



May 8, 2019

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OPPOSE THE CONFIRMATION OF JEFFREY BROWN TO THE U.S. DISTRICT COURT FOR THE SOUTHERN 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 Jeffrey Brown for the U.S. District Court for the Southern District of Texas.

Mr. Brown, a member of the Texas Supreme Court, is an ideological extremist who lacks the neutrality and open-mindedness to serve a lifetime appointment as a federal judge. His record both on and off the bench demonstrates a hostility to LGBTQ rights, women's reproductive health care, and immigrant rights. In addition, Mr. Brown refused to acknowledge that the landmark case *Brown v. Board of Education* was correctly decided. The Senate must reject his nomination.

Hostile to LGBTQ Equality: Mr. Brown has extreme views on LGBTQ equality. In the 2016 case *In re State of Texas*, in which the Texas Supreme Court dismissed as moot a challenge to Texas's ban on same-sex marriage in the wake of the Supreme Court's decision affirming marriage equality in the 2015 case *Obergefell v. Hodges*, Mr. Brown wrote a separate concurring opinion. He accused plaintiffs' counsel of "deliberate and premeditated misuse of the Texas justice system" and asserted that "the status quo was that marriage in Texas was limited to the union of one man and one woman. So says the Texas Constitution, the Texas Family Code, and Texas common law. Indeed, so says all of pre-21st-century American history and all of Western Civilization from the beginning of Christendom to the modern day."¹

Mr. Brown was part of a Texas Supreme Court majority in *Pidgeon v. Turner* that held in June 2017 that city employees who were married in other states did not have any automatic rights to marriage benefits, despite the Supreme Court's holding in *Obergefell*. The opinion attempted to narrow the reach of that landmark decision, stating that while *Obergefell* required states to recognize same-sex marriages, "it did not hold that states must provide the same publicly funded benefits to all married persons...."² Mr. Brown was also part of a Texas Supreme Court majority in 2015 that suspended a Houston City Council ordinance

¹https://scholar.google.com/scholar_case?case=17453991287441639798&q=489+S.W.3d+454+&hl=en&as_sdt=20006.

²https://scholar.google.com/scholar_case?case=4311721021246475097&q=Pidgeon+v.+Turner,+538+S.W.3d+73&hl=en&as_sdt=20006.

that prohibited discrimination based on sexual orientation and gender identity.³ Mr. Brown and his colleagues forced the ordinance to go to a popular vote, where it was defeated.

Mr. Brown made extreme and ideological remarks at an August 2015 Republican Party rally following the Supreme Court's decisions upholding marriage equality (*Obergefell v. Hodges*) and the Affordable Care Act (*King v. Burwell*). Mr. Brown mockingly suggested Texas could start another Civil War, asserting: "What can Texas do about these rulings? Short of what some states did in 1861, there's not much that can be done. A constitutional amendment would solve this, sure, but I believe that's an uphill battle. I'm not optimistic for this to turn around any time soon."⁴ Referring to *Obergefell*, Mr. Brown stated: "We don't legislate from the bench, and that's exactly what the Supreme Court did here."⁵

In an October 2017 speech to a local Republican club, Mr. Brown railed against a federal judge, whom he described merely as "an Obama appointee," who denied a motion to dismiss an Americans with Disabilities Act case involving a claim by a transgender individual who was denied the right to use the restroom of her choice. Mr. Brown called the claim "outrageous" and said it "comes out of a case in Pennsylvania in which a Cabela's stocker sued his employer because Cabela's refused to accommodate his medical condition – gender dysphoria – by allowing him to wear a female name tag and use the ladies' [sic] restroom." Based on Mr. Brown's offensive and insensitive comments, transgender people would understandably believe they could not receive fair treatment in his courtroom.

Sought to Undermine Women's Health Care: Mr. Brown has expressed personal opposition to the landmark case *Roe v. Wade*. In 2016, on the 43rd anniversary of that decision, Mr. Brown posted links on his Twitter account to the two dissenting opinions in *Roe v. Wade*, and he quoted a line from one of the dissents that said "I find nothing in the language or history of the Constitution" to support the decision.⁶

In a 2016 speech to a local Tea Party gathering, Mr. Brown praised the efforts of the Texas Supreme Court that made it more difficult for minors seeking an abortion without parental consent to receive a judicial bypass.⁷ And Mr. Brown praised a state anti-abortion organization for endorsing him during his campaign to become a state supreme court justice. Mr. Brown said: "I'm proud and honored to receive the endorsement of the largest pro-life organization in Texas. Texas Right to Life is one of the strongest grassroots organizations of its kind in the country. They are devoted to championing life at every stage, and this is a cause I applaud and support."⁸ Mr. Brown served on the advisory board of an anti-choice organization, LifeHouse of Houston, from 2002-2019. He would not have an open mind in cases involving women's reproductive health care.

Hostile to Immigrant Rights: Mr. Brown defended President Trump's draconian Muslim ban and extreme views on executive power. In an intemperate and combative October 2017 speech to a Republican organization, Mr. Brown condemned federal judges who had struck down the president's

³https://scholar.google.com/scholar_case?case=441129143529290874&q=In+re+Williams,+470+S.W.3d+819&hl=en&as_sdt=20006.

⁴ Chelsea Henderson, "Brown: Texas at mercy of SCOTUS rulings," Port Arthur News. Aug. 4, 2015.

⁵ *Id.*

⁶ Jeffrey Brown, Questions for the Record, April 17, 2019.

⁷ *Id.*

⁸ *Id.*

troubling Muslim ban. He called such rulings “an attempted coup d’etat by activist judges to halt President Trump’s so-called travel ban” and said that “[t]heir reasoning is not based in law but in their belief that we have an illegitimate president.”⁹ Mr. Brown went on to complain:

You don’t have to be a lawyer to find it highly questionable that a judge should block, or have anything at all to say, about a duly elected president setting immigration policy.... Yet here’s what these courts are saying: Regardless of what the text of the executive order actually says, regardless of the president’s inherent authority in this area, comments *candidate* Trump said can be taken as discriminatory against Muslims. These comments, whatever they were, made before the president was even the president, and of course having no bearing whatsoever on the actual policy itself, are being leveraged by federal judges to undermine the president in one of his most fundamental duties: securing our borders and keeping us safe. Under this twisted logic, the exact same executive order, if issued by President Obama, would not be unconstitutional, because he certainly never called out Islamic terrorism. This double standard is not based on the law but in petty defiance of the president. You’ve heard of fake news. Welcome to fake law.¹⁰

These inflammatory comments demonstrate an arrogance and ideological bias that would preclude Mr. Brown from serving as a fair and neutral arbiter on immigration matters.

Unwilling to Say *Brown v. Board of Education* Was Correctly Decided: Mr. Brown refused to acknowledge that *Brown v. Board of Education* was correctly decided. This landmark Supreme Court decision – handed down 65 years ago next week – ended legalized apartheid in America’s school system and set the stage for racial integration in all facets of American life. Yet Mr. Brown, like many of President Trump’s nominees, refused to state that it was correctly decided. He said that “it would be inappropriate to opine on whether *Brown*, or any other decision of the Supreme Court that I would be bound to follow, was correctly decided.”¹¹ That is a false assertion. As recently as last fall, then-D.C. Circuit Judge Brett Kavanaugh testified that “I think *Brown versus Board of Education*, as I’ve said many times before, is the single greatest moment in Supreme Court history.... And it’s correct. It’s correct. It’s correct because it corrected a historic mistake in *Plessy versus Ferguson*.”¹² Nominees like Mr. Brown who cannot bring themselves to affirm such a vital case as *Brown v. Board of Education* do not deserve a lifetime appointment as a federal judge.

Ideological Affiliations and Comments: Mr. Brown has been a member of the Federalist Society for over two decades, since 1997. 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 nearly 50 percent of his district court nominees have been Federalist Society members. Never before has a president attempted to pack the courts with such a high percentage of ideological extremists.

⁹ Jeffrey Brown, “Conservative Judging and the Constitution,” Golden Corridor Republican Women, Oct. 3, 2017.

¹⁰ *Id.*

¹¹ Jeffrey Brown, Questions for the Record, April 17, 2019.

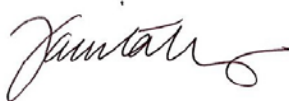
¹² <https://www.c-span.org/event/?449706/senators-press-supreme-court-nominee-record-spar-documents>.

Mr. Brown has made many ideologically extreme comments in speeches over the years. In a February 2018 speech he made as a sitting state supreme court justice to a Republican audience, he attacked the motives of judges who disagreed with him. He said that “Progressives don’t distinguish between what the Constitution says and what they wish it said. After all, to them the Constitution is just an anachronism, and interpreting it in modern times is just a means to a desired end.”¹³ He declared that “the Left has taken to circumventing majority will however it can. And its judges will not let the law stand in the way of doing their part to unilaterally enshrine those policies they cannot achieve obtain [sic] at the ballot box.”¹⁴ He referred to arch-conservative Justice Scalia as “one of our greatest Supreme Court justices” who “will always be a personal hero of mine.”¹⁵ He praised Senate Republicans’ outrageous decision in 2016 to deny a hearing and vote to Supreme Court nominee Merrick Garland, asserting: “A vacant Supreme Court seat, which the Republican majority in the U.S. Senate thankfully would not allow President Obama to fill, had the potential to shape the Court’s jurisprudence for decades to come.”¹⁶ If confirmed, Mr. Brown would bring a clear bias and far-right ideological agenda to the bench, and he would not serve as an objective and fair-minded arbiter.

Disturbing Lack of Diversity: President Trump’s lack of commitment to diversity on the federal judiciary is deeply disturbing. Mr. Brown, like the vast majority of the president’s judicial nominees, is a white male. President Trump has appointed the least diverse group of nominees in decades.¹⁷ Of his 45 appellate nominations, none are African-American. None are Latino. Only nine are women. His district court nominees are also predominately white and male. 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 Jeffrey Brown for the U.S. District Court for the Southern 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, at (202) 466-3311.

Sincerely,



Vanita Gupta
President & CEO

¹³ Jeffrey Brown, Keynote Address, Brazoria County Republican Party Lincoln-Reagan Dinner, Feb. 10, 2018.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ <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/>.