AFJ NOMINEE SNAPSHOT

WENDY VITTER

U.S. District Court for the Eastern District of Louisiana

CONTENTS

INTRODUCTION, 1
OMISSIONS BEFORE THE SENATE, 1
BIOGRAPHY, 2
REPRODUCTIVE RIGHTS, 3
RECORD AS A PROSECUTOR, 4
REFUGEE RESETTLEMENT, 6
CONCLUSION, 7

INTRODUCTION

On January 23, 2018, President Trump nominated Wendy Baldwin Vitter to serve as a judge on the U.S. District Court for the Eastern District of Louisiana. If confirmed, Vitter would take the seat previously held by Helen G. Berrigan, who took senior status on August 23, 2016.

On March 1, 2018, Alliance for Justice published a brief "snapshot" report to highlight certain troubling aspects of Vitter's record. At the time, we noted there were serious omissions from Vitter's Senate Judiciary Committee questionnaire responses, which raised questions about whether material was accidentally or deliberately omitted – either of which would constitute grounds for questioning Vitter's fitness for a federal judgeship. These issues are especially pressing because the omissions from the questionnaire included disturbing comments in which Vitter endorsed troubling views on women's legally established reproductive rights.

After Alliance for Justice's snapshot was released, several media reports (VICE: "A Trump judge pick left anti-abortion speeches off her Senate questionnaire; " New Orleans Times-Picayune: "Wendy Vitter omitted anti-abortion work on Senate judicial questionnaire; The Hill: "Judicial nominee draws scrutiny over disclosures of past speeches), as well as a statement from Senate Judiciary Committee Ranking Member Dianne Feinstein, pointed out the omissions in Vitter's responses. Following these releases and more than two weeks after the publication of AFJ's report, on March 16, Vitter supplemented her original questionnaire with approximately 100 new entries, totaling over 190 pages of new material.

While the omissions from Vitter's original document submission formed one basis for AFJ's concerns about her nomination, other aspects of her record formed another. Vitter was Chief of Trials at the New Orleans District Attorney's Office (D.A.) under Harry Connick, an office that was found to have persistently violated the Constitution. Vitter has also voiced, contrary to the position of her employer, the Roman Catholic Archdiocese of New Orleans, her opposition to the humanitarian placement of refugee immigrants from Syria in the United States.

Alliance for Justice opposes Wendy Vitter's confirmation to the District Court for the Eastern District of Louisiana.

OMISSIONS BEFORE THE SENATE

Vitter had significant omissions in her original responses to the Senate Judiciary Questionnaire. These omissions included:

- A panel she led called "Abortion Hurts Women's Health" hosted by Louisiana

Right to Life on November 2, 2013. At that event, video of which is easily located by searching for Vitter's name on the YouTube website, Vitter 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.

- A speech at a rally against the construction of a Planned Parenthood clinic in New Orleans on May 20, 2013. In her speech, the contents of which were not originally disclosed, she claimed that Planned Parenthood "kills over 150,000 females a year."
- A speech at a campaign event for her husband, former Senator David Vitter, in Shreveport in October 2015.
- A campaign ad on behalf of her husband's gubernatorial campaign in October 2015.
- A speech before the Northeast Louisiana Tea Party in October 2010.
- An interview on behalf of her husband's Senate campaign on October 28, 2004.
- A letter to the editor in the New Orleans Times-Picayune on March 8, 1996.

When Goodwin Liu, President Obama's nominee to the U.S. Court of Appeals for the Ninth Circuit, had to supplement his original questionnaire for the Senate Judiciary Committee, there was an outcry from Republicans. Then-Senator Jeff Sessions, Ranking Member of the Judiciary Committee, along with every Republican on the committee including current Chairman Chuck Grassley, wrote 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 Committee 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." Senator Sessions even suggested that Liu had committed a felony. Later, Republicans successfully filibustered his nomination, and Liu withdrew his name from consideration.

Federal judicial nominees are required to fill out the questionnaire completely and honestly, as these disclosures are necessary for senators to properly vet candidates for lifetime appointments. Without a complete record, the Senate's constitutional "advice and consent" role is undermined. Thus, Vitter's lack of disclosure, especially of controversial remarks, is a critical problem.

BIOGRAPHY

Wendy Vitter attended Sam Houston State University, attaining a B.S. in 1982, and Tulane Law School, receiving her J.D. in 1986. After law school she joined the Orleans Parish District Attorney's Office in New Orleans, Louisiana. While working for

the Orleans Parish D.A. she served in various positions, including Assistant District Attorney and Deputy Chief of Trials. In 1990, Vitter became the Chief of Trials, a position she held under District Attorney Harry Connick, until 1992. After leaving the D.A.'s Office, Vitter joined the firm Abbott and Meeks in New Orleans for one year as an associate.

For approximately two decades, from 1993 to 2013, Vitter did not practice law. During this time, Vitter supported her husband, former Louisiana Senator David Vitter, in his political career. In that capacity, Wendy Vitter served as an uncompensated campaign manager in David Vitter's 1999 congressional campaign, and as an unofficial campaign advisor in his subsequent campaigns.

In 2004, Vitter and her husband were criticized for buying a house in New Orleans with a deed that stated the house could only be sold "to people of the white race." The Vitters claimed they had not been aware of the racially restrictive covenant.

Since 2012, Wendy Vitter has served as the general counsel to the Archdiocese of New Orleans.

While Vitter litigated extensively in state court during her time as a prosecutor, her record reveals a lack of federal trial experience. As reported by a local New Orleans media outlet, "[o]nline records show [Vitter] with but one federal court case, and that was as co-counsel to the lead attorney more than 25 years ago." On her questionnaire, Vitter claims ten percent of her current practice involves matters of federal jurisdiction.

REPRODUCTIVE RIGHTS

As a high profile advocate against reproductive rights for women, Vitter has spoken at events in support of the pro-life movement. However, Vitter failed to include at least two significant speaking engagements on this topic in her original paperwork to the Senate Judiciary Committee.

One of Vitter's undisclosed speaking engagements was an "Abortion Hurts Women's Health" panel she moderated on November 14, 2013. During the panel, Vitter praised the efforts of Texas in fighting against reproductive rights for women:

> I'll tell you what, last year Texas led the nation in some very pro-life, restrictive laws led by a very strong governor. And just last week the one about the admitting privileges was struck down by the court of appeals. They're taking it to the Supreme Court, but they are making great strides in making it very difficult to get abortions in Texas.

Vitter continued, comparing the anti-abortion laws in Texas to her efforts in Louisiana:

> And we're gonna be right there, because our lobbying efforts in the Louisiana legislature are always, you know, right up front. The pro-life forces are there. We're the ones who have mandated ultrasounds before

> anybody can have an abortion, which has made a huge difference, when a person sees that life in their body. Louisiana is always up front in the legislature.

Minutes later, Vitter endorsed the views of anti-abortion activist Dr. Angela Lanfranchi, known for spreading dangerous and debunked materials claiming that abortions cause breast cancer and that birth control pills make women "choose partners who share a similar genetic profile causing them to lose interest in sex and become more likely to be the victim of violent assault and murder." After Lanfranchi tells the crowd that she has materials about how "the pill kills" and "contraceptives caus[e] cancer," Vitter recommends these materials as advocacy tools:

> So, the next step: go to Dr. Angela's website "Breast Cancer Prevention Institute," download it, and at your next physical, you walk into your pro-life doctor and say, "Have you thought about putting these facts or this brochure in your waiting room?" Each one of you can be the pro-life advocate to take the next step. That's what you do with it.

These materials, still available online, claim that "[w]omen on the pill are more likely to die a violent death." It bears noting that the American Cancer Society has found no causal relationship between abortion and breast cancer, and the scientific consensus is that "[o]ral contraception [is] not associated with an increased long-term risk of death[,]" and in fact may produce a net benefit in overall life expectancy.

Vitter goes on to say that, "I think bringing [Dr. Angela's] brochure to any doctor's office is a great action item."

Vitter also failed to disclose on her original questionnaire that she was a speaker at a major rally opposing Planned Parenthood in 2013, even though a local paper covered the event. The purpose of the rally was to protest "construction of a 7,000 square-foot Planned Parenthood clinic…scheduled to begin construction[.]" The center was the first Planned Parenthood facility to perform abortions in the state of Louisiana. At the event, according to an article Vitter only disclosed when she supplemented her SJQ response materials, Vitter said that "Planned Parenthood says they promote women's health. It is the saddest of ironies that they kill over 150,000 females a year. The first step in promoting women's health is to let them live."

RECORD AS A PROSECUTOR

Vitter began her career at the Orleans Parish D.A.'s office in 1983, and was elevated to supervisory positions during the course of almost a decade there, including in 1990 being promoted to Chief of Trials, where she "overs[aw] the felony trial attorneys while continuing to prosecute cases."

While Vitter worked for the Orleans Parish D.A. the district attorney was Harry Connick. Connick's office has been the

subject of extreme controversy for its repeated failures to disclose evidence to the defense, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). Tellingly, three Supreme Court cases – *Kyles v. Whitely*, *Connick v. Thompson*, and *Smith v. Cain* – go into detail regarding the D.A.'s office's persistent *Brady* violations, which overlapped in part with Vitter's career there.

In fact, since 1990, at least twelve people have been exonerated because of the D.A.'s failure to disclose exculpatory evidence. As one former assistant prosecutor in that office explained, "the office's unwritten policy [was] 'when in doubt, don't give it up.'" The New York Times wrote that the district attorney himself "misunderstood the Brady rule so profoundly that he was once indicted himself for suppressing evidence, and he never disciplined a prosecutor for violating the Brady rule."

In 1995, five years after Vitter became Chief of Trials, the Supreme Court said that the office had "blatant and repeated violations" of the *Brady* rule. *Kyles*, 514 at 455 (Stevens, J., concurring). In 2011, Justice Ginsburg wrote that the "misperception and disregard of *Brady's* disclosure requirements" in the Orleans D.A.'s Office "were pervasive" and that "a fact trier could reasonably conclude that inattention to *Brady* was standard operating procedure at the District Attorney's Office." *Thompson*, 563 U.S. at 79–80 (Ginsburg, J., dissenting). "Connick and the prosecutors who served under him were not merely negligent regarding *Brady*. Rather, they were deliberately indifferent to what the law requires." *Id*. at 100.

As Dean Erwin Chemerinsky wrote in his petition for writ of certiorari in the *Truvia v. Connick* case, which involved two African-Americans who had served 27 years in prison before it was discovered that the prosecution failed to turn over potentially exculpatory evidence:

> Connick's Office admitted that its policy on *Brady* is that, when the prosecution has a single eyewitness supporting its case, it does not have to turn over inconsistent statements of that single eyewitness to the defense. In other words, the position of Connick's office has been that, in the thirty years from [1975] up through very recently, Connick's office acknowledges purposely withholding *Brady* evidence from the defense instead of simply turning over these materials and allowing the jury to weigh this evidence.

See Petition for Writ of Certiorari, *Truvia v. Connick*, 2014 U.S. S. Ct. Briefs LEXIS 4389 (2014) (No. 14-708)

Indeed, among the evidence presented in *Truvia* were discovery responses by 44 Orleans Parish assistant district attorneys in 90 cases where the A.D.A. misinformed defendants of the materials they were entitled to under Brady. *Id.* In addition, a former assistant district attorney testified that the Orleans Parish District Attorney's Office did not train him on *Brady* violations, and actually instructed him to provide "not entitled" responses to *Brady* requests. *Id.*

As the Washington Post noted, "[g]iven that the courts have turned over at least 36 convictions for prosecutor misconduct, including the convictions of nine death row inmates (four of whom were later exonerated)," there certainly seemed to be "a pattern and practice of unconstitutional policies, training and behavior." "Press accounts of the office dating to the 1990s (see a summary of them in this brief) describe judges in Louisiana growing increasingly frustrated with the office for failing to turn over exculpatory evidence, on occasion even ordering prosecutors to take classes to better learn the law." The New York Times, describing the pervasive level of constitutional violations in the Orleans D.A.'s office, asked, "How many constitutional violations will it take before the New Orleans district attorney's office is held to account for the culture of negligence and outright dishonesty that has pervaded it for decades?"

Vitter's leadership role, as Chief of Trials, in an office that had "blatant and repeated violations" of the Constitution and a culture that was "deliberately indifferent" to the law, raises serious questions about her own commitment to critical constitutional protections.

Finally, in 2003 – after the Supreme Court had found the "blatant and repeated" *Brady* violations by the Orleans Parish D.A. in *Kyles v. Whitley*, and after Connick was indicted, in 1989, for aiding and abetting an illegal gambling operation by returning gambling records to a bookmaker (he was later acquitted) – Vitter endorsed Connick continuing to serve in public office. Vitter was asked about her time at the office, where she "recalled how Connick taught his lawyers to do what's right for the victims and the community[,]" adding "[o]ne more thing… Harry Connick in 2008."

It is also worth noting that in 1990, while Vitter served as either Deputy Chief of Trials or Chief of Trials, the New Orleans Times-Picayune newspaper criticized the office for disproportionate sentencing. The Times-Picayune compared the prosecution of Mark Sturdivant, who is black, to Charles Clarke, who is white. Vitter prosecuted the Sturdivant case, and pursued the death penalty, while the D.A. only pursued a manslaughter charge against Clarke. As the Times-Picayune wrote, "The two cases and the different paths they have taken through the judicial system have puzzled some criminal court regulars. More importantly, the judges presiding over the cases have raised questions about how the district attorney's office determined that the cases deserved different charges."

REFUGEE RESETTLEMENT

While Vitter was serving as general counsel to the Archdiocese of New Orleans, Catholic Charities helped resettle Syrian refugees in the state of Louisiana. In response to criticism over the Archdiocese's humanitarian work, Vitter made her opposition to refugee

resettlement clear during a campaign event in 2015. Said Vitter:

> Catholic Charities obviously is a Catholic mission service that serves ministry to people in need but not even Catholic Charities, they don't make the policy [sic]. They are administering a policy of the Obama administration. It's President Barack Obama's policy. It is not Catholic Charities' policy and I can guarantee it's not Wendy Vitter's policy.

Vitter's opposition to settling refugees from Syria stands in stark contrast to the stated position of the Roman Catholic Archdiocese of New Orleans, who when criticized for its resettlement program, responded:

> Catholic Charities Immigration and Refugee Services has a long history of resettling families fleeing violence in their home countries. Thirty years ago the late Archbishop Philip Hannan worked to resettle Vietnamese families here, and today the Vietnamese community is a valuable part of our diverse New Orleans culture. Today, we face new challenges as we answer the Gospel call to welcome the stranger and care for the vulnerable. Thousands of families – women, men and children – are fleeing violence in the Middle East. Catholic Charities is a grantee agency that receives refugees from many parts of the world, including the Middle East, and we have recently resettled two families from the area.

CONCLUSION

Vitter has shown an intense hostility to women's reproductive rights and to providing humanitarian aid to refugees. She has strong connections to a district attorney with a staggering history of due process violations. Moreover, her delay in disclosing significant portions of her record to the Judiciary Committee until after AFJ, the press, and Ranking Member Feinstein publicly flagged omissions in her submission to the committee raise questions about judgment and integrity that are worrisome for someone who aspires to be a federal judge. Alliance for Justice strongly opposes Vitter's confirmation to the District Court for the Eastern District of Louisiana.