



May 15, 2018

Officers
Chair
Judith L. Lichtman
National Partnership for
Women & Families
Vice Chairs
Jacqueline Pata
National Congress of American Indians
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hillary Shelton
NAACP
Secretary
Jo Ann Jenkins
AARP
Treasurer
Lee A. Saunders
American Federation of State,
County & Municipal Employees

Board of Directors
Helena Berger
American Association of
People with Disabilities
Kimberly Churches
AAUW
Kristen Clarke
Lawyers' Committee for
Civil Rights Under Law
Lily Eskelsen Garcia
National Education Association
Fatima Goss Graves
National Women's Law Center
Chad Griffin
Human Rights Campaign
Wylecia Wiggs Harris
League of Women Voters of the
United States
Mary Kay Henry
Service Employees International Union
Sherrilyn Ifill
NAACP Legal Defense and
Educational Fund, Inc.
David H. Inoué
Japanese American Citizens League
Derrick Johnson
NAACP
Michael B. Keegan
People for the American Way
Samer E. Khalaf
American-Arab
Anti-Discrimination Committee
Marc Morial
National Urban League
Janet Murguía
UnidosUS
Debra L. Ness
National Partnership for
Women & Families
Rabbi Jonah Pesner
Religious Action Center
Of Reform Judaism
Anthony Romero
American Civil Liberties Union
Shanna Smith
National Fair Housing Alliance
Richard L. Trumka
AFL-CIO
Toni Van Pelt
National Organization for Women
Randi Weingarten
American Federation of Teachers
Dennis Williams
International Union, UAW
John C. Yang
Asian Americans Advancing Justice |
AAJC

Policy and Enforcement
Committee Chair
Michael Lieberman
Anti-Defamation League
President & CEO
Vanita Gupta

OPPOSE THE CONFIRMATION OF MICHAEL TRUNCALÉ TO THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

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 Michael Truncalé for the U.S. District Court for the Eastern District of Texas.

Mr. Truncalé is a partisan, conservative ideologue whose past statements show a hostility to immigrant rights, voting rights, reproductive freedom, workers' rights, LGBT rights, campaign finance limits, environmental protection, common-sense gun control, and the role of the federal government. Mr. Truncalé does not have the neutrality and objectivity necessary to serve in a lifetime position as a federal judge.

Hostile to Immigrant Rights: In a 2012 interview in which he was asked what he would do to improve the security of Texas, Mr. Truncalé, a congressional candidate at the time, appears to have said that “with regard to immigration, we must not continue to have the maggots coming in,” although a Trump administration spokesperson said he used the word “magnets” not “maggots.”¹ Both terms are dehumanizing and offensive, and Mr. Truncalé’s use of either term suggests he holds biased views about immigrants. In that same interview, Mr. Truncalé advocated militarizing the border because, in his words, “we have all sorts of bad influences coming in.”²

In a 2016 op-ed entitled “The Reason to Vote for Trump,” Mr. Truncalé inveighed against the prospect of a Democratic president appointing a justice to fill the vacancy left by the death of Justice Scalia. On the subject of immigration, Mr. Truncalé wrote: “The new justice will also consider whether President Obama has illegally expanded his power by refusing to enforce laws he does not like. For example, Obama has unilaterally amended immigration laws by designating entire classes of people as having ‘legal status,’ even though the law clearly states that they are unlawfully in our country.”³

In 2012 speech notes that Mr. Truncalé submitted to the Senate Judiciary Committee, he wrote “Opposed to Dream Act – Perm. Residence Instate Tuition – for illegals,” but in

¹ <https://slate.com/news-and-politics/2018/04/trump-judicial-nominee-michael-truncalé-called-immigrants-maggots.html>.

² <https://www.youtube.com/watch?v=Hr3rSPRTGJM>.

³ Id.

response to a written question from Ranking Member Feinstein, he refused to agree to recuse himself in any case involving DACA or DAPA.⁴ Nor would Mr. Truncale agree to recuse himself in cases involving so-called “sanctuary cities,” despite his stated opposition to them and his allegation that Hillary Clinton’s support for such jurisdictions raised questions about her ability to keep the United States safe.⁵

Supports Restrictions on Voting Rights: In a 2013 speech, Mr. Truncale described the Supreme Court’s decision in *Shelby County v. Holder* – which invalidated the critical preclearance provision of the historic Voting Rights Act – as a “victory,”⁶ and he said he would “take action” against what he said were efforts by the Obama administration to “ignore the decision” in *Shelby County*.⁷ In notes he submitted to the Senate Judiciary Committee for a 2014 speech, Mr. Truncale wrote: “Have you forgotten about the relentless attempts to make our elections a joke by allowing widespread voter fraud? It took Republicans to push through voter ID laws that protect the rights of citizens so that everyone get [sic] one vote per person.”⁸ In speech notes for a different speech in 2014, he wrote that “voter fraud makes a mockery of our elections” and photo ID laws are necessary “so that everyone’s vote is protected from being diminished by someone who votes several times.”⁹

Extreme Anti-Government Beliefs: Mr. Truncale has made a number of statements that reflect a deep hostility to the role of the federal government. Here are some of the statements that he has made in recent years:

- In a 2012 speech, he said: “I think we should abolish the Department of Education. I say that as a parent who raised children in this district. Education decisions should be made at the local level with teachers and parents. And besides as a region I didn’t see one single thing that we got out of the Department of Education, so as a citizen taxpayer I see no economic benefit to it. And the Department of Energy is not putting a drop of gasoline in your tank. And, finally, the biggest spender yet is Obamacare, because that is going to cost us over \$1 trillion and is going to create 111 new bureaucracies. Obamacare must be repealed.”¹⁰
- He slammed the Affordable Care Act in other 2012 speeches as well. In one, he said: “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.”¹¹ In another speech, he said: “There is no right in the Constitution for the government to tell you what kind of insurance to buy.”¹²

⁴ <https://www.judiciary.senate.gov/imo/media/doc/Truncale%20Responses%20to%20QFRs.pdf>.

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ <https://www.youtube.com/watch?v=becblZDMM0>.

¹¹ <https://www.youtube.com/watch?v=n1ztJk4m8P4>.

¹² <https://www.youtube.com/watch?v=uN7KCQ6RzIw>.



- In a 2012 speech, Mr. Truncale criticized federal safety net program like Social Security, Medicare, and Medicaid. He said: “Entitlement spending, oh my heavens. We’ve got about half the people in America in the wagon, and the other half pulling the wagon. And not only can we not afford that, I mean we’re now having to pay the Russians to send our astronauts into space. We borrowed the money from the Chinese to pay the Russians. That’s weak. And it’s because we’re giving away all this money.”¹³

These comments demonstrate Mr. Truncale would come to the bench with a strong bias against existing laws duly passed by Congress and the mission of several key agencies of the federal government.

Wants to Politicize Federal Courts: In his 2016 article entitled “The Reason to Vote for Trump,” Mr. Truncale utilized italicized bold font to emphasize the depth of his partisan convictions, asserting: *“Beware: If Donald Trump is not elected, expect a liberal/progressive Supreme Court which will make decisions that affect each and every American by redefining the very nature of our government and society for decades to come.”*¹⁴ He also wrote that a liberal Supreme Court would advance “a perversion of the Bill of Rights,” and he asserted: “A liberal Supreme Court would view the Constitution as an evolving document that gives birth to new ‘rights’ and obligations without first seeking the consent of the people.”¹⁵ He also wrote: “Liberal groups will be emboldened to bring forth cases that attempt to roll back the freedoms contained in the First and Second Amendments. 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, a new exception to the First Amendment that would prohibit ‘offensive or hateful’ speech, and a prohibition of sex-segregated restrooms.”¹⁶ These intemperate comments reflect the mindset of a person who possesses a hyper-partisan approach to judicial decision-making and who would bring a right-wing ideological agenda to the bench.

LGBT Bias: In his 2016 article arguing that the Supreme Court would become too liberal unless Donald Trump filled the Court’s vacancy, Mr. Truncale slammed efforts to protect transgender individuals, writing: “The liberal Supreme Court will also consider President Obama’s actions in rewriting laws like Title IX, which prohibits discrimination based on sex – by redefining the word ‘sex’ to mean ‘gender identity’ or even a person’s ‘internal sense of gender.’”¹⁷ Mr. Truncale also criticized “liberals” for wanting to “force Christian photographers to use their artistic skills to celebrate same-sex weddings.”¹⁸

Wants to Limit Reproductive Freedom: Mr. Truncale strongly criticized the contraception access provision of the Affordable Care Act. He said: “This recent assault on the Catholic Church is something that people of all faiths should be concerned about, and I’m talking about the most recent requirements of the Obama administration and the bureaucrats in Washington regarding contraceptives, to require

¹³ https://www.youtube.com/watch?v=HXUVd_Li-GM.

¹⁴ <http://gtrw.us/wp-content/uploads/2016/08/GTRW-Sept-2016-email.pdf>.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

Catholics to purchase contraception. That’s an assault. Why? Because now you have government telling religion what to do.”¹⁹

In 2016, Mr. Truncale wrote: “Although the *Hobby Lobby* decision narrowly protected employers against forced funding of abortions and the *Little Sisters of the Poor* decision narrowly avoided the question of whether Catholic nuns must provide and pay for contraception in their health insurance plans, we can expect more ‘modifications’ to the Bill of Rights from a 5-4 liberal Supreme Court. For example, liberals want to require pharmacists to sell abortion drugs despite religious objections....”²⁰

In a 2012 speech, Mr. Truncale said: “I don’t think we should be funding Planned Parenthood. I’d cut them off.”²¹ He boasted about marching in an anti-abortion rally,²² and he criticized former Texas State Senator Wendy Davis, who undertook a 13-hour filibuster to delay a vote on a restrictive anti-abortion bill. Mr. Truncale’s speech notes say: “Wendy Davis’ Claim [sic] to fame – kills little girls”²³ and “she wants to kill babies five months into term.”²⁴ These are not the views of someone who could rule fairly and dispassionately in cases involving reproductive rights.

Extreme Views on Campaign Finance Laws: In his 2016 article entitled “The Reason to Vote for Trump,” Mr. Truncale made clear his antipathy to any forms of campaign finance limitations. He wrote: “Hillary Clinton has already declared war on the continued validity of the Court’s *Citizens United* decision.... Limiting the amount of money an individual or organization can spend on the communication of ideas will diminish the right to speech.”²⁵

Believes in Weakening Unions: Mr. Truncale agrees with right-wing special interest groups who have attacked “fair share” union fees in order to undermine the health of public sector unions in America. In 2016, Mr. Truncale wrote: “Consider that the freedom to spend (or not spend) money on political speech is under assault. For example, the Court will soon decide whether public school teachers should be compelled to pay union dues even though those dues are used to promote political causes opposed by individual teachers.”²⁶ This issue is currently before the Supreme Court in *Janus v. AFSCME*, and it is abundantly clear how Mr. Truncale hopes the case will come out.

Hostile to Environmental Protection: Mr. Truncale attacked President Obama’s efforts to protect our environment. He wrote that “President Obama on numerous occasions has blatantly engaged in law-making – an activity that our Constitution vests solely in Congress. The new liberal Supreme Court will determine whether President Obama’s executive order to institute a ‘Clean Power Plan,’ which would essentially put the coal industry out of business in an attempt to ‘combat climate change,’ should be upheld. If a liberal Court upholds such executive-made law, expect the EPA and the Army Corps of

¹⁹ <https://www.youtube.com/watch?v=Kzb9XP3Xago>.

²⁰ Id.

²¹ https://www.youtube.com/watch?v=HXUVd_Li-GM.

²² <https://www.youtube.com/watch?v=Kzb9XP3Xago>.

²³ <https://afj.org/wp-content/uploads/2018/04/Michael-Truncale-Senate-Questionnaire-Attachments-Page-5674.pdf>.

²⁴ https://www.prochoiceamerica.org/wp-content/uploads/2018/04/Michael-Truncale_NARAL.pdf.

²⁵ <http://gtrw.us/wp-content/uploads/2016/08/GTRW-Sept-2016-email.pdf>.

²⁶ Id.

Engineers to control virtually every pond, lake, or creek in America by redefining the term, ‘Waters of the United States,’ as set forth in the Clean Water Act.”²⁷ In a 2012 speech, he referred to the Environmental Protection Agency as a “job killer.”²⁸

Defended Gun Manufacturers: Mr. Truncale represented gun manufacturer Glock, Inc. in a product liability case in which the plaintiff alleged that the Glock 17 pistol was defective and unreasonably dangerous because its quick trigger mechanism made it susceptible to accidental discharge.²⁹ Mr. Truncale argued that the accident at issue was caused by the plaintiff’s contributory negligence, and the case was resolved through a secret settlement.³⁰ In notes he submitted to the Senate Judiciary Committee for a 2016 speech, Mr. Truncale wrote that Democrats have “declared war on the NRA.”³¹

Ideological and Partisan Background: Like most of President Trump’s judicial nominees, Mr. Truncale 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 over 80 percent of Trump’s circuit court nominees, and a significant number of his district court nominees, have been Federalist Society members. Mr. Truncale believes in originalism, which is a method of constitutional interpretation utilized by conservative ideologues to roll back critical rights and liberties that have been established through judicial precedents and with which they disagree. In supporting the Gorsuch nomination last year to the Supreme Court, Mr. Truncale stated: “This nominee (Judge Neil Gorsuch) is exceptionally qualified for this position and he’ll offer great leadership on the U.S. Supreme Court because he’ll hold true to the principles of Justice Scalia, who believed that the Constitution was written with a specific intent that should be followed and that the original words of the Constitution should govern this land.”³²

Mr. Truncale is an extreme partisan. In notes for a 2016 speech related to the presidential election, he wrote: “The policies of dependency created by Democrats is [sic] DESTROYING BLACK COMMUNITIES” and that the Democratic Party is the “Party of division.”³³ He also wrote that Democrats use the “race/gender card [to get] votes.”³⁴ In a 2011 speech, he stated that President Obama was an “un-American imposter.”³⁵ In a 2016 speech, he said: “We can have differences in a Republican Primary – as it should be. But we come together. So often, I hear complaints about our Republican leaders, yet I don’t hear them complain about Obama, Pelosi, or Reed [sic]. Who is the real enemy?”³⁶ Mr. Truncale has contributed nearly \$20,000 to Republican candidates, including President Trump. In addition to his failed congressional campaign, Mr. Truncale has served as “a fundraiser, host, endorser,

²⁷ Id.

²⁸ <https://www.judiciary.senate.gov/imo/media/doc/Truncale%20Responses%20to%20QFRs.pdf>.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² <http://kfdm.com/news/local/reaction-from-local-gop-democratic-party-leaders-to-presidents-supreme-court-nominee>.

³³ <https://www.judiciary.senate.gov/imo/media/doc/Truncale%20Responses%20to%20QFRs.pdf>.

³⁴ Id.

³⁵ Id.

³⁶ <https://afj.org/wp-content/uploads/2018/04/Michael-Truncale-Senate-Questionnaire-Attachments-Page-5674.pdf>.

and grassroots worker for many Texas political campaigns,”³⁷ and he identified 17 Republican candidates for whom he campaigned, including President Trump. He has also served as the Republican chair of multiple Texas county precincts, as a committeeman on the State Republican Executive Committee, and as a delegate and volunteer at Republican National Conventions. Mr. Truncale’s highly partisan and ideological background demonstrates that he would not be fair and impartial if confirmed to a lifetime appointment on the federal bench.

Texas Nominees: In 1981, journalist Jack Bass wrote a book called “Unlikely Heroes,” which chronicled the courage of Fifth Circuit judges in vigorously implementing *Brown v. Board of Education* in the South. Today, we are witnessing the opposite dynamic. At his Senate Judiciary Committee hearing, Mr. Truncale refused to say that *Brown v. Board of Education* was correctly decided. Mr. Truncale’s nomination is a continuation of the relentless effort by the Trump administration and Senators Cornyn and Cruz to select federal judges in Texas with a demonstrated hostility to civil and human rights, which will jeopardize the Fifth Circuit’s historically significant role in vindicating the civil rights of its diverse population. The Fifth Circuit features the largest percentage of people of color of any circuit in the nation. Based on their troubling track records, we have opposed or expressed serious concerns about all of President Trump’s Texas nominees to the Fifth Circuit – James Ho, Andrew Oldham, and Don Willett – and we have opposed Texas district court nominees Matthew Kacsmaryk, Jeffrey Mateer, and Mr. Truncale. I urge President Trump and the Texas Senators to select more fair-minded and less ideological individuals for the federal bench.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Michael Truncale for the U.S. District Court for the Eastern District of Texas. 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

³⁷ <https://www.judiciary.senate.gov/imo/media/doc/Truncale%20SJQ1.pdf>.