



Nomination of Steve A. Matthews to the United States Court of Appeals for the Fourth Circuit

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Introduction

Steve Matthews currently serves as the managing director for the private South Carolina-based law firm, Haynesworth Sinkler Boyd.¹ Even a cursory look at his résumé demonstrates that he has accomplished much in his legal career and is well-qualified to fill the position for which he has been nominated. Despite his vast qualifications, however, there are various aspects of both his legal career and the appointment process itself that may diminish his appeal as a judicial nominee in the eyes of less conservative members of the Senate.

Education and Legal Career

Matthews earned a bachelor of arts in history in 1977 from the University of South Carolina where he graduated *magna cum laude*.² He subsequently attended Yale Law School, earning his juris doctor in 1980.³ Immediately following law school, Matthews practiced corporate law for five years at Dewey Ballantine, a private Washington, D.C., law firm.⁴ Matthews then worked for the United States Department of Justice under the Reagan Administration, advising both President Reagan and then-Attorney General Edwin Meese on the selection of judicial appointees as well as serving as special counsel to Attorney General Meese

¹ Haynesworth Sinkler Boyd, P.A., Steve A. Matthews, http://www.hsblawfirm.com/listdetail.asp?dl_key=1E0D431ABBFC488E9EB752D38EAB6E7F&sc_id= (last visited Jan. 22, 2008).

² The White House, Judicial Nominations – Steve A. Matthews, http://www.whitehouse.gov/infocus/judicialnominees/matthews_steve.html (last visited Jan. 22, 2008).

³ *Id.*

⁴ *Id.*

during the Iran-Contra investigation.⁵ During his tenure at the Justice Department, Matthews served in the following capacities: Deputy Assistant Attorney General, Civil Division (1985), Special Counsel to Assistant Attorney General, Civil Rights Division (1985-1986), Deputy Assistant Attorney General, Office of Legal Policy (1986-1987), and Executive Assistant to the Attorney General (1988)—a role for which he received the Department of Justice Special Achievement Award.⁶

Upon his departure from the Justice Department, Matthews joined Haynesworth Sinkler Boyd, the Columbia, South Carolina-based law firm characterized by its generally conservative outlook and pro-business reputation.⁷ Matthews currently practices law in the “area of information technology where he represents both developers and licensee-purchasers of software and hardware. In that field, he provides a range of services to start-ups and to major corporations – from licensing issues and contract negotiation, to litigation regarding product performance and intellectual property infringement.”⁸ Since joining Haynesworth Sinkler Boyd, however, he has engaged in a number of different areas of law practice including municipal finance law, telecommunications, and intellectual property.⁹

Conservative Connections

The first potential hindrance to Matthews’ confirmation revolves around his role as a former officer and board member for Landmark Legal Foundation (LLF), a conservative public interest legal group. LLF president Mark R. Levin has articulated that the organization’s mission is to challenge “what may be the most insidious legacy of modern liberalism – judicial activism and the radical judges who use it to advance an extremist social agenda. America’s courts have become the final bulwark for the advocates of big government who have been defeated time after time at the ballot box at the local, state and federal level.”¹⁰ While this mission resonates well with conservative thinkers, it has quite the opposite effect on liberals; LLF regularly receives

⁵ Haynesworth Sinkler Boyd, P.A., *supra* note 1.

⁶ The White House, *supra* note 2.

⁷ Haynesworth Sinkler Boyd, P.A., *supra* note 1; Haynesworth Sinkler Boyd, P.A., Firm Profile, http://www.hsblawfirm.com/95D830C3F872493FB788ACD2DD770E9F.asp?ie_key=2F2A1529FD4C475DB83553FD072390A5&sc_id=&parent=0&id_grandparent=-1?sc_id= (last visited Jan. 22, 2008).

⁸ Haynesworth Sinkler Boyd, P.A., *supra* note 1.

⁹ The White House, *supra* note 2.

¹⁰ Mark R. Levin, Letter from President, <http://www.landmarklegal.org/DesktopFrame.aspx?frame=MESSAGE&artnumber=-1&modid=630> (last visited Jan. 22, 2008).

heavy criticism from liberal commentators and organizations. For instance, in discussing Matthews' nomination to the Fourth Circuit and his involvement with LLF, liberal publication *Slate* recently made the following remarks:

The Landmark Legal Foundation? Wait: Isn't that the outfit run by Mark R. Levin, the man who brought us *Men in Black: How the Supreme Court Is Destroying America*? The constitutional theory proffered in that book was, as you may recall, that any judge who arrives at a different legal conclusion than Levin or Rush Limbaugh is an "activist" who threatens America with imminent "tyranny." Matthews is thanked by name in *Men in Black*. Is it a bit strange that Bush's latest judicial nominee was intimately involved in a best-selling book that argues for kneecapping the federal judiciary?¹¹

The foregoing comments serve as only one example of the current liberal opposition to Matthews as a judicial nominee based upon his involvement with LLF. Earthjustice, ("a non-profit public interest law firm dedicated to protecting the magnificent places, natural resources, and wildlife of this earth, and to defending the right of all people to a healthy environment"¹²) is steadfastly opposed to Matthews' nomination to the federal bench. In expressing their opposition, Earthjustice described Matthews in context of his role as a "Member and the Secretary of the Board of Directors of the Landmark Legal Foundation, which nominated Rush Limbaugh for the 2007 Nobel Peace Prize."¹³

Matthews' involvement with the Federalist Society for Law and Public Policy Studies (Federalist Society) has also been cited by liberals as a reason to oppose his nomination to the Fourth Circuit Court of Appeals. The Federalist Society describes itself as "a group of conservatives and libertarians interested in the current state of the legal order. It is founded on the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our Constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be."¹⁴ Exemplifying the liberal opposition to Matthews' connection to the Federalist Society, People for the American Way—in its "Right Wing Watch" publication—criticized President Bush for nominating two Federalist Society

¹¹ Dahlia Lithwick, *The Fight to Fill Judicial Vacancies Grows Ever Weirder*, SLATE, Sept. 10, 2007, <http://www.slate.com/id/2173655/>.

¹² Earthjustice.org, About Us: Earthjustice: Environmental Law, http://www.earthjustice.org/about_us/index.html (last visited Jan. 22, 2008).

¹³ Earthjustice.org, Bush Rejects Bi-Partisan Senate Effort in Order to Reignite Judicial Nomination Wars, <http://www.earthjustice.org/news/press/007/bush-rejects-bi-partisan-senate-effort-in-order-to-reignite-judicial-nomination-wars.html> (last visited Jan. 22, 2008).

¹⁴ The Federalist Society, About Us, <http://www.fed-soc.org/aboutus/> (last visited Jan. 22, 2008).

members (Matthews and Duncan Getchell) to the same circuit.¹⁵ And not only is Matthews a member of the Federalist Society, but he is also a former state chapter president for the organization. While he is certainly not the first judicial nominee to have been a member of the Federalist Society, he is one of the first to have been nominated since Democrats have gained more power on the Senate floor.

Finally, Matthews' affiliation with the Intercollegiate Studies Institute (ISI) has also caused some raised eyebrows within the liberal community. The Intercollegiate Studies Institute works to instill an understanding and appreciation for America's founding principles: limited government, individual liberty, personal responsibility, the rule of law, free market economy, and moral norms.¹⁶ ISI accomplishes its mission by funding fellowships, lectures and other educational opportunities to college students. Matthews once served as board chairman for the Collegiate Network, a subsidiary of ISI that "focuses public awareness on the politicization of American college and university classrooms, curricula, student life, and the resulting decline of educational standards."¹⁷

Nomination

In addition to Matthews' close affiliations with various conservative organizations, the circumstances surrounding his nomination might also present a challenge to his ultimate confirmation by the Senate. President Bush nominated Matthews in the wake of Bush's outright rejection of a bi-partisan list of potential judicial nominees recommended by Virginia Senators Jim Webb (D-VA) and John Warner (R-VA). In response to Bush's rejection of this list (and his subsequent nomination of both Matthews and Getchell), Senator Webb publicly denounced the President for expressly rejecting their recommendations: "Today, despite our good faith, bipartisan effort to accommodate the President, the recommendations that Senator Warner and I made have been ignored. The White House talks about the spirit of bipartisanship, lamenting congressional obstructionism. The White House cannot expect to complain about the confirmation of federal judges when they proceed to act in this manner."¹⁸ Various

¹⁵ People for the American Way, Right Wing Watch: Federalist Society Archives, http://www.rightwingwatch.org/groups/federalist_soci/index.html (last visited Jan. 22, 2008).

¹⁶ Intercollegiate Studies Institute, About ISI, http://www.isi.org/about_isi.html (last visited Jan. 22, 2008).

¹⁷ Collegiate Network, About CN, <http://www.isi.org/cn/about/index.aspx> (last visited Jan. 22, 2008).

¹⁸ Debra Cassens Weiss, *4th Circuit Nomination Criticized*, ABA JOURNAL, Sept. 7, 2007, http://www.abajournal.com/news/4th_circuit_nomination_criticized/.

organizations, such as Earthjustice mentioned above, have cited the nature of Matthews' nomination as yet another reason to oppose it.

Notwithstanding the liberal opposition to Matthews' nomination, however, the conservative senators from his home state of South Carolina have been highly supportive of his nomination. Senator Graham (R-SC) stated that "Steve Matthews is an outstanding choice. He has a keen legal mind and is a man of integrity. I fully support him and hope the Senate will give him a quick and fair hearing."¹⁹ Senator Jim Demint stated that "Steve has the experience, intellect and integrity necessary to serve on one of our nation's highest courts. He will be a strong addition to the Fourth Circuit."²⁰

¹⁹ South Carolina's Matthews Nominated For Fourth Circuit Court of Appeals, http://lgraham.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=902cf8d6-802a-23ad-4fe9-5f849bfd904c&Region_id=&Issue_id= (last visited Jan. 22, 2008).

²⁰ *Id.*