



# **TRUMP'S ATTACKS ON OUR JUSTICE SYSTEM: 2017 - 2019**

# Contents

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<b>Executive Summary</b>	<b>3</b>
<b>President Trump's Impact on the Courts</b>	<b>5</b>
<b>Trump's Impact by the Numbers</b>	<b>12</b>
<b>Undermining Democracy: Siding with the Wealthy and Powerful Over Everyday Americans</b>	<b>15</b>
<b>Thwarting Public Protections for Health and Safety</b>	<b>15</b>
Access to Affordable Health Care	17
Worker Protections	18
Environmental Protections	19
Gun Violence	19
Education	20
Consumer Rights	21
<b>Eroding Civil Rights and Equality Protections</b>	<b>22</b>
People of Color	22
Women's Equality and Reproductive Justice	24
LGBTQ Equality	26
Persons with Disabilities	27
Immigrant Rights	29
Native American Rights	30
<b>Undermining Our Democracy</b>	<b>31</b>
<b>Executive Power</b>	<b>33</b>
<b>Degrading of the Senate's Advice and Consent Duty</b>	<b>35</b>
<b>Changing Senate Rules to Confirm Neil Gorsuch and Brett Kavanaugh</b>	<b>35</b>

# Contents

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Sullyng the Process to Confirm Kavanaugh	35
<b>Changing Senate Rules and Norms to Confirm Lower Court Nominees</b>	<b>37</b>
<b>Hiding and Obscuring Key Data</b>	<b>39</b>
<b>Misleading the Senate</b>	<b>40</b>
<b>Hearings Stacked to Minimize Vetting</b>	<b>42</b>
<b>Condoning Nominees who Lack Basic Qualifications</b>	<b>42</b>
<b>Future Outlook</b>	<b>44</b>
Progressives are Increasingly Galvanized	44
Progressives Will Be Ready On January 1, 2021	45
Progress Was Made on Supreme Court Ethics Reform	46
<b>Appendix</b>	<b>47</b>

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Appendices current as of January 13, 2020. Updated appendices available on our [website](#).

*Alliance for Justice is a national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. Since 1979, AFJ has been the leader in advocating for a fair and independent justice system, preserving access to the courts, and empowering others to stand up and fight for their causes. The two pillars of Alliance for Justice are our Justice Program, focusing on ensuring our nation's courts protect our critical constitutional rights and legal protections, and our Bolder Advocacy Program, focusing on building advocacy capacity among nonprofits and the foundations that fund them.*

# Executive Summary

Of all the ways President Donald Trump has undermined our democracy, his massive reshaping of the courts will be the hardest to undo. With the support of Senate Majority Leader Mitch McConnell and the Senate Republicans, Trump has filled lifetime vacancies on the federal court at a breakneck pace. Many of these nominees have ultraconservative views that are contrary to the direction most Americans think our country should be headed — views that are consistent, however, with Republicans' desire to accomplish in the courts what they cannot through the legislature. Some nominees are also egregiously unqualified to uphold the integrity Americans have come to expect from judges, but Senate Republicans have nevertheless rubber-stamped their confirmations.

Alliance for Justice has closely monitored and challenged these developments. This report offers a retrospective on Trump's transformation of the courts over his first three years in office, specifically highlighting how the process accelerated during 2019. Explaining both what has happened to the courts and how, the report details the numerous ways that Senate Republicans have abandoned the Senate's norms for the confirmation process so that they could fast-track Trump's nominees, even over the objections of home-state senators. In contrast, McConnell had used those very practices to obstruct many of President Obama's nominees, including Merrick Garland to the Supreme Court, which further explains why Trump has had so many vacancies to fill and why he's significantly outpaced Obama when it comes to appointing judges.

The numbers tell an alarming story. Compared to Obama's first three years in office, Trump has appointed as many Supreme Court justices (two), twice as many appeals court judges (50 vs. 25), and significantly more district court judges (133 vs. 97). In fact, the Senate confirmed 80 district court nominees just this past year. Disturbingly, Trump has already flipped three different circuit courts of appeals, such that they now have a majority of Republican-appointed judges.

These judges were confirmed despite taking incredibly ugly positions throughout their pasts. The report highlights many of their egregious records on issues that impact Americans of all walks of life, from workers' rights to civil rights to immigration to the environment. Detailed [appendices](#) flesh out these records by issue area, providing an irrefutable glimpse at how hostile these judges are to the rule of law.

After three years of rapid confirmations, the impact of Trump's judges is already readily apparent. Surprising no one, the decisions these judges have issued

from the bench directly reflect the extreme views they espoused before their nominations. The report highlights major examples of how Trump's judges are already attempting to dismantle many of the legal protections Americans have long taken for granted, such as access to health care and the right to vote.

Despite this dim outlook for the future of our courts, all is not lost. The report concludes by highlighting the way that progressives are significantly more energized by the fate of the courts than ever before. Alliance for Justice is also already planning for the future through the Building the Bench initiative, which will help identify diverse and progressive judges for the next president to appoint.

With lifetime appointments, Trump's judges will play a part in shaping every aspect of American life for years to come. Understanding just who these judges are and how they got their positions is essential for mitigating the threats they pose to democracy and the law as we know it.



# President Trump's Impact on the Courts

For 40 years, Alliance for Justice (AFJ), an organization with over 120 members from the public interest and civil rights, social justice, and philanthropic communities representing millions of Americans, has fought to ensure a justice system that upholds the rights of all people, not just the wealthy and the powerful. During this time, AFJ has produced comprehensive reports on the records of judicial nominees of presidents from both parties. Armed with that research, we have mobilized grassroots power and energized influencers on hundreds of judicial nominations. Working with a breadth of coalition partners, we have led the opposition to judicial nominees who would undermine our rights and critical legal protections and have supported those that would advance our rights and the rule of law.

The Trump administration's assault on our courts, however, is unlike anything we have seen before. Senate Majority Leader Mitch McConnell and Judiciary Committee Chairmen Chuck Grassley and Lindsey Graham have degraded the Senate's confirmations process to stack the federal bench with judges who are upending the Constitution, essential laws, and public protections.

President Trump has been [impeached](#) for trying to use his office to solicit foreign interference on his behalf for the 2020 election and for obstruction of justice. He has repeatedly acted in ways struck down by the [courts](#). His attempts to subvert the [independence](#) of the Justice Department, aided by Attorney General William Barr, are especially egregious. He continues to verbally [attack](#) judges who have ruled against him. He has stated that he expects personal [loyalty](#) from those in law enforcement, demanded investigations into the [media](#) and political [opponents](#), and [mocked](#) constitutional rights.

This report, however, will focus on just one aspect of how Trump has impacted our justice system during his first three years in office: the judicial nominations put forward by the White House and confirmed by the Senate. Organizations funded by the wealthy and powerful have generated these names for Trump's consideration, and Senate Republicans have expedited their confirmation by disregarding norms and rules the advice and consent process. President Trump, who repeatedly emphasized his litmus tests – judges who will [gut](#) *Roe v. Wade*, [overturn](#) the ACA, and [strike down](#) gun safety laws – has placed scores of ultraconservative individuals on the bench who will erode rights and legal protections for generations, long after he leaves the White House.

In early 2019, AFJ released a two-year retrospective [report](#) on the harm Trump has inflicted upon the federal bench. Unfortunately, the harm only grew during

the third year of Trump's presidency. In 2019 alone, the Republican Senate confirmed 20 appellate and 80 district court judges.

Thus, at the end of the first session of the 116th Congress, the Senate had confirmed a total of 187 of President Trump's nominees for lifetime appointments on the federal bench, including two Supreme Court justices. That is more than one-fifth of all federal judges and includes 50 court of appeals judges and 133 district court nominees. While President Obama had two justices confirmed during his first three years, only 25 appellate and 97 district court judges were confirmed.

Through his confirmations, Trump has flipped three circuit courts of appeals — the Second, Third, and Eleventh — such that they now have a majority of Republican-appointed judges. Additionally, he reinforced Republican control of the Fifth, Sixth, Seventh, Eighth and Tenth Circuits. Now, despite the fact that a Republican candidate for president has only won the popular vote once since 1992, only four circuit courts — the D.C., First, Fourth, and Ninth — have a majority of Democratic-appointed judges.

This report documents Trump's impact on our federal judiciary and the judicial nominations process and looks at the totality of the records of the people that he has put on the federal bench. It illustrates the depth and the breadth of the harm Trump is inflicting on the courts and the American people who rely on independent judges to properly enforce our most important constitutional rights and legal protections.

In considering President Trump's impact thus far on the federal bench, it is useful to begin with his two Supreme Court nominees: [Neil Gorsuch](#) and [Brett Kavanaugh](#). Before they were confirmed, AFJ documented the extreme views of both Gorsuch and Kavanaugh. Predictably, now that they are on the Court Gorsuch and Kavanaugh have already issued opinions eroding critical rights and legal protections.

For example, Gorsuch [upheld](#) President Trump's discriminatory Muslim ban, made it harder for victims of wage theft to hold their employer [accountable](#), and [reversed](#) a 40-year-old precedent to weaken labor unions. He upheld voter [purges](#), efforts to make it harder for Native Americans to [vote](#), and racially discriminatory [redistricting](#). He voted to allow businesses to [discriminate](#) against LGBTQ persons and to allow states to [discriminate](#) against same-sex couples. His rulings made it harder for women to make their own reproductive health [choices](#). He [suggested](#) that *Gideon v. Wainright*, the landmark case guaranteeing the right to counsel, even for indigent defendants, be overturned.

Both Gorsuch and Kavanaugh [support the nondelegation doctrine](#), meaning they want to revisit 80 years of precedent that enables Congress to empower federal agencies to protect consumers, workers, and the environment. Both [voted](#) to allow enforcement of the Trump Administration's rule that prevents Central American migrants from seeking asylum from within the United States and held that the government could indefinitely detain immigrants

awaiting deportation. Both held that political gerrymandering cases can [never](#) be challenged in federal court, and both [would have allowed](#) the Trump Administration's citizenship question on the 2020 census. Both also would have [allowed](#) a restrictive Louisiana anti-choice law to move forward while the statute was being challenged and allowed Trump's ban on transgender service members to take [effect](#).

The story of Trump's impact on the courts, however, goes well beyond the Supreme Court. For most people, 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.

Just as Senate Republicans abused their power to block Merrick Garland's nomination and confirm Gorsuch and Kavanaugh, so too have they rushed through an unprecedented number of narrow-minded, biased lower court jurists.

Republicans are not confirming these individuals to the bench because of their legal abilities or capacity to fairly apply facts to law. Rather, President Trump — aided and abetted by the Sessions and Barr Justice Departments and White House Counsels Don McGahn and Pat Cipollone — has selected his nominees largely because of their records as ultraconservative movement lawyers who have fought to turn back the clock on our laws — even if they do not meet the basic qualifications to do the job.

Conservatives often say they want judges who will “interpret the law, not make it.” They suggest they merely want to install non-biased, non-“activist” jurists on the bench. The reality is, however, that conservative policy objectives — such as doing away with accessible quality health care, weakening protections that keep our air and water clean, giving more power to large corporations, curtailing voting rights, and denying worker protections — are extremely unpopular with most Americans.

That is why it is no coincidence that this massive reshaping of the federal judiciary has taken place while Trump and McConnell have abandoned any notion of a legislative agenda. In 2019, Senate Republicans refused to consider [over 250 pieces](#) of legislation passed by the Democratic House, including bills dealing with voter rights and election security, LGBTQ equality, worker protections, gun safety, violence against women, and climate change.

Republicans fast-tracked judges largely united in their commitment to advance ultraconservative ideological goals and to use the courts to achieve their policy objectives: attack access to health care; undermine the rights of people of color, women, LGBTQ people, immigrants, workers, and consumers; roll-back environmental protections; make it easier for Republicans to rig elections; and ensure Republican presidents enjoy nearly unlimited and unchecked authority. Indeed, Republican Majority Leader Mitch McConnell has been open about his



intent to continue prioritizing packing the federal bench with ultraconservative jurists to advance Republican policy objectives. As *The New York Times* [noted](#) early last year:

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.

Ted Cruz explicitly [asked Halil Ozerden](#), a nominee to the Fifth Circuit, what he had done to “advance conservative causes.” [Justin Walker](#) – confirmed in 2019 to be a trial judge in Kentucky despite being rated unqualified by the American Bar Association (ABA) – praised Brett Kavanaugh precisely on the [basis](#) that he was a “warrior” for “conservative legal principles...who will not go wobbly.”

One need only look at the Republican failure to repeal the Affordable Care Act (ACA) to see why conservatives are so intent on stacking the courts with reliable ideologues. Conservatives hope life-tenured judges will do the unpopular work of taking health insurance from millions of people for them. Trump is appointing scores of judges who were previously lawyers on the front lines fighting the ACA, and his Justice Department is then asking those judges to declare the ACA unconstitutional. These judges' records show they oppose every aspect of the law, including its protections for people with preexisting conditions. Every single Republican senator voted for judges committed to eroding the ACA.

As Lindsey Graham [rightly made clear](#), “these conservative judicial appointments will impact our nation for years to come.”

This report contains [appendices](#), current as of January 13, 2020, documenting many of Trump's ideological nominees through the first session of the 116<sup>th</sup> Congress and are replete with nominees who have histories of bigoted and offensive comments, troubling records, and biases. Updated appendices are available on our [website](#).

It is one thing to hear about one judge's bias against reproductive rights. It is another thing to see clear documentation, as we lay out in this report, that more than 30 new federal judges at the highest levels have brought with them terrible records on reproductive rights. More than 35 brought with them hostility to equal rights for LGBTQ Americans. Over two dozen have fought protections for clean air and clean water. Dozens more have fought to deny voting rights, attacked protections for persons with disabilities, immigrants, consumers, and workers. These are individuals who, thanks to Trump and every

Senate Republican,<sup>1</sup> are now federal judges adjudicating the rights and liberties for millions of people — for the rest of their lives.

In fact, 2019 saw Senate Republicans confirm many of Trump's most egregiously ideological and often unqualified nominees to lifetime appointments. Illustrative:

- **[Chad Readler](#)** (Sixth Circuit), who led the effort to take access to health care away from millions of people with preexisting conditions;
- **[Steven Menashi](#)** (Second Circuit), who had racist, sexist, and homophobic writings and worked with Betsy DeVos to erode access to quality public education and with Stephen Miller to advance draconian immigration policies;
- **[Neomi Rao](#)** (D.C. Circuit), who had extremely offensive writings blaming victims of sexual assault for their own attacks. She also wrote disparagingly about LGBTQ rights and race, advocated for using the courts to invalidate progressive legislation, and had radical views on executive power;
- **[Lawrence VanDyke](#)** (Ninth Circuit), who the ABA rated unqualified because of his temperament and bias, including against LGBTQ Americans. He led efforts to erode environmental protections and gun safety measures, as well as reproductive rights;
- **[Matthew Kacsmaryk](#)** (Northern District of Texas), who spent his career fighting against equality for women and LGBTQ Americans;
- **[Sarah Pitlyk](#)** (Eastern District of Missouri), who fought assistive reproductive technologies like in vitro fertilization (IVF) and surrogacy and who the ABA rated unqualified;
- **[Wendy Vitter](#)** (Eastern District of Louisiana), who failed to disclose that she had promoted a brochure claiming that birth control is linked to breast cancer and “violent death.” Vitter also purchased two homes

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<sup>1</sup> With few exceptions, every Republican in the Senate voted for these individuals. In many cases, evidence of offensive writings, prejudicial policy positions, and/or a glaring absence of experience — including nine nominees rated unqualified by the ABA — did not dissuade Republicans en masse from supporting a judicial nominee.

Senator Lisa Murkowski [voted](#) against Brett Kavanaugh; Senator John Kennedy [voted](#) against Greg Katsas; Senator Jeff Flake [voted](#) against Jonathan Kobes; Senator Susan Collins voted against [Wendy Vitter](#), [Matthew Kacsmaryk](#), [Steven Menashi](#), [Sarah Pitlyk](#), and [Lawrence VanDyke](#); and Senator Mitt Romney [voted](#) against Michael Truncale. Public reports indicated that Senator Tim Scott would have [voted](#) against Thomas Farr.

Further, 27 Republicans [voted](#) against Mark Bennett, nominee to the Ninth Circuit, [because](#) he “br[o]ke from conservative legal orthodoxy” as Hawaii’s Attorney General. Further, a [number](#) of conservative senators indicated their opposition to Halil Ozerden, someone with an [ultraconservative record](#) because Ozerden dismissed a case, without prejudice, challenging rules under the ACA. Since the regulations were not yet final, Ozerden found the case was not ripe (in other words, he applied rules learned by every first-year law student). Conservative senators also [forced](#) the withdrawal of Michael Bogren’s nomination for a district court seat in Michigan because of his work defending a municipal ordinance that prohibited discrimination against LGBTQ Americans.

containing Jim Crow covenants requiring sale “to people of the white race” and refused to say she thought *Brown v. Board of Education* was rightly decided;

- **Justin Walker** (Western District of Kentucky), an outspoken opponent of the ACA who the ABA rated unqualified for lack of trial experience. He also did 119 media appearances on behalf of Brett Kavanaugh during Kavanaugh’s Supreme Court nomination, 118 more than the number of depositions Walker had taken;
- **Patrick Wyrick** (Western District of Oklahoma), a protégé of disgraced Environmental Protection Agency (EPA) Administrator Scott Pruitt, who cozied up to oil and gas lobbyists and acted as their conduit when he worked for the Oklahoma Attorney General’s office;
- **Howard Nielson** (District of Utah), who defended the use of torture as an attorney in George W. Bush’s Justice Department. In private practice, he defended Prop 8, California’s ban on same-sex marriage, and sought to have a gay judge removed from the case. He was also a lead attorney for the National Rifle Association (NRA).

The other part of the story, detailed in this report, is that in their efforts to confirm more ideologically extreme judges than in past administrations, Senate Republicans have undermined the Senate’s advice and consent duty. They ended the filibuster for Supreme Court justices in order to confirm Neil Gorsuch and Brett Kavanaugh. They ensured that scores of Kavanaugh’s records were never disclosed and credible allegations of sexual assault never fully investigated. In 2019, they severely limited debate of district court nominees and, for the first time in history, confirmed judges opposed by both home-state senators.

In short, Senate Republicans have created a process designed to prevent scrutiny of nominees’ disqualifying records and expedite confirmations. There is a reason. If the American people truly knew the records of many of these jurists, they would be horrified.

Nevertheless, in the last three years, thanks to public education and advocacy efforts undertaken by AFJ and groups across the nation, several of the most egregious of Trump’s nominees were defeated. And, nomination fights have truly galvanized progressives across the country. Moreover, AFJ is working to ensure that the next president prioritizes reversing the damage Trump and Republicans have inflicted on our justice system. For example, AFJ has launched an initiative called Building the Bench to help identify federal judges with a demonstrated commitment to constitutional rights and legal protections and prioritize increasing the demographic and professional diversity on our federal courts, so our bench better reflects the diversity of our nation. Building the Bench will further our work to ensure that every litigant and every person who walks into a courtroom truly believes they will receive equal justice under law.

This retrospective report reviews the first three years of judicial nominations and confirmations during the Trump presidency. All data and analyses pertain to the period ending on January 3, 2020, which marked the end of the first session of the 116<sup>th</sup> 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 looks to the future, because we believe that all those who care deeply about fair-minded judges and courts must still fight, despite the current President’s assaults on the rule of law and our rights. Finally, the appendices provide information on select nominees’ records by subject matter.<sup>2</sup>

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2 Throughout his first three years in office, 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.

# Trump's Impact By the Numbers<sup>3</sup>

Before delving into the egregious records of Trump's nominees, it is worth looking at a snapshot of just how many judges Republicans have confirmed since abandoning the Senate's norms for the advice and consent process:

**The Senate confirmed two Supreme Court justices and 50 of President Trump's court of appeals nominees.** In comparison, President Obama had two justices and 25 appellate judges confirmed by the end of his first three years.

**The Senate confirmed 133 of President Trump's district court nominees.** President Obama had 97 confirmed by the end of his first three years.

**President Trump has reshaped circuit courts.** Since 2017, Republican-appointed judges became a majority on the Second, Third, and Eleventh Circuits. Below is a graph showing Trump's impact on the Courts of Appeals.

Circuit	End of Obama Administration 2017 Circuit Makeup		Through the First session the 116th Congress 2019 Circuit Makeup		Percentage of Trump Appointees on the Court of Appeals
	Democratic- President Appointed Judges	Republican- President Appointed Judges	Democratic- President Appointed Judges	Republican- President Appointed Judges	
<b>D.C. Circuit</b>	7	4	7	4	18% (two of 11)
<b>First Circuit</b>	4	2	4	2	0
<b>Second Circuit</b>	9	4	6	7	38% (five of 13)
<b>Third Circuit</b>	8	5	6	8	23% (four of 17)
<b>Fourth Circuit</b>	9	6	8	7	20% (three of 15)
<b>Fifth Circuit</b>	8	9	5	11	29% (five of 17)
<b>Sixth Circuit</b>	6	10	5	11	35% (six of 16)
<b>Seventh Circuit</b>	5	6	2	9	35% (four of 11)
<b>Eight Circuit</b>	3	8	1	10	35% (four of 11)
<b>Ninth Circuit</b>	22	7	16	13	34% (ten of 29)
<b>Tenth Circuit</b>	7	5	7	5	16% (two of 12)
<b>Eleventh Circuit</b>	9	3	5	7	41% (five of 12)
<b>Federal Circuit</b>	8	4	8	4	0

<sup>3</sup> All statistics are as of January 3, 2020.



**Sixteen of Trump's appellate judges were confirmed over objections of home state senators and for the first time in history, 2019 saw judges confirmed over the objections of both home state senators. Under Obama, NO judges were confirmed without the support of both home state senators.** The following judges were confirmed over objections of home-state senators:

- The Judiciary Committee held a hearing for [David Stras](#) (Eighth Circuit), over the [objection](#) of Minnesota Senator Al Franken, and the Senate [confirmed](#) him.
- The Senate confirmed [Michael Brennan](#) (Seventh Circuit) over the [objection](#) of Wisconsin Senator Tammy Baldwin (to a seat vacant because Senator Ron Johnson's blue slip was respected under President Obama).
- The Senate confirmed [Peter Phipps](#) and [David Porter](#) (Third Circuit) over the [objections](#) of Pennsylvania Senator Bob Casey (Porter to a seat vacant because Senator Patrick Toomey's blue slip was respected under President Obama).
- The Senate confirmed [Eric Murphy](#) and [Chad Readler](#) over the [objections](#) of Ohio Senator Sherrod Brown.
- The Senate confirmed [Daniel Bress](#), [Daniel Collins](#), [Kenneth Lee](#), and [Patrick Bumatay](#) (Ninth Circuit) over the objections of California Senators Dianne Feinstein and Kamala Harris.
- The Senate confirmed [Joseph Bianco](#), [Michael Park](#), and [Steven Menashi](#) (Second Circuit) over the objections of New York Senators Charles Schumer and Kirsten Gillibrand.
- The Senate confirmed [Eric Miller](#) (Ninth Circuit) over the [objections](#) of Washington Senators Patty Murray and Maria Cantwell.
- The Senate confirmed [Paul Matey](#) (Third Circuit) over the [objections](#) of New Jersey Senators Bob Menendez and Cory Booker.
- The Senate confirmed [Lawrence VanDyke](#) (Ninth Circuit) over the [objections](#) of Nevada Senators Catherine Cortez Masto and Jacky Rosen.

**President Trump's nominees are overwhelmingly white males.** Through the first session of the 116th Congress, nearly 76% of Trump's confirmed appellate and district court nominees were male and over 85% were white. In comparison, 58% of Obama's nominees were male and 64% were white over the course of his entire presidency. Trump's four nominees to the Third Circuit and his four nominees to the Eighth Circuit were all white males.

**President Trump’s nominees have been confirmed more quickly than President Obama’s.** Under President Obama, the median number of days from nomination to confirmation for appellate judges was [229](#). Under Trump, the median has been 146.5 days. In 2015-2016, the Republican Senate confirmed just two of Obama’s circuit court nominees. In one week in May 2018, the Republican Senate confirmed five appellate judges alone. The Republican Senate in 2015-2016 confirmed just 18 of Obama’s district court nominees. In one week — July 24-31, 2019, the Republican Senate confirmed 15 Trump judges. In just two days – December 18-19, 2019 — the Republican Senate confirmed [13](#) of Trump’s judges.

**On average, President Trump’s nominees are more [inexperienced](#) than President Obama’s were.** In 2019, the Republican Senate confirmed [Eric Murphy](#) and [Chad Readler](#) to circuit courts, ages 39 and 46, respectively. Trump has also [nominated Andrew Brasher](#), 38, to the Eleventh Circuit. [Justin Walker](#), age 37, was [confirmed](#) to a district court in Kentucky despite having minimal trial experience. Most egregiously, [Allison Jones Rushing](#) (Fourth Circuit) was confirmed on a party line vote when she was just 36, making her the country’s [youngest](#) federal judge.

**85% of President Trump’s confirmed appellate nominees were members of the Federalist Society.** President Trump promised that he would lean heavily on ultraconservative groups 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 led by the Federalist Society that promote ultraconservative interests. 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 [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.” He [added](#), in joining AFJ in decrying Justice Kavanaugh’s appearance at the Federalist Society fundraiser: it’s “a machine that turns hundreds of millions of dollars in dark money into federal judges like Brett Kavanaugh, who will deliver for big corporate and partisan donors.”

# Undermining Democracy: Siding with the Wealthy and Powerful Over Everyday Americans

## Thwarting Public Protections for Health and Safety

Trump's judicial nominees are united in their hostility to legislation and policies that promote the well-being of people in America on multiple fronts, including protections for health, safety, consumers, and clean air and clean water.

Former Trump advisor Steve Bannon [pledged](#) the “deconstruction of the administrative state” and Trump's judicial nominees fit this pattern, using the courts to undermine laws that could not otherwise be defeated in Congress. In fact, former White House Counsel Donald McGahn told the Federalist Society that “the greatest threat to the rule of law in our modern society is the ever-expanding regulatory state” and openly [acknowledged](#) the “coherent plan” to install judges who will gut federal laws, dismantle environmental protections, roll back civil rights, and diminish 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.

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 our health, our safety, and the environment. President Trump's second Supreme Court appointee, [Brett Kavanaugh](#), is also well-known for consistently voting to reverse actions by agencies like the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and National Labor Relations Board (NLRB). He also ruled that the Consumer Financial Protection Bureau (CFPB) 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.

It is no surprise then, in 2019, with the addition of Kavanaugh, all five [Republican-appointed](#) justices suggested that the courts should tie the hands of the agencies that Congress has recognized as having the knowledge and experience to enforce critical laws, safeguard essential protections, and ensure the health and safety of the public. Justices Roberts, Thomas, Alito, Gorsuch and Kavanaugh have all called for reinvigorating a doctrine — the nondelegation doctrine — last used successfully in 1935 by a famously reactionary Supreme Court majority bent on invalidating the New Deal. Currently, executive agencies

are permitted to exercise rulemaking authority pursuant to a valid delegation from Congress. As long as the delegation [provides](#) a “sufficiently intelligible principle, there is nothing inherently unconstitutional about it.”

The conservative justices seem to disagree with this long-established principle of law, arguing that agencies should not be able to exercise such authority, even if Congress properly delegates it. Justice Antonin Scalia [himself](#) made clear this position’s radical nature. As he explained, reviving that doctrine would deprive Congress of the authority essential to empower agencies to effectively implement and enforce critical statutes that protect the American people in countless areas, from ensuring financial stability to controlling health hazards. As Scalia [noted](#), “We have almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law,” because “a certain degree of discretion, and thus of lawmaking, *inheres* in most executive and judicial action.” The current Republican-appointed justices seem ready to flout these principles and potentially disable Congress from making government work for the American people.

It is not just Supreme Court justices that seek to undermine critical protections. For example, [Neomi Rao](#), confirmed in 2019 to Brett Kavanaugh’s seat on the D.C. Circuit, previously worked within the Trump Administration to dismantle public protections as the head of the Office of Information and Regulatory Affairs (OIRA). She had [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.

[Don Willett](#) (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](#) (Fifth Circuit) has advocated for tearing down legal protections. Oldham has argued that [both](#) the 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.”

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 impede 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.

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.

### Access to Affordable Health Care

One need only look at Republicans' failure to repeal the ACA while controlling both chambers 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](#) to the Supreme Court, who, on the D.C. Circuit, [twice dissented](#) from decisions upholding the ACA and in one dissent wrote what his former law clerk and now-judge [Justin Walker described](#) as a “roadmap” to invalidate the ACA. Another of Kavanaugh's former clerks, [Sarah Pitlyk, said](#) of Kavanaugh, “No other contender on President Trump's list is on record so vigorously criticizing the [ACA].”

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. Nevertheless, Readler was confirmed by the Republican Senate.

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 forum-shopped and found a judge, Reed O'Connor (a former staffer for a longtime opponent of the ACA, Senator John Cornyn), who [declared](#) the *entire* ACA unconstitutional. Two Republican-appointed judges on the Fifth Circuit, including Trump nominee [Kurt Engelhardt](#), then kept the lawsuit [alive](#), threatening health care for millions.

As [Appendix A](#) further illustrates, Trump nominees have been consistent in their fight against health care for the American people.



## Worker Protections

Conservatives know that weakening 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 SeaWorld 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. In another case, Gorsuch was the only judge who would have [overturned](#) an OSHA fine on an employer that failed to properly train a mining-construction worker who was killed on the job. He was electrocuted when a piece of equipment got too close to an overhead powerline.

On the Supreme Court, Gorsuch has already worked to gut employee rights. He joined the conservative majority in [Janus v. AFSCME](#), striking a blow against public sector labor unions. He also ignored the plain text of the National Labor Relations Act, in [Epic Systems Corp. v. Lewis](#), to strip the rights of victims of wage theft and make it more difficult for them to hold their employers accountable. Another Trump judge, Julius Richardson (Fourth Circuit) issued a [decision](#) that denied black lung benefits to a retired coal miner who developed a permanent respiratory disability. The decision reversed the Department of Labor Benefits Review Board’s decision and reinstated the administrative law judge’s decision that the dissent noted “wholly ignores” evidence of lung impairment.

In [Kleber v. CareFusion Corp.](#), Trump Seventh Circuit judges [Amy Coney Barrett](#), [Michael Brennan](#), [Michael Scudder](#), and [Amy St. Eve](#) cast the deciding votes to rule that the Age Discrimination in Employment Act does not protect job seekers from practices that have a “disparate impact” on older workers.

Before being confirmed, many of Trump’s lower court nominees led the fight to stop the Obama Administration from ensuring that about four million workers would become eligible for overtime pay. [Barbara Lagoa](#) (Eleventh Circuit), as a state court judge, [sided](#) with businesses challenging Miami’s decision to raise the minimum wage. Because of her decision, over 24,000 Miami workers lose over \$117 million in wages annually. [Kenneth Lee](#) (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.” He contended that properly enforcing these basic protections “can dent the bottom line of Fortune 500 companies and potentially cripple small businesses.”

## Environmental Protections

Conservatives know that weakening protections for clean air and water — i.e. allowing corporations to dump toxins into our communities unchecked — is unpopular. Once again, as [Appendix L](#) demonstrates, their strategy is to nominate judges who will do it for them.

For example, [Brett Kavanaugh](#) consistently [ruled](#) against environmental protections while serving on the D.C. Circuit. In Montana and Nevada, and in the Environmental and Natural Resources Division of the Justice Department, [Lawrence VanDyke](#) had a record of hostility to protections for clean air and water. In one instance, while Solicitor General of Nevada, he joined with three mining companies to [challenge](#) land use restrictions that protected lands used by wildlife. Nevadans did not support the company's lawsuit, nor did the Republican governor of the state, who [said](#) the suit did “not represent the state of Nevada, the governor, or any state agencies.”

[Andrew Oldham](#) believes the entire EPA is unconstitutional. [Patrick Wyrick](#) (Western District of Oklahoma) 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. [Joshua Kindred](#) (nominated to the District Court of Alaska) fought regulations aimed at protecting Alaska's air, water, and wildlife as counsel to the Alaska Oil and Gas Association.

On the bench, Trump judges are already attacking clean air and clean water. In [Protecting Air for Waterville v. Ohio](#), Trump Sixth Circuit judge [Joan Larsen](#) prevented environmental advocates from challenging permits issued to a company that wanted to build a natural gas pipeline in Ohio and Michigan. The dissent pointed out that the decision was “inconsistent with the review procedure Congress created” and with “public safety.” In [Guertin v. Michigan](#), Trump Sixth Circuit judges [Amul Thapar](#), [Joan Larsen](#), [John Nalbandian](#) and [Eric Murphy](#) would have held that Flint, Michigan residents Shari Guertin and her daughter, who drank and bathed in lead-tainted water, could not sue state and city officials for exposing them to contaminated water.

## Gun Violence

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.” 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.

As [Appendix P](#) demonstrates, Trump has named scores of judges who oppose gun safety measures, and many who have pledged allegiance to the NRA. In an NRA questionnaire, [Lawrence VanDyke](#) [called](#) gun safety measures “misdirected” and said he discontinued his membership with the NRA only so he would not have to recuse himself in cases the NRA was involved in. He

questioned the soundness of one legal argument, and yet supported it so he could be “[on the side](#)” of the NRA. He [opposed](#) background checks, restrictions on the sale of automatic weapons, and age restrictions for firearm purchases.

[Howard Nielson](#) served as a lawyer for the NRA. [Brett Talley](#), nominated to a district court seat in Alabama, “[pledge\[d\]](#) [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 the Senate Judiciary Committee supported Talley’s nomination until he withdrew after it was reported he failed to disclose controversial social media posts, including one that [praised](#) the “first KKK.”

[Cory Wilson](#) (nominated to the Southern District of Mississippi) [indicated](#) in a NRA questionnaire that he would be against “any additional restrictive state legislation regulating firearms,” and that he believes gun laws should be less restrictive in Mississippi, even though it already has the most permissive gun laws in the country. As a legislator, he [supported](#) authorizing concealed carry on any public property. He also [voted](#) to authorize individuals to carry firearms in churches and places of worship.

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 that upheld a federal gun safety law allowing 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.

## Education

As shown in [Appendix K](#), Trump’s judicial nominees have records of hostility towards public education. And, many were hand-picked from the ranks of political appointees instrumental to enacting the Trump-DeVos agenda.

Most notable, [Steven Menashi](#) was Betsy DeVos’s righthand at the Department of Education, involved in undermining civil rights enforcement and eroding protections for people of color, victims of sexual harassment and sexual violence, LGBTQ students, and children with disabilities. He was the [architect](#) of illegal efforts to cheat student borrowers who were defrauded by for-profit colleges. Menashi [opposed](#) need-based financial aid because he claimed that it hurt wealthy people. He [compared](#) colleges collecting data on students’ race to the Nuremburg laws. He [bemoaned](#) schools teaching multiculturalism, supported school [vouchers](#), and [attacked](#) advocates for public school teachers.

Also illustrative is [Chad Readler](#), who worked to [eliminate](#) the right to a public education from Ohio’s state constitution. At the same time as he worked to gut public education, he fought [oversight](#) of Ohio’s charter schools (including audits and ethics obligations), which have long been enmeshed in corruption and scandals. And, while working in the Trump Justice Department, he [worked](#) with Betsy DeVos to side with for-profit schools over defrauded students.

## Consumer Rights

The Trump Administration is selecting judicial nominees who have fought for the wealthy and powerful and advocated allowing corporate interests to evade accountability when they injure, kill, or defraud American consumers.

On the Supreme Court, Gorsuch and Kavanaugh [joined](#) a 5-4 majority to give businesses more power to force consumers and workers into individual arbitration proceedings, rejecting the ability of 1,300 employees pressing their common claims in arbitration together as a class, even though the arbitration agreement the workers signed did not explicitly ban class actions.

On the D.C. Circuit, [Brett Kavanaugh argued](#) that the entity created to protect consumers from unscrupulous banks after the biggest financial crisis since the Great Depression —the CFPB—is unconstitutional. Although the full D.C. Circuit [reversed](#) his decision, the issue is now before the Supreme Court. In the fight for a free and open internet, Kavanaugh sided [against](#) the Federal Communication Commission (FCC)'s net neutrality rule. When a court found that the merger of two major health insurance companies would violate antitrust laws, Kavanaugh [dissented](#).

[Neil Gorsuch](#) too, on the Tenth Circuit, made it more difficult for the federal government to ensure the safety of American consumers. In a major win for medical device manufacturers over patients, Gorsuch [held](#) that a medical device company is immune from liability for harm caused by its product when it sells that product for a use never approved by the Food and Drug Administration (FDA) and never found to be safe and effective. Because of Gorsuch's opinion, it is more difficult for patients who are injured through the unapproved use of a medical device to seek recourse in the courts and hold medical device companies accountable. Gorsuch also [held](#) that the Consumer Product Safety Commission (CPSC) could not ensure children are safe from toy magnets.

Trump's lower court judges have also worked to erode consumer protections. [Amy Coney Barrett](#) wrote a [decision](#) denying consumers the ability to enforce their rights under federal law against abusive debt collection practices. In [FTC v. Credit Bureau Center](#), Trump Seventh Circuit judges [Barrett](#), [Michael Brennan](#), [Michael Scudder](#), and [Amy St. Eve](#) refused to reconsider a decision prohibiting the Federal Trade Commission (FTC) from seeking restitution for victims of consumer fraud. To reach the result, the Seventh Circuit overturned its own precedent and ignored opposite rulings from eight other circuits.

[Barbara Lagoa](#) and [Robert Luck](#), as state court judges, [made](#) it harder for homeowners to defend themselves against banks that were improperly trying to foreclose their homes. Before being confirmed, [Eric Miller argued](#) that manufacturers of surgical devices should not be held accountable when they fail to warn hospitals that perform surgeries with those devices about their potential dangers. Miller also worked to [shield](#) Boeing from liability when a worker was exposed to asbestos at work and later died from mesothelioma,

even though Boeing did not dispute that it was aware that asbestos was a hazardous material and forced its workers to inhale asbestos fibers. [Eric Murphy fought](#) to allow pharmaceutical companies to be able to sell drugs for uses that are not FDA approved. [Daniel Collins](#), [Eric Murphy](#) and [Chad Readler](#), as attorneys for Big Tobacco, fought health protections for consumers and helped tobacco companies fight liability for injuries it caused consumers. [Mark Norris](#) (Western District of Tennessee) worked to [ban](#) securities lawsuits for securities fraud in Tennessee and made it easier for insurance companies to deny claims without justification.

## Eroding Civil Rights and Equality 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. His judge's records represent a serious threat to equality and civil rights.

### People of Color

Trump's judicial nominees have records of hostility to equality for people of color. Even Republican Senator Tim Scott [wrote](#) that his colleagues 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 (sadly, the vast majority supported by Tim Scott) have indeed spent their careers undermining the rights of people of color.

On the bench, Trump's judges have already gutted civil rights laws. [Gorsuch](#) joined the majority in [Husted v. A. Philip Randolph Institute](#) to allow Ohio to target infrequent voters — disproportionately persons of color — for removal from the voter rolls and to deprive them of the fundamental right to vote. He also [questioned](#) the principle of “one person, one vote,” and asserted that the Voting Rights Act (VRA) does not apply to redistricting. Gorsuch joined Justice Thomas's [dissent](#) from the Court's decision reversing Curtis Flowers' conviction and holding that prosecutors improperly excluded African-Americans from the jury. In a combined six trials, Mississippi had used peremptory challenges to strike 41 of the 42 prospective African-American jurors.

[Amy Coney Barrett](#), on the Seventh Circuit, sided against an African-American worker whose employer transferred him to another store as part of 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 the company 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.

Last year, in [Inclusive Communities Project v. Lincoln Dev. Co.](#), Trump Fifth Circuit judges [Don Willett](#), [Kurt Engelhardt](#), [Kyle Duncan](#), [James Ho](#) and [Andrew Oldham](#) cast deciding votes to undermine the Fair Housing Act by making it more difficult to bring disparate impact claims under the law. Willett also [dissented](#) from a decision upholding a ruling invalidating a Mississippi Senate district as an illegal racial gerrymander under the Voting Rights Act; Willett suggested that the Voting Rights Act's bar on the dilution of minority votes is unconstitutional.

Even more remarkably, an alarming number of 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. Adding to the disgrace is the reality that, thanks to Trump, several people who actively undermined school desegregation efforts are now federal judges. [Mark Norris](#) is a prime example. Now sitting on the U.S. District Court for the Western District of Tennessee, Norris, as a state senator, authored a bill that ensured majority white and wealthier communities in Shelby County could form their own school district, separated from Memphis's 85% black student population. As the former Tennessee Speaker of the House [said](#), "[t]he only thing [Norris was] doing with that bill was segregation."

[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](#) two houses with a protected covenant deed specifying it could only be sold "to people of the white race." [Steven Menashi](#) [defended](#) a white fraternity that threw a "ghetto party" and argued against diverse communities, [writing](#) that "ethnically heterogeneous societies exhibit less political and civic engagement, less effective government institutions, and fewer public goods."

[Ryan Bounds](#) (nominated to the Ninth Circuit and later withdrawn) was shown to have written offensive and racist articles while at Stanford University, which [resulted](#) in the withdrawal of his nomination.

This hostility to people of color is demonstrated by several nominees' apparent love for the Confederacy. [Liles Burke](#) (Northern District of Alabama) [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](#) (nominated to the Middle District of Alabama and later withdrawn) [wrote](#) a blog praising "the first KKK."

## Women's Equality and Reproductive Justice

President 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. 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. Christine 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.

[Steven Menashi](#) authored an article titled "[Heteropatriarchal Gynophobes!](#)" Menashi criticized sexual assault prevention advocates and belittled Take Back the Night Marches. In another writing, he [argued](#) that students should not be disciplined for verbal sexual harassment. At the Department of Education, he worked to [weaken](#) protections for victims of sexual assault.

[Neomi Rao](#) made numerous offensive statements regarding sexual assault, women's rights, and gender equality. She [wrote](#), "unless someone made her drinks undetectably strong or forced them down her throat, a woman, like a man, decides when and how much to drink. And if she drinks to the point where she can no longer choose, well, getting to that point was a part of her choice." Rao also wrote, "[i]t has always seemed self-evident to me that even if I drank a lot, I would still be responsible for my actions. While Rao conceded that someone "who rapes a drunk girl should be prosecuted," she continued to blame survivors by arguing, "[a]t the same time, a good way to avoid a potential date rape is to stay reasonably sober."

Under Trump, Rao served as Administrator of OIRA. Under her leadership, OIRA rolled back Title IX [protections](#) for sexual assault survivors. OIRA also delayed implementation of proposed [guidance](#) from the EEOC to give employers additional information on how to handle sexual harassment. She was also [instrumental](#) in halting the EEOC requirement for employers to submit pay data that advocates explained were "necessary to enforce pay discrimination laws, a pressing concern given the persistent pay disparities across lines of gender, race, and ethnicity." Rao [said](#) the pay data "lack practical utility."

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

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 reproductive rights. Once confirmed, they have continued their assault on these rights.

Illustrative of this dangerous view, in 2019 the Senate confirmed [Sarah Pitlyk](#), who has demonstrated in her short career a single-minded mission to erode access to reproductive health care. In reference to *Roe v. Wade*, Pitlyk [lamented](#) the “gross defects in the Supreme Court’s thoroughly activist abortion jurisprudence.” Pitlyk [defended](#) Iowa’s “Heartbeat Bill,” which would have banned abortion as soon as a fetal heartbeat is detected — before most individuals even realize they are pregnant. As courts have repeatedly held, such a law is clearly [unconstitutional](#). Alarming, Pitlyk’s attacks on reproductive rights go even farther than opposing abortion. She has even attacked assisted reproductive technologies (ART), such as [in vitro](#) fertilization and [surrogacy](#).

[Neil Gorsuch](#) joined the other conservative Supreme Court justices in [striking](#) down California’s disclosure laws for fraudulent so-called “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, in *June Medical Services v. Gee*, Trump Fifth Circuit judges [Don Willett](#), [Kurt Engelhardt](#), [James Ho](#) and [Andrew Oldham](#) voted to allow an extreme Louisiana anti-abortion law to take effect, even though it was identical to a Texas law that the Supreme Court struck down in 2015. The Supreme Court is reviewing the case in the 2019-2020 term. [James Ho](#) also [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.” In another [case](#), Ho made clear that he disagreed with the Court’s decision in *Roe* and would have upheld a Mississippi law prohibiting abortion before the point most people know they are pregnant.

In *California v. Azar*, Trump Ninth Circuit judges [Eric Miller](#) and [Kenneth Lee](#) cast key votes that keep in effect the Trump Administration’s domestic gag rule, which prohibits health care professionals from even discussing abortion care with their patients.

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.

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. [Damien Schiff](#) (nominated to the Court of Federal Claims and later withdrawn) even [argued](#) that Title IX was unconstitutional, and [Michael Brennan](#) and [Don Willett dismissed](#) the [existence](#) of a “glass ceiling” in the workplace.

[Thomas Farr](#) (nominated to the Eastern District of North Carolina and later withdrawn) 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

As [Appendix C](#) demonstrates, President Trump’s judicial nominees’ hostility to LGBTQ equality emerged early on as one of the most distinctive unifying features among them. As Lambda Legal concluded in its [report](#), “Trump’s Judicial Assault on LGBT Protections: After Three Years of Trump Nominees, Bias and Bigotry Remain the Norm,” one in three nominees have deep histories of anti-LGBTQ advocacy.

For example, Eric Murphy (Sixth Circuit) argued against marriage equality in the landmark Supreme Court case *Obergefell v. Hodges*. [Matthew Kacsmaryk](#) (Northern District of Texas) spent his career fighting equality against LGBTQ people and all women. He was confirmed to his seat despite referring to being transgender as a “delusion” and calling gay people “disordered.” Republican Senator Susan Collins [said](#) that Kacsmaryk had an “alarming bias against the rights of LGBTQ Americans and disregard for Supreme Court precedents.” Collins said Kacsmaryk’s “extreme statements” suggest “an inability to respect precedent and apply the law fairly and impartially,” and yet every other Republican supported him.

Likewise, the American Bar Association raised [concerns](#) about the ability of [Lawrence VanDyke](#) to be “fair to persons who are gay, lesbian, or otherwise part of the LGBTQ community” based on his career causing harm to LGBTQ people and perpetrating baseless and disproven claims about LGBTQ communities. He has [argued](#) that “many studies raise concerns about gay parenting” and that there is “ample reason for concern that same-sex marriage will hurt families, and consequentially children and society.” He [wrote](#) favorably about conversion

therapy and has opposed antidiscrimination laws. He worked as an allied attorney and a Blackstone Fellow for Alliance Defending Freedom, [which](#) “has supported the recriminalization of homosexuality in the U.S. and criminalization abroad; has defended state-sanctioned sterilization of trans people abroad; has linked homosexuality to pedophilia and claims that a ‘homosexual agenda’ will destroy Christianity and society.” While in Montana, VanDyke [regularly supported](#) bans on same-sex marriage in other states.

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 people 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 persons who relied on federal courts in their quest for equality.

In [Telescope Media Group v. Lucero](#), Trump Eighth Circuit judge [David Stras](#) created a religious exemption from state anti-discrimination laws protecting LGBTQ people. In July 2018, Trump nominee [Kevin Newsom](#) (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. The Supreme Court is currently considering this case. [Stephanos Bibas 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**

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. An impartial hearing officer, an administrative law judge, and a federal district court judge all agreed that Luke needed placement in a residential school program due to his lack of progress in applying skills learned at school to other environments. Yet, Gorsuch wrote an [opinion](#) reversing that determination in a manner so extreme the Supreme Court itself unanimously [rejected](#) Gorsuch’s standard. As [Jeffrey Perkins](#), Luke P.’s father, said to the Senate Judiciary Committee, “[t]hank you for the opportunity today to give voice to my son, Luke, whose access to an appropriate education, and thus to a meaningful and dignified life, was threatened by views of Judge Neil Gorsuch. Judge Gorsuch thought that an education for my son that was even one small step above insignificant was acceptable.”



Gorsuch also ignored statutory language to rule against people with disabilities in the [case](#) of Grace Hwang, an assistant professor at Kansas State University for 15 years. After a cancer diagnosis, she requested and received a six-month leave of absence while she recovered from a bone marrow transplant. As she was preparing to return to teaching, the campus erupted in a flu epidemic. Because a flu infection would have been potentially deadly given her compromised immune system, Hwang asked for further leave, during which she could have worked from home. The university denied her request. Hwang then sued the university for violations of the Rehabilitation Act, which prohibits disability discrimination by entities that receive federal funds and requires reasonable accommodation. Judge Gorsuch ruled that Professor Hwang's request was unreasonable. Gorsuch wrote that the leave policy was "more than sufficient" and asserted that the Rehabilitation Act should not "turn employers into safety net providers for those who cannot work." His reasoning has been rejected by other courts.

While on the D.C. Circuit, [Brett Kavanaugh](#) dismissed the claims of individuals with intellectual disabilities who argued that their [rights had been violated](#) after they were subjected to elective surgeries without regard for their wishes or preferences. Kavanaugh's opinion was [inconsistent](#) with the rulings of many courts, which have held that an individual's wishes are given some consideration, even if the individual has been deemed mentally incompetent. Kavanaugh's decision demonstrates his disregard for the rights of those with disabilities and a lack of empathy for those who might want to express their own desires, even if those wishes would not necessarily govern.

[Neomi Rao](#) has [written numerous articles](#) criticizing bans on "dwarf-tossing," a degrading practice in which individuals throw little people for sport or entertainment. Dwarf-tossing has encouraged violence towards little people, even paralyzing one man who eventually died after he was picked up and thrown against his will. Despite the real-world consequences of the vile practice, Rao is fixated on the theory that bans on dwarf-tossing violate the "dignity" of little people who wish to participate. She argued that a French ban on dwarf-tossing demonstrates how "concepts of dignity can be used to coerce individuals by forcing upon them a particular understanding of dignity." She wrote that the state's restriction of such activity impinges upon the individual's ability to make money, drawing parallels to prostitution and pornography.

[Steven Menashi](#) also worked to erode rights of persons with disabilities. With Stephen Miller, he worked to broaden the "public charge" rule, which effectively excludes people with disabilities and their families from legal immigration to the United States. At the Department of Education, he was instrumental in delaying enforcement of the Equity in IDEA regulations designed to address significant disproportionality in the treatment of students of color with disabilities. In one case, a court even admonished Menashi's Department for "fail[ing] to account for the costs to children, their parents, and society" when it degraded the rule.

In addition, Trump's judges are trying to erode protections for people with disabilities. [Steven Grasz](#) (Eighth Circuit) would have [ruled](#) that, under the

Americans with Disabilities Act (ADA), it was permissible for a theater to only provide captioning for deaf individuals on one Saturday matinee per show. [Joan Larsen dissented](#) in a decision that held that an insurance company's denial of disability benefits for a woman with leukemia was improper. [Elizabeth Branch](#) (Eleventh Circuit) [dissented](#) in a case and argued that the Justice Department could not go to court to enforce Title II of the ADA, which prohibits discrimination in public services by cities and states. The case involved care for children with severe health conditions; a Department of Justice investigation found that Florida was unnecessarily institutionalizing children with disabilities.

## Immigrants Rights

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. [Mark Bennett](#) (Ninth Circuit) [cast](#) the deciding vote to partially reverse a lower court order and allow the Trump Administration rule that bars almost all Central and South American asylum seekers at the U.S. Mexico-border to go into effect except in California and Arizona, while a challenge to the rule is pending.

[Steven Menashi](#) had writings deeply hostile to Muslims and worked with Stephen Miller to advance draconian immigration policies. [Chad Readler](#), 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 the Deferred Action for Childhood Arrivals program (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](#) (Eastern District of Texas) was the go-to attorney in the Texas Attorney General's office for immigration cases. He fought to end legal protections for Dreamers and the parents of Dreamers — the Deferred Action for Parents of Americans program (DAPA). He also supported the 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](#) 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' 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

President Trump’s judicial nominees have fought rights for Native American and Native Alaskan communities and tribal sovereignty.

For example, before becoming a Supreme Court justice, [Brett Kavanaugh](#) had a troubling [record](#) with regard to the rights of native people. On the Supreme Court, Kavanaugh [dissented](#) from a case honoring an 1868 treaty between the Crow Tribe and the federal government, guaranteeing the tribe’s authority to hunt off their reservation on unoccupied lands. He also [dissented](#) from a case affirming Yakama Nation rights under an 1855 treaty, prohibiting Washington from taxing a Yakama trucking company for using state highways to transport fuel to the Yakama Nation. And, [Neil Gorsuch rejected](#) the appeal of a decision that made it harder for Native Americans to vote in North Dakota, effectively [disenfranchising](#) 10% of all voting-age Native Americans in North Dakota.

Trump’s lower court nominees also have troubling records with regard to Native American rights. [Eric Miller](#) 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.”

[Michael Park advocated](#) for a position that could lead to the elimination of federal protection of subsistence fishing rights for Alaska Natives. [Lawrence VanDyke argued](#) that the Agua Caliente Tribe did not have a right to the groundwater under their own reservation. [Patrick 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 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.

On the Eighth Circuit, [Steven Grasz](#) wrote an [opinion](#) that eroded the authority of tribal courts to hear cases involving issues impacting tribal members.

## 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 (Donald Trump himself, responsible for two Supreme Court justices and over 180 lower court judges, lost the popular vote by nearly 3 million votes). 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 low-income communities to vote. They have tried to rig the census to undercount immigrants and people of color. When they do lose elections, Republicans are now changing the rules to limit the authority of those the voters did choose to govern. For example, in North Carolina, Wisconsin, and Michigan, Republican lawmakers voted to [take power away](#) from the newly elected Democratic governor.

In case after case, even before [Neil Gorsuch](#) and [Brett Kavanaugh](#) joined the Court, conservative justices made it easier for Republicans to win elections. In [Bush v. Core](#), 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 2013, in another 5-4 decision, [Shelby County v. Holder](#), they gutted the Voting Rights Act, and Republican-controlled states previously covered by the preclearance provision of the Act continue to enact laws and policies to make it more difficult for people of color to vote.

But the attack on democracy has only accelerated since Justice Gorsuch joined the Court. 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. As a result, states have expedited the purging of voters. The Court [allowed](#) North Dakota to make it harder for Native Americans to vote. 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, a longtime [dream](#) of Justice Alito, and seen as key to helping weaken the Democratic party.

[Neil Gorsuch](#) joined the conservative majority in [Abbott](#), [Husted](#), and [Janus](#), and he has signaled a willingness to eviscerate essential protections for voters. 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.

Further, both Gorsuch and Kavanaugh would have [allowed](#) the Trump Administration to include a citizenship question on the census, resulting in a severe undercount of people of color and depriving these communities of resources and accurate political representation. Both men also joined the 5-4 decision in [Rucho v. Common Cause](#) holding that political gerrymandering cases can never be challenged in federal court. This decision was a major political victory for Republicans, who have manipulated electoral maps to dilute the vote and entrench their own power.

In the lower courts, [Don Willett dissented](#) from a decision upholding a ruling invalidating a Mississippi Senate district as an illegal racial gerrymander under the Voting Rights Act; Willett suggested that the Voting Rights Act's bar on the dilution of minority votes is unconstitutional.

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. Illustrative is [Andrew Brasher](#), who was confirmed to the district court in Alabama in May 2019 and nominated to the Eleventh Circuit just six months later. Throughout his career, Brasher advocated for racist gerrymandering and defended laws that disproportionately disenfranchise voters of color, including [voter ID](#) and [proof](#) of citizenship requirements, and a [ban](#) on former felons voting. He strongly supported gutting the Voting Rights Act. In response to questions at his [hearing](#), he could not name one example of discriminatory voting restrictions since *Shelby County*.

Also 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 C](#), however, [Andrew Brasher](#) and [Thomas Farr](#) are far from isolated examples.

Moreover, these nominees have not just fought to make it harder for people of color 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 that supported Ho's nomination knew exactly whom they were backing.

## Executive Power

Donald Trump has expounded unprecedented theories of unchecked executive power. He has [said](#), “I have an Article II, where I have the right to do whatever I want as president.” He claimed the authority to unilaterally impose a discriminatory Muslim ban, end DACA, add a citizenship question to the census, commit war crimes, withhold congressionally-authorized aid to Ukraine unless it served his reelection purposes, deny all cooperation with congressional oversight or lawfully issued subpoenas (claiming “[absolute immunity](#)” from all oversight), and ignore legitimate Freedom of Information Act requests. The list goes on and on.

President Trump’s stunning views on executive power are only surpassed by Attorney General William Barr — who AFJ vigorously opposed when nominated. In a recent [speech](#) to the Federalist Society, Barr lauded the executive branch and castigated Congress and the judiciary for imposing checks on it, decrying “the steady encroachment on Executive authority by the other branches of government.”

Not surprising, President Trump has stacked the courts with loyalists who share his dangerously expansive view of executive power. [Brett Kavanaugh](#), for example, has indicated that he does not believe sitting presidents can be indicted, has argued for a president’s power to remove a special counsel at will, and questioned the Supreme Court ruling that ordered President Richard Nixon to turn over the Watergate tapes.

On the Supreme Court, Justices [Gorsuch](#) and [Kavanaugh](#) have done their part to rubber stamp Trump’s power grabs. Gorsuch [upheld](#) Trump’s discriminatory Muslim Ban, signing onto Chief Justice Roberts’ majority opinion claiming that the bigoted ban “is squarely within the scope of Presidential authority.” Additionally, both Gorsuch and Kavanaugh voted to [uphold](#) Trump’s draconian new asylum restrictions on Central American migrants, and they sanctioned the government’s practice of indefinitely detaining immigrants awaiting deportation. Both justices also would have [allowed](#) the controversial citizenship question to appear on the 2020 census, despite evidence that the Trump Administration [lied](#) about its racist motivation for including it.

This dangerous ideology is shared by Trump’s lower court judges as well. As [Appendix M](#) demonstrates, because of Donald Trump and the Republican Senate, the courts are now replete with judges who have expansive views of executive power. [Justin Walker](#) rushed to Trump’s defense after he fired James Comey over, in Trump’s own words, “this Russia thing.” Walker [criticized](#) the Mueller investigation and [argued](#) that the FBI should not be independent of the President. He was, of course, rewarded for his party loyalty with a lifetime appointment to the federal bench.

Perhaps the most stunning example of this theory of executive power, however, appeared in [Neomi Rao’s](#) recent dissent in a case concerning the president’s tax returns. Prior to her confirmation to Kavanaugh’s former seat on the D.C. Circuit,



AFJ [reported](#) extensively on Rao's troubling views. With her powerful new platform on the D.C. Circuit, Rao has continued to advance her belief that the president should rarely be held accountable. In a baffling [dissent](#), Rao argued that Congress cannot use its oversight powers to investigate a president's potential illegal conduct, except through impeachment. In other words, Rao would have allowed Trump to continue shielding his tax returns, despite Congress's lawful subpoena. When the case came up for en banc review, another Trump appointee, [Gregory Katsas](#) (DC Circuit), [joined](#) Rao in voting to rehear the case in a second attempt to give Trump the ruling he wanted.

In addition, this year the Senate confirmed [Howard Nielson](#), who 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. If Nielson would defend President George W. Bush's abuses of power on torture, one wonders what he would permit Trump to get away with.

# Degrading of the Senate's Advice and Consent Duty

One of the most striking developments in the judicial nomination process in the first three 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.

## Changing Senate Rules to Confirm Neil Gorsuch and Brett Kavanaugh

By taking the unprecedented step of obstructing the Supreme Court nomination of Merrick Garland, Republicans successfully held the late Justice Antonin Scalia's seat open in the hope that a Republican president would be elected. Upon his election, President Trump promptly took advantage of this opportunity. Senate Republicans [changed](#) Senate rules, on a party-line vote, to 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 and [Brett Kavanaugh](#) by a [vote](#) of 50-48.

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

It bears noting that Mitch McConnell, after creating some imagined principle to keep Merrick Garland from even receiving a hearing during an election year, has brazenly made [clear](#) — in a surprise to no one — that that same principle does not apply when a Republican is president if a vacancy arises in 2020.

## Sullyng the Process to Confirm Kavanaugh

Republican members of the Senate Judiciary Committee, under the leadership of Senator Chuck Grassley, 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. 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 [chose](#) to rely on an alternative, partisan process to ensure that confirmation hearings for Kavanaugh could take place before the midterm elections. 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. Blasey 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. 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. Blasey Ford. It did not interview her husband, nor did it interview Dr. Blasey Ford's therapist, the individual who conducted the polygraph examination of Dr. Blasey Ford, or friends of Dr. Blasey 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.

Republicans did everything in their power to shield Kavanaugh's records from Congress and the public so the American people would not discover even more damaging information about Kavanaugh than was already in the public sphere. As a result, when Democrats obtained control of the House, AFJ and other organizations pressed the House Judiciary Committee to obtain the records that Senate Republicans were intent on keeping hidden, and we applauded when Chairman Nadler, in August, [formally requested](#) the National Archives to "complete its review and release records to the Committee related to Justice Brett M. Kavanaugh's service in the White House from 2001 to 2006, when he served as Staff Secretary and in the White House Counsel's Office."

Democrats also pressed FBI Director Christopher Wray on the ridiculous "investigation" it conducted into credible allegations of sexual assault. Wray admitted that the White House and Senate Republicans handcuffed FBI agents and severely restrained the investigation.

## Changing Senate Rules and Norms to Confirm Lower Court Nominees

In early 2019, Republicans further eroded Senate rules by [limiting](#) the amount of debate time for district court nominations from thirty hours of debate to two. There was no legitimate reason to change the rules; it was a “solution” to a problem that did not exist.

Republicans claimed the resolution was necessary to hasten the confirmation process against Democratic obstructionism. In reality, more of President Trump's judicial nominees had been confirmed by the Senate at that point than had been confirmed at the same point in President Obama's administration. Second, by severely curtailing time for the full Senate to consider district court nominees — individuals who will serve for life and in many cases have the final say on the rights of the American people — enactment of the resolution only further inhibited the ability of senators and the American people to properly vet judicial nominees before voting to confirm them to a lifetime appointment to the federal bench.

Past examples illustrate why minimizing the time allowed for consideration of nominees could have serious negative consequences; and why Republicans were so intent on doing so.

For example, every Republican on the Judiciary Committee [voted](#) to report [Brett Talley's](#) nomination to the full Senate. Only after his committee vote was it discovered that he [failed to disclose](#) more than 15,000 pieces of online commentary, including one believed to be attributable to him and in which the writer defended the KKK.

On the eve of Thomas Farr's Senate confirmation vote, a memo leaked from the Justice Department that the administration had previously refused to provide despite Democrats' request. The memo provided evidence of Farr's involvement in voter suppression efforts and raised serious questions regarding Farr's veracity before the Senate. A year had passed since Farr was voted out of committee and cloture had already been obtained before scrutiny surfaced this damning document.

If the rule change had passed earlier, it is highly likely these individuals would have been rushed through the floor process and be currently sitting as federal judges, without appropriate vetting.

Moreover, under President Obama, Republicans vigorously fought for the rights of home-state senators and extensively used the blue slip to [block](#) nominees. Under President Trump, Republicans quickly [discarded](#) the 100-year-old tradition, confirming judges over the objection of a home state senator. In 2019, for the first time in history, they went further, confirming judges over the objection of [both](#) home-state senators.

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. Then-Judiciary Committee Chairman Patrick Leahy maintained the rule in the face of pressure from progressives to end the blue slip (as Grassley and Graham would do) in the face of unprecedented Republican obstruction of Obama's nominees. 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.

The following judges were confirmed over the objections of home-state senators, something not done during the Obama Administration: [Joseph Bianco](#); [Michael Brennan](#); [Daniel Bress](#); [Patrick Bumatay](#); [Daniel Collins](#); [Kenneth Lee](#); [Paul Matey](#); [Steven Menashi](#); [Eric Miller](#); [Eric Murphy](#); [Michael Park](#); [Peter Phipps](#); [David Porter](#); [Chad Readler](#); [David Stras](#); and [Lawrence VanDyke](#).

As just one example of how little Republicans care about even the pretext of “consultation” with home-state senators, the White House did not even arrange a [meeting](#) between Senator Cory Booker or Senator Bob Menendez and Third Circuit nominee Paul Matey until after he was voted out of Committee; and Chairman Graham and Senate Republicans were okay with that. As Senator Menendez [said](#), “It wasn’t for lack of trying. Senator Booker requested time with Mr. Matey, but when he didn’t receive it, the Judiciary Committee proceeded anyway.”

This year alone, Chairman Graham proceeded with numerous nominations over vigorous opposition from home-state senators. Illustrative, but by no means exclusive, Sherrod Brown was tenacious in highlighting Chad Readler’s attacks on access to quality health care; he took the virtually unprecedented step of testifying against Readler in the Judiciary Committee. Senators Rosen and Cortez-Masto were resolute in their opposition to Lawrence VanDyke; Senator Rosen even attended the Committee markup in person. Senator Schumer worked passionately in an effort to defeat Steven Menashi (who he called a “[bottom crawler](#)”).

Finally, Chairman Graham eroded Senate norms further by confirming — over home-state senator opposition — nominees with at best tenuous ties to states they were purportedly nominated from.

[Daniel Bress](#), for example, was nominated to fill a California seat on the Ninth Circuit, and both California senators [highlighted](#) his lack of connection to the state. Bress was a resident of Alexandria, Virginia, a suburb of Washington, D.C. He has practiced law at the law firm of Kirkland & Ellis LLP *in Washington* for 11 years. In fact, the firm [highlighted](#) Bress as one of “D.C.’s rising stars” (not “California’s rising stars”) in 2017. Bress’s professional connection to California is minimal as he worked as an attorney in San Francisco for only one year, from 2007 to 2008.

At a Judiciary Committee [hearing](#) on March 7, 2019, Senator Feinstein said, “I don’t understand why the White House would choose someone with such a limited connection to the state.” Chairman Lindsey Graham appeared to agree: “[h]aving a nominee to the circuit court with very little connection to California bothers me,” yet he worked to confirm him.

Likewise, [Lawrence VanDyke](#) was nominated to a Ninth Circuit seat in Nevada. VanDyke did not grow up in Nevada, does not appear to own property in the state, does not seem to have family ties to the state, and was only an active member of the Nevada State Bar for two years (after waiting two years to take the state bar exam). VanDyke was at the time of his confirmation a resident of Manassas, Virginia, a suburb of Washington, D.C. He was born in Texas and attended high school and college in Montana and Oklahoma. After graduating from Harvard Law School in 2005, VanDyke spent the next decade of his career in Washington, D.C., Texas, and Montana. In 2015, after an unsuccessful run for a seat on the Montana Supreme Court, the Republican Attorney General in Nevada threw him a lifeline and gave him a job as state Solicitor General, despite having never lived or practiced law in Nevada. As soon as his political appointment ended, VanDyke ended his brief stint in Nevada to move back to Washington, D.C.

## 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.

[Steven Menashi refused](#) to answer questions about his record at the Department of Education, his role working with Stephen Miller at the White House, and any potential [involvement](#) on matters regarding the whistleblower complaint concerning President Trump’s efforts to pressure Ukraine to investigate Joe Biden and his family. Both Senate Judiciary Committee Ranking Member Lindsey Graham and Committee member Senator John Kennedy admonished him during the [hearing](#). Kennedy said “I wish you would be more forthcoming. This isn’t supposed to be a game.” Yet, every Republican but one supported his confirmation.

[Kenneth Lee](#) repeatedly [failed](#) to disclose inflammatory writings (initially omitting over 75 articles), including controversial articles on race, LGBTQ equality, and sexual assault to Senator Dianne Feinstein’s and Senator Kamala Harris’s nominating commissions and to the Senate Judiciary Committee. Yet, every Republican supported him.

[Wendy Vitter](#) failed to disclose more than 100 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. Yet, every Republican but one supported her.

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 Senate 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 Oregon's committee went so far as to make clear that Bounds "[misled](#)" the committee. Nevertheless, every Republican on the Senate Judiciary Committee voted for Bounds' nomination.

These examples stand in stark contrast to the posture taken by Senate 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."

## 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.

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 but one voted for her.

Also illustrative is [Lawrence VanDyke](#). At his [hearing](#), Senator Chris Coons asked VanDyke if, while serving as Solicitor General of Montana, he had "ever sign[ed] the attorney general of the state onto an amicus brief without reading the brief before signing on?" VanDyke responded that he had not. However,

this is contradicted by an [email](#) that VanDyke wrote to the Texas Attorney General's office, in which he joined a brief in an Establishment Clause case: "Usually I don't send our 'join' emails until after I've read the draft brief, but the combination of my trust in the exceptional work your office always produces, and the fact that I'm so busy right now that I'm worried I might forget to send a join email later, causes me to just send our join now." VanDyke claimed in defense that he later read the brief.

Likewise, [Andrew Brasher](#) falsely stated to the Senate Judiciary Committee when asked about an amicus brief he filed in *Shelby County v. Holder* that supported gutting the VRA. Brasher's [brief](#) argued that Section 5 of the VRA, which requires certain states and jurisdictions to preclear with the Justice Department any change in the way they run elections, was no longer necessary and imposed an unwarranted burden on the states that were covered, arguing, "Section 5 undermines state sovereignty in unanticipated ways." In response to a question about the brief at his [hearing](#), however, Brasher stated that it "argued exclusively that section 4 of the VRA" – which established the formula for which jurisdictions are covered under Section 5 – "needed to be updated."

[Thomas Farr](#) was [untruthful](#) in his response to questions about his involvement in voter suppression efforts orchestrated by the campaign of Jesse Helms, the former Republican senator from North Carolina. 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, but instead 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 was the confirmation of [David Porter](#). A 2009 [press release](#) announcing the formation of an organization called the Pennsylvania Judicial Network which opposed the nomination of Sonia Sotomayor to the Supreme Court, 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.

## Hearings Stacked to Minimize Vetting

Chairmen Grassley and Graham 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 Graham held hearings on six circuit nominees in one five-week period alone.

Republicans 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."

During the Obama Administration, there were only three instances when 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 three years of the Trump Administration, Grassley and Graham held 13 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.

## Condoning Nominees who Lack Basic Qualifications

Through the first session of the 116<sup>th</sup> Congress, nine Trump judicial nominees were [rated](#) "Not Qualified" by the ABA. That is the highest number of judicial nominees to be ranked "Not Qualified" during the first three years of a presidency. Worse yet, seven of them were nevertheless confirmed. The full list includes:

- Leonard Steven Gras (8th Circuit),
- Jonathan Kobes (8th Circuit),
- Lawrence VanDyke (9th Circuit),
- Holly Teeter (District of Kansas),
- Charles Goodwin (Western District of Oklahoma),
- Justin Walker (Western District of Kentucky),
- Sarah Pitlyk (Eastern District of Missouri),
- John Connor (Eastern, Northern and Western Districts of Oklahoma) (nomination withdrawn), and

- Brett Talley (Middle District of Alabama) (nomination withdrawn)

In contrast, President Obama nominated [no person](#) rated unqualified by the ABA.

For example, [Allison Rushing](#) was an attorney at Williams & Connolly and in her mid-thirties. 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 was only 11 years out of law school. She had 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.”

Yet, Kennedy and every Republican supported her confirmation.

[Justin Walker](#) was an outspoken critic of the ACA who did [119 media appearances](#) on behalf of [Brett Kavanaugh](#). As the ABA noted, however, he had never tried a case to verdict or judgment and had only taken one deposition his entire career. The ABA rated him [Not Qualified](#), yet every Republican voted to confirm him.

The ABA gave the same [rating](#) to [Sarah Pitlyk](#). Pitlyk spent her entire career fighting reproductive freedom, including IVF and surrogacy. Yet, as the ABA wrote, “she has not taken a deposition. She has not argued any motion in a state or federal trial court. She has never picked a jury. She has never participated at any stage of a criminal matter.” Republicans confirmed her too.

Finally, the ABA rated [Lawrence VanDyke](#) “[Not Qualified](#)” to serve on the Ninth Circuit Court of Appeals. After interviewing 60 of his former colleagues, the ABA concluded that “Mr. VanDyke’s accomplishments are offset by the assessments of interviewees that Mr. VanDyke is arrogant, lazy, an ideologue, and lacking in knowledge of the day-to-day practice including procedural rules.” In an email trying to avoid working on one case as a lawyer, VanDyke even admitted that “the immediate tasks in that case are something I have little experience with...(discovery wrangling, experts, stipulations, and a meet and confer with opposing counsel).” One of his colleagues in the Montana Attorney General’s Office called him a “charlatan,” who “quit his job, in a tantrum, because he didn’t want to work.” One review provides a stark perspective on his abilities: “Ever since he has arrived, Mr. VanDyke has been arrogant and disrespectful to others, both in and outside of this office. He avoids work. He does not have the skills to perform, nor desire to learn how to perform, the work of a lawyer. Now that he has resigned and refuses to work on cases assigned to him, while remaining on the payroll for the next several months...” The office’s chief of staff seemed to agree with the colleague’s scathing review, writing, “Your frustration does not exceed ours.” Every Republican but one voted to confirm him.

# Future Outlook

The 2018 midterm elections increased the Senate Republican majority, and rule changes and further erosion of norms quickened the confirmation pace of Trump judges. The mass confirmations of far-right jurists will cause great harm to people across this country. But there are also some hopeful signs.

## Progressives are Increasingly Galvanized

It is important to emphasize that there is unprecedented energy around the courts from every corner of the progressive community. Several problematic nominees over the past three years were successfully defeated because of the advocacy of AFJ along with scores of 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](#), Matthew Peterson, Thomas Marcelle, and [Damien Schiff](#) were not confirmed to the bench and thankfully are not adjudicating the rights and liberties of others. In addition, current district court judge [Halil Ozerden](#) was not elevated to the Fifth Circuit.

These defeats have real-world consequences and are 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. For example, Thomas Farr was withdrawn only after relentless advocacy by civil rights leaders, North Carolinians, and allies, who exposed his background of voter suppression against communities of color and racist rhetoric. Jeff Mateer was defeated by the outcry of LGBTQ advocates, including [parents of transgender children](#), and civil rights allies after discovering video of him referring to transgender children as part of “Satan’s plan.”

Indeed, the overwhelming evidence demonstrates to our country’s lawmakers that the country is watching their votes on Trump’s judges. For example:

According to the Associated Press, three-quarters of 2018 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. Since then, challengers and major endorsing organizations have headlined incumbent senators’ confirmation votes in their announcements.

Long time advocates on the courts, including, but not limited to civil rights, reproductive freedom, LGBTQ, worker, and environmental organizations, doubled down on their commitment to fighting for fair courts. In addition, new and growing constituencies, such as health care activists, faith leaders, Native

American communities, educators, and sexual assault survivors strengthened their engagement in 2019.

Legal leaders used their gravitas to speak out against Trump's nominees: influencers like law professors signed letters (e.g. over 2,400 law professors [opposed](#) Brett Kavanaugh) and former judges issued [op-eds](#). Media personalities, including John Oliver, Samantha Bee, Andy Cohen, Seth Meyers, and Rachel Maddow have highlighted Trump's lower court nominees' terrible records. Celebrities, including Bradley Whitford, Kerry Washington, Alyssa Milano, John Cusack, Alicia Keys, and Debra Messing have spoken out against the president's troubling judges.

Over the past three years, millions of people have opposed Trump's judicial nominees, including people from all walks of life, from truck drivers to parents of transgender students to persons with disabilities. They spoke passionately regarding the real-world stakes of these nomination fights. Here are three striking examples this year:

Survivors of sexual assault and their advocates, LGBTQ communities, and communities strongly fought [Neomi Rao's](#) nomination to fill Justice Kavanaugh's vacant seat on the DC Circuit Court of Appeals. They organized press conferences and lined hallways with people displaying her writings blaming survivors and her quotes attacking LGBTQ people and communities of color.

[Chad Readler](#), nominated to the Sixth Circuit Court of Appeals from Ohio, garnered unprecedented bipartisan opposition when health care advocates rallied to make him front and center in Trump's and Republicans' attacks on access to health care.

Hundreds of thousands of people from all walks of life — educators, Muslim and other faith leaders, immigrant rights' advocates, LGBTQ communities, advocates for clean air and water, and more — mobilized to fight the nomination of Steven Menashi to the Second Circuit. Over 100,000 people made their voices heard when Republicans confirmed Menashi.

## **Progressives Will Be Ready on January 1, 2021**

Alliance for Justice and progressives across the country are working to ensure that the next president prioritizes reversing the damage President Trump and Republicans have inflicted on our justice system.

For example, AFJ has launched an initiative, [Building the Bench](#), to help identify and make sure the next president prioritizes nominating federal judges with a demonstrated commitment to constitutional rights and legal protections, including civil rights, rights for women and LGBTQ Americans, protections for workers, clean air and clean water, consumers, and immigrants. Building the Bench will also prioritize demographic and professional diversity to ensure our bench better reflects the diversity of our nation, so that every person who walks into a courtroom truly believes they will receive equal justice under law.



## Progress was Made on Supreme Court Ethics Reform

In addition, 2019 saw progress on the issue of Supreme Court ethics, which AFJ [has long](#) advocated for. Unlike lower court judges, the Supreme Court has never adopted nor been subject to a comprehensive code of judicial ethics, and [H.R.1](#), which passed the House of Representatives, would change that, by requiring the creation of a code of conduct for Supreme Court justices. The issue was further highlighted when [Brett Kavanaugh](#) appeared at a Federalist Society fundraiser. As Sheldon Whitehouse [said](#), joining AFJ in denouncing Kavanaugh's appearance, "a private organization funded by anonymous donors having an improper role in the selection of judges and justices is bad enough. A Supreme Court Justice returning favors to that organization is even worse. The Court needs an ethics code."

# Appendix

## Trump Judges: On the Issues

Appendix A: Access to Health Care	48
Appendix B: Equal Employment Opportunity	50
Appendix C: LGBTQ Americans	52
Appendix D: Native Americans	58
Appendix E: Persons with Disabilities	60
Appendix F: Racial Equity	62
Appendix G: Voting Rights	65
Appendix H: Consumers	70
Appendix I: Criminal Justice	72
Appendix J: Death Penalty	77
Appendix K: Education	79
Appendix L: Environment	82
Appendix M: Executive Power & Civil Liberties	86
Appendix N: Church and State	89
Appendix O: Freedom of the Press	91
Appendix P: Gun Safety	92
Appendix Q: Immigration	94
Appendix R: Money in Politics	97
Appendix S: Reproductive Rights	99
Appendix T: Sexual Harassment and Assault	106
Appendix U: Workers	109

*Appendices current as of January 13, 2020. Updated appendices available on our [website](#).*

# Appendix A:

## Access to Health Care

### Trump judges and nominees who have fought access to health care (*See also: Reproductive Rights*)

**Amy Coney Barrett** (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.

**John Bush** (Sixth Circuit) strongly opposed the Affordable Care Act and said it needs to be “repealed.”

**Ralph Erickson** (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.”

**Thomas Farr** (Nominated to Eastern District of North Carolina; Withdrawn) compared the Supreme Court’s decision upholding the Affordable Care Act to *Plessy v. Ferguson* and *Dred Scott*.

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

**Steven Grasz** (Eighth Circuit) [said](#) the Supreme Court’s decision upholding the Affordable Care Act “placed the legitimacy of the court, as well as our freedom as Americans, in great jeopardy.”

**Gregory Katsas** (D.C. Circuit) represented the National Federation of Independent Business in its challenge to the Affordable Care Act in [\*National Federation of Independent Businesses \(NFIB\) v. Sebelius\*](#), 567 U.S. 519 (2012).

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

**Eric Murphy** (Sixth Circuit) challenged one of the Affordable Care Act’s tax provisions. In [\*Ohio v. United States\*](#), 849 F.3d 313 (6th Cir. 2017), Murphy argued that the Affordable Care Act’s Transitional Reinsurance Program should only apply to private employers. The Sixth Circuit rejected Murphy’s “novel” argument.

**Howard Nielson** (District of Utah) co-authored amicus briefs challenging the Affordable Care Act in [Halbig v. Sebelius](#), 27 F.Supp.3d 1 (D.C. Cir. 2014) and [King v. Burwell](#), 135 S.Ct. 2480 (2015).

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

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

**Sarah Pitlyk** (Eastern District of Missouri) called the Supreme Court's decision upholding the Affordable Care Act a "disastrous ruling" and an "unprincipled decision," while praising then-Judge Brett Kavanaugh for "vigorously criticizing the law."

**David Porter** (Third Circuit) wrote several columns arguing the Affordable Care Act is unconstitutional.

**Neomi Rao** (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 Affordable Care Act. 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** (Sixth Circuit), as acting head of the Justice Department's Civil Division, filed a brief arguing that the Affordable Care Act is unconstitutional.

**Michael Truncale** (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."

**Justin Walker** (Western District of Kentucky) called the Supreme Court's decision to uphold the Affordable Care Act "indefensible." He praised then-Judge Kavanaugh for his "thorough and principled takedown" of the Affordable Care Act and for providing a "roadmap" for Supreme Court justices "who said Obamacare was unconstitutional."

**Cory Wilson** (Nominated to Southern District of Mississippi) repeatedly railed against the Affordable Care Act. He called it "big intrusive government," labeled it "illegitimate" because it passed without Republican votes, and said, "For the sake of the Constitution, I hope the Court strikes down the law and reinvigorates some semblance of the limited government the Founders intended." He also opposed the expansion of Medicaid in his home state of Mississippi, deriding it as the "ever-expanding welfare state." Further, he supports banning embryonic stem cell research.

# Appendix B:

## 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** (Seventh Circuit), while on the Seventh Circuit, sided with an employer who segregated employees by race and ethnicity.

**Michael Brennan** (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** (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; Withdrawn) 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; Withdrawn) disparaged the Civil Rights Act of 1964, claiming that “calls for diversity” are “code for relaxed standards.”

**Neil Gorsuch** (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.

**Steven Grasz** (Eighth Circuit) pushed for a measure that would have allowed employers to discriminate against LGBTQ employees.

**Matthew Kacsmaryk** (Northern District of Texas) argued that employers should be able to discriminate based on sexual orientation and gender identity.

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

**Halil Ozerden** (Nominated to Fifth Circuit), as a district court judge, prevented employees who faced severe racial discrimination at work from having their claims heard by a jury, including in cases where workers found nooses hanging in the shipyard where they worked, repeatedly heard the N-word at work, and were threatened with racist graffiti.

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

**Lawrence VanDyke** (Ninth Circuit) opposed fair hiring policies that prohibit employers from asking applicants to disclose their criminal history on applications.

**Don Willett** (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: LGBTQ Americans

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

**Campbell Barker** (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** (Eleventh Circuit) praised Justice Scalia's dissent in *Lawrence v. Texas*.

**Andrew Brasher** (Middle District of Alabama, Nominated to Eleventh Circuit) filed a brief opposing marriage equality in *Obergefell v. Hodges*. He also led other states in filing an amicus brief arguing that a photographer should be able to refuse to provide her services to a same-sex couple based on her personal opposition to same-sex marriage.

**Jeffrey Brown** (Southern District of Texas), as a state court judge, consistently ruled against marriage equality and expressed personal disdain for [Obergefell v. Hodges](#). On the Texas Supreme Court he joined the majority opinion in [Pidgeon v. Turner](#), which held that cities in Texas could defy *Obergefell*'s ruling and deny married same-sex couples the rights of marriage. He also joined a majority opinion that restricted same-sex sexual harassment claims.

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

**Kyle Duncan** (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** (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** (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** (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.

**Steven Grasz** (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** (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** (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** (D.C. Circuit) defended the Defense of Marriage Act (DOMA) in two cases and strongly opposed *Obergefell*.

**Joan Larsen** (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** (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; Withdrawn) called transgender children part of “Satan’s plan.”

**Steven Menashi** (Second Circuit) has implied that LGBTQ identities are “outside and above nature” and those who support equality are attempting to “peer[] down on the rest of creation with a godlike power to manipulate it for our own purposes. He supported the ban on lesbian, gay and bisexual people serving in the military; he opposed court decisions which recognized marriage equality; and he defended discrimination against LGBTQ Americans in public accommodations such as restaurants and movie theaters. He accused a leading LGBTQ group of exploiting the brutal murder of Matthew Shepard for political and financial ends. During his leadership at the Department of Education, the Department weakened Title IX protections for transgender students.

**Eric Murphy** (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** (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** (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."

**Peter Phipps** (Third Circuit) defended the discharge of a nurse from the United States Air Force under the "Don't Ask, Don't Tell" policy in [Witt v. Department of the Air Force](#).

**David Porter** (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** (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** (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** (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.

**Lee Rudofsky** (Eastern District of Arkansas) defended Arkansas when two same-sex couples sued the state to require Arkansas to list the spouse of a birth mother, regardless of gender, as the second parent of their child on their birth certificate. He also fought a city ordinance banning discrimination based on sexual orientation or gender identity and has authored or edited multiple articles justifying LGBTQ discrimination. He signed an amicus brief advocating that a florist has the right to refuse to serve a same-sex couple. At his Senate Judiciary Committee hearing, he disavowed previous support for marriage equality.

**Allison Rushing** (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; Withdrawn) 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."

**Brantley Starr** (Northern District of Texas) led Texas's efforts to block guidance from federal agencies that protected gender identity as a form of sex discrimination under Title IX. He signed an opinion letter after **Obergefell v. Hodges** claiming that civil servants, including clerks, judges, and justices of the peace, could still refuse to issue marriage licenses to same-sex couples. He also defended several bills in Texas that discriminate against gay couples in the adoption and foster care systems.

**Amul Thapar** (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** (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."

**Lawrence VanDyke** (Ninth Circuit) worked as an allied attorney and a Blackstone Fellow for Alliance Defending Freedom (ADF) which, "has supported the recriminalization of homosexuality in the U.S. and criminalization abroad; has defended state-sanctioned sterilization of trans people abroad; has linked homosexuality to pedophilia and claims that a 'homosexual agenda' will destroy

Christianity and society.” In an article for the Harvard Law Record, he promoted the myth that same-sex marriage and families will harm children and society and that LGBTQ people are deviant and dangerous. While Solicitor General of Montana, he regularly supported bans on same-sex marriage in other states. He also supported the Defense of Marriage Act and opposed laws protecting LGBTQ Americans from being discriminated against.

**Don Willett** (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.”

**Cory Wilson** (Nominated to Southern District of Mississippi) said that “gay marriage is a pander to liberal interest groups and an attempt to cast Republicans as intolerant, uncaring and even bigoted.” As a legislator, Wilson voted to allow businesses to refuse service to LGBTQ persons.

**Allen Winsor** (Northern District of Florida) defended Florida’s ban on same-sex marriages.

# Appendix D: Native Americans

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

**Ryan Bounds** (Nominated to Ninth Circuit; Withdrawn) 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** (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** (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.

**Robert Luck** (Eleventh Circuit) as a state court judge criticized the longstanding doctrine of tribal immunity.

**Steven Menashi** (Second Circuit), while in college, defended the Dartmouth College football cheer, "Wah-Hoo-Wah! Scalp 'Em," and dismissed the idea that it proceeded "from a racist belief in the inferiority of American Indians."

**Eric Miller** (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** (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.

**Lawrence VanDyke** (Ninth Circuit) argued that Agua Caliente Tribe did not



have a federally-reserved right to the groundwater under their reservation.

**Patrick Wyrick** (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. Hobig\*](#); and arguing against tribal court jurisdiction to adjudicate certain claims against nonmembers in [\*Dollar Gen. Corp. v. Miss. Band of Choctaw Indians\*](#).

# Appendix E: Persons with Disabilities

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

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

**Michael Brennan** (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** (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** (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** (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** (Fifth Circuit) supported efforts to prevent Texans with disabilities from suing the state.

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

**David Stras** (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** (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: Racial Equity

## Trump judges and nominees who have shown insensitivity towards persons of color (See also *Equal Employment Opportunity and Voting Rights*)

**Ryan Bounds** (Nominated to Ninth Circuit; Withdrawn) wrote articles expressing hostility towards multiculturalism and diversity.

**Andrew Brasher** (Middle District of Alabama, Nominated to Eleventh Circuit) 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.” He was also involved in a lawsuit arguing that it was unconstitutional for the Census Bureau to count people who are not citizens as part of the decennial census, consistent with the Trump Administration’s goal of undercounting immigrants.

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

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

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

**Daniel Collins** (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; Withdrawn) claimed that “calls for diversity” are “code for relaxed standards.”

**Gregory Katsas** (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** (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.

**Steven Menashi** (Second Circuit) argued against diverse communities, writing that “ethnically heterogeneous societies exhibit less political and civic engagement, less effective government institutions, and fewer public goods.” He compared universities’ collection of race data in college admissions to Germany under Adolf Hitler. He defended a fraternity that threw a “ghetto party,” characterizing the event as “harmless and unimportant.” As Acting General Counsel of the Department of Education, he narrowed the scope of civil rights enforcement.

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

**Michael Park** (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.

**Peter Phipps** (Third Circuit) represented the U.S. Department of Housing and Urban Development (HUD) in *Thompson v. United States HUD*, in which a court held that HUD violated the Fair Housing Act through its practice of what the Legal Defense Fund described as “unfairly concentrating African-American public housing residents in the most impoverished, segregated areas of Baltimore City.”

**Sarah Pitlyk** (Eastern District of Missouri) argued that college equal opportunity programs “unjustly impose the costs of remedying past discrimination on individuals who have no personal responsibility for prior wrongs,” and that they “entrench racial prejudices, rather than alleviate them.”

**Neomi Rao** (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.”

**Lee Rudofsky** (Eastern District of Arkansas) voiced opposition to affirmative action.

**Damien Schiff** (Nominated to Court of Federal Claims; Withdrawn) 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; Withdrawn) purportedly wrote a blog post defending the early KKK.

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

**Allen Winsor** (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** (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.”

# Appendix G: Voting Rights

## Trump judges and nominees who have fought to make it easier for states to suppress the vote, gerrymander, and dilute minority votes

**Campbell Barker** (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** (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** (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** (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** (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** (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** (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** (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** (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** (Sixth Circuit) wrote an amicus brief on behalf of the Center for Equal Opportunity and Project 21 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** (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** (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.

**Lee Rudofsky** (Eastern District of Arkansas) defended Arkansas’s voter ID law.

**Brantley Starr** (Northern District of Texas) defended Texas’s discriminatory voter ID law in [Veasey v. Abbott](#) and Texas’s redistricting plans, which allegedly violated the Constitution and Voting Rights Act by intentionally diluting the votes of minority communities, in [Abbott v. Perez](#). He also falsely testified before a Texas Senate hearing that a deceased judge’s name had been found on voting rolls after his death, and wrote two letters advocating for measures that would make it more difficult for people to vote.

**David Stras** (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** (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.

**Cory Wilson** (Nominated to Southern District of Mississippi) criticized the Justice Department for sending election observers to Mississippi, despite the state’s long-documented history of voter suppression. He is a strong supporter of voter ID laws and purges from voter rolls, both practices which have resulted in thousands of voters losing their rights.

**Allen Winsor** (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** (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** (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** (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 Bress** (Ninth Circuit) repeatedly opposed the right of people to band together in class action lawsuits to hold corporations accountable. He defended many corporations against class actions, including a corporation that allegedly deceived plaintiffs in an asbestos injury case and misled them into settlements by lying about the facts.

**Jeffrey Brown** (Southern District of Texas) as a state court judge barred a lawsuit brought by a former Navy officer who developed mesothelioma from asbestos products. He has also delivered several speeches to organizations that fight to keep Americans from holding corporations accountable.

**Daniel Collins** (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** (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** (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** (Fifth Circuit) supported Texas's cap on medical malpractice suits.

**Gregory G. Katsas** (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** (Supreme Court), while on the D.C. Circuit, argued the Consumer Financial Protection Bureau is Kavanaugh sided against the FCC's net neutrality rule. When a consumer group fought for stricter tire safety standards, Kavanaugh ruled against them.

**Barbara Lagoa** (Eleventh Circuit) as a state court judge made it harder for homeowners to defend themselves against banks that were improperly trying to foreclose upon their homes by denying them the right to attorney's fees. In another case, she sided with a bank and reversed a decision that had found a foreclosure claim was barred by the statute of limitations; overturning what the dissent noted was "almost eighty years of well-established Florida jurisprudence."

**Kenneth Lee** (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.

**Robert Luck** (Eleventh Circuit), as a state court judge, made it harder for homeowners to defend themselves against banks that were improperly trying to foreclose on their homes by denying them the right to attorney's fees. Luck also reversed a lower court's decision that had denied a cellphone provider's effort to force a consumer into arbitration. In another instance, Luck reinstated a verdict for a tobacco company in a wrongful death case after a lower court judge had found that a new trial was warranted.

**Paul Matey** (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.

**Steven Menashi** (Second Circuit) expressed strong negative opinions regarding attorneys who represent consumers. He attacked lawyers who advocate for the elderly: "there[s] a whole discipline of 'elder law' devoted to these tricks," referring to efforts to ensure people who are eligible for Medicaid can receive the benefits to which they are entitled. He supported efforts to cap recovery for those injured as a result of medical malpractice and, as a lawyer,

fought the ability of victims of negligence by drug companies to seek full accountability. He also opposed a D.C. Circuit decision upholding the FCC's net neutrality rules.

**Eric Miller** (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** (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** (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** (Fifth Circuit) has questioned the legitimacy of all federal regulations, which would include consumer protections.

**Halil Ozerden** (Nominated to Fifth Circuit) as a district court judge prevented a child's mother from suing a football helmet manufacturer when the ninth grader became partially paralyzed after making a tackle in a football scrimmage while wearing the manufacturer's helmet. The Fifth Circuit overturned Ozerden's decision.

**Michael Park** (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.

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

**Chad Readler** (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** (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.

**Lawrence VanDyke** (Ninth Circuit) sued to invalidate the Dodd-Frank Act.

**Don Willett** (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

**Campbell Barker** (Eastern District of Texas) attempted to retry a person kept in prisons unconstitutionally 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** (Seventh Circuit) criticized the retroactivity of sentencing guideline reforms. In [McCottrell v. White](#), Barrett authored a dissent arguing that prison guards did not commit cruel and unusual punishment when they fired their weapons over a crowded prison dining hall, striking several inmates with buckshot.

**Mark Bennett** (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** (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** (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.

**Jeffrey Brown** (Southern District of Texas) as a state court judge ruled that a prosecutor could comment in court about a criminal defendant’s silence in response to police questioning, holding it did not violate the right against self-incrimination. He also wrote an opinion allowing evidence found after an illegal police seizure to be introduced at a civil forfeiture proceeding.

**Daniel Collins** (Ninth Circuit) defended a controversial Department of Justice policy that required prosecutors to pursue the maximum charges and sentences against criminal defendants and minimized the ability of local U.S. attorneys to offer plea bargains for lesser sentences. He also advocated for eliminating Miranda warnings and questioned the wisdom of [\*Batson v. Kentucky\*](#), the seminal case prohibiting racial discrimination in jury selection. Collins has filed amicus briefs defending police officers in an excessive force case and defended Chicago’s controversial loitering ordinance.

**Kyle Duncan** (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** (Tenth 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** (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** (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** (Eleventh Circuit) defended purposeful racial discrimination in jury selection.

**Gregory Katsas** (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** (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** (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** (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!"

**Halil Ozerden** (Nominated to Fifth Circuit), as a district court judge, imposed unexplained and irrelevant special conditions of drug and alcohol testing and treatment for a defendant's supervised release, conditions which were overturned on appeal. He also prevented a victim from bringing most of his claims to trial after a prison guard allegedly sexually assaulted him and his cellmate. In another case, he held that a police officer who fired six shots and killed a man fleeing on an ATV was entitled to qualified immunity protecting him from legal action.

**William McCrary Ray II** (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.”

**Neomi Rao** (D.C. Circuit) proposed limiting constitutional protections for criminal defendants. Discussing *Miranda v. Arizona*, 384 U.S. 436 (1966), Rao explained her view that “Miranda exemplifies the recurring problem in criminal cases – promoting the dignity of the accused may greatly discount the dignity of the victims of crime.”

**Lee Rudofsky** (Eastern District of Arkansas) joined prison payphone providers in challenging a Federal Communications Commission rule capping rates on phone calls from prisons, which can reach as high as \$10 per minute. He also filed two briefs arguing that minors sentenced to life imprisonment without possibility of parole as juveniles should continue to serve for life without eligibility for parole, despite precedent and state law that suggested otherwise.

**Amy St. Eve** (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** (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** (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** (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** (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** (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** (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** (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** (Eleventh Circuit) supported Oklahoma's problematic execution method.

**Steven Grasz** (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** (Fifth Circuit) fought to maintain the death penalty in Texas, including defending Texas's lethal injection protocol.

**Kevin Newsom** (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** (Sixth Circuit), in an article titled, "Make Death Penalty for Youth Available Widely," advocated for subjecting children to the death penalty.

**Lee Rudofsky** (Eastern District of Arkansas) filed at least 12 briefs in a single

year before the Supreme Court to oppose stays of execution for Arkansas inmates facing the death penalty.

**Allen Winsor** (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** (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** (Ninth Circuit) fought substitute teachers' rights to adequate pay.

**Andrew Brasher** (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** (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."

**Daniel Bress** (Ninth Circuit) litigated, pro bono, a case to convert a public elementary school to a charter school in Anaheim County, California.

**John Bush** (Sixth Circuit) opposed women being admitted into the Virginia Military Affordable Care Actdemy (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** (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.

**Kurt Engelhardt** (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.

**Gordon Giampietro** (Nominated to Eastern District of Wisconsin; Withdrawn) 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** (Supreme Court), while on the Tenth Circuit, ruled to weaken the Individuals with Disabilities Education Act.

**Steven Menashi** (Second Circuit) has been Education Secretary Betsy DeVos's right-hand man at the Department in eroding protections for students of color, sexual assault survivors, and victims of fraudulent for-profit colleges. He opposed need-based financial aid because it purportedly hurts the wealthy. He compared universities' collection of race data in college admissions to Germany under Adolf Hitler. He supports school vouchers on the grounds that it "restore[s] taxpayers' property rights" and has attacked teachers' unions.

**Eric Murphy** (Sixth Circuit) defended school vouchers for private religious schools.

**Kevin Newsom** (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.

**Howard Nielson** (District of Utah) fought to end affirmative action at state universities.

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

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

**Chad Readler** (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.

**Lee Rudofsky** (Eastern District of Arkansas) represented the Arkansas Department of Education in a suit brought by parents and community members of Little Rock, alleging that the department implemented a variety of policies that furthered racial discrimination in Little Rock schools. He also supported George W. Bush's platform on school vouchers and privatization.

**Damien Schiff** (Nominated to Court of Federal Claims; Withdrawn) 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.

**Brantley Starr** (Northern District of Texas) supported Texas's efforts to combat alleged "censorship" of groups like neo-Nazis and other hate groups on college

campuses following an uptick in hate groups targeting college campuses for recruitment.

**Michael Truncale** (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.”

**Lawrence VanDyke** (Ninth Circuit) defended the Nevada’s school voucher program, which allowed parents to use taxpayer money to pay for their children’s private school tuition.

**Justin Walker** (Western District of Kentucky) bemoaned the “billions of taxpayer dollars” spent on maintaining “a minimum level of funding to offer an adequate education for all students.” He criticized the right to quality public education found in many state constitutions, complaining that this right infringes upon the liberty of “the minority of individuals who pay the majority of income taxes.”

**Don Willett** (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

**Campbell Barker** (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** (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** (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** (Ninth Circuit) defended the oil company Shell in several cases, including a global warming case brought by the City of Oakland, a case brought by victims of Hurricane Katrina, and a suit brought by a Native Alaskan village alleging that oil companies' contributions to global warming threatened the village's very existence.

**Allison Eid** (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** (Eighth Circuit), as a district court judge, enjoined the Obama Administration's Clean Water Rule.

**Neil Gorsuch** (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** (Eleventh Circuit) has challenged [designations](#) under the Endangered Species Act.

**Brett Kavanaugh** (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*.

**Joshua Kindred** (Nominated to District of Alaska) spent five years serving as Environmental Counsel to the Alaska Oil and Gas Association. While in that position, he fought against regulations aimed at protecting Alaska's air, water, and wildlife. He fought for the approval of an arctic drilling project, aggressively opposed fracking regulations, and advocated for weakening regulations that implement the Clean Air Act.

**Steven Menashi** (Second Circuit) has opposed the Kyoto Accord and wants to constrain the ability of the EPA to enforce the Clean Air Act.

**Eric Murphy** (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** (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.

**Howard Nielson** (District of Utah) represented Republicans in Congress in opposing EPA regulations in *Air Regulatory Group v. EPA*, 134 S.Ct. 2427 (2014).

**Andrew Oldham** (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** (Second Circuit) challenged the Clean Water Rule, which expanded protection for two million miles of streams and 20 million acres of wetlands.

**David Porter** (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** (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.”

**Lee Rudofsky** (Eastern District of Arkansas) publicly supported Scott Pruitt as “the right person at the right time to lead the EPA.” He also led the state of Arkansas in challenging the Clean Power Plan (CPP) and criticized its efforts to reduce carbon dioxide emissions. Rudofsky supported the Trump Administration’s delay in implementing the Chemical Disaster Rule, arguing that the required safety measures would put financial burdens on corporate polluters. He also defended big oil corporations’ interests in challenging the Obama-era “stream protection rule,” and provided arguments against efforts to make coal mining more environmentally sound. He represented Arkansas in opposing the National Ambient Air Quality Standard for Ozone, as well as emissions standards for toxic air pollutants from power plants under the Clean Air Act. Additionally, during his time in private practice, Rudofsky was a member of the legal team representing British Petroleum (BP) following the Deepwater Horizon catastrophe, and as solicitor general of Arkansas, Rudofsky’s office opposed the Endangered Species Act’s (“ESA”) critical habitat designation.

**Damien Schiff** (Nominated to Court of Federal Claims; Withdrawn) 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** (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.

**Brantley Starr** (Northern District of Texas) represented Texas in bringing an injunction to block the implementation of the Clean Water Rule.

**Brett Talley** (Nominated to Middle District of Alabama; Withdrawn) 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.”

**Lawrence VanDyke** (Ninth Circuit) filed an amicus brief challenging the Clean Power Plan. As Solicitor General of Nevada, he fought environmental protections aimed at curtailing pollution from mining into streams and waterways. He joined a lawsuit that sought to invalidate the Obama Administration’s expansion of the Clean Water Act. He also joined with three mining companies to oppose land use restrictions issued by the Department

of the Interior. As Deputy Assistant Attorney General for the Environmental and Natural Resources Division of the Department of Justice, VanDyke has defended the Trump administration against several lawsuits brought as a result of the administration's efforts to tear down environmental regulations.

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

**Justin Walker** (Western District of Kentucky) called for reinvigorating the non-delegation doctrine, a position that would deprive Congress of the authority to empower agencies, including the EPA, to effectively implement and enforce statutes.

**Patrick Wyrick** (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 & Civil Liberties

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

**Amy Coney Barrett** (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.

**Joseph Bianco** (Second Circuit) defended the Patriot Act and raised concerns about trying terror suspects in Article III courts. As a district court judge he ruled that it was permissible for police to stop and detain someone after following him one mile from the home they had a warrant to search, a decision later reversed by the Supreme Court.

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

**John Bush** (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** (Ninth Circuit) was actively involved in drafting portions of, implementing, and defending the Patriot Act while serving as associate deputy attorney general under George W. Bush. Collins supported the controversial "bulk collection" and "sneak and peek" provisions, which are criticized for eroding privacy rights. He also supported the Bush administration in [\*Hamdan v. Rumsfeld\*](#), and opposed extending protections outlined by the Geneva Conventions to combatants whose affiliated groups did not sign on to international human rights treaties.

**Neil Gorsuch** (Supreme Court) upheld President Trump's discriminatory Muslim Ban.

**James Ho** (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** (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** (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 *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** (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** (District Court for D.C.) had troubling statements and positions regarding inhumane treatment of inmates.

**Steven Menashi** (Second Circuit) favorably repeated the Islamophobic myth that General Pershing executed Muslim prisoners with bullets dipped in pig’s fat. He also praised Chilean dictator Augusto Pinochet, writing that he had “noble aims” and dismissed criticism that Pinochet utilized “excessive violence.” He criticized opponents of the 2003 war in Iraq as “pro-Saddam activists” who were “totally unprincipled,” “thoroughly contemptible,” and were protesting “on behalf of despotism.” He defended the treatment of detainees at Guantanamo Bay, stating that they were “reportedly well fed and clothed.”

**Eric Miller** (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** (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** (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** (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** (Seventh Circuit) was reportedly deeply involved in structuring the post-9/11 prosecution of alleged terrorists by military commissions under George W. Bush.

**Justin Walker** (Western District of Kentucky), after President Trump fired James Comey for investigating Trump campaign ties to Russia, argued that the FBI should not be independent of the president.

# Appendix N: Church and State

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

**Allison Eid** (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** (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** (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.

**Steven Grasz** (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.

**Steven Menashi** (Second Circuit) called the president of People for the American Way “hysterical” because of his opposition to state funding of religious schools.

**Allison Rushing** (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.

**Lawrence VanDyke** (Ninth Circuit) argued it was constitutional to teach creationism in public schools.

**Don Willett** (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: Freedom of the Press

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

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

**Ryan Nelson** (Ninth Circuit) represented Melaleuca's CEO, Frank VanderSloot, in a defamation suit against *Mother Jones*.

# Appendix P: Gun Safety

## Trump judges and nominees who have fought gun safety measures

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

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

**Howard Nielson** (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** (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** (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** (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.”

**Brantley Starr** (Northern District of Texas) defended Texas’s expansive concealed carry law. He also defended Texas’s lawsuit against a county for posting signs that banned firearms in its multipurpose courthouse.

**Brett Talley** (Nominated to Middle District of Alabama; Withdrawn) wrote that “2012 was a bad year for those who value the time-honored right to bear arms. Between the fatal shootings in Aurora, [sic] CO and Newtown, CN [sic]—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.

**Lawrence VanDyke** (Ninth Circuit) opposed age limits for firearms and joined a case of questionable legal worth to side with the NRA. He also defended a law that took the position that the federal government could not regulate guns that were manufactured and sold in Montana despite admitting that he had “trouble coming up with any plausible (much less good) arguments of how to get around [existing Supreme Court precedent].”

**Cory Wilson** (Nominated to Southern District of Mississippi), as a Mississippi legislator, supported authorizing concealed carry on any public property. He also voted to authorize individuals to carry firearms in churches and places of worship.

**Allen Winsor** (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** (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

**Campbell Barker** (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** (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** (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** (Eleventh Circuit) worked on amicus briefs opposing DACA and DAPA.

**Brett Kavanaugh** (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.

**Steven Menashi** (Second Circuit), working in the Trump White House, was a member of the Stephen Miller-led Immigration Strategic Working Group and worked to advance President Trump's immigration policy.

**Eric Murphy** (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** (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** (Fifth Circuit) was the architect of Texas's legal strategy to halt DACA and DAPA.

**Halil Ozerden** (Nominated to Fifth Circuit), as a district court judge, ruled against eight immigrant women who were sexually assaulted while detained in United States Immigration and Customs Enforcement (ICE) custody.

**Michael Park** (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** (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.

**Lee Rudofsky** (Eastern District of Arkansas) was part of the Attorney General of Arkansas's team that signed on to briefs opposing protections for immigrants, including in [U.S. v. Texas](#), which involved the expansion of the DACA program and the Deferred Action for Parental Accountability (DAPA) program. He also signed an amicus brief in [County of Santa Clara v. Trump](#), supporting Trump's attacks on immigrants by specifically preventing local governments from protecting immigrant communities.

**Brantley Starr** (Northern District of Texas) defended President Trump's Muslim Ban, claiming it "was a facially neutral order" that "did not discriminate." He also fought to eliminate protections for Dreamers, arguing in [Texas v. United States](#) that DACA was unconstitutional. Starr defended a law that would have "allow[ed] local law enforcement to ask legally detained people about their immigration status and punish law enforcement officials if they don't cooperate with federal requests to hold undocumented immigrants they detain—whether or not they actually committed a crime." And he strongly supported criminalizing undocumented immigration under state laws.

**Michael Truncale** (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."

**Lawrence VanDyke** (Ninth Circuit) opposed the expansion of Deferred Action for Childhood Arrivals (DACA). He also supported President Trump's efforts to withhold federal funding from jurisdictions that limit cooperation with federal

immigration detainer requests (so called “sanctuary cities”).

**Wendy Vitter** (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** (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** (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; Withdrawn) 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** (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.

**Steven Grasz** (Eighth Circuit), while Chief Deputy Attorney General, [challenged](#) the constitutionality of the Nebraska legislature's campaign finance reforms.

**James Ho** (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.

**Steven Menashi** (Second Circuit) opposes any contribution limits. He wrote, "When the Congress decided to restrict such freedom by limiting political contributions, it led politicians to resort to actual criminality."

**Mark Norris** (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.

**Lee Rudofsky** (Eastern District of Arkansas) claimed that “I think \$5 billion is a pretty reasonable amount of money to spend in a conversation with the American public about who should be the leader of the free world,” and called corporate campaign spending “signs of a functioning democratic republic” and “the physical embodiment of the First Amendment.”

**Brantley Starr** (Northern District of Texas) sided with a Texas Tea Party group in their efforts to overturn campaign finance rules.

**Amul Thapar** (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: Reproductive Rights

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

**Campbell Barker** (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 Affordable Care Act contraception mandate.

**Amy Coney Barrett** (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. In [\*Planned Parenthood v. Box\*](#), Amy Coney Barrett (Seventh Circuit) joined a dissent that tried to reconsider a previous ruling affirming a preliminary injunction against an Indiana law that would require minors to obtain parental consent before getting an abortion, in violation of clear Supreme Court precedent.

**Andrew Brasher** (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 Affordable Care Act, and, in his personal capacity, even questioned the validity of *Planned Parenthood v. Casey*.

**Jeffrey Brown** (Southern District of Texas) bragged about his involvement in making it more difficult for minors to seek abortion care in Texas, referred to IUDs and emergency contraceptives as “potentially life-terminating drugs

and devices” and “abortifacients,” and was endorsed by major anti-choice organizations in Texas.

**Liles Burke** (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** (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** (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** (Ninth Circuit) fought to make it harder for women to obtain contraceptives and other basic healthcare. He filed amicus briefs in several cases to support religious nonprofits’ challenges to the Affordable Care Act’s contraceptive mandate, to argue that “provid[ing] seamless coverage of contraceptive services for women” and “provid[ing] cost-free contraceptive coverage” are not “compelling governmental interests,” and to strike down a Baltimore City ordinance that required pregnancy clinics that do not offer or provide referrals for abortion care to post disclosure signs in their waiting areas.

**Kyle Duncan** (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** (Tenth 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** (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** (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.

**Steven Grasz** (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** (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** (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** (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** (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 [Carza 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** (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; Withdrawn) 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.

**Steven Menashi** (Second Circuit) authored an amicus brief, pro bono, opposing the Affordable Care Act’s contraceptive mandate. He wrote an article praising the “consensus that opposes the radical abortion rights advocated by campus feminists and codified in *Roe v. Wade*.”

**Eric Miller** (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** (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** (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** (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. Also, as a state legislator he voted for a [resolution](#) urging Congress to overturn the Affordable Care Act’s contraceptive-coverage policy. The resolution referred to the Obama Administration as “reminiscent of totalitarian and authoritarian regimes” and called the policy a “direct assault on people of faith and the very Constitution itself.”

**Andrew Oldham** (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** (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).

**Peter Phipps** (Third Circuit) was the lead attorney for the DOJ in *ACLU v. Azar*. Phipps defended a Health and Human Services policy to provide grants to institutions that had "religious objection[s] to providing access to abortion or contraception."

**Sarah Pitlyk** (Eastern District of Missouri) has devoted nearly her entire career to fighting women's reproductive freedom. She has criticized "gross defects in the Supreme Court's thoroughly activist abortion jurisprudence," supported Trump's Title IX gag rule, and defended Iowa's unconstitutional "Heartbeat Bill," which would have banned abortion once a fetal heartbeat is detected, before most women even know they are pregnant. In addition, she has defended David Daleiden, the architect of the deceptively-edited "sting" videos which purport to show Planned Parenthood employees selling fetal parts for money. She even opposed assistive reproductive technologies like in vitro fertilization and surrogacy, going so far as to state that "surrogacy is harmful to mothers and children, so it's a practice society should not be enforcing." Further she has fought for the personhood status of embryos, even suggesting that disposing of unused embryos is akin to murdering children.

**Neomi Rao** (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** (Northern District of Georgia) voiced his strong support for measures banning late-term abortions.

**Chad Readler** (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 supported overturning the Ninth Circuit’s decision upholding regulations against fake women’s health centers in [NIFLA v. Becerra](#), 138 S.Ct. 2361 (2018).

**Lee Rudofsky** (Eastern District of Arkansas) questioned the constitutional basis of the right to choose and defended corporations that wish to deny reproductive health care coverage to employees. He led the effort to strip Medicaid funding from Planned Parenthood in Arkansas, and assisted other states, including Louisiana and Texas, in their attempts to block individuals from accessing vital health care. Rudofsky also supported Arkansas’ efforts to implement a 12-week abortion ban—and, more broadly, has supported targeted restrictions on abortion providers (TRAP laws) that aim to impose unnecessary, burdensome requirements on abortion providers and prevent them from performing crucial and constitutionally affirmed healthcare services.

**Damien Schiff** (Nominated to Court of Federal Claims; Withdrawn) 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.”

**Brantley Starr** (Northern District of Texas) testified in support of a bill to restrict access to reproductive care by imposing harsh and medically unnecessary requirements on abortion care providers. In [Whole Woman’s Health v. Paxton](#), he defended a Texas law criminalizing a vital, safer second-trimester abortion procedure. He also represented Texas in [Franciscan Alliance, Inc. v. Burwell](#), a controversial, multi-state case challenging the Affordable Care Act’s anti-discrimination provision—a challenge that, if successful, would result in severe health consequences for women seeking reproductive care. Additionally, Starr advocated, “based solely on videos made by a radical anti-abortion group with ties to violent extremists,” for the termination of Medicaid agreements with Planned Parenthood. He also misrepresented information about local authorities to support the Texas AG’s office takeover of the criminalization and prosecution of abortion from local officials.

**Brett Talley** (Nominated to Middle District of Alabama; Withdrawn) 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** (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.”

**Lawrence VanDyke** (Ninth Circuit) submitted an amicus brief to the Supreme Court in support of Arizona’s twenty-week abortion ban, arguing that “an unborn child can feel pain by twenty weeks’ gestation.” In his brief, VanDyke asked the justices to reconsider *Roe v. Wade*. He also supported challenging the legality of “buffer zones,” which create a small zone outside of clinics through which patients and providers can enter without facing harassment from protesters. In Montana, he advocated for signing on to an Alabama comment letter that challenged the Affordable Care Act’s contraception mandate

**Wendy Vitter** (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.”

**Justin Walker** (Western District of Kentucky) praised then-Judge Kavanaugh for a dissent arguing that the Obama Administration’s contraceptive-coverage policy, ensuring that employer-based insurance policies made the full range of birth control options available to employees, was unconstitutional.

**Cory Wilson** (Nominated to Southern District of Mississippi) bemoaned that “[f]orty years on, we still live under *Roe v. Wade*, the result of a liberal activist court.” He said that he supports “the complete and immediate reversal of the *Roe v. Wade* and *Doe v. Bolton* decisions.” As a legislator in Mississippi, Wilson voted to defund Planned Parenthood, for a 15-week abortion ban, and a bill to prohibit abortions after a heartbeat can be detected in a fetus. Wilson also supports requiring that any woman considering an abortion must first be provided with information about a fetus’ capacity to feel pain.

**Allen Winsor** (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** (Western District of Oklahoma), as Solicitor General of Oklahoma, fought reproductive rights for women, including supporting laws that limit access to contraception.

# Appendix T:

## 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; Withdrawn) 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** (Seventh Circuit) applauded the Supreme Court’s decision in *United States v. Morrison*, which struck down key parts of the Violence Against Women Act.

**Daniel Collins** (Ninth Circuit) argued in defense of Internet Brands, Inc. against negligence claims after a woman utilizing Internet Brands’ model networking website was lured into a fake audition and sexually assaulted. The corporation allegedly knew about the rapists’ use of the website but did not warn users.

**Kurt Engelhardt** (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; Withdrawn) 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** (Supreme Court), faced credible allegations of sexual

assault made by Dr. Blasey Ford and other women during his Supreme Court confirmation hearing.

**Kenneth Lee** (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.

**Steven Menashi** (Second Circuit) criticized "Take Back the Night" marches, which seek to end violence against women, writing "'Take Back the Night' marches charge the majority of male students with complicity in rape and sexual violence (every man's a potential rapist, they say, it's part of the patriarchal culture)." As Acting General Counsel of the Department of Education he was intimately involved in the 2017 Title IX Question and Answer guidance document that rescinded Title IX guidance on schools' responsibilities for protecting students from sexual harassment and violence; and he worked on the Department's proposed rule on campus sexual assault.

**Sarah Pitlyk** (Eastern District of Missouri) dismissed the credible accusation of sexual assault against Brett Kavanaugh as "direct character assassination" and a "last-ditch effort to block his path to the Supreme Court."

**Neomi Rao** (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."

**Lee Rudofsky** (Eastern District of Arkansas) argued that the Constitution prevents Arkansas from being sued for money damages under Title IX. If that were true, students would no longer be able to sue their school for money damages when the school mishandles their sexual assault claims.

**David Stras** (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.

**Justin Walker** (Western District of Kentucky) continued to defend then-judge Brett Kavanaugh even after multiple women credibly accused him of sexual assault. After Dr. Christine Blasey Ford's testimony, Walker suggested that she was "mistaken" about her own experience of sexual assault.

**Don Willett** (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 Equal Employment Opportunity and Sexual Harassment and Assault*)

**Joseph Bianco** (Second Circuit), as a district court judge, granted motions to dismiss in employment law cases over 84 percent of the time.

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

**Jeffrey Brown** (Southern District of Texas) as a state court judge voted to overturn a jury verdict for a railroad employee who contracted West Nile Virus after the railroad company, which knew about the existence of mosquitoes infected with the virus in the area, failed to adequately warn workers or provide mosquito repellent.

**Daniel Collins** (Ninth Circuit) repeatedly defended the interests of corporations sued under the Alien Tort Statute for alleged human rights violations, including child slavery.

**Allison Eid** (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; Withdrawn) 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** (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.

**Barbara Lagoa** (Eleventh Circuit) as a state court judge sided with businesses challenging Miami Beach’s decision to raise the minimum wage. She also ruled that Uber Drivers are not entitled to unemployment benefits.

**Kenneth Lee** (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** (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** (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** (Fifth Circuit) has argued the entire Department of Labor is unconstitutional.

**Halil Ozerden** (Nominated to Fifth Circuit) as a district court judge frequently prevents workers from fully litigating their cases against corporations. In [\*EEOC v. Rite Way Service\*](#), Ozerden prevented a cleaning employee who had corroborated a colleague's sexual harassment complaint against a supervisor and was subsequently fired from having her Title VII retaliation claim decided by a jury. Ozerden also granted summary judgment to an employer who was being sued by post-Hurricane Katrina emergency restoration workers for not paying overtime pay. He was overturned by the Fifth Circuit in both cases.

**Michael Park** (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** (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.

**Lee Rudofsky** (Eastern District of Arkansas) helped Arkansas sue to stop the Obama Administration's overtime rule, which would have made about four million workers eligible for overtime pay. He also opposed the Persuader Advice Exemption Rule, which would have forced businesses to reveal information to the government about third-party labor relations consultants hired to help the company prevent workers from unionizing.

**Allison Rushing** (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; Withdrawn) believes OSHA is unconstitutional.

**Lawrence VanDyke** (Ninth Circuit) fought the Obama Administration's overtime rule, opposing overtime pay for about 4 million workers.

**Justin Walker** (Western District of Kentucky) represented a mining corporation after it violated the National Labor Relations Act "by refusing to recognize, bargain with, and provide...information" to the United Mine Workers of America International Union. He has also denigrated labor unions more generally, claiming that it is hypocritical to both support labor unions and advocate for "people power" over "special interest power."

**Patrick Wyrick** (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.