



May 14, 2014

Dear Senator:

On behalf of the hundreds of thousands of members of People For the American Way, we write to express our strong opposition to the confirmation of Michael Boggs to be a judge on the Northern District of Georgia.

Boggs served as a state legislator from 2001-2004. In 2004 he was elected to a Superior Court (trial court) judgeship, and in 2012 he was appointed by the governor to fill a vacancy on the Georgia Court of Appeals. His record raised major concerns about his qualifications, concerns that were not assuaged during his confirmation hearing.

Unfortunately, Boggs' record makes clear that senators should not confirm him to a lifetime position as a United States judge.

Role of Legislator vs. Role of Judge

As a threshold matter, Boggs has made clear that he has a fundamentally inaccurate and dangerous idea of the role of a judge in our nation's system of law. Federal judicial nominees regularly come before the Judiciary Committee and assure senators that their personal political or ideological beliefs won't affect their decisions as a judge. Boggs himself repeatedly assured members of the Judiciary Committee of the same thing. But in 2004, when he was running for judge, Boggs assured voters that his decisions as a state judge *would* conform to his positions as a legislator.

According to the July 8, 2004, *Waycross Journal-Herald*, then-Rep. Boggs told voters at a judicial candidates' forum, "I am proud of my record. You don't have to guess where I stand – I oppose same-sex marriages. I supported and authored the Child Protection Act to protect children from predators. I have a record that tells you exactly what I stand for."

This reflects a fundamental misunderstanding of the role of the courts and of judges, a misunderstanding that goes to the heart of whether someone is qualified to be confirmed to a lifetime federal judgeship.

Boggs' linkage of his judicial role to his legislative record makes that record directly relevant to whether he should be confirmed. As discussed below, that record is deeply disturbing, showing

a disregard for gays and lesbians, African Americans, church-state separation, and constitutionally protected reproductive rights.

LGBT Equality

As a state legislator in 2004, Boggs voted in favor of a state constitutional amendment to prohibit gays and lesbians from marrying. He presented it as needed to stop “activist judges” from second-guessing the legislature’s decision on who can get married. He voted to permanently lock lesbian and gay Georgians out of the right to marry.

And he did so with gusto, speaking from the House floor about how this was a rare opportunity to “stand up for things that are common-sensical, things that are premised on good conservative Christian values.” And, as noted above, when he ran for judge, he highlighted his strong opposition to marriage equality as a reason for people to vote for him.

Over the past decade, millions of Americans have evolved in their positions toward marriage equality. That includes President Obama, who nominated Boggs. We do not believe that long-ago opposition to marriage equality, by itself, is necessarily a bar to the federal bench.

But Boggs’ eagerness to permanently marginalize a vulnerable group in the state constitution speaks volumes about his ability to understand the basic concepts behind the Equal Protection Clause. His explanation that he was doing so in order to codify his own personal religious beliefs is also disturbing.

It is essential for a judge to be able to understand the impact of the law on other people, especially people with different backgrounds and life experiences from the judge. Boggs’ record on LGBT equality suggests he lacks that fundamental ability.

Confederate Imagery in the Georgia State Flag

Boggs’ record shows a similar blind spot for African Americans. In 1956, during the height of “massive resistance” to *Brown v. Board of Education*, Georgia had revised its flag to incorporate the Confederate Battle Flag. As a state legislator, Boggs voted against ultimately successful legislation to remove the offensive imagery. After the flag was changed, he voted for a bill that put another new flag, this one with Confederate imagery, up for popular vote.

The insensitivity to African Americans can hardly be overstated. He explained to the *Charlton County Herald* at the time, “It was a very difficult issue, but my constituents overwhelmingly supported keeping the flag as it was.” One might wonder if the more than 25% of his constituency that was African American took that position.

At Boggs' confirmation hearing, Sen. Durbin asked if the nominee believed that the Confederate imagery in the state flag had anything to do with race. Boggs replied that there was no legislative history for the 1956 decision, and that some say it wasn't motivated by racism and opposition to *Brown v. Board of Education*.

The Confederate Battle flag represents the enslavement of generations of African Americans, and a system of government premised upon the state's right to protect and promote slavery. It represents a region's willingness to go to war and leave the United States over the "right" to enslave their African American population. It represents the use of violence for 100 years after the Civil War to keep African Americans in a state of constant fear and subjugation. Its presence on the flag should not have been a "very difficult issue" for Boggs, regardless of what he claims his constituents wanted.

Reproductive Rights

In the Georgia House in 2001, Boggs voted for an amendment to pending legislation that would have added information about the number of abortions performed by a doctor to profiles maintained by the state and available to anyone asking. No other specific procedure would have had to be listed. This was at a time of rising concern about violence against doctors who provide abortions.

Boggs assured senators at his confirmation hearing that he now thinks this was an ill-conceived proposal that he regrets voting for, but that he hadn't known that there was a risk of violence inherent in the amendment. Sen. Blumenthal called it "incredible" that Boggs was unaware of the history of violence against abortion providers and the obvious threat the legislation posed to the lives of doctors.

Rep. Boggs also cosponsored legislation to make the state's parental-involvement law for minors seeking abortions more restrictive, as well as legislation to create "choose life" license plates to fund often-deceptive anti-choice "crisis pregnancy centers."

His record shows a commitment to anti-choice ideology. His stated willingness to let his personal beliefs shape his judicial decisions makes his confirmation a threat to constitutionally protected reproductive rights.

Government Promotion of Religion

As a state representative, Boggs cosponsored bills indicating his zeal to use government to promote religion, raising constitutional concerns about church-state separation. One bill would

have required all public schools and government buildings to prominently display the national motto “In God We Trust.” There is a vast difference between the appearance of the motto on coins and dollar bills, on the one hand, and in public schools, on the other. When these words are directed at captive audiences of young, impressionable school children by their schools, they send an impermissible message of government endorsement of religion.

He also cosponsored legislation to mandate the creation by the state of a lesson for display in public buildings on how religion has shaped American law, featuring public displays of the Ten Commandments, the Mayflower Compact, and the Declaration Independence. Under the bill, counties would be specifically authorized to post this particular display and the state would protect them in court from lawsuits over the constitutionality of the display. The nominee’s willingness to use the institutions of government as a tool to promote particular religious views is disturbing.

Boggs’ Judicial Record and Experience

Boggs claims his record as a state judge shows that he does not allow his decisions to be shaped by his personal ideology. However, the public record is devoid of cases where he had any opportunity to rule on the issues of concern. So his judicial record, in fact, does not show that he has departed from his stated commitment to use the courts to impose his personal political views.

At his committee hearing, Boggs said he would no longer consider a judicial opinion recognizing a constitutional right for gays to marry as “judicial activism,” as he had charged in 2004. He said that his decade of experience as a judge had taught him that judges decide cases based on the facts before them, and that his previous attacks on the judiciary were unfounded.

Yet nearly eight years into his decade of experience as a judge, his 2011 application to the Georgia Judicial Nominating Commission to be recommended to the state’s Court of Appeals stated:

The judiciary continues to endure criticism, fairly earned in some cases, of abrogating their constitutionally created authority by issuing decisions that venture into policy making. Partisan political campaigns are increasingly politicizing our judiciary in part, because of judicial decisions that have ignored and violated the basic tenets of the judiciary, that policy making is the sole province of a duly elected citizen legislature.

Since this seems to be coded language for results-based judicial decisionmaking along the lines he promised in 2004, Senator Coons asked Boggs to give some examples of cases he had in mind when he wrote this. The nominee was unable to do so. And Boggs’ statement to Sen. Coons that

“the concept of activist judge that I held as a legislator is no longer prevalent in my mindset” seems belied by his 2011 statement to the Georgia Judicial Nominating Commission.

Conclusion

Unfortunately, based on the record presented to the Senate, we do not believe Michael Boggs has demonstrated that he would be able to bring to his service as a lifetime judge on the federal courts the requisite impartiality necessary for such a position. People For the American Way opposes the nomination and urges the Senate not to confirm him.



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