TRUMP’S ATTACKS ON OUR JUSTICE SYSTEM

President Trump, the Federal Judiciary and the 115th Congress

ALLIANCE FOR JUSTICE
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INTRODUCTION

For nearly 40 years, Alliance for Justice (AFJ) has worked to ensure that our nation’s justice system advances core constitutional values, preserves critical rights and unfettered access to the courts, and adheres to the even-handed administration of justice for all Americans. We have never witnessed an assault on our justice system like the one we have seen since Donald Trump became President.

President Trump has repeatedly demonstrated his contempt for the rule of law. His likely criminality is referenced in court filings. He has verbally attacked judges who have ruled against him. He has stated that he expects personal loyalty from those in law enforcement. He has demanded investigations into the media and political opponents. He has repeatedly tried to undermine independent investigations. He has mocked constitutional rights. He has abused his pardon authority. He has repeatedly acted in ways struck down by courts. His attempts to subvert the independence of the Department of Justice are especially egregious, and a detailed examination of those actions could easily consume an entire report.

Indeed, a point-by-point recitation of President Trump’s shameful conduct in office could consume several reports. This retrospective report, however, issued after the 115th Congress, will focus on one specific aspect of Trump’s impact on our justice system: the judicial nominations, put forward by the White House, that have emanated from organizations funded by the wealthy and powerful and have been expedited by the Senate’s disregard for norms and rules. The President has placed numerous ultraconservative individuals on the bench who will erode rights and legal protections for generations, long after he leaves the White House.

In considering President Trump’s impact thus far on the federal bench and the unprecedented role played by Senate Republicans, it is useful to begin with his two Supreme Court nominees: Neil Gorsuch and Brett Kavanaugh. The events surrounding their nominations, as well as their own records, epitomize the Trump Administration’s threat to our rights and values through its impact on the courts.

Gorsuch, whose extreme views were well documented by Alliance for Justice and others prior to his confirmation, sits on the Court because Senate Republicans refused to consider President Barack Obama’s nomination of Merrick Garland. By taking the unprecedented
step of obstructing the Garland nomination, Republicans successfully held the late Justice Antonin Scalia's seat open in the hope that a Republican president would be elected. The newly-elected President Trump promptly took advantage of this opportunity. Rather than negotiating with Senate Democrats on a consensus jurist, he selected Gorsuch from a Federalist Society list, and Senate Republicans changed Senate rules to confirm him. Once on the Court, Gorsuch continued to cozy up to Republican leaders. He did a "victory lap" visit to Kentucky with Mitch McConnell, spoke at the Trump Hotel and Federalist Society, and dined with Republican leaders to discuss “important issues facing our country.” Predictably, as a justice, he has refused to hold the Trump Administration accountable. For example, he joined the conservative majority upholding President Trump's discriminatory Muslim Ban. He also voted to eviscerate protections for workers and to decimate civil rights.

Kavanaugh was likewise nominated to the Supreme Court because of support from the Federalist Society. His record as a lawyer, a George W. Bush Administration official, and lower court judge was one of extreme partisanship and advancement of political goals; indeed, polling conducted during his confirmation process showed that his base of support was extremely narrow and that he was an unpopular nominee with the American public at large. And as was the case with the Gorsuch nomination, Senate Republicans eroded Senate norms to ram Kavanaugh’s confirmation through. The list of abuses and irregularities they perpetrated in service of this goal is long: It includes withholding and hiding documents from other senators and from the public, condoning lying, and handcuffing the FBI in its investigation of credible allegations of sexual assault.

In other words, Republicans played political hardball and won – they kept Merrick Garland off the Supreme Court and installed two men on the Court who will advance partisan goals, devastate constitutional rights, and undermine legal protections for decades.

The confirmations of Gorsuch and Kavanaugh were the culmination of a 50-year effort. At least since Lewis Powell argued that the “American economic system is under broad attack” and urged the business community to weaponize the courts to serve business interests, Republican presidents have tried to pack the courts with ultraconservatives. Trump is just perhaps the most brazen, repeatedly emphasizing his litmus tests – judges who will overturn Roe v. Wade, overturn the Affordable Care Act, and strike down gun safety laws – as a way to alleviate concerns among the conservative base. In fact, he went further than any president before, explicitly promising to outsource his constitutional authority to select judges to outside groups and relying exclusively on the pre-published Federalist Society list.
The story of Trump’s impact on the courts, however, goes well beyond the Supreme Court. For most Americans, the lower courts have the final say on their rights under the Constitution and whether critical legal protections will be properly enforced. The Supreme Court decides fewer than 100 cases each year. In contrast, over 50,000 cases are filed in federal courts of appeals and over 340,000 are filed in district courts every year.

Unfortunately, the same tactics Republicans used to keep Garland off the bench, and to confirm Gorsuch and Kavanaugh, have been used to confirm narrow-minded, biased lower court jurists.

In fact, Republican Majority Leader Mitch McConnell has been open about his prioritization of packing the federal bench with ultraconservative jurists with the explicit goal to advance Republican policy objectives (as opposed to neutral jurists who will simply apply the law). As The New York Times noted recently:

The unprecedented number of conservative-approved judicial nominees McConnell has waved through the Senate — a process for which he laid the groundwork before Trump was elected — stands to shift much of the burden of conservative policymaking away from an increasingly paralyzed Senate. In the coming years, battles over voting rights, health care, abortion, regulation and campaign finance, among other areas, are less likely to be decided in Congress than in the nation’s courthouses. In effect, McConnell has become a master of the Senate by figuring out how to route the Republican agenda around it.

Conservatives know they cannot achieve their unpopular policy objectives through the democratic process – one need only look at Republican failure to repeal the Affordable Care Act even with both houses of Congress and the White House. So, instead, they wish to fill the courts with partisan, ideological judges.

This report contains appendices documenting many of Trump’s ideological nominees from the 115th Congress. Appendices A-U are replete with nominees who have histories of bigoted and offensive comments, troubling records, and bias. Yet, with very few exceptions, every single Republican in the Senate voted for these individuals. In many cases, evidence of

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1 See Senator Murkowski’s vote against Brett Kavanaugh, Senator Kennedy’s vote against Greg Katsas, and Jeff Flake’s vote against Jonathan Kobes. Public reports indicated that Tim Scott would have voted against Thomas Farr. In contrast, twenty-seven Republicans also voted against Mark Bennett, nominee to the Ninth Circuit, because he “br[oke] from conservative legal orthodoxy” as Attorney General of Hawaii.
offensive writings, prejudicial policy positions, and/or a glaring absence of experience still did not dissuade Republicans en masse from supporting a judicial nominee.

From filibustering any Obama nominee to the D.C. Circuit, to using the blue slip to block well-qualified and noncontroversial nominees, Republican Majority Leader Mitch McConnell and Senate Republicans led an unprecedented obstruction effort against President Obama’s nominees to the lower federal courts. This obstruction allowed President Trump to inherit 17 circuit court and 88 district court vacancies. In comparison, President Obama entered office in 2009 with just 54 vacancies.

When Trump took office, Senate Republicans proceeded to degrade the Senate’s advice and consent role and to minimize vetting in order to fill these vacancies at an extraordinary pace. The result is that President Trump had 30 circuit court judges confirmed in his first two years, compared to just 16 for President Obama. Moreover, it is no exaggeration to say that McConnell and Senate Judiciary Committee Chairman Chuck Grassley systematically destroyed Senate rules and norms in order to install overwhelmingly white, male, inexperienced Federalist Society members on the bench. These nominees have largely been united in their commitment to the advancement of ultraconservative ideological goals and to using the courts to attack access to health care; to undermine the rights of persons of color, women, LGBTQ Americans, immigrants, workers, and consumers; and to destroy environmental protections. To put it bluntly, millions of people will suffer because of rulings made by judges the Republican-controlled Senate has confirmed.

At the same time, it is important to note that several problematic nominees were successfully defeated. Because of the advocacy of AFJ along with numerous other groups and people across the country, as well as the leadership of Democratic senators, Ryan Bounds, Thomas Farr, Jeff Mateer, Brett Talley, Gordon Giampietro, Damien Schiff and Steven Schwartz are not adjudicating the rights and liberties of others.

In addition, the fights over Gorsuch, Kavanaugh, and lower court nominees have increasingly energized progressives around the courts issue, as opposition and coalitions continue to grow. An outstanding series on the People For the American Way website, “Confirmed Judges, Confirmed Fears,” provides ongoing documentation of how Trump’s judges have brought their agendas to the bench.

This retrospective report reviews the first two years of judicial nominations and confirmations during the Trump presidency. Except where otherwise noted, all data and
analyses pertain to the period ending on January 3, 2019, which marked the end of the 115th Congress. Part I provides data as to persons nominated and confirmed. Part II describes what many of the nominees have in common – records of working to eviscerate critical rights and legal protections. Part III describes the erosion of rules and norms to confirm many of President Trump’s nominees. Part IV offers hope, because we believe that all those who care deeply about fair-minded judges and courts can still find reasons to remain optimistic about the future despite the current President’s assaults on the rule of law and our rights. Finally, the appendices provide information on select nominees’ records, broken down by subject matter.²

I. REVIEW OF PRESIDENT TRUMP’S IMPACT ON THE COURTS³

• **The Senate confirmed two Supreme Court justices and 30 (37 as of April 1, 2019) of President Trump’s court of appeals nominees.** In comparison, President Obama had two justices and 16 appellate judges confirmed by the end of his first two years.

• **The Senate confirmed 53 of President Trump’s district court nominees.** President Obama had 44 confirmed by the end of his first two years. (By April 1, 2019, the Senate still had confirmed 53 of President Trump’s district court nominees; however, by April 1, 2011, President Obama had confirmed 54 district court nominees.)

• **President Trump has already reshaped several circuit courts.**

  - Since three Trump judges were confirmed, the Eleventh Circuit now has an equal number of Democratic- and Republican-appointed judges. The court previously had eight judges appointed by Democrats and three appointed by Republicans. Trump has appointed over 27% of the judges on the Eleventh Circuit (three of 11).

  - At the end of 2016, the Third Circuit had eight Democratic-appointed judges and five Republican-appointed judges. At the end of his first two years, Trump had appointed two and nominated one other, who was confirmed in 2019.

  - Trump has appointed over 35% of the judges on the Seventh Circuit (four of 11).

  - Trump has appointed over 35% of the judges on the Eighth Circuit (four of 11).

  - Trump has appointed nearly 30% of the judges on the Fifth Circuit (five of 17).

² In the 115th Congress, Alliance for Justice studied the record of all of Trump’s appellate nominees as well as district and court of claims nominees whose records were of particular concern.
³ All statistics are as of January 3, 2019, the end of the 115th Congress, unless otherwise noted.
At the end of 2018, Trump had appointed 25% of the judges on the Sixth Circuit (four of 16). He had also nominated two other judges, who were confirmed in 2019, bringing the total number of Trump judges on the circuit to six of 16, or 37.5%, by April 1, 2019.

- **President Trump's nominees are overwhelmingly white males.** In the 115th Congress, over 76% of Trump's confirmed appellate and district court nominees were male and over 91% were white. As of April 1, 2019, over 75% were male and over 90% were white. In comparison, nearly 58% of Obama's nominees were male and 64% were white throughout his entire presidency.

President Trump’s nominees to the Eighth Circuit illustrate the lack of diversity. Only two women have ever sat on the Eighth Circuit: Diana Murphy and Jane Kelly. When Judge Kermit Edward Bye took senior status, President Obama nominated Jennifer Puhl, an assistant United States attorney in the District of North Dakota, to fill the vacancy. Both home state senators supported Puhl and the Judiciary Committee unanimously approved her. Yet Mitch McConnell never gave Ms. Puhl a full Senate vote and her nomination was ultimately returned to the White House. Had she been confirmed, she would have been the first female federal judge in North Dakota, and only the third woman to ever serve on the Eighth Circuit.

To fill the vacancy, President Trump nominated Ralph Erickson, a white man. Trump’s other three confirmed nominees to the Eighth Circuit Court of Appeals – David Stras (who took Diana Murphy’s seat), Steven Grasz, and Jonathan Kobes, are also white men.

As he did in Erickson’s case, in many cases President Trump replaced an Obama-nominated woman whom Senate Republicans did not confirm with a man: Amul Thapar (confirmed to the Sixth Circuit) replaced Lisabeth Tabor Hughes as a nominee from Kentucky; Stephanos Bibas (confirmed to the Third Circuit) replaced Rebecca Ross Haywood as a nominee from Pennsylvania; Thomas Farr (who was not confirmed after opposition from Senator Tim Scott) would have replaced Patricia Timmons-Goodson as nominee for the Eastern District of North Carolina.

At the end of the 115th Congress, 83% (25 of 30) of President Trump's confirmed appellate nominees were members of the Federalist Society.
President Trump promised that he would lean heavily on the Federalist Society to identify judicial nominees. In line with this all-important assurance to his base, President Trump has selected nominees who have been prescreened and preselected by groups advancing ultraconservative interests – led by the Federalist Society. Collectively, these entities are seeking to reshape the courts to advance their agenda, which includes dismantling the “administrative state,” eliminating constitutional protections for women and LGBTQ people, and protecting corporations’ rights over the rights of all people. These positions have been called the “litmus tests for conservative judges.”

As Senator Sheldon Whitehouse recently said in a comprehensive speech on the Federalist Society, “This Federalist Society is the vehicle for powerful interests, which seek not to simply ‘reorder’ the judiciary, but to acquire control of the judiciary to benefit their interests.” Under President Trump, membership in the Federalist Society is highly correlated with the likelihood of nomination to a circuit court vacancy: in the 115th Congress, 25 of 30 confirmed (83%) circuit court judges were members (31 out of 37 – also 83% – as of April 1, 2019).

The Federalist Society is not the only group funded by the wealthy and powerful that is reshaping our courts. For example, the Judicial Crisis Network (JCN) is a conservative judicial advocacy group that spent millions of dollars to block Merrick Garland’s nomination and then spent millions more supporting conservative judges like Neil Gorsuch and Brett Kavanaugh. For example, JCN spent $1.5 million on a pro-Kavanaugh advertisement after Dr. Christine Blasey Ford came forward with credible allegations of sexual assault. The organization additionally spent $1 million in ads attacking Democrats over opposition to lower court nominees. It planned to spend $250,000 pressuring Mitch McConnell to “call off all recesses” until judicial vacancies were filled. It spent $140,000 to pressure Michigan’s senators to support Joan Larsen (who was confirmed to the Sixth Circuit) and six figures pressuring Sen. John Kennedy of Louisiana to support Kyle Duncan (who was confirmed to the Fifth Circuit).

The Judicial Crisis Network receives money from the Wellspring Committee, which gave JCN $23.5 million in 2016. Most of the Wellspring Committee’s funds, in turn, came from a single anonymous donor who gave the organization over $28 million – an astonishing 90 percent of its $32 million in revenue. Wellspring Committee’s president, Ann Corkery, worked with Leonard Leo guiding Trump’s judicial nomination process. Ann Corkery’s husband, Neil, is the only Wellspring Committee board member. Another highly secretive organization, the BH Group, has received almost $1 million from JCN. Despite a complicated
web of anonymous donors and shell organizations which are designed to obfuscate these connections, Leonard Leo has also been linked to the BH Group.

The Judicial Crisis Network is far from the only conservative outside spender. Americans for Prosperity, a group tied to the Koch brothers’ network, promised a seven-figure effort to confirm Brett Kavanaugh. The Great America PAC and Great America Alliance, the latter a 501(c)(4), spent $3 million to confirm Gorsuch and pledged $5 million to confirm Kavanaugh.

Also relevant is the National Rifle Association (NRA). The NRA broke its own spending records in support of Donald Trump’s presidential campaign. In return, Trump told the NRA, “You came through big for me, and I am going to come through for you.” The NRA subsequently spent $1 million supporting the nomination of Neil Gorsuch. After Trump nominated Brett Kavanaugh, who is on record arguing that assault weapon bans are unconstitutional, the NRA spent more than $1 million supporting his confirmation.

Other conservative billionaires have direct ties to Trump judicial nominees. For example, Justice Gorsuch has ties to billionaire oil mogul and Federalist Society backer Philip Anschutz. Ryan Nelson (who was confirmed to the Ninth Circuit) worked for Frank VanderSloot, Idaho’s wealthiest person with an estimated net worth of $1.9 billion.

II. UNDERMINING DEMOCRACY, THWARTING THE ABILITY OF THE AMERICAN PEOPLE TO ADDRESS CRITICAL PROBLEMS, AND ERODING RIGHTS AND LEGAL PROTECTIONS

A. UNDERMINING OUR DEMOCRACY

David Frum, former advisor to President George W. Bush, wrote that “[i]f conservatives become convinced that they cannot win democratically, they will not abandon conservatism. They will reject democracy.” Indeed, since 1992, a Republican candidate for President has only won the popular vote once. In the face of increasingly changing demographics, Republicans and their voters (whiter, more male, and older than the rest of the country), are doing all they can to entrench themselves in power, rigging the system to keep themselves in charge long after a majority has repudiated them.
To accomplish this goal, Republicans have engaged in racial gerrymandering and partisan redistricting. They have also made it harder for people of color, Latinos, Native Americans, young people, and the economically disadvantaged to vote. They have tried to rig the census to undercount minorities. When they do lose elections, Republicans are now changing the rules to limit the authority of those the voters did choose to govern.

The courts have aided and abetted Republican efforts to remain in power. In fact, in nearly 20 years’ worth of decisions, the conservatives on the Supreme have tilted the political playing field towards the wealthy and powerful.

In case after case, conservative justices have made it easier for Republicans to win elections. In *Bush v. Gore*, five conservative justices halted the recount of Florida’s ballots in the 2000 election, which led to the election of George W. Bush (in a decision “limited to the present circumstances”). In 2010, five conservative justices overturned decades of law and precedent to further open the gates to big money in campaigns. In 2013, in another 5-4 decision, *Shelby County v. Holder*, they gutted the Voting Rights Act, and Republican-controlled states followed with laws to make it more difficult for people of color to vote.

Just last term, in *Abbott v. Perez*, the conservative justices rejected attacks on Texas’s racially discriminatory redistricting; they also allowed Ohio, in *Husted v. A. Philip Randolph Institute*, to target infrequent voters for removal from the voter rolls and to deprive them of the fundamental right to vote. The Court allowed egregiously racially and politically gerrymandered districts to remain in effect. It allowed North Dakota to make it harder for Native Americans to vote if they used a PO Box. In *Janus v. AFSCME*, moreover, the Court overturned 40 years of precedent to weaken labor unions, a central goal of Republicans since the New Deal and seen as key to helping weaken the Democratic party.

Trump’s judges are central to continuing this assault on our democracy into the future. Long after the nation’s demographic changes threaten Republicans’ grip on power, Trump-nominated judges will still be on the bench.

Neil Gorsuch joined the conservative majority in *Husted* and *Janus*, and he has signaled an even greater willingness to eviscerate essential protections. Last term, Gorsuch questioned the essential democratic principle of “one person, one vote.” In *Abbott*, Gorsuch joined Justice Clarence Thomas’s concurrence saying that the Voting Rights Act “does not apply to redistricting,” despite numerous cases that hold otherwise. Without briefing or argument, Gorsuch would have gutted the Voting Rights Act’s protections against racial discrimination.
Indeed, a defining feature of many of Trump’s judicial nominees is not only opposition to a fulsome democracy, but a history of fighting to disenfranchise others. Most notable, of course, was Thomas Farr, who for three decades led Republican efforts in North Carolina to disenfranchise voters of color, including but not limited to participation in practices by the Jesse Helms campaign that the George H.W. Bush Justice Department concluded improperly intimidated African-American voters. While supported by almost every Republican, Farr’s nomination was defeated only after opposition from Senator Tim Scott.

As noted in Appendix G, however, Thomas Farr is far from an isolated example.

Moreover, these nominees have not just fought to make it harder for minorities to vote or have their vote counted equally. As noted in Appendix R, Trump’s judicial nominees have also made decisions that favor increasing the political influence of the wealthy and powerful. James Ho, for example, wrote an article for the Federalist Society opposing all restrictions on campaign contributions. Then, within five months of confirmation to the Fifth Circuit, Ho authored a lengthy dissent questioning the legitimacy of any limit on how much a person or business can give a candidate. The large corporate interests who supported Ho’s nomination knew exactly whom they were backing.

In fact, it is long past time to be surprised when these ultraconservative judges take sides. Indeed, Trump-nominated judges have, more than any judges in the recent past, dropped any pretense that they are independent jurists rather than partisans.

Given the extraordinarily untoward circumstances surrounding Neil Gorsuch’s confirmation, we would have expected him to be extra conscious of the need to be apolitical in his public life. Yet Gorsuch behaved in the exact opposite manner, doing a “victory lap” with Mitch McConnell; speaking at the Trump Hotel; giving a speech at the Federalist Society demeaning Alphonse Maddin, the trucker who almost froze to death on the job and whose legal claims Gorsuch ruled against at the appellate level; and dining with Republican Senate leaders to discuss “important issues facing our country.”

Meanwhile Brett Kavanaugh spent his entire career prior to his Supreme Court nomination as a hyperpartisan advocate. He worked for Republicans on the election recount at the heart of the Bush v. Gore case, helped with the investigation of President Bill Clinton’s relationship with Monica Lewinsky, drafted grounds for President Clinton’s impeachment
with Independent Counsel Ken Starr, and led an independent counsel's investigation that dignified wild Republican conspiracy theories alleging the murder of Vince Foster.

In his confirmation hearing on September 27, 2018, Kavanaugh cited unsubstantiated conspiracy theories about a former Democratic President and former Democratic presidential candidate, accusing Democrats of opposing him as part of “revenge on behalf of the Clintons” and as part of a “calculated and orchestrated political hit.” He attacked the integrity of Democratic senators. He condemned progressive groups that opposed his nomination, many of which will litigate in his courtroom. He openly threatened revenge against Democrats and those who had opposed him, emphasizing that “what goes around comes around.”

B. THWARTING THE ABILITY OF THE AMERICAN PEOPLE TO ADDRESS CRITICAL PROBLEMS

Trump’s judicial nominees are united in their hostility to legislation and regulations that promote the wellbeing of Americans on multiple fronts, including protections for health, safety, consumers, and the environment. One of Trump’s failed judicial nominees, Damien Schiff, wrote of a “reinvigorated constitutional jurisprudence, emanating from the judiciary,” which “could well be the catalyst to real reform, as opposed to that reform coming from other branches.” He wrote that “the President is hampered by the modern administrative state” and “Congress, as a collective body of 535 persons, cannot act effectively.” But “the Supreme Court, with just five votes, can overturn precedents upon which many of the unconstitutional excrescences of the New Deal and Great Society eras depend.”

Don Willett (who was confirmed to the Fifth Circuit) has written that he wants to revive Lochner era jurisprudence – returning to the days when reactionary judges invalidated minimum wage and child labor laws. As a Texas Supreme Court justice, Willett wrote several concurring opinions arguing that courts should be more aggressive in reviewing and striking down laws and rules that protect health, safety and social welfare. He has praised decisions that “anointed a framework for smaller government” and “set up future wins to shrink Washington’s power.”

Like Willett, Andrew Oldham (also confirmed to the Fifth Circuit) has advocated for tearing down legal protections. Oldham has argued that both the Environmental Protection Agency (EPA) and Department of Labor are unconstitutional. As a lawyer, he helped file dozens of
lawsuits challenging actions by federal agencies and advocated for making all labor, consumer, and environmental regulations “completely inoperable.” Additionally, Neomi Rao, who was nominated, and in 2019 confirmed, to Brett Kavanaugh’s former seat on the D.C. Circuit, criticized the conservative justices on the Supreme Court for not creating a “revolution” that would overturn “important” acts such as the ACA. She complained about the failure of the Supreme Court to overrule progressive laws. Moreover, Patrick Wyrick (whose nomination to be a district court judge was not acted on by the end of the Congress) told a conservative audience in 2016 that the administrative state is unlawful.

While most conservatives hide behind the banal platitude that they desire “judges who will interpret the law, not make it,” the reality is they want no such jurists. Many conservatives do not want unbiased and fair-minded judges who will merely read briefs and apply facts to congressionally-enacted law. Rather, they want movement lawyers who, once confirmed, will use their positions to hamper the ability of the American people to address critical issues through their elected officials. They want to use the courts to eradicate laws and agencies that are designed to protect workers, consumers, the environment and civil rights, to return the country to an era when the wealthy and the powerful controlled society unchecked by federal protections that safeguarded the health, safety and wellbeing of everyday Americans.

Former Trump advisor Steve Bannon pledged the “deconstruction of the administrative state” and Trump’s judicial nominees fit this pattern, fighting to use the courts to undermine laws that could not otherwise be defeated in Congress. In fact, former White House counsel Donald McGahn openly acknowledged the “coherent plan” to install judges who will gut federal laws, dismantle environmental protections, roll back civil rights and gut worker rights. “These efforts to reform the regulatory state begin with Congress and the executive branch,” McGahn said, “but they ultimately depend on courts.”

In other words, as Senator Richard Blumenthal said, the Trump Administration has “weaponized” judicial nominations to help “shut down” crucial New Deal protections.

Yet even before Trump, conservative judges have done their part to undermine public protections. As Senator Sheldon Whitehouse noted, in a recently released study, the five conservative justices on the Court voted to advance right-wing and corporate interests 92% of the time, including protecting corporations from liability, “letting polluters pollute,” “taking away civil rights,” and “union-busting.”
Illustrative of this trend, just last term in *Epic Systems v. Lewis*, the five conservative justices, in an opinion by Justice Gorsuch, made it harder for victims of wage theft to hold their employers accountable under the National Labor Relations Act.

Indeed, it is no accident that Gorsuch was nominated after *writing extensively* about his view that judges should have the power to second-guess decisions by government agency experts and make it harder for agencies to protect health, safety, and the environment. Trump nominee Neomi Rao currently worked within the Trump Administration to dismantle such public protections. In addition, Trump's lower court judges, like Amul Thapar, have already expressed this view on the bench (Thapar authored an opinion *arguing* that precedents giving deference to agencies “deserve renewed and much-needed scrutiny”).

President Trump's second Supreme Court appointee, *Brett Kavanaugh*, is also well-known for consistently voting to reverse actions by agencies like the EPA, Occupational Safety and Health Administration, and National Labor Relations Board. He also once ruled that the Consumer Financial Protection Bureau was unconstitutional. In fact, a Trump White House memorandum *touted* Kavanaugh’s nomination by noting that he had overruled federal regulators 75 times on cases involving clean air, consumer protections, net neutrality, and other issues. Republican *talking points* argue that Kavanaugh “Respects Corporate Entities' First Amendment Rights.” This and other evidence made it clear that Kavanaugh was nominated to protect corporations, the wealthy, and the powerful over the rights of all others.

The actions and records of Trump judicial nominees on several key issues, as described in more detail below, are representative of the serious threats these nominees pose to the wellbeing of the American people. In these areas, we can see how Trump's judges have been selected to advance an agenda to use the courts to hamper the ability of the people, through their elected officials and government agencies, to address critical issues.

**AFFORDABLE HEALTH CARE**

One need only look at Republican failure to repeal the Affordable Care Act (ACA) while controlling both houses of Congress and the White House to see why conservatives are so intent on stacking the courts with reliable ideologues. Conservatives hope lifetime-tenured judges will do the unpopular work of taking health insurance from over 50 million people for them.
Thus, it is no surprise that President Trump explicitly said he would nominate judges who are hostile to the ACA, and who “will do the right thing unlike Bush’s appointee John Roberts on Obamacare.” Trump nominated Brett Kavanaugh, who, on the D.C. Circuit, twice dissented from decisions upholding the Affordable Care Act and in one dissent wrote what his former law clerk described as a “roadmap” to invalidate the ACA, to the Supreme Court.

Nor is it a coincidence that Chad Readler, who as a Justice Department official filed a brief encouraging a federal court to invalidate the ACA, was nominated to the Sixth Circuit the day he advocated striking down the law. Lamar Alexander, Republican Chairman of the Senate Committee on Health, Education, Labor, and Pensions, called Readler’s argument “as far-fetched as any I’ve ever heard.” Three career Justice Department lawyers refused to sign Readler’s brief, and a veteran Justice Department lawyer resigned in protest. An ideologically diverse group of legal scholars said Readler’s arguments “violate[d] basic black-letter principles” of law.

Readler’s brief was filed in federal court in the Northern District of Texas, where a multi-state lawsuit to invalidate the ACA was decided in December 2018. Conservative groups had forum-shopped and had found a judge, Reed O’Connor (a former staffer for a longtime opponent of the ACA, Senator John Cornyn), and declared the entire ACA unconstitutional.

As Appendix A demonstrates, Trump nominees have been consistent in their fight against health care for the American people.

**WORKER PROTECTIONS**

Conservatives know that legislation to weaken worker protections is unpopular, so, as Appendix U demonstrates, they find judges who will do it for them. Brett Kavanaugh sent strong signals before his Supreme Court nomination that he would be a reliable vote against worker protections. While on the D.C. Circuit, he called OSHA protections “paternalistic” and went on to rule against OSHA in a case in which a Sea World trainer was mauled to death by a killer whale. On the Tenth Circuit, Neil Gorsuch would have ignored the Highway Transportation Safety Act and denied federal protection to Alphonse Maddin, the “Frozen Trucker,” who had to choose between his life and his job. Gorsuch too regularly sided with corporations over everyday Americans.
On the Supreme Court, Gorsuch has already worked to gut employee rights. He joined the conservative majority in *Janus*. He also ignored the plain text of the National Labor Relations Act, in *Epic Systems*, to strip the rights of victims of wage theft.

**ENVIRONMENTAL PROTECTIONS**

Conservatives know that weakening protections for clean air and water is unpopular, so once again, as Appendix L demonstrates, their strategy is to nominate judges who will do it for them.

Brett Kavanaugh consistently ruled against environmental protections while serving on the D.C. Circuit. Andrew Oldham, now on the Fifth Circuit, believes the entire EPA is unconstitutional. Patrick Wyrick (on the President’s short list for the Supreme Court) is a protégé of disgraced former EPA Administrator Scott Pruitt; he worked with Pruitt in Oklahoma to advance the interests of oil, coal and gas lobbyists. Another nominee, Damien Schiff, said that the EPA “treat[s] American citizens as if there [sic] were not American citizens, as if they were just slaves” and claimed that Earth Day was a “threat to individual liberty and property rights.”

**GUN VIOLENCE**

In the wake of national tragedies involving gun violence, legislation to allow criminals greater access to dangerous firearms is unpopular. Recognizing this, conservatives who are adamantly opposed to gun safety measures are nominating judges to advance their agenda, as Appendix P demonstrates.

A number of Trump’s confirmed judges have already worked to limit firearm safety laws. On the Fifth Circuit, Trump nominees James Ho, Don Willett, Kyle Duncan and Kurt Engelhardt voted to reconsider a decision upholding a federal gun law that allows states to establish and enforce their own gun laws. Third Circuit Judge Stephanos Bibas dissented in a case upholding a ban on large capacity magazines. Seventh Circuit judge Amy Coney Barrett would have overturned a law banning people convicted of felonies from possessing firearms. On the Supreme Court, Brett Kavanaugh has yet to rule on any firearms case, but as a judge on the D.C. Circuit he made it clear he would have invalidated D.C.’s ban on assault weapons.

Indeed, a key feature of many nominees is their fidelity to the National Rifle Association. Howard Nielson served as a lawyer for the NRA. One nominee, Brett Talley, “pledged [his] support to the NRA; financially, politically, and intellectually.” He said, “[t]hey stand for all of
us now, and I pray that in the coming battle for our rights, they will be victorious.” Every Republican on committee supported Talley’s nomination until he withdrew after it was reported he failed to disclose controversial social media posts.

C. ERODING RIGHTS AND LEGAL PROTECTIONS

President Trump’s judicial nominees have troubling records on issues that affect people of color, women, LGBTQ Americans, persons with disabilities, immigrants, and Native Americans. Their records represent a serious threat to equality and civil rights. In lifetime tenures as federal judges, these judges would turn back the clock on the progress of the last several decades.

PEOPLE OF COLOR

President Trump, whom the Justice Department once sued for housing discrimination, gained political notoriety for spreading the false theory that President Barack Obama was not born in the United States. He has demeaned people immigrating from the Caribbean, Latin America, and African countries. He has questioned the IQ of African-American members of Congress. He pandered to white supremacists after they held a violent and deadly rally in Charlottesville.

On the policy front, President Trump and his allies have fought to weaken critical laws that protect equality for people of color. On his last day as attorney general, Jeff Sessions issued a memorandum gutting the Justice Department’s use of “consent decrees, court-approved deals between the Justice Department and local governments that create a roadmap of changes for law enforcement and other institutions.” The administration has fought equal opportunity programs. The Department of Housing and Urban Development proposed changes to Obama-era rules that were designed to combat segregation in housing policy, and Secretary Ben Carson has virtually stopped enforcing fair housing laws. The Trump Administration’s School Safety Commission recommended rescinding Obama-era school discipline guidance, which was intended to assist localities in complying with civil rights laws. The administration is also planning to roll back disparate impact regulations, making it harder to root out systematic discrimination.

Likewise, Trump’s judicial nominees have records of hostility to equality for people of color. Indeed, Senator Tim Scott wrote that Republicans need to “stop bringing candidates with questionable track records on race before the full Senate for a vote.” As Appendix F
demonstrates, too many nominees have indeed spent their careers undermining the rights of people of color.

On the bench, Trump’s judges have already gutted civil rights laws. As noted above, Gorsuch joined the majority in *Husted*, questioned the principle of “one person, one vote,” and asserted that the Voting Rights Act does not apply to redistricting.

**Amy Coney Barrett**, on the Seventh Circuit, sided against an African-American worker whose employer transferred him to another store through an alleged practice of segregating employees by race. In *EEOC v. AutoZone*, the Equal Employment Opportunity Commission (EEOC) claimed that AutoZone had a practice of segregating employees by race, when it allegedly assigned African-American employees to stores in African-American neighborhoods and Latino employees to Latino neighborhoods. A three-judge panel of the Seventh Circuit denied the EEOC’s claim that AutoZone’s practice violated Title VII of the Civil Rights Act. The Seventh Circuit then considered whether to rehear the case en banc. Barrett joined the majority of the Seventh Circuit in denying a petition for rehearing en banc, effectively siding with the employer. Chief Judge Diane Wood, one of three dissenting judges, noted that this decision meant that the company’s “separate-but-equal arrangement” was permissible despite Congress’s intent in passing the Civil Rights Act of 1964 to eliminate such blatant racism.

Even more remarkably, Trump’s judicial nominees have refused to confirm that *Brown v. Board of Education* was correctly decided when questioned about it at their confirmation hearings. A Wisconsin district court nominee, *Gordon Giampietro*, even voiced his opposition to the Civil Rights Act of 1964.

This hostility to people of color is demonstrated by several nominees’ apparent love for the Confederacy. *Liles Burke* kept a portrait of Confederate President Jefferson Davis hanging in his office. *Mark Norris* led the effort to keep monuments to Confederate leaders in parks and public spaces of majority-black cities in Tennessee. *Brett Talley* is believed to have written a blog praising “the first KKK.”

Other nominees have had similarly troubling writings and episodes in their records: *Ryan Bounds* wrote offensive and racist articles while at Stanford University, the revelation of which resulted in the sinking of his nomination. *Neomi Rao* wrote offensive articles in her twenties that disparaged racial justice. *Kenneth Lee* repeatedly failed to disclose inflammatory writings (initially omitting over 75 articles) including controversial articles on
race, LGBTQ equality, and sexual assault. Wendy Vitter purchased a house with a protected covenant deed specifying it could only be sold “to people of the white race.”

**WOMEN’S EQUALITY**

During the 2016 presidential race, Donald Trump's campaign was littered with sexist comments and behavior. He bragged about getting away with sexual assault in an Access Hollywood tape that came to light during campaign season; talked about “blood coming out of [Megan Kelly’s] wherever”; insulted fellow candidate Carly Fiorina’s appearance; and behaved in a misogynistic and demeaning manner toward his opponent, Hillary Clinton, to list just a few examples.

As President, Trump has turned his hostility toward women into harmful policy decisions. He announced a new rule that eliminates the ACA requirement that all health insurance plans cover birth control; halted EEOC rules designed to give women the tools they need to combat unequal pay; revoked President Obama’s Fair Pay and Safe Workplaces Executive Order, which required companies with federal contracts to increase salary transparency and stop forcing victims of sexual harassment and assault into arbitration; and revoked Obama-era guidance designed to protect college students from sexual assault.

President Trump has also spread his attacks on women’s rights to our nation’s courts. Trump’s choices for lifetime appointments to the federal bench make it clear that he wants to use the judiciary to roll back women’s rights for generations to come.

Many of President Trump's nominees have fought to weaken protections against sexual harassment and sexual assault. First, Trump nominated (and every Republican senator but Lisa Murkowski supported) Brett Kavanaugh for the Supreme Court despite the credible allegations of sexual assault made by Dr. Blasey Ford and other women. Kavanaugh went on to be confirmed despite his shameful performance before the Senate Judiciary Committee on September 27, 2018. Dr. Blasey Ford’s persuasive and heartbreaking account of her assault by Kavanaugh and the corroborating evidence – including conversations she had with others before Donald Trump became President, her therapist’s notes, and a polygraph exam – were highly credible. Alone, her testimony, as well as the allegations of others, should have been grounds to reject Kavanaugh’s elevation to the highest court.

Another nominee, Neomi Rao, made numerous offensive statements regarding sexual assault, women’s rights, and gender equality. As the head of the Office of Information and
Regulatory Affairs (OIRA) in the Trump Administration, her work was consistent with the dangerous and extreme views she expressed earlier in her career.

As demonstrated in Appendix T, too many of President Trump's nominees have fought to weaken protections against sexual harassment and sexual assault.

In addition, Trump made clear that he will only nominate judges who pass his litmus test of overturning Roe v. Wade. Trump said overturning Roe “will happen automatically . . . because I am putting pro-life justices on the court.” Not surprisingly, as shown in Appendix S, Trump’s nominees to the federal bench consistently have fought against women’s reproductive rights. Once confirmed, they have continued their assault on these rights.

Neil Gorsuch joined the other conservative Supreme Court justices in striking down California’s disclosure laws for fraudulent “crisis pregnancy centers” as unconstitutional compelled speech. Justice Stephen Breyer, in his dissent, pointed out how the decision “radically change[d] prior law.” Gorsuch joined Justices Samuel Alito and Clarence Thomas in dissenting from the Court’s decision not to hear a lower court case that had invalidated state actions that defunded Planned Parenthood. And indeed, in 2019, all of Trump’s confirmed nominees to the Sixth Circuit ruled that Ohio can defund Planned Parenthood.

Meanwhile, James Ho joined a Fifth Circuit panel that reversed a lower court order requiring the Texas Conference of Catholic Bishops to comply with a subpoena. In so doing, he made clear his views regarding the right to decide whether to have an abortion. He wrote separately to call abortion a “moral tragedy.”

Nominees have not just fought access to abortion, but also access to contraceptives. Wendy Vitter urged supporters to distribute materials that claimed the birth control pill “kills” and makes a woman more likely to be the victim of violent assault and murder. Gordon Giampietro called the birth control pill “an assault on nature,” and blamed it for other problems in society. Jeff Mateer compared the ACA contraception mandate to policies in Nazi Germany.

In fact, many nominees were involved in efforts to allow for-profit corporations to deny contraceptive coverage to employees. For example, Kyle Duncan represented Hobby Lobby in its effort to avoid providing contraceptive coverage to over 13,000 employees as required by the ACA. As a lower court judge, Neil Gorsuch ruled for Hobby Lobby.
Finally, as demonstrated in Appendix B, nominees have disturbing records when it comes to equal employment and education opportunities for women. One nominee even argued that Title IX was unconstitutional, and two nominees have dismissed the existence of a “glass ceiling” in the workplace.

Thomas Farr supported a North Carolina bill that prevented women who were discriminated against, or who were victims of workplace sexual harassment, from filing a lawsuit in state court, calling it a “better policy for the state.”

As a state judge, Don Willett limited the amount of compensation that a victim of workplace sexual harassment and assault could collect from her employer. Kurt Engelhardt, moreover, consistently ruled against sexual harassment claims, often going out of his way to rule that allegations did not rise to the level of objectively hostile conduct and to keep cases from even being heard by a jury.

**LGBTQ EQUALITY**

President Trump’s Administration has attacked equality for LGBTQ Americans. The Justice Department has argued that federal civil rights laws do “not protect individuals from discrimination based on their sexual orientation” or gender identity. It rescinded guidance protecting transgender students from discrimination at school. The Justice Department also issued sweeping religious liberty guidance to federal agencies, which will create a “license for discrimination” against LGBTQ individuals and others. Additionally, the President banned transgender Americans from serving in the military.

As Appendix C demonstrates, President Trump’s judicial nominees’ hostility to LGBTQ equality emerged early as one of the most distinctive unifying features among them. As Lambda Legal concluded in its report, “Stacking the Courts: The Fight Against Trump’s Extremist Nominees,” “many of these nominees (1 in 3) have deep histories of anti-LGBTQ advocacy.” Few have been as open in their contempt for their fellow citizens as Jeff Mateer (who claimed that transgender children are part of “Satan’s plan”), Damien Schiff (arguing that an anti-bullying program was “teaching ‘gayness’ in schools”), or Gordon Giampietro (who called same-sex couples “troubled” and birth control “an assault on nature”), all of whom were kept off the bench because of galvanized opposition throughout the country. But a disturbing number of nominees have worked actively to undermine equality for LGBTQ Americans.
Once confirmed, Trump nominees have continued their attacks on LGBTQ equality. For example, Justice Neil Gorsuch dissented in Paven v. Smith, in which the Court struck down an Arkansas law that treated same-sex couples differently from opposite-sex couples on their children’s birth certificates. He also ruled against the rights of LGBTQ Americans in Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission. As a lower court judge, Gorsuch expressed disdain for those seeking to use the courts to enforce their rights, and specifically criticized LGBTQ Americans who relied on federal courts in their quest for equality.

In July 2018, Trump nominee Kevin Newsom of the Eleventh Circuit, in Bostock v. Clayton County Board of Commissioners, voted against reviewing a decision of a three-judge panel that dismissed the claim of an employee who had been discriminated against due to his sexual orientation. Also, Stephanos Bibas, a Trump appointee, joined a dissent in Doe v. Boyertown Area School District, criticizing a Third Circuit panel decision protecting transgender students in a Pennsylvania school district. James Ho, contrary to decisions in other circuits, held that prisons may adopt blanket prohibitions on providing transgender inmates with medically necessary transition-related health care.

**PERSONS WITH DISABILITIES**

Donald Trump, during his presidential campaign, mocked a reporter living with arthrogryposis, a condition that limits joint function. Trump and his administration have continued to undermine the rights of persons with disabilities. The Department of Education rescinded guidance documents that detailed the rights of special needs students and delayed implementation of a rule that aimed to reduce overrepresentation of students of color in special education programs. Attorney General Jeff Sessions rescinded guidance documents that detailed rights under the Americans with Disabilities Act. The Trump Administration dropped the Justice Department’s appeal of a significant disability rights lawsuit that the Obama Administration had brought on behalf of a woman who was fired as a sheriff's deputy after she underwent surgery for a heart condition. The Trump Justice Department also filed a brief that would severely limit the protections of the Americans with Disabilities Act, limiting what is a “public accommodation.” Republicans in the House passed the ADA Education and Reform Act of 2017 which, if it became law, would have undermined the ADA by making it more challenging for persons with disabilities to enforce the ADA against businesses that failed to accommodate them. And most recently, the administration sought to defund the Special Olympics.
As demonstrated in Appendix E, Trump has chosen judicial nominees with prior records of fighting the rights of persons with disabilities. Perhaps most notably, while on the Tenth Circuit, Neil Gorsuch weakened the Individuals with Disabilities Education Act when he ruled against a child with autism, Luke P. (in a manner so extreme the Supreme Court itself reversed his standard). He gutted the Rehabilitation Act when he ruled that Grace Hwang, recovering from cancer, was not entitled to workplace accommodation when she had to choose between her job and her life. On the D.C. Circuit, Brett Kavanaugh ruled to limit the rights of individuals with intellectual disabilities. As a lawyer, Andrew Oldham fought to prevent persons with disabilities from suing the state of Texas. Neomi Rao wrote numerous articles criticizing bans on “dwarf-tossing,” a degrading practice in which individuals throw little people for sport or entertainment.

**IMMIGRANT RIGHTS**

The Trump Administration has led a full-scale assault on immigrants and one of President Trump’s first acts was to issue the discriminatory Muslim Ban. The government has separated immigrant children from their mothers at the southern border, and tragically some have died in the government’s custody. The President has said he intends to sign an executive order ending birthright citizenship. The administration has made it more difficult for people to claim asylum. It has tried to circumvent courts concerning the Deferred Action for Childhood Arrivals (DACA) program. It announced the creation of a denaturalization task force in a push to strip naturalized citizens of their citizenship. It tried to deny critical law enforcement funding to cities that will not assist the federal government in targeting immigrants.

As demonstrated in Appendix Q, Trump’s judicial nominees have extensive records fighting the rights of immigrants. On the bench, several have already ruled against immigrants’ rights.

Most notably, Neil Gorsuch as a Supreme Court justice voted to uphold President Trump’s Muslim Ban.

The records of many Trump nominees have given clear indications that they will be staunch opponents of immigration and immigrants’ rights. Illustrative of this is Chad Readler, who as acting head of the Civil Division at the Justice Department defended many of the Trump Administration’s most abhorrent actions against immigrants, including separating children from their mothers, arguing for indefinite detention of immigrant children, defending
Trump’s Muslim Ban, fighting access to food and showers for detained immigrants, and working to end DACA protections for thousands of Dreamers.

Andrew Oldham was the architect of Texas’s strategy to block the expansion of DACA to additional Dreamers and parents of U.S. citizens or green card holders. In addition, John Barker has been a go-to attorney in the Texas attorney general’s office for immigration cases. He has fought to end legal protections for Dreamers (DACA) and the parents of Dreamers (DAPA). He also supported Trump’s discriminatory Muslim Ban and the state’s attempts to punish cities for refusing to discriminate against their citizens in policing. Kyle Duncan filed an amicus brief against President Obama’s Executive Order that established the DAPA program.

Nominees have also attacked refugees. Wendy Vitter has voiced her opposition to the humanitarian placement of refugee immigrants from Syria in the United States. Mark Norris fought to sue the federal government to challenge the refugee resettlement program, and even Jeff Sessions’s Justice Department said Norris’s lawsuit was baseless. A rabid opponent of refugee settlement, Norris created a website where he used the headline: “Don’t let potential terrorists come to Tennessee” along with inflammatory imagery, such as juxtaposing an image of refugees with a picture of ISIS terrorists. In doing so, he spread abhorrent anti-Muslim rhetoric, equating Muslim refugees with ISIS terrorists.

NATIVE AMERICAN RIGHTS

Donald Trump has a long history of demeaning Native American culture and history, often using slurs and offensive language. On the policy front, the Trump Administration has tried to remove protections for lands sacred to Native Americans.

It is therefore no surprise that several of President Trump’s judicial nominees had records of fighting rights for Native American communities and tribal sovereignty. For example, Brett Kavanaugh has a troubling record with regard to the rights of Native people and Michael Park, nominated to the Second Circuit, advocated for a position that could lead to the elimination of federal protection of subsistence fishing rights for Alaska Natives. Eric Miller, nominated to the Ninth Circuit, spent much of his career fighting Native American rights. As the National Congress of American Indians and the Native American Rights Fund wrote, “[h]is advocacy has focused on undermining the rights of Indian tribes, often taking extreme positions and using pejorative language to denigrate tribal rights.”
Andrew Wyrick served as lead counsel and negotiator for the Oklahoma Attorney General’s Office in a five-year dispute over water rights with two of Oklahoma’s largest Indian tribes – the Chickasaw Nation and Choctaw Nation of Oklahoma. The tribes sued in order to block a state water permit to Oklahoma City that they alleged violated a historic treaty between the tribes and the state despite the tribes’ authority over those waters. Wyrick also fought tribal sovereignty in amicus briefs and Supreme Court petitions on behalf of Oklahoma.

III. DEGRADING OF THE SENATE’S ADVICE AND CONSENT DUTY

One of the most striking developments in the judicial nomination process in the first two years of the Trump Administration was the wide-ranging abandonment of norms, rules, and traditions in order to accelerate confirmation of the maximum number of judges. This was done without regard for the questionable credentials and caliber of many nominees, or for the constitutional duties of the Senate in judicial confirmations.

A. CHANGING SENATE RULES TO CONFIRM NEIL GORSUCH

In 2017, Republicans ended decades of Senate tradition to change the rules, on a party-line vote, and lower the threshold for ending debate on a Supreme Court nomination from 60 to 51 votes. This allowed for the confirmation of Neil Gorsuch by a vote of 54 to 45.

Seven of the prior eight Supreme Court justices (all except Thomas) had earned at least 60 votes during the confirmation process. Rather than nominating an individual who would enjoy broad bipartisan support, Republicans chose simply to change the rules.

B. SULLYING THE PROCESS TO CONFIRM KAVANAUGH

Republican members of the Senate Judiciary Committee, under Senator Chuck Grassley’s leadership, did everything in their power to obstruct a fair confirmation process for Brett Kavanaugh.

First, Chairman Grassley made a partisan, unilateral decision to formally request from the National Archives only a small portion of the documents pertaining to Kavanaugh’s record in the Bush White House. He pointedly excluded records dating from Kavanaugh’s years of service as Staff Secretary to President Bush. In that role, Kavanaugh gave “recommendations and advice” to the President at a time when numerous key
controversial policy decisions were being made by the administration. Kavanaugh himself has said that his job as staff secretary was most “formative” and “instructive” to who he is as a judge. Yet Grassley did not request any documents from this critical part of Kavanaugh’s White House service. Second, even those records that Grassley did request, related to Kavanaugh’s service in the White House counsel’s office, were much more limited than the analogous, albeit bipartisan, request for documents from Elena Kagan’s White House counsel tenure. When the National Archives responded that even the small subset of documents Grassley requested could not be produced for public and Senate review earlier than the end of October 2018, Grassley then chose to rely on an alternative, partisan process to ensure that confirmation hearings for Kavanaugh could take place before the midterm elections.

In lieu of waiting for the National Archives to complete its review, Senator Grassley relied on documents provided by a well-known Republican lawyer, Bill Burck, whose close ties to the Trump Administration and representation of three individuals enmeshed in the Russia-related probe (Stephen K. Bannon, Reince Priebus and Donald McGahn), raised questions about his ability to play an impartial role in the process. Not only was the choice of an individual with Republican ties as gatekeeper highly questionable on its own, but it abrogated the National Archives’ customary role in managing the process.

The selected documents were then provided to the Senate Judiciary Committee just hours before hearing began on a confidential basis – meaning that journalists and the public could not view them. The flaws in this opaque, sham approach were many and obvious. Indeed, throughout the hearings, Grassley dismissed concerns raised by Senate Democrats about the unprecedented rush and extreme partisanship in the confirmation process.

Most disconcerting about the Kavanaugh nomination process was the manner in which Senate Republicans handled credible allegations of sexual assault against Kavanaugh made by Dr. Christine Blasey Ford. Chairman Grassley held a rushed hearing where Dr. Ford was the only witness, other than Kavanaugh, called to testify.

After the Senate Judiciary Committee reported Kavanaugh’s nomination to the full Senate, the FBI then conducted a cursory investigation into the sexual misconduct allegations. According to public reports, the White House and Senate Republicans severely constrained the FBI from fully investigating the allegations. It has been publicly reported, for example, that the FBI did not interview Dr. Christine Blasey Ford. It did not interview her husband, nor did it interview Dr. Ford’s therapist, the individual who conducted the polygraph
examination of Dr. Ford, or friends of Dr. Ford whom she told about the assault. Public reports also suggest the FBI did not interview individuals who had information regarding allegations of Kavanaugh’s sexual misconduct toward Debbie Ramirez. As one of Kavanaugh’s classmates at Yale wrote, “[t]he FBI investigation was a joke. I know because I tried to help FBI and was rebuffed.”

C. CHANGING SENATE RULES TO CONFIRM LOWER COURT NOMINEES

The blue slip, a century-old tradition in the Senate, had the effect of ensuring meaningful consultation between the White House and home-state senators. Under President Obama, Republicans vigorously fought for the rights of home-state senators and extensively used the blue slip to block nominees. Notably, in 2009, every Republican senator signed a letter to President Obama requiring home-state Republican approval (not just consultation) for any nominee. Under President Trump, Republicans quickly discarded the 100-year-old tradition.

In 2014, Senator Orrin Hatch noted that diminishing this 100-year old tradition would “sweep aside the last remaining check on the president’s judicial appointment power.” He added, “A confirmation process without filibuster or blue slip veto would weaken the collaboration between the president and the Senate, further politicize the confirmation process, and ultimately produce a more politicized federal judiciary.”

One year later, when Republicans took control of the Senate, Senator Chuck Grassley wrote:

Over the years, Judiciary Committee chairs of both parties have upheld a blue-slip process, including Sen. Patrick Leahy of Vermont, my immediate predecessor in chairing the committee, who steadfastly honored the tradition even as some in his own party called for its demise. I appreciate the value of the blue-slip process and also intend to honor it.

Indeed, during the Obama Administration, Republicans blocked 18 judicial nominees through blue slips (and this number does not include the nominations that were never made in the first place because Republicans made clear they would block them). In fact, Chairman Grassley refused to hold hearings on circuit nominees Rebecca Haywood (Third Circuit), Lisabeth Tabor Hughes (Sixth Circuit), Abdul Kallon (Eleventh Circuit), and Myra
Selby (Seventh Circuit) because they lacked support from Republican senators who refused to return the blue slip.

Republican senators often gave no substantive reason for their decisions. For example, when President Obama nominated Hughes to fill a Sixth Circuit vacancy, Senator Mitch McConnell simply told the President that he refused to fill the seat. Grassley respected McConnell’s blue slip and the seat remained open for McConnell’s “friend,” Amul Thapar, whose most notable decision as a judge was one that would have further eroded campaign finance restrictions, a position that aligned with McConnell’s own interests. Likewise, Senators Shelby and Sessions admitted that they did not return their blue slip on Kallon’s nomination to the Eleventh Circuit because they did not want President Obama to fill the seat. They succeeded in keeping it vacant, and President Trump was able to fill the vacancy with Kevin Newsom.

We cannot stress strongly enough that during the Obama years, there were zero exceptions to the rule that both home-state senators must approve a judicial nominee. In fact, according to the Congressional Research Service, in 100 years there had been only three exceptions to the practice that both home-state senators must return a positive blue slip for a judicial nominee to be confirmed. Moreover, until 2019, a judge had never been confirmed over the objections of both home-state senators.

Yet as soon as Trump became President, outside wealthy donors pressured Republicans to change Senate rules. The Koch brothers pushed donors to lobby their senators to eliminate the blue slip, distributing a “one-page document, explaining the blue-slip practice and urging attendees – many of them big players in Republican politics – to press the issue with the Senate’s GOP leadership and ‘other Republican senators you know.’” In addition, the conservative Judicial Crisis Network announced their intent to spend $250,000 on ads pressuring McConnell to eliminate the blue slip.

So, despite Grassley’s 2015 pledge and their own steadfast insistence on the blue slip being respected during the Obama years, in 2017, Grassley and McConnell reversed course and confirmed nominees without both blue slips. For example, in the 115th Congress, this happened in the following cases in which there was lack of meaningful consultation with the home-state Democratic senator:

- The Judiciary Committee held a hearing for David Stras, over the objection of Senator Al Franken, and the Senate confirmed him.
• The Senate confirmed Michael Brennan over the objection of Senator Tammy Baldwin (to a seat that was vacant only because Ron Johnson’s blue slip was respected under President Obama).
• The Senate confirmed David Porter over the objection of Senator Bob Casey (to a seat vacant because Chairman Grassley respected Senator Toomey’s blue slip under President Obama).

In the 115th Congress, Grassley further undermined home-state senators by holding a hearing and reporting to the full Senate the nomination of Ryan Bounds, over the objections of Oregon Senators Ron Wyden and Jeff Merkley; holding a hearing on Eric Miller, over the objections of Washington Senators Patty Murray and Maria Cantwell; and holding a hearing on Paul Matey, over the objections of New Jersey Senators Bob Menendez and Cory Booker. Both Miller and Matey were confirmed in 2019, along with Chad Readler and Eric Murphy, who were confirmed over the objections of Senator Sherrod Brown. The White House also put forward five other appellate nominees without meaningful consultation with New York and California senators.

Finally, in early 2019, Republicans indicated their intent to further erode Senate rules by limiting the amount of debate time for district court nominations.

D. HIDING AND OBSCURING KEY DATA

As discussed earlier, in the effort to confirm Brett Kavanaugh, Republicans did all they could to minimize the amount of information made available to the American people.

But the effort to obscure nominees’ full records did not start or stop with Kavanaugh. During the Trump Administration, failure to disclose materials has become routine and Senate Republicans have condoned the lack of full disclosure.

For example, Wendy Vitter failed to disclose more than a hundred speeches, interviews, and press articles, including one easily found through a quick YouTube search, in which she promoted materials that claim “the pill kills” and is associated with women dying violent deaths. This panel featured a speaker who also claimed that abortions cause breast cancer. In total, Vitter originally failed to disclose more than 100 speeches, interviews, and press articles.

Likewise, Brett Talley (who was in charge of helping nominees navigate the Senate Judiciary Committee while working at the Office of Legal Policy) failed to disclose more than 15,000
pieces of online commentary, including one believed to be attributable to him and in which he defended the KKK. He also did not disclose that his wife was employed as the chief of staff to the White House counsel. Every Republican supported Talley in the Judiciary Committee.

Further, Ryan Bounds failed to disclose to the Oregon judicial selection committee a series of controversial articles he wrote in the Stanford Review. The head of the Committee went so far as to make clear that Bounds “misled” the committee. Nevertheless, every Republican on the Senate Judiciary Committee voted for Bounds’s nomination. Kenneth Lee, another nominee to the Ninth Circuit, likewise failed to disclose inflammatory writings to Senator Dianne Feinstein’s and Senator Kamala Harris’s nominating commissions and to the Senate Judiciary Committee.

Gordon Giampietro also failed to disclose information to his state nominating commission, when he did not notify the Wisconsin judicial selection commission about a radio interview in which he disparaged LGBTQ Americans and reproductive rights, and also made statements belittling “diversity” and criticizing the Civil Rights Act of 1964. A commission member made clear they would not have supported him if he had been forthcoming. Yet the White House nominated him, and Senator Ron Johnson supported his confirmation.

These examples stand in stark contrast to the posture taken by Judiciary Committee Republicans in 2010. In that year, all Republicans then serving on the committee, joined former Ranking Member Jeff Sessions in blocking Goodwin Liu, an Obama nominee to the Ninth Circuit who had supplemented his original Senate Judiciary Questionnaire with additional materials. The Republicans argued that “Liu’s unwillingness to take seriously his obligation to complete these basic forms is potentially disqualifying and has placed his nomination in jeopardy.” The Republicans wrote that “[a]t best, this nominee’s extraordinary disregard for the Committee’s constitutional role demonstrates incompetence; at worst, it creates the impression that he knowingly attempted to hide his most controversial work from the Committee.”

E. MISLEADING THE SENATE

Many of Donald Trump’s judicial nominees, including Brett Kavanaugh, have misled the Judiciary Committee. In virtually every case, that has not stopped Republicans on the committee from supporting confirmation.
In addition to his denial of credible allegations of sexual assault, Kavanaugh misled the Senate regarding prior comments about *Roe v. Wade*, handling stolen documents, work on warrantless wiretapping and detention policy, and involvement in some of the most controversial Bush confirmation battles.

Evidence strongly suggests that Thomas Farr was untruthful in his response to questions about his involvement in voter suppression efforts orchestrated by the Jesse Helms campaign; indeed, a former Justice Department official and Justice Department memorandum directly contradicted Farr’s testimony. Despite serious allegations, Republicans did not investigate the matter further, tried to conceal the contrary evidence from the Department of Justice, denied requests for an additional hearing, and pushed Farr’s nomination through committee on a party-line vote. All but two Republican senators supported his nomination.

Also illustrative is the confirmation process for David Porter. A 2009 press release announcing the formation of an organization opposing the nomination of Sonia Sotomayor to the Supreme Court, called the Pennsylvania Judicial Network, listed Porter as a co-founder. This organization was a local affiliate of the Judicial Crisis Network, the far-right organization that has spent millions of dollars to support Trump’s extreme judges. Carrie Severino, JCN’s chief counsel, wrote in the National Review that Porter was indeed “part of a network of conservatives ... that organized in opposition to the confirmation” of Sotomayor.

Yet during his confirmation hearing, Porter denied that he co-founded the organization and “portray[ed] his association with the group as merely a 15-second phone conversation,” and “he could not explain how his name wound up at the top of a letter announcing his role in founding the organization.” Notably, before the hearing, the Judicial Crisis Network took down the website with his name on it. Despite this misleading statement to the Senate, every Republican voted for Porter’s confirmation.

Also relevant is the nomination of Wendy Vitter. Vitter endorsed claims that “the pill kills” and that abortion increases the risk of breast cancer. Yet at her hearing, when asked whether she supported these debunked assertions, she gave a response that was contradicted by a video that she initially failed to disclose to the committee. Every Republican on the committee voted for her.
F. HEARINGS STACKED TO MINIMIZE VETTING

Chairman Grassley also arranged hearings in order to reduce vetting and scrutiny of Trump nominees. Over a two-year period during the Obama Administration, Chairman Grassley held hearings on a total of only five circuit court nominees. Under President Trump, Chairman Grassley held hearings on five circuit nominees in one month alone.

Chairman Grassley even held two hearings while the Senate was in recess, without Democrats’ consent and at times when no Democratic senator was able to attend the hearings and question the nominees. Committee Democrats wrote Chairman Grassley that the Judiciary Committee “has never before held nominations hearings while the Senate is in recess before an election.” They further emphasized, “[w]e take our constitutional duty to vet nominees for lifetime appointments to the federal bench very seriously. An essential part of that vetting process is an opportunity to question nominees in a public hearing. Holding hearings during a recess, when members cannot attend, fails to meet our constitutional advice-and-consent obligations.”

Moreover, during the Obama Administration, there were only three instances where two circuit court nominees appeared at the same hearing. Republicans, who were in the minority, were consulted in each case. Indeed, in 2017, the second time Grassley proceeded with two circuit court nominees, he acknowledged that it was “unusual.” Nevertheless, during the first two years of the Trump Administration Grassley held eight hearings with two circuit court nominees on the same panel. Given that each senator only gets five minutes to ask questions, this meant considerably less scrutiny for each nominee.

G. CONDONING NOMINEES WHO LACK BASIC QUALIFICATIONS

During the 115th Congress, an astounding six Trump judicial nominees were rated “Not Qualified” by the American Bar Association (ABA), the highest number of judicial nominees to be ranked “Not Qualified” during the first two years of a presidency.

Jonathan Kobes is illustrative of this phenomenon. Kobes had served as lead counsel in just two trials that led to a verdict, had just one oral argument and had argued no cases before the Supreme Court. And he had no legal scholarship, had authored no law review article, nor made any public statements on legal issues. As the ABA wrote, “Mr. Kobes has neither the requisite experience nor evidence of his ability to fulfill the scholarly writing required of a United States Appeals Court Judge . . . [H]e was unable to provide sufficient writing samples of the caliber required to satisfy Committee members that he was capable of doing the
work of a United States Circuit Court Judge.” The ABA added, “None of the writing that we reviewed is reflective of complex legal analysis, knowledge of the law, or ability to write about complex matters in a clear and cogent manner.” Nevertheless, Kobes was supported by every Senate Republican but one.

In fact, the White House seemed more intent on nominating young ideological conservatives over qualified jurists. For example, Allison Rushing, an attorney at Williams & Connolly and in her mid-thirties, was nominated to the Fourth Circuit Court of Appeals. Rushing, a member of the Federalist Society, worked at the Alliance Defending Freedom, an extremist organization that has been listed as a hate group by the Southern Poverty Law Center. She is only 11 years out of law school. She has practiced law for only eight years, having spent three years as a law clerk. A leading legal publication, Above the Law, called Rushing “comically inexperienced.” In fact, as Senator Kennedy rightly pointed out at her hearing:

Williams & Connolly is a great law firm, a lot of great lawyers there. Tell me why you’re more qualified to be on the Fourth Circuit than some of the Williams & Connolly [lawyers] that have been there for 20 years, 25, 30 years in the trenches.

Also noteworthy is Trump nominee Brett Talley. The ABA unanimously found the 36-year-old Talley “Not Qualified” given that he had only practiced law for three years, never tried a case to verdict or judgment, never argued a motion in federal court, and was known more for his political blogging than his legal ability. Nonetheless, Talley was supported by every Republican on the Judiciary Committee. Only after Talley was voted out of committee on a party-line vote was it reported by The New York Times, Slate, and BuzzFeed that he had not disclosed more than 15,000 pieces of online commentary, nor had he disclosed that his wife worked in the White House Counsel’s Office as Don McGahn’s chief of staff.

Like Talley, Matthew Petersen had never tried a case or argued a motion in federal court. He was a commissioner on the Federal Election Commission, where he served with White House Counsel Don McGahn. Senator John Kennedy questioned Petersen at his hearing about basic trial court motions and standards of evidence. Petersen was unable to answer these questions, and video of Kennedy’s questioning went viral. Petersen withdrew his nomination five days after the hearing.

Ryan Holte was 34 years old when nominated to a federal judgeship and admitted “I have not tried a case.” Stephen Schwartz was also nominated to the Court of Federal Claims
although he had no relevant experience. Both were also supported by every Republican on the Judiciary Committee.

IV. FUTURE OUTLOOK

The 2018 midterm elections increased the Senate Republican majority, which has the potential to ease confirmation of even more Trump judges. This prospect is sobering, as are the mass confirmations of far-right jurists under the Trump Administration so far. But there are also some hopeful signs.

First, and most significantly, several nominees were successfully defeated. Ryan Bounds, Thomas Farr, Jeff Mateer, Brett Talley, Gordon Giampietro, Damien Schiff, Stephen Schwartz and Matthew Peterson were not confirmed as federal judges with the power to further erode the rights and liberties of others. For millions of people in the Ninth Circuit, as well as North Carolina, Texas, Alabama, and Wisconsin, and litigants who come before the Federal Court of Claims, these defeats have real-world consequences. Their defeats are also a testament to the ability of education and advocacy to make a difference in the outcomes of nominations, at least for some of the most egregiously unfit nominees.

Moreover, the fights over Neil Gorsuch, Brett Kavanaugh and lower court nominees have increasingly energized progressives as to the courts, and opposition and coalitions continue to grow. Millions of Americans, including people in every state, took action against Trump’s troublesome judicial nominees, including a wide variety of advocates such as health care activists, faith leaders, Native American communities, advocates for LGBTQ rights, women’s rights activists, civil rights activists, workers, and climate activists. Law professors signed letters, many organizations ensured their members’ voices were heard, and citizens showed up at hearings in blue shirts to protest Chairman Chuck Grassley’s decision to change the blue slip protocol and other rules. Senators and thousands of citizens attended rallies. Most importantly, everyday Americans, from truck drivers to parents of transgender students to persons with disabilities, spoke passionately regarding the real-world stakes of these nomination fights.

In particular, the dramatic Kavanaugh confirmation process showed our country’s lawmakers how much Americans care about the courts, and that progressives have awoken to the importance of the issue. According to the Associated Press, three-quarters of midterm voters said the debate over Kavanaugh’s nomination was very or somewhat important to
their vote, and those who said it was very important to their vote were more likely to support the Democratic candidate.
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APPENDIX A: ACCESS TO HEALTH CARE

Trump judges and nominees who have fought access to health care

(See also Appendix S: Women’s Equality – Reproductive Rights)

- **Amy Coney Barrett** (confirmed to Seventh Circuit) criticized Chief Justice John Roberts for his decision in *National Federation of Independent Businesses (NFIB) v. Sebelius*, 567 U.S. 519 (2012), which upheld Congress’s authority to enact large portions of the Affordable Care Act (ACA).

- **Ralph Erickson** (confirmed to Eighth Circuit) emphasized that he believes there is no right to health care. He said, “Many Americans believe that they have a ‘Right to Medical Care.’ This right is not enumerated in the Constitution—nor can it be divined from the language of the Constitution.”

- **Britt Grant** (confirmed to Eleventh Circuit) challenged the ACA by filing an amicus brief that, had she been successful, would have eliminated tax subsidies for millions of Americans.


- **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, dissented from two rulings upholding the ACA. In one dissent he wrote what a Kavanaugh clerk described as a “road map” to invalidate the law.

- **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit)2 challenged one of the ACA’s tax provisions. In *Ohio v. United States*, 849 F.3d 313 (6th Cir. 2017), Murphy argued that the ACA’s Transitional Reinsurance Program should only apply to private employers. The Sixth Circuit rejected Murphy’s “novel” argument.

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1 In the 115th Congress, Alliance for Justice studied the record of all of Trump’s appellate nominees, as well as district and court of claims nominees whose records were of particular concerns. Thus, the appendices do not cover the totality of Trump nominees. The information in the appendices are largely drawn from Alliance for Justice’s reports, which are linked to.

2 When confirmation dates occurred after the 115th Congress, those dates are noted.

• **Andrew Oldham** (confirmed to Fifth Circuit) was lead counsel in an effort by 20 states to strike down the ACA as unconstitutional. In *Hotze v. Burwell*, 784 F.3d 984 (5th Cir. 2015), Oldham argued that the ACA violated the Origination Clause of the Constitution.

• **Michael Park** (nominated to Second Circuit) filed an amicus brief arguing the Affordable Care Act was unconstitutional.

• **David Porter** (confirmed to Third Circuit) wrote several columns arguing the ACA is unconstitutional.

• **Neomi Rao** (confirmed March 13, 2019 to D.C. Circuit) criticized the Affordable Care Act. Most notably, she criticized Chief Justice John Roberts for his opinion in the 2014 case *King v. Burwell*, 135 S. Ct. 475 (2014). Rao also criticized the conservative justices on the Supreme Court for not creating a “revolution” that would overturn “important” acts such as the ACA. She complained about the failure of the Supreme Court to overrule progressive laws, specifically noting “when it comes to something important . . . or we get the Affordable Care Act, well we’re not going to really interfere in those areas. So there seems like they’re saying we can draw a line, but they just won’t. Not when it’s anything really important.”

• **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit), as acting head of the Justice Department’s Civil Division, filed a brief arguing that the ACA is unconstitutional.

• **Michael Truncale** (nominated to Eastern District of Texas) argued, “If Obamacare is allowed to stand, there is no limit to what the federal government can do to you. It’s going to create 111 agencies that get between you and your doctor, it’s going to lead to government rationing of healthcare.”
APPENDIX B: CIVIL RIGHTS — EQUAL EMPLOYMENT OPPORTUNITY

Trump judges and nominees who have fought efforts to ensure all persons have an equal opportunity to be hired, promoted, receive equal pay for equal work, and be free from harassment in the workplace

- **Amy Coney Barrett** (confirmed to Seventh Circuit), while on the Seventh Circuit, sided with an employer who segregated employees by race and ethnicity.

- **Michael Brennan** (confirmed to Seventh Circuit) has written derisively of the concept of a “glass ceiling” that prevents the advancement of women, expressing skepticism of such a “notion” that “rules were rigged” against some segments of society.

- **Kurt Engelhardt** (confirmed to Fifth Circuit), while a district court judge, had a troubling record with regard to workplace sexual harassment claims, often going out of his way to rule that allegations do not rise to the level of objectively hostile conduct and to keep cases from even being heard by a jury.

- **Thomas Farr** (nominated to Eastern District of North Carolina) supported eliminating the right of workers to bring any employment discrimination lawsuit in state court. Farr also fought to invalidate a county ordinance that protected employees from discrimination. As an attorney, Farr defended a company when a supervisor said that female employees were “stupid, retarded, and awful,” that “women with children should be at home and not employed in the workplace;” and that he would go to an employee’s hotel room to “help [her] pick [her] panties off the floor.” Farr defended another company where a woman was denied a position because the job “was too hard and too rough for a woman.”

- **Gordon Giampietro** (nominated to Eastern District of Wisconsin) disparaged the Civil Rights Act of 1964, claiming that “calls for diversity” are “code for relaxed standards.”

- **Neil Gorsuch** (confirmed to Supreme Court), while on the Tenth Circuit, repeatedly voted to deny women suing under Title VII for sex discrimination the opportunity to present evidence of discrimination to a jury.

- **L. Steven Grasz** (confirmed to Eighth Circuit) pushed for a measure that would have allowed employers to discriminate against LGBTQ employees.
• **Matthew Kacsmaryk** (nominated to Northern District of Texas) argued that employers should be able to discriminate based on sexual orientation and gender identity.

• **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, dismissed an African-American employee’s claim alleging race discrimination. He dissented from a majority decision that recognized an African-American woman’s right to pursue race discrimination and retaliation claims under the Congressional Accountability Act. He also dissented from a decision which found that the State Department violated the Age Discrimination in Employment Act when it terminated an employee on his sixty-fifth birthday.

• **Mark Norris** (confirmed to Western District of Tennessee) supported legislation that limited to $25,000 compensatory damages in retaliatory discharge cases and eliminated individual liability. He also supported legislation that prohibits cities from protecting gay and lesbian Tennesseans from being discriminated against based on sexual orientation.

• **Andrew Oldham** (confirmed to Fifth Circuit) fought Equal Employment Opportunity Commission (EEOC) guidance for employers to help those with criminal histories have a fair chance in hiring decisions.

• **Amy St. Eve** (confirmed to Seventh Circuit), while a district court judge, sided with an employer who segregated employees by race and ethnicity.

• **Don Willett** (confirmed to Fifth Circuit), while on the Texas Supreme Court, limited the amount of compensation that a victim of workplace sexual harassment and assault can collect from his or her employer. Before joining the Texas Supreme Court, Willett objected to a draft proclamation of then-Governor George W. Bush honoring the Texas Federation of Business and Professional Women. He wrote: “I resist the proclamation’s talk of ‘glass ceilings,’ pay equity (an allegation that some studies debunk), the need to place kids in the care of rented strangers, sexual discrimination/harassment and the need generally for better ‘working conditions’ for women (read: more government).”
APPENDIX C: CIVIL RIGHTS — LGBTQ AMERICANS

*Trump judges and nominees who have fought fairness, equality, and opportunity for lesbian, gay, bisexual, transgender and queer Americans*

- **J. Campbell Barker** (nominated to Eastern District of Texas) signed Texas’s amicus brief in support of Masterpiece Cakeshop, which had refused to sell a wedding cake to a same-sex couple. Barker is also on Texas’s amicus brief supporting a flower shop’s discrimination against same-sex couples by refusing to sell flowers for a couple to use in a wedding.

- **Elizabeth Branch** (confirmed to Eleventh Circuit) praised Justice Scalia’s dissent in *Lawrence v. Texas*.

- **Andrew Brasher** (nominated to Middle District of Alabama) filed a brief opposing marriage equality in *Obergefell v. Hodges*.

- **John Bush** (confirmed to Sixth Circuit) criticized the State Department for modifying passport application forms to account for the possibility of same-sex parents.

- **Kyle Duncan** (confirmed to Fifth Circuit) warned of “a rapid movement towards sort of general cultural acceptance of homosexuality and homosexual practices.” Duncan co-authored an amicus brief representing Louisiana’s opposition to same-sex marriage. He wrote elsewhere that if the Supreme Court recognized that same-sex marriage was a fundamental right, the “harms” to our democracy “would be severe, unavoidable, and irreversible.” Duncan also sought to deny same-sex couples adoption rights. Duncan represented Virginia’s Gloucester County School Board and argued that Gavin Grimm, a transgender high school boy, should not be allowed to use the men’s restroom. Finally, Duncan has spoken several times before the Alliance Defending Freedom, an organization that has defended the state enforced sterilization of transgender people overseas and is classified as a hate group by the Southern Poverty Law Center.

- **Kurt Engelhardt** (confirmed to Fifth Circuit), while a district court judge, made clear his opposition to same-sex marriage, noting that a state does not need to recognize marriages that violate public policy of the state and saying that “the Louisiana Legislature has clearly stated the ‘strong public policy’ of this state against recognition of same-sex marriages.”
• **Neil Gorsuch** (confirmed to Supreme Court), while on the Supreme Court, ruled against the rights of LGBTQ Americans in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*. On the Tenth Circuit he joined a panel opinion upholding summary judgment in favor of an employer who banned a transgender woman from using the women’s restroom until she could prove that she had undergone sex reassignment surgery, and then declined to renew her teaching contract. He rejected a claim by a transgender woman incarcerated in Oklahoma who alleged that her constitutional rights were violated when she was denied medically necessary hormone treatment. In an op-ed published in the National Review Online, Gorsuch attacked “American liberals” for what he said was an overreliance on litigation to “effect[] their social agenda on everything from gay marriage to assisted suicide to the use of vouchers for private-school education.”

• **Britt Grant** (confirmed to Eleventh Circuit) assisted on an amicus brief opposing same-sex marriage in *Obergefell*. Grant opposed government guidance that called for transgender students to be permitted to use facilities that conform to their gender identity.

• **L. Steven Grasz** (confirmed to Eighth Circuit) supported a law that would allow employers to discriminate against LGBTQ persons. He was director of the Nebraska Family Alliance, which supports conversion therapy. As Chief Deputy Attorney General of Nebraska, Grasz opposed the recognition in Nebraska of same-sex marriages contracted in other states. Further, in 1999, Grasz represented Nebraska as amicus curiae in a suit regarding the denial of marriage licenses for same-sex couples. Grasz also argued before the Nebraska Supreme Court that state law did not allow an unmarried lesbian couple to adopt a child.

• **James Ho** (confirmed to Fifth Circuit) defended Texas’s Defense of Marriage Act. Ho litigated *In the Matter of the Marriage of J.B. & H.B.*, where a same-sex couple that had been married in Massachusetts sought to obtain a divorce in Texas.

• **Matthew Kacsmaryk** (nominated to Northern District of Texas) has written that while the “Civil Rights Movement” was on “the right side of history,” the same cannot be said for efforts by LGBTQ persons to achieve equality.

• **Gregory Katsas** (confirmed to D.C. Circuit) defended the Defense of Marriage Act (DOMA) in two cases and strongly opposed *Obergefell*.

• **Joan Larsen** (confirmed to Sixth Circuit) objected to *Lawrence v. Texas* and criticized the Justice Department for not defending the constitutionality of the Defense of Marriage Act. As a state supreme court justice, moreover, Larsen failed to give *Obergefell* full effect.
• **Kenneth Lee** (nominated to Ninth Circuit) has writings from his twenties that show extremely troubling views on LGBTQ equality, ranging from harmful stereotypes about the LGBTQ community and the AIDS epidemic, to characterizing LGBTQ campus advocacy as the work of “militant gays.”

• **Jeff Mateer** (nominated to Eastern District of Texas) called transgender children part of “Satan's plan.”

• **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit) defended Ohio’s prohibition on same-sex marriage in *Obergefell v. Hodges*. During Murphy’s tenure as state solicitor, the state of Ohio joined an amicus brief in *Gloucester County School Board v. G.G.*, defending a school board’s refusal to allow a transgender student to use the bathroom that matched his gender identity.

• **Howard Nielson** (nominated to District of Utah) defended Proposition 8 in California, which would have banned same-sex marriage in California. After the district court, in *Perry v. Schwarzenegger*, ruled that Proposition 8 was unconstitutional, Nielson filed a motion to vacate the judgment. Nielson’s motion argued that the judge “had a duty to disclose not only the facts concerning his [same-sex] relationship, but also his marriage intentions.” Nielson continued his opposition to same-sex marriage years later, when he authored an amicus brief opposing marriage equality in *Obergefell v. Hodges*.

• **Mark Norris** (confirmed to Western District of Tennessee) supported legislation that prohibits cities in Tennessee from protecting LGBTQ people from being discriminated against based on sexual orientation. Norris cosponsored a joint resolution urging Congress to pass the Federal Marriage Amendment, which would define marriage exclusively as the “union of a man and a woman.” Norris supported legislation that directly conflicted with *Obergefell v. Hodges*, a bill that, as one supporter noted, was passed to “compel courts to side with the late Supreme Court Justice Antonin Scalia and his dissent.” In addition, ignoring legal advice from the state attorney general that *Obergefell* applied to state divorce and child custody proceedings, Norris tried to intervene in a matter in order to prevent a state court from applying *Obergefell*. Not only was Norris’s legal position in direct conflict with Supreme Court precedent, the judge in the case noted that Norris’s actions “constitute[d] an attempt to bypass the separation of powers provided for by the Tennessee Constitution.”

• **David Porter** (confirmed to Third Circuit) praised Senator Rick Santorum’s 2005 book, *It Takes a Family*, writing that “[Santorum] argues, ‘the currency of social capital is trust’ and that ‘is
first created and then nurtured by healthy families,’ a prosperous society ‘depends on healthy mom-and-dad families.’” Porter was also a contributor to The Center for Vision & Values, a think tank at Grove City College. Grove City College does not allow its students to accept federal financial aid in order to avoid complying with Title IX. The Princeton Review ranked Grove City College as one of the least LGBTQ-friendly colleges in the country.

- **Neomi Rao** (confirmed March 13, 2019 to D.C. Circuit) said that while LGBTQ people "have established themselves as a minority group fighting against discrimination" and "trendy political movements have only recently added sexuality to the standard checklist of traits requiring tolerance," there was a major difference between sexuality and race or gender: "People who tolerate women in the workplace and blacks and Hispanics as neighbors view homosexuality as a behavior – and behaviors, unlike gender and race, are subject to change," she said. "No one knows whether sexuality is a biological phenomenon or a social construct. The truth may lie somewhere in the middle." Prior to Rao’s departure, the Office of Information and Regulatory Affairs (OIRA), under her leadership, was finalizing a rule proposed by the Department of Health and Human Services (HHS) that would allow health care providers to refuse to provide medical care to patients towards whom providers have “conscientious objections.” Additionally, Rao’s office worked with Betsy DeVos’s Department of Education to roll back protections for LGBTQ students on college campuses. Proposed changes to Title IX would expand schools’ ability to discriminate against LGBTQ students under the guise of religious exemptions.

- **William Ray II** (confirmed to Northern District of Georgia), as chairman of the Gwinnett County Republican Party, passed a resolution “strongly oppos[ing] any plan, legislation, or resolution which may explicitly or implicitly condone homosexual behavior. Such plans which are opposed include, but are not limited to, the passage of legislation to implement in Gwinnett County any domestic partner benefit plan.” Ray said that “[o]ur main point in passing the resolution is not to grant members of the homosexual community greater rights than exist in the general citizenry.”

- **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit) was responsible for advancing the anti-LGBTQ agenda of the Justice Department as the acting assistant attorney general of DOJ’s Civil Division. He signed an amicus brief in support of the discriminatory actions of the bakery in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*. Readler also defended Trump’s transgender military ban.

- **Allison Rushing** (confirmed March 25, 2019 to Fourth Circuit) worked at the Alliance Defending Freedom, an organization that has defended the state-enforced sterilization of
transgender people overseas and is classified as a **hate group** by the Southern Poverty Law Center. Rushing spoke favorably of the Defense of Marriage Act.

- **Damien Schiff** (nominated to Court of Federal Claims) wrote that "I contend that the due process clause, assuming that it has a substantive component, likely does not forbid the criminalization of sodomy." Schiff spoke out against marriage equality in California. Schiff was critical of a decision in Florida invalidating that state's ban on same-sex couples adopting children. He also has criticized a school district's attempt to address bullying of LGBTQ students, contending it was "teaching 'gayness' in public schools."

- **Amul Thapar** (confirmed to Sixth Circuit), as a district court judge sitting by designation on the Sixth Circuit, rejected a worker's same-sex sexual harassment and retaliation claims, inappropriately restricting same-sex sexual harassment claims by requiring the victim produce "credible evidence that the harasser was homosexual."

- **Michael Truncale** (nominated to Eastern District of Texas) warned of dire consequences if Trump lost the election, writing that "liberals want to require pharmacists to sell abortion drugs despite religious objections and to force Christian photographers to use their artistic skills to celebrate same-sex weddings."

- **Don Willett** (confirmed to Fifth Circuit) disparaged the right of LGBTQ people to marriage equality, when he joked about wanting the "right to marry bacon" in a tweet. He also joked about California's laws relating to transgender students' participation in school sports. Willett has also consistently ruled against same-sex marriage rights. In 2005, Willett attended a Texas Restoration Project event that the Austin Chronicle described as an event for then-Governor Rick Perry and "religious conservatives [to] get together to bash gays."

- **Allen Winsor** (nominated to Northern District of Florida) defended Florida's ban on same-sex marriages.
APPENDIX D: CIVIL RIGHTS — NATIVE AMERICANS

Trump judges and nominees who have fought fairness, equality, and opportunity for Native Americans

• **Ryan Bounds** (nominated to Ninth Circuit) served as opinion editor and assistant news editor for the Stanford Review. During his time there, The Stanford Review’s editorial page began a repeated segment called “Smoke Signals” which featured a crude caricature of a Native American. Stanford University President Gerhard Casper and Provost Condoleezza Rice criticized The Stanford Review’s use of the image and approximately a dozen Native American students wrote letters of complaint.

• **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, exhibited a lack of understanding of tribal rights and Native American history in past writings on the topic. He wrote an amicus brief supporting a challenge to the Hawaiian Constitution, which Native rights activists argue misclassified tribes as racial minorities instead of sovereign nations protected by the Constitution.

• **Kenneth Lee** (nominated to Ninth Circuit), in his twenties, mocked the “politically correct clique” for criticizing professional sports teams that use offensive Native American caricatures and stereotypes in their mascots and cheers.

• **Eric Miller** (confirmed February 26, 2019 to Ninth Circuit) has a lengthy and disturbing record on Native issues, leading to opposition to his nomination from the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). This is one of only a small handful of times in NCAI’s history that they have formally opposed a judicial nomination.

• **Michael Park** (nominated to Second Circuit) worked on two briefs in *Sturgeon v. Frost*, advocating for a position that could lead to the elimination of federal protection of subsistence fishing rights for Alaska Natives.

• **Patrick Wyrick** (nominated to Western District of Oklahoma) served as lead counsel and negotiator for the Oklahoma Attorney General’s Office in a five-year dispute over water rights with two of Oklahoma’s largest Indian tribes – the Chickasaw Nation and Choctaw Nation of Oklahoma. Wyrick has also fought tribal sovereignty in amicus briefs and Supreme Court petitions on behalf of Oklahoma, including opposing tribal immunity from suits brought by
states in *Michigan v. Bay Mills Indian Community* and *Oklahoma v. Hobia*; and arguing against tribal court jurisdiction to adjudicate certain claims against nonmembers in *Dollar Gen. Corp. v. Miss. Band of Choctaw Indians*. 
APPENDIX E: CIVIL RIGHTS — PERSONS WITH DISABILITIES

*Trump judges and nominees who have fought fairness, equality, and opportunity for persons with disabilities*

- **Mark Bennett** (confirmed to Ninth Circuit) supported massive statewide cuts to special-education programs in Hawaii’s state budget.

- **Michael Brennan** (confirmed to Seventh Circuit) praised the Supreme Court’s decision in *Board of Trustees of the University of Alabama v. Garrett* which held that persons with disabilities could not sue state governments for damages under the Americans with Disabilities Act (ADA).

- **Neil Gorsuch** (confirmed to Supreme Court), while on the Tenth Circuit, consistently ruled against rights and protections for persons with disabilities, including reading the Individuals with Disabilities Education Act (IDEA) extremely narrowly. For example, at the exact moment Neil Gorsuch was testifying in his confirmation hearing, the Supreme Court issued *Endrew F. v. Douglas Cty. Sch. Dist.* In that case, the Supreme Court unanimously reversed the extraordinarily low standard for educational benefit under the IDEA that Gorsuch created in *Thompson School Dist. V. Luke P.* In that case, he ruled against a student with autism who needed placement in a residential school program due to his lack of progress in school. Also illuminating was *Hwang v. Kan. State Univ*, where Gorsuch ignored clearly established law and allowed an employer to deny a professor recovering from cancer an accommodation to work from home when her doctor told her if she returned to work during a flu epidemic she could die.

- **Ryan Nelson** (confirmed to Ninth Circuit) was counsel for a group of states that supported Tennessee in claiming that persons with disabilities could not sue for money damages under Title II of the Americans with Disabilities Act. Nelson’s brief stated, “there is no general constitutional right to public buildings that are physically ‘accessible’ to the disabled.”

- **Mark Norris** (confirmed to Western District of Tennessee) sought an opinion from the state attorney general exempting the state airport authority from a Tennessee law that states that “no agency, city, town or other municipality or any agency thereof shall exact any fee for parking” in a handicap space by drivers with disabilities. Norris ensured the Memphis Airport could charge parking fees to drivers with disabilities.
• **Andrew Oldham** (confirmed to Fifth Circuit) supported efforts to prevent Texans with disabilities from suing the state.

• **Neomi Rao** (confirmed March 13, 2019 to D.C. Circuit), as *Mother Jones* noted, “is a staunch defender of dwarf-tossing.”

• **David Stras** (confirmed to the Eighth Circuit), while on the Minnesota Supreme Court, joined an opinion limiting the state assistance for a nine-year-old boy with a severe disability.

• **Amy St. Eve** (confirmed to Seventh Circuit), while a district court judge, dismissed a discrimination suit under the ADA that was reversed by the Seventh Circuit. The plaintiff, Linda Reed, who suffered from an untreatable neurological condition characterized by involuntary movements, claimed that a state circuit court judge in Illinois had failed to allow her sufficient accommodations during her pro se personal injury action in his court. In reversing, Judge Richard Posner wrote: “For one court (the state court) to deny accommodations without which a disabled plaintiff has no chance of prevailing in her trial, and for another court (the federal district court) on the basis of that rejection to refuse to provide a remedy for the discrimination that she experienced in the first trial, is to deny the plaintiff a full and fair opportunity to vindicate her claims.”
APPENDIX F: CIVIL RIGHTS — RACIAL EQUITY

Trump judges and nominees who have shown insensitivity towards persons of color

(See also Appendix B: Civil Rights – Equal Employment Opportunity and Appendix C: Civil Rights – Voting Rights)

- **Ryan Bounds** (nominated to Ninth Circuit) wrote articles expressing hostility towards multiculturalism and diversity.

- **Andrew Brasher** (nominated to Middle District of Alabama) filed an amicus brief in support of a Florida law mandating universal drug testing for Temporary Assistance for Needy Families (TANF) applicants – an unconstitutional law that would have made low income families pay for drug tests and had a disparate impact on persons of color. The Eleventh Circuit found the law stripped away the “legitimate expectations of privacy” “by virtue of [their] poverty.”

- **Michael B. Brennan** (confirmed to Seventh Circuit) argued to make a statute of limitations in civil rights suits as narrow as possible.

- **Liles Burke** (confirmed to Northern District of Alabama) kept a portrait of Confederate President Jefferson Davis hanging in his office.

- **John Bush** (confirmed to Sixth Circuit) spread conspiracy theories falsely alleging that President Obama was born in Africa.

- **Daniel Collins** (nominated to the Ninth Circuit) defended Wells Fargo’s racially discriminatory lending practices, which allegedly led to high rates of foreclosures for families of color as well as and deepened racial segregation within the city.

- **Gordon Giampietro** (nominated to Eastern District of Wisconsin) claimed that “calls for diversity” are “code for relaxed standards.”

- **Gregory Katsas** (confirmed to D.C. Circuit) described the 2014 Supreme Court term as “grim” and a “very bad year for conservatives,” highlighting the Court’s decision in *Texas Dept. of Housing and Community Affairs v. The Inclusive Communities Project*, which upheld disparate impact claims under the Fair Housing Act.
• **Kenneth Lee** (nominated to Ninth Circuit) wrote a number of articles that demonstrated a profound trivialization of America's racial history and the resultant need for robust civil rights laws.

• **Mark Norris** (confirmed to Western District of Tennessee) led the effort to prohibit local communities from removing monuments to Confederate leaders from parks or public spaces.

• **Michael Park** (nominated to Second Circuit) on behalf of the Project on Fair Representation, is defending the Trump Administration’s effort to insert a citizenship question into the 2020 census. Park is committed to dismantling equal opportunity programs. In 2012, he served as a key contributor in *Fisher v. University of Texas*, 133 S. Ct. 2411 (2013), writing an amicus brief on behalf of petitioner Abigail Fisher in support of her argument that the university’s use of race as one consideration among many in the admissions process was unconstitutional. Park is also representing the plaintiff group, Students for Fair Admissions (SFFA), that has sued Harvard University for its race-conscious admissions process.

• **Neomi Rao** (confirmed March 13, 2019 to D.C. Circuit) said “for the past decades, Yale has dedicated itself to a relatively firm meritocracy, which drops its standards only for a few minorities, some legacies and a football player here or there.” She also wrote, “[t]he multiculturalists are not simply after political reform. Underneath their touchy-feely talk of tolerance, they seek to undermine American culture. They argue that culture, society and politics have been defined – and presumably defiled – by white, male heterosexuals hostile to their way of life.”

• **Damien Schiff** (nominated to Court of Federal Claims) compared affirmative action to slavery, Jim Crow, and the internment of Japanese Americans in World War II. He also admits he would have “objected to an anti-racism curriculum being taught in 1950s Arkansas.”

• **Brett Talley** (nominated to Middle District of Alabama) purportedly wrote a blog post defending the early KKK.

• **Wendy Vitter** (nominated to Eastern District of Louisiana) bought a house with a racial covenant that stated the house could only be sold to whites.

• **Allen Winsor** (nominated to Northern District of Florida) defended a Florida statute that required drug tests for all applicants seeking Temporary Assistance for Needy Families benefits. The law was found unconstitutional.
Don Willett (confirmed to the Fifth Circuit) wrote that "[t]he judgment of history is clear that the vast majority of minorities are not held back by racial bigotry, but by fractured families and poor K-12 schools that deny them the credentials required to enter elite social institutions."
Trump judges and nominees who have fought to make it easier for states to suppress the vote, gerrymander, and dilute minority votes

- **J. Campbell Barker** (nominated to Eastern District of Texas) defended Texas’s voter photo ID law that intentionally discriminated against persons of color and unconstitutionally burdened the right to vote.

- **Andrew Brasher** (nominated to Middle District of Alabama) filed an amicus brief in *Shelby County v. Holder* that supported eroding the Voting Rights Act. He also defended Alabama’s felon anti-voter law that, according to one study, disenfranchises over 286,000 Alabamians, and supported an Arizona law, rejected by the Supreme Court, requiring voters to show proof of citizenship before voting. Brasher has a history of defending unconstitutional racial gerrymanders in Alabama and in Virginia. He wrote in his personal capacity criticizing the Supreme Court’s efforts to correct racial gerrymanders.

- **Kyle Duncan** (confirmed to Fifth Circuit) unsuccessfully represented North Carolina in an attempt to obtain a Supreme Court reversal of the Fourth Circuit’s ruling invalidating a restrictive voting law that required voters to have photo identification, reduced the days of early voting, and eliminated same-day registration, out-of-precinct voting, and preregistration. Duncan also co-authored a brief in *Abbott v. Veasey* petitioning for Supreme Court review and defending Texas’s strict voter identification law.

- **Allison Eid** (confirmed to Tenth Circuit) praised *Bush v. Gore* and criticized *Baker v. Carr and Reynolds v. Sims*. Eid was the sole dissenter when the Colorado Supreme Court upheld a court-imposed redistricting plan. She was the only judge who sided with Republicans who advocated for less competitive districts.

- **Neil Gorsuch** (confirmed to Supreme Court), while on the Supreme Court, joined the majority in *Husted v. A. Philip Randolph Institute* to allow Ohio to target infrequent voters for removal from the voter rolls and deprive them of the right to vote. He refused to hear an appeal concerning North Dakota’s efforts to make it harder for Native Americans to vote. In *Abbott v. Perez*, he rejected a challenge to Texas’s racially discriminatory redistricting. In *Abbott*, Gorsuch joined Justice Thomas’s concurrence saying that the Voting Rights Act “does not apply to redistricting,” despite numerous cases holding otherwise. Without briefing or argument, Gorsuch would have eviscerated the Voting Rights Act’s protections against racial discrimination.
• **Britt Grant** (confirmed to Eleventh Circuit) drafted, reviewed, or edited an amicus brief for six states, including Georgia, in support of gutting the Voting Rights Act in *Shelby County v. Holder*. She also signed onto a brief in *Kobach v. U.S. Election Assistance Comm’n & Project Vote, Inc.*, which involved documentary proof of citizenship as a voter registration requirement.

• **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, upheld a South Carolina voter ID law that the Justice Department argued disenfranchised tens of thousands of people of color. In contrast to two of his colleagues, he also declined to endorse the importance of Section 5 of the Voting Rights Act, before the *Shelby County* decision was issued.

• **Kenneth Lee** (nominated to Ninth Circuit) believes states should be allowed to take away voting rights for millions of men and women who have paid their debts to society and served their criminal sentences.

• **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit) defended Ohio’s voter purge in *Husted v. A. Philip Randolph Institute*. Murphy also helped to end early voting in the state during “Golden Week.”

• **John Nalbandian** (confirmed to Sixth Circuit) wrote an amicus brief on behalf of the Center for Equal Opportunity and Project 2i in support of Indiana’s voter ID law, which required citizens voting in person to provide government-issued photo identification. Nalbandian also defended Ohio’s legislature when it sought to undo a civil rights consent decree designed to protect voters.

• **Mark Norris** (confirmed to Western District of Tennessee) was an ardent supporter of a strict voter ID law in Tennessee. Norris also pushed an amendment that required proof of citizenship to vote.

• **Andy Oldham** (confirmed to Fifth Circuit) co-authored an amicus brief for the state of Texas in *Shelby County v. Holder* in support of eroding the Voting Rights Act.

• **David Stras** (confirmed to Eighth Circuit), while on the Minnesota Supreme Court, joined an opinion in *League of Women Voters v. Ritchie* rejecting challenges to a ballot question — which, as Minnesota Supreme Court Justice Alan Page noted, was “phrased to actively deceive and mislead”—seeking to amend the state constitution to require a photo ID for voting.
• **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit) served as an attorney for the Koch-funded “Buckeye Institute,” a far-right think tank that has filed numerous briefs in support of restrictive voting laws in Ohio, including voter roll purges, rolling back early voting, and limitations on allowing voters to cast absentee and provisional ballots. Later, at DOJ, Readler repeatedly defended President Trump’s Commission on Election Integrity. Readler also defended the Trump Administration’s controversial “Citizenship Question” census proposal.

• **Allen Winsor** (nominated to Northern District of Florida), as solicitor general of Florida, defended several troubling laws, including repeated efforts in Florida to dilute the vote of persons of color and make it harder for Floridians to vote. Winsor also wrote how Florida Republicans “saw that through the process of creating majority-minority districts, African-Americans would be aggregated, even packed, into districts almost sure to elect their candidate of choice[.]” This Republican strategy, Winsor writes, required “Republicans to ‘court’ black Democrats, especially, but not exclusively, in the South[.]” and for Republicans to “‘sell’ African Americans on the idea that GOP and black political interests actually merged on the eve of legislative and congressional redistricting.”

• **Patrick Wyrick** (nominated to Western District of Oklahoma) signed an amicus brief on behalf of Oklahoma in support of a Virginia voting law that was struck down by the Fourth Circuit. For a third-party candidate to appear on a presidential ballot in Virginia, he or she must gather a minimum number of signatures from voters. The Virginia law at issue required that every ballot signature be witnessed by a Virginia resident.
APPENDIX H: CONSUMERS

Trump judges and nominees who have fought rights and protections for consumers

- **Andrew Brasher** (nominated to Middle District of Alabama) has repeatedly opposed the right of individuals to band together to hold corporations accountable and joined a challenge to the constitutionality of the Dodd-Frank Act.

- **Michael Brennan** (confirmed to Seventh Circuit) criticized the Wisconsin Supreme Court for invalidating a cap on non-economic damages in medical malpractice claims. The ruling came in a case in which a doctor’s negligence injured an infant during birth and left him partially paralyzed with a deformed right arm. In the case, damages would have been capped at only half of what the jury awarded the boy.

- **Daniel Collins** (nominated to the Ninth Circuit), as an attorney for Big Tobacco, fought health protections for consumers and helped tobacco companies avoid liability for injuries inflicted on victims of fraudulent advertising.

- **Allison Eid** (confirmed to Tenth Circuit) praised efforts to limit the ability of aggrieved individuals to bring lawsuits and recover damages. She also has argued in favor of making it more difficult for individuals to join together in class action lawsuits to hold corporations accountable. Eid participated in numerous tort cases on the Colorado Supreme Court, consistently ruling in favor of protecting corporations and limiting recovery for harmed plaintiffs.

- **Neil Gorsuch** (confirmed to Supreme Court) argued that securities fraud class actions should be more difficult to achieve. He has criticized civil discovery. Gorsuch, while on the Tenth Circuit, held that a medical device company is immune from liability for harm caused by its product when it sells that product for a use that has never been approved by the FDA and never found to be safe and effective. Judge Gorsuch also held that the Consumer Product Safety Commission could not ensure children are safe from certain toys.

- **James Ho** (confirmed to Fifth Circuit) supported Texas’s cap on medical malpractice suits.

- **Gregory G. Katsas** (confirmed to D.C. Circuit) supported the Court’s decision in *Wal-mart v. Dukes*, which refused to certify a nationwide class of female Walmart employees who had alleged sex discrimination. He described it as a “nice win for business.” He has also supported heightened pleading standards.
• **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, argued the Consumer Financial Protection Bureau is unconstitutional. Kavanaugh sided against the FCC’s net neutrality rule. When a consumer group fought for stricter tire safety standards, Kavanaugh ruled against them.

• **Kenneth Lee** (nominated to Ninth Circuit) represented corporate interests and criticized those who sought to vindicate their rights using class-action lawsuits. In his writings, he supported making it more difficult to hold corporations accountable when they act illegally and harm the American people.

• **Paul Matey** (confirmed March 12, 2019 to Third Circuit) published two articles with Neil Gorsuch arguing securities fraud class actions should be more difficult to bring. Additionally, when Matey was serving as a hospital’s senior vice president, a nationwide investigation grading hospital safety raised severe concerns about the hospital’s patient safety standards.

• **Eric Miller** (confirmed February 26, 2019 to Ninth Circuit) criticized a court decision that held that manufacturers of complex surgical devices have a duty to warn hospitals that perform surgeries with those devices about their potential dangers. He supported making it harder for those wronged by corporations to band together in class actions. On behalf of the Chamber of Commerce, Miller filed an amicus brief arguing an out-of-state victim of deceptive debt collection practices should not have the ability to sue under Washington state law.

• **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit) fought to allow pharmaceutical companies to be able to sell drugs for uses that are not FDA approved. Murphy also fought victims seeking compensation from cigarette companies.

• **Mark Norris** (confirmed to Western District of Tennessee) championed legislation which limited the amount an injured plaintiff could recover for noneconomic damages and capped punitive damages in all civil cases while preventing punitive damages in most product liability actions. The act also prohibits lawsuits under the Tennessee Consumer Protection Act (TCPA) for securities fraud, prohibits consumer-class action lawsuits, and prohibits lawsuits filed under the TCPA by individuals.

• **Andrew Oldham** (confirmed to Fifth Circuit) has questioned the legitimacy of all federal regulations, which would include consumer protections.
• **Michael Park** (nominated to Second Circuit), on behalf of the Chamber of Commerce, fought FTC enforcement action against LabMD, a medical-testing laboratory, after the company’s inadequate data security practices allowed sensitive private medical and financial data for 9,300 patients to be exposed to millions of internet users and downloaded.

• **A. Marvin Quattlebaum Jr.** (confirmed to Fourth Circuit) defended Michelin against claims involving injury and death resulting from allegedly defective tires.

• **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit) challenged the constitutionality of the Consumer Financial Protection Bureau. Additionally, as an attorney for Big Tobacco, Readler fought health protections for consumers.

• **David Stras** (confirmed to Eighth Circuit) as state court judge sided with an insurance company over an injured child who had brought suit seeking to recover damages from a school bus accident.

• **Don Willett** (confirmed to Fifth Circuit), while on the Texas Supreme Court, ruled for consumers in only 19 percent of cases he heard while on the court, making him the lowest scoring among the six Texas Supreme Court justices who were evaluated in a study. Moreover, in a 2016 report, the Center for American Progress found that Willett “voted for corporate defendants more than 70 percent of the time.”
APPENDIX I: CRIMINAL JUSTICE

Trump judges and nominees who have fought constitutional protections and fairness in the criminal justice system

- **J. Campbell Barker** (nominated to Eastern District of Texas) attempted to retry a person kept in prison constitutionally for 32 years after his conviction was overturned. Barker also represented Texas in an attempt to execute an African-American defendant after a psychologist testified at trial that the defendant’s race made him statistically more likely to commit a violent crime.

- **Amy Coney Barrett** (confirmed to Seventh Circuit) criticized the retroactivity of sentencing guideline reforms.

- **Mark Bennett** (confirmed to Ninth Circuit) criticized the Hawaii Supreme Court for being too pro-defendant. Bennett also supported reviving “Walk and Talk” programs at airports, which permitted officers to “question and possibly search suspicious-looking passengers with their consent[,]” a practice that was declared unconstitutional by the Hawaii Supreme Court. He also supported a bill that would eliminate the legal requirement that police knock and announce themselves before breaking down a door.

- **Stephanos Bibas** (confirmed to Third Circuit) has advocated for compelling prisoners to join the military and other deeply troubling forms of criminal sanctions. He has minimized racial disparities in the criminal justice system and stated that drug addiction was not a disease but rather something that people could choose to overcome. Moreover, he has questioned the propriety of the Miranda doctrine and argued against robust habeas corpus protections. As a federal prosecutor, he brought charges against a cashier at a veterans’ hospital cafeteria for allegedly stealing $7, and he lost the case when the cashier was acquitted.

- **Michael Brennan** (confirmed to Seventh Circuit) questioned the Exclusionary Rule, which prevents evidence obtained in violation of a defendant’s constitutional rights from being admitted in court. Brennan also served as staff counsel to the committee that wrote and implemented Wisconsin’s harsh Truth-in-Sentencing law in 1998. Moreover, while Brennan was serving as a state trial court judge, the (Madison, Wisconsin) Capital Times noted that “Brennan was the judge who presided over one of the most blatant demonstrations of racial inequality in justice in Milwaukee County” in a case in which four young African-American men were heavily sentenced for a prank that involved letting the air out of vehicle tires.
• **Daniel Collins** (nominated to the Ninth Circuit) has promoted policy positions and argued for legal outcomes that would increase mass incarceration and disproportionately impact people of color in the criminal justice system. This includes defending a policy that required prosecutors to pursue maximum charges, advocating for eliminating Miranda warnings, and expressing dissatisfaction with attempts to diversify jury pools under the Supreme Court’s landmark decision in *Batson v. Kentucky*.

• **Kyle Duncan** (confirmed to Fifth Circuit) challenged the retroactive application of *Miller v. Alabama*, which held that mandatory life sentences without the possibility of parole were unconstitutional for juveniles. Duncan also defended inhumane conditions in prisons, arguing that severe overcrowding in jails did not violate the Eighth Amendment.

• **Allison Eid** (confirmed to Eleventh Circuit), while on the Colorado Supreme Court, consistently ruled against the rights of criminal defendants and the accused. For example, she disagreed with the majority of the Colorado Supreme Court when it ruled to suppress evidence police officers obtained after brutally beating a man, breaking several bones in his face and hitting him repeatedly with a metal baton, when he said he didn’t want to answer the officers’ questions. She also argued *Miller v. Alabama*, which held that juvenile offenders could not be sentenced to life without the possibility of parole, should not have been applied retroactively.

• **Kurt Engelhardt** (confirmed to Fifth Circuit), while a district court judge, overturned the convictions of New Orleans police officers who had been convicted of shooting unarmed civilians on the Danziger Bridge, days after Hurricane Katrina, because Justice Department officials had anonymously posted online comments about the case. In contrast, in *Truvia v. Julian*, Engelhardt dismissed a civil rights lawsuit brought against the Orleans Parish District Attorney despite the DA’s Office’s repeated failure, over decades, to turn over possibly exculpatory evidence to those accused of a crime (as required by the Supreme Court in *United States v. Brady*) in a case involving two men who had been wrongfully incarcerated for 27 years.

• **Neil Gorsuch** (confirmed to Supreme Court), while on the Tenth Circuit, consistently enabled constitutionally problematic convictions to stand. He held that a police officer was entitled to qualified immunity from an excessive force claim arising from his use of a stun gun that killed a young man. He also held that officers had not used excessive force against a Vietnam War veteran who was suicidal when they burst into his hotel room unannounced with guns drawn and ended up shooting him. He has displayed disregard for the rights of people who are incarcerated by restricting inmates’ ability to join together as a class to vindicate their rights.
• **Britt Grant** (confirmed to Eleventh Circuit) defended purposeful racial discrimination in jury selection.

• **Gregory Katsas** (confirmed to D.C. Circuit) spoke approvingly of Justice Clarence Thomas’s dissent in *Dawson v. Delaware*, where Thomas was the sole dissenter from an opinion that barred the state from introducing bad-character evidence at trial that had no relevance to the case; Thomas’s dissent in *Hudson v. McMillan*, where the Court held that prison guards using excessive force against prisoners constitutes cruel and unusual punishment; and Thomas’s dissent in *Foucha v. Louisiana*, where the Court held that a person found not guilty by reason of insanity cannot be held indefinitely on the grounds of “potential dangerousness” once no mental illness is present.

• **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, ruled for the police in a case of stop-and-frisk, when police officers stopped an African-American man who vaguely matched the description of an armed robber, searched him without his consent and discovered a weapon. When the case was reheard later by the full D.C. Circuit, Kavanaugh’s ruling was overturned. Kavanaugh also spoke favorably about former Chief Justice William Rehnquist’s narrow view of the exclusionary rule.

• **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit) ridiculed Justice Sotomayor’s dissent in *Utah v. Strieff*, 136 S.Ct. 2056 (2016), a Fourth Amendment case that allows evidence gleaned from unlawful searches to be introduced in court if the officer finds an outstanding arrest warrant. Sotomayor’s dissent discussed the decision’s likely effect on racial profiling and cited studies on racial equality. Murphy criticized the dissent’s focus on racial justice.

• **Mark Norris** (confirmed to Western District of Tennessee), claimed that feeding prisoners three meals a day was “wasting” nearly a million dollars per year. Norris claims responsibility for changing the law so that “it’s cooked dried beans for prisoners and a million dollars for you!”

• **William McCrory Ray II** (nominated to Northern District of Georgia) opposed a bill that would have “prohibit[ed] police from using race or ethnicity as the basis for a traffic stop.” He opposed a hate crime bill that would have authorized longer sentences and stiffer fines for people convicted of committing “an offense because of bias or prejudice.”

promoting the dignity of the accused may greatly discount the dignity of the victims of crime.”

- **Amy St. Eve** (confirmed to Seventh Circuit), while a district court judge, dismissed claims in which an incarcerated individual brought an action alleging that a county jail had subjected him to inhumane working and living conditions, including “inadequate food … and contaminated water.”

- **David Stras** (confirmed to Eighth Circuit) as a state court judge dissented in a case that held that trial judges had the ability in a rape case to allow expert testimony that contradicted the defendant’s claim of consensual sex.

- **Amul Thapar** (confirmed to Sixth Circuit), while a district court judge, dismissed a case involving a pretrial detainee who died when the jail’s nurse, who knew about his illness, did not provide him with diabetic medication or emergency room care. Thapar’s ruling was overturned on appeal. He also ruled that federal courts cannot reduce a person’s sentence for time already served in a state prison, if the person has served that time while waiting for sentencing on the same charges. His ruling would have extended and maximized prison time for incarcerated people. The Supreme Court, in an opinion written by the late Justice Antonin Scalia, disagreed, and Thapar’s decision was vacated.

- **Michael Truncale** (nominated to Eastern District of Texas) warned that, if Trump lost, “Liberals/progressives will also attempt to create new ‘rights’ on everything from receiving welfare payments to a prohibition on racial disparities in criminal justice outcomes.”

- **Wendy Vitter** (nominated to Eastern District of Louisiana) faced scrutiny over her time as a prosecutor because the department she worked in, and had a leadership position in, was marred by serious allegations of prosecutorial misconduct. These violations centered on what the Supreme Court later classified as “blatant and repeated" violations of the *Brady* disclosure rule.

- **Don Willett** (confirmed to Fifth Circuit) wrote a paper accusing the Texas Court of Criminal Appeals of having a “pro-defendant tilt.” Willett ridiculed criminal defendants and believed that the Court of Criminal Appeals “concocts silly ways to reverse their convictions” and “breathes in technicalities as if they were air.”
APPENDIX J: DEATH PENALTY

Trump judges and nominees who have fought for the death penalty

- **Andrew Brasher** (nominated to the Middle District of Alabama) repeatedly defended death sentences that were struck down by the courts, including Florida's unconstitutional law that allowed judges to overrule juries and impose the death penalty. He sought the death penalty for a defendant with mental illness despite the state's failure to provide sufficient access to a competent psychiatrist as required under federal law, and also advocated for the position that children can be sentenced to life in prison with no possibility of parole.

- **Liles Burke** (nominated to the Northern District of Alabama), as a state court judge, consistently voted to affirm the imposition of the death penalty, even in cases tainted by racial discrimination and cases involving defendants with intellectual disabilities.

- **Britt Grant** (confirmed to Eleventh Circuit) supported Oklahoma’s problematic execution method.

- **L. Steven Grasz** (confirmed to Eighth Circuit) vigorously advocated for the death penalty in Nebraska, serving as assistant secretary for Nebraskans for the Death Penalty and for Nebraskans for Capital Punishment. After Nebraska abolished the death penalty in 2015, Grasz represented Nebraskans for the Death Penalty before the Nebraska Supreme Court in a case that led to reinstatement of capital punishment in the state.

- **James Ho** (confirmed to Fifth Circuit) fought to maintain the death penalty in Texas, including defending Texas’s lethal injection protocol.

- **Kevin Newsom** (confirmed to Eleventh District) defended questionable death penalty practices as the Solicitor General of Alabama. The Supreme Court unanimously rejected his attempt to prevent an inmate from being able to challenge the constitutionality of Alabama’s proposed execution procedure, which would require cutting through muscle and skin to find a vein. Newsom has also filed several amicus briefs in death penalty cases on behalf of the state, including arguing that the execution of minors does not violate the Constitution.

- **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit), in an article titled, “Make Death Penalty for Youth Available Widely,” advocated for subjecting children to the death penalty.
• **Allen Winsor** (nominated to Northern District of Florida) defended Florida’s capital sentencing system, where a judge, rather than a jury, made the critical findings necessary to impose the death penalty. Winsor also defended a Florida law that required defendants to show an IQ test score of 70 or below before they were allowed to submit additional evidence of an intellectual disability, a law that the Supreme Court said “creates an unacceptable risk that persons with intellectual disability [sic] will be executed.”

• **Patrick Wyrick** (nominated to Western District of Oklahoma) defended Oklahoma’s death penalty protocol before the Supreme Court. The lethal injection procedure, described by Justice Sotomayor as “like being burned alive,” reportedly took over 40 excruciating minutes to kill one death row inmate. While the Court eventually ruled in a 5-4 decision that the state’s protocol was constitutional, Oklahoma and its attorneys, including Wyrick, came under fire from the Supreme Court for misstating the facts.
APPENDIX K: EDUCATION

Trump judges and nominees who have fought equal access to quality public education

- **Mark Bennett** (confirmed to Ninth Circuit) fought substitute teachers’ rights to adequate pay.

- **Andrew Brasher** (nominated to Middle District of Alabama) defended an Alabama law retaliating against the Alabama Education Association by restricting its members’ ability to pay dues to the association unless it stopped engaging in any political activity.

- **Michael Brennan** (confirmed to Seventh Circuit) wrote a letter highlighting his efforts in support of school choice in Wisconsin, and specifically his efforts to “protect choice schools from overburdensome government regulations.”

- **John Bush** (confirmed to Sixth Circuit) opposed women being admitted into the Virginia Military Academy (VMI). He wrote that the military-style education of VMI “does not appear to be compatible with the somewhat different developmental needs of most young women.” The Supreme Court disagreed.

- **Allison Eid** (confirmed to Tenth Circuit) supported using taxpayer-funded school vouchers for religious schools. She also dissented in a case where the Colorado Supreme Court upheld voters’ decision to better fund public education, and supported efforts to undermine collective bargaining rights of teachers.

- **Gordon Giampietro** (nominated to Eastern District of Wisconsin) said, “I grew up next to lawyers, architects and crack dealers...The common denominator I saw was that the children who succeeded in Washington[, D.C.] were in private schools, and the children who turned out to be criminals were in public schools.” He fought for school choice in Wisconsin and wrote that he is proud of his work to protect school choice from “overburdensome government regulations.”

- **Neil Gorsuch** (confirmed to Supreme Court), while on the Tenth Circuit, ruled to weaken the Individuals with Disabilities Education Act.

- **Howard Nielson** (nominated to District of Utah) fought to end affirmative action at state universities.
• **Kurt Engelhardt** (confirmed to Fifth Circuit), while a district court judge, was actively involved in efforts to end desegregation initiatives in Jefferson Parish Schools, efforts that were intended to address historical inequalities and remnants of formal segregation.

• **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit) defended school vouchers for private religious schools.

• **Kevin Newsom** (confirmed to Eleventh Circuit) argued that a high school girls’ basketball coach, who was fired for complaining that the school treated the girls’ team worse than the boys’ team, could not bring a lawsuit for retaliation under Title IX. The Supreme Court disagreed and ruled in favor of the basketball coach.

• **Mark Norris** (confirmed to Western District of Tennessee) was instrumental in weakening Memphis schools, attended largely by African-American children.

• **William McCrary Ray II** (nominated to Northern District of Georgia) supported a bill to end affirmative action programs.

• **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit) attacked public schools in Ohio. Readler pushed to eliminate a provision of Ohio’s Constitution that provides students with the right to a “thorough and efficient” education. The former president of the Ohio School Boards Association noted that eliminating this provision of the Ohio Constitution would mean there would be no right to public education in Ohio. Readler also fought efforts to better regulate charter schools. He supported the efforts of Education Secretary Betsy DeVos to protect fraudulent for-profit schools.

• **Damien Schiff** (nominated to Court of Federal Claims) sued to prevent Title IX from being applied to high school students. If he had been successful, millions of girls across the country would have had far fewer educational opportunities. His lawsuit was dismissed.

• **Michael Truncale** (nominated to Eastern District of Texas) called for the abolition of the Department of Education, saying, “I don’t recall one single thing that was of any benefit to a single college student in Texas that came from the Department of Education.”

• **Don Willett** (confirmed to Fifth Circuit) opposed affirmative action and argued that the “vast majority of minorities are not held back by racial bigotry, but by fractured families and poor K-12 schools that deny them the credentials required to enter elite social institutions.”
APPENDIX L: ENVIRONMENT

Trump judges and nominees who have fought environmental protections

• **J. Campbell Barker** (nominated to the Eastern District of Texas) sought to enjoin the Clean Power Plan, Environmental Protection Agency (EPA)-issued policies that limited the dumping of unlimited amounts of carbon into the atmosphere and that sought to curb global warming.

• **Andrew Brasher** (nominated to Middle District of Alabama) gave two speeches criticizing the Clean Water Rule and served as the lead attorney for Alabama in attempting to block the rule. Brasher has also attacked protections for endangered species.

• **Joel Carson III** (confirmed to Tenth Circuit) has written that the Takings Clause of the Fifth Amendment is implicated when endangered animals are reintroduced into the wild and prey on privately owned livestock. In addition to Carson’s expansive arguments as to what constitutes a regulatory taking, he advocated against environmental regulations on behalf of corporate oil and gas interests.

• **Daniel Collins** (nominated to the Ninth Circuit) defended the interests of big oil and energy companies at the expense of the deteriorating climate and Americans’ wellbeing.

• **Allison Eid** (confirmed to Tenth Circuit) praised the Supreme Court’s decision that struck down the EPA’s migratory bird rule. On the Colorado Supreme Court, she held that a public hearing regarding the issuance of a permit to drill wells near a contaminated nuclear blast site was not necessary. She would have allowed a private company to use eminent domain to build a petroleum pipeline, while making it harder for communities to build parks.

• **Ralph R. Erickson** (confirmed to Eighth Circuit), as a district court judge, enjoined the Obama Administration’s Clean Water Rule.

• **Neil Gorsuch** (confirmed to Supreme Court), while on the Tenth Circuit, frequently turned away challenges by environmental groups seeking to protect natural resources and public land. Moreover, he has been skeptical of rules promulgated by environmental agencies designed to increase oversight of large corporations.

• **Britt Grant** (confirmed to Eleventh Circuit) has challenged designations under the Endangered Species Act.
• **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, consistently overturned protections for clean air, routinely putting corporate interests over safeguards for the health of families and the environment. For example, Kavanaugh rejected an EPA rule requiring that upwind states bear responsibility for their fair share of pollution they cause in downwind states, and was overturned by the Supreme Court. He also sided against the EPA’s authority to regulate greenhouse gases. Kavanaugh also supported disgraced ex-EPA Administrator Scott Pruitt and the Trump Administration in *Clean Air Council v. Pruitt*.

• **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit) argued on behalf of states challenging the Clean Water Rule. Murphy also fought the Clean Power Plan. During Murphy’s tenure as state solicitor, Ohio joined a multi-state brief that sought to weaken the Endangered Species Act.

• **Ryan Nelson** (confirmed to Ninth Circuit) served as Deputy Attorney General for the Environment and Natural Resources Division of the Department of Justice, signing on to briefs for the government that hurt the environment.


• **Andrew Oldham** (confirmed to Fifth Circuit) questioned the legality of the entire EPA. He helped Texas sue to block the EPA from limiting pollution and enforcing the Clean Air Act.

• **Michael Park** (nominated to Second Circuit) challenged the Clean Water Rule, which expanded protection for two million miles of streams and 20 million acres of wetlands.

• **David Porter** (confirmed to Third Circuit) represented the Republican caucuses of Pennsylvania’s General Assembly in a lawsuit defending the constitutionality of a 2009 anti-environment bill that vastly expanded the amount of state forest land eligible for gas extraction.

• **Neomi Rao** (confirmed March 13, 2019 to D.C. Circuit) authored several articles expressing her disdain for environmentalism and her rejection of mainstream scientific theories. She wrote derisively of “[t]he three major environmental bogeymen, the greenhouse effect, the depleting ozone layer, and the dangers of acid rain.” She criticized environmental groups at Yale for “accept[ing] issues such as global warming as truth with no reference to the prevailing scientific doubts.” Rao also bashed environmental groups for “promot[ing] a dangerous
orthodoxy that includes the unquestioning acceptance of controversial theories like the greenhouse effect."

- **Damien Schiff** (nominated to Court of Federal Claims) has fought environmental protections, argued the Endangered Species Act was unconstitutional, said the EPA treats citizens as “slaves” and even argued that Earth Day was a threat to liberty.

- **Stephen Schwartz** (nominated to Court of Federal Claims) repeatedly litigated cases challenging environmental protections. Most notably, he defended BP after the Deepwater Horizon explosion. Schwartz worked as co-counsel for the Rocky Mountain Farmers Union challenging Low Carbon Fuel Standard (LCFS) regulations for motor fuel used in California.

- **Brett Talley** (nominated to Middle District of Alabama) wrote that the EPA became a “lawless organ” during the Obama administration, and that “while Pruitt’s enemies would never admit it, in the long run his confirmation would be good for the environment.”

- **Allen Winsor** (nominated to Northern District of Florida) sued the EPA to stop the Clean Power Plan.

- **Patrick Wyrick** (nominated to Western District of Oklahoma) is a protégé of disgraced former EPA Administrator Scott Pruitt. While working as the Solicitor General for the State of Oklahoma, Wyrick assisted Pruitt in dismantling environmental protections and was part of exchanges between Pruitt and energy lobbyists.
APPENDIX M: EXECUTIVE POWER AND CIVIL LIBERTIES

Trump judges and nominees who have expansive views of unchecked executive power and have fought protections for civil liberties

- **Amy Coney Barrett** (confirmed to Seventh Circuit) authored an article criticizing the Supreme Court’s decision in *Boumediene v. Bush*, which held that foreign citizens detained at Guantanamo Bay could file habeas corpus petitions in federal court challenging their detention.

- **Michael Brennan** (confirmed to Seventh Circuit) objected to the notion that Yaser Hamdi, an enemy combatant detained indefinitely, “should enjoy the constitutional protection of habeas corpus.”

- **John Bush** (confirmed to Sixth Circuit) represented President Ronald Reagan during the Iran-Contra investigation and coauthored the response to the independent counsel’s final report in the Iran-Contra Affair.

- **Daniel Collins** (nominated to the Ninth Circuit) was actively involved in drafting portions of, implementing, and defending the Patriot Act. He also filed an amicus brief in support of the government in *Hamdan v. Rumsfeld*. *Hamdan* involved the question of the processes that should be applied to detainees at Guantanamo Bay: whether a military tribunal at Guantanamo that omitted certain protections was sufficient process for a prisoner under U.S. and international law.

- **Neil Gorsuch** (confirmed to Supreme Court) upheld President Trump’s discriminatory Muslim Ban.

- **James Ho** (confirmed to Fifth Circuit) authored a memo that was cited in the infamous Bybee-Yoo “Torture Memo” that, according to The Washington Post, paved the way for waterboarding of terrorism suspects and other harsh interrogation tactics[]. Ho’s memo was cited as evidence that Common Article 3 of the Geneva Conventions “contains somewhat similar language” that distinguishes torture from other types of “cruel treatment” toward prisoners. In a law review article, Ho argued that the status of al Qaeda detainees does not reach the status of lawful combatants, and that they are therefore not afforded protections.
under the Geneva Conventions and other protections under international law for prisoners of war.

- **Gregory Katsas** (confirmed to D.C. Circuit) argued that federal courts lacked the jurisdiction to hear habeas petitions from foreign nationals held at Guantanamo Bay. Katsas defended the constitutionality of the detention of a prisoner under the Military Commissions Act, which the government posited was an adequate substitute for the traditional habeas right. When asked whether waterboarding was torture during a confirmation hearing, Katsas refused to answer.

- **Brett Kavanaugh** (confirmed to Supreme Court) argued that “criminal investigations and prosecutions of the President” should be deferred while he is in office. In 1998, he wrote that “Congress should give back to the President the full power to act when he believes that a particular independent counsel is 'out to get him.'” Kavanaugh proposed that Congress also adopt a statute "to establish that a sitting President cannot be indicted." In 1999, Kavanaugh also participated in a roundtable discussion where he questioned the Supreme Court’s decision in *U.S. v. Nixon*. While on the D.C. Circuit, when the court considered a challenge to the government’s bulk collection of phone metadata, Kavanaugh wrote separately to express his agreement with the government. Kavanaugh has also taken an aggressive stance on the authority of military commissions.

- **Joan Larsen** (confirmed to Sixth Circuit) worked for the Office of Legal Counsel when several opinions were issued authorizing “torture, indefinite detention, warrantless wiretapping, and other abuses of power.” She coauthored an undisclosed memo in March 2002 regarding the habeas corpus rights of detained prisoners. In a 2006 op-ed in The Detroit News, Larsen praised President George W. Bush’s signing statement limiting the application of the McCain Amendment, which outlawed the use of torture against persons in the custody of the United States.

- **Trevor McFadden** (confirmed to District Court for D.C.) had troubling statements and positions regarding inhumane treatment of inmates.

- **Eric Miller** (confirmed February 26, 2019 to Ninth Circuit) worked for the Office of Legal Counsel when several opinions were issued authorizing “torture, indefinite detention, warrantless wiretapping, and other abuses of power.” Miller joined government briefs defending the constitutionality of depriving detainees at Guantanamo Bay access to habeas corpus, defending the government’s authority to detain and hold an individual in potentially indefinite military detention, and defending the government’s decisions to withhold
information on detainees under the Freedom of Information Act and to close immigration deportation hearings to the public.

- **Ryan Nelson** (confirmed to Ninth Circuit) appears on a “list of selected members” on an amicus brief filed by the Citizens for the Common Defense in 2004 in the case *Al Odah v. United States*. In its brief, the organization describes itself as “an association that advocates a conception of robust Executive Branch authority to meet the national security threats that confront the nation in its war against international terrorists[,]” and emphasizes that “vigorous executive power necessary to defend our nation against foreign enemies was seen by the Framers as a vital precondition to securing those blessings and an integral part of the same libertarian enterprise.”

- **Howard Nielson** (nominated to District of Utah) served as Deputy Assistant Attorney General in the Office of Legal Counsel from 2003 to 2005. During that time, Nielson’s boss, Stephen Bradbury, authored the “torture memos,” which provided the legal justifications for 13 types of enhanced interrogation techniques employed by the CIA, including waterboarding. Nielson wrote a letter to the editor of The Washington Post in 2007 defending Bradbury. He also authored a memorandum titled “Whether Persons Captured and Detained in Afghanistan are ‘Protected Persons’ under the Fourth Geneva Convention,” in which he furthered a legal theory that would truncate most protections of the international treaty.

- **Neomi Rao** (confirmed March 13, 2019 to D.C. Circuit) is a proponent of the “unitary executive” theory. She has advocated vigorously for the President to obtain complete control of the executive branch – most notably independent agencies – where Congress has specifically enacted legislation to insulate agencies and agency officers from political influence.

- **Michael Scudder** (confirmed to the Seventh Circuit) was reportedly deeply involved in structuring the post-9/11 prosecution of alleged terrorists by military commissions under George W. Bush.
APPENDIX N: FIRST AMENDMENT — CHURCH AND STATE

Trump judges and nominees who have fought to erode separation of church and state

- **Allison Eid** (confirmed to Tenth Circuit), while on the Colorado Supreme Court, supported the use of taxpayer dollars to pay for vouchers to private religious schools. Eid also advocated for exempting religiously-affiliated retirement homes from paying taxes.

- **Ralph Erickson** (confirmed to Eighth Circuit), as a district court judge, ruled against plaintiffs who argued that the display and taxpayer-funded upkeep of a monument of the Ten Commandments on city property violated the Establishment Clause.

- **Neil Gorsuch** (confirmed to Supreme Court), while on the Tenth Circuit, in cases like *Hobby Lobby Stores Inc. v. Sebelius* and *Little Sisters of the Poor v. Burwell*, took an expansive view of the religious liberty of persons and corporations, even when those religious beliefs curtail the rights of other Americans. He was extremely permissive in permitting religiously oriented public displays and installations. He repeatedly criticized the “reasonable observer” test for Establishment Clause cases as too likely to find impermissible endorsements of religion by the government.

- **L. Steven Grasz** (confirmed to Eighth Circuit), while serving in the Nebraska Department of Justice, petitioned the Nebraska State Board of Education to teach evolution as a theory and not “objective fact.” Grasz argued that teaching evolution as fact could interfere with religious rights. Grasz has advocated for religion-specific, student-led prayers before school baccalaureate ceremonies and sports events.

- **Allison Rushing** (confirmed March 25, 2019 to Fourth Circuit) coauthored an article with Alliance Defending Freedom’s Senior Counsel Jordan Lorence, titled “Nothing to Stand On: ‘Offended Observers’” and the Ten Commandments. The Rushing-Lorence article criticizes and demeans those who seek to enforce the Establishment Clause.

- **Don Willett** (confirmed to Fifth Circuit), while working in then-President George W. Bush’s administration, was the Director of Law & Policy for the White House Office of Faith-Based and Community Initiatives. Willett laments that prior to the Bush administration, government officials "routinely tilted the playing field against religious groups . . . [b]ecause they stubbornly
misperceive the requirements of the First Amendment and have failed to bring their stale policies in line with recent U.S. Supreme Court rulings that have cooled church-state hostility by supplanting rigid separationism with what the Church has called 'guarantee of neutrality.'" Overall, Willett believes that "[t]he American people, for their part, want religion in the public square."
APPENDIX O: FIRST AMENDMENT — FREEDOM OF THE PRESS

*Trump judges and nominees who have narrow views of freedom of the press*

- **John Bush** (confirmed to Sixth Circuit) argued that *New York Times v. Sullivan* was wrongly decided.

- **Ryan Nelson** (confirmed to Ninth Circuit) represented Melaleuca's CEO Frank VanderSloot in a defamation suit against *Mother Jones* magazine.
APPENDIX P: GUN SAFETY

Trump judges and nominees who have fought gun safety measures

- **Allison Eid** (confirmed to Tenth Circuit), while on the Colorado Supreme Court, argued that Denver could not ban ownership of assault weapons. Eid also authored the Colorado Supreme Court’s opinion striking down the University of Colorado’s handgun ban.

- **Britt Grant** (confirmed to Eleventh Circuit) argued that a city ordinance prohibiting possession of AR-15 style weapons or large-capacity magazines violated the Second Amendment.

- **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, voted to invalidate D.C.’s ban on assault weapons.

- **Howard Nielson** (nominated to District of Utah) has repeatedly represented the NRA in attempts to overturn firearm regulations. These suits include a case where Nielson argued that bans on 18-20-year-olds publicly carrying firearms are unconstitutional; a case challenging bans on handgun purchases to people under the age of 21; and a case where Nielson fought Chicago’s ban on semiautomatic rifles and large capacity magazines. In each one of these cases, the laws were upheld. At the Department of Justice, contrary to the overwhelming weight of authority, before the Supreme Court considered the question in *District of Columbia v. Heller*, Nielson authored a 2004 memorandum concluding that the Second Amendment secured an individual right to bear arms.

- **Andrew Oldham** (confirmed to Fifth Circuit) defended Texas laws that provide expansive rights for gun owners. He filed an amicus brief arguing that a San Diego law that required people to show “good cause” to carry a concealed weapon in public was unconstitutional. He criticized a Highland Park, Illinois ban on AR-15 assault weapons.

- **William McCrary Ray II** (confirmed to Northern District of Georgia) opposed a measure designed to ensure child safety. The bill would have made it a misdemeanor “to negligently leave a handgun in the reach of children.”

- **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit) submitted a brief supporting the Trump Administration’s policy to allow private companies to produce untraceable guns produced by 3D printers. In the brief, Readler recognized that his position would “make it significantly easier to produce undetectable, untraceable weapons, pos[e] unique threats to
the health and safety of the States’ residents and employees, and compromis[e] the States’ ability to enforce their laws and keep their residents and visitors safe.”

- **Brett Talley** (nominated to Middle District of Alabama) wrote that “2012 was a bad year for those who value the time-honored right to bear arms. Between the fatal shootings in Aurora, CO and Newtown, CN—with several others spread throughout—it seems that the forces of gun control may finally pass new legislation designed to restrict gun ownership.” He also wrote: “Fortunately, there is a group dedicated to the protection of our Second Amendment Rights—the National Rifle Association. Today I pledge my support to the NRA; financially, politically, and intellectually. I ask you to do the same. Join the NRA. They stand for all of us now, and I pray that in the coming battle for our rights, they will be victorious.” He is also an advocate of arming teachers.

- **Allen Winsor** (nominated to Northern District of Florida) defended a law that prohibited doctors from discussing gun safety with patients. In February 2017, the Eleventh Circuit struck down the law.

- **Patrick Wyrick** (nominated to Western District of Oklahoma), as solicitor general, signed an Attorney General Opinion allowing Oklahoma residents to carry concealed or unconcealed handguns if they hold a valid license issued in another state.
APPENDIX Q: IMMIGRATION

Trump judges and nominees who have fought protections for immigrants

- **J. Campbell Barker** (nominated to Eastern District of Texas) has fought to end legal protections for Dreamers, under Deferred Action for Childhood Arrivals (DACA) and the parents of Dreamers, under Deferred Action for Parents of Americans (DAPA). He also supported Trump's discriminatory Muslim Ban and Texas's attempts to punish cities for refusing to discriminate against their citizens in policing.

- **Kyle Duncan** (confirmed to Fifth Circuit) fought against DAPA and DACA. He also participated as counsel for amicus curiae in *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) where he argued against basic civil rights for immigrants and their right to receive informed and adequate counsel regarding the consequences of a plea deal.

- **Neil Gorsuch** (confirmed to Supreme Court), while on the Supreme Court, upheld President Trump's discriminatory Muslim Ban. On the Tenth Circuit, he upheld decisions detrimental to immigrants.

- **Britt Grant** (confirmed to Eleventh Circuit) worked on amicus briefs opposing DACA and DAPA.

- **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, held that a 16-year-old immigrant who was detained by Immigration and Customs Enforcement (ICE) did not have the right to an abortion – even after completing statutory requirements. Kavanaugh also sided with a corporation in *Agri Processor Co. v. NLRB*, 514 F.3d 1 (2008) arguing that undocumented immigrant workers could not be counted as employees for union organizing purposes since they were not "employees" under labor law.

- **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit) signed an amicus brief challenging federal funding to so-called "sanctuary" jurisdictions, Murphy was co-counsel on a brief opposing DAPA and supported Trump's discriminatory Muslim Ban.

- **Mark Norris** (confirmed to Western District of Tennessee) tried to block refugees settling in Tennessee, used xenophobic and anti-Muslim advertisements to campaign against refugee resettlement, advocated for English-only driver's tests to exclude immigrants from driving,
and introduced a bill to add years to a criminal sentence if the defendant was an unauthorized immigrant at the time of the offense.

- **Andrew Oldham** (confirmed to Fifth Circuit) was the architect of Texas’s legal strategy to halt DACA and DAPA.

- **Michael Park** (nominated to Second Circuit) on behalf of the Project on Fair Representation, is defending the Trump Administration’s effort to insert a citizenship question into the 2020 census.

- **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit), as the former acting head of the Civil Division at the Department of Justice, was a chief legal defender of President Trump’s assault on immigrants. Readler defended the policy of separating immigrant children from their parents at the border. Readler also defended the decision to detain immigrant children for an indefinite amount of time. Additionally, he defended Trump’s Muslim Ban, supported ending DACA, and threatened to cut federal funding for local jurisdictions that were so-called “sanctuary” jurisdictions.

- **Michael Truncale** (nominated to Eastern District of Texas), fearmongering about the Mexican border, said, “We have all sort of bad influences coming in. We have drugs. We have illegal gangs. There is the possibility of bombs.”

- **Wendy Vitter** (nominated to Eastern District of Louisiana) opposed the resettlement of Syrian refugees in the United States.
APPENDIX R: MONEY IN POLITICS

Trump judges and nominees who have fought limits on campaign contributions or expenditures

- **John Bush** (confirmed to Sixth Circuit) wrote an amicus brief on behalf of Mitch McConnell arguing that several provisions of Kentucky’s campaign finance law were unconstitutional.

- **Allison Eid** (confirmed to Tenth Circuit), while on the Colorado Supreme Court, dissented from a decision that held that the Colorado Secretary of State did not have the authority to raise campaign finance reporting limits for issue committees, groups whose purpose is to support or oppose a ballot question.

- **Thomas Farr** (nominated to Eastern District of North Carolina) represented a Republican candidate for North Carolina State Senate accused of violating North Carolina’s “Stand by Your Ad” law, which required certain disclosures in political advertisements.

- **Neil Gorsuch** (confirmed to Supreme Court), while on the Tenth Circuit, struck down a Colorado statute that imposed lower campaign contribution limits on minor party candidates than those applied to major party candidates. He authored a concurring opinion in the case suggesting limits on campaign contributions were unconstitutional.

- **L. Steven Grasz** (confirmed to Eighth Circuit), while Chief Deputy Attorney General, challenged the constitutionality of the Nebraska legislature’s campaign finance reforms.

- **James Ho** (confirmed to Fifth Circuit) authored an article opposing any limits on campaign contributions, and then on the Fifth Circuit argued that limits on campaign contributions are unconstitutional.

- **Mark Norris** (confirmed to Western District of Tennessee) supported a bill to raise the aggregate limit for state senators on PAC donations to $472,000 every two years. The current limit is $472,000 every four years. He also supported legislation, which became law, that allowed corporations to make direct campaign contributions.

- **Amul Thapar** (confirmed to Sixth Circuit), as a district court judge, enjoined enforcement of eight rules of judicial conduct that Kentucky had enacted to keep judges nonpartisan and judicial candidates out of partisan politics. In that case, he used a severely flawed First Amendment analysis to strike down Kentucky’s ban on state judicial candidates contributing
money to political organizations or candidates. The Sixth Circuit unanimously reversed that part of his decision.
APPENDIX S: WOMEN’S EQUALITY — REPRODUCTIVE RIGHTS

Trump judges and nominees who have fought to limit access to abortion and/or contraception

- **J. Campbell Barker** (nominated to Eastern District of Texas) was a lead attorney defending Targeted Regulation of Abortion Providers (or “TRAP”) anti-choice laws, which the Supreme Court struck down as unconstitutional in *Whole Woman’s Health v. Hellerstedt*, 136 S.Ct. 2292 (2016). The Court found that the law had imposed undue burdens, including mandating hospital admitting privileges for abortion providers and requiring that clinics conform to the structural standards of ambulatory surgical centers. Barker also signed briefs in other cases where religious nonprofits challenged the ACA contraception mandate.

- **Amy Coney Barrett** (confirmed to Seventh Circuit) has been critical of *Roe v. Wade*. In one article, it was reported that Barrett stated that the “framework of Roe essentially permitted abortion on demand, and Roe recognizes no state interest in the life of a fetus.” Barrett also signed a letter authored by The Becket Fund criticizing the Affordable Care Act’s requirement that employers provide contraceptive coverage as part of their employer-sponsored health insurance plans.

- **Andrew Brasher** (nominated to Middle District of Alabama) defended an unconstitutional law that would allow a judge to appoint an attorney for a fetus and the district attorney to call witnesses to testify regarding a minor’s maturity. He has defended other unlawful anti-choice policies, including laws requiring abortion providers to have admitting privileges at nearby hospitals, restricting where facilities that provide abortions can be located based on proximity to schools, and “effectively criminaliz[ing] the most common method of second-trimester abortions.” In 2014, Brasher, on behalf of the attorney general of Alabama, told a crowd, “The ACLU and Planned Parenthood want a fight and we will give them one.” Brasher challenged the contraceptive mandate in the ACA, and, in his personal capacity, even questioned the validity of *Planned Parenthood v. Casey*.

- **Liles Burke** (confirmed to Northern District of Alabama), as a state court judge, held in *Ankrom v. State*, 152 So.3d 373 (2011) that the word “child” in Alabama’s child endangerment statute applies to the unborn.
• **John Bush** (confirmed to Sixth Circuit) likened abortion to slavery: “[t]he two greatest tragedies in our country—slavery and abortion—relied on similar reasoning and activist justices at the U.S. Supreme Court, first in the Dred Scott decision, and later in Roe.”

• **Stephen Clark** (nominated to Eastern District of Missouri) said that *Roe v. Wade* “gave doctors a license to kill unborn children. Like the Dred Scott decision, Roe is BAD law.”

• **Daniel Collins** (nominated to the Ninth Circuit) fought to make it harder for women to obtain contraceptives, filing an amicus brief in *Burwell v. Hobby Lobby, Inc.*, arguing that corporations could deny contraceptive coverage as part of employer-sponsored health insurance plans. He supported religious nonprofits' challenges to the Affordable Care Act's contraceptive mandate. He also filed an amicus brief challenging a Baltimore City ordinance that required fake women's health centers to post disclosure signs in their waiting areas.

• **Kyle Duncan** (confirmed to Fifth Circuit) represented Hobby Lobby in its efforts to avoid providing contraceptive coverage to over 13,000 employees as required by the Affordable Care Act.

• **Allison Eid** (confirmed to Eleventh Circuit), while on the Colorado Supreme Court, twice dissented from the denial of a writ of certiorari in a case involving graphic images of aborted fetuses displayed by protesters during church services. Applying strict scrutiny based on the compelling interest of protecting children from disturbing images, the Colorado Court of Appeals upheld an injunction preventing such displays.

• **Neil Gorsuch** (confirmed to Supreme Court) on the Supreme Court joined the other conservative Supreme Court justices in striking down California's disclosure laws for fraudulent “crisis pregnancy centers” as unconstitutional compelled speech. Justice Breyer, in his dissent, pointed out how the decision “radically change[d] prior law.” Gorsuch joined Justices Samuel Alito and Clarence Thomas in dissenting from the Court's decision not to hear a lower court case that had invalidated state actions that defunded Planned Parenthood. On the Tenth Circuit, he held that the Department of Health and Human Services could not require closely-held for-profit corporations to provide contraceptive coverage as part of their employer-sponsored health insurance plans if the corporation said that doing so conflicted with its religious beliefs. In *Planned Parenthood Assoc. of Utah v. Herbert*, moreover, he went to extraordinary lengths to allow the state of Utah to defund Planned Parenthood.
• **Britt Grant** (confirmed to Eleventh Circuit) defended a “fetal pain” law passed by the Georgia legislature. The law made it illegal for doctors to perform abortion after 20 weeks of pregnancy, with a few exceptions.

• **L. Steven Grasz** (confirmed to Eighth Circuit) has written that the historic denial of civil rights to Native Americans and African Americans is comparable to the “denial” of civil rights to aborted fetuses. As Chief Deputy Attorney General of Nebraska, Grasz defended laws banning abortion procedures as well as laws prohibiting the use of public funds for state grants to organizations that provided abortion-related services.

• **James Ho** (confirmed to Fifth Circuit) is associated with the First Liberty Institute, an organization that has taken strong stances against women’s reproductive rights. On the bench, Ho joined a Fifth Circuit panel that reversed a lower court order requiring the Texas Conference of Catholic Bishops to comply with a subpoena. In so doing, he made clear his views regarding the right to decide whether to have an abortion.

• **Matthew Kacsmaryk** (nominated to Northern District of Texas) described *Roe v. Wade* as follows: “[S]even justices of the Supreme Court found an unwritten ‘fundamental right’ to abortion hiding in the due process clause of the Fourteenth Amendment and the shadowy ‘penumbras’ of the Bill of Rights, a celestial phenomenon invisible to the non-lawyer eye.” He also vigorously opposed the Affordable Care Act employer contraceptive mandate, representing an organization that sought to avoid providing the healthcare required by the Department of Health and Human Services to female employees. His organization, the First Liberty Institute, has taken a hard-line stance against the contraception provision of the Affordable Care Act.

• **Gregory Katsas** (confirmed to D.C. Circuit) litigated multiple cases during his time in the Bush Administration where the government attempted to limit the rights of women to contraception and abortion access.

• **Brett Kavanaugh** (confirmed to Supreme Court), while on the D.C. Circuit, dissented in the case involving a young immigrant woman in government custody, Jane Doe, access to abortion care in *Garza v. Hargan*, 874 F.3d 735 (2017) even after she successfully followed and completed all of the burdensome requirements mandated by Texas to have the procedure. In allowing her to receive an abortion after completing various procedural hurdles, Kavanaugh argued that the D.C. Circuit created “a new right for unlawful immigrant minors in U.S. Government detention to obtain immediate abortion on demand, thereby barring any
Government efforts to expeditiously transfer the minors to their immigration sponsors before they make that momentous life decision.”

- **Jonathan Kobes** (confirmed to Eighth Circuit) represented, pro bono, a group of fake women’s health centers seeking to uphold a South Dakota law that required physicians to read a predetermined script to women seeking an abortion. Under the law, the abortion care provider was required to tell women seeking abortion care that abortion ends “the life of a whole, separate, unique, living human being,” that she has an “existing relationship” with the “unborn human being” and that abortion increases the risk of suicide.

- **Jeff Mateer** (nominated to Eastern District of Texas) criticized *Roe v. Wade*. In a blog post he wrote, “In 1973, seven unelected judges determined that, despite hundreds of years of contrary precedent, the unborn had no right to life. Since that time, 52 million innocent lives have been taken. This past year over 1 million lives were terminated. Today alone, in abortion mills throughout the country, 2,739 babies will be killed. For over the past 30 years, we seem to be living in a society that does not honor life, but instead promotes a culture of death.” Mateer also represented four “crisis pregnancy centers” which claimed that their rights were violated when an Austin, Texas ordinance required them to post signage stating that they do not provide medical services. He also compared the contraceptive coverage mandate under the Affordable Care Act to oppression in Nazi Germany.

- **Eric Miller** (confirmed February 26, 2019 to Ninth Circuit) signed briefs while working at the Justice Department that advanced the Bush Administration’s efforts to restrict access to abortion care.

- **Eric Murphy** (confirmed March 7, 2019 to Sixth Circuit) submitted a brief to the Supreme Court arguing in support of an Arizona law that prohibited certain abortions pre-viability. Murphy also defended a law targeting Planned Parenthood that would have cut off critical health funds, including funding for breast and cervical cancer prevention and sexual violence prevention, to any entity that provides abortion services.

- **Howard Nielson** (nominated to District of Utah) coauthored an amicus brief in *Whole Woman’s Health v. Hellerstedt*, 136 S.Ct. 2292 (2016) arguing that the Supreme Court should uphold restrictive abortion regulations in Texas. These regulations required that all outpatient abortion providers meet untenable standards that would have shut down many women’s health facilities, making it incredibly difficult for women in Texas to safely access abortion providers.
• **Mark Norris** (confirmed to Western District of Tennessee) co-sponsored a resolution in Tennessee that would ban abortion even if necessary to protect the mother’s life or in cases of rape or incest.

• **Andrew Oldham** (confirmed to Fifth Circuit) was a lead attorney defending the Texas law consisting of a series of provisions known as Targeted Regulation of Abortion Providers (TRAP) laws. Oldham also defended Texas’s controversial effort to bar reproductive health organizations from receiving funding through the Texas Women’s Health Program.

• **Michael Park** (nominated to Second Circuit) represented the state of Kansas in *Planned Parenthood of Kansas v. Andersen*, 882 F.3d 1205 (10th Cir. 2018), after it attempted to defund Planned Parenthood and banned it from participating in the state Medicaid program. Park was also involved in defending the Trump Administration’s attack on the right of a young immigrant woman in government custody, Jane Doe, to access abortion care, in *Garza v. Hargan*, 304 F. Supp. 3d 145 (D.D.C. 2018).

• **Neomi Rao** (confirmed March 13, 2019 to D.C. Circuit) frequently uses her ideas regarding “dignity” in constitutional law as an ideological framework to couch problematic stances regarding social justice. Using this framework, Rao cited “dignity” in expressing her opposition to a woman’s right to access health care. For example, in a 2011 article titled “Dignity as Intrinsic Human Worth,” Rao twisted the reasoning the Supreme Court outlined in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), to allude that the “dignity” of fetuses should perhaps override the right of women to control decisions regarding their health care. Rao explained how Casey “explicitly connected dignity, autonomy, and choice as ‘central to the liberty protected by the Fourteenth Amendment.’” She then challenged this reasoning by stating that while “the plurality highlighted the inherent dignity of a woman’s freedom to choose an abortion . . . it minimized the competing inherent dignity of the fetus to life.” In Rao’s view, courts “have often avoided the conflict by emphasizing the centrality of one of these dignities at the expense of the other.”

• **William McCrary Ray II** (confirmed to Northern District of Georgia) voiced his strong support for measures banning late-term abortions.

• **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit) attacked the right of a young immigrant woman in government custody, Jane Doe, to have access to abortion care in *Garza v. Hargan*, 874 F.3d 735 (2017) even after she successfully followed and completed all of the burdensome requirements mandated by Texas to have the procedure. Readler also

- **Damien Schiff** (nominated to Court of Federal Claims) wrote numerous pieces stating his disagreement with a woman’s right to choose whether to have an abortion. In a blog post, Schiff wrote: “I am not saying that people in favor of legalized abortion are morally decrepit (although I would consider their view on this matter to be gravely in error).” He also wrote that with regard to “forbidding women to abort their unborn children . . . at most it might be a deprivation of liberty within the meaning of the DPC [Due Process Clause], but that position, although conceptually less disagreeable than the EPC [Equal Protection Clause] argument, is nevertheless without originalist merit.”

- **Brett Talley** (nominated to Middle District of Alabama) called *Roe v. Wade* “indefensible.” In an online commentary, Talley also wrote that voters should support Trump “if you want justices who adhere to the Constitution, laws that respect unborn life.”

- **Michael Truncale** (nominated to Eastern District of Texas), a strong opponent of abortion care, boasted on his 2012 campaign website that he was “the only congressional candidate to participate in a recent March for Life, ecumenical March for Life.” Calling for defunding of Planned Parenthood, he has also described the Affordable Care Act’s contraceptive-coverage policy as an “assault on the Catholic Church” because “now you have the government telling religion what to do.” Truncale was particularly vicious about Wendy Davis, the Texas Democrat who in 2015 held a thirteen-hour-long filibuster to block a bill that severely restricted abortion care in Texas, describing “Wendy Davis’ Claim to fame-kills little girls.”

- **Wendy Vitter** (nominated to Eastern District of Louisiana) urged supporters to distribute materials that claimed abortion services are a cause of breast cancer and that birth control pills “kill” and make a woman more likely to be the victim of violent assault and murder. Vitter also publicly lauded how Texas has “led the nation in some very pro-life, restrictive laws,” and how anti-choice activists “are making great strides in making it very difficult to get abortions in Texas.”

- **Allen Winsor** (nominated to Northern District of Florida) defended a Florida law that imposed a mandatory 24-hour waiting period before accessing abortion care. In April 2016, the Florida Supreme Court blocked the law, and it was recently declared unconstitutional. Winsor also filed an amicus brief in opposition to the Affordable Care Act’s contraceptive coverage mandate.
• **Patrick Wyrick** (nominated to western District of Oklahoma), as Solicitor General of Oklahoma, fought reproductive rights for women, including supporting laws that limit access to contraception.
APPENDIX T: WOMEN’S EQUALITY —
SEXUAL HARASSMENT AND ASSAULT

Trump judges and nominees who have fought to weaken protections against
sexual harassment and assault

- **Ryan Bounds** (nominated to Ninth Circuit) wrote an article arguing that schools should impose a higher standard of proof for sexual assault claims, in contrast to the requirements for claims of other serious, nonsexual campus misconduct. The stringent "beyond a reasonable doubt" standard promoted by Bounds is typically reserved for criminal cases, whereas most schools use the "preponderance of the evidence" standard in their internal investigation of misconduct complaints. The imposition of a higher standard of proof on survivors of sexual violence, and not victims of all other types of misconduct, discriminates against sexual assault survivors.

- **Michael Brennan** (confirmed to Seventh Circuit) applauded the Supreme Court’s decision in *United States v. Morrison*, which struck down key parts of the Violence Against Women Act.

- **Kurt Engelhardt** (confirmed to Fifth Circuit), as a district court judge, had a troubling record with regard to sexual harassment claims, often going out of his way to rule that allegations do not rise to the level of objectively hostile conduct and to keep cases from even being heard by a jury.

- **Thomas Farr** (nominated to Eastern District of North Carolina) supported a North Carolina bill that prevented women who were discriminated against or who were victims of sexual harassment in the workplace from filing a lawsuit in state court, calling it a “better policy for the state.” As an attorney, Farr defended a company when a supervisor said that female employees were “stupid, retarded, and awful,” that “women with children should be at home and not employed in the workplace,” and that he would go to an employee’s hotel room to “help [her] pick [her] panties off the floor.” Farr defended another company where a woman was denied a position because the job “was too hard and too rough for a woman.”

- **Brett Kavanaugh** (confirmed to Supreme Court), faced credible allegations of sexual assault made by Dr. Blasey Ford and other women during his Supreme Court confirmation hearing.

- **Kenneth Lee** (nominated to Ninth Circuit) wrote a number of articles that demonstrated hostility toward women’s rights and equality. He inappropriately criticized the experiences of
sexual harassment survivors, espoused harmful stereotypes of sexual violence, and showed skepticism regarding the reported prevalence of rape on college campuses.

- **Neomi Rao** (nominated to D.C. Circuit) warned of “hysteria over date rape.” She argued, “a good way to avoid a potential date rape is to stay reasonably sober” and “if she drinks to the point where she can no longer choose, well, getting to that point was part of her choice.” OIRA, under Rao’s leadership, signed off on Education Secretary Betsy DeVos’s efforts to roll back protections for survivors of sexual assault on college campuses. The proposed rule, while not yet final, would make a series of changes to Title IX processes on college campuses that many survivor groups oppose. As organizations such as End Rape on Campus and Know Your IX explain, “[i]f the proposed rule becomes law, survivors will lose access to their education and schools will continue to sweep sexual violence under the rug. The new rule will stop survivors from coming forward and make schools more dangerous for all students.” Rao also criticized the Violence Against Women Act (VAWA), a landmark law with bipartisan support that protects survivors of sexual and domestic violence and seeks to root out sexual violence. In discussing Supreme Court precedent, Rao stated: “So they’re able to invalidate things like the Guns Free School Zone Act or parts of the Violence Against Women Act, which are really kind of grandstanding statutes, which are largely covered by other state laws or something like that.”

- **David Stras** (confirmed to Eighth Circuit) as a state court judge dissented in a case that held that trial judges had the ability in a rape case to allow expert testimony that contradicted the defendant’s claim of consensual sex.

- **Don Willett** (confirmed to Fifth Circuit), while on the Texas Supreme Court, limited the amount of compensation that a victim of workplace sexual harassment and assault can collect from her employer.
APPENDIX U: WORKERS

Trump judges and nominees who have fought protections for workers

(See also Appendix B: Civil Rights – Equal Employment Opportunity and Appendix T: Women’s Equality – Sexual Harassment and Assault)

- **Ryan Bounds** (nominated to Ninth Circuit) criticized students who protested a “union-busting” hotel.

- **Allison Eid** (confirmed to Tenth Circuit), while on the Colorado Supreme Court, dissented from a decision holding that a woman who fell and injured herself at work was entitled to workers’ compensation. Eid dissented and said workers' compensation should not cover injuries “where the cause is not known” even if the injury occurred at work.

- **Thomas Farr** (nominated to Eastern District of North Carolina) served as a staff attorney to the anti-union National Right to Work Legal Defense Foundation and continued to promote that organization’s values throughout his career. For example, Farr filed an amicus brief arguing that California’s collective bargaining system for state employees was unconstitutional. In 1997, Farr urged the Supreme Court to consider and reverse a case that expanded protections for workers harmed by exposure to asbestos.

- **Neil Gorsuch** (U.S. Supreme Court), while on the Supreme Court, wrote the opinion in *Epic Systems v. Lewis*, which effectively strips workers (in this case employees who were victims of wage theft, underpaid by their employers) of their ability to most effectively enforce their rights. Gorsuch was the deciding vote in *Janus V. AFSCME*, where he voted to overrule a 41-year-old precedent upholding the constitutionality of state laws that allow public sector unions to require nonmembers to pay their fair share of the costs of collective bargaining. On the Tenth Circuit, he repeatedly denied critical remedies to many workers wronged by their employers. He was the only one of seven judges who would have ruled against Alphonse Maddin, the “Frozen Trucker,” by ignoring a law to protect the health and safety of transportation workers and allowing Mr. Maddin’s employer to force him to choose between his job and saving his own life. In *Hwang v. Kan. State Univ.*, Gorsuch ignored clearly established law and allowed an employer to deny a professor who was recovering from cancer, Grace Hwang, an accommodation to work from home when her doctor told her if she returned to work during a flu epidemic she would die.

- **Britt Grant** (confirmed to Eleventh Circuit) assisted with an amicus brief arguing that the Supreme Court should overrule *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977).
arguing public sector unions should not be able to collect fees from non-members in the workplace although non-members benefit from unions’ ability to secure better working conditions.

- **Brett Kavanaugh** (U.S. Supreme Court), while on the D.C. Circuit, routinely ruled against workers and their families. In *SeaWorld of Fla., LLC v. Perez* he called OSHA protections “paternalistic” and would have overturned a fine for SeaWorld following the death of a trainer who was killed by a whale after SeaWorld failed to adopt sufficient safety measures. Kavanaugh also wrote an opinion upholding Department of Defense (DOD) regulations that undermined the collective bargaining rights of hundreds of thousands of DOD civilian employees. Kavanaugh sided with a company fighting workers’ attempts to improve working conditions, arguing that contrary to the National Labor Relations Board (NLRB), other judges, and prior Supreme Court precedent, the workers’ vote to join a union was invalid because of some of the workers’ immigration statuses. Kavanaugh also wrote opinions supporting the decision of a hotel, The Venetian, to ask the police to issue criminal citations against union demonstrators who were protesting legally; supporting CNN when the NLRB found it had discriminated against union members in hiring and needed to recognize and bargain with a worker’s union; and in favor of Verizon’s decision to prohibit union members from displaying pro-union signs in their cars while at work. Kavanaugh also sided with Donald Trump’s Venetian Casino when it tried to prevent workers from unionizing.

- **Kenneth Lee** (nominated to Ninth Circuit) criticized the “surge of wage-and-hour class action lawsuits” in California, including one case where Walmart had “to pay $172 million in damages for failing to provide 30-minute meal breaks to its employees in accordance with California labor law.” As he wrote, “these lawsuits can dent the bottom line of Fortune 500 companies and potentially cripple small businesses.”

- **Eric Miller** (confirmed February 26, 2019 to Ninth Circuit) worked to shield a corporation from liability when a Boeing employee was exposed to asbestos at work and later died from mesothelioma. Miller has also defended corporations against employment discrimination claims by women alleging harassment and a hostile work environment. Miller represented Microsoft, defending a corporate policy that made it difficult for employees to bring forward credible workplace harassment claims.

- **Mark Norris** (confirmed to Western District of Tennessee) pushed legislation that has made it far harder for workers to pursue compensation claims in Tennessee, including barring the cases from trial courts. He also advanced legislation that overturned living wage laws.
• **Andrew Oldham** (confirmed to Fifth Circuit) has argued the entire Department of Labor is unconstitutional.

• **Michael Park** (nominated to Second Circuit), after New York City issued an emergency order to improve work conditions for low-income nail salon workers, sued on behalf of salon owners, fighting efforts to protect workers. Park was also involved in efforts to make it more difficult for workers injured by asbestos to hold corporations accountable.

• **Neomi Rao**’s former office, OIRA, allowed revisions to Occupational Safety and Health Administration (OSHA) protections that would allow certain employers to conceal workplace injuries.

• **Chad Readler** (confirmed March 6, 2019 to Sixth Circuit) helped disqualify millions of American workers from overtime pay by dropping the defense of a rule that doubled the minimum salary required for exemptions under the Fair Labor Standards Act.

• **Allison Rushing** (confirmed March 5, 2019 to Fourth Circuit) represented Ernst & Young in *Ernst & Young LLP v. Morris*, which later was consolidated with *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018). Rushing argued that employees who were denied overtime pay could be deprived of the right to unite and join as a class action in arbitration under the National Labor Relations Act.

• **Damien Schiff** (nominated to Court of Federal Claims) believes OSHA is unconstitutional.

• **Patrick Wyrick** (nominated to Western District of Oklahoma) defended a law that converted the state’s workers’ compensation system into one that gave far fewer protections for injured workers. On the Oklahoma Supreme Court, Wyrick dissented in a case where the court awarded compensation to an injured worker who suffered a permanent and total disability.