

Feinstein draws fire over vote for judge

by Bob Egelko

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Sen. Dianne Feinstein's tiebreaking vote for a controversial judicial nominee of President Bush has dismayed civil and gay rights advocates and prompted one California Democratic congresswoman to threaten to oppose any plans Feinstein has to seek re-election.

"This was a test of whether Democrats were up to the task of applying scrutiny to Bush's judicial nominees," Nan Aron, president of Alliance for Justice, an association of civil rights, consumer advocates and other liberal groups, said Friday in criticizing Feinstein's vote on Leslie Southwick's nomination to a federal appeals court.

Gays and lesbians in California "are not going to be silent about this," added Becky Dansky of the National Gay and Lesbian Task Force, who said Feinstein had usually been a reliable ally. Feinstein said she respected her critics but disagreed with them about Southwick.

The California Democrat crossed party lines Thursday and enabled Republicans on the Senate Judiciary Committee to prevail in a 10-9 vote that moved Southwick's nomination to the Senate floor. The former Mississippi Court of Appeals judge is seeking a seat on the Fifth U.S. Circuit Court of Appeals in New Orleans and has become the latest flash point in a congressional battle over Bush's conservative judicial selections.

Southwick's opponents say his voting record in 11 years on the state court was overwhelmingly in favor of businesses and against workers and consumers, but they have largely focused on his votes as part of court majorities in two cases.

In one, the court voted to reinstate a white state employee who had been fired for calling a black co-worker a "good ol' n-." In the other case, the court upheld a decision to remove an 8-year-old child from her bisexual mother, in a ruling that referred to the woman's "homosexual lifestyle." Southwick also signed another judge's separate opinion that described homosexuality as a choice that carries consequences.

In a statement at Thursday's hearing, Feinstein read a letter from Southwick in which the nominee, while not disavowing his votes, said his court should have condemned the employee's racial slur more strongly. She also noted that Southwick had received the American Bar Association's highest evaluation for his candidacy and had taken leave from his court in 2004 to serve with the Judge Advocate General's Corps in Iraq.

"Judge Southwick is a qualified, circumspect person," Feinstein said. "I don't believe he's a racist. ... I believe he made a mistake" in a handful of opinions.

Her vote was condemned by some of her usual allies, including many members of the Congressional Black Caucus, who held a news conference Thursday evening. Rep. Maxine Waters, D-Los Angeles, warned of possible political consequences for Feinstein, who was elected to a third six-year term last year. She has not said whether she will seek another term in 2012, when she will be 79.

If Feinstein "continues to relate to this caucus in the way she's been doing ... we will have no alternative but to not only share this information, but to fight against her coming back to the United States Senate," Waters said.

Rep. Barbara Lee, D-Oakland, also at the news conference, said she was "doubly disappointed that a senator from my home state, Sen. Feinstein, would vote with the Republicans to bring the Southwick nomination to the Senate floor."

The nomination is likely to pick up enough Democratic support to win Senate confirmation in the fall, despite a plea for a filibuster from the Leadership Conference on Civil Rights. The organization's vice president and policy director, Nancy Zirkin, said Friday she was "stunned and amazed" by Feinstein's vote.

In response to her critics, Feinstein issued a statement Friday saying, "I understand the concerns that have been raised, and I respect the people who have raised them. Let me assure you, if I thought Judge Southwick was a racist or a bigot, I would not have voted to send his nomination to the full Senate."

Southwick, nominated to a court that rules on cases from Louisiana, Mississippi and Texas, has been the most disputed judicial candidate since Democrats took control of Congress in January. Civil rights groups, noting that the court has never had an African American judge, successfully opposed Bush's two previous candidates for the vacancy, Charles Pickering and Michael Wallace, and have led the opposition to Southwick.

Bush issued a statement calling the committee approval "a refreshing victory for the American judicial system."