

Barack Obama Courts His Base

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Politics: Perhaps concerned with claims he's "not black enough," Barack Obama plays the race card in the judicial nomination of Leslie Southwick. That may score points with liberal activists, but it shouldn't with fair-minded voters.

Speaking to the National Association of Black Journalists in Las Vegas recently, Sen. Obama took them to task for continuing to ask him questions about his "blackness." He called it "a troubling question . . . perpetrated through our press" and wondered why that was.

Perhaps to prove his bona fides, Obama has taken the lead in opposing the nomination of Judge Southwick to a seat on the 5th Federal Circuit Court of Appeals. He says Southwick has a "disappointing record on cases involving consumers, employees, racial minorities, women, and gays and lesbians."

In other words, Southwick's another racist, homophobic, redneck Republican. Standing logic on its head, Obama says in a statement on his Web site: "The nation has just witnessed how quickly settled law can change when activist judges are confirmed."

Settled law is a phrase used by liberals to defend opinions written by judicial advocates of a "living Constitution" who legislate from the bench. Activist judges in their view are those who try to return to the Founding Fathers' original intent.

Obama opines: "In decisions covering employment discrimination to school integration, the Roberts-Alito Supreme Court has turned back the clock on decades of hard-fought civil rights progress."

Progress is in the eyes of the beholder. One of the cases Obama was referring to was the recent decision that the integration plans in public schools in Louisville, Ky., and Seattle were unconstitutional, with Roberts declaring, "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."

Sen. Diane Feinstein, D-Calif., doesn't quite share Obama's harsh judgment of Southwick and broke with her Democratic colleagues to vote in favor of sending Southwick's nomination to the Senate floor.

"I don't believe he is a racist," Feinstein told the Judiciary Committee. "I believe he's a good person. . . . Judicial nominees are not just a collection of prior writings or prior judicial opinions. . . . My hope is that we can put these days behind us and that we can give people a fair hearing."

A fair hearing for Southwick is not what Obama has in mind. He wants to focus on two out of some 7,000 opinions.

The first involves a Mississippi state employee who was terminated after referring to an African-American as "a good ole (expletive)." The employee was later reinstated with back pay by a state administrative board.

That case was less about the slur and more about whether the punishment fit the crime. The slur was made outside the target's presence, an apology was offered and accepted, and the workplace was not disrupted as a result.

The Mississippi Court of Appeals did not dismiss the slur but, with Southwick in the 5-4 majority, concluded that the state board acted within the law.

Southwick was part of an 8-2 majority that let stand a lower-court decision that awarded custody of a child to the biological father over the biological mother who was a self-identified bisexual.

The lower court had used many other factors in its decision, including income, family stability and time spent with the child. Southwick's court found the lower court had not abused its discretion.

Obama wants to make an issue of which side Southwick was on, but the only issue is whether he sided with the law. In both of these cases, he did.

Obama also wants to make an issue of the fact that only one of 19 sitting judges on the 5th Circuit, which includes Texas, Louisiana and Mississippi, is African-American.

While there's a case for more minority representation on a court encompassing a circuit that is more than 30% nonwhite, we find offensive the argument that people of a particular race, gender or ethnicity can be represented or judged fairly only by their own kind.

The American Bar Association has found Judge Southwick to be "well qualified." So do we.