



May 22, 2018

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OPPOSE THE CONFIRMATION OF PATRICK WYRICK TO THE U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

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 Patrick Wyrick for the U.S. District Court for the Western District of Oklahoma.

Patrick Wyrick, 37, is a justice on the Oklahoma Supreme Court. Although he has had few controversial cases during his year on that court, in his previous job as Solicitor General of Oklahoma he worked closely with then-Oklahoma Attorney General Scott Pruitt to diminish civil and human rights in America. His extreme ideology earned him a place on President Trump's Supreme Court short list.¹ Mr. Wyrick graduated from law school just 11 years ago, a full year below the American Bar Association's ("ABA") minimum years of practice standard to be rated qualified to serve as a federal judge. The ABA has not yet issued its rating for Mr. Wyrick, but in his haste to rush President Trump's judicial nominees through the committee regardless of their qualifications, Chairman Grassley has scheduled Mr. Wyrick's hearing for May 23, 2018. The Senate must reject this nomination.

Challenged Environmental Protections: Mr. Wyrick worked closely with then-Attorney General Scott Pruitt to help the oil and gas industry advance its extreme anti-environment agenda. Emails that have been produced and published by the *New York Times* demonstrate this unseemly relationship.² In one email, for example, a lobbyist for Devon Energy emailed Mr. Wyrick and praised him for a letter – ghost written by Devon Energy – that Mr. Pruitt sent on state government letterhead to the Environmental Protection Agency challenging its methane regulations.³ The emails demonstrate many other communications and collaborations between Mr. Wyrick and Devon Energy. According to his Financial Disclosure Report submitted to the Senate, Mr. Wyrick owns shares of Devon Energy.⁴ In February 2017, the Oklahoma Supreme Court – to which Mr. Wyrick had just been appointed – blocked a trial court's order to have more of Mr. Pruitt's emails made public. A local commentator wrote: "And here we are, with Wyrick rightfully still appointed – and a Justice of the Oklahoma Supreme Court until and unless something changes – sitting on a court which just issued an indefinite stay on the release of his former boss's emails. It just looks bad."⁵

¹ <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-announces-five-additions-supreme-court-list/>.

² <https://www.nytimes.com/interactive/2014/12/07/us/politics/1-devon-energy-scripted-letters.html>.

³ Id.

⁴ <https://www.afj.org/wp-content/uploads/2018/05/Patrick-Wyrick-Senate-Questionnaire-PUBLIC-OCR.pdf>.

⁵ <https://www.okgazette.com/oklahoma/commentary-wheres-the-transparency/Content?oid=2980191>.

During his six years as the Oklahoma Solicitor General, Mr. Wyrick brought and supported numerous challenges to efforts by the federal government to protect clean air and combat climate change. In many cases, Mr. Wyrick was unsuccessful. In a May 2017 speech, Mr. Wyrick said: “Pruitt’s time as AG came in a time in history where we had an administration that was as aggressive as any in history in expanding federal power and aggregating power in Washington.”⁶

Personally Criticized for Defense of Flawed Death Penalty Process: Mr. Wyrick 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. Wyrick conducted the Supreme Court oral argument on behalf of Oklahoma, and Justice Sotomayor questioned the veracity and credibility of his brief. During the oral argument, she told Mr. Wyrick: “I am substantially disturbed that in your brief you made factual statements that were not supported by the cited – of those sources and in fact directly contradicted. I’m going to give you just three small examples among many I found. So nothing you say or read to me am I going to believe, frankly, until I see it with my own eyes....”⁷ This is a stinging criticism coming from a sitting Supreme Court Justice and one that calls into question Mr. Wyrick’s integrity.

Defended Anti-Muslim Referendum: Mr. Wyrick helped defend a proposed amendment to the Oklahoma Constitution that stated, among other things: “The courts shall not look to the legal precepts of other nations or cultures. Specifically, the courts shall not consider international law or Sharia Law.”⁸ This proposed amendment was passed in a statewide referendum, but it was challenged in court and struck down as a violation of the Free Exercise Clause and the Establishment Clause.⁹ In affirming the district court ruling, the Tenth Circuit noted: “Appellants do not identify any *actual problem* the challenged amendment seeks to solve. Indeed, they admitted at the preliminary injunction hearing that they did not know of even a single instance where an Oklahoma court had applied Sharia law or used the legal precepts of other nations or cultures, let alone that such applications or uses had resulted in concrete problems in Oklahoma.”¹⁰ Mr. Wyrick’s willingness to defend this inflammatory, anti-Muslim state referendum is especially troubling for a nominee who would be entrusted to apply equal justice under law.

Defended Anti-Workers’ Compensation Law: Mr. Wyrick defended a 2013 Oklahoma law – the Administrative Workers’ Compensation Act – that converted the state’s workers’ compensation system into an administrative dispute resolution system which gave far fewer protections for injured workers. For example, it established caps on compensation for workers injured on the job and caps on the length of time such workers could receive compensation (from 156 weeks to 104 weeks); it allowed injured workers to make a one-time change of physician but forced them to choose from a list of three doctors selected by the employer; and it enabled employers to settle claims through binding arbitration.¹¹ The law has been repeatedly challenged and several parts have been invalidated by the Oklahoma Supreme

⁶ <https://www.afj.org/wp-content/uploads/2018/05/Wyrick-Questionnaire-Attachments-p-76-79.pdf>.

⁷ https://www.supremecourt.gov/oral_arguments/argument_transcripts/2014/14-7955_1823.pdf.

⁸ *Awad v. Ziriax*, 966 F. Supp.2d 1198, 1201 (W.D. Okla. 2013).

⁹ *Id.*

¹⁰ 670 F.3d 1111, 1130 (10th Cir. 2012).

¹¹ <https://newsok.com/article/3805034/at-a-glance-oklahoma-workers-comp-changes>.

Court.¹² Mr. Wyrick has continued his skepticism of workers' compensation as a member of that court, writing a dissent in a case last year, *Multiple Injury Trust Fund v. Garrett*, in which the court awarded compensation to an injured worker who suffered a permanent and total disability. Mr. Wyrick voted to deny any award.¹³

Opposed Native American Sovereignty: Mr. Wyrick represented Oklahoma during a five-year legal dispute initiated by two of the state's largest Indian tribes – Chickasaw Nation and Choctaw Nation – who claimed that the state violated a historic treaty it had with the tribes by allowing Oklahoma City to take water from lakes that were within the tribes' territories. Mr. Wyrick and the state argued that the tribes were ignoring an 1866 agreement in which they gave up certain rights.¹⁴ According to a news account after the case settled in 2016: "Michael Burrage, the tribes' attorney and a former federal judge, said the state pushed hard to keep oversight in its own hands or court system. 'The tribes, I don't want to say they distrust those people [the state], but we sort of do,' Burrage told the Hugo audience. 'We wanted the settlement agreement enacted into federal law.'"¹⁵

Mr. Wyrick also opposed tribal sovereignty in three amicus briefs filed in Supreme Court cases. In *Michigan v. Bay Mills Indian Community*¹⁶ and *Oklahoma v. Hobia*,¹⁷ he argued against tribal immunity from lawsuits brought by states. And in *Dollar General Corporation v. Mississippi Band of Choctaw Indians*, Mr. Wyrick argued against tribal jurisdiction over nonmembers in tort claims.¹⁸

Undermined Women's Access to Health Care: Mr. Wyrick worked on several cases and briefs that sought to limit women's access to reproductive health care. He defended an Oklahoma law that would have required all women to prove their age in order to obtain Plan B and generic emergency contraceptives and required those under 17 to have a prescription.¹⁹ The law was struck down as unconstitutional under state law.

In *Sebelius v. Hobby Lobby Stores, Inc.*, Mr. Wyrick 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. Mr. Wyrick's brief articulated a sweeping license to discriminate in the name of religion, stating that a corporation's "religious faith is no less worthy of respect and protection than is the religious faith practiced by church members."²⁰

Mr. Wyrick also filed an amicus brief in *Humble v. Planned Parenthood*, asking the Supreme Court to overturn a Ninth Circuit decision that struck down an Arizona anti-abortion law that made it more difficult for women to access abortion-inducing medication. Mr. Wyrick argued: "To hold as the Ninth

¹² See, e.g., <https://www.insurancejournal.com/news/southcentral/2016/04/14/405474.htm>.

¹³ 408 P.3d 169 (Wyrick, J., dissenting).

¹⁴ <http://www.chicagotribune.com/news/nationworld/ct-indian-tribes-oklahoma-water-rights-dispute-20160811-story.html>.

¹⁵ <https://stateimpact.npr.org/oklahoma/2016/08/18/with-water-settlement-inked-tribes-now-selling-the-details-back-home/>.

¹⁶ https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-515_pet_amcu_oklahoma.authcheckdam.pdf.

¹⁷ <http://sblog.s3.amazonaws.com/wp-content/uploads/2015/04/tiger-hobia.pdf>.

¹⁸ http://www.scotusblog.com/wp-content/uploads/2015/09/amicus_oklahoma.pdf.

¹⁹ <https://www.afj.org/wp-content/uploads/2018/05/Wyrick-defended-HB2226.pdf>.

²⁰ https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v3/13-354_amcu_soa.authcheckdam.pdf.

Circuit has done that Arizona cannot so regulate because doing so involves a moderate increase in cost and imposes mild inconveniences would threaten the overall protective framework spanned by the States and the federal government.”²¹ The Supreme Court denied certiorari in this case, so the Ninth Circuit ruling remained in place.

And in the case *Pruitt v. Nova Health Systems*, Mr. Wyrick asked the Supreme Court in 2013 to reverse a ruling by his state supreme court that struck down a pre-abortion ultrasound requirement, arguing that it was “impossible to deny that the state supreme court’s misapplication of federal constitutional law implicates numerous other states’ informed consent statutes and proposals.”²² The Supreme Court denied Mr. Wyrick’s certiorari petition, and the Oklahoma Supreme Court ruling remained in place.

Mr. Wyrick’s extreme anti-abortion record demonstrates why President Trump added him to his Supreme Court short list in November 2017. During the 2016 presidential campaign, Mr. Trump embraced unseemly litmus tests and expressly stated he would only appoint Supreme Court justices who opposed abortion rights. Asked in a presidential debate if his Supreme Court appointees would vote to overturn *Roe v. Wade*, candidate Trump said: “If we put another two or perhaps three justices on, that is really what will happen. That will happen automatically in my opinion. Because I am putting pro-life justices on the court.”²³ Mr. Wyrick would be such a justice.

Possible Role in Other Troubling Briefs: Mr. Wyrick listed on his Senate questionnaire several troubling Supreme Court amicus briefs that were filed by Oklahoma Attorney General Scott Pruitt during the time in which Mr. Wyrick served as the Solicitor General. However, he did not indicate what his role was in writing, reviewing, editing, or approving these briefs. In their brief filed in *Obergefell v. Hodges*, Oklahoma argued against marriage equality in a brief written by Stuart Kyle Duncan. In *United States v. Windsor*, Oklahoma defended the constitutionality of the Defense of Marriage Act. In *Abbott v. Veasey*, Oklahoma defended Texas’s discriminatory voter ID law. In *Schuetz v. Coalition to Defend Affirmative Action*, Oklahoma advocated for race-neutral admissions policies and against affirmative action. And in *Whole Women’s Health v. Hellerstedt*, Oklahoma defended an extreme Texas anti-abortion law that was struck down as unconstitutional. In light of Mr. Wyrick’s self-described role as “the chief appellate lawyer for the State of Oklahoma”²⁴ during the time these briefs were filed, it is hard to imagine he did not review and approve them, so Senators must thoroughly question the nominee and require further disclosure.

Ideological Jobs and Affiliations: Mr. Wyrick’s extreme ideology can be seen not only in the positions he has advanced, but also in the career he has chosen. Prior to his appointment to the Oklahoma Supreme Court last year by conservative Republican Governor Mary Fallin, Mr. Wyrick worked for six years as Solicitor General of Oklahoma under another right-wing politician: Attorney General Scott Pruitt, who appointed him to the position. Before that, he worked at an Oklahoma law firm primarily representing corporate clients. His first job out of law school was serving as a judicial law clerk to an Oklahoma U.S. District Judge, James Payne, whose nomination to the Tenth Circuit was withdrawn by the Bush administration when it was learned that he had violated federal law by failing to recuse himself in at least 18 cases involving corporations in which he owned stock.²⁵ In addition, Mr. Wyrick is a member of the

²¹ <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/11/Humble-Amicus-Brief-As-Filed-1.pdf>.

²² <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/06/27817-pdf-Brown-II-final-petition.pdf>.

²³ <https://www.politico.com/story/2016/10/full-transcript-third-2016-presidential-debate-230063>.

²⁴ <https://www.judiciary.senate.gov/imo/media/doc/Wyrick%20SJQ.pdf>.

²⁵ https://www.salon.com/2006/01/23/payne_4/.

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Federalist Society, joining this organization in 2011 and currently serving as the president of the Federalist Society's Oklahoma City Lawyers Chapter. 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.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Patrick Wyrick for the U.S. District Court for the Western District of Oklahoma. 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