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Apr-04-02 05:04P

From: Kathy Miller To: Jesse Holland

Date: 4/4/2002 Time: 1:50:38 PM

Page 2 of 3

P.02

get



Pennsylvania NOW, Inc.

National Organization for Women

P.O. Box 32341, Philadelphia, PA 19146-9998 Phone: 215 726-9726 Fax 215-727-5052

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April 4, 2002

The Honorable Arlen Specter
Hart Senate Office Building # 711
United States Senate
Washington, DC 20510

To: Anne Womack
From: Monica Gollings
616-2777

Dear Senator Specter:

On behalf of the National Organization for Women's 27,000 Pennsylvania supporting members and more than 500,000 members nationwide, I am writing to request a meeting with you to discuss the nomination of Judge D. Brooks Smith to the Third Circuit Court of Appeals. In our opinion, Judge Smith's violation of the judicial code of conduct in remaining a member of a club that discriminates against women for eleven years, coupled with his open hostility to the federal Violence Against Women Act (VAWA), renders him unfit to serve as a federal appellate judge. We strongly urge you to reconsider your support for Judge Smith's nomination.

A significant barrier to the advancement of women in business and professional life is the discriminatory practices of private clubs where business deals are often made and personal contacts valuable for business purposes, employment and professional advancement are formed. That is why the National Organization for Women (NOW) has worked tirelessly for over 30 years to open up the memberships of such organizations.

It is particularly important that federal judges adhere to ethical bans on membership in clubs that discriminate. Federal judges are entrusted to decide some of the most sensitive and difficult questions of human and civil rights. Victims of discrimination need to know that judges hearing their case are intolerant of discrimination in all its forms. More broadly, the arbitrariness and irrationality of gender distinctions in a judge's organization invites questions about the judge's commitment to equality and fairness.

That is why Canon 2(C) of the Code of Conduct for United States Judges, the binding ethical rules applicable to federal judges, specifically prohibits federal judges from being members of clubs that invidiously discriminate on the basis of race, sex, religion or national origin. While the Code permits a judge to remain a member of such an organization while making "immediate and continuous" efforts to change the organization's discriminatory practices, this process cannot take more than two years. After two years, if an organization still has not changed its policies, a judge must "resign immediately."

Judge Smith recognized at the time he was appointed as a federal district judge in 1988 that he was a member of a club -- the Spruce Creek Rod and Gun Club -- that invidiously discriminates against women members. He recognized in 1988 that "adherence to [ethical canons] would require my resignation from the club" and promised the U.S. Senate that he would "take affirmative steps" to open the club to women and resign if those efforts failed. Asked how long these affirmative steps might take, Judge Smith specifically noted that he might have to wait until the

Apr-04-02 05:04P

P.03

From: Kathy Miller To: Jesse Holland

Date: 4/4/2002 Time: 1:50:36 PM

Page 3 of 3

club's board meeting in April 1989 to petition to change the club's bylaws. He committed to the Senate that he would resign from the club after this board meeting if it continued to discriminate.

Despite the specific two-year time limit in the Code of Conduct, and his promise to the Senate Judiciary Committee that he would act quickly, Judge Smith remained a member of this organization as a district court judge for more than eleven years, until late 1999, in plain violation of the Code. Judge Smith was never successful in changing the gun club's discriminatory policy.

Judge Smith's unethical and inexplicable decision to remain a member of a club that discriminates against women is particularly troubling in light of a speech Judge Smith gave to the Pittsburgh Chapter of the Federalist Society in 1993, condemning the federal Violence Against Women Act (VAWA). As you know, before passing VAWA, Congress assembled one of the most extensive legislative records ever established, including reports from more than twenty states' judiciaries documenting overwhelmingly the widespread discriminatory practices against women by state and local police, prosecutors, judges and jurors.

In light of this evidence, Judge Smith's assertions that "state courts *** have a demonstrated record of competence in this area," that "domestic violence cannot ever be said to fall into a 'class' of activities that have substantial national consequences ***" and that VAWA would be unconstitutional "notwithstanding whatever 'findings' Congress can muster regarding the alleged effect of domestic violence on interstate commerce" read like a slap in the face. I would think they would also deeply trouble you, Senator Specter, because you strongly supported VAWA. I note that Senator Hatch, a co-author of VAWA, pointedly informed Judge Smith at his confirmation hearing last month that he "couldn't disagree more" with Judge Smith's characterization of VAWA and concluded that Judge Smith misconstrued "the nature and scope of the Act."

I hope that upon a full consideration of Judge Smith's record, you will reconsider your decision to support Judge Smith's nomination to the Third Circuit. I look forward to speaking with you about this topic.

Sincerely yours,

Kathy Miller
President
Pennsylvania NOW

Enclosures



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From: Monica Goodling
616-2777

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