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Co-Presidents

May 10, 2005

The Honorable Arlen Specter
Chair
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

RE: The Society of American Law Teachers' Opposition to the
Nomination of Judge **Terrence Boyle** to the United States
Court of Appeals for the Fourth Circuit

Dear Senators Specter and Leahy:

The Society of American Law Teachers (SALT) opposes – and urges all members of the committee to vote against -- the nomination of Judge Terrence Boyle to the United States Court of Appeals for the Fourth Circuit. SALT is the largest organization of law professors in the United States, representing more than 900 professors at more than 160 law schools. It is deeply committed to civil rights and the rule of law. Judge Boyle's twenty-year record on the district court evidences his disregard for both. It would be shameful to elevate him to the court of appeals.

Judge Boyle's hostility to civil rights, individual rights, and basic procedural fairness is patent. Judge Boyle has ignored or misconstrued controlling law time and time again in order to find against plaintiffs in race, sex, and disability discrimination cases. His opinions evince a clear antagonism to civil rights statutes and have been reversed frequently by the Fourth Circuit, one of the most conservative Circuit Courts in the country. His decisions are motivated, in part, by an extreme view of states' rights. In *Ellis v. North Carolina*,¹ a race discrimination case brought pursuant to Title VII of the Civil Rights Act of 1964, Judge Boyle dismissed the case, holding that state employers enjoy sovereign immunity from Title VII-based suits. The decision ignored twenty-five years of precedent that, despite recent revival of sovereign immunity doctrine, have not been questioned, in which the Supreme Court held that Title VII properly abrogated the states' sovereign immunity. A unanimous panel of the Fourth Circuit vacated Judge Boyle's opinion. Similarly, Judge Boyle dismissed on sovereign immunity grounds a case brought by a group of African-Americans objecting to the construction of a landfill in a predominantly African-American municipality. The Fourth Circuit reversed, finding that the case was a classic example of a suit for injunctive relief against state officials acting in their official capacities. Such suits are allowed pursuant to a century-old Supreme Court decision, *Ex parte Young*.² Judge Boyle is the extreme activist judge who is willing to ignore controlling law in favor of his own ideological views of the law.

¹ Opinion unavailable but referred to in appellate decision in the 4th Circuit, No. 02-1428, 2002 U.S. App. LEXIS 23717 (4th Cir., Oct. 28, 2002).

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In *United States v. North Carolina*,³ Judge Boyle attempted to undo more than 30 years of Title VII law. The United States sued North Carolina for discrimination against women applying for positions in the state's prison workforce. The case was based on the claim that North Carolina's hiring practices had a disparate impact on women. The parties reached a settlement in the case and filed the consent decree with Judge Boyle for approval. The remedies agreed to in the decree were fairly standard Title VII remedies. The heart of the prospective relief was an agreement that the state would recruit women for entry-level and supervisory positions, the goal of which was "to achieve the employment of women in correctional officer positions at correctional institutions housing male inmates in numbers approximating their interest in, and ability to qualify for, such positions."⁴ Judge Boyle refused to approve the consent decree and invited the state to withdraw its consent to the agreement.

Judge Boyle's decision hinged on the argument that Title VII actions based on disparate impact had to identify an intentionally discriminatory practice. This pronouncement was contrary to over two decades of Supreme Court precedent providing that disparate impact claims brought under Title VII do not require proof of intent to discriminate, and defied the explicit language of the Civil Rights Act of 1991, which codified disparate impact theory. Judge Boyle acknowledged this precedent but swept it aside by declaring that the Supreme Court had overruled the precedent *sub silentio*. He provided no citation of authority for this incredible statement. He was unanimously reversed by a three judge panel of the Fourth Circuit. Judge Boyle's total disregard for long-standing law was prompted by his own antipathy towards civil rights laws. He said that the concept of unintentional discrimination is logically impossible, and that disparate impact theory produces illegal hiring quotas.⁵

Judge Boyle's discussion of the sex discrimination allegations in the case dismissed these allegations as "merely a theoretical dispute about subjective notions of societal ideals."⁶ He accused the government of improperly using statistics to invade state sovereignty and suggested that the case was an illustration of discrimination laws imposing a uniformity of cultural outcome even if the state's culture discouraged women from working in prisons. Thus, he reduced sex discrimination to a matter of "state culture."

Judge Boyle has written equally egregious decisions undermining the rights of persons with disabilities under the Americans With Disabilities Act. He has repeatedly referred to the ADA as creating special rights, not equal rights, for persons with disabilities and has argued that it, therefore, is not authorized by the Fourteenth Amendment. He has made clear his position that Congress had no authority to pass the ADA and that it is an illegitimate exercise of Congressional power. Fueled by his extreme aversion to the ADA, Judge Boyle has misapplied the law in an

³914 F. Supp. 1257 (E.D.N.C. 1996).

⁴180 F.3d 574, 578 (4th Cir. 1999).

⁵*Id.*

⁶*Id.*

attempt to eviscerate it. In *Williams v. Channel Master Satellite Systems, Inc.*,⁷ the Fourth Circuit criticized Judge Boyle's narrow interpretation of the ADA's protections. The Court found that Judge Boyle applied the wrong legal framework for considering Williams' claims, for concluding that work does not constitute a major life activity, and for using an incorrect test for determining if Williams had a disability. Most importantly, the Court reversed Judge Boyle's construction of the employer's duty to reasonably accommodate persons with disabilities (to which he is inimical) as overly deferential to business. First, despite the statute's plain language, Judge Boyle stated that job reassignment is never a required reasonable accommodation. More broadly, he advanced a reasonable accommodation standard that essentially gave complete deference to the employer's purported business expertise and rejected a consideration of the employer's financial resources and other factors in determining if an accommodation be reasonable. Thus, Judge Boyle's approach to reasonable accommodation would find that an accommodation is unreasonable if the employer says it is.

In contrast to his negation of civil rights claims where the plaintiff is a person of color, a woman, or a person with a disability, Judge Boyle has been quick to find discrimination in two cases where the plaintiffs were white.⁸ The Supreme Court reversed both of these voting rights decisions in which white plaintiffs challenged the boundaries of voting districts as having been motivated by racial gerrymandering. One of those reversals was in a unanimous decision written by Justice Clarence Thomas.⁹

Judge Boyle has misused, misinterpreted, and plain ignored rules of procedure in his rush to dismiss cases to which he is unsympathetic. He has ruled against plaintiffs without providing them an opportunity to be heard on the law or facts. In *United States v. Wilson*,¹⁰ Judge Boyle converted a motion to dismiss into a motion for summary judgment. He then granted summary judgment without informing the plaintiff or giving him an opportunity to respond. Judge Boyle's ruling was a violation of the plain text of the Federal Rules of Civil Procedure, which provide that, when a motion to dismiss is converted into a motion for summary judgment, "all parties shall be given reasonable opportunity to present all material made pertinent to such motion."¹¹ A panel of the Fourth Circuit reversed him.¹² Astonishingly, Judge Boyle proceeded to repeat the same

⁷101 F.3d 346 (4th Cir. 1996).

⁸*Cromartie v. Hunt*, 34 F. Supp. 2d 1029 (E.D.N.C. 1988); *Cannon v. North Carolina State Board of Education*, 917 F. Supp. 387 (E.D.N.C. 1996).

⁹*Cromartie v. Hunt*, 526 U.S. 541 (1999); *Cromartie v. Hunt*, 532 U.S. 234 (2001). In each case, Judge Boyle wrote the majority opinion for two of three judges on a three-judge district court panel.

¹⁰Opinion unavailable but referred to in appellate decision in the 4th Circuit, No. 98-6978, 1999 U.S. App. LEXIS 5126 (4th Cir. March 22, 1999).

¹¹Fed. R. Civ. P. 12(b).

¹²*United States v. Wilson*, No. 98-6978, 1999 U.S. App. LEXIS 5126 (4th Cir. March 22, 1999).

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conduct in three subsequent cases, all of which were reversed by the Fourth Circuit.¹³ Even where Judge Boyle has allowed proper briefing of summary judgment cases, he has been criticized by the Fourth Circuit several times for prematurely throwing out civil rights cases despite the persistence of material facts in dispute.¹⁴ Judge Boyle has been reversed for other procedural errors that denied individuals their day in court. Judge Boyle's cavalier attitude toward the most fundamental elements of judicial proceedings disqualifies him from confirmation to the appellate bench.

The Fourth Circuit has reversed Judge Boyle more than 100 times for, among other things, disregarding his statutory duty to review the decisions of magistrate judges and dismissing cases without first allowing plaintiffs an opportunity to present evidence. Judge Boyle has displayed a hostility toward civil rights cases, and a willingness to ignore substantive precedent to achieve his ideological goals. The Society of American Law Teachers strongly urges the Committee on the Judiciary to honor the rule of law by rejecting the nomination of Terrence Boyle to the United States Court of Appeals for the Fourth Circuit.

Yours very truly,

Professor Jose Robert (Beto) Juarez, Jr.
Professor Holly Maguigan
Co-Presidents

¹³*Abdussamadi v. Vandiford*, No. 99-6225, 1999 U.S. App. LEXIS 18663 (4th Cir. Aug. 11, 1999); *Lomas v. Red Storm Entertainment, Inc.*, No. 01-2139, 2002 U.S. App. LEXIS 25348 (4th Cir. Oct. 28, 2002); *United States v. Swann*, No. 01-1331, 2001 U.S. App. LEXIS 22704 (4th Cir. Oct. 22, 2001).

¹⁴*Fuller v. White*, No. 94-6425, 1994 U.S. App. LEXIS 33524 (4th Cir. Nov. 29, 1994), 1995 U.S. App. LEXIS 1440 (4th Cir. Jan. 25, 1995); *Moore v. Morton*, No. 91-2603, 1992 U.S. App. LEXIS 4540 (4th Cir. Mar. 13, 1992); *Godon v. North Carolina Crime Control & Pub. Safety*, No. 9902509, 2000 U.S. App. LEXIS 30148 (4th Cir. Nov. 30, 2000).