



November 8, 2017

**OPPOSE THE CONFIRMATION OF BRETT TALLEY TO THE
U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in strong opposition to the confirmation of Brett Talley to be a U.S. District Judge for the Middle District of Alabama.

Mr. Talley is wholly unqualified for this lifetime position because he lacks the litigation experience needed to be a trial court judge, and he has demonstrated ideologically extreme views that call into question his temperament and ability to approach cases with the fairness and open-mindedness necessary to serve as a federal judge.

Not Qualified: The nonpartisan American Bar Association (ABA) has given Mr. Talley its lowest possible rating: unanimous Not Qualified.¹ That means that all 14 members of the ABA's Standing Committee on the Federal Judiciary rated him unqualified to serve as a federal judge. He is only the fourth judicial nominee since 1989 to receive such a rating, and the other three were not confirmed, although one is currently pending.² Ironically, Mr. Talley currently holds a position at the U.S. Department of Justice in which he supervises the processing of judicial nominees, including overseeing the transmittal of nominees' materials to the ABA for the evaluation process.

Although the ABA has not yet submitted an explanation for Mr. Talley's unanimous Not Qualified rating, his glaring lack of legal experience is likely the primary rationale. Mr. Talley, who is 35 or 36 years old, graduated from law school just 10 years ago and lacks the minimum 12 years of legal experience that the ABA believes is necessary to serve effectively as a judge. The ABA publication states: "The Committee believes that a nominee to the federal bench ordinarily should have at least twelve years' experience in the practice of law."³ The ABA has reviewed every federal judicial nominee since 1953, so its commitment to the 12-year guideline stems from 64 years of experience. Mr. Talley falls two years short of that guideline. In extraordinary circumstances, the ABA has made an

¹<https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Web%20rating%20Chart%20Trump%20115.authcheckdam.pdf>.

²<https://www.americanbar.org/content/dam/aba/uncategorized/GAO/GraszStatement.authcheckdam.pdf>.

³<https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Backgrounder.authcheckdam.pdf>.

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exception to this rule – for example, when a nominee has considerable litigation experience. But Mr. Talley falls far short of the mark here too, acknowledging on his Senate questionnaire that he has never once taken a case to trial.⁴ Remarkably, Mr. Talley has never even argued a motion in federal district court, and he has participated in only one hearing in federal district court during his short legal career.⁵

Moreover, Mr. Talley hasn't even practiced law for a majority of the time since he graduated from law school. Of the 10 years since graduation, he has practiced law for less than three years. He has spent most of his time working either as a judicial law clerk (three years) or as a political appointee (four years) in policy and communications roles. The notion that Mr. Talley is prepared to be a federal trial judge – having practiced law for less than three years and never having had a trial or even argued a motion in court – is a sad commentary on the value that the Trump administration places on maintaining a credible and respected federal judiciary.

It is also highly troubling that Chairman Grassley has enabled the Trump administration's efforts to pack the courts with inexperienced, right-wing ideologues, by rushing to hold stacked hearings for multiple nominees, such as Mr. Talley, before their ABA ratings were even received by the Senate Judiciary Committee. Ranking Member Feinstein⁶ and outside commentators⁷ have repeatedly called on Chairman Grassley to not break the Senate tradition of waiting to schedule nomination hearings until their ABA ratings have been submitted, for good reason – so that the committee can have all the relevant information before it when questioning nominees for lifetime appointments to the judiciary. In Chairman Grassley's haste, he has scheduled nomination hearings this year for four judicial nominees whose ABA ratings were not completed by the date of the hearing: Mr. Talley, Holly Teeter, Timothy Kelly, and Trevor McFadden. There are also now four Trump judicial nominees who have received a Not Qualified rating from the ABA: Mr. Talley, Ms. Teeter, Leonard Grasz, and Charles Goodwin.⁸ And six other nominees have received a partial rating of Not Qualified. Thus, of the 50 Trump judicial nominees who have received a rating as of today, 8 percent were found to be unqualified by all or most members of the ABA evaluation committee, and 20 percent were found to be unqualified by at least some members.

This is astounding. For the good of the federal judiciary, practicing attorneys, and the American people, I urge Chairman Grassley to return to the practice of actually allowing the committee the needed time to examine a nominee's full record, which includes having their ABA ratings in before deciding whether to schedule future hearings. And once the committee has the minimal professional rating, the Judiciary Committee should return to the common sense conclusion that an even partial Not Qualified rating is a clear sign that the nominee deserves additional scrutiny before even a hearing is scheduled. The Senate is assigned an independent role in the judicial confirmation process by the Constitution to be a check on the executive branch. In order to perform that role, the Judiciary Committee must take more seriously the

⁴<https://www.judiciary.senate.gov/imo/media/doc/Talley%20SJO.pdf>.

⁵<https://www.judiciary.senate.gov/imo/media/doc/Talley%20Responses%20to%20QFRs.pdf>.

⁶<https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=553C7480-3238-4C03-9CA0-4D7C94F85AE3>.

⁷<http://thehill.com/blogs/pundits-blog/the-judiciary/330414-trump-lower-court-nominees-need-non-partisan-american-bar>.

⁸<https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Web%20rating%20Chart%20Trump%20115.aucthecheckdam.pdf>.

qualifications and reputation for fairness of every lifetime appointment. Nominees rated Not Qualified after an independent examination of their record and reputation for fairness should not be confirmed.

Extreme Views: Mr. Talley is also unqualified for a federal judgeship because of his extreme ideological viewpoints as demonstrated in highly intemperate writings. A longtime member of the ultraconservative Federalist Society, Mr. Talley has authored numerous tweets, blog posts, and op-eds containing offensive and highly partisan statements. For example:

- In a January 2013 blog post, just weeks after the tragic killing of 26 young children and teachers at an elementary school in Newtown, Connecticut, Mr. Talley wrote: “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.”⁹ Despite these inflammatory statements, Mr. Talley refused to commit to recusing himself, should he be confirmed, in cases that involved gun issues or the NRA.
- In another blog posting, from February 2013, Mr. Talley wrote: “Having the right to bear arms is, in many ways, the ultimate right. It is action in a way that voting or speech is not, and it makes a mockery of the notion that the government has a monopoly on force. It is power, the kind ordinary citizens have not held during 99% of human history.”¹⁰
- In an October 2016 op-ed about the presidential election, Mr. Talley wrote: “If you support activist justices on the Supreme Court, if you support late-term abortion on demand, if you support open borders and amnesty, if you want a continuation of a foreign policy that has helped plunge the Middle East into war-torn chaos, if you want four more years of the past eight years, Hillary Clinton is your candidate.... Hillary Clinton has committed acts that would have resulted in the prosecution of ordinary citizens.”¹¹
- In a November 2016 op-ed, arguing for the appointment of conservative Judge William Pryor to fill the Supreme Court vacancy wrongly denied to Judge Merrick Garland, Mr. Talley wrote: “And if the Democrats do attempt to stop his nomination? Pryor is worth the fight. For too long, Republican presidents have gone for the ‘stealth’ pick, nominations of jurists with little or no judicial track record, who may or may not adhere to a conservative judicial philosophy.”¹²
- In a December 2016 op-ed entitled “Democrats, the party who cried racist,” Mr. Talley savaged the critics of Senator Sessions’ nomination to be Attorney General, writing: “But although some Democrats have seldom faced a defeat they couldn’t attribute to the personal failings of the voters, the 2016 election may be unique to the extent in which the left weaponized charges of racism.... Sessions’ opponents immediately raised the specter of racism to oppose him, and the

⁹<https://happywarriordotme.wordpress.com/2013/01/26/a-call-to-arms-its-time-to-join-the-national-rifle-association/>.

¹⁰<https://happywarriordotme.wordpress.com/2013/02/05/gun-control-and-japanese-internment/>.

¹¹<http://www.cnn.com/2016/10/20/opinions/clinton-trump-third-debate-roundup/index.html>.

¹²<http://www.cnn.com/2016/11/14/opinions/who-trump-should-appoint-supreme-court-talley/index.html>.



press played along.... Sessions' detractors have presented not a shred of evidence from the past three decades that Sessions is a racist.”¹³

- In another December 2016 op-ed, Mr. Talley defended the announced nomination of anti-environment Scott Pruitt to lead the Environmental Protection Agency. Mr. Talley wrote: “During the Obama administration, the EPA became a lawless organ of federal power, divorced from the Congressional statutes that were meant to constrain it.... Pruitt’s opponents have resorted to character assassination, pulling out one of the biggest guns in their arsenal. Pruitt, they claim, is a climate change denier, which in environmentalist circles is akin to being branded a witch or a high heretic. In the old days, Pruitt would be in danger of being burned at the stake — were it not for the carbon emissions.... Given the weak case against him, it is imperative that Republicans in the Senate rally to Pruitt’s cause. They cannot allow his nomination to be scuttled because of his adherence to the rule of law and his assertion that free people in a free country should be able to challenge climate change dogma without fear of prosecution.”¹⁴
- Mr. Talley failed to disclose to the Senate Judiciary Committee any of his tweets, despite the fact that each of them clearly constitutes “material published only on the Internet” and is therefore responsive to question 12(a) of the Senate questionnaire. Several of his tweets from 2016 have been uncovered by other sources. Here is a sampling:
 - “Hillary Rotten Clinton might be the best Trumpism yet.”¹⁵
 - “The press cares when you lie to the American people. Unless you are @HillaryClinton #LochteGate”¹⁶
 - “Exactly. And that’s why she isn’t in jail.” [after retweeting a person who wrote: “I often feel like there’s the Hillary standard and then there’s the standard for everybody else”]¹⁷
 - He retweeted a person who wrote: “Must say: fact that Bernie fans at DNC now chanting the same ‘LOCK HER UP!!’ refrain from RNC represents single greatest Trump-troll ever.”¹⁸

These offensive and extremely partisan comments are the opposite of the kind of temperament we need in an independent jurist. And in light of the tragic mass shooting in a Texas church last Sunday, the consideration this week of Mr. Talley – in light of his diatribes against the majority of Americans who favor common sense gun safety – is particularly stunning.

For the foregoing reasons, The Leadership Conference urges you to reject the nomination of Brett Talley to be a U.S. District Judge for the Middle District of Alabama. Thank you for your consideration of our

¹³<http://www.cnn.com/2016/12/01/opinions/democrats-the-party-who-cried-racist-talley/index.html>.

¹⁴<http://www.cnn.com/2016/12/15/opinions/epa-went-rogue-trump-pruitt-opinion-talley/index.html>.

¹⁵<https://www.judiciary.senate.gov/imo/media/doc/Talley%20Responses%20to%20QFRs.pdf>.

¹⁶Id.

¹⁷<http://www.rightwingwatch.org/post/trump-judicial-nominee-said-hillary-clinton-should-be-jailed/>.

¹⁸<https://www.judiciary.senate.gov/imo/media/doc/Talley%20Responses%20to%20QFRs.pdf>.

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views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel and Legal Director, at (202) 466-3311.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta".

Vanita Gupta
President & CEO