

1919 Pennsylvania Avenue, N.W., Suite 200, Washington, DC 20006
Telephone: (202) 466-4110 Facsimile: (202) 466-2693
Office also in Fairfax, VA

May 9, 2006

VIA FACSIMILE: (202) 228-1264

The Honorable William H. Frist
United States Senate Majority Leader
United States Senate
509 Hart Senate Office Building
Washington DC 20510

Re: Nomination of the Hon. Terrence W. Boyle

Dear Senator Frist:

We write as former clerks to Judge Terrence W. Boyle to respectfully request a meeting with you to discuss his nomination to the Fourth Circuit Court of Appeals.

As you know, Judge Boyle was initially nominated to the Fourth Circuit by President Bush in May 2001. No one can seriously question Judge Boyle's credentials or qualifications to serve on the federal bench, either at the district or appellate court level. After a unanimous confirmation vote to the district court, Judge Boyle has earned a reputation as a firm but fair, tough yet thoughtful jurist. He is a man of rock-ribbed integrity. He is well respected and highly regarded by all who appear before him as well as his fellow members of the court. In short, this is a well-deserved and long-overdue nomination.

Yet, from the beginning, Senate Democrats made great efforts to block Judge Boyle's nomination on grounds that he is not qualified (a charge plainly at odds with the ABA's unanimous rating of "well qualified"), or that he has a higher than acceptable reversal rate (a charge clearly false in light of the studies showing his reversal rate nearly 13% *lower* than the national average), or that he is too partisan to be fair (a charge belied by his widespread support from both Republicans *and* Democrats in the local community). The obvious yet unfounded implication of their attacks is that Judge Boyle is unable or unwilling to impartially and fairly handle cases that come before him. Judge Boyle's stellar record as one of the youngest federal judges ever appointed who has served for more than 22 years and presided over more than 10,000 cases during that time proves otherwise.

The Honorable William H. Frist
May 8, 2006
Page 2

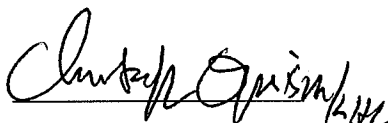
Judge Boyle is now the target of a new line of attacks from Senate Democrats. Unlike previous attacks, however, those now being lodged against Judge Boyle are shamefully personal. Senate Democrats are employing a nuclear option of their own, believing that character assaults may prevail where political attacks have failed. Indeed, this has been their *modus operandi* in several recent nominations, most notably seen in the confirmation hearings of then-Judge Samuel Alito. Their strategy is to offer up enough untruths to raise questions about a judge's fitness to serve. In an off-year, this strategy might not work. When a crucial election fast approaches, however, the Senate Democrats are hopeful that raising the slightest question, despite having no basis in fact, will be sufficient to tip the scales against a particular judge. It did not work with then-Judge Alito's nomination and we implore you to not allow it to happen with Judge Boyle's nomination.

Each signatory to this letter has had the honor and pleasure of serving as a judicial clerk to Judge Boyle at or about the start of our respective legal careers. We hail from both the private and public sectors, military and civilian life. From Judge Boyle, we not only learned about the law but gained a greater respect for it. To allow this well-orchestrated obstructionist plot to keep a man of principle like Judge Boyle from a seat on the Fourth Circuit would be a travesty. More troubling is if we allow these baseless personal assaults to persist without a response from Senate Republicans. That, Senator Frist, would be an injustice in light of Judge Boyle's honorable service for more than two decades.

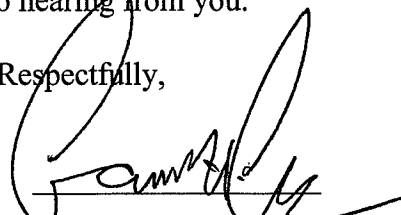
Please consider allowing a few of us to meet with you personally to discuss this issue further. In the interim, please see attachment A, which is an editorial submitted by a North Carolina attorney involved in at least one matter for which Judge Boyle has come under attack. Upon reading, you will see the allegations of Judge Boyle's mishandling of a matter are wholly without merit.

Feel free to contact Chris Oprison at (202) 371-7083 or Lars Liebeler at (202) 828-9867 to schedule a meeting at a time convenient for you. Thank you for your time. We look forward to hearing from you.

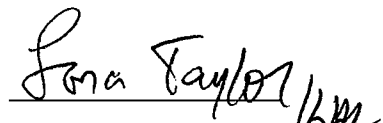
Respectfully,



Christopher Oprison
Clerkship Years: 97-98
Washington, D.C.



Lars H. Liebeler
87-88
Washington, D.C.



Lora Taylor
03-04
Raleigh, NC

Andrew Tripp/LME

Andrew Tripp
04-05
Atlanta, GA

Michael Bronson/LME

Michael J. Bronson
01-02
Cincinnati, OH

Laura Loyek/LME

Laura M. Loyek
02-03
Raleigh, NC

Joseph M. Lischwe/LME

Joseph M. Lischwe
85-87
Raleigh, NC

Patricia Cassell/LME

Patricia Cassell
90-91
Salt Lake City, UT

Joseph T. Price/LME

Joseph T. Price
98-99
New York, NY

Rocco J. deGrasse/LME

Rocco J. deGrasse
84-86
Chicago, IL

John DeAngelis/LME

John DeAngelis
98-99
Greensboro, NC

Eric Goulian/LME

Eric Goulian
88-89
Raleigh, NC

Wes Camden/LME

Wes Camden
04-05
Raleigh, NC

Enclosure

Letter:

Published: May 03, 2006 12:30 AM
Modified: May 03, 2006 08:32 AM

Judge Boyle ruled fairly in GE case

The May 1 news story "Claims put Boyle's new bench seat at risk," and the article at Salon.com on which it was based, referred to the case of Bursell v. General Electric. The article said that two months after U.S. District Judge Terrence Boyle purchased GE stock, he issued a ruling unfavorable to Kenneth Bursell. I represented Bursell in that litigation. The Salon.com article was misleading and inaccurate. Boyle's rulings were favorable to Bursell.

On Oct. 22, 2002, Boyle denied GE's request to stay the lawsuit pending resolution of Bursell's worker's compensation claim. The ruling cited the considerable harm if he were not allowed to pursue his claim (for disability benefits) until after his pending worker's compensation claim is resolved. On Jan. 31, 2003, Boyle agreed with Bursell that he was entitled to have his claims for benefits reviewed by the court under the *de novo* standard, the most favorable standard of review available in such cases. Then, after conducting a bench trial in April 2003, Boyle ruled that Bursell was entitled to short-term disability benefits, denied his claim for a disability pension and dismissed without prejudice the long-term benefits claim. Finally, Boyle ruled on Aug. 25, 2004, that plaintiff was entitled to recover his attorney's fees from GE.

The Salon.com article suggested that the outcome of the case was unfavorable to Bursell. To the contrary, Boyle's favorable decision on the short-term benefits claim convinced GE's claims administrator, MetLife, to approve long-term benefits for the maximum benefit period allowed under the plan. The claim for attorney's fees and costs was settled. I do not take issue with Boyle's ruling on the disability pension, the one claim that was denied outright.

According to the article, Boyle purchased GE stock two months before he issued his ruling in 2004. In fact he announced his expected ruling at the conclusion of the bench trial in 2003, before he purchased the GE stock. In any event, I do not believe that his ownership of less than \$15,000 of GE stock creates even the appearance of a conflict of interest. In 2004 GE had \$134 billion in revenue. The idea that a ruling over one employee's disability benefits could somehow benefit Boyle financially is ludicrous. I would not have asked him to step aside had I known of his minimal stake in this corporate behemoth.

I also disagree with groups which contend that Boyle is hostile to claims brought by disabled persons. I have represented a number of disability claimants in cases before Boyle, and am familiar with his rulings in other cases. His treatment of the parties has been entirely fair and evenhanded.

Andy Whiteman



Hartzell & Whiteman, LLP

Raleigh

(The length limit on letters was waived to permit a fuller response.)

All rights reserved. This copyrighted material may not be published, broadcast or redistributed in any manner.

Story Tools

 Printer Friendly  Email to a Friend
Ⓐ Enlarge Font Ⓐ Decrease Font

More A Opinion

- Unwieldy obituaries
- A pilot forever taking wing
- The analyst
- State of caring...
- All the best for 600 participants in church's annual Joy Prom
- President's nomination