



June 13, 2018

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## OPPOSE THE CONFIRMATION OF ALLEN WINSOR TO THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

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 Allen Winsor for the U.S. District Court in the Northern District of Florida.

Mr. Winsor is a young, conservative ideologue who has attempted to restrict voting rights, LGBT equality, reproductive freedom, environmental protection, criminal defendants' rights, and gun safety. He does not possess the neutrality and fair-mindedness necessary to serve in a lifetime position as a federal judge.

**Worked to Restrict Voting Rights:** Mr. Winsor has worked on a number of cases in which he sought to make it more difficult for people to vote, particularly people of color. In *Florida NAACP v. Browning*, he defended a Florida law, commonly referred to as the “no match, no vote” law, requiring that the driver’s license or Social Security number on a voter registration application be verified before a voter can be registered. The law had a disparate impact on people of color, particularly the Haitian-American and Latino communities, where compound names are commonly used and can be difficult to match. According to the Brennan Center for Justice, which represented the Florida NAACP in this case, “the practice unduly delayed or denied the registration of more than 76,000 Florida citizens, including more than 11,000 citizens kept from the rolls in 2008, with a substantial differential impact on minority citizens.”<sup>1</sup> As a result of the legal challenge, the law was amended by the state legislature to reduce the number of eligible citizens blocked from exercising their right to vote.

In *League of Women Voters of Florida v. Cobb*, Mr. Winsor defended a draconian Florida law that imposed substantial fines on organizations that engaged in voter registration drives but did not “promptly” submit the registration applications. The law was challenged by the League of Women Voters of Florida, People Acting for Community Together (a non-profit group serving primarily low-income communities of color and immigrants), the AFL-CIO, AFSCME, and SEIU because, as a federal district judge noted, “the Law’s fines could severely drain the finances of each of the nonprofit Plaintiffs and decimate their voter registration budgets,”<sup>2</sup> and several of the plaintiffs imposed a moratorium on their voter registration activities because they could not afford to pay the potential fines. The court rejected Mr. Winsor’s arguments and enjoined the law as a violation of the First and Fourteenth Amendments.

<sup>1</sup><https://www.brennancenter.org/legal-work/florida-naACP-v-browning>.

<sup>2</sup>447 F.Supp.2d 1314, 1324 (S.D. Fla. 2006).

In *Diaz v. Cobb*, Mr. Winsor defended a Florida law – challenged as unconstitutional by the AFL-CIO and SEIU – that requires people to register to vote at least 29 days prior to an election. The law doesn't permit any changes to voter registration applications to correct errors or omissions after the 29-day deadline. A district judge upheld the constitutionality of the law,<sup>3</sup> which has prevented many Floridians from casting votes.

In sum, Mr. Winsor has defended multiple Florida laws which were designed to obstruct countless eligible voters from participating in our electoral system. Judges must respect the fundamental importance of the right to vote. Mr. Winsor's record shows he does not.

**Attacked LGBT Equality:** Mr. Winsor defended Florida's prohibition on same-sex marriage in many cases. In *Brenner v. Scott*, for example, he signed a brief arguing there was "a clear and essential connection between [heterosexual] marriage and responsible procreation and childrearing,"<sup>4</sup> and that heterosexual marriage is more likely to result in "stable and enduring family units" than same-sex marriage.<sup>5</sup> The brief also asserted that "disrupting Florida's existing marriage laws would impose significant public harm,"<sup>6</sup> an assertion that received significant criticism.<sup>7</sup> Mr. Winsor's arguments were rejected by U.S. District Judge Robert Hinkle, who called them "an obvious pretext for discrimination" and held that Florida's ban on same-sex marriage was unconstitutional.<sup>8</sup> Ironically, Mr. Winsor has been nominated to replace Judge Hinkle.

**Undermined Women's Access to Health Care:** Mr. Winsor has sought to limit women's access to reproductive health care. In *Florida v. Gainesville Woman Care*, he defended a Florida law imposing a mandatory 24-hour waiting period before a woman could access abortion care. He filed a brief arguing that the waiting period was justified so that "a woman has an opportunity to consider her decision in private, away from the potentially coercive environment of a clinic."<sup>9</sup> When pressed by Ranking Member Feinstein in a written question to identify the evidentiary basis for this assertion, Mr. Winsor conceded "there was not an evidentiary record developed on that assertion at that stage of the litigation."<sup>10</sup> The Florida Supreme Court later declared the law unconstitutional, finding that "through the Mandatory Delay Law, the State impermissibly interferes with women's fundamental right of privacy,"<sup>11</sup> and noting that "[n]o other medical procedure, even those with greater health consequences, requires a twenty-four hour waiting period in the informed consent process."<sup>12</sup>

In 2013, in the case *Beckwith Electric v. Sebelius*, Mr. Winsor filed an amicus brief and argued that corporations are "persons" with religious rights and should not have to abide by a federal requirement that they provide contraception coverage to their female employees. NARAL Pro-Choice America has called

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<sup>3</sup>541 F.Supp.2d 1319 (S.D. Fla. 2008).

<sup>4</sup><https://www.scribd.com/document/227265964/4-14-cv-00107-50>.

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

<sup>6</sup>*Id.*

<sup>7</sup><http://www.tampabay.com/news/politics/stateroundup/florida-response-to-lawsuit-gay-marriage-will-cause-harm/2182184>.

<sup>8</sup>*Brenner v. Scott*, 999 F. Supp. 2d 1278, 1281 (N.D. Fla. 2014), order clarified, No. 4:14CV107-RH/CAS, 2015 WL 44260 (N.D. Fla. 2015).

<sup>9</sup>[https://www.aclu.org/sites/default/files/field\\_document/08.14.15\\_appellants\\_initial\\_brief\\_on\\_merits.pdf](https://www.aclu.org/sites/default/files/field_document/08.14.15_appellants_initial_brief_on_merits.pdf).

<sup>10</sup><https://www.judiciary.senate.gov/imo/media/doc/Winsor%20Responses%20to%20QFRs.pdf>.

<sup>11</sup>*Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1247 (Fla. 2017).

<sup>12</sup>*Id.* at 1261.

this requirement “the greatest advancement in reproductive healthcare in a generation.”<sup>13</sup> Mr. Winsor fought that advancement, and his brief articulated a sweeping license to discriminate in the name of religion, arguing: “The HHS Mandate, however, forces religious owners of closely-held corporations to choose between abandoning their faith or paying hefty-and potentially ruinous-fines. Owning a business should not require abandoning one’s values.”<sup>14</sup>

**Defended Flawed Death Penalty Procedures:** Mr. Winsor has defended flawed capital punishment procedures before the Supreme Court. In *Hurst v. Florida*, which Mr. Winsor personally argued before the Supreme Court in 2015, he defended Florida’s law in which a judge, rather than a jury, had the authority to make the critical findings necessary to impose the death penalty on a criminal defendant. The Supreme Court rejected his argument in an 8-1 decision, holding: “The Sixth Amendment protects a defendant’s right to an impartial jury. This right required Florida to base Timothy Hurst’s death sentence on a jury’s verdict, not a judge’s factfinding. Florida’s sentencing scheme, which required the judge alone to find the existence of an aggravating circumstance, is therefore unconstitutional.”<sup>15</sup>

Mr. Winsor also conducted the Supreme Court oral argument in *Hall v. Florida*, where he was again unsuccessful in defending a flawed Florida death penalty practice. Florida law defined “intellectual disability” to require an IQ of 70 or below, and if a criminal defendant tested higher than 70, all further consideration of intellectual disability was foreclosed and, as a result, the defendant was not eligible to assert that the death penalty would constitute an Eighth Amendment violation. In a 5-4 ruling, the Court struck down this Florida law as unconstitutional. Justice Kennedy wrote for the Court and explained: “The flaws in Florida’s law are the result of the inherent error in IQ tests themselves. An IQ score is an approximation, not a final and infallible assessment of intellectual functioning.... Intellectual disability is a condition, not a number.”<sup>16</sup>

In addition, Mr. Winsor defended Oklahoma’s flawed and controversial lethal injection death penalty procedure, which received national headlines after the botched execution of Clayton Lockett in 2014. Mr. Lockett died of a heart attack after 40 minutes of extraordinary pain and suffering. The procedure was challenged in court and ultimately upheld 5-4 by the Supreme Court in the 2015 case *Glossip v. Gross*. Mr. Winsor filed an amicus brief in this case arguing that “midazolam will produce a level of unconsciousness sufficient to yield a humane and constitutional execution” and “[t]he procedures for carrying out the capital sentences in states like Oklahoma and Florida provide protections well beyond what the Eighth Amendment requires.”<sup>17</sup>

**Challenged Environmental Protections:** The Clean Power Plan (“CPP”) was an important Obama administration Environmental Protection Agency (“EPA”) initiative to help curb power plant carbon pollution that drives dangerous climate change. Mr. Winsor sought to stop the CPP. In the case *West Virginia v. EPA*, he co-signed a brief in 2016 asking the Supreme Court to stay the CPP and calling it “contrary to the public interest” and “an unprecedented power grab by EPA that seeks to reorder the

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<sup>13</sup><https://www.prochoiceamerica.org/2017/05/31/naral-trump-set-roll-back-greatest-advancement-reproductive-healthcare-generation/>.

<sup>14</sup>[https://www.afj.org/wp-content/uploads/2018/05/BECKWITH-ELEC.-CO.-v.-SEBELIUS\\_-2013-U.S.-11th-Cir.-Briefs-LEXIS-478.pdf](https://www.afj.org/wp-content/uploads/2018/05/BECKWITH-ELEC.-CO.-v.-SEBELIUS_-2013-U.S.-11th-Cir.-Briefs-LEXIS-478.pdf).

<sup>15</sup>*Hurst v. Florida*, 136 S. Ct. 616, 624 (2016).

<sup>16</sup>*Hall v. Florida*, 134 S. Ct. 1986, 2000-2001 (2014).

<sup>17</sup>[https://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/BriefsV5/14-7955\\_amicus\\_resp\\_Florida.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV5/14-7955_amicus_resp_Florida.authcheckdam.pdf).



Nation's energy grid.”<sup>18</sup> This CPP litigation is on hold in light of the Trump administration's decision in October 2017 to issue a notice proposing to repeal the CPP.

**Opposed Gun Safety:** Mr. Winsor defended a National Rifle Association-backed law, referred to as the “docs vs. glocks” law, that prohibited Florida doctors from asking their patients if they owned firearms. The law was struck down by the U.S. Court of Appeals for the Eleventh Circuit, which concluded the law constituted a First Amendment violation, stating: “Florida may generally believe that doctors and medical professionals should not ask about, nor express views hostile to, firearm ownership, but it ‘may not burden the speech of others in order to tilt public debate in a preferred direction.’”<sup>19</sup> Mr. Winsor's defense of this unconstitutional and irresponsible law is particularly resonant in the wake of the tragic high school shooting earlier this year in Parkland, Florida, where 17 people were killed.

**Ideological and Partisan Affiliations:** Mr. Winsor has been a member of the Federalist Society since 2005. This out-of-the-mainstream legal organization represents a sliver of America's legal profession – just four percent – yet over 80 percent of President Trump's circuit court nominees, and a significant number of his district court nominees, have been Federalist Society members. Mr. Winsor was also a member of the right-wing Republican National Lawyers Association (“RNLA”) from 2008 to 2010. During this time period, the RNLA opposed the Sotomayor and Kagan nominations to the Supreme Court, supported voter suppression efforts such as voter ID laws, and waged an ideological attack on the Justice Department's Civil Rights Division.<sup>20</sup>

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Allen Winsor for the U.S. District Court in the Northern District of Florida. 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 and Legal Director, at (202) 466-3311.

Sincerely,

Vanita Gupta  
President & CEO

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<sup>18</sup>[https://ago.wv.gov/publicresources/epa/Documents/Final%20States%20SCOTUS%20Stay%20App%20-%20ACTUAL%20\(M0116774xCECC6\).pdf](https://ago.wv.gov/publicresources/epa/Documents/Final%20States%20SCOTUS%20Stay%20App%20-%20ACTUAL%20(M0116774xCECC6).pdf).

<sup>19</sup>*Wollschlaeger v. Florida*, 848 F.3d 1293, 1313-1314 (11th Cir. 2017) (internal citation omitted).

<sup>20</sup><http://www.rnla.org/Documents/Jud.Comm.Ltr.pdf>; [http://www.rnla.org/Documents/Kagan\\_RNLA\\_Ltr.pdf](http://www.rnla.org/Documents/Kagan_RNLA_Ltr.pdf); <http://www.rnla.org/news/mediaarchive.asp>; <https://www.rnla.org/Newsletter/ViewArticle.asp?ArticleID=391>.