



September 4, 2019

Officers

Chair

Judith L. Lichtman
National Partnership for
Women & Families

Vice Chairs

Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hilary Shelton
NAACP

Secretary/Treasurer

Lee A. Saunders
American Federation of State,
County & Municipal Employees

Board of Directors

Kevin Allis
National Congress of American Indians
Kimberly Churches
AAUW

Kristen Clarke
Lawyers' Committee for
Civil Rights Under Law

Alphonso B. David
Human Rights Campaign
Lily Eskelsen Garcia

National Education Association
Fatima Goss Graves

National Women's Law Center
Mary Kay Henry

Service Employees International Union
Sherrilyn Ifill
NAACP Legal Defense and
Educational Fund, Inc.

David H. Inoue
Japanese American Citizens League
Gary Jones

International Union, UAW
Derrick Johnson
NAACP

Virginia Kase
League of Women Voters of the
United States

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

Lisa Rice
National Fair Housing Alliance
Anthony Romero

American Civil Liberties Union
Maria Town

American Association of
People with Disabilities
Richard L. Trumka

AFL-CIO
Toni Van Pelt
National Organization for Women

Randi Weingarten
American Federation of Teachers
John C. Yang

Asian Americans Advancing Justice |
AAJJC

Policy and Enforcement

Committee Chair

Michael Lieberman
Anti-Defamation League
President & CEO

Vanita Gupta

**OPPOSE THE CONFIRMATION OF JUSTIN WALKER TO THE
U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY**

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 Justin Walker to the U.S. District Court for the Western District of Kentucky.

Mr. Walker's nomination is a triumph of nepotism over neutrality. He is a right-wing partisan operative who has been deemed unqualified to serve as a federal judge by the American Bar Association ("ABA"). The Senate must refuse to confirm him to a lifetime appointment on the federal judiciary.

Rated Not Qualified by the ABA: The ABA determined that Mr. Walker – age 37 and just 10 years out of law school – lacks sufficient experience, particularly trial experience, to serve as a U.S. District Judge. Mr. Walker is the seventh Trump judicial nominee to be rated Not Qualified by the ABA. This appears to be the highest number of judicial nominees to be rated Not Qualified during the first three years of a presidency. The ABA made the following observations in a letter explaining why it deems Mr. Walker unqualified to serve as a federal judge:

- “The judicial system, the public, the trial bar, and the nominee are not well served by appointing to the bench a lawyer who lacks adequate experience.... Mr. Walker does not meet the minimum professional competence standard necessary to perform the responsibilities required by the high office of a federal district court judge.”¹
- “Mr. Walker’s experience to date has a very substantial gap, namely the absence of any significant trial experience. Mr. Walker has never tried a case as lead or co-counsel, whether civil or criminal.”²
- “[I]t was challenging to determine how much of his ten years since graduation from law school has been spent in the practice of law. Even crediting the time spent in judicial clerkships, Mr. Walker’s practice experience is less than his 10 years since

¹ https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-07-30NQ-rating-Justin-R-Walker.pdf?logActivity=true.

² *Id.*

graduation and significantly less than the 12 years of legal practice experience stated in our criteria [as minimally necessary to serve as a federal judge].”³

These pointed comments from the ABA about Mr. Walker’s lack of experience paint a vivid picture of an individual who is unworthy of a lifetime appointment to the federal judiciary. In addition, Mr. Walker appears to have misrepresented his trial experience on his Senate questionnaire, where he asserted under oath: “I have been associate counsel at a federal criminal jury trial.”⁴ The ABA found otherwise, stating that Mr. Walker “never tried a case as lead or co-counsel, whether civil or criminal.”⁵ Mr. Walker also lacks basic litigation experience, admitting at his Senate hearing that he has only taken one deposition during his entire legal career. He is simply unqualified to serve as a federal district judge.

It is also troubling that the chair of the Senate Judiciary Committee, Senator Graham, permitted Mr. Walker to have a hearing despite his Not Qualified rating, and that Senator Graham jettisoned the committee’s tradition of allowing the ABA to offer live testimony about its rationale for rating a nominee Not Qualified. Senator Graham has shown rank hypocrisy on the value of the ABA’s role in the confirmation process. During the Obama presidency, Senator Graham called the ABA the “gold standard” and stated: “That service you provide the Senate is invaluable because in these politically charged times in which we live, you are a filter, sort of a wall, between people who are politically connected and somebody who should be on the bench.”⁶ Senator Graham’s partisan and relentless effort to steamroll Trump judicial nominees through the committee will be an indelible stain on his legacy.

Ideological Defense of Kavanaugh: Despite his lack of experience and qualifications to serve as a federal judge, it can be inferred that Mr. Walker was nominated as a political payoff from President Trump and Majority Leader McConnell. According to his Senate paperwork,⁷ Mr. Walker conducted *162 media interviews* last year – including 35 interviews on Fox News alone – defending President Trump’s embattled Supreme Court nominee, Brett Kavanaugh, for whom Mr. Walker once worked as a law clerk. The tenor of many of Mr. Walker’s comments demonstrates that he views judges as results-driven ideologues, rather than as fair and neutral arbiters.

- In a July 8, 2018 interview with Fox News, Mr. Walker assured viewers that, if nominated to the Supreme Court, then-Judge Kavanaugh would be “a warrior” and “a fighter for conservative legal principles who will not go wobbly. The man does not have a wobbly bone in his body.... Judge Kavanaugh was fighting for conservative legal principles way before George Bush was president. He was investigating Hillary Clinton in the 1990s. He’s been fighting for those principles on the D.C. Circuit – the second most important court in the country – over and over and over again.”⁸
- In a Fox News interview on September 28, 2018, Mr. Walker took partisan potshots at Democratic senators who wanted Dr. Christine Blasey Ford to have adequate

³ *Id.*

⁴ <https://www.judiciary.senate.gov/imo/media/doc/Justin%20Walker%20SJO%20-%20PUBLIC.pdf>.

⁵ https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-07-30NQ-rating-Justin-R-Walker.pdf?logActivity=true.

⁶ https://web.archive.org/web/20130308082333/http://www.abanow.org/wordpress/wp-content/files_flutter/1344446699graham_comments.pdf.

⁷ <https://www.judiciary.senate.gov/imo/media/doc/Justin%20Walker%20SJO%20-%20PUBLIC.pdf>.

⁸ <https://video.foxnews.com/v/5806728724001/#sp=show-clips>.

process to testify and the opportunity to have her allegations properly investigated. Mr. Walker asserted: “If it was deemed credible, it should have been investigated in July and not leaked to the press just before the confirmation vote, which really uses Dr. Ford for the Democrats’ political purposes of delaying this process just for the sake of delaying this process.”⁹

- In an October 2, 2018 Fox News interview, Mr. Walker griped: “The call for an FBI investigation now, by the Democrats, as opposed to two months ago when Senator Feinstein heard about this, just is a transparent attempt to delay for the sake of delay. And remember this has been their strategy all along. It seems like light years ago, seems like decades ago, when we were hearing about, oh, what was it, the documents. Oh, documents this and documents that. Now we can see that was just a delaying tactic. They asked Judge Kavanaugh I don’t know something like 1,300 written question after his testimony at the hearing. My goodness, that’s so transparently an attempt to delay for the sake of delay. Now to hear them, to hear some of them, sound so sanctimonious and talk about his credibility when their whole strategy has been a deceptive farce all along.”¹⁰
- In an October 6, 2018 interview with Fox News, Mr. Walker asserted: “If we’re gonna have an FBI investigation, I think one of the things we ought to be investigating is how Dr. Ford’s name got leaked to the press against her will. She’s been a victim of this unfair, vicious search and destroy mission against Judge Kavanaugh whose only mission has been to delay for the sake of delay.”¹¹ When asked by the Fox News host about what the next “line of attack” from Senate Democrats would be, Mr. Walker retorted: “Oh my goodness. You know Ainsley, there are limits to my imagination.”¹²

These partisan, intemperate comments help demonstrate Mr. Walker’s lack of fitness for the federal bench, and they reflect the ideological, activist agenda he would bring if confirmed.

Hostile to Health Care: Amidst his shameless defense of Justice Kavanaugh last year, Mr. Walker laid bare his own extreme views, including his intense opposition to the Affordable Care Act (“ACA”) and access to health care. In a July 2018 op-ed explaining why then-Judge Kavanaugh’s opinion in a D.C. Circuit case demonstrated skepticism of the ACA, Mr. Walker wrote:

Kavanaugh’s thorough and principled takedown of the mandate was indeed a roadmap for the Supreme Court – *the Supreme Court dissenters*, justices Antonin Scalia, Anthony Kennedy, Clarence Thomas, and Samuel Alito, who explained that the mandate violated the Constitution. I am very familiar with that opinion, because I served as Kennedy’s law clerk that term. I can tell you with certainty that the only justices following a roadmap from Brett Kavanaugh were the ones who said Obamacare was unconstitutional. Kavanaugh was equally critical of the individual

⁹ <https://www.yahoo.com/news/kavanaugh-ford-hearing-flawed-222021986.html>.

¹⁰ <https://video.foxnews.com/v/5843366072001/#sp=show-clips>.

¹¹ <https://video.foxnews.com/v/5845318401001/#sp=show-clips>.

¹² *Id.*

mandate under the weak Taxing Clause argument advanced by the government and catastrophically accepted by the Supreme Court.¹³

Mr. Walker's assertion that the Supreme Court's decision to uphold the ACA decision was "catastrophic" reveals a deep-seated hostility to the ACA that would render him incapable of fairly presiding over a case involving that critical federal law.

In addition, Mr. Walker supported efforts to deny contraceptive coverage to employees. In a July 6, 2018 op-ed, Mr. Walker praised then-Judge Kavanaugh's dissent in *Priests for Life v. U.S. Department of Health and Human Services*, where he voted to allow religiously-affiliated employers to opt out of providing birth control coverage to employees. Mr. Walker called his former boss's record of ruling on behalf of religious interests "unparalleled" and stated: "His dissenting opinion in *Priests for Life v. HHS*, where he concluded that the Obama administration's contraceptive mandate violated the rights of religious organizations, was called 'pure perfection' by one of the lawyers challenging the mandate."¹⁴ Mr. Walker has a clear agenda on reproductive health issues and could not rule fairly in such cases.

Supports Radical Theory to Diminish Federal Enforcement of Civil and Human Rights: Mr. Walker believes that the Supreme Court should overturn longstanding precedents – specifically *Chevron* and *Humphrey's Executor* – that laid the legal groundwork permitting federal agencies to help protect civil rights, the environment, health care, labor, workplace safety, education, consumer protection, and more. For three and a half decades, since 1984, the Supreme Court has required judges to defer to administrative agencies' interpretations of federal law in most cases where the law is "ambiguous" and the agency's position is "reasonable." Even Justice Scalia defended the *Chevron* doctrine as an important rule-of-law principle.¹⁵ Overturning the *Chevron* precedent, as Mr. Walker advocates, would return that ultimate decision-making authority to judges, who may be ideologically committed to deregulation. *Humphrey's Executor*, a 1935 Supreme Court decision, safeguarded the creation of independent federal agencies that protect the American people and are insulated from presidential interference.

In a recent article, Mr. Walker argued that the Supreme Court should overturn the precedent set in *Chevron* and *Humphrey's Executor* because they provide, in his view, excessive deference and delegation to federal agencies. He wrote that "by traveling from *Schechter* to *Chevron*, the Supreme Court has profoundly undermined the democratic accountability central to the Constitution's conception of self-government."¹⁶ He complained that "for every one page of law passed by democratically accountable legislators, one hundred pages of law are promulgated by unelected regulators..." and that "Supreme Court decisions enabled this state of affairs."¹⁷ And he asserted that "although administrative and constitutional law scholars will correctly view an overturning of *Humphrey's Executor* as a jurisprudential earthquake, most citizens outside that bubble, including even most lawyers, will likely view its overturning with a collective yawn."¹⁸ Mr. Walker encouraged Justice Kavanaugh to lead the way in limiting and overturning these critical Supreme Court decisions, and he favorably quoted a law professor who wrote: "In Brett Kavanaugh, President Trump may not have found a justice to 'deconstruct

¹³ <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/>.

¹⁴ <https://www.nationalreview.com/2018/07/judge-brett-kavanaugh-religious-liberty-warrior/>.

¹⁵ <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3075&context=dlj>.

¹⁶ <https://afj.org/wp-content/uploads/2019/07/Walker-Schechter-to-Chevron-Article.pdf>.

¹⁷ *Id.*

¹⁸ *Id.*

the administrative state’ – in Steve Bannon’s formulation – but he has found one who will help bring it to heel.”¹⁹ Mr. Walker would bring this radical agenda to the bench, if confirmed.

Ideological Affiliations: Mr. Walker has been a member of the Federalist Society since 2006, his first year of law school. He has given 18 speeches at Federalist Society events, and he currently serves on the Federalist Society’s Executive Committee for Louisville Chapter and on its Executive Committee for International and National Security Law Practice Group. This out-of-the-mainstream 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 nearly 50 percent of his district court nominees are members of the Federalist Society. Never before has a president attempted to pack the courts with such a high percentage of ideological extremists.

Disturbing Lack of Diversity: President Trump’s lack of commitment to diversity on the federal judiciary is also deeply disturbing. Mr. Walker, like the vast majority of the president’s judicial nominees, is white and male. President Trump has appointed the least diverse group of nominees in decades.²⁰ Of his 50 appellate nominations, none are African American. None are Latino. Only 10 are women. His district court nominees are similarly nondiverse. 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 Justin Walker for the U.S. District Court for the Western District of Kentucky. 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

¹⁹ *Id.*

²⁰ <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/>.