



October 16, 2018

## OPPOSE THE CONFIRMATION OF ALLISON RUSHING TO THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

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 opposition to the confirmation of Allison Rushing to the U.S. Court of Appeals for the Fourth Circuit.

Ms. Rushing is a young, ideological extremist who has never practiced law in North Carolina. Moreover, the Senate Republicans have scheduled Ms. Rushing's hearing during recess over the objections of the minority party and before the American Bar Association ("ABA") has had a chance to finish its evaluation of her. Both of these factors will seriously compromise the ability of senators to properly vet her suitability for the Fourth Circuit. The Senate must oppose this controversial and unqualified nominee.

**Ideological Extremist:** Ms. Rushing, just 35 or 36 years old, was selected for this judicial vacancy in an effort by the Trump administration and Senate Republicans to install an extreme, far-right judge on the Fourth Circuit. Ms. Rushing has served as a judicial law clerk to three of the most conservative jurists in U.S. history: Justice Clarence Thomas, Justice Neil Gorsuch, and D.C. Circuit Judge David Sentelle. Ms. Rushing is a member of the Federalist Society. This out-of-the-mainstream legal organization represents a sliver of America's legal profession – just four percent – yet more than 80 percent of President Trump's circuit court nominees, and many of his district court nominees, have been Federalist Society members.

Ms. Rushing has worked at the Alliance Defending Freedom ("ADF"), an extremist organization that has been officially listed as a *hate group* by the Southern Poverty Law Center.<sup>1</sup> The ADF "is a legal advocacy and training group that 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."<sup>2</sup> Although Ms. Rushing worked there only for a summer during law school, it is deeply disturbing that she chose to work there at all.

**Hostility to Civil Rights:** Ms. Rushing embraced the ADF agenda in a 2013 speech she gave in which she defended the Defense of Marriage Act, a law passed by Congress in 1996 that defined marriage as only the union between a man and a woman. Ms. Rushing stated:

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<sup>1</sup> <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.

<sup>2</sup> *Id.*

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Of Reform Judaism  
Lisa Rice  
National Fair Housing Alliance  
Anthony Romero  
American Civil Liberties Union  
Anisa Tootla  
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United States  
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AFL-CIO  
Toni Van Pelt  
National Organization for Women  
Randi Weingarten  
American Federation of Teachers  
Dennis Williams  
International Union, UAW  
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“The reasons for the law were both moral and practical.”<sup>3</sup> She also defended the dissent in *United States v. Windsor*, which struck down DOMA, opining that for the four conservative dissenting Justices, “the fact that DOMA codified the definition of marriage that had prevailed throughout most of human history and, at the time of DOMA’s enactment, had been adopted by every State in the nation and every nation in the world, was evidence that the law did have a valid basis...”<sup>4</sup> Ms. Rushing also made the offensive assertion that in *Windsor* “the majority chose the [sic] write the opinion in a unique way that calls it bigotry to believe that homosexuality does not comport with Judeo-Christian morality.”<sup>5</sup>

Ms. Rushing expressed anti-civil rights views in an amicus brief she filed in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project*, a 2015 case in which the Supreme Court held that disparate impact claims were cognizable under the Fair Housing Act. Such claims are a critical tool for remedying discriminatory lending practices and stopping housing discrimination against domestic and sexual violence victims. But Ms. Rushing, representing insurance companies, argued: “The statutory text unambiguously prohibits only disparate treatment, not conduct resulting in a disparate impact in the absence of discriminatory intent.”<sup>6</sup> The Supreme Court rejected her extreme position.

In another anti-civil rights brief Ms. Rushing filed – in the case *Ernst & Young LLP v. Morris*, which was consolidated with *Epic Systems Corp. v. Lewis* – Ms. Rushing defended the ability of corporations to force workers to sign arbitration clauses that nullify their right to band together and challenge workplace misconduct such as sexual harassment.<sup>7</sup> Although the Supreme Court ruled 5-4 in her favor earlier this year, it is troubling that Ms. Rushing would advance a position that will sweep many discrimination and harassment claims under the rug and allow corporations to hide behind arbitration clauses when they violate employees’ civil rights.

**Lack of ABA Rating and North Carolina Ties:** Ms. Rushing is just 11 years out of law school and she fails to meet the ABA’s 12-year minimum standard for years of experience practicing law. She has actually practiced just eight years, having spent three years working as a judicial law clerk. A leading legal publication, *Above the Law*, has called Ms. Rushing “comically inexperienced.”<sup>8</sup> But the reason for having such minimum standards of legal experience on our federal bench is no laughing matter.

Ms. Rushing has been nominated for a Fourth Circuit vacancy in North Carolina, yet her Senate questionnaire indicates she has never practiced law in North Carolina and is not a member of the North Carolina bar.<sup>9</sup> Ms. Rushing has had eight different legal jobs during and after law school, and none of them were in North Carolina. Her nomination sends a message to the North Carolina legal community, and it may explain why the ABA has not yet completed its rating. As part of its process, the ABA talks to judges and lawyers in the legal community in which the nominee would serve, and it is clear that Ms. Rushing is a cipher in the North Carolina legal community. One would expect the ABA to give Ms. Rushing a rating of Not Qualified based on her insufficient ties to North Carolina and her failure to meet

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<sup>3</sup> Allison Jones, “Henry Forum: ‘Enemies of Mankind’: Religion and Morality in the Supreme Court’s Same-Sex Marriage Jurisprudence,” (Oct. 30, 2013).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> [https://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/BriefsV4/13-1371\\_pet\\_amicus\\_aia.pdf](https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/13-1371_pet_amicus_aia.pdf).

<sup>7</sup> <http://www.scotusblog.com/wp-content/uploads/2017/06/16-300-petitioner-merit-brief.pdf>.

<sup>8</sup> <https://abovethelaw.com/2018/08/trumps-latest-circuit-nominee-graduated-law-school-in-2007/?rf=1>.

<sup>9</sup> <https://www.judiciary.senate.gov/imo/media/doc/Rushing%20SJQ.pdf>.



the 12-year minimum practice bar. Perhaps this is why Chairman Grassley is breaking committee precedent and rushing her hearing forward before this minimum professional rating is completed.

**Senate Republican Abuse of Confirmation Process:** Scheduling Ms. Rushing's hearing for October 17, 2018 over Democratic objections – during a Senate recess when senators are out of town – is just the latest example of Chairman Grassley bulldozing over the minority in order to remake the federal courts in Trump's image. Republicans have systematically reduced the important role that senators play in independently vetting lifetime appointments and are harming the federal judiciary in their haste to pack the courts with ideological extremists.

The scheduling of tomorrow's hearing appears to be unprecedented. As the 10 Senate Judiciary Committee Democrats explained in an October 15, 2018 letter to Chairman Grassley:

The Committee has never before held nominations hearings while the Senate is in recess before an election. The handful of nominations hearings that have been held during a recess have been with the minority's consent, which is not the case here – in fact, we were not even consulted.... We 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.<sup>10</sup>

Senate Republicans continue to abuse their power – from unilaterally changing the 60-vote threshold for Supreme Court nominees to confirm Neil Gorsuch and Brett Kavanaugh; to the sham process in which they failed to hold Justice Kavanaugh accountable for his blatant misrepresentations to the Senate, multiple sexual assault allegations, and record as a White House political operative; to overturning the century-old tradition of deference to home-state senators; to stacking hearings with multiple circuit court nominees and those without ABA ratings. Republican efforts to pack the courts with Trump extremists demonstrate a dangerous lack of respect for the independence of the federal judiciary.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Allison Rushing to the U.S. Court of Appeals for the Fourth Circuit. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel, at (202) 466-3311.

Sincerely,

Vanita Gupta  
President & CEO

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<sup>10</sup> [https://www.feinstein.senate.gov/public/\\_cache/files/0/4/0403a9bc-a914-484f-a82d-c4cc2e3fe86e/051C1FA0FF33D91CF3412B4DE0752785.2018.10.15-sjc-dems-to-grassley-re-nominations-hearings-during-recess.pdf](https://www.feinstein.senate.gov/public/_cache/files/0/4/0403a9bc-a914-484f-a82d-c4cc2e3fe86e/051C1FA0FF33D91CF3412B4DE0752785.2018.10.15-sjc-dems-to-grassley-re-nominations-hearings-during-recess.pdf).