



December 17, 2019

**OPPOSE THE CONFIRMATION OF STEPHEN VADEN TO THE  
U.S. COURT OF INTERNATIONAL TRADE**

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 Stephen Vaden to the U.S. Court of International Trade (“CIT”).

Mr. Vaden, age 37, is another ideologically extreme, young, white man nominated by President Trump for a lifetime position on the federal bench. Mr. Vaden has never practiced international law and is not admitted to practice in the court to which he was nominated. He was nominated for this judgeship as a reward for services rendered to the Trump administration – Mr. Vaden is a political appointee in the U.S. Department of Agriculture who was confirmed to that position last year on a near party-line vote due to his controversial record – and for his previous efforts to restrict voting rights in America. The CIT is a specialized court that handles international trade disputes, but its members are Article III judges who often sit by designation on federal circuit and district courts and rule on critical civil and human rights cases. The Senate must reject Mr. Vaden’s nomination.

**Worked to Restrict Voting Rights:** In 2016, in the case *North Carolina State Conference of the NAACP v. McCrory*, Mr. Vaden defended North Carolina’s monster voter suppression law. This notorious law, passed in the wake of the Supreme Court’s devastating decision in *Shelby County v. Holder* that gutted a key provision of the Voting Rights Act, was struck down by the U.S. Court of Appeals for the Fourth Circuit. The North Carolina law imposed a rigid photo ID requirement, cut back the number of early voting days, and eliminated same-day voter registration. Mr. Vaden defended these restrictions, writing: “If minorities are free to vote subject only to the usual burdens of voting imposed on everyone, they have a full and fair ‘opportunity’ to vote, and cannot possibly have any *less* opportunity than non-minorities.”<sup>1</sup> The Fourth Circuit rejected Mr. Vaden’s arguments and invalidated the North Carolina law, ruling that it was passed with discriminatory intent, calling it “the most restrictive voting law North Carolina has seen since the era of Jim Crow,” and noting “that the new provisions target African Americans with almost surgical precision.”<sup>2</sup>

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<sup>1</sup><https://moritzlaw.osu.edu/electionlaw/litigation/documents/AmicusCuriaeBriefofSenatorsThomTillisLindseyGrahamTedCruzMikeLeeandtheJudicialEducationProje.pdf>

<sup>2</sup>[https://www.brennancenter.org/sites/default/files/legal-work/Opinion\\_7\\_29\\_16.pdf](https://www.brennancenter.org/sites/default/files/legal-work/Opinion_7_29_16.pdf)

In another voting rights case, *Lee v. Virginia State Board of Elections*, Mr. Vaden defended a Virginia photo ID law that the plaintiffs alleged was even more strict than the ID provision struck down in the North Carolina case.<sup>3</sup> The plaintiffs noted that “the unrefuted evidence shows strict photo-ID laws disproportionately suppress minority turnout” and their expert witness opined that “approximately 230,000 registered Virginia voters do not possess qualifying ID.”<sup>4</sup> A conservative district judge and circuit court panel upheld the law.<sup>5</sup>

In another important voting rights case, *Northeast Ohio Coalition for the Homeless v. Husted*, Mr. Vaden filed an amicus brief on behalf of 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.<sup>6</sup> The district court struck down these discriminatory provisions and the Sixth Circuit partially affirmed that ruling.<sup>7</sup>

Mr. Vaden 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 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, prior to an election. In 2014, the state eliminated Golden Week voting, and a district judge ruled that the law’s elimination had a disproportionate impact on voters of color in violation of the Constitution and Voting Rights Act. But Mr. Vaden defended the elimination of Golden Week in the U.S. Court of Appeals for the Sixth Circuit on behalf of the Buckeye Institute.<sup>8</sup> 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.”<sup>9</sup>

**Abuses at Department of Agriculture:** As a political appointee in the Trump Department of Agriculture, Mr. Vaden has been involved in the controversial decision to repeal Roadless Rule protections for the Tongass National Forest,<sup>10</sup> an old-growth temperate rainforest in Alaska containing tribally significant lands for Alaska Natives. Mr. Vaden’s proposal would gut longstanding environmental protections and enable logging interests to bulldoze roads and clear-cut trees in areas that have been off limits for decades. Six federally recognized Tribal governments strongly opposed this

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<sup>3</sup><https://afj.org/wp-content/uploads/2019/11/Reply-Brief-of-Appellants.pdf>.

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

<sup>5</sup><http://www.ca4.uscourts.gov/Opinions/Published/161605.P.pdf>.

<sup>6</sup><https://www.afj.org/wp-content/uploads/2018/06/Northeast-Ohio-Coalition-for-the-Homeless-v.-Husted-837-F.3d-612.pdf>.

<sup>7</sup>*Id.*

<sup>8</sup><https://www.buckeyeinstitute.org/library/doclib/Brief-of-The-Buckeye-Institute-and-the-Judicial-Education-Project-as-Amici-Curiae.pdf>.

<sup>9</sup><https://www.judicialwatch.org/wp-content/uploads/2016/08/Ohio-Democratic-Party-v.-Husted-opinion-3561.pdf>.

<sup>10</sup><https://www.judiciary.senate.gov/imo/media/doc/Vaden%20Responses%20to%20Questions%20for%20the%20Record.pdf>.

decision and noted: “For many Tribal leaders, this is another indignation and example of environmental injustice as many Alaska Native communities bear the brunt of the climate change impacts and extraction policies that disrupt if not destroy the ecosystems they have come to rely upon while their concerns and voices are ignored.”<sup>11</sup> The forests protected by the Roadless Rule also safeguard drinking water supplies and provide vital habitat for thousands of wildlife species.<sup>12</sup>

In addition, Mr. Vaden has engaged in activities to demean and demoralize career employees. He has acknowledged providing legal advice on the controversial decision to relocate the department’s Economics Research Service and National Institute of Food and Agriculture from Washington, D.C. to Kansas City,<sup>13</sup> a move that has been described as “an effort to stifle research [such as climate change] that contradicts the Trump administration’s agenda.”<sup>14</sup> Indeed, the relocation has resulted in staff departures and delays on the completion of dozens of important research studies on such topics as veterans’ health, the opioid epidemic, obesity, and organic foods.<sup>15</sup> The Agriculture Department’s Inspector General (“IG”) concluded that the relocations may have violated federal law that requires congressional approval before spending money to relocate offices, but Mr. Vaden wrote a controversial memo disregarding the IG conclusions because “USDA is not required to abide by unconstitutional laws.”<sup>16</sup>

Mr. Vaden’s nomination to be the USDA General Counsel was opposed in 2017 by the American Federation of Government Employees (“AFGE”) because of his dismissive treatment of agency employees. One of his first acts as General Counsel was to terminate the labor contract between the office and its staff of 250 lawyers, who were represented by AFGE Local 1106.<sup>17</sup> Under Mr. Vaden’s leadership of the Agriculture Department’s Office of General Counsel, the employee satisfaction score in that office plummeted to number 405 out of 415 agency offices that were ranked in a recent survey.<sup>18</sup>

**Ideological and Partisan Affiliations:** Mr. Vaden has been a member of the far-right Federalist Society since 2005, when he joined as a first-year law student. He has been an active member, speaking frequently to Federalist Society audiences and serving since 2015 on its Administrative Law and Regulation Practice Group executive committee.<sup>19</sup> 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. Vaden is also a member of Teneo, which was described by the *National Review* as “a network of young conservatives, doing what they can to advance conservative principles.”<sup>20</sup>

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<sup>11</sup><https://www.hia-env.org/wp-content/uploads/2019/10/Tribal-CA-Press-Release-2019.pdf>.

<sup>12</sup><https://earthjustice.org/features/timeline-of-the-roadless-rule>.

<sup>13</sup><https://www.judiciary.senate.gov/imo/media/doc/Vaden%20Responses%20to%20Questions%20for%20the%20Record.pdf>.

<sup>14</sup><https://www.politico.com/story/2019/06/25/departments-agriculture-union-relocation-1554201>.

<sup>15</sup><https://www.washingtonpost.com/science/2019/10/02/usda-relocation-has-delayed-key-studies-millions-funding-employees-say/>.

<sup>16</sup><https://www.usda.gov/oig/webdocs/91801-0001-23.pdf>.

<sup>17</sup>[https://www.prnewswire.com/news-releases/union-opposes-trump-nominee-to-lead-usda-attorneys-office-300553019.html?tc=eml\\_cleartime](https://www.prnewswire.com/news-releases/union-opposes-trump-nominee-to-lead-usda-attorneys-office-300553019.html?tc=eml_cleartime).

<sup>18</sup><https://bestplacestowork.org/rankings/overall/sub>.

<sup>19</sup><https://www.judiciary.senate.gov/imo/media/doc/Stephen%20Vaden%20SJO%20-%20PUBLIC.pdf>.

<sup>20</sup><https://www.nationalreview.com/2015/10/austin-journal-jay-nordlinger/>.



He has been a partisan activist, contributing thousands of dollars to Republican candidates and serving as president of the Yale Law Republicans while in law school.

**Lack of Experience:** Mr. Vaden is a 2008 law school graduate, and he did not become eligible to practice law until 2009. Thus, he has practiced law for only ten years, which is two years shy of the 12-year mark that the American Bar Association (“ABA”) views as the minimum number of years to be qualified to serve as a federal judge. In addition, Mr. Vaden acknowledged that he has never litigated any matters in the CIT, he is not admitted to practice before the CIT, he has never litigated any matters involving international trade, and he has never handled a trial of any type.<sup>21</sup> Mr. Vaden’s ABA rating of partial Not Qualified likely reflects these concerns about his lack of experience to serve as a federal judge, particularly on a court specializing in international trade cases.

**Disturbing Lack of Diversity:** President Trump’s lack of commitment to diversifying the federal judiciary is deeply disturbing. President Trump has appointed the least diverse group of nominees in decades.<sup>22</sup> Of his 55 appellate nominations, none are African American. Only one is Latinx. And only 11 are women. His district court and CIT nominees are similarly nondiverse. Our nation’s great diversity should be reflected in its government institutions, especially the federal judiciary, which serves as the ultimate 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 Stephen Vaden to the U.S. Court of International Trade. 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, or Lena Zwarenstejn, Fair Courts Campaign Director, at (202) 466-3311.

Sincerely,

Vanita Gupta  
President & CEO

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<sup>21</sup><https://www.judiciary.senate.gov/imo/media/doc/Vaden%20Responses%20to%20Questions%20for%20the%20Record.pdf>.

<sup>22</sup><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/>.