federal court judgeship with little written record from which her experience as a state court judge can be evaluated and her judicial philosophy scrutinized.<sup>2</sup> President Bush essentially has asked America to trust him and to confirm Judge Haynes to the second highest court in our country -- *for life* -- with no genuine substantive basis on which to do so.

Judge Haynes's testimony at her brief hearing did not serve to dispel the concerns raised by her thin record. No judicial nominee is presumptively entitled to confirmation, and Judge Haynes has not met the burden that each nominee must satisfy of demonstrating that she should be confirmed. In light of the specific facts and circumstances discussed above, we respectfully urge the Committee not to proceed further with Judge Haynes's nomination.

Sincerely,



Kathryn Kolbert  
President

cc: All Members, Senate Judiciary Committee

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<sup>2</sup> In response to post-hearing written questions, Judge Haynes provided the Committee with copies of "Findings of Fact and Conclusions of Law" that she had issued in a number of cases over which she presided while a state court judge. These typically involved unremarkable issues of state law (*e.g.*, contract disputes) and not the types of federal legal issues that would routinely come before a judge on the Fifth Circuit.