

United States Senate

WASHINGTON, DC 20510

June 23, 2006

Dear Colleague,

Last week marked *one year* since the nomination of Judge Terrence Boyle to serve on the Fourth Circuit Court of Appeals was approved by the Senate Judiciary Committee and referred to the floor for confirmation—yet he continues to patiently await action by the full Senate. We strongly encourage you to join us in supporting swift Senate confirmation of Judge Boyle’s nomination.

Judge Boyle has served with distinction for more than two decades on the U.S. District Court for the Eastern District of North Carolina, handling more than 16,000 cases at the trial level with competence and integrity. Judge Boyle also has significant appellate experience, having repeatedly been designated to sit with the Fourth Circuit. In fact, he has authored more than 20 appellate opinions and participated in the decisions of approximately 200 cases argued before that court. The American Bar Association—whose endorsement is at times held out as the “gold standard”—examined Judge Boyle’s record and unanimously concluded that he was “well-qualified” for appellate court service.

Notwithstanding Judge Boyle’s impeccable qualifications and sterling character, his opponents have made a number of misleading and frivolous charges against him—for example, claiming that he has been reversed an “alarming” 165 times. But the truth is that Judge Boyle has been reversed less than 100 times in his 22-year judicial career, and his reversal rate of just 6.0 percent is substantially lower than the 8.6 percent national average.

The campaign against Judge Boyle continued in earnest last month when the Internet magazine *Salon.com* published two articles accusing Judge Boyle of engaging in unethical behavior by participating in cases where he had a supposed financial interest. An examination of these cases, however, shows that any alleged breach by Judge Boyle was inadvertent, minor, and, in a number of instances, totally non-existent. Moreover, there is absolutely *no evidence* to suggest that Judge Boyle knowingly heard a case in which he had a conflict of interest, used his office for personal gain, or abused the trust of the people he was appointed to serve. Those Senators with questions about these *Salon.com* allegations have had the opportunity in recent weeks to have their concerns addressed in staff-level briefings.

The case at the center of the *Salon.com* attack is Bursell v. General Electric Company, involving a workers’ compensation claim against GE. It turns out that Judge Boyle owned 50 shares of GE stock worth approximately \$1,500 when the written decision in the Bursell case was released. *Salon.com* has used this fact to transform Boyle into a caricature of judicial greed.

It is hard to see how Judge Boyle could have financially benefited from the Bursell decision, particularly since he ruled in favor of many of the plaintiff’s key claims. Judge Boyle

granted the plaintiff, an injured GE worker, both his claim for short-term disability benefits and attorneys' fees. In fact, the lawyer for the plaintiff, a self-described liberal Democrat, has publicly characterized this *Salon.com* charge as "ludicrous" and says that Judge Boyle's ownership of the small amount of GE stock did not create "even the appearance of a conflict of interest." He calls the *Salon.com* attack "misleading" and "inaccurate."

Salon.com also criticizes Judge Boyle for participating in cases involving Midway Airlines when the airline was in Chapter 11 bankruptcy and was not listed on a stock exchange. The *Salon.com* story does not tell you that Judge Boyle was a trustee of a child's trust, in which he had no direct financial interest, and that this trust, not the judge himself, held only 50 shares of Midway stock valued at less than \$25 in total. (Due to the preceding bankruptcy, the Midway stock was worth mere pennies per share.)

Salon.com even faults Judge Boyle for owning stock in Quintiles Transnational, a pharmaceutical company, and then participating in a case involving that firm. It turns out that Judge Boyle sold any Quintiles stock he owned in 2000—*before* the case, Quintiles v. WebMD, was filed in 2001.

Although Judge Boyle and his clerks take care in screening each case that comes before them for conflicts, he concedes that some inadvertent mistakes have been made over the course of two decades of public service. We believe that it would be unfair—and set a dangerous precedent—to let Judge Boyle's nomination languish due to a handful of unintentional and trivial errors.

First nominated nearly 15 years ago, Judge Boyle has waited longer for a vote than any current nominee. And the seat to which he has been nominated is the longest federal judicial vacancy in the country. Now is the time for the Senate to fulfill its constitutional duty and grant Judge Terrence Boyle an up-or-down vote. Please join us in this effort.

Sincerely,



ELIZABETH DOLE
United States Senator



RICHARD BURR
United States Senator