

Testimony of

The Honorable Orrin Hatch

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Statement of Senator Orrin G. Hatch, Chairman

Before the Committee on the Judiciary

United States Senate

on

The Nomination of Leon Holmes to be

United States District Judge for the Eastern District of Arkansas

This morning the Committee is considering the nomination of Leon Holmes for the Eastern District of Arkansas. I want to say at the outset that I am well aware that there sincerely held concerns here in the Committee about Mr. Holmes's nomination, which my colleagues expressed at our last markup. There are concerns about some of his public stands as a citizen, including some editorials and articles he has written. As I said at the markup, I have to admit that I am also concerned about some of those comments. They trouble me as well.

At the same time I am struck by the type of support Mr. Holmes has received from the people of Arkansas. Significantly he has the full support of his Democratic home State Senators, Senators Lincoln and Pryor. After the last markup, Mr. Holmes wrote a detailed letter of explanation to Senator Lincoln. Let me read some passages of that letter:

"In the 1980s I wrote letters to the editor and newspaper columns regarding the abortion issue using strident and harsh rhetoric. I am a good bit older now and, I hope, more mature than I was at that time."

"As the years passed," he writes, "I came to realize that one cannot convey a message...using that kind of rhetoric in public discussion. While I cannot speak for those who raise these issues, my impression is that my statements about the abortion issue that they criticize are all more than

fifteen years old." He goes on in the next paragraph: "As I stated in response to written questions from Senator Durbin, I am especially troubled by the sentence about rape victims in a 1980 letter to the editor regarding the proposed Human Life Amendment; and, as I said there, regardless of the merits of the issue, the articulation of that sentence reflects an insensitivity for which there is no excuse and for which I apologize. I do not propose to defend that sentence, and I would not expect you or anyone else to do so."

In the letter Mr. Holmes mentions what he sees as the growth process he has undergone during the last two decades and closes in this manner: "I certainly was not ready [to assume the responsibilities of a federal judge] in 1980, nor for many years thereafter, and I do not claim that I was. My impression is that my colleagues in the Arkansas bar--those who know me well and who represent clients in federal court--believe that my legal career as a whole manifests a readiness to assume the responsibilities of a district court judge, and I hope that you believe so as well."

After receiving this letter Senator Lincoln issued a statement reaffirming her support for Mr. Holmes's nomination. She said, "Together with a substantial number of recommendations from respected Arkansas citizens, mostly in the legal community, Mr. Holmes's answers convince me that he can set his personal views and religious beliefs aside both as a lawyer and a judge, if he is confirmed."

She goes on to say: "In deciding to maintain my support for Leon Holmes as a Federal District Judge in Arkansas, I cannot ignore the many letters of support generated by members of the legal community in Arkansas, many of whom also share different views than Mr. Holmes. These letters describe him as 'fair,' 'compassionate,' 'even-handed,' and 'disciplined'. His colleagues hold him in high esteem. Mr. Holmes demonstrates in his letter to me that even on emotional issues like a woman's right to choose, he can respect the opposite view." I would urge all of my colleagues to read Senator Lincoln's statement, if they have not already done so.

Senator Pryor, who met with Mr. Holmes following the hearing, has also reiterated his support.

The outpouring of support from the Arkansas legal community, those who know Mr. Holmes best, has been remarkable. Some of the most ardent letters of support for his nomination have been from very prominent pro-choice citizens and lawyers. Stephen Engstrom, for example, writes: "Leon Holmes and I differ on political and personal issues such as pro-choice/anti-abortion. I am a past board member of our local Planned Parenthood chapter and have been a trial lawyer in Arkansas for over twenty-five years. Regardless of our personal differences on

some issue, I am confident that Leon Holmes will do his duty as the law and facts of any given case require."

Kent Rubens, another Arkansas attorney writes: "I cannot think of anyone who is better qualified legally or ethically to so serve....I am sure that there will be those who seek to block his confirmation because of her personal views. That would be a mistake. I was privileged to represent [the Arkansas] litigant who struck down the abortion statutes here in Arkansas after Roe and Doe were decided....There is no one who will argue that my views are anything other than pro choice."

Mr. Rubens continues: "I am as confident as Brett Maverick holding five aces that the only people who will be disappointed by his confirmation will be those folks who believe that Leon Holmes could raise his right hand, take an oath to support the Constitution of the United States, and then set his views over the Constitution and the decisions of the Supreme Court construing it. Leon Holmes will not set himself up as superior to the Constitution, and I have every belief that his confirmation will not embarrass any member of your committee. As someone who has represented the pro choice view and holds the pro choice view, I ask that you urge [Committee Members] to support his confirmation."

Robin Carroll, Legal Counsel to the Arkansas Democratic Party, writes: "I have tried several cases with Mr. Holmes. Without hesitation I can tell you Mr. Holmes is a brilliant and ethical lawyer. There is no doubt in my mind that Mr. Holmes would be a fair and impartial judge and do honor to the bench." Ms. Carroll says: "It would be a shame to place Mr. Holmes in a box for some of his prior causes and a further shame if his nomination is not approved. As someone who may very well practice in his court, I have no reservations about Mr. Holmes's ability to be fair and impartial on any issue."

The Committee received another letter, dated April 17, from Oneal Sutter, who writes, "I graduated from law school in 1995 and hung out my shingle as a sole practitioner. Since that time, I have built a civil rights law firm. My firm has filed more civil rights lawsuits in the Eastern District of Arkansas than any other lawyer within the last eight years. My area of emphasis is civil rights and discrimination in employment. . . . I assure you that, in my eight years of practice, I have learned to identify ideologues who are also lawyers. Such lawyers routinely put their personal and philosophical interests ahead of what I consider to be in their clients' best interests. Mr. Holmes never did this. . . . I recommend Leon Holmes to the federal bench, with a full understanding of his politics. Personally, I do not agree with some of his political views. Yet, my personal criteria for a good judge do not include a requirement that the person agree with me on every issue. I only hope that the judge remembers what practicing law is like from day to day, while at the same time, avoiding injecting her personal and philosophical

beliefs into litigation. I am confident that Mr. Holmes will exceed my expectations in these two areas. I therefore heartily recommend him to the federal bench."

I will submit copies of all of these letters of support, and the others we have received, for the record. I wanted to take a few minutes to read portions of them because the support for Leon Holmes's nomination in Arkansas is simply overwhelming. Even the Governor of Arkansas, Mike Huckabee, supports Mr. Holmes's nomination. He writes, "On the day that I was to be sworn in as Governor, we had a constitutional crisis because the outgoing governor, who had previously announced his resignation, at the last minute decided that he would not resign. I immediately asked my staff to call the best and most respected Constitutional lawyer in the state. Everyone agreed that person was Leon Holmes. Mr. Holmes left his office immediately, came to the capitol, and assisted in counseling us through the constitutional crisis. I have called on him several other times when the state was faced with monumental legal questions. His opinion is the gold standard among attorneys. I have personally known Leon Holmes for almost 20 years. I know that he will be an outstanding judge. He will bring honor to the judiciary, to the State of Arkansas, and to all who supported his nomination and confirmation."

I also believe it's noteworthy that Susan Holmes, the nominee's wife, has written to the Committee. The article she co-wrote with her husband, entitled Gender Neutral Language, was the focus of much criticism at the last markup. Susan Holmes writes: "Some have suggested that in this article we advocated that women should be subservient to their husbands. Nothing could be further from the truth. I felt compelled to write because these allegations, by inference, also call my character into question."

Mrs. Holmes continues, "I assure you I have never considered myself subservient to anyone. . . . The article is a product of my Bible study over the many years of my marriage. It should be noted that immediately preceding the verses in Ephesians 5 where wives are instructed to be submissive to their husbands, all Christians, male and female, are told to 'be submissive to one another.' The article was published in a Catholic newspaper where the readership should be familiar with this passage. The article was not intended as a how-to manual for wives but to point out the symbolic use of the language used in Scripture and prompt a discussion on the effects on theology of trying to gender-neutralize the language used in church. The article also explicitly points out that everyone, male and female, comes to God in an equal relationship. It has no application to anyone who is not attempting to follow the Catholic/Christian faith."

I will put the full text of Mrs. Holmes's article in the record. I must say that since our last markup, the reaction from the Catholic community has been strong. The President of the Catholic League, William Donohue, issued a statement observing, "Holmes's critics are doing what the Constitution expressly prohibits - they are applying a religious test to his nomination."

That they are doing it in a back-door manner makes it all the more contemptible." An editorial that appeared on April 9 in the Arkansas Catholic stated, "We hope that the senators on the committee and the full Senate will look at Leon Holmes's skills as an attorney and not what he has written in relationship to his strong Catholic faith."

Now, I do not want to suggest that any of my colleagues here on the Committee called into question Mr. Holmes's religious faith. I do not for one second believe that there is a religious bias at work here. What I suspect is that my colleagues did not have all the facts about Mr. Holmes's writings relating to his religious beliefs, which is why I took the time to share what has been written about his article since the last markup.

Given the concerns that Mr. Holmes's nomination has generated, I have decided that the most prudent way to proceed on his nomination is to move directly to a vote without recommendation.

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