



STATEMENT ON THE NOMINATION OF CHARLES W. PICKERING

The National Partnership for Women & Families opposes the nomination of Charles W. Pickering to the U.S. Court of Appeals for the Fifth Circuit. Judge Pickering has an extensive, troubling record of aggressive advocacy to restrict fundamental civil rights and protections, many of which have been critical to women's advancement. It is a record of immoderate and extreme views that raises serious doubts about his willingness to apply the law in a fair and even-handed manner. It is precisely because of this record that Judge Pickering was rejected once by the Senate Judiciary Committee, and we strongly urge the Committee to reject his nomination again.

A Record of Opposition

We believe that it is crucial to confirm judges committed to ensuring that our courts are free of bias and operate fairly for all individuals. Judge Pickering's documented hostility to reproductive rights, women's rights, and civil rights undermines these very principles.

Reproductive Rights. A close examination of Judge Pickering's record before he became a federal district judge reveals his aggressive advocacy to undo reproductive rights guaranteed by the U.S. Constitution. For example, as chair of the Human Rights and Responsibilities Subcommittee of the 1976 Republican Platform Committee, he supported the first-ever inclusion of a plank in the national party platform protesting the Supreme Court's decision in *Roe v. Wade*, and also calling for an amendment to the U.S. Constitution making abortion illegal.¹ Further, as a Senator in the Mississippi State Senate in 1978, Judge Pickering voted for a resolution calling for a constitutional convention to propose a state amendment banning abortion.² As a state Senator, Judge Pickering also voted against state funding for family planning programs.³ These advocacy efforts raise serious questions about whether he would apply the law faithfully, or seek to advance his singular agenda to curtail reproductive rights critical to women.

Workplace Discrimination. As a district court judge, Judge Pickering authored many opinions which were hostile and dismissive of allegations of gender as well as other types of employment discrimination claims. To our knowledge, in the vast number of employment discrimination opinions authored by Judge Pickering, he has rarely ruled in favor of plaintiffs in Title VII gender discrimination cases. For example, in *Thornton v. Wilder*, an unpublished opinion, the plaintiff accused her supervisor of sexual harassment and other forms of discrimination based on her gender. Although Judge Pickering's opinion notes that the Plaintiff presented several examples of being treated worse than a male co-worker, the case was dismissed. More generally, throughout his tenure on the court, Judge Pickering has given short shrift to plaintiffs in employment discrimination cases, making his nomination to a lifetime seat on the Fifth Circuit even more troubling.

¹ *Pickering Will Chair GOP Panel*, The Clarion Ledger, Aug. 10, 1976, at 1; Frederic N. Tulskey, *Pickering's Panel Avoids ERA Stand, Opposes Abortion*, The Clarion Ledger, Aug. 12, 1976, at 3.

² 1978 MS JCR 3, Senate Journal at 436 (Feb. 7, 1979). See also *Proposal on Abortion Approved*, The Clarion Ledger, and February 8, 1979.

³ 1972 MS SB 1560, Senate Journal at 631-632 (Mar. 31, 1972).

These concerns about his record handling employment discrimination claims were only exacerbated by his responses during his Judiciary Committee hearing last Congress. In response to questions about possible bias against plaintiffs, Judge Pickering remarkably opined that he ruled against plaintiffs in most employment discrimination cases because the Equal Employment Opportunity Commission (EEOC) resolves most meritorious claims. Thus, he apparently concluded that most of the cases that make it into court are neither strong nor worthy of much consideration. Judge Pickering's analysis, however, is an inaccurate statement of how the law works – and, more importantly, exhibits an attitude towards victims of job discrimination that disadvantages plaintiffs before their claims can even be heard. Because of serious resource constraints, the EEOC only litigates a small percentage – often less than 4% – of the charges filed with the Commission each year. Many meritorious employment discrimination claims end up in court simply because the EEOC has not had time to act on the complaint in a timely fashion. Plaintiffs in these cases rely on judges to fairly and thoroughly adjudicate their claims, but plaintiffs in Judge Pickering's court have had no such assurance. We believe that Judge Pickering's record, and words, speak volumes about his attitude towards employment discrimination cases – an attitude that disadvantages plaintiffs before they walk in the courtroom door and, if elevated to a higher court, would undermine the ability of plaintiffs to challenge successfully gender-based employment discrimination.

Race Discrimination. Judge Pickering has a long record – dating back to his days as a law student – that raise serious questions about his commitment to justice and protecting the rights of racial minorities. In 1959, Judge Pickering published a law review article recommending ways to fix a loophole in Mississippi's felony laws against interracial marriage.⁴ The legislature amended the state law as Judge Pickering had suggested, making Mississippi the state with the toughest criminal penalties. Later, as a State Senator, Judge Pickering called for a constitutional convention to ban race-based school desegregation in 1973.⁵ He also cast several votes to impede the full extension of electoral opportunities to African-Americans as part of Mississippi's massive resistance to implementing the Voting Rights Act. He voted twice in favor of reapportionment plans that helped keep the state Senate all white by diluting minority-voting strength through multi-member voting districts. In 1975, he co-sponsored a Mississippi Senate Resolution calling on Congress to repeal the Voting Rights Act or to apply it to all states regardless of their discrimination history.⁶

As a district court judge, Judge Pickering's opinions are often hostile towards plaintiffs seeking to invoke civil rights protection. In almost all of the civil rights cases Judge Pickering has presided over, he has dismissed claims or granted summary judgment to defendants alleging civil rights violations. For example, in *Seeley v. City of Hattiesburg* (No. 2:96-CV-327PG), and *Johnson v. South Mississippi Home Health* (No. 2:95-CV-367PG), both racial discrimination cases, Judge Pickering granted summary judgment to the defendants, noting that, "This case has all the hallmarks of a case that is filed simply because an adverse employment decision was made in regard to a protected minority." His dismissive tone is one that is repeated in his other opinions in civil rights cases.

⁴ Charles W. Pickering, *Recent Decision, Criminal Law – Miscegenation – Incest*, 30 Miss. L.J. 326 (1959).

⁵ 1973 MS HR 55 (Mar. 2, 1973).

⁶ 1975 MS SCR 549 (Jan. 21, 1975).

In one particularly troubling case, Judge Pickering imposed a lenient punishment on a defendant when sentencing one of two men convicted of burning an 8 foot cross on the lawn of an interracial family, characterizing the incident as a mere “drunken prank” Previously the defendant’s friend had fired two-shots into the home of this family. Judge Pickering asked the U.S. prosecutors to drop some of the charges filed against the defendant and took the extraordinary step of calling the U.S. Department of Justice to complain about what he considered to be an unreasonable punishment for the defendant if one of the charges was not dropped. Judge Pickering’s actions raise serious ethical questions and underscore our belief that he should not be elevated to the Fifth Circuit Court of Appeals.

Conclusion

Because the U.S. Court of Appeals handles thousands of cases per year on issues that affect women, minorities, and others in our Nation, it is crucial for the Senate Judiciary Committee to scrutinize and carefully consider each of President Bush’s nominees. We believe that Judge Pickering is not the right choice for an appellate court appointment. His record reflects a blatant disregard for the concerns of women and racial minorities, and furthermore, raise serious questions about his ability to decide in a fair and judicially balanced manner. We call upon the Senate Judiciary Committee to reject Charles W. Pickering’s nomination to the Fifth Circuit Court of Appeals.