



November 14, 2018

OPPOSE THE CONFIRMATION OF CHAD READLER TO THE U.S. COURT OF APPEALS FOR THE SIXTH 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 strong opposition to the confirmation of Chad Readler to the U.S. Court of Appeals for the Sixth Circuit.

Mr. Readler is an ideological extremist who has sought to severely restrict civil and human rights in America, most recently as a high-ranking official in the Sessions Justice Department. In leading the Justice Department's Civil Division, Mr. Readler was at the forefront of defending the most alarming and controversial policies of the Trump administration. He is strongly opposed by Senator Sherrod Brown, one of his home-state senators, which would have historically stopped his nomination from moving forward. The Senate must reject this nomination.

Sought to Weaken Health Care Protections: In June 2018, in the case *Texas v. United States*, Mr. Readler filed a brief refusing to defend the Affordable Care Act and its vital protections for people with pre-existing conditions, arguing that such protections were unconstitutional.¹ The Department of Health and Human Services estimates that as many as 129 million Americans under age 65 have pre-existing conditions.² In filing this brief, Mr. Readler abandoned the Justice Department's bipartisan and traditional duty to defend duly enacted federal laws in court, prompting three career attorneys to withdraw from the case and one to resign from the Justice Department altogether.³ Republican Senator Lamar Alexander said: "The Justice Department argument in the Texas case is as far-fetched as any I've ever heard. . . . Congress specifically repealed the individual mandate penalty, but I didn't hear a single senator say that they also thought they were repealing protections for people with pre-existing conditions."⁴ Yet that is what Mr. Readler is arguing in this ongoing litigation.

¹ <https://www.afj.org/wp-content/uploads/2018/06/Texas-v-USA-CA.pdf>.

² <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/preexisting.html>.

³ <https://www.politico.com/story/2018/06/12/obamacare-justice-department-resign-642992>.

⁴ <https://thehill.com/policy/healthcare/391975-gop-senator-doj-obamacare-argument-as-far-fetched-as-any-ive-ever-heard>.

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Advocated for Harmful Citizenship Question on 2020 Census: In multiple court cases this year, Mr. Readler has defended the Trump administration's disturbing decision to add a citizenship question to the 2020 Census, which would reverse 70 years of consistent census practice; undermine the integrity of the count and damage communities across the country, especially communities of color and immigrants; and violate the Census Bureau's constitutional and statutory duties to conduct a full enumeration of the U.S. population. Mr. Readler has written briefs arguing that adding the citizenship question was necessary to better enforce the Voting Rights Act and was added at the behest of the Justice Department. Both of these assertions are false. Mr. Readler's arguments were undermined by subsequently produced evidence showing that the decision to add the citizenship question was driven by nativist advocates Stephen Bannon and Kris Kobach who do not want to count noncitizens for congressional apportionment purposes.⁵ It was not based on Voting Rights Act enforcement needs or at the request of the Justice Department, as Mr. Readler has maintained in court filings.⁶ It is deeply troubling that Mr. Readler would advance such specious and pretextual claims, and that he would play such an integral part in President Trump's efforts to discriminate against immigrant and minority communities.

Worked to Undermine Voting Rights: Mr. Readler defended President Trump's voter suppression commission that was created in 2017 to investigate the president's bogus claim that millions of people voted illegally in the 2016 presidential election. Mr. Readler filed briefs defending the commission's widely repudiated efforts to collect sensitive and highly personal information including voter names, dates of birth, party affiliation, partial Social Security numbers, criminal history, and voting history.⁷ This massive invasion of privacy was part of the commission's ploy to provide cover for the president's wild and unfounded claims of mass voter fraud and to lay the foundation to purge eligible voters from the rolls. Fortunately, after much public outrage led by bipartisan secretaries of state and advocates, as well as litigation, President Trump disbanded the commission.

Before he defended national efforts to undermine the right to vote, Mr. Readler worked to restrict voting rights in Ohio. In *Northeast Ohio Coalition for the Homeless v. Husted*, Mr. Readler filed an amicus brief for the right-wing, Koch-funded Buckeye Institute in which he defended Ohio laws that (1) required county officials to reject the ballots of absentee and provisional voters whose identification did not perfectly match voting records, (2) reduced the number of post-election days for absentee and provisional voters to cure errors, and (3) limited the ways in which poll workers could help voters.⁸ The district court struck down these discriminatory provisions and the Sixth Circuit partially affirmed that ruling.⁹

Mr. Readler also sought to undermine voting rights in Ohio by defending efforts to reduce early voting opportunities. Following the 2004 election in which many Ohio voters were forced to wait in line for up

⁵ <https://slate.com/news-and-politics/2018/10/ross-bannon-kobach-collaborated-on-census-citizenship-question.html>.

⁶ <https://www.brennancenter.org/sites/default/files/legal-work/New-York-et-al-v-Department-of-Commerce-Memorandum-of-Law-in-Support-of-Motion-to-Dismiss.pdf>.

⁷ <https://epic.org/privacy/litigation/voter/epic-v-commission/EPIC-v-Commission-amended-TRO-PI-Opposition.pdf>.

⁸ <https://www.afj.org/wp-content/uploads/2018/06/Northeast-Ohio-Coalition-for-the-Homeless-v.-Husted-837-F.3d-612.pdf>.

⁹ *Id.*

to 12 hours in order to vote, the state created a five-day “Golden Week” period in which voters could register and vote at the same time. In 2014, the state eliminated Golden Week voting, and a district judge concluded that the law’s elimination had a disproportionate impact on voters of color in violation of the Constitution and Voting Rights Act. But Mr. Readler defended the elimination of Golden Week in court on behalf of the Buckeye Institute, asserting that the decision was fully legal.¹⁰ Although the Sixth Circuit overturned the district court decision, Judge Stranch wrote a dissent and concluded that Ohio’s elimination of Golden Week “imposed a disproportionate burden on African Americans” and “was linked to social and historical conditions of discrimination that diminish the ability of African Americans to participate in the political process.”¹¹

In addition, Mr. Readler defended the Trump campaign in 2016 after it was sued in Ohio for intimidation and threats against voters.¹² Then-candidate Trump and his surrogates had made statements in the runup to the election encouraging Trump supporters to aggressively patrol polling places and engage in racial profiling. A district court issued a temporary restraining order against the Trump campaign to stop Trump supporters from engaging in voter intimidation on Election Day, but a conservative Sixth Circuit panel reversed the order.¹³

Defended Inhumane Anti-Immigration Policies: Mr. Readler has been at the center of defending the most cruel and extreme anti-immigrant policies of the Trump administration. He defended in court the heartless separation of immigrant families at the U.S. border,¹⁴ a policy that tore apart thousands of families and was widely repudiated across the political spectrum. Mr. Readler has also defended the denial of access to basic, humane conditions for detained immigrants in federal facilities.¹⁵

After courts struck down the Trump administration’s family separation policy, Mr. Readler defended President Trump’s executive order to detain immigrant families at the border indefinitely. He filed a brief asking a federal court to modify the 1997 Flores settlement agreement, which permits the federal government to detain immigrant children for no more than 20 days.¹⁶ Mr. Readler’s request was rejected by a federal judge.¹⁷

Mr. Readler has also defended the Trump administration’s positions that both the Deferred Action for Childhood Arrivals (“DACA”) program and Deferred Action for Parents of Americans and Lawful

¹⁰ <https://www.buckeyeinstitute.org/library/doclib/Brief-of-The-Buckeye-Institute-and-the-Judicial-Education-Project-as-Amici-Curiae.pdf>.

¹¹ <https://www.judicialwatch.org/wp-content/uploads/2016/08/Ohio-Democratic-Party-v.-Husted-opinion-3561.pdf>.

¹² <https://www.afj.org/wp-content/uploads/2018/06/Ohio-Democratic-Party-v.-Ohio-Republican-Party-2016-U.S.-Dist.-LEXIS-153350.pdf>.

¹³ <https://www.cnn.com/2016/11/04/politics/trump-clinton-voter-intimidation/index.html>.

¹⁴ <https://www.afj.org/wp-content/uploads/2018/06/MS-L-v-US-ICA.pdf>.

¹⁵ <https://www.clearinghouse.net/chDocs/public/IM-AZ-0021-0028.pdf>.

¹⁶ <https://assets.documentcloud.org/documents/4549953/Flores-Notice-of-Motion-and-Motion-Re-Settlement.pdf>.

¹⁷ <https://www.cnn.com/2018/07/09/politics/federal-judge-trump-administration-detaining-children/index.html>.

Permanent Residents (“DAPA”) program are unlawful.¹⁸ Ending DACA could result in the deportation of 700,000 Dreamers, who were brought to the United States as children. Litigation is ongoing.

Additionally, Mr. Readler has defended the Trump administration’s executive order to cut federal funding for local governments that Trump labeled as “sanctuary cities.”¹⁹ Multiple federal judges have blocked implementation of the executive order, concluding that it directed federal agencies to withhold funds that had been lawfully appropriated by Congress.

Finally, Mr. Readler defended the Trump administration’s discriminatory ban on immigrants from Muslim-majority countries. In a brief filed with the Supreme Court, he argued that the Fourth Circuit opinion, which struck down the ban as unconstitutional in light of discriminatory, anti-Muslim comments from then-candidate Trump during the presidential campaign, “threatens to chill campaign speech and interfere with the President’s conduct of foreign affairs.”²⁰ The Supreme Court upheld the Muslim ban in a controversial 5-4 decision.

Defended Anti-LGBTQ Policies: Mr. Readler has defended three of the Trump administration’s most extreme and discriminatory anti-LGBTQ legal positions. First, he filed a brief in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* in which he argued that a bakery owner should have a license to discriminate against a same-sex couple who tried to order a cake for their wedding.²¹ Second, he defended the Trump administration’s discriminatory ban on transgender people serving in the military,²² which has been blocked by multiple federal courts. And third, in *Zarda v. Altitude Express*, Mr. Readler argued that Title VII should not cover discrimination based on sexual orientation.²³ Mr. Readler’s position in that case reversed the Justice Department’s previous position and notably conflicted with the position taken by another federal agency – the Equal Employment Opportunity Commission. Mr. Readler’s arguments were rejected by the Second Circuit.

Mr. Readler’s anti-LGBTQ views go back decades. In 1998, he wrote a law review article, “Local Government Anti-Discrimination Laws: Do They Make a Difference?,” in which he argued against anti-discrimination ordinances such as those that included sexual orientation discrimination bans. Mr. Readler wrote: “Local governments’ adoption of anti-discrimination ordinances that protect characteristics not protected by the federal or state government raises serious questions about what is the most sound policy for eliminating discrimination.... The federal government, armed with the ability to enact uniform laws that are effectively enforced, should be left to decide what regulations are best applied to private employers.”²⁴ It is troubling that Mr. Readler has pushed an anti-LGBTQ agenda for over two decades.

¹⁸ https://www.justice.gov/opa/case-document/file/1070481/download?utm_medium=email&utm_source=govdelivery.

¹⁹ <https://www.clearinghouse.net/chDocs/public/IM-PA-0015-0009.pdf>.

²⁰ <http://www.scotusblog.com/wp-content/uploads/2017/08/16-1436-ts.pdf>.

²¹ <https://www.afj.org/wp-content/uploads/2018/06/Masterpiece-Cakeshop-v.-Colorado-Civil-Rights-Commission-amicus-brief.pdf>.

²² <https://www.afj.org/wp-content/uploads/2018/06/Doe-v.-Trump.pdf>.

²³ <https://www.afj.org/wp-content/uploads/2018/06/Zarda-v.-Altitude-Express-Inc..pdf>.

²⁴ <https://www.afj.org/wp-content/uploads/2018/09/Local-Gov-Antidiscrim-Do-They-Make-Difference.pdf>.

Hostile to Reproductive Freedom: In the case *Garza v. Hargan*, Mr. Readler defended the Trump administration’s efforts to prevent Jane Doe, a 17-year-old immigrant woman, from obtaining an abortion because she was not a U.S. citizen.²⁵ Mr. Readler’s argument was embraced by then-D.C. Circuit Judge Brett Kavanaugh but was rejected by the full D.C. Circuit. A concurring opinion in the case noted that “today’s decision rights a grave constitutional wrong by the government.”²⁶ And in *NIFLA v. Becerra*, Mr. Readler defended the Trump administration’s position that a California law requiring anti-abortion fake health clinics to notify patients that the state offers abortion services constituted a First Amendment violation.²⁷ The Supreme Court struck down the law earlier this year in a sharply divided 5-4 decision.

Undermined Public Education: Mr. Readler has worked for years to undermine Ohio’s public education system and to limit educational benefits and protections for Ohio school children. Perhaps most troublingly, he supported the radical proposal of eliminating a 164-year-old clause in the Ohio constitution that requires the state legislature to “secure a thorough and efficient system of common schools throughout the state.”²⁸ This clause has been critical to providing an adequate system of public schools throughout the state. But in 2014, Mr. Readler proposed eliminating the clause because he believed it gave too much power to the courts in defining the adequacy of the school system. Ultimately, his controversial effort to change the state constitution was unsuccessful.²⁹ Mr. Readler has also been a staunch proponent of Ohio’s deeply flawed charter school system,³⁰ and he has opposed common-sense accountability measures and defended the interests of for-profit charter school operators over the educational needs of vulnerable children.³¹ More recently, Mr. Readler has defended ideological efforts by Education Secretary Betsy DeVos to set back the Obama administration’s efforts to help college students receive debt relief.³²

Fought Against Consumer Protections: Mr. Readler sought to dismantle the Consumer Financial Protection Bureau (“CFPB”), an independent agency created by Congress after the 2008 financial crisis to protect consumers from deceitful banks and lenders.³³ He argued that the CFPB’s structure – in which its director may only be removed by the president “for cause” – was unlawful. This position was embraced by then-D.C. Circuit Judge Brett Kavanaugh but rejected by the full D.C. Circuit in *PHH Corporation v. Consumer Financial Protection Bureau*.³⁴

When he was in private practice, Mr. Readler represented the tobacco company R.J. Reynolds in a challenge to a Buffalo, New York ordinance that prohibited tobacco ads from being placed within 1,000 feet of schools and day care centers. Mr. Readler argued that the ordinance violated the First

²⁵ <https://www.afj.org/wp-content/uploads/2018/06/Hargan-v.-Garza.pdf>.

²⁶ 874 F.3d 735 (D.C. Cir. 2017) (en banc) (Millett, J., concurring).

²⁷ <https://www.afj.org/wp-content/uploads/2018/06/NIFLA-v.-Becerra.pdf>.

²⁸ <https://www.ohio.com/akron/pages/thorough-and-efficient-out-of-the-ohio-constitution>.

²⁹ <https://www.dispatch.com/content/stories/local/2015/03/12/school-systems-remain-thorough-and-efficient.html>.

³⁰ <https://afj.org/wp-content/uploads/2018/09/Adjudging-education-policy-Readler.pdf>.

³¹ https://www.sconet.state.oh.us/pdf_viewer/pdf_viewer.aspx?pdf=750924.pdf.

³² https://www.huffingtonpost.com/entry/us-secretary-of-education-backs-for-profit-schools_us_59650fa4e4b09be68c0055a8.

³³ <https://assets.documentcloud.org/documents/3519662/3-17-17-US-Amicus-Brief-PHH.pdf>.

³⁴ 881 F.3d 75 (D.C. Cir. 2018) (en banc).



Amendment.³⁵ Due to his representation of R.J. Reynolds in this and other matters, several public health groups called on Mr. Readler to recuse himself in tobacco-related litigation when he joined the Justice Department.³⁶ Mr. Readler refused to do so. He subsequently asked federal courts to delay implementing the Obama administration's FDA rule that imposed strict oversight over the use of e-cigarettes.³⁷

Ideological Affiliations: Mr. Readler was a member of the Federalist Society from 2001 to 2017, serving as the president of the Columbus, Ohio Federalist Society chapter in 2005 and 2006. 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 a significant number of his district court nominees, have been Federalist Society members. Mr. Readler was also a longtime member of the right-wing Republican National Lawyers Association ("RNLA"), from 2004 to 2017. The RNLA opposed the Sonia Sotomayor and Elena Kagan nominations to the Supreme Court, supported voter suppression efforts such as photo ID laws, and waged an ideological attack on the Obama Justice Department's Civil Rights Division. Mr. Readler has been a longtime political operative and served as one of President Trump's lawyers in 2016 in pre- and post-election litigation. He also served as the Ohio co-chair of the Romney presidential campaign in 2012, and he has been a top fundraiser for conservative state judicial candidates. He has personally contributed over \$12,000 to Republican candidates.

Lack of Home-State Senator Support: Due to his extreme record, Mr. Readler is strongly opposed by a home-state senator, Sherrod Brown.³⁸ In light of this opposition, he should not be granted a committee hearing or vote. During the Obama presidency, Senate Judiciary Committee Chairman Chuck Grassley did not grant a hearing or vote to a single nominee unless they had support from both home-state senators. In 2015, Chairman Grassley pledged:

For nearly a century, the chairman of the Senate Judiciary Committee has brought nominees up for committee consideration only after both home-state senators have signed and returned what's known as a "blue slip." This tradition is designed to encourage outstanding nominees and consensus between the White House and home-state senators. Over the years, Judiciary Committee chairs of both parties have upheld a blue-slip process, including Sen. Patrick Leahy of Vermont, my immediate predecessor in chairing the committee, who steadfastly honored the tradition even as some in his own party called for its demise. I appreciate the value of the blue-slip process and also intend to honor it.³⁹

During the Trump presidency, Chairman Grassley has made the hypocritical decision to give a hearing to eight circuit court nominees who lacked the support of a home-state senator: David Stras, Michael Brennan, Ryan Bounds, David Porter, Eric Murphy, Chad Readler, Eric Miller, and Paul Mately. The

³⁵ <https://buffalonews.com/2005/09/03/r-j-reynolds-challenging-citys-effort-to-restrict-posting-of-tobacco-ads/>.

³⁶ https://www.tobaccofreekids.org/assets/content/press_office/2017/2017_03_27_doj_recusal.pdf.

³⁷ https://www.washingtonpost.com/politics/fda-suspends-enforcement-of-stricter-standards-for-e-cigarette-cigar-industry/2017/05/02/be7e557a-2ed6-11e7-9534-00e4656c22aa_story.html?utm_term=.aa25d0483417.

³⁸ <https://www.brown.senate.gov/newsroom/press/release/brown-will-not-support-judge-nominees-who-worked-to-strip-ohioans-of-their-rights>.

³⁹ <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2015/04/15/working-secure-iowas-judicial-legacy/25801515/>.



Congressional Research Service has identified only three known instances during the 101-year history of the blue slip – prior to the Trump presidency – in which a judicial nominee was confirmed over the objections of a home-state senator.⁴⁰

Over the years, when the Senate majority placed partisan loyalty to the president over the Senate’s institutional interest in independently carrying out its constitutional responsibilities, the blue slip served as a vital corrective. This institutional check has arguably never been more important than today, with a president who undermines the legitimacy of judges and their rulings, and who prioritizes loyalty to him over fealty to the law. As Senator Hatch astutely observed in 2014: “Weakening or eliminating the blue slip process would sweep aside the last remaining check on the president’s judicial appointment power. Anyone serious about the Senate’s ‘advice and consent’ role knows how disastrous such a move would be.”⁴¹

Stunning Lack of Diversity: Mr. Readler and the other nominees listed above who have been opposed by home-state senators are all conservative white men. More generally, President Trump’s lack of commitment to diversity on the federal judiciary is deeply disturbing. He has appointed the least diverse group of nominees in decades.⁴² Of his 43 appellate nominations, none are African-American. None are Latino. Only eight are women. Our nation’s great diversity should be reflected in its government institutions, especially the federal judiciary, which serves as the guardian of our rights and liberties. At a time when the legal profession has more women and attorneys of color than ever before, President Trump’s record on judicial diversity is truly appalling.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Chad Readler to the U.S. Court of Appeals for the Sixth 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

⁴⁰ <https://fas.org/sgp/crs/misc/R44975.pdf>.

⁴¹ <https://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.

⁴² <https://www.usatoday.com/story/news/politics/2018/02/13/trumps-87-picks-federal-judges-92-white-just-one-black-and-one-hispanic-nominee/333088002/>.