

May 11, 2010

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Jeff Sessions
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

The undersigned organizations write to express our strong opposition to the nomination of John “Jack” McConnell to the United States District Court for the District of Rhode Island. Mr. McConnell’s past statements, conduct as a personal injury plaintiffs’ lawyer, and lackluster ABA rating give us serious reservations about his fitness to serve a lifetime appointment to the federal bench. We do not raise these issues lightly, as our organizations have historically stayed away from debates surrounding federal district court nominees. But given Mr. McConnell’s record, we believe that a response is warranted under the circumstances.

Our opposition begins with Mr. McConnell’s mediocre rating from the American Bar Association of “substantial majority qualified, minority unqualified.” For a practicing lawyer with 25 years of experience to obtain such a low rating speaks poorly of his legal abilities, and likely means that he generated negative comments from judges before whom he appeared and/or from lawyers who know him.

Mr. McConnell’s ABA rating should come as no surprise given his past statements that raise serious question about whether he will follow precedent and the rule of law. For example, in 1999, Mr. McConnell was hired on a contingency fee basis by the State of Rhode Island to sue paint companies under theories of liability that exceeded the bounds of well-settled law. After nine years of protracted litigation, and after millions of dollars spent by defendants, the Rhode Island Supreme Court unanimously (4-0) rejected Mr. McConnell’s misguided interpretation of public nuisance law. Rather than respect the court’s ruling, Mr. McConnell publicly attacked the Supreme Court’s decision in an op-ed that he penned for *The Providence Journal*, where he said that the justices “got [the decision] terribly wrong” by letting “wrongdoers off the hook.”

Mr. McConnell’s public criticism of the Rhode Island Supreme Court’s lead paint ruling should also give the Committee pause because it casts light on a judicial philosophy that appears more outcome-driven than based on interpreting and applying the law. Indeed, when viewed against his philosophical views of “an active government” that should not “stand on the sidelines,” a picture begins to emerge of a judicial nominee who will legislate from the bench.

We are equally concerned that Mr. McConnell lacks the capacity to be an impartial jurist, especially against business defendants who may appear before him. Mr. McConnell has defined his career by suing business defendants. As his own Committee questionnaire indicates, of the top ten cases he views as the “most significant” litigations of his legal career, all but two involve actions against businesses, and *none involved him representing or defending a business*. Worse

still, when asked by the *Columbus Post Dispatch* in 2006 about the possibility of future lead paint litigation, he said that, based on history, he had “absolutely no confidence” that defendant paint companies would do the right thing. He added “ [t]he only time is when they’re sued and forced to by a jury.” How could a business hope to win in Mr. McConnell’s courtroom when these statements show that the deck is already stacked so heavily against them?

To be sure, Mr. McConnell’s ability to render fair and impartial rulings from the bench should be seriously questioned in light of potential significant financial windfalls that he stands to recover for the next 15 years. According to the McConnell questionnaire, he is scheduled to receive millions of dollars annually through 2024 from an organization closely tied with his current employer, the Motley Rice plaintiffs’ lawyer firm. This has all the appearance of a conflict of interest and it is truly difficult to see how Mr. McConnell could render impartial judgments in matters involving plaintiffs’ law firms while simultaneously receiving millions of dollars in compensation from another plaintiffs’ firm.

We ultimately fear that Mr. McConnell’s apparent bias against business defendants, underlying judicial philosophy, and questionable respect for the rule of law, will lead to the multiplication of baseless lawsuits in his courtroom with untold consequences to businesses large and small across the country. Given the handful of judges who currently serve on the District of Rhode Island court, it is not hard to imagine a generation of enterprising personal injury lawyers flocking to a new “magnet jurisdiction” at the federal level with a chance to draw a plaintiff-lawyer friendly judge. State courts like those in Madison County, Illinois have amply demonstrated the problems that can arise from courts that accept plaintiffs’ claims no matter what the merits. Finally, as most litigators well know, federal district courts retain wide swaths of effectively unreviewable authority. As such, we urge the Committee to resist the confirmation of a lawyer with an animus against one type of defendant.

Like other litigants before our courts, the business community seeks the evenhanded application of law to the circumstances of their cases. After reviewing the record to date, the undersigned strongly believe that Mr. McConnell has not demonstrated that he would provide the kind of fair notice and predictable rules that businesses need to order their affairs. For this and the other foregoing reasons, we urge you to oppose this nomination.

Sincerely,

US Chamber Institute for Legal Reform
US Chamber of Commerce
American Insurance Association
American Tort Reform Association
National Association of Mutual Insurance Companies
Property and Casualty Insurers Association of America

Cc: The Members of the Senate Committee on the Judiciary