

ALLIANCE FOR JUSTICE REPORT

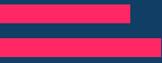
Nomination of Justin Walker

U.S. Court of Appeals for the D.C. Circuit



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Alliance for Justice Report:

JUSTIN WALKER

Alliance for Justice opposes the confirmation of Justin Walker to the D.C. Circuit. Justin Walker, 38, was deemed unqualified to serve as a district court judge by the American Bar Association (ABA) just six months ago and has extremely limited legal experience. Walker believes the courts should invalidate the Affordable Care Act and take away health care from millions. He wants to rejuvenate long discarded doctrines to severely limit the federal government's ability to protect civil rights, workers, consumers, and the environment. At a time when President Trump has repeatedly acted above the law, Walker's extreme views on unchecked presidential authority are particularly dangerous.

Introduction

On April 3, 2020, President Trump announced his intent to [nominate](#) Justin Walker to the United States Court of Appeals for the District of Columbia Circuit. Walker would fill a vacancy being created by the retirement of Judge Thomas B. Griffith, a George W. Bush appointee (his confirmation would maintain the composition of active members on the court at seven Democratic appointees and four Republican appointees). Alliance for Justice strongly opposes Justin Walker's confirmation.

The D.C. Circuit is considered the second most powerful court in the country. It handles some of the most complex and sensitive litigation. It oversees the actions of federal agencies on topics like the environment, consumer protections, workers' rights, banking regulations, and other vital issues. As Chief Justice John Roberts, himself a former member of the D.C. Circuit, [explained](#) in a 2005 lecture titled "What Makes the D.C. Circuit Different," the court has a "special responsibility to review legal challenges to the conduct of the national government." And, it is critical in ensuring that *all* government officials, including the president, are subject to the rule of law. [According](#) to former Judge Patricia Wald, "Aside from the U.S. Supreme Court, it resolves more constitutional questions involving separation of powers and executive prerogatives than any court in the country." Despite its name, its decisions reach far beyond the District of Columbia. The judges there touch the lives of every American.

Four of the current nine justices on the Supreme Court – Chief Justice John Roberts, and Justices Clarence Thomas, Ruth Bader Ginsburg and Brett Kavanaugh – were previously judges on the D.C. Circuit. Other legendary jurists who have made significant contributions to the law, the rights, and the well-

being of every American have sat on the court, including Patricia Wald, David Bazelon, and Harold Leventhal. Justin Walker's nomination is an insult to these legal giants and the remarkable institution where they served.

Indeed, there are countless seasoned Republican lawyers who would be qualified to sit on the D.C. Circuit, the nation's "second highest court." Unfortunately, Walker, a 38 year old [rated](#) "not qualified" by the American Bar Association when confirmed to the district court just six months ago, is not one of them.

Rather, Walker is a Mitch McConnell loyalist being rewarded for dutiful service to the Republican Party (including [162](#) media appearances defending Brett Kavanaugh). He has extreme views on unchecked executive power. He wants to weaken gun safety measures, including bans on assault weapons. He has shown contempt for public education. And, he would use his position on the powerful D.C. Circuit to weaken civil rights, worker, consumer, and environmental protections. He has been vehement in his opposition to the Affordable Care Act ("ACA") and is committed to using the courts to do what Trump, McConnell, and the Republican Party could not do through Congress—take away access to quality health care from [millions](#), including people with preexisting conditions.

Trump himself explicitly stated he was looking for judicial nominees who are hostile to the Affordable Care Act, [tweeting](#), "My judicial appointments will do the right thing unlike Bush's appointee John Roberts on ObamaCare." Walker, who [praised](#) Brett Kavanaugh for writing a "roadmap" to judges to invalidate the law and called Chief Justice Roberts's opinion upholding the Act "indefensible," and "catastrophic[]," meets that test.

Walker's confirmation could literally threaten the health of [millions](#) precisely when they need access to quality health insurance the most.

Background

Walker Lacks the Experience to Serve on the D.C. Circuit and was Nominated Because of His Loyalty to Mitch McConnell

Walker [received](#) his BA from Duke University in 2004 and his JD from Harvard Law School in 2009. Prior to law school, he was a speechwriter for Secretary of Defense Donald Rumsfeld. As far back as 2004, when he was barely in his twenties, Walker [identified](#) as a "tax-cutting, Iraq-invading Republican." Walker was a law clerk for Brett Kavanaugh on the D.C. Circuit and then for Justice Anthony Kennedy. Until his confirmation to the district court on October 24, 2019, he was an associate professor at the University of Louisville's Brandeis School of Law.

Walker is just 38 years old and has only been a district court judge for six months. In that time, he has presided over no trials that have gone to verdict or

judgment. He is the [youngest](#) nominee to the D.C. Circuit since 1983. Like many of Trump's nominees, he is an active member of the Federalist Society and has been [paid](#) thousands of dollars for appearances at its events.

Prior to his confirmation to the District Court for Western District of Kentucky, he [received](#) a "not qualified" rating from the American Bar Association. By his own admission, he had [never](#) "served as sole or chief counsel in any case tried to verdict or judgment." Only once had he been either an "associate counsel at a federal criminal jury trial" or "taken an expert deposition." The Trump Administration is known for valuing conservative media punditry over other credentials for high office. True to form, Walker's qualifications to be a federal trial judge apparently consisted of at least 161 more media appearances defending Brett Kavanaugh than federal jury trials or expert depositions.

Indeed, Walker owes his loyalty to Mitch McConnell who previously hand-picked Walker for the District Court. McConnell [told](#) the Judiciary Committee that he knew Walker's grandfather, and when Walker was in high school, as a favor he met with Walker for a paper he was writing for school, although McConnell "hadn't routinely done high school interviews." Then, in January, 2020, McConnell [accompanied](#) Walker to a meeting with President Trump to discuss Walker's potential nomination to the D.C. Circuit, a conversation that covered the impeachment trial.

On March 13, 2020, while much of the country was already engaging in social distancing to protect their communities, and the House of Representatives was working to pass the Families First Coronavirus Response Act, Mitch McConnell recessed the Senate so he could fly with Justice Kavanaugh to Kentucky [for a victory lap](#) at Walker's investiture as a district court judge. The health crisis was not lost on the attendees at the investiture. Indeed, it was [referenced](#) by Walker himself when he noted that, because of the coronavirus, the crowd was small enough he could thank everyone personally. McConnell's absence in Washington delayed Senate action until the following week.

Walker believes a good judge is not someone who will fairly, dispassionately and without bias apply facts to law, but someone who will be a "warrior" for conservatism.

It is abundantly clear from his record that Walker cannot credibly assert objectivity as a jurist. Indeed, Chief Justice John Roberts has [articulated](#) platonic ideals of a judge (which he himself has certainly [not lived up to](#)): Roberts was emphatic when nominated: "I have no agenda." More recently, Roberts [said](#), "We do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to equal right to those appearing before them." Walker's nomination to the D.C. Circuit makes a mockery of those principles.

As noted, Walker was a vocal supporter of Brett Kavanaugh during the period up to his confirmation to the Supreme Court. When right-wing critics questioned Kavanaugh's conservative bona fides, Walker was trotted out on Fox

News and other media outlets as a character witness, where he made clear that Kavanaugh was a “warrior” for “conservative legal principles” who would “not go[] wobbly.” He [predicted](#):

a conservative revolution as big as the Reagan Revolution . . . Issues like affirmative action, school prayer, gun rights, and abortion will see drastic changes. I predict an end to affirmative action, an end to successful litigation about religious displays and prayers, an end to bans on semi-automatic rifles, and an end to almost all judicial [decisions allowing abortion]. This change will give Donald Trump the most conservative judicial legacy of any Republican in history, by far.

Later, after Dr. Christine Blasey Ford made credible allegations that Kavanaugh had sexually assaulted her, Walker continued to [defend](#) his former boss. Despite Dr. Ford’s testimony plus [corroborating](#) evidence, Walker claimed that Dr. Ford was “[mistaken](#)” about her sexual assault. Moreover, he directly [attacked](#) the integrity of Democratic senators, including Senators Richard Blumenthal and Maize Hirono for defending Ford, claiming they could not be trusted in the matter.

Even after becoming a judge, Walker [continued](#) to viciously lash out at critics. At his investiture, Walker showered Kavanaugh with praise as if it was Kavanaugh who had been the victim, not the women who accused him of sexual assault:

Justice Kavanaugh, what can I say that I haven’t already said on Fox News? You were like St. Paul: hard pressed on every side but not crushed; perplexed but not in despair; persecuted but not abandoned; struck down but not destroyed. Because in Kavanaugh’s America, we will not surrender while you wage war on our work, or our cause, or our hope, or our dream.j

Rather than celebrating objectivity, Walker, who previously had celebrated Kavanaugh for being a “warrior” said he will “not surrender” in the “war” he sees being fought. Rather than celebrating impartiality and nonpartisanship, Walker, at his investiture, referenced those who opposed his own confirmation with a sarcastic, “No hard feelings,” which was accompanied by appropriate laughter from his audience of supporters. And, he repeatedly referred to his own values as ones progressives might call “deplorable,” directly aligning himself with Trump. He continued, “we are winning, but we have not won.”

In his most notable decision during his brief tenure as a judge, Walker demonstrated just how far he was willing to go to make political statements from the bench.

In [On Fire Christian Center, Inc. v. Greg Fisher](#), Walker issued an ex parte temporary restraining order against the City of Louisville “from enforcing, attempting to enforce, or otherwise requiring compliance with any prohibition on drive-in church services at On Fire.” This order [stemmed](#) from the Mayor’s “strong[] suggest[ion]” that churches not host-in-person or drive-in services Easter weekend because the mayor “wanted to keep them and the city safe amid the coronavirus pandemic.”

Regardless of the merits of the holding, his process as a judge is telling. Walker issued the order *ex parte* and did not even give the City of Louisville an opportunity to respond. Nor was it clear an order was even necessary. The lawsuit was based on the mayor's "suggestion." The mayor, moreover, made clear there was no planned enforcement action. As Mayor Greg Fischer [said](#), "I regret that the judge did not allow us to present evidence that would have demonstrated there has been no legal enforcement mechanism communicated....We attempted twice to contact the court." Also, as Governor Andy Beshear subsequently [stated](#) when Walker did allow legal filings after his *ex parte* order, "In short, no, the March 19, 2020 Order prohibiting mass gatherings does not prohibit drive-in religious services."

As Joseph Gerth, a Louisville journalist [noted](#), "the strangest thing is that young Walker did all this without even talking to the city's lawyers. Had he done that, he would have learned that Fischer hadn't signed any sort of executive order and had no plans to take action against the churches that chose to conduct drive-in church services. He would have learned there was nothing for the church to sue over to begin with." As conservative law professor Josh Blackman similarly [emphasized](#), had Walker "held a 15 minute telephonic status conference, any doubt could have been resolved. [Walker] could have simply denied the TRO as moot on the Mayor's official representation that there would be no enforcement action."

Instead, Professor Blackman noted, "Walker wrote a 20 page decision with 86 footnotes that read[s] like something of a law review article. It provided a thorough exegesis of religious freedom from biblical times . . . to the KKK. None of this discourse was necessary to decide the narrow question." Blackman emphasized that while judges are supposed to generally avoid constitutional issues where possible, Walker addressed the First Amendment "head-on," even though unnecessary to decide the case (Kentucky statutory law "provided all the relief the Plaintiff's sought"). As Gerth, the Louisville journalist, [wrote](#), Walker's "screed...looked more like a red meat campaign speech than a legal document."

Health Care

Before he was elected, Trump explicitly [stated](#) he would look for judicial nominees who are hostile to the ACA. Walker easily passes that test, and his nomination to the D.C. Circuit demonstrates that Trump remains committed to overturning the ACA.

Walker has repeatedly said he believes the ACA is unconstitutional. In an [article](#) defending Brett Kavanaugh, Walker called the Supreme Court's decision to uphold the ACA "indefensible," and "catastrophic[]." He also praised Kavanaugh for his "thorough and principled takedown" of the ACA, and for providing a "roadmap" for Supreme Court justices "who said Obamacare was unconstitutional."

When Senator Feinstein [asked](#) Walker to explain these remarks, and whether he still believed them when the Committee was evaluating his nomination to the district court, Walker refused to answer. He said “I understand that the role of an academic and a citizen engaged in the political process is different than the role of a judge or judicial nominee. The canons of judicial conduct preclude me, in my role as a judicial nominee, from going beyond what was said in the 2018 article.” Apparently, Walker’s understanding of the judicial canons only meant that it was the public and senators voting on a lifetime appointment that could not be privy to his views on access to quality health insurance. As a judge with no case or controversy before him, he has felt no such reservation.

Speaking at his [investiture](#) on March 13, 2020 – in the middle of a pandemic – he doubled down on his antipathy of the Affordable Care Act. Describing his clerkship with Justice Kennedy, Walker remarked that the “worst thing” you could hear from Justice Kennedy was “the Chief Justice thinks this might be a tax.” This was a reference to *NIFB v. Sebelius*, where the Court largely upheld the ACA on the grounds that the penalty imposed by the individual mandate was a tax.

Tragically, the stakes for the health and well-being of [millions](#) of people are all too real. Indeed, Walker’s nomination comes at a time when the nation is facing a massive pandemic that jeopardizes the lives, health, and economic well-being of millions.

It is, therefore, remarkable that during this worldwide health crisis, on [March 22](#), the president doubled down on his support for a lawsuit challenging constitutionality of the entire Affordable Care Act (ACA). The very same day that the United States [confirmed](#) 10,351 more cases of the coronavirus (bringing the total number to 34,000) and reported 111 virus related deaths (bringing the total number to 413), the President urged the courts to “terminate” the ACA.

According to [Protect Our Care](#), if the lawsuit is successful, 20 million people could lose health insurance; 135 million people with preexisting conditions – including cancer, pregnancy, and diabetes – will lose desperately needed protections; and nearly 12 million seniors will pay more for prescription drugs. Given the vulnerability of these individuals to COVID-19, the last thing we should do is make it harder for them to access the care they need. As the American Medical Association and other physician groups made [clear](#), if successful the lawsuit “would have a devastating impact on doctors, patients, and the American health care system as a whole.”

Walker also threatens the health care of women. He [praised](#) Kavanaugh for a dissent arguing that the Obama Administration’s contraceptive-coverage policy, ensuring that employer-based insurance policies made the full range of birth control options available to employees, was unconstitutional, a position that would allow employers to restrict access to contraception for their employees.

Executive Power

On January 8, 2020, Justin Walker, [accompanied](#) by Mitch McConnell, met with Donald Trump. We know that President Trump has demanded loyalty from officials in the justice system. As he [told](#) James Comey, “I need loyalty, I expect loyalty.”

In the meeting, Walker, McConnell, and Trump [discussed](#) impeachment. It would certainly not be lost on any of the participants that Walker was being considered for a position on a court, the D.C. Circuit, that has a docket already full of cases concerning Trump’s flagrant attacks on the rule of law, extreme views of presidential power, and efforts to gut Congress’s oversight authority (including when exercising its impeachment power, which was the very topic of their conversation).

Nor is it likely coincidental that Trump, according to Senate Judiciary Committee questionnaires, has met with just three of the 55 appellate nominees he’s selected: his first nominee, Amul Thapar (also a friend of Mitch McConnell’s), and two of his nominees to the D.C. Circuit, Neomi Rao and Justin Walker. His other nominee to the Circuit, Greg Katsas, was a known quantity to the president, having worked in the White House Counsel’s office prior to his nomination. Donald Trump has a great deal personally invested in decisions of the D.C. Circuit; it is where “loyalty” would be most crucial.

If confirmed, Walker would certainly join Neomi Rao and Greg Katsas, who have both [regularly ruled](#) to protect Trump’s efforts to operate outside the law.

Walker has an extreme record on executive power. He was dismissive of the Mueller investigation, [calling](#) it “much ado about nothing” during an appearance on Fox News. In addition, after President Trump fired James Comey for investigating Trump campaign ties to Russia, Walker [argued](#) that the FBI should not be independent of the president. In an essay titled “FBI Independence as a Threat to Civil Liberties,” Walker wrote that “the FBI Director should not think of himself as the nation’s protector; instead, he must think of himself as an agent of the President.” Senator Hironio asked Walker if it would be acceptable for a president to ask the FBI Director to “go easy” on his political allies. Walker [refused](#) to answer.

This was not a hypothetical question. Trump now [claims](#), “I have an Article II where I have the right to do whatever I want as President.” He said as recently as April 13, 2020, “When somebody’s president of the United States, the authority is total. And that’s the way it’s got to be. It’s total.” Among those rights, the president believes, is for law enforcement to exist to serve his personal interests, not those of the nation. Trump called himself the country’s “[chief law enforcement officer](#).” He made it abundantly clear that he thinks it is [appropriate](#) for him to discuss individual investigations with the attorney general. He [asserted](#) that he has an “[absolute right](#)” to intervene in criminal

cases, undermining the important principle that law enforcement be insulated from politics.

At the same time, Attorney General Barr has devoted the full resources of the Department of Justice (DOJ) to shield Trump from legal exposure, brazenly intervened in criminal cases involving Trump's allies, and weaponized the DOJ against Trump's foes.

To appreciate the dangerousness of Trump's attitude, one need only look at his most recent signing statement for the coronavirus stimulus package where he [indicated](#) that he did not intend to comply with congressional oversight of the distribution of funding.

Education

In a 2019 symposium discussion, Walker made clear his hostility to public education. He [bemoaned](#) the “billions of taxpayer dollars” spent on maintaining “a minimum level of funding to offer an adequate education for all students.” He criticized the right to quality public education found in many state constitutions. For example, he criticized Ohio's constitutional responsibility to provide a “thorough and efficient” system of public schools. William Phillis, executive director of Ohio Coalition for Equity and Adequacy of School Funding, made clear [that](#) “there are over 1,000 new school buildings in Ohio that wouldn't be there without the ‘thorough and efficient’ provision” of the state constitution and key court decisions enforcing the provision that Walker opposes.

Remarkably, Walker [equates](#) “the African-American minority in segregated schools” in the 1950s with “the wealthy minority in affluent schools” in the 1990s, claiming that “the latter is...a fairly popular class to take political aim at.” Seemingly without irony, Walker uses the language of minority rights to complain that the right to education contained in state constitutions — as well as increased spending on public education — would infringe upon the liberty of “the minority of individuals who pay the majority of income taxes.”

Workers' Rights

Walker has [denigrated](#) labor unions, claiming that it is hypocritical to both support labor unions and advocate for “people power” over “special interest power.” And, as mentioned, Walker has limited legal experience as a practicing attorney. It is, therefore, notable that one of the few cases he did work on involved [representing](#) a mining corporation in a dispute with the United Mine Workers of America International Union. In the [case](#), the National Labor Relations Board found that Rockwell Mining Company violated the National Labor Relations Act “by refusing to recognize, bargain with, and provide . . . information” to the union “as the duly certified collective-bargaining representative” of mine workers at Rockwell's mine in Wharton, West Virginia.

The NLRB, [including](#) Republican members Marvin Kaplan and William Emanuel, had denied Rockwell's challenge to union certification, a position Walker disagreed with.

In representing Rockwell Mining, Walker fought to undermine the collective bargaining rights of employees to achieve better wages, benefits and working conditions. On November 19, 2019, the D.C. Circuit [upheld](#) the Board's decision.

Relevant to Walker's anti-labor position is his [praise](#) of Kavanaugh's dissent in [Agri Processor Co. v. NLRB](#). There, Agri Processor employees in Brooklyn decided to join a union to improve their working conditions. When their employer argued that the union vote was invalid due to some of the workers' immigration status, Kavanaugh sided with the company. At the D.C. Circuit, Kavanaugh dissented from a decision affirming that the company needed to bargain with the union. The majority noted arguments that the National Labor Relations Act (NLRA) "helps to assure that the wages and employment conditions of lawful residents are not adversely affected by the competition of illegal alien employees who are not subject to the standard terms of employment." Kavanaugh, though, would have agreed with the company that undocumented immigrants are not "employees" under the labor law and were therefore ineligible to vote in "the tainted union election." The majority opinion harshly criticized Kavanaugh's dissent as ignoring the plain language of the NLRA and as a "misread[]" of Supreme Court precedent, noting concerns about "creat[ing] a subclass of workers."

Gun Safety

Walker is a threat to the ability of elected officials to protect the American people from rampant gun violence. Indeed, in praising the nomination of Brett Kavanaugh to the Court, Walker was [exuberant](#) at the prospect that Kavanaugh's nomination would see the "end to bans on semi-automatic rifles." When Walker clerked for him, Kavanaugh took an extremely narrow view of the lawfulness of modern-day gun safety measures, including bans on semi-automatic weapons, and Walker has [praised](#) that decision.

After the Supreme Court's 2008 ruling in [District of Columbia v. Heller](#), the District of Columbia updated its firearm regulations to prohibit possession of certain military-style semi-automatic rifles and to require registration of firearms. When the D.C. Circuit upheld several of those gun safety measures, Kavanaugh [dissented](#) from his Republican appointed colleagues, finding, "[i]n my judgment, both D.C.'s ban on semiautomatic rifles and its gun registration requirement are unconstitutional under Heller."

Indeed, during a Fox News interview on September 3, 2018, Walker [endorsed](#) a theory that gun restrictions based on public safety are "precluded by the Second Amendment" because of "the decision by the framers to make that

balancing choice themselves and to take some of that question out of the democratic process.”

Public Health and Safety

Walker wants to tie the hands of the agencies that Congress has recognized as having the knowledge and experience to enforce critical laws, safeguard essential protections, and ensure the health and safety of the public. This is a particularly dangerous position for someone nominated to the D.C. Circuit, a court [where](#) about two-thirds of cases involve the federal government in some civil capacity. It is the [last resort](#) for most decisions involving federal agencies.

Indeed, Walker was excited at the prospect of Kavanaugh’s nomination to the Supreme Court precisely because it would undermine federal agencies. Quoting favorably Jonathan Adler, he [wrote](#), “In Brett Kavanaugh, President Trump may not have found a justice to ‘deconstruct the administrative state’ — in Steve Bannon’s formulation — but he has found one who will help bring it to heel.”

In an [article](#) titled “The Kavanaugh Court and the Schechter-to-Chevron Spectrum: How the New Supreme Court Will Make the Administrative State More Democratically Accountable,” Walker called for reinvigorating the non-delegation doctrine, which was [last used](#) successfully in 1935 by a famously reactionary Supreme Court majority bent on invalidating the New Deal.

Currently, executive agencies are permitted to exercise rulemaking authority pursuant to a valid delegation from Congress. As long as the delegation [provides](#) a “sufficiently intelligible principle, there is nothing inherently unconstitutional about it.”

Walker [disagrees](#) with this long-established principle of law, arguing that agencies should not be able to exercise such authority, even if Congress properly delegates it. Justice Antonin Scalia himself made clear this position’s radical nature. As he explained, reviving that doctrine would deprive Congress of the authority essential to empower agencies to effectively implement and enforce critical statutes that protect the American people in scores of areas from ensuring financial stability to controlling health hazards. As Scalia [noted](#), “we have almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law” because “a certain degree of discretion, and thus of lawmaking, inheres in most executive and judicial action.” Walker would flout these principles and preclude Congress from making government work for the American people.

In addition to accepting the non-delegation doctrine, Justice Scalia also accepted the legal principle that gives agencies the authority to determine how they will carry out their mandates when the congressional act governing their

actions might be open to different interpretations – referred to as “*Chevron* deference.” As Justice Scalia [noted](#), “in the long run *Chevron* will endure and be given its full scope” because “it more accurately reflects the reality of government, and thus more adequately serves its needs.”

Walker [disagrees](#) on this point and has expressed hostility towards the decades-old doctrine that is a cornerstone of administrative law. He has criticized the federal government’s ability to regulate corporations and protect consumers, the environment, workers, and more.

Walker has also [argued](#) that agencies, including independent agencies that historically have been independent of political management, should have less power to issue public protections and enforce safety standards. He opined that such agencies should no longer be independent. Agencies such as the Consumer Financial Protection Board, the Securities and Exchange Commission, the National Labor Relations Board, and the Occupational Safety and Health Review Commission play critical roles in upholding the rights of consumers, workers, and investors; Walker would be hostile to the protection of these rights.

Conclusion

Justin Walker believes a jurist should be a “warrior” for political causes. His actions and statements reveal that he is indeed a zealot who is primarily concerned with promoting conservative causes. None is more dangerous in the middle of a pandemic than his view that the courts should invalidate the ACA and take away health care from [millions](#).

He is not being nominated for his experience, but because he has been loyal to the Republican Party, his condoning Donald Trump’s

unchecked power, and because his desire to prevent the federal government from protecting the health and safety of the American people. For these reasons, Alliance for Justice strongly opposes Justin Walker’s confirmation.

AFL-CIO

AMERICA'S UNIONS

June 3, 2020

Chairman Lindsey Graham
Ranking Member Dianne Feinstein
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

Dear Chairman Graham and Ranking Member Feinstein,

The AFL-CIO urges you to oppose the nomination of Judge Justin Walker to the United States Court of Appeals for the District of Columbia Circuit. The DC Circuit is of immense importance to workers and their families, as approximately two-thirds of its case load concerns involve actions of the federal government. It is considered the most influential circuit court in the country as it reviews complex challenges to the conduct of federal agencies.

Judge Walker was confirmed to his current position on the District Court for the Western District of Kentucky less than a year ago, and the AFL-CIO opposed confirmation for reasons that still hold true. Admitted only in 2019 to practice in the Western District of Kentucky, he began his service on the bench barely ten years after his graduation from law school, and at the time had very limited legal experience, minimal trial experience, and a deeply partisan record that raised serious concerns about his ability to be fair and open-minded.

Mr. Walker's inexperience alone should disqualify him from a seat on the critically important DC Circuit. Judges on the DC Circuit are called upon to decide a majority of the administrative law cases that come before the circuit courts from executive branch and independent agencies. His very brief service since he became a district court judge has not provided any substantial additional trial experience—nor anything else—to justify so rapid an elevation to this important circuit court.

Although his legal experience is limited, his support for corporate interests over the rights of working people has been robust. Prior to assuming the bench, Mr. Walker served as co-counsel to Rockwell Mining LLC in a pending case before the U.S. Court of Appeals for the District of Columbia Circuit, where he argued that the court should vacate a National Labor Relations Board decision. In *Rockwell Mining LLC*, 367 NLRB No. 46 (2018), the Republican members of the Board found Rockwell Mining unlawfully failed and refused to recognize and bargain with the union in violation of the National Labor Relations Act. In representing Rockwell Mining, Mr. Walker sought to undermine the collective bargaining rights of the employees to achieve better wages, benefits and working conditions afforded by the NLRA.

American Federation of Labor and Congress of Industrial Organizations

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RICHARD L. TRUMKA
PRESIDENT

ELIZABETH H. SHULER
SECRETARY-TREASURER

TEFERE GEBRE
EXECUTIVE VICE PRESIDENT

Moreover, Mr. Walker has repeatedly expressed vehement opposition to the Affordable Care Act and to the Supreme Court ruling in *NIFB v. Sebelius* that largely upheld the ACA's extension of healthcare coverage for millions of Americans. He has criticized the federal government's ability to protect the public, and written that requiring employer-based health plans to cover a full range of birth control options is unconstitutional.

Our nation deserves judges who are both qualified and unbiased. Nothing in his record suggests that Mr. Walker meets that standard. We urge you to oppose his nomination for a lifetime appointment to the U.S. Circuit Court for the District of Columbia.

Sincerely,



William Samuel
Director, Government Affairs

American Federation of Labor and Congress of Industrial Organizations

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RICHARD L. TRUMKA
PRESIDENT

ELIZABETH H. SHULER
SECRETARY-TREASURER

TEFERE GEBRE
EXECUTIVE VICE PRESIDENT

May 4, 2020

The Honorable Lindsey Graham
Chair
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of our national network of more than 300,000 supporters, Americans United writes to voice our opposition to the confirmation of Justin Walker to the United States Court of Appeals for the District of Columbia Circuit.

When Judge Justin Walker was nominated to serve as a District Court judge, less than one year ago, the American Bar Association (ABA) deemed him unqualified due to his lack of experience: “Mr. Walker does not presently have the requisite trial or litigation experience or its equivalent.”¹ The ABA noted that “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 Yet, after a mere six months as a district court judge, President Trump is already seeking to elevate him to the D.C. Circuit, which many consider to be the second most powerful court in the nation.³

In the few short months Judge Walker has been on the district court, he has not had time to gain sufficient experience to qualify him for his current position, let alone enough experience to earn a promotion to the D.C. Circuit. He has not even presided over a trial that has gone to verdict or judgment. He has managed, however, to attract significant negative attention from legal experts, on both the right and left, for his opinion in *On Fire Christian Center v. Fischer*⁴—a case in which he granted a temporary restraining order to ensure that a church could hold drive-in church services during the global COVID-19 pandemic. Judge Walker’s handling of this case reveals that he lacks the experience and judicial temperament necessary to serve on the D.C. Circuit and holds a troubling view of religious freedom.

As explained by Josh Blackman, Cato Scholar and Associate Professor of Law at the South Texas College of Law Houston, Judge Walker “made numerous, unforced errors” in his ruling on a

¹ Letter from Paul T. Moxley, Standing Comm. on the Fed. Judiciary, Am. Bar Assoc., to Senate Judiciary Comm. (July 30, 2019). available at <https://bit.ly/2VVf5aw>.

² *Id.*

³ See, e.g., John G. Roberts, Jr., Lecture, *What Makes the D.C. Circuit Different? A Historical View*, 92 Va. L. Rev. 375, 376 (2006).

⁴ *On Fire Christian Ctr. v. Fischer*, No. 3:20-CV-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020) (granting temporary restraining order).

motion for a temporary restraining order in *On Fire Christian Center*.⁵ Judge Walker, so eager to issue an opinion, wrote a discursive 20-page decision with 86 footnotes in just short of 24 hours. Yet he failed to find time to give the Defendants, Louisville Mayor Greg Fischer and the City of Louisville, the opportunity to respond to the allegations in the complaint before accepting what the plaintiffs said and using it as a platform to write an unnecessary and often ideological opinion delving into unrelated topics. Had he paused to even just hold a brief status conference by telephone before issuing his order and opinion, he likely would have learned that although the City of Louisville urged the religious community not to hold drive-in church services, it did not threaten any enforcement action against those who held such services, nor did issue an order banning such services.⁶ There was no real case or controversy: Judge Walker issued an advisory opinion that barred the City from taking an action it had no intention of taking. In doing so, he grossly exceeded the powers of the federal courts under Article III of the Constitution. The *On Fire* opinion demonstrates his lack of experience or understanding of a judge's role.⁷

Indeed, Judge Walker began his the opinion with the jarring claim that, “on Holy Thursday, an American mayor criminalized the communal celebration of Easter.”⁸ This was factually incorrect. At the time of the opinion, the Commonwealth of Kentucky, like nearly two-thirds of the states, had temporarily suspended all mass gatherings—including those at houses of worship—to prevent the spread of COVID-19.⁹ And most denominations and faiths across the country have been urging their congregations to hold online services and their congregants to stay home in order to save lives. Louisville attempted to dissuade—but did not prohibit—drive-in gatherings, because evidence showed that previous *On Fire Christian Center* drive-in services did not comply with social distancing rules: Instead of staying in their cars with the windows no more than half

⁵ Josh Blackman, *Courts Should Not Decide Issues that Are Not There*, Volokh Conspiracy (Apr. 12, 2020), <https://bit.ly/2YAL4P1>.

⁶ Def.'s Mot. to Dissolve TRO at 2, 9-10, *On Fire Christian Ctr. v. Fischer*, No. 3:20-CV-264-JRW (W.D. Ky. Apr. 13, 2020), available at <https://bit.ly/2WfWG6Z>.

⁷ A footnote at the end of the opinion appears to be the initials of Judge Walker and his law clerks. Attributing the opinion to his clerks, who surely assist him in researching and drafting the opinion but who are not Senate-confirmed and invested with Article III power, may demonstrate Judge Walker's lack of understanding about his role as an Article III judge. It also undermines the role of Article III judges, suggesting that their power can be simply delegated to law clerks. The footnote follows a statement about *On Fire's* beliefs regarding Easter, which does not actually use language or descriptions from the Plaintiff's pleadings. Using his own language, it reads as a deeply personal statement of beliefs, even using a first-person plural pronoun. Placed where it is in the opinion, the footnote could be read to associate the judge and his clerks with the statement of beliefs about Easter.

⁸ See Walter Kim & Timothy Dalrymple, To Cancel or Not to Cancel: That is the Question, *Christianity Today*, Mar. 23, 2020, <https://bit.ly/3f7qhlp> (“canceling in-person worship services is not the same as canceling worship.”); Auburn Seminary, Petition: We Commit to #FaithfulDistance! <https://bit.ly/2SrE9n6> (“We now have an obligation to act to mitigate the worst impacts of the global COVID-19 pandemic. This obligation includes canceling large group gatherings and encouraging community members to stop unnecessary travel and stay at home.”); Br. of Kan. Interfaith Action as Amicus Curiae in Support of Def., *First Baptist Church v. Kelly*, Case 6:20-cv-01102-JWB-GEB (D. Kan. Apr. 21, 2020), available at <https://bit.ly/2Sssl4a> (“no one's right to worship is being limited; only their ability to gather physically is affected. The pandemic is an extenuating circumstance that calls on people of faith to accept temporary limitations on public worship that would be unacceptable in normal circumstances. But these are not normal circumstances, and we are willing to accept a temporary inconvenience for a greater good—the life and health of our congregants and our communities.”).

⁹ See e.g. [Ala. Amended Order of the State Health Officer](#) (Apr. 3, 2020); [Ga. Exec. Order 04.02.20.01](#) (Mar. 23, 2020); [Idaho Dep't of Health and Welfare Order of the Director](#) (Apr. 15, 2020); [Ind. Exec. Order 20-18](#) (Apr. 6, 2020); [Iowa Proclamation of Disaster Emergency](#) (Apr. 6, 2020); [La. Proclamation No. 41 JBE 2020](#) (Apr. 2, 2020); [Mo. Dep't of Health and Senior Servs. Order](#) (Apr. 3, 2020); [Neb. Directed Health Measure Order 2020-10](#) (Apr. 10, 2020); [N.C. Exec. Order No. 121](#) (Mar. 27, 2020); [Okla. Exec. Order 2020-13](#) (Apr. 8, 2020); [S.C. Exec. Order 2020-13](#) (Mar. 22, 2020); [Tenn. Exec. Order 17](#) (Mar. 22, 2020).

open, their drive-in services¹⁰ included “gathering within six feet of each other, elbow bumping, dangerously hanging out of car windows, and passing the collection basket.”¹¹

In addition, the *On Fire* opinion reflects Judge Walker’s troubling view of religious freedom. He veers far from the claims made by On Fire Christian Center in order to express his views on a wide variety of religious freedom cases, and in so doing prejudged issues that would likely come before him on the D.C. Circuit. Despite their irrelevance to the legal question presented in the case before him, Judge Walker begins the opinion by reciting incidents of religious persecution, starting in 64 CE. Then he appears to suggest that plaintiffs in recent cases—such as businesses that claim they are entitled to religious exemptions from nondiscrimination laws that protect LGBTQ people and the Plaintiff in this case—are suffering akin to Christians who were persecuted under Nero, to African-American slaves who were flogged for attending Christian services, and to the Latter Day Saints driven into Utah by “[m]urderous mobs.”¹²

He goes on to describe recent cases in an overwrought—and inaccurate—way:

- He describes the birth control benefit in the Affordable Care Act, which ensures that most health insurance plans cover all FDA-approved methods of contraception with no co-pay, as “forc[ing] religious business owners to *buy* pharmaceuticals they consider abortion inducing”;¹³
- He depicts the Department of Justice’s argument that the First Amendment did not preclude the application of the Americans with Disabilities Act to a woman who taught secular subjects at a religious school, as “prohibit[ing] a church from choosing its own ministers”;¹⁴
- He characterizes the regulation that exempts religious entities from providing insurance coverage for contraception to their employees after simply filling out a form to request the exemption, as “conscript[ing] nuns to provide birth control”;¹⁵ and
- He portrays the enforcement of a state law that prohibits businesses from discriminating against LGBTQ customers as “discrimination toward people of faith.”¹⁶

The First Amendment includes two complementary protections: free exercise of religion and the separation of church and state. Throughout the opinion, Judge Walker demonstrates that he views the Free Exercise Clause as predominant¹⁷ and does not account for the limitations imposed by the Establishment Clause. Separation of church and state is the linchpin of religious freedom and one of the hallmarks of American democracy. It ensures that each person has the right to choose whether to be religious or nonreligious without pressure from the government. It

¹⁰ *On Fire*, 2020 WL 1820249 at *6.

¹¹ Def.’s Mot. to Dissolve TRO at *2, *On Fire* (W.D. Ky. Apr. 13, 2020).

¹² *On Fire*, 2020 WL 1820249, at *3-4.

¹³ *Id.* at *3 (emphasis added).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Notably, he appears to describe *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) and *Zubik v. Burwell*, 136 S. Ct. 1557 (2016) as Free Exercise Clause cases rather than cases that were decided under the Religious Freedom Restoration Act. *On Fire*, 2020 WL 1820249, at *3. This could suggest that he would disagree with Justice Scalia’s opinion in *Employment Division v. Smith*, 494 U.S. 872 (1990), which held that the Free Exercise Clause does not require strict scrutiny so long as the law is neutral and generally applicable. Or, it could suggest that he would take a different, yet also extraordinary position, and argue that the laws in *Hobby Lobby* and *Zubik* were not neutral and generally applicable.

safeguards houses of worship from intrusion by the government and prevents religious institutions from using the mechanisms of government to impose their religion on others. It guarantees that parents can send their children to public schools without fear that they will be coerced into participating in prayer or religious activities. It protects taxpayers from being forced to fund the religious activities and education of others. It ensures that everyone can practice their religion, so long as it doesn't harm others. And, it makes certain that all Americans feel welcome and treated equally under the law regardless of their religion.

Confirming a judge who fails to recognize the protections afforded by the separation of church and state could have real and troubling consequences for people who most need the safeguards guaranteed by the First Amendment. Judge Walker will bring his problematic views of the scope of the First Amendment to any religious freedom cases that come before the D.C. Circuit. It is also concerning that he could come to new cases without an open mind, appearing already committed to ruling according to his views that laws guaranteeing access to healthcare and nondiscrimination burden religious exercise. His hasty ruling in *On Fire* already shows a proclivity to rule based on preexisting views rather than on the facts of the case before him.

* * *

We all deserve qualified appellate court judges who treat all the parties fairly under the law, only issue rulings on real cases and controversies, and do not prejudge or impose their own ideological views onto the case. In Judge Walker's very short six-month tenure, he has proven he is not ready to do that.

For these reasons, Americans United opposes the confirmation of Justin Walker to the United States Court of Appeals for the District of Columbia Circuit.

Sincerely,

A handwritten signature in cursive script that reads "Maggie Garrett".

Maggie Garrett
Vice President of Public Policy

AN OPEN LETTER TO THE UNITED STATES SENATE

May 5, 2020

We, the 53 undersigned groups, are deeply dismayed that in the midst of the COVID-19 pandemic, when addressing the health and economic needs of our nation should be paramount to all other business, President Trump, Leader Mitch McConnell, and their allies in the Senate have said they [will prioritize](#) the rapid confirmation of two of Trump's judges who explicitly support dismantling the healthcare protections we need most right now.

We have grave concerns that the confirmation of these judges will exacerbate the health crisis in this country. The President has made clear that he would nominate judges committed to dismantling the Affordable Care Act (ACA) and take away health care for millions. He [said](#), "my judicial appointments will do the right thing unlike Bush's appointee John Roberts on Obamacare." McConnell is rushing to confirm nominees, including those nominated *in the middle of the pandemic*, that clearly meet President Trump's litmus test.

Two pending nominees offer stark examples of anti-healthcare judges: Justin Walker, nominated to the D.C. Circuit, and Cory Wilson, nominated to the Fifth Circuit.

Justin Walker praised Brett Kavanaugh for writing a ["roadmap"](#) for judges to invalidate the law and called Chief Justice Roberts's opinion upholding the ACA "indefensible," and "catastrophic[]." On March 13, as Congress negotiated what became the Families First Coronavirus Response Act, McConnell and Kavanaugh flew to Kentucky to attend Walker's investiture as a district court judge, delaying passage of the bill. Mocking the safety precautions already being promoted, Walker [fist-bumped both men](#).

Cory Wilson called the ACA, which among other provisions protects people with preexisting conditions, ["illegitimate" and "perverse."](#) He encouraged the Supreme Court to invalidate it, stating, ["\[f\]or the sake of the Constitution, I hope the Court strikes down the law."](#) Wilson also [openly fought Medicaid expansion](#) in Mississippi.

The real-life threat to our healthcare is clear. In just one case, now pending before the Supreme Court, the Fifth Circuit Court of Appeals kept alive a lawsuit challenging the constitutionality of the entire Affordable Care Act. In the middle of the pandemic, on [March 22, 2020](#), President Trump doubled down on his support for suit.

If the ACA is invalidated, [studies](#) show 20 million Americans would lose health coverage. The ACA also prohibited insurers denying or dropping coverage because of a preexisting condition – a provision impacting 135 million Americans. Nearly 12 million Americans will have to pay millions more for drugs because the prescription drug donut hole will be reopened. The ACA also prohibited discrimination against women and LGBTQ people – ending insurance practices that charged women more for the same coverage and allowed care to be denied altogether to some LGBTQ people. The ACA also greatly improved coverage of and access to health care services, including contraception and maternity care, especially for communities of color and those with intersecting identities.

At a time of a worldwide pandemic, now is not the time for the Senate to prioritize the confirmation of judges who are committed to taking away health insurance through the courts for millions.

Sincerely,

Alliance for Justice
Advocates for Youth
AIDS United
American Atheists
American Muslim Health Professionals
American-Arab Anti-Discrimination Committee (ADC)
Autistic Self Advocacy Network (ASAN)
Battle Born Progress
Bazelon Center for Mental Health Law
Center for Popular Democracy Action
Clearinghouse on Women's Issues
Coalition Of Labor Union Women
Coalition on Human Needs
Community Catalyst
Demand Justice
Disability Rights Education & Defense Fund (DREDF)
Equality California
Equality North Carolina
Family Equality
Feminist Majority Foundation
Fix Our Senate
Freedom From Religion Foundation
Health Care for America Now (HCAN)
Health Care Voter
Hoosier Action
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)
Justice in Aging
League of Conservation Voters
Little Lobbyists
Muslim Caucus Education Collective
Muslim Public Affairs Council (MPAC)
NAACP
NARAL Pro-Choice America
National Asian Pacific American Women's Forum (NAPAWF)
National Association of Social Workers (NASW)
National Center for Transgender Equality
National Council of Jewish Women

National Education Association
National Employment Lawyers Association
National Equality Action Team (NEAT)
National Health Law Program
National Immigration Law Center
National Partnership for Women & Families
NETWORK Lobby for Catholic Social Justice
People For the American Way
PFLAG National
Population Connection Action Fund
Protect Our Care
Public Advocacy for Kids (PAK)
Service Employees International Union
SIECUS: Sex Ed for Social Change
Silver State Equality-Nevada
Universal Health Care Action Network



May 5, 2020

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein,

On behalf of the Human Rights Campaign (HRC), America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality, we write to oppose the nomination of Justin Walker to the U.S. Court of Appeals for the D.C. Circuit. In confirming a judge to lifetime service on the federal bench, Senators entrust that the judge will be a thoughtful, but neutral arbiter – guided by a devotion to the law, the Constitution, and justice for every litigant over bias, self-interest, or personal political belief. Although we expect these basic but exacting qualities from every federal judge, we must acknowledge the unique, national reach of the D.C. Circuit. Justin Walker has devoted his brief legal career to promoting divisive partisan talking points and excusing radical conservative ideology under the guise of legal theory. He also earned an “unqualified” rating from the American Bar Association because of his lack of experience for his nomination to the District court just six months ago.

Today our nation faces a generation-defining pandemic. As death rates continue to rise, this crisis is testing our healthcare system and exposing the persistent disparities that have plagued marginalized communities – including LGBTQ people – for decades. This crisis also forces us to evaluate all federal government leaders through a critical public health lens. A lens that prioritizes access to care, respect for science, and human dignity and survival over partisanship. Justin Walker has built his career by promoting opposing values. His unrelenting critique of the Affordable Care Act (ACA), as recently as March 13, 2020 at his investiture for his seat on the District Court, belies the tangible threat his nomination is to the health of millions of Americans.

The ACA has served as a lifeline for millions of LGBTQ people and has proven to be a critical tool in ending health disparities within our community. Before passage of the ACA, LGBTQ people reported some of the lowest rates of insurance coverage of any population in the country. The individual market reforms, including the ban on preexisting conditions have made it possible for many in our community to obtain health insurance for the first time in their lives. The Medicaid expansion has helped to improve coverage rates among low-income LGB people by eight percent. In addition, tens of thousands of people living with HIV have qualified for care and treatment under the Medicaid expansion, gaining access to life-saving treatments before becoming disabled by the virus. As a result, people living with HIV are able to lead healthier, and longer lives.

Justin Walker has repeatedly asserted that the ACA is unconstitutional and has described the Supreme Court’s decision upholding it as “indefensible” and “catastrophic.”¹ He also praised Justice Kavanaugh’s opinion in the 2011 challenge to the law in *Seven-Sky v. Holder*² as a “thorough and principled takedown” of the ACA and as a “roadmap” for the Supreme Court justices “who said Obamacare was unconstitutional.”³ Walker’s persistent attacks on the ACA in his professional capacity during this healthcare crisis reveal the extent to which partisan ideology colors his judgment and is ingrained in his approach to the law.

¹ *Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful*, Justin Walker, The Federalist, (July 3, 2018).

² 661 F. 3d 1 (2011).

³ *Supra* note 1.

We are also deeply concerned by Justin Walker’s views regarding executive power and administrative decision-making. In hundreds of media interviews and articles, Walker has asserted extreme views of executive power. In January 2020, Walker joined a meeting with Mitch McConnell and President Trump in a discussion involving the status of his nomination to the D.C. Circuit, as well as the extent of Congressional oversight authority in exercising impeachment powers. If confirmed, Walker would be tasked with working through the D.C. Circuit docket with multiple cases challenging the President’s attacks on the rule of law and claims of “total authority” over government. Walker’s previous statements raise serious concerns regarding his commitment to enforcing the law and the Constitution regarding executive power and privilege. In response to the firing of FBI Director James Comey in the midst of the Bureau’s investigation into Trump campaign ties with Russia, Walker penned a law review article asserting that “the FBI Director should not think of himself as the nation’s protector; instead, he must think of himself as an agent of the President.”⁴ Since his nomination to the federal bench, Walker has refused to distance himself from this statement.⁵

Despite his relatively brief legal career, Justin Walker’s record reveals intense partisanship that compromises his ability to exercise reasoned juristic judgement. If confirmed, he will have the opportunity to rule on numerous cases and controversies addressing some of the most critical questions facing our democracy today. Accordingly, we urge you to vote against his lifetime appointment to a seat on the United States Court of Appeals for D.C. Circuit. Thank you for your consideration. If you have any questions or need more information, please contact me at David.Stacy@hrc.org.

Sincerely,



David Stacy

Government Affairs Director

⁴ *FBI Independence as a Threat to Civil Liberties: An Analogy to Civilian Control of the Military*
George Washington Law Review, Vol. 86, 2018.

⁵ Senate Judiciary Committee Hearing, Nominations, July 31, 2019.



May 5, 2020

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington D.C. 20510

RE: Lambda Legal Opposes the Confirmation of Justin Walker for United States Court of Appeals for the D.C. Circuit.

Dear Chairman Graham and Ranking Member Feinstein:

Lambda Legal urges you to postpone or cancel the hearing on, and to oppose the nomination of Justin Walker to the United States Court of Appeals for the D.C. Circuit. Lambda Legal is the oldest and largest national legal organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and everyone living with HIV, through impact litigation, policy advocacy, and public education.

It is important to address the backdrop of this nomination hearing before discussing the nominee’s record. Senate Majority Leader Mitch McConnell’s decision to disregard the advice of the Attending Physician of the U.S. Congress and bring the Senate back into session for the purpose of pushing through more judicial nominations recklessly endangers the health and well-being of Senators, their staff and all of the supporting security and medical personnel, as well as their families and communities.¹ Leader McConnell has made no secret of the fact that his goal for the year is to “leave no vacancy behind” and has callously declared that the “pandemic will not get in the way of achieving that goal.”² With over one million confirmed COVID-19 cases across the country and over 65,000 dead from the virus,³ the decision of the Senate Judiciary Committee to move forward with hearings on judicial nominees is, in a word, indefensible. We respectfully submit that this decision, if held to, is likely to be difficult to explain to the American public.⁴

¹ Emily Cochrane and Nicholas Fandos, *Under Pressure, House Leaders Scrap Plan for Speedy Return to the Capitol*, NEW YORK TIMES (Apr. 28, 2020), available at <https://www.nytimes.com/2020/04/28/us/politics/house-return-coronavirus.html>

² Hugh Hewitt, *Senate Majority Leader Mitch McConnell on What Comes Next* (Apr. 22, 2020) available at <https://www.hughhewitt.com/senate-majority-leader-mitch-mcconnell-on-what-comes-next/>.

³ Centers for Disease Control and Prevention Coronavirus Disease, Cases in the U.S., available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last accessed on May 3, 2020).

⁴ Rather than focusing on judicial nominations, the Senate Judiciary Committee should be prioritizing issues within its jurisdiction directly related to the global pandemic. For example, we would urge the committee to focus on the urgency of the crisis resulting from COVID-19 sweeping through our federal prisons. See, e.g., Walter Pavlo, *Bureau Of Prisons Had A Response Plan For A Pandemic But Delayed Action*, FORBES (Apr. 23, 2020) available at

The Committee’s decision to jeopardize public health in order to move forward immediately now with a hearing for a nomination to the U.S. Court of Appeals for the D.C. Circuit is particularly peculiar, as that position will not even be vacant until September 1, 2020, upon the retirement of Judge Griffith. Moreover, the Committee’s decision to schedule a needlessly premature hearing to consider the nomination of Judge Justin Walker is even more bizarre and inexcusable given Judge Walker’s glaring lack of legal experience, which resulted in him receiving a “Not Qualified” rating from the American Bar Association for the district court position to which he was confirmed a mere six months ago.⁵ Specifically, Judge Walker, who is only 38 years old, had never served as lead counsel in any case tried to verdict, had never filed a motion to dismiss in federal court, had never filed a motion for summary judgment in federal court, and had never even taken a deposition in a federal case.⁶

Judge Walker’s primary qualifications for this position appear to be his decades-long relationship with Senator McConnell,⁷ his public support for now-Justice Kavanaugh, and his strong affiliation with the Federalist Society.⁸ In addition, Judge Walker’s conduct since taking the bench has heightened rather than dissipated doubts about his ability to perform the duties of his current position of public trust in a fair and impartial manner, let alone whether he is an appropriate choice for elevation.⁹

Judge Walker’s own public statements reinforce the concern that he is an acknowledged, loyal partisan, not an impartial arbiter of justice. Less than two months ago, Judge Walker proclaimed during his investiture speech that, “*we are winning, but we have not won.*” He added that, “*although we celebrate today, we cannot take for granted tomorrow or we will lose our courts and our country to critics who call*

<https://www.forbes.com/sites/walterpavlo/2020/04/23/bureau-of-prisons-had-a-response-plan-for-a-pandemic-but-delayed-action/#6db2fbf3d974>.

⁵ American Bar Association Standing Committee on the Judiciary Ratings of Article III and Article IV Judicial Nominees, 116th Congress, *available at* https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/webratingchart-trump116.pdf?logActivity=true (last accessed May 5, 2020).

⁶ Nomination of Justin Reed Walker to the United States District Court for the Western District of Kentucky Questions for the Record (Submitted August 7, 2019), *available at* <https://www.judiciary.senate.gov/imo/media/doc/Walker%20Responses%20to%20QFRs.pdf>.

⁷ Senator McConnell was heavily criticized for recessing the Senate in order to travel back to Kentucky to join Judge Walker for his investiture ceremony on March 13, 2020, delaying the advancement of the first Coronavirus legislation. *See*, Brendan Cole, *Mitch McConnell ‘Wasted’ Time on Coronavirus Bill By Sending Senate Home, Says Ohio Senator: ‘We Should be Working on This’*, NEWSWEEK (Mar. 17, 2020) *available at* <https://www.newsweek.com/mitch-mcconnell-sherrod-brown-coronavirus-relief-bill-senate-1492660..>

⁸ Judge Walker devoted much of his short career to earning thousands of dollars for speaking appearances organized by the Federalist Society in support of Justice Kavanaugh’s nomination, while at the same time conducting over one hundred media appearances with the same objective. *See* <https://www.judiciary.senate.gov/imo/media/doc/Walker%20Responses%20to%20QFRs.pdf>

⁹ One commentary on Judge Walker’s recent handling of a request to enjoin a municipal public health social distancing order (issued in response to the COVID-19 pandemic) noted “[h]ad the District Court held a 15 minute telephonic status conference, any doubts about the proposed enforcement [of the challenged order] could have been resolved. * * * But the District Court skipped that route. Instead, it spent nearly 24 hours writing a twenty-page published decision, with 86 footnotes.” Josh Blackman, *Courts should not decide issues that are not there*, THE VOLOKH CONSPIRACY, April 12, 2020, *available at* <https://reason.com/2020/04/12/courts-should-not-decide-issues-that-are-not-there/>

us ‘terrifying’ and who describe *us* as ‘deplorable’” and that “...in Kavanaugh’s America, *we* will not surrender while *you* wage war on *our* work, or *our* cause, or *our* hope, or *our* dream.”¹⁰

Impartiality – in both fact and public perception – is an essential ingredient of our legal system. But when Judge Walker referred to “our” work and “our” cause” and “our” courts in a speech about his new role as a federal judge, he dropped even the pretense of impartiality and reveled in the partisan ideology he intends to deploy on the federal bench. His honest but outrageous remarks already have added to the dangerous politicization of the judiciary that much of the American public rightly deplores. Nominating, or elevating, this sort of aggressively, publicly ideological nominee undermines the public’s confidence in the integrity and impartiality of the courts in precisely the ways about which Chief Justice Roberts has expressed grave concern.

As another example, Judge Walker has expressed similarly partisan views about the Affordable Care Act (ACA), the legislation responsible for millions of Americans having health insurance during the current pandemic. For example, in 2018, he wrote an article lambasting the idea that a dissent from then-Judge Kavanaugh could possibly be a defense of the ACA (in a decision dismissing a challenge to the ACA).¹¹ Defending the dissent against criticism from the right, Judge Walker argued that it actually provided a road map for the U.S. Supreme Court to hold the ACA unconstitutional. After the Supreme Court eventually upheld the ACA, Judge Walker characterized that decision as “indefensible.”¹² When confronted about these remarks during his confirmation process, Judge Walker professed that he understands “the role of a “citizen engaged in the political process” to be different from the role of a judicial nominee.¹³ Months later however, Judge Walker used his investiture speech, of all places, to renew his strident criticism of the Supreme Court’s decision to uphold the ACA.¹⁴ Despite his reassurances, Walker clearly does not understand or is indifferent to the difference between his role as citizen engaged in the political process and his role as a judge.

Make no mistake, access to healthcare has never been more critical to the well-being of our country. With millions of people unemployed and many sick and suffering, the ACA’s complementary support of private insurance markets is critical for public health and probably also for the survival of that sector of our economy. Judge Walker’s consistent derision for the ACA demonstrates a refusal to respect a duly-enacted statute, a lack of judicial temperament, and alarming naivety about the consequences of official actions. Sadly, it is beyond obvious that he is unable at this time to serve as a thoughtful, neutral arbiter of justice.

The U.S. Court of Appeals for the D.C. Circuit is widely viewed as influential because it has jurisdiction over issues concerning the U.S. Congress and many government agencies. It is charged with interpreting

¹⁰ Walker Investiture, *Judge Justin Walker Investiture Part Four – Judge Walker Speech*, YOUTUBE (Mar. 13, 2020), available at <https://www.youtube.com/watch?v=k5iUfudxuM8>.

¹¹ Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented and Unlawful*, THE FEDERALIST (July 3, 2018), available at <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/> (discussing then-Judge Kavanaugh’s dissent in *Seven-Sky v. Holder*, 661 F.3d 1 (D.C. Cir. 2011), *abrogated by Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566 (2012)).”

¹² Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented and Unlawful*, THE FEDERALIST (July 3, 2018), available at <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/>.

¹³ See *Supra* Note 6.

¹⁴ See *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 132 S. Ct. 2566 (2012) (holding the individual mandate was a “tax” that was within Congress’s taxing powers).



and enforcing public protections in a wide array of contexts, including health care. Judge Walker’s legal experience is still limited and undistinguished; however, his record to date shows extreme partisan ideology that is inseparable from his judicial philosophy. At this point, it is beyond serious dispute that, were he elevated, he would remain unable to set aside his ardent partisan agenda. Instead, Judge Walker’s confirmation to the D.C. Circuit would jeopardize even more people (or entities) whom Judge Walker views as a “them” rather than an “us.”

Thank you for considering our views on this important matter. Please do not hesitate to reach out if we can provide additional information throughout the confirmation process. You can reach us through Sasha Buchert, Senior Attorney, at sbuchert@lambdalegal.org.

Very truly yours,

Lambda Legal



April 27, 2020

Officers
Chair
Judith L. Lichtman
National Partnership for
Women & Families
Vice Chairs
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hillary 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
Rory Gamble
International Union, UAW
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
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 |
AAJC

President & CEO
Vanita Gupta

OPPOSE THE CONFIRMATION OF JUSTIN WALKER TO THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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. Court of Appeals for the District of Columbia Circuit.

President Trump's recent announcement that he will nominate Mr. Walker, 37, to the powerful D.C. Circuit is the latest action by the Trump administration designed to deprive health care and critical civil rights protections for millions of Americans. Mr. Walker's zealous opposition to health care access is particularly galling amidst the worst public health emergency this nation has faced in over a century.

In addition, Mr. Walker's elevation to the D.C. Circuit – like his nomination last year to a federal district court judgeship in Kentucky – is a triumph of nepotism over neutrality. Mr. Walker's district court investiture on March 13, 2020 made national headlines because his political patron, Majority Leader McConnell, recessed the Senate in the middle of emergency COVID-19 legislative negotiations so he could travel to Kentucky to attend. Just three weeks after his district court investiture, Mr. Walker was put forward for a D.C. Circuit judgeship that does not even become vacant until September.

At this perilous time in our nation's history, the Senate should maintain a laser focus on efforts to save lives and mitigate the devastating economic impact of COVID-19 on the American people. The Senate should not process judicial nominations – particularly those like Mr. Walker who seek to dismantle health care protections for vulnerable people – until the shock of the pandemic has been diminished.

Hostile to Health Care: In 2018, during the Brett Kavanaugh Supreme Court confirmation fight, Mr. Walker served as one of the embattled nominee's most frequent and partisan propagandists. Mr. Walker wrote several op-eds and conducted 162 media interviews – including 35 interviews on Fox News alone – defending Mr. Kavanaugh.¹ In a July 3, 2018 op-ed explaining why Mr. Kavanaugh's opinion in a D.C. Circuit case demonstrated skepticism of the Affordable Care Act ("ACA"), Mr. Walker revealed his own intense

¹ <https://www.judiciary.senate.gov/imo/media/doc/Justin%20Walker%20SJQ%20-%20PUBLIC.pdf>.



opposition to this landmark health care law. Mr. Walker called the ACA an “indefensible decision” and asserted:

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 mandate under the weak Taxing Clause argument advanced by the government and catastrophically accepted by the Supreme Court.²

Mr. Walker’s view that the Supreme Court’s decision to uphold the ACA decision was “indefensible” and “catastrophic” and his belief that Mr. Kavanaugh had advanced a “takedown” of the law’s individual mandate reveal a deep-seated hostility to the ACA. Moreover, Mr. Walker gratuitously disparaged the ACA at his March 13, 2020 investiture, where he said that the “worst words” he ever heard while clerking for Justice Kennedy were: “The Chief Justice thinks this might be a tax.”³ This was a reference to the 2012 Supreme Court decision in which Chief Justice Roberts cast the deciding vote to uphold the ACA on the grounds that the penalty imposed by the individual mandate constituted a tax. Mr. Walker would be utterly incapable of fairly presiding over cases involving that critical federal law.

In addition, Mr. Walker has supported efforts to deny basic contraceptive coverage to employees. In a July 6, 2018 op-ed, he praised Mr. Kavanaugh’s dissent in *Priests for Life v. U.S. Department of Health and Human Services*, in which Mr. Kavanaugh voted to allow religiously-affiliated employers to opt out of providing standard birth control coverage to their employees. Mr. Walker called Mr. Kavanaugh’s record of ruling on behalf of religious special 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.”⁴ Mr. Walker has a clear ideological bias on reproductive health issues and could not rule fairly in such cases.

Ideological Defense of Kavanaugh: Mr. Walker made other extreme and ideologically charged comments during his relentless defense of Mr. Kavanaugh in 2018. Mr. Walker’s comments demonstrate a cynicism about the confirmation process and a worldview that judges should serve as results-driven ideologues, not fair and impartial arbiters.

- In an interview with Fox News on July 8, 2018 – the day before President Trump announced Mr. Kavanaugh’s nomination to the Supreme Court – Mr. Walker sought to assure the network’s right-wing viewers that, if selected, Mr. Kavanaugh would be “a warrior” and “a fighter for conservative legal principles who will not go wobbly. The man does not have a

² <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/>.

³ <https://www.youtube.com/watch?v=k5iUfudxuM8>.

⁴ <https://www.nationalreview.com/2018/07/judge-brett-kavanaugh-religious-liberty-warrior/>.



wobbly bone in his body.”⁵ Mr. Walker added: “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.”⁶

- 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 a fair and adequate process to testify and the opportunity to have her allegations properly investigated by federal officials. 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.”⁷
- 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.”⁸
- 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.”⁹ 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.”¹⁰

These cynical, sarcastic, and intemperate comments about the role of judges, and about the good-faith efforts of Senate Democrats to investigate credible allegations against Mr. Kavanaugh, reflect the mindset of a right-wing ideologue who is unsuited to serve in a judicial position.

Supports Radical Theory to Diminish Federal Enforcement of Civil and Human Rights: The D.C. Circuit handles more administrative law cases – involving the operation and procedures of our federal government – than any other federal appellate court. Roughly one-third of the D.C. Circuit’s docket are appeals from federal agency decisions, compared to less than 20 percent for federal circuit courts

⁵ <https://video.foxnews.com/v/5806728724001/#sp=show-clips>.

⁶ *Id.*

⁷ <https://www.yahoo.com/news/kavanaugh-ford-hearing-flawed-222021986.html>.

⁸ <https://video.foxnews.com/v/5843366072001/#sp=show-clips>.

⁹ <https://video.foxnews.com/v/5845318401001/#sp=show-clips>.

¹⁰ *Id.*



nationwide.¹¹ Mr. Walker has advanced extreme views on administrative law, asserting 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 the late Justice Scalia defended the *Chevron* doctrine as an important rule-of-law principle.¹² 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.”¹³ He complained that “for every page of law passed by the people we elect, there are 100 pages of laws promulgated by people we didn’t elect” and that “Supreme Court jurisprudence enabled this state of affairs.”¹⁴ 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.”¹⁵ Mr. Walker encouraged Justice Kavanaugh to lead the way in limiting these critical Supreme Court decisions, and he stated that he agreed with an assessment of a law professor who had written: “In Brett Kavanaugh, President Trump may not have found a justice to ‘deconstruct the administrative state’ – in Steve Bannon’s formulation – but he has found one who will help bring it to heel.”¹⁶ Mr. Walker has brought to the bench this radical agenda and disrespect for precedent with which he disagrees.

Judicial Activism on the Bench: Mr. Walker’s short tenure on the district court has already been marred by a decision in which he sought to decide issues not before the court but that synced up with his personal ideological agenda. In *On Fire Christian Center v. Fischer* – without even permitting the defendant an opportunity to present evidence – Mr. Walker issued a temporary restraining order allowing a Louisville church to have in-person attendance at an April 12, 2020 Easter service. He began his opinion with words dripping in sarcasm and exaggeration: “On Holy Thursday, an American mayor criminalized the communal celebration of Easter. That sentence is one that this Court never expected to see outside the pages of a dystopian novel, or perhaps the pages of *The Onion*.”¹⁷ Mr. Walker’s contention is irresponsible and false: the Louisville mayor, Greg Fischer, not only had not “criminalized” Easter services, he had not issued prohibitions of any sort. The mayor had encouraged residents to practice social distancing and avoid services, but he did not ban or prohibit them. In essence, Mr. Walker halted enforcement of a law that did not exist. In a blog post entitled “Courts should not decide issues that are

¹¹ <https://www.americanbar.org/groups/litigation/committees/appellate-practice/articles/2013/winter2013-0313-role-dc-circuit-administrative-law/>.

¹² <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3075&context=dlj>.

¹³ <http://civilrightsdocs.info/pdf/judicial-nominations/documents/Walker-KavanaughSchechterChevron.pdf>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ <https://reason.com/wp-content/uploads/2020/04/OnFireChristianCenter.pdf>.



not there,” conservative commentator Josh Blackman criticized Mr. Walker’s opinion and said the judge had made “numerous, unforced errors” in this case.¹⁸ Indeed, by manufacturing facts to comport with his ideological agenda, and not permitting the defendant to provide evidence, Mr. Walker demonstrated a troubling degree of bad judgment and judicial activism.

Judgeships as Political Payoff: Mr. Walker’s judicial career amounts to a political payoff from President Trump and Majority Leader McConnell. Mr. Walker has known the Kentucky senator since high school,¹⁹ and as noted previously, Mr. Walker served as a chief lobbyist for President Trump’s controversial Supreme Court nominee, Mr. Kavanaugh. Mr. Walker revealed in his Senate questionnaire that he was first contacted by the White House about a potential nomination to the D.C. Circuit in September 2018 – in the middle of his public relations blitz for Mr. Kavanaugh.²⁰ He had been out of law school for just nine years at that time – substantially below the 12-year minimum years of practice that the American Bar Association (“ABA”) believes are necessary for federal judicial service. Mr. Walker also disclosed in his Senate paperwork that when he interviewed with the White House in January 2020 for the D.C. Circuit judgeship for which he has been selected, he was accompanied by Majority Leader McConnell.²¹ It is highly unusual for a senator to accompany a potential judicial nominee to a White House interview.

When Mr. Walker was nominated and confirmed last year for a seat on the U.S. District Court in the Western District of Kentucky, he received an ABA rating of Not Qualified. The ABA concluded that Mr. Walker – age 37 and at that point 10 years out of law school – lacked sufficient experience, particularly trial experience, to handle the weighty duties and responsibilities of this position. The ABA made the following observations in a letter explaining why it deemed Mr. Walker unqualified to serve as a federal district court 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.”²²
- “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.”²³
- “[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 graduation and

¹⁸ <https://reason.com/2020/04/12/courts-should-not-decide-issues-that-are-not-there/>.

¹⁹ <https://www.rollcall.com/2020/04/17/judge-justin-walker-is-a-window-into-mcconnells-sway-on-federal-courts/>.

²⁰ <http://civilrightsdocs.info/pdf/judicial-nominations/documents/Justin-Reed-Walker-Senate-Judiciary-Questionnaire-PUBLIC.pdf>.

²¹ *Id.*

²² https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-07-30NQ-rating-Justin-R-Walker.pdf?logActivity=true.

²³ *Id.*



significantly less than the 12 years of legal practice experience stated in our criteria [as minimally necessary to serve as a federal judge].”²⁴

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. Mr. Walker is one of nine Trump judicial nominees to be rated Not Qualified by the ABA. No president in American history has nominated more unqualified judges.²⁵ When Mr. Walker was brought up for a confirmation vote, not a single Democratic senator voted to confirm him.

Additional Indicia of Extreme Ideology: 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 has been paid nearly \$10,000 for his appearances,²⁶ and he has served 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.

At his March 13, 2020 investiture, Mr. Walker sarcastically thanked “my nomination opponents including the American Bar Association.”²⁷ He continued: “Thank you for serving as an enduring reminder that although my legal principles are prevalent, they have not yet prevailed, and although we are winning we have not won. And that although we celebrate today, we cannot take for granted tomorrow, or we will lose our courts and our country to critics who call us terrifying and who describe us as deplorable.” He added that “in Brett Kavanaugh’s America, we will not surrender while you wage war on our work, or our cause, or our hope, or our dream.”²⁸ These combative, ideological comments – particularly inappropriate at a nonpartisan judicial investiture ceremony – provide further evidence that Mr. Walker views his role as a judge no differently than his role as a Fox News commentator. And his glib, vindictive portrayal of the ABA as an “opponent” reveals a lack of decorum and professionalism. The ABA’s rating of Mr. Walker as Not Qualified was based on his complete lack of litigation and trial experience, not his political views.

Disturbing Lack of Diversity: President Trump’s lack of commitment to diversity on the federal judiciary continues to be 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.²⁹ Of his 56 appellate nominations, none are African-American, only one is Latinx, and only 11 are women. His district court nominees are similarly homogeneous. Our nation’s great diversity should be reflected in its government institutions, especially the federal judiciary, which serves as the guardian of

²⁴ *Id.*

²⁵ <https://fas.org/sgp/crs/misc/IN10814.pdf>.

²⁶ <https://www.judiciary.senate.gov/imo/media/doc/Walker%20Responses%20to%20QFRs.pdf>.

²⁷ <https://www.youtube.com/watch?v=k5iUfudxuM8>.

²⁸ *Id.*

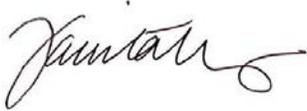
²⁹ <https://www.usatoday.com/story/news/politics/2018/02/13/trumps-87-picks-federal-judges-92-white-just-one-black-and-one-hispanic-nominee/333088002/>.



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 abysmal.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Justin Walker for the U.S. Court of Appeals for the District of Columbia Circuit. 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



United States Senate
Washington, DC 20510

Re: Oppose the judicial nomination of Justin Walker to the United States Court of Appeals for the D.C. Circuit.

Dear Senator,

The League of Conservation Voters (LCV) believes our earth is worth fighting for because everyone has a right to clean air, water, lands, and a safe, healthy community. Each year, LCV publishes the National Environmental Scorecard, which details the voting records of members of Congress on environmental legislation. The Scorecard is distributed to LCV members, concerned voters nationwide, and the media.

We urge you to oppose the judicial nomination of Justin Walker to the United States Court of Appeals for the D.C. Circuit. Justin Walker is not a serious candidate for this significant court; he lacks the basic experience and temperament required to competently serve as a judge, and his nomination is the result of his loyalty to Senator McConnell and President Trump and willingness to side with partisan political interests over the rule of law.

The D.C. Circuit Court of Appeals is one of our nation's most important federal courts, responsible for determining the future of critical public protections that safeguard the health of our communities, and serving as a check on presidential overreach. Walker, who has not argued a case in court and was deemed "Not Qualified" by the American Bar Association for a district court seat six months ago,¹ has been selected to serve as a rubber stamp for this Administration, and as a reward for his frequent appearances on Fox News to support the President.²

Walker's limited academic writings demonstrate his desire to use a position on the court to undermine critical environmental and public health protections, siding with conservative and big corporate interests rather than serving as an unbiased judge.³ His criticisms of the Affordable Care Act⁴ and the role of government experts in formulating public protections is particularly galling at a time when we are in the midst of a public health crisis. But Walker is far more concerned about protecting the privileges of wealthy and powerful, not the rights of all people, lamenting in one article not about the harms of pollution but rather "*who will pay to clean the air and to clean the water.*"⁵

Walker's clear lack of temperament makes him unfit to serve as a judge, let alone at one of the highest levels of the federal courts. In his public statements, Walker has made clear that he has no interest in serving fairly as a judge, but instead as an extension of the Republican Party. He spent months attacking sitting Senators on Fox News for investigating the serious allegations of sexual assault by Justice Kavanaugh. In March at his investiture ceremony, Walker gloated gleefully about opposition to his nomination, and bragged about his desire to follow a partisan agenda in the courtroom, arguing that conservatives "*are winning but have not won. And that although we celebrate today, we cannot take for granted tomorrow or we will lose our courts and our country to critics who call us 'terrifying' and who describe us as 'deplorable'.*"⁶ This vitriolic and bombastic



statement was made mere minutes after taking the oath to “faithfully and impartially” perform his duties as a judge.

This nomination is not worthy of serious consideration, further undermines the credibility of the federal judiciary, and it is unrealistic for any party to expect to receive a fair, unbiased and competent ruling in a case before Justin Walker. At a time when our nation requires immediate, sustained and bipartisan efforts to address this unprecedented health crisis, the decision to prioritize this nomination is unconscionable, and lays plain the desire of this Administration and Senator McConnell to place party politics over the well-being of our nation.

For these reasons, LCV strongly urges you to oppose the judicial nomination of Justin Walker to the United States Court of Appeals for the D.C. Circuit. We will consider including this confirmation vote in the 2020 *Scorecard*. If you need more information, please call my office at (202) 785-8683 and ask to speak with a member of our government relations team.

Sincerely,

A handwritten signature in black ink that reads "Gene Karpinski".

Gene Karpinski
President

¹ Letter from the American Bar Association Standing Committee on the Federal Judiciary to the U.S. Senate Judiciary Committee, *Re: Nomination of Justin R. Walker to the United States District Court for the Western District of Kentucky* (July 30, 2019), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-07-30NQ-rating-Justin-R-Walker.pdf

² Justin Walker made at least 161 media appearances in 2018, including 35 on Fox News, to defend the President and the nomination of Brett Kavanaugh. See Alliance for Justice, *Nomination of Justin Walker* (April 22, 2019), <https://www.afj.org/wp-content/uploads/2020/04/Walker-Report-4.22.20.pdf>.

³ Justin Walker, *The Kavanaugh Court and the Schechter-to-Chevron Spectrum: How the New Supreme Court Will Make the Administrative State More Democratically Accountable*, INDIANA LAW JOURNAL (Feb. 28, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3332672.

⁴ Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful*, THE FEDERALIST (July 3, 2018), <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/>.

⁵ *Id.*

⁶ Walker Investiture, *Judge Justin Walker Investiture Part Four - Judge Walker Speech*, YOUTUBE (March 13, 2020), available at <https://www.youtube.com/watch?v=k5iUfudxuM8>.



NAACP

June 3, 2020

The Honorable Lindsey Graham
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Diane Feinstein
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

**RE: OPPOSITION TO THE CONFIRMATION OF JUSTIN WALKER
TO THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA**

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots based civil rights organization, I strongly urge you to oppose the confirmation of Justin Walker to the U.S. Court of Appeals for the District of Columbia.

As a threshold matter, the Senate should refuse to consider all of Donald Trump's judicial nominations in this time of crisis. The nation is engaged in a herculean struggle against a worldwide, once-in-a-century pandemic. Tragically, more than 105,000 American lives have been lost and 1.8 million Americans have contracted coronavirus. On top of our health emergency, the entire nation is outraged and saddened by the brutal killing of George Floyd at the hands of Minneapolis police officers and is demanding substantial reform from Congress that will hold police accountable for their unlawful actions. The Senate must focus its complete and undivided attention on saving the lives and livelihoods of the American people. No other course of action is remotely acceptable. At this moment in time, the Senate's consideration of Trump's 53rd appellate nomination is a dereliction of duty of the highest order.

The NAACP objects to Justin Walker's nomination in particular because it adds absolutely no diversity to the D.C. Circuit and to the appellate courts generally. Justin Walker is a white male. The D.C. Circuit is located in the District of Columbia, where the majority of residents are people of color, and this court is the second most powerful in the land. Its bench should have ample diverse representation of all communities. Trump has nominated three judges to this court, and two are white men. The circuit recently lost an African-American woman judge with the retirement of Judge Janice Rogers Brown, but Trump failed to appoint an African-American judge to this court. Instead, he has nominated 38 white males to appellate courts and has refused to nominate even one Black judge to any appellate court. As a result, our federal courts are losing diverse representation in historic proportion, which diminishes the public's trust and confidence in the judiciary.

The D.C. Circuit plays a powerful and unique role in the federal judiciary. Given special jurisdiction, it reviews challenges to the government's public protections for all Americans. It considers issues of national consequence such as access to health care, workers' rights, workplace safety, non-discrimination policies, consumer rights, immigrants' rights, money in politics, reproductive rights, and environmental protections. The court hears many cases of particular interest to communities of color. For example, it reviews employment discrimination cases by federal workers, almost 20% of whom are African American. The court hears challenges to affirmative action policies adopted by federal agencies which provide employment and contracting opportunities to communities of color. The D.C. Circuit has an impact all across the country.

Justin Walker is wholly unsuited to serve on any federal bench, much less the nation's second most powerful court. His primary "qualification" for a Trump judgeship appears to be his long friendship with Senate Majority Leader Mitch McConnell, for whom he once interned. Senator McConnell took the highly unusual step of accompanying Mr. Walker to the White House when he was interviewed for the judgeship on the D.C. Circuit. Walker's secondary "qualification" is that, as a former law clerk to then-Judge Brett Kavanaugh on the D.C. Circuit, he aggressively defended Kavanaugh when his nomination to the Supreme Court was in grave jeopardy. Walker [made](#) 162 media appearances in defense of Kavanaugh, including [predicting](#) at one point that Kavanaugh would usher in "an end to affirmative action, an end to successful litigation about religious displays and prayers, an end to bans on semi-automatic rifles, and an end to almost all judicial [decisions allowing abortion]." When Dr. Christine Blasey Ford came forward about Kavanaugh's sexual assault, Walker [attacked](#) Democratic senators, including Senator Feinstein, Ranking Member of the Senate Judiciary Committee, whom he suggested the FBI investigate.

There is simply no justification for Justin Walker first becoming a federal judge and then being rapidly promoted to the nation's second highest court. Justin Walker graduated from law school only eleven years ago. Nonetheless, Trump nominated him to the Western District of Kentucky last year, when he had one less year of legal experience. Not surprisingly, the American Bar Association Standing Committee on the Federal Judiciary (ABA) [rated](#) him "Not Qualified." The ABA noted that nominees to the federal bench generally should have 12 years of experience practicing law and found that Walker had no compensating experience whatsoever: "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." The ABA noted it was difficult even to determine how much of his ten years since law school graduation Walker had devoted to the practice of law. The ABA concluded that "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." Despite this terrible rating based on the views of his peers, the Senate [confirmed](#) Justin Walker in a 50 to 41 vote in October.

Justin Walker's investiture ceremony was held on March 13. It received national attention because Majority Leader McConnell sent the Senate home during work on legislation providing relief from coronavirus in order to attend the event, and he traveled to Kentucky with Justice Brett Kavanaugh to do so. At his investiture, Justin Walker made shockingly intemperate [remarks](#) in which he divided legal principles into two camps with winners and losers, thereby reinforcing our deep concern that he is an extreme ideologue. That he would unabashedly make these remarks at the very ceremony in which he formally becomes a judge—where impartiality and fairness are paramount—is all the more alarming. After caustically thanking the ABA for opposing his nomination, Walker stated: "Thank you for serving as an enduring reminder that although my legal principles are prevalent, they have not yet prevailed, and although we are winning, we have not won. And that although we celebrate today, we cannot take for granted tomorrow, or we will lose our courts and our country to critics who call us terrifying and who describe us as deplorable." Three weeks

later, Trump nominated Justin Walker to a judgeship on the D.C. Circuit. The vacancy does not become available until September.

Given his background, his connections, and his record, Justin Walker represents an exceedingly dangerous appointment to the D.C. Circuit in terms of judicial independence. Trump's two other appointments to the D.C. Circuit came directly from the Trump White House, and it shows. Judge Greg Katsas had served as deputy White House Counsel and Judge Neomi Rao had served as "deregulatory czar" in the White House, where she oversaw the dismantling of countless government regulations. In their short tenure on the D.C. Circuit, they have demonstrated a remarkable fealty to protecting Trump and his administration. In an extremely disingenuous [dissent](#), Judge Rao sought to protect Trump from a subpoena by the U.S. House of Representatives for his financial records. Judge Katsas [voted](#) in favor of reconsidering the majority ruling. In another [dissent](#), Judge Rao attempted to protect Trump from congressional oversight, arguing that the House of Representatives was not entitled to confidential documents from the Mueller investigation. In yet another [dissent](#), Judge Rao argued that the Environmental Protection Agency should be allowed to eliminate restrictions on dangerous emissions. Both Trump appointees [voted](#) to lift a preliminary injunction against federal executions which Attorney General William Barr had reinstated after nearly 20 years of moratorium. Hand-picked and fast-tracked by Majority Leader McConnell to this important appellate court, Justin Walker will assuredly join these Trump appointees in protecting Trump both personally and politically, despite what the law requires in particular cases.

Justin Walker's extraordinarily intemperate ruling in a religious liberty case during his short tenure on the district court demonstrates exactly why he should be disqualified from the D.C. Circuit. In [On Fire Christian Center v. Fischer](#), an evangelical church in Louisville, Kentucky sued the Democratic mayor and the city preemptively over an anticipated ban on holding drive-in services on Easter Sunday due to coronavirus. Judge Walker issued a temporary restraining order that was astonishing in its tone and its complete lack of factual predicate. But the most alarming part of Walker's order is that it was likely not necessary at all. The mayor had announced plans to promote social distancing, which included avoiding church services, but he issued no prohibition. After the lawsuit was filed, the mayor [called](#) Judge Walker's court twice unsuccessfully to say he never announced he would enforce a ban. Judge Walker never even held a [conference call](#) between lawyers representing the parties to determine the mayor's exact plans and whether there was a dispute to be decided.

Instead, Justin Walker issued a scathing 20-page opinion (with 86 footnotes) in favor of the church which began: "On Holy Thursday, an American mayor criminalized the communal celebration of Easter." Walker accused the mayor of "ordering Christians not to attend Sunday services," and he engaged in a long discussion of pilgrims as "heirs to a long line of persecuted Christians, including some punished with prison or worse for the crime of celebrating Easter," and other historical victims of religious persecutions. He even mentioned that a former Supreme Court justice and former Majority Leader of the U.S. Senate (both Democrats) were ex-Klansmen. Astonishingly, he repeatedly accused the mayor of "threatening" church members and pastors if they held a drive-in Easter service although the mayor was merely attempting to protect their safety and the safety of all residents. The intemperance and judicial activism present in Walker's decision-making make it all the more remarkable that the ABA changed its rating of Justin Walker to "Well-Qualified" in connection with his nomination to the D.C. Circuit. While the ABA attempted to explain that Justin Walker's scholarship, writing, and clerkship experience counted favorably toward his appellate court nomination, its failure to address this outrageous lack of judicial temperament is completely inexplicable under the circumstances.

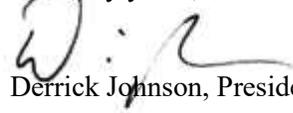
Most tragically for the present circumstances facing our nation, Justin Walker has expressed extremely hostile positions against affordable health care for all. This would be dangerous at any time, but the prospect that he would be confirmed to the nation's second highest court with these views while our nation is reeling from inadequate health care is incredibly frightening. In an [op-ed](#) defending Brett Kavanaugh's nomination to the Supreme Court, Walker called the Supreme Court's decision to uphold the Affordable Care Act "indefensible" and catastrophic." He praised then-Judge Kavanaugh's opinion on the D.C. Circuit as a "thorough and principled takedown of the [individual] mandate," which he called a "roadmap" for the dissenters to the Supreme Court opinion. He continued: "I can tell you with certainty that the only justices following a roadmap from Brett Kavanaugh were the ones who said Obamacare was unconstitutional." He noted that "Kavanaugh was equally critical of the individual mandate under the weak Taxing Clause argument advanced by the government and catastrophically accepted by the Supreme Court."

In the middle of a public health crisis, Justin Walker's strong views against judicial deference to federal agency decisions are also extremely problematic, given the D.C. Circuit's critical role in reviewing federal regulations protecting the health and safety of the American people. Similar to the nomination records of [Justice Kavanaugh](#) and [Judge Rao](#), Justin Walker is highly critical of administrative law precedent which requires deference to agency interpretation and protects agency independence. Alarming, Justin Walker [argued](#) in favor of overturning longstanding Supreme Court precedent, in the [Chevron](#) and [Humphrey's Executor](#) cases, that establish foundational principles allowing robust federal agency protection of health care, workplace safety, labor, consumer rights, and civil rights. Walker complained that, "for every page of law passed by the people we elect, there are 100 pages of laws promulgated by people we didn't elect," and that "Supreme Court jurisprudence enabled this state of affairs."

The American people are struggling to save their own lives, whether they are trying to avoid the deadly coronavirus or, in the case of Black Americans, trying to protect themselves from deadly force by the police. It is inconceivable that Senators would set aside the urgent needs of their constituents to consider yet another Trump judicial appointment. Justin Walker's nomination at this moment is an insult to our country and to the judiciary. He completely lacks the impartiality and independence which are fundamental to judging, and he is wholly unfit to serve in a lifetime position on the powerful D.C. Circuit. If the Senate insists on voting on his nomination, it must reject the nomination.

Thank you for considering the NAACP's strong opposition to this appalling nomination. Should you have any questions or comments, please contact Hilary Shelton, Director of the Washington Bureau and Senior Vice President for Policy and Advocacy, at his office at (202) 463-2940.

Sincerely yours,



Derrick Johnson, President and CEO



April 30, 2020

Dear Senator,

We write on behalf of our 2.5 million member-activists to express our opposition to the nomination of Justin Walker to the U.S. Court of Appeals for the D.C. Circuit. In order to be qualified for a lifetime position on the federal bench, a nominee must be fair-minded and committed to defending our core constitutional protections, including reproductive freedom. However, Walker's record makes clear that he is not.

In the midst of a national public health emergency, in a case unrelated to reproductive rights, Walker wrote: "It was not long ago, for example, that the government told the Supreme Court it can prohibit a church from choosing its own minister; force religious business owners to buy pharmaceuticals they consider abortion inducing; and conscript nuns to provide birth control." Walker implied that the federal government's positions in *Burwell v. Hobby Lobby Stores, Inc.* and *Zubik v. Burwell* were examples of "state-sponsored" "bigotry." Walker's mischaracterization of the federal government's position in these cases suggests a legal philosophy that is hostile to reproductive freedom.

In addition, Walker was a vocal public advocate for Justice Brett Kavanaugh's confirmation to the Supreme Court. Walker predicted that Kavanaugh's confirmation would dramatically change the state of litigation on a number of issues, including reproductive freedom: "I predict an end to affirmative action, an end to successful litigation about religious displays and prayers, an end to bans on semi-automatic rifles, and an end to almost all judicial restrictions on abortion." Walker spoke of Kavanaugh's confirmation as a part of Donald Trump's "conservative revolution" on the courts. Walker also has a deeply troubling history of opposition to the Affordable Care Act and support for the ability of businesses to discriminate against and refuse service to LGBTQ people.

Now, more than ever, Americans must be able to depend on the courts to protect their constitutional rights. However, it is clear that Walker could not be a fair-minded and unbiased arbiter of the law. We urge Senators to vigorously oppose this nomination and should it reach the Senate floor, vote no.

Sincerely,

NARAL Pro-Choice America



Justin Walker

President Trump nominated Justin Walker to serve on the U.S. Court of Appeals for the District of Columbia Circuit on April 3, 2020. Walker is anti-choice.

Career¹

- Bachelor of Arts, Duke University, 2004
- Speechwriter for the Secretary of Defense, Department of Defense, 2005-2006
- Juris Doctorate, Harvard Law School, 2009
- Clerk, Judge Brett M. Kavanaugh, U.S. Court of Appeals for the D.C. Circuit, 2010-2011
- Clerk, Justice Anthony M. Kennedy, Supreme Court of the United States, 2011-2012
- Associate, Gibson Dunn & Cratcher LLP, 2009-2010, 2012-2013
- Writer, EJS Enterprises LLC, 2013-2015
- Solo Practitioner, 2013-2019
- Assistant Professor of Law, University of Louisville Brandeis School of Law, 2015-2019
- Associate Professor of Law, University of Louisville Brandeis School of Law, 2019
- Partner of Counsel, Dinsmore & Shohl LLP, 2019
- Judge, U.S. District Court for the Western District of Kentucky, 2019-present

Record on Reproductive Freedom

Court Cases

- In a case unrelated to reproductive freedom, Walker wrote: “It was not long ago, for example, that the government told the Supreme Court it can prohibit a church from choosing its own minister; force religious business owners to buy pharmaceuticals they consider abortion inducing; and conscript nuns to provide birth control.”² Walker implied that the federal government’s positions in *Burwell v. Hobby Lobby Stores, Inc.* (a case about the ability of certain for-profit businesses to deny their employees access to contraceptive coverage) and *Zubik v. Burwell* (a case about the ability of certain employers to interfere with their employees’ access to contraceptive coverage paid for by a third party) were examples of “state-sponsored” “bigotry.”³

Notable Information

- Walker clerked for anti-choice Associate Justice Brett Kavanaugh when he was a judge on the D.C. Circuit and was a vocal advocate for Kavanaugh’s nomination to the

Supreme Court. Walker submitted a letter to the Senate Judiciary Committee in support of Kavanaugh's confirmation.⁴

- In an interview, Walker predicted that Kavanaugh's confirmation would dramatically change the state of litigation on a number of issues, including reproductive freedom: "I predict an end to affirmative action, an end to successful litigation about religious displays and prayers, an end to bans on semi-automatic rifles, and an end to almost all judicial restrictions on abortion."⁵ Walker stated: "This is a conservative revolution as big as the Reagan Revolution....This change will give Donald Trump the most conservative judicial legacy of any Republican in history, by far."⁶
- In defending Kavanaugh's conservative credentials, Walker championed Kavanaugh's dissenting opinion in *Priests for Life v. U.S. Department of Health and Human Services* in which Kavanaugh supported the ability of certain employers to deny their employees access to contraceptive coverage.⁷
- Walker has been a member of the conservative, anti-choice Federalist Society since 2006.⁸ Walker is reportedly "a star in the Federalist Society."⁹ The Federalist Society is led by Leonard Leo, the anti-choice activist who is heavily involved in selecting Trump's Supreme Court and lower court nominees. Leo has been outspoken in his anti-choice views, calling abortion "an act of force" and "a threat to human life,"¹⁰ and serves as co-chairman of Students for Life,¹¹ a group whose mission is to "abolish abortion."¹²
- Walker has donated to anti-choice politicians including Sens. Mitch McConnell (R-KY) and Rand Paul (R-KY).¹³

Record on Other Key Issues

- Walker has been a vocal opponent of the Affordable Care Act (ACA). In a speech at his March 13, 2020 investiture, Walker referred to Chief Justice Roberts's decision upholding a key component of the ACA as "the worst words" he has ever heard.¹⁴ Kavanaugh called the opinion "indefensible" and "catastrophic."¹⁵ Walker praised then-Judge Brett Kavanaugh for writing the "roadmap" to undermine the ACA, calling the ACA "unprecedented" and "unlawful" and emphasizing Kavanaugh's "thorough and principled take down" of key components of the law.¹⁶
- Walker has expressed support for the ability of businesses to discriminate against and refuse service to LGBTQ people.¹⁷ In discussing the enforcement of state anti-discrimination laws, Walker stated that "[r]easonable people will disagree about whether those results would be good or bad."¹⁸ Walker stated that "states with socially progressive majorities" are "us[ing] the power of the state" to "penalize" businesses for refusing to provide services to LGBTQ people.¹⁹

April 30, 2020

¹ Questionnaire for Judicial Nominees: Justin Reed Walker, United States Senate Committee on the Judiciary.

² *On Fire Christian Ctr. Inc. v. Fischer*, No. 3:20-cv-00264-JRW at 6 (W.D.Ky. Apr. 11, 2020) (citing *Hosanna Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 185 (2012), *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 691 (2014), *Zubik v. Burwell*, 136 S.Ct. 1557 (2016)), <https://www.courtlistener.com/recap/gov.uscourts.kywd.116558/gov.uscourts.kywd.116558.6.0.pdf> (last visited Apr. 30, 2020).

³ *Id.*

⁴ Questionnaire for Judicial Nominees: Justin Reed Walker, United States Senate Committee on the Judiciary.

⁵ Carrie Johnson, *Brett Kavanaugh Supported Broad Leeway for Presidents Under Investigation*, NPR (July 10, 2018), <https://www.npr.org/2018/07/10/627504728/brett-kavanaugh-supported-broad-leeway-for-presidents-under-investigation> (last visited May 4, 2020).

⁶ Gary Gately, *Kavanaugh Nomination Draws Swift Praise, Condemnation*, Talk Media News (July 9, 2018), <http://www.talkmedianews.com/featured/2018/07/09/kavanaugh-nomination-draws-swift-praise-condemnation/> (last visited May 4, 2020).

⁷ Justin Walker, *Judge Brett Kavanaugh: A Warrior for Religious Liberty*, National Review (July 6, 2018), <https://www.nationalreview.com/2018/07/judge-brett-kavanaugh-religious-liberty-warrior/> (last visited Apr. 30, 2020).

⁸ Questionnaire for Judicial Nominees: Justin Reed Walker, United States Senate Committee on the Judiciary.

⁹ Andrew Wolfson, *Trump Nominates Former Brett Kavanaugh Clerk for Federal Judge in Kentucky*, Courier Journal (June 20, 2019), <https://www.courier-journal.com/story/news/politics/2019/06/20/donald-trump-nominates-former-brett-kavanaugh-clerk-federal-bench-kentucky-mcconnell-support/1511456001/> (last visited Apr. 30, 2020).

¹⁰ Jeffrey Toobin, *The Conservative Pipeline to the Supreme Court*, The New Yorker (Apr. 10, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court> (last visited Apr. 30, 2020).

¹¹ Board of Directors, Students for Life, <https://studentsforlife.org/about/boardofdirectors/> (last visited July 25, 2019).

¹² Mission Statement, Students for Life, <http://studentsforlife.org/about/mission-statement/> (last visited July 25, 2019).

¹³ Donor Lookup: Justin Walker, Open Secrets, <https://www.opensecrets.org/donor-lookup/results?name=Justin+Walker&cycle=&state=KY&zip=&employ=&cand=> (last visited Apr. 30, 2020).

¹⁴ Speech at Judge Justin Walker Investiture (Mar. 13, 2020), <https://www.youtube.com/watch?v=k5iUfudxuM8> (last visited Apr. 30, 2020).

¹⁵ Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented and Unlawful*, The Federalist (July 3, 2018), <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/> (last visited Apr. 30, 2020).

¹⁶ *Id.*

¹⁷ Justin Walker, *Less Liberty*, 2019 Symposium, Richmond Law School (draft available at Questionnaire for Judicial Nominees: Justin Reed Walker, United States Senate Committee on the Judiciary).

¹⁸ *Id.*

¹⁹ *Id.*

Beatrice Kahn
President

Sheila Katz
Chief Executive Officer

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Tel: 202 296 2588
action@ncjw.org

www.ncjw.org

April 30, 2020

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

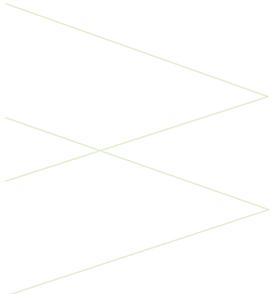
Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

The National Council of Jewish Women (NCJW) writes to express its strong opposition to the nomination of Justin Walker to the United States Circuit Court for the District of Columbia Circuit. Walker has proven himself to be a political ideologue who is wholly unqualified to serve a lifetime appointment as a federal judge.

Just last year, Walker earned a rating of “[Not Qualified](#)” from the nonpartisan American Bar Association (ABA), which objectively evaluates candidates based on competence, among other criteria. In fact, Walker acknowledged in front of this Committee that he has never served as the sole or lead attorney trying a case to verdict or judgment and has only taken one deposition during his entire career. The ABA plainly stated that Walker’s “legal practice to date does not compensate for the short time the nominee has practiced law and/or his lack of substantial courtroom experience.” Walker was confirmed to a district judgeship despite his total lack of qualifications. And, a mere *three weeks* after being sworn in as a district judge, Walker was nominated to the court often considered to be the second-highest in the country. This is, quite simply, indefensible.

Walker quickly proved that he had indeed brought his partisan ideology with him to the federal bench, despite the duty of a judge to be impartial and fair. In [On Fire Christian Center v. Fischer](#), Walker issued a temporary restraining order against a [non-existent law](#) so that he could write a nearly twenty page opinion that began with “On Holy Thursday, an American mayor criminalized the communal celebration of Easter.” In fact, the mayor in question had urged churchgoers to exercise caution in public in light of the pandemic, but had not enjoined anyone from holding or attending a service. Regardless, Walker’s unnecessary and excessively long opinion showed, more than anything else, his eagerness to enshrine Christianity as the American religion.

By enshrining — or attempting to enshrine — any one religion, the government unconstitutionally infringes on the free exercise of religion. As advocates inspired by Jewish values and guided by our faith, we understand the sanctity of religious freedom guaranteed by the First Amendment to the US Constitution. We know that religious freedom is meant to be a shield, not a sword, and that public servants must place the US Constitution above personal religious beliefs in order to preserve religious liberty for all. Walker has fallen short in this regard.



Beatrice Kahn
President

Sheila Katz
Chief Executive Officer

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Rushing to elevate Walker in the midst of a global pandemic, despite his striking lack of qualifications and outward partisanship, gives the appearance that the Administration and Senate are willing to reward those who support a particular ideological agenda with a lifetime judgeship. And, this appearance casts an unfortunate — and avoidable — cloud of distrust over the third branch of government. For the sake of the judiciary's independence, as well as public trust in courts, **we strongly urge the Senate Judiciary Committee to vote against Justin Walker's confirmation** to the US Circuit Court of Appeals for the District of Columbia Circuit.

Sincerely,



Jody Rabhan
Chief Policy Officer
National Council of Jewish Women



April 7, 2020

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

RE: Nomination of Justin Walker to the Court of Appeals for the DC Circuit

Dear Chair Graham and Ranking Member Feinstein,

On behalf of the National Center for Transgender Equality (NCTE), we write to oppose the nomination of Justin Walker to the U.S. Court of Appeals for the District of Columbia Circuit. Founded in 2003, NCTE works to improve the lives of the nearly two million Americans who are transgender. For all Americans, equal justice requires fair judges who will honestly and impartially weigh all the facts presented in any case, on any issue, demonstrate a commitment to respecting fundamental rights and freedoms, and treat all litigants with dignity and respect. Unfortunately, Judge Walker's history of extreme views, divisive and derogatory rhetoric, and troubling views about the role of federal judges means that he cannot meet this high standard for a lifetime court appointment.

In addition, we urge you to take no action on any judicial nomination at this time given the current unprecedented health and economic crisis facing the nation and the world. The Judiciary Committee and every Senator should be focused squarely and solely on saving lives and providing relief to those affected

Judge Walker received his commission as a district judge less than six months ago, and his investiture less than one month ago. His limited legal experience—he was rated Not Qualified by the American Bar Association when nominated for his current position—is overshadowed by a long record of partisan and often highly intemperate political advocacy. Judge Walker has stated that a federal judge should be a “warrior” for “conservative legal principles, one “who will not go wobbly” on ideological commitments. He has said that the Director of the FBI should “not think of himself as the nation’s protector, instead he must think of himself as an agent of the President.” He has declared much of the federal government unconstitutional. Perhaps of most concern is Mr. Walker’s long

record of intemperate and demeaning rhetoric toward political opponents, including ad hominem attacks on members of this Committee.

Judge Walker has also expressed a strong commitment to overturning the landmark Affordable Care Act, which has provided critical health coverage and protections for millions of Americans. Beyond calling the Supreme Court's historic decisions upholding the law "indefensible," he praised a judicial nominee for what he characterized as a "roadmap" to dismantle the law." Judge Walker's record clearly demonstrates that he meets President Trump's promise to nominate judges committed to overturning overturn coverage for millions of Americans.

In short, Mr. Walker's record does not show that he meets the high standards of professionalism, civility, temperament, and fairness expected for a lifetime appointment to a federal appeals court. We urge you to oppose his confirmation. Furthermore, we urge you to devote the full attention of the Judiciary Committee in the coming weeks to saving lives and providing relief amid the current unprecedented health and economic crisis.

Thank you for considering our views on this important nomination. Please do not hesitate to reach out if we can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Mara Keisling", with a long, sweeping horizontal stroke extending to the right.

Mara Keisling
Executive Director

cc: United States Senate Judiciary Committee Members



1201 16th Street, NW | Washington, DC 20036 | Phone: (202) 833-4000

Lily Eskelsen García
President

Rebecca S. Pringle
Vice President

Princess R. Moss
Secretary-Treasurer

Kim A. Anderson
Executive Director

May 5, 2020

U.S. Senate
Judiciary Committee
Washington, DC 20510

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we strongly urge you to oppose Justin Walker’s nomination to the U.S. Court of Appeals for the District of Columbia. Votes associated with this issue may be included in NEA’s Report Card for the 116th Congress.

Our nation is facing an unprecedented public health and economic crisis. As of this writing, 1.1 million Americans have tested positive for the coronavirus and nearly 70,000 have died from it—numbers that will continue rising for the foreseeable future. In the last week alone, 3.8 million Americans filed unemployment claims, bringing the total number of unemployed to more than 30 million. The non-partisan [Center on Budget and Policy Priorities](#) is projecting a massive \$350 billion in state budget shortfalls in FY2021. School buildings housing more than 45 million students in 43 states and Washington, DC, have shut down, and layoffs of educators and other public employees have begun.

The Senate should be dealing with the pressing issues wrought by this pandemic. A hearing on Walker’s nomination to the U.S. Court of Appeals for the District of Columbia should not even be held under these circumstances. If it proceeds, however, the nomination should be rejected because he is:

- **Hostile to health care.** The inequities, coverage gaps, and absurdly high cost of health care in America—more expensive by orders of magnitude than health care in comparable countries—were serious concerns even before the coronavirus crisis. Yet Walker has already made it clear he believes the Affordable Care Act is unconstitutional.¹ That alone is disqualifying.
- **Not qualified to serve on the second highest court in the land.** Walker’s cable news experience exceeds his courtroom experience. He has so little courtroom experience the American Bar Association (ABA) deemed him unqualified for the position he now seeks, finding it “challenging to determine how much of his ten years since graduation from law school has been spent in the practice of law.”² Before his confirmation to the district court, Walker was the chief lobbyist for then-Judge Brett Kavanaugh. He regularly appeared on cable news shows, where he praised

¹ Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful*, The Federalist, Jul. 3, 2018, <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/>.

² American Bar Association, *Re: Nomination of Justin R. Walker to the United States District Court for the Western District of Kentucky*, Jul. 30, 2019, https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-07-30NQ-rating-Justin-R-Walker.pdf?logActivity=true.

Kavanaugh as “a fighter for conservative legal principles who will not go wobbly” and proposed having the FBI investigate Senate Democrats for their oversight efforts.³

- **Not an impartial judge.** During his brief time on the bench, Walker has displayed an eagerness to operate as a political, cultural warrior rather than an impartial judge. At his March 13, 2020 investiture, he sarcastically thanked the ABA “for serving as an enduring reminder that although my legal principles are prevalent, they have not yet prevailed . . . in Brett Kavanaugh’s America, we will not surrender while you wage war on our work, or our cause, or our hope, or our dream.”⁴ On April 11, 2020, in *On Fire Christian Center v. Fischer*, Walker issued a temporary restraining order against a stay-at-home order that allowed a Louisville church to hold an in-person Easter service without first hearing from the city. In language more befitting a social media post than a judicial opinion, he accused the mayor of “criminaliz[ing] the communal celebration of Easter.” Walker would have known the stay-at-home order did not criminalize or prohibit services if had given the city a chance to respond before issuing his inflammatory opinion.
- **Hostile to public education.** In the *On Fire Christian Center* opinion, Walker opined on state prohibitions against using taxpayer dollars to support sectarian schools—prohibitions that limit public funding of public schools that welcome all students, regardless of race, religion, ethnicity, sexual orientation, gender identity, or disability. To Walker, the prohibitions deserve the same kind of condemnation as slavery and religious bigotry: “[P]ockets of society have not always lived up to our nation’s ideals. Slave owners flogged slaves for attending prayer meetings. . . Bigotry toward Roman Catholics motivated a majority of states to enact [prohibitions on public funding of sectarian schools].”⁵ He made these statements even though the issue of public funding of sectarian schools was not before the court and could come before him in the future.

In short, Walker is a political and cultural warrior, not an impartial judge. During his brief career, and few months on the bench, he has clearly demonstrated a commitment to using the courts to achieve political goals, not dispense equal justice.

For all these reasons, we strongly urge you to oppose Walker’s nomination to the U.S. Court of Appeals for the District of Columbia.

Sincerely,



Marc Egan
Director of Government Relations
National Education Association

³ Fox News, *Law professor: Judge Kavanaugh has backbone of iron*, Jul. 8, 2018, <https://video.foxnews.com/v/5806728724001#sp=show-clips>; Fox News, *Former Kavanaugh clerk slams Democrats' criticisms*, Oct. 6, 2018 <https://video.foxnews.com/v/5845318401001#sp=show-clips>.

⁴ Walker Investiture, *Judge Justin Walker Investiture Part Four - Judge Walker Speech*, Youtube, Mar. 13, 2020, <https://www.youtube.com/watch?v=k5iUfudxuM8>.

⁵ *Id.* at 5.



May 20, 2020

VIA EMAIL

**Re: National Employment Lawyers Association (NELA) Opposes Nomination of
Justin Walker to the United States Court of Appeals for the DC Circuit**

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate Judiciary Committee:

On behalf of the National Employment Lawyers Association (NELA), and its 4,000 circuit, state, and local affiliate members across the country, we write to express our strong opposition to the confirmation of Judge Justin Walker to the United States Court of Appeals for the DC Circuit. NELA is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. Our members represent plaintiffs in employment cases in every circuit, including the DC Circuit to which Judge Walker has been nominated. Our members and the thousands of clients they represent afford NELA a unique perspective on how judicial decisions impact the daily lives and the rights of working people.

At the outset, we wish to register our dismay that at this time, the Senate is moving forward with consideration of Mr. Walker's nomination—or any judicial nomination, in view of the unprecedented crisis that our nation, and every worker in the nation, faces as the COVID-19 pandemic rages on. Over 35 million American workers are out of work and many of those returning to work are returning to dangerous conditions in the workplace. As of this writing over 92,000 Americans have died from COVID-19 with no end in sight. In the face of this public health crisis, it is indefensible to use precious time and resources to advance a nominee who is committed to dismantling the Affordable Care Act which provides access to health care for millions of Americans and their families. Further underscoring the partisan nature of this nomination, Mr. Walker was put forward for a D.C. Circuit judgeship that does not even become vacant until September.

NELA is committed to doing everything possible to ensure that lifetime appointments to the federal judiciary will be filled by individuals who adhere to the rule of law and who are deeply committed to protecting the rights of *all* working people, especially in matters of civil rights and the well-established doctrines protecting underrepresented communities in the workplace. NELA carefully considers each nominee, including his or her record, through this lens.

Judge Walker Is Not Qualified To Serve As Federal Judge

Justin Walker was nominated and confirmed to serve on the U.S. District Court for the Western District of Kentucky last year. After serving just a few months in that capacity, Judge Walker was nominated to the United States Circuit Court for the District of Columbia Circuit, a court that is often called the second highest court in the nation. Last year, Walker earned a rating of “Not Qualified” from the nonpartisan American Bar Association (ABA), which objectively evaluates candidates based on competence, among other criteria.

Judge Walker had been out of law school for just nine years when he was nominated to the U.S. District Court seat – substantially below the 12-year minimum years of practice that the ABA uses as the minimum experience necessary to be considered qualified for federal judicial service.

Mr. Walker acknowledged that he has never served as the sole or lead attorney trying a case to verdict or judgment and has only taken one deposition during his entire career. The ABA plainly stated that Walker’s “legal practice to date [did] not compensate for the short time the nominee has practiced law and/or his lack of substantial courtroom experience.” Walker was confirmed to a district court judgeship despite his lack of experience and “Not Qualified” rating. Three weeks after being sworn in as a district court judge, Walker was nominated to the U.S. Court of Appeals for the D.C. Circuit. None of the factors that raised concern last year have changed, including his lack of qualification for the judgeship for which he was nominated.

Judge Walker Opposes Access To Health Care

Judge Walker’s long record of zealous opposition to the Affordable Care Act (ACA) raises particular concerns amidst the worst public health emergency this nation has faced in over a century. Access to health care is an ongoing and increasingly difficult issue for working people. In a July 3, 2018 op-ed explaining why Judge Kavanaugh’s opinion in a D.C. Circuit case demonstrated skepticism of the ACA, Mr. Walker revealed his own intense opposition to this landmark health care law. Mr. Walker called the ACA an “indefensible decision” and asserted:

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 mandate under the weak Taxing Clause argument advanced by the government and catastrophically accepted by the Supreme Court.¹

Mr. Walker’s view that the Supreme Court’s decision to uphold the ACA decision was “indefensible” and “catastrophic” demonstrates that he would be incapable of fairly presiding over cases involving that critical federal law.

Judge Walker Supports Radical Steps To Diminish Federal Enforcement of Civil and Human Rights:

¹ <https://www.judiciary.senate.gov/imo/media/doc/Justin%20Walker%20SJQ%20-%20PUBLIC.pdf>.

Administrative law is the source of essential tools for enforcement of a wide array of workers' rights issues. Worker health and safety, many aspects of wage and hour law, anti-discrimination regulations promulgated by the Office of Federal Contract Compliance Programs, EEOC and other federal agencies are all critical tools in advancing and enforcing workers' rights. Judge Walker has advanced extreme views on administrative law, asserting 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. The late Justice Scalia defended the *Chevron* doctrine as an important rule of-law principle.²

Overturing the *Chevron* precedent, as Mr. Walker advocates, would return that ultimate decision-making authority to judges. *Humphrey's Executor*, a 1935 Supreme Court decision, safeguarded the creation of independent federal agencies that have substantial expertise in their subject area and protect the American people and are insulated from presidential interference.

Judicial Activism From The Bench

Mr. Walker's short tenure on the district court has already been punctuated by a decision in which he ruled on an issue not before the court but that aligned with his personal ideological agenda. In *On Fire Christian Center v. Fischer* Judge Walker issued a temporary restraining order on an issue not before the court, *and* without permitting the defendant an opportunity to present evidence.

Mr. Walker issued a temporary restraining order and a 20-page opinion allowing a Louisville church to have in-person attendance at an April 12, 2020 Easter service. He began his opinion: "On Holy Thursday, an American mayor criminalized the communal celebration of Easter." In fact, the mayor had not ordered, nor had he issued any law that would prohibit holding or attending an Easter Service. The mayor in question had simply urged people to practice social distancing and avoid services, in keeping with the recommendations of every public health expert in the nation. In response, Judge Walker used his role as a federal judge to address an issue in keeping with his personal values, but that didn't exist as a legal issue before him. Judge Walker's 20-page opinion on the matter demonstrates troubling judicial activism.

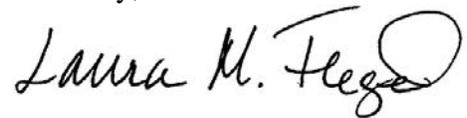
If confirmed, Judge Walker's extreme views will cause incalculable harm to civil and employee rights that have been part of the mainstream for decades. Our nation, and each one of us, functions on a daily basis thanks to the every-day working people who are NELA members' clients. As the COVID-19 crisis has revealed, our society's functioning is dependent upon healthcare workers, sanitation workers, grocery workers, and tens of millions of other essential working people. They, in turn, are dependent upon judges to uphold access to healthcare and the many health and safety regulations upon which their lives depend.

² <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3075&context=dlj>

The working people of our nation and their families who depend on them deserve federal judges who clearly demonstrate that they respect both the rule of law and the intent of Congress in passing our civil and workplace rights laws. NELA strongly urges you to stand on behalf of working people across this country and vote against advancing the nomination of Justin Walker.

If you have questions or wish to discuss this letter, please contact Laura Flegel, Legislative & Public Policy Director at lflegel@nelahq.org. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Laura M. Flegel". The signature is written in a cursive style with a large, looping flourish at the end of the word "Flegel".

Laura M. Flegel



May 5, 2020

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way opposes the nomination of Justin Walker to be a judge on the U.S. Circuit Court for the D.C. Circuit. Walker is exactly the kind of partisan nominee that the framers intended the Senate to protect us from.

A Time of Pandemic. As an initial matter, the Senate should not be processing any lifetime judicial nominees when it should be focusing on helping our communities get the support and resources we need to address the COVID-19 pandemic. We are still learning the basics of how this disease works and the physical, emotional, and economic devastation it can cause. More and more Americans are dying every day—our parents, our spouses, our neighbors, our friends and colleagues—while the Senate majority, over the objections of its minority, is engaged in “business as usual” in processing such nominees. Moreover, as discussed below, a vote to confirm this particular nominee would be another act of sabotage against healthcare access for millions of people in every state.

The Unique Importance of the D.C. Circuit. The D.C. Circuit by law is the exclusive court to consider appeals concerning an array of agency health and safety protections affecting the entire country. Moreover, even when parties appealing agency decisions, congressional statutes, or presidential actions have a choice of venues, they often choose to have their cases heard by the D.C. Circuit due to its expertise in complex administrative matters.

While the Supreme Court is better known, it only hears a miniscule portion of appeals that are filed with it. As a result, when the D.C. Circuit makes a ruling, it very often is the last word on the matter.

Every facet of our lives is affected by some aspect of federal law, including healthcare, clean air and water, the rights of working people, food safety, gun violence, telecommunications, retirement savings, securities fraud, credit cards regulations, and much more. Federal actions in all these areas can be appealed to the courts, and that court is often the D.C. Circuit. That makes it a particularly important court to protect from right-wing elitists who are deeply hostile to letting the American people use a robust federal government to tackle national problems and to protect ourselves from the vast power imbalance between individuals and corporate interests.

Depriving People of Healthcare. Walker is a former clerk for then-D.C. Circuit Judge Brett Kavanaugh, and he regularly promoted Kavanaugh’s nomination to the Supreme Court on

television and in print.ⁱ The legal positions he approvingly attributed to Kavanaugh make clear the kind of judge Walker himself would be.

Walker praised Kavanaugh for his D.C. Circuit dissent in the main Affordable Care Act case as a “thorough and principled takedown of the mandate” that served as a “roadmap” for the four Supreme Court dissenters who would have struck the ACA down.ⁱⁱ At the time, Walker was a private citizen. But even after becoming a federal judge, he spoke publicly of his contempt for the ACA and for the Supreme Court ruling that upheld the individual mandate. At his investiture, while thanking then-Justice Anthony Kennedy for hiring him as a clerk, he made sure to include a condemnation of the Court’s decision upholding the ACA:

The greatest words you can hear from Justice Kennedy are “You’re hired.” And the worst words are, “The Chief Justice thinks this might be a tax.”ⁱⁱⁱ

This gratuitous editorial comment as a sitting judge stands in contrast to his claim to the Senate Judiciary Committee that it would be inappropriate for him under the canons of judicial conduct as a judicial nominee to express his opinion of that case. As his fellow Republicans continue to gin up lawsuits to destroy this landmark law, the ACA may very well be before the D.C. Circuit. No reasonable litigant or observer would think Judge Walker would put aside his intense personal bias against the law and its constitutionality.

This is particularly disturbing at a time when COVID-19 has already killed more than 70,000 people in the United States and infected over one million more.^{iv} The Centers for Disease Control has forecast 200,000 new infections and 3,000 deaths per day by June 1.^v

Shredding the Social Safety Net. As a highly visible supporter of Kavanaugh’s confirmation to the Supreme Court, Walker wrote that Kavanaugh’s “courageous and influential opinions on countless different issues—presidential power, regulatory overreach, religious liberty, the Second Amendment, and the list goes on—leave no doubt that he would be a forceful conservative justice for decades to come.”^{vi} Walker praised Kavanaugh’s opposition to Supreme Court precedents allowing Congress to delegate authority to agencies, requiring courts to defer to agency interpretations (the *Chevron* doctrine), and upholding the creation of independent agencies whose leaders cannot be fired by the president without cause.^{vii}

Essentially, Walker’s jurisprudence would undo the New Deal and undercut the constitutionality of a wide array of health and safety protections and reasonable limitations on corporate power.

Unbridled Presidential Power. Walker’s belief that the Supreme Court wrongly decided cases upholding the creation of independent agencies would not only damage the social safety net. It also reflects his legal view that the Constitution gives the president vast authority that cannot be checked by the other branches. As noted above, Walker praised then-Judge Kavanaugh’s “courageous and influential opinions” positing immense unchecked executive authority.

That includes empowering the president to use federal law enforcement agencies to go after his political opponents or anyone else who threatens his grip on power. After President Trump fired the FBI director in his effort to derail investigations into the Trump campaign’s potential coordination with Russia, Walker wrote an article opposing the independence of the FBI.^{viii} At his district court hearing, Sen. Hirono asked him directly whether it is acceptable for a president to ask the FBI director to “go easy” on his political allies. Although this would be a clear abuse of presidential authority and potentially criminal obstruction of justice, Walker refused to give a substantive answer.^{ix}

Using the Federal Bench for Policy and Politics: At his public investiture this year, Judge Walker delivered what can only be considered a partisan political rant. Speaking as a federal judge at a formal occasion, Walker said of the 2018 political fight over Kavanaugh’s elevation to the Supreme Court:

[Kavanaugh was] like St. Paul. Hard pressed on every side but not crushed. Perplexed but not in despair. Persecuted but not abandoned. Struck down but not destroyed.

Because in Brett Kavanaugh’s America, we will not surrender while you wage war on our work or our cause or our hope or our dream.^x

Inflammatory invective such as this from a sitting federal judge corrupts the judiciary and erodes its legitimacy in the eyes of the American people. Elevating Walker to the D.C. Circuit would only serve to magnify the damage already done and cement the impression that Republican judges are Republicans first and judges second.

Walker made this clear in an April 2020 case called *On Fire Christian Center. v. Fischer*.^{xi} The plaintiff sought an emergency temporary restraining order against Louisville Mayor Greg Fischer. On Fire Christian Center told the court—incorrectly—that the mayor had banned drive-in Easter services as a measure to combat COVID-19, an order the church argued violated its religious liberty. In fact, as city officials had already made clear in public statements, they did not intend to shut down drive-in services. Instead, they urged people not to hold them in the interest of public health. Officials also planned to hand out written material to worshipers to warn them on the health risks, and to facilitate contact tracing in case of infection by recording the license plates of those in attendance.^{xii}

But Walker did not wait for the city to file a formal response. Instead, he issued the requested TRO. Especially since city officials had already made public statements making clear they were not taking the actions alleged in the petition, Walker could have given it a chance to respond to the church’s petition. But he chose instead to act precipitously, weighing in on an issue fraught with political implications.

Walker has also strongly suggested that constitutional interpretations are correct when they align with his personal policy preference for smaller government. An example was his praise for the

Supreme Court's ruling in *DeShaney v. Winnebago County*, in which the Court ruled that the Due Process Clause does not require the state to protect people from the actions of private actors. He agreed with the holding not because it was consistent with the text, meaning, purpose, or history of the Fourteenth Amendment, but because it "ensure[d] that the federal courts will not be among the many other accelerants on the size of local, state, and federal government."^{xiii} Similarly, the basis of his criticism of the argument that the Equal Protection Clause requires governments to spend as much on public education in impoverished areas as it does in wealthy ones was that it would "require each state to raise taxes by billions of dollars."^{xiv}

Conclusion: Justin Walker's record shows that he would approach constitutional interpretation with an agenda, and it is an agenda he shares with Brett Kavanaugh and so many other Trump judicial nominees: to serve the interests of the wealthy and powerful rather than protect the rights of every American. The Senate should reject his nomination to the D.C. Circuit.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

ⁱ E.g., "Law Professor: Judge Kavanaugh Has Backbone of Iron," Fox News, July 8, 2018, <http://video.foxnews.com/v/5806728724001>.

ⁱⁱ Justin Walker, "Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful," The Federalist, July 3, 2018, <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful>.

ⁱⁱⁱ Judge Justin Walker Investiture Part 4 - Judge Walker Speech, <https://www.youtube.com/watch?v=k5iUfudxuM8>, at 2:05.

^{iv} "Coronavirus in the U.S.: Latest Map and Case Count," <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (updated May 4, 2020).

^v "Draft report predicts covid-19 cases will reach 200,000 a day by June 1," The Washington Post, May 4, 2020, https://www.washingtonpost.com/health/government-report-predicts-covid-19-cases-will-reach-200000-a-day-by-june-1/2020/05/04/02fe743e-8e27-11ea-a9c0-73b93422d691_story.html.

^{vi} Justin Walker, "Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful," The Federalist, July 3, 2018, <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful>.

^{vii} Justin Walker, "The Kavanaugh Court and the Schechter-to-Chevron Spectrum: How the New Supreme Court Will Make the Administrative State More Democratically Accountable," University of Louisville Law, Legal Studies Research Paper Series, Paper No. 2019-01, https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3367176_code844181.pdf?abstractid=3332672&mirid=1&type=2.

^{viii} Justin Walker, "FBI Independence as a Threat to Civil Liberties: An Analogy to Civilian Control of the Military," 86 *George Washington Law Review* 1011, July 2018, <https://www.gwlr.org/wp-content/uploads/2018/09/86-Geo.-Wash.-L.-Rev.-1011.pdf>.

^{ix} Confirmation hearing for Justin Walker, Senate Judiciary Committee, July 31, 2019, <https://www.judiciary.senate.gov/meetings/07/31/2019/nominations>.

^x Walker Investiture at 2:45.

^{xi} *On Fire Christian Center v. Fischer*, No. 3:20-CV-264-JRW, 2020 U.S. Dist. Lexis 65924 (W.D. Ky. Apr. 11, 2020).

^{xii} Mark Joseph Stern, “The Trump Bench: Justin Walker,” *Slate*, April 13, 2020, <https://slate.com/news-and-politics/2020/04/trump-bench-justin-walker.html>.

^{xiii} Justin Walker, “Less Liberty? (rough draft/outline),” for discussion at April 13, 2019 Symposium at Richmond Law School, posted online at <https://afj.org/wp-content/uploads/2019/07/Less-Liberty.pdf>.

^{xiv} *Id.*



June 3, 2020

Dear Members of the Senate Judiciary Committee:

In this moment we are coping with the recent killings of Black people at the hands of police brutality, the militarized response to those protesting for justice, over 100,000 deaths from COVID-19, and waiting on decisions from the Supreme Court that will determine the future of reproductive rights, immigrant rights, and LGBTQ rights. Instead of focusing on the legislation our country needs, Senate Republican leadership is focused on packing the courts with the Trump-Pence administration's judicial nominees. Recently, Senate Majority Leader Mitch McConnell called senators back to the Capitol, endangering them and their staff members, for a hearing on Justin Walker's nomination to the U.S. Court of Appeals for the District of Columbia Circuit — even though the seat will not be open until September. This power grab for the courts is a waste of valuable time and resources that could instead be directed at COVID-19 relief legislation and addressing the systemic racism in our police forces and justice system. Furthermore, the confirmation of judges who are hostile towards health care access compromises the health and lives of people living in the United States. Justin Walker should not be considered for an appointment to the United States Court of Appeals for the District of Columbia Circuit, especially during a global pandemic.

Justin Walker has publicly opposed the Affordable Care Act (ACA), which is more critical during this public health crisis than ever before. Under the ACA, 32 million uninsured individuals have gained coverage, creating unprecedented gains in insurance coverage including for 15 million Black people and 17 million Latinos and Latinas. In the first quarter of 2019, [13.7 million](#) people were enrolled in ACA marketplace plans and Medicaid expansion has led to an additional [14.7 individuals](#) gaining access to critical coverage. In the current crisis, it is [estimated](#) that upwards of 27 million people may have lost their employer-based coverage as of May 2, 2020. When people have nowhere else to turn for insurance coverage, the ACA provides access to life-saving coverage and care. Additionally, the ACA [protects](#) people who contract the virus that causes COVID-19 from losing health coverage, facing higher premiums, or paying higher out-of-pocket costs. Because of it, fewer people fall through the cracks of our health care system, which is even more critical during times of economic uncertainty and a public health crisis. In 2018, Walker praised then-Judge Brett Kavanaugh for creating a "[roadmap](#)" that other judges could use to invalidate the ACA. Walker called the Supreme Court decision in *NFIB v. Sebelius* — the case that upheld the ACA's individual mandate — "indefensible" and "catastrophic." Now is not the time to be confirming judicial nominees who support taking away health care from millions of people.

Health care coverage and services are essential, and Justin Walker's record demonstrates a clear hostility to expanded health access, including reproductive health care. Opponents of safe, legal abortion have [praised](#) and endorsed Walker for being a "traditionalist" and "constitutionalist," which means they believe Walker will not uphold the right to abortion. With anti-abortion politicians implementing restrictive laws across the country, we cannot afford another judge who will jeopardize access to abortion care.

Justin Walker's attacks on civil liberties do not stop with reproductive rights. He [praised](#) Supreme Court Justice Brett Kavanaugh as someone who would "shift the court dramatically to the right," and effectively bring an end to affirmative action, opposition to public religious displays and prayers, assault weapon bans, and abortion rights. Walker also applauded Kavanaugh's dissent in *Priests for Life v. United States Department of Health and Human Services*, a case challenging the ACA's contraceptive coverage requirement, as an example of "defending religious liberty." Judges should be fair and impartial, but disturbingly, Walker [views](#) his judgeship as a means to "wage war" to advance his judicial philosophy and "win" against "opponents," demonstrating an us-versus-them mentality. Our rights should not be subjected to this partisan and dangerous ideological thinking on the bench.

Throughout the country, anti-abortion politicians are exploiting the fear and urgency of the pandemic to push their political agenda to ban abortion and attack our reproductive rights. This is not the time to play a political game with people's lives — or to confirm a nominee who is anti-health care as a federal appellate judge. Our senators need to focus on this public health crisis and injustices against Black people living in America. They must halt votes on Walker or any other judicial lifetime nominee. Our democracy, health, and rights are on the line.

Planned Parenthood Federation of America has a longstanding history of working to protect access to health care, including reproductive rights, and strongly urges you to oppose the nomination of Justin Walker to the D.C. Circuit.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jacqueline Ayers". The signature is written in a cursive, flowing style.

Jacqueline Ayers
Planned Parenthood Action Fund
Planned Parenthood Federation of America
1110 Vermont Avenue NW, Suite 300
Washington, DC 20005

May 4, 2020

The Honorable Lindsey Graham
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Reproductive Justice Groups Oppose Confirmation of Justin Walker Due to his Lack of Qualifications, Track Record of Opposing the ACA and Birth Control Access, Demonstrated Hostility Toward Workers' Rights, and Demonstrated Lack of Impartiality Due to his Disregard for Christine Blasey Ford's Testimony Against Brett Kavanaugh

Dear Chairman Graham:

We are 21 reproductive justice organizations and allied reproductive health and rights organizations, writing to express our strong opposition to the confirmation of Justin Walker to the United States Court of Appeals for the DC Circuit.

We are organizations based throughout the country that advocate for reproductive justice, joined by partners who advocate for reproductive rights and health.

Reproductive Justice framework is rooted in the human right to control our own bodies, our sexuality, our gender, and our reproduction. Reproductive justice will be achieved only when all people, of all immigration statuses have the social, economic, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-preservation.

Every individual should have the right to make their own reproductive decisions, without facing impossible obstacles. They should be able to make decisions about their health care based on their own living conditions and circumstances. This also means that they should be able to plan whether or when to start or add to their family without outside interference, no matter where they seek care and without discrimination.

Given our commitment to reproductive justice, we strongly oppose Judge Justin Walker's nomination to the District of Columbia ("D.C.") Circuit. His record shows a legal career built on opposition to issues that are fundamental to Reproductive Justice and support for laws and policies that disproportionately harm people of color. Moreover, as organizations that work on a number of issues within the reproductive justice framework, including access to healthcare and contraceptives, survivor's rights and worker's rights. Judge Walker's record of eroding these

rights is alarming. His record demonstrates a career built on opposition to issues fundamental to Reproductive Justice. In light of his record, we believe he lacks the qualifications to serve with impartiality and fairness required of a judge.

1. His Peers Considered Judge Walker “Not Qualified” for the Bench

The American Bar Association (“ABA”) rated Judge Walker as “Not Qualified” during his confirmation to his current bench at the Western District of Kentucky. The ABA found Judge Walker was not qualified for his current bench because he lacked experience.¹ The ABA estimated that at best, Judge Walker practiced law for less than ten years since his graduation from law school. *Id.* Despite a “Not Qualified” rating from the ABA, Judge Walker was confirmed to his current bench on October 25, 2019.²

Since his confirmation to the bench, Judge Walker has, at most, accumulated all of six months of judicial experience. Six months is not enough to circumvent his lack of legal experience prior to his nomination; it is certainly not enough to deem Judge Walker qualified for the D.C. Circuit Court, which is often known as the second highest court in the land. It is very concerning that Judge Walker is being nominated for this bench despite the glaring lack of legal experience.

2. Judge Walker Spent His Career Working Against Providing Healthcare for Millions of Americans

The current COVID-19 pandemic has revealed the deep inequities of healthcare access in our country.³ For example, in the ongoing COVID-19 crisis, Black communities are currently facing significantly greater incidence of COVID-19 hospitalizations.⁴ Based on current data, 1 in 3 people who become sick enough with COVID-19 to be hospitalized are Black, while Black Americans make up 13% of the total United States population.⁵

¹ AMERICAN BAR ASSOC., NOMINATION OF JUSTIN R. WALKER TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY (2019), *available at* https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-07-30NQ-rating-Justin-R-Walker.pdf?logActivity=true.

² UNITED STATES CONGRESS, <https://www.congress.gov/nomination/116th-congress/898> (last visited Apr. 16, 2020).

³ Elisabeth Rosenthal and Emmarie Huetteman, *Analysis: He Got Tested For Coronavirus. Then Came The Flood Of Medical Bills*, KAISER HEALTH NEWS (Apr. 1, 2020), <https://khn.org/news/covid19-coronavirus-test-surprise-medical-bill/>; *see also* SHARON PARROTT ET AL., CARES ACT INCLUDES ESSENTIAL MEASURES TO RESPOND TO PUBLIC HEALTH, ECONOMIC CRISES, BUT MORE WILL BE NEEDED, <https://www.cbpp.org/sites/default/files/atoms/files/3-27-20econ.pdf> (last visited Apr. 16, 2020).

⁴ Allison Aubrey, *CDC Hospital Data Point to Racial Disparity in COVID-19 Cases*, NPR (Apr. 08, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/08/830030932/cdc-hospital-data-point-to-racial-disparity-in-covid-19-cases>.

⁵ *Id.*

Many, despite the numerous successes of the Patient Protection and Affordable Care Act (“ACA”), still do not have health insurance.⁶ During this time of healthcare crisis, nominating Judge Walker, who has demonstrated his hostility against healthcare access, is deeply troublesome.

During his numerous public support for now-Justice Brett Kavanaugh, he extolled Justice Kavanaugh’s “strongest, most consistent, most fearless record of constitutional conservatism . . .”⁷ He also noted with approval that Justice Kavanaugh provided the “roadmap” for Supreme Court Justices to dissent from upholding the individual mandate of the ACA.⁸

Women of color face deeply troubling barriers to healthcare such as language, economic, geographic, and cultural barriers to receiving healthcare. Despite the passage of the ACA, Latina women continue to be one of the most uninsured groups in the United States.⁹ The rate of insured greatly differs in subgroups of AAPIs and when broken down by occupation.¹⁰

Women of color need more access to healthcare, not less. Judge Walker’s record does not lend confidence that he will uphold the ACA and recognize women of color’s right to healthcare access.

3. Judge Walker’s Record Against Free and Accessible Contraception Goes Against Reproductive Justice

As reproductive justice organizations, we are also concerned by Judge Walker’s statements against the right of women to access contraceptive healthcare in order to make best decisions about themselves, their families, and their communities.

Judge Walker called Justice Kavanaugh a “warrior” and a “steadfast and fearless supporter of religious liberty” while pointing out Justice Kavanaugh’s dissent against ACA’s mandate for employer-sponsored health plans to supply contraceptives without out of pocket costs.¹¹ In this article, Judge Walker is highly laudatory of Justice Kavanaugh’s stance against this mandate.

Judge Walker’s opposition to the ACA and its mandate for employer-sponsored plans to provide contraceptives is particularly harmful to women of color employees with lower incomes. Access to contraceptives through the ACA is a vital component of women’s health and undermining

⁶ JENNIFER TOLBERT ET. AL., KEY FACTS ABOUT THE UNINSURED POPULATION, <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/> (last visited Apr. 16, 2020).

⁷ Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful*, THE FEDERALIST (July 3, 2018), <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/>.

⁸ *Id.*

⁹ Munira Gunja et. al, *The Impact of the Affordable Care Act on Latinas in the U.S.*, <https://wafmag.org/2016/10/impact-affordable-care-act-u-s-latinas/> (last visited Apr. 24, 2020).

¹⁰ NAPAWF calculations based on American Community Survey (ACS) 2015 1-year using Ruggles, S., Genadek, K., Goeken, R., Grover, J., & Sobek, M. (2015). Integrated Public Use Microdata Series: Version 6.0 [dataset]. Minneapolis: University of Minnesota. Retrieved 16 Apr. 2020, from <https://usa.ipums.org/usa/>; see *infra* section 3.

¹¹ Justin Walker, *Judge Brett Kavanaugh: A Warrior for Religious Liberty*, NATIONAL REVIEW (July 6, 2018), <https://www.nationalreview.com/2018/07/judge-brett-kavanaugh-religious-liberty-warrior/>.

ACA's coverage would create higher out-of-pocket costs for women of color employees, thus taking away their power to make decisions about their own bodies and families.¹²

4. Judge Walker's Records Demonstrates Hostility Against Workers' Rights

We are also concerned by Judge Walker's record against worker's rights. Women of color are especially vulnerable to employer mistreatment and are consistently underpaid compared to their white, non-Hispanic male counterparts.

On average, Hispanic women make 54 cents for every dollar and Black women earn 64 cents for every dollar a white, non-Hispanic man earns.¹³ Within the AAPI community, there are stark wage disparities within AAPI subgroups. Burmese, Cambodian, Nepalese, and Fijian women earn less than 60 percent of what white, non-Hispanic men are typically paid.¹⁴

Women of color also disproportionately make up the personal care sector and also make up a disproportionate number of tipped workers.¹⁵ Women of color are also more likely to work involuntarily in part-time positions because they are unable to secure full-time work.¹⁶

Service workers and personal care workers work in harsh conditions that often do not provide for workplace protections or fair wages.¹⁷ Currently, the federal minimum wage for tipped workers is \$2.13.¹⁸ Tipped workers are also far less likely to have health coverage.

Almost 17 percent of healthcare workers are born outside the United States. Of these, most were from Asia.¹⁹ For example, 23 percent of home health, psychiatric, and nursing aides were born

¹² Marcella Howell & Ann M. Starrs, *For Women of Color, Access to Vital Health Services Is Threatened*, GUTTMACHER INSTITUTE (July 2017),

<https://www.guttmacher.org/article/2017/07/women-color-access-vital-health-services-threatened>

¹³ CENTER FOR AMERICAN PROGRESS, WOMEN OF COLOR AND THE WAGE GAP (2015)

<https://www.americanprogress.org/issues/women/reports/2015/04/14/110962/women-of-color-and-the-gender-wage-gap/>.

¹⁴ *Id.*

¹⁵ *Id.*; *Making America Work: Asian Americans, Native Hawaiians and Pacific Islanders in the Workforce and Business* (2014), <https://advancingjustice-la.org/sites/default/files/MakingAmericaWork2015.pdf>; Sylvia Allegretto & David Cooper, *Twenty-Three Years and Still Waiting for Change*, (July 10, 2014)

<https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

¹⁶ CENTER FOR AMERICAN PROGRESS, WOMEN OF COLOR AND THE WAGE GAP (2015).

¹⁷ Annette Bernhardt et. al., NATIONAL EMPLOYMENT LAW PROJECT, BROKEN LAWS. UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES, (Sep. 21, 2009) available at

<https://www.nelp.org/publication/broken-laws-unprotected-workers-violations-of-employment-and-labor-laws-in-america-cities/>.

¹⁸ *Minimum Wages for Tipped Employees*, DEP'T OF LABOR (Jan. 1, 2020).

<https://www.dol.gov/agencies/whd/state/minimum-wage/tipped>.

¹⁹ Lisa Rapaport, *U.S. Relies Heavily on Foreign Born Workers*, (Dec. 4, 2008),

<https://www.reuters.com/article/us-health-professions-us-noncitizens/u-s-relies-heavily-on-foreign-born-healthcare-workers-idUSKBN1O32FR>

outside the United States.²⁰ Currently, these healthcare workers are on the frontlines of the pandemic.

Within this context, it is important that worker's rights are recognized and respected so women of color have the agency and economic power to assist them in making their own decisions. However, Judge Walker's career does not spark confidence that he will work to uphold workers' rights.

For example, Judge Walker represented a corporation against a labor union found to have refused to bargain with their employees' union. We find this representation is not an exception but a manifestation of his long-standing views against workers. In college, Judge Walker noted that there was "hypocrisy" around individuals who support unions.²¹

Judge Walker's bias against workers' rights is especially troubling because he is being considered for the D.C. Circuit, which frequently adjudicates in matters arising from federal agencies such as the National Labor Relations Board. Women of color need our courts to uphold workers' rights to ensure their economic power and the personal autonomy that stems from obtaining economic power.

5. His Response to Sexual Harassment Casts Doubt on His Impartiality

Judge Walker's ability to be impartial is in doubt. During Supreme Court Justice Brett Kavanaugh's hearing, Judge Walker stated Dr. Christine Blasey Ford's statements regarding her experience of sexual harassment was "mistaken."²² Rather than believing Dr. Blasey Ford's statements, Judge Walker was quick to come to the defense of his mentor because he worked with Justice Kavanaugh, disregarding her testimony.

As a judge on the D.C. Circuit, Judge Walker must impartially rule on matters based on fact and reason, not based on his personal experiences. Judge Walker's quickness to dismiss Dr. Blasey Ford's testimony is troubling for reproductive justice organizations as we continue to advocate for autonomy over our own bodies, free from anyone's control.

Women of color disproportionately experience sexual assault in their lifetime but are less likely to report it to authorities.²³ When Black women report sexual assault, they are less likely to be believed.²⁴ Further, transwomen of color are more likely to be victims of sexual violence.²⁵

²⁰ *Id.*

²¹ Justin Walker, *Headed to New Hampshire*, DUKE NEWS (Jan. 20, 2004),

https://web.archive.org/web/20040306123238/http://www.dukenews.duke.edu/news/campaign_headednh.html.

²² Fox News, *Fox News Breaking*, DAILYMOTION, (Sept. 27, 2018), <https://www.dailymotion.com/video/x6ucaa2>.

²³ END RAPE ON CAMPUS, PREVALENCE RATES <https://endrapeoncampus.org/new-page-3>

²⁴ Maya Finoh & Jasmine Sankofa, *The Legal System Has Failed Black Girls, Women, and Non-Binary Survivors of Violence*, AMERICAN CIVIL LIBERTIES UNION (Jan. 28, 2019)

<https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/legal-system-has-failed-black-girls-women-and-n>

[on](#)

²⁵ OFFICE FOR VICTIMS OF CRIME (June 2014) https://www.ovc.gov/pubs/forge/sexual_numbers.html.

During the current COVID-19 pandemic, AAPI women were two to three times more likely to report harassment than men.²⁶ Centuries of denigrating them as exotic and submissive sexual beings have made them targets of unwanted attention and harassment.²⁷ When issues like this rise in courts, we look to judges to examine facts and rule on the side of justice. Judge Walker's dismissal of Dr. Blasey Ford's testimony causes us concerns on whether he will be able to rule with impartiality necessary to examine facts of cases as they appear before him, especially in cases related to sexual harassment.

For people of color, threats to health care, economic justice, and survivors' rights are threats to our bodily autonomy and undermine our ability to make decisions about our own lives and families. People of color rely on the protections enforced by courts, yet Judge Walker repeatedly demonstrated a career-long commitment to rolling back the rights that determine our health, freedom, and well-being. As a judge in the influential District of Columbia Circuit, Judge Walker will have the power to decide many cases involving critical legal protections for groups and civil rights he has long worked against. We cannot support a nominee who will disregard the daily realities and needs of communities of color. For the foregoing reasons, we urge you to strongly oppose the confirmation of Judge Justin Walker to the District of Columbia Circuit.

Sincerely,

National Asian Pacific American Women's Forum (NAPAWF)

In Our Own Voice: : National Black Women's Reproductive Justice Agenda

SisterReach

SIECUS: Sex Ed for Social Change

URGE: Unite for Reproductive & Gender Equity

Positive Women's Network-USA

We Testify

The Afiya Center

SPARK Reproductive Justice NOW!, inc.

²⁶ Asian Pacific Policy & Planning Council, Incidence of Coronavirus Discrimination (Mar. 25, 2020) http://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/A3PCON_Public_Weekly_Report_3.pdf;

Asian Pacific Policy & Planning Council, Incidence of Coronavirus Discrimination (Apr. 3 2020) http://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/Press_Release_4_3_20.pdf.

²⁷ *Sexual Violence*, ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/about-gbv/types-of-gbv/sexual-violence/>; NiCole T. Buchanan et. al., *Sexual Harassment, Racial Harassment, and Well-Being among Asian American Women: An Intersectional Approach*, 41 *Women & Therapy* 261-280 (2018) <https://www.tandfonline.com/doi/full/10.1080/02703149.2018.1425030?scroll=top&needAccess=true>.

SisterSong Women of Color Reproductive Justice Collective

SisterLove, Inc.

Jane's Due Process

Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)

The Womxn Project

National Network of Abortion Funds

If/When/How: Lawyering for Reproductive Justice

Religious Coalition for Reproductive Choice

Civil Liberties and Public Policy

National Women's Health Network

Physicians for Reproductive Health

National Partnership for Women & Families

Questions for the Record for Justin Walker Nominee for the District of Columbia Circuit

1. Many women of color experience sexual harassment on the job, due in part to our country's system of racism.²⁸ Yet at the same time, you have been a noted opponent of workers' rights.²⁹ How do you propose to rule on matters where another worker violates a woman worker at her job? '
2. The Patient Protection and Affordable Care Act ("ACA") created a right for women to receive full coverage of contraceptives from most private plans, including employer sponsored plans without a copay.³⁰ How would you rule in cases where the right to receive free contraceptives from an employer sponsored plan is in jeopardy?
3. In a 2018 article in *The Federalist* titled, "Brett Kavanaugh Said Obamacare Was Unprecedented and Unlawful," you called the Supreme Court's opinion in *National Federation of Independent Business v. Sebelius* an "indefensible decision."³¹ To this, you stated that you were speaking as an "academic and a citizen engaged in the political process" on your last Questions for the Record.³² As an academic and as a citizen, please explain how you came to this conclusion.
 - a. Do you believe that access to affordable healthcare is a right?
4. During your 162 appearances to stump for now-Justice Brett Kavanaugh's nomination to the Supreme Court, you stated you know him well and called him a "mentor" and a "friend".³³ On your previous Questions for the Record, you stated that you appeared for now-Justice Brett Kavanaugh and spoke on his record as an "academic and as a citizen engaged in the political process."³⁴ On the same Questions for the Record, you stated that a judge's life experiences can influence their ruling in helping them become a good

²⁸ Dan Cassino & Yasemin Besen-Cassino, *Race, threat and workplace sexual harassment: The dynamics of harassment in the United States, 1997–2016*, (May 27, 2019)

<https://onlinelibrary.wiley.com/doi/epdf/10.1111/gwao.12394>

²⁹ <https://www.afj.org/wp-content/uploads/2019/11/Walker-Report-Final.pdf>

³⁰ *Insurance Coverage of Contraceptives* (Apr. 15, 2020) available at

<https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives>

³¹ Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful*, *THE FEDERALIST* (July 3, 2018), <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/>.

³² *Nomination of Justin Reed Walker to the United States District Court for the Western District of Kentucky Questions for the Record Submitted* (Aug. 7, 2019)

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

³³ Justin Walker, *Professor Justin Walker offers insight on Supreme Court opening*,

<https://louisville.edu/law/news/professor-justin-walker-offers-insight-on-supreme-court-opening>; Justin Walker, *Guest blog: Reflections on Judge Brett Kavanaugh*,

<https://louisville.edu/law/about/deans-blog/Guest-blog-reflections-on-judge-brett-kavanaugh>

³⁴ *Nomination of Justin Reed Walker to the United States District Court for the Western District of Kentucky Questions for the Record Submitted* (Aug. 7, 2019)

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

listener and of being a lifelong learner. Will your friendship and mentorship with Justice Kavanaugh influence your judicial decision making?

5. On September 27, 2018, you stated that Dr. Christine's Blasey Ford was "mistaken" in her experiences of describing her sexual assault by Justice Brett Kavanaugh. On that same interview, you stated that Justice Kavanaugh was on your "short list" of people you'd trust.
 - a. Why would you not believe a survivor?
 - b. When making judicial decisions, will you look to your personal relationships and experiences over facts as presented in front of you?
6. Justice Kavanaugh was at your investiture, where after the ceremony, he and you shared a fist bump, an informal way of greeting someone you know well, indicating a close relationship.³⁵ Would you say your stumping for Justice Kavanaugh further cemented your relationship with him?
7. The District of Columbia Circuit frequently adjudicates in matters of national importance. During your last hearing for the Western District of Kentucky, the American Bar Association found you were "Not Qualified" due to your lack of experience.³⁶ Based on your own answers to the previous Question for the Record, you have stated you have zero bench trial experience.³⁷ You have never submitted a motion for a summary judgment. You have never argued a motion in federal court. But you are now being considered for what is often known as the "Second Highest Court in the Land." Why do you think you qualify for the D.C. Circuit?

³⁵ WDRB,

https://www.wdrb.com/news/mitch-mcconnell-brett-kavanaugh-attend-federal-judges-swearing-in-ceremony-in-louisville/article_1611593e-657c-11ea-abbf-7b4a682a00e0.html (May 13, 2020).

³⁶ AMERICAN BAR ASSOC., NOMINATION OF JUSTIN R. WALKER TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY (2019), *available at*

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

³⁷ Nomination of Justin Reed Walker to the United States District Court for the Western District of Kentucky Questions for the Record Submitted (Aug. 7, 2019)

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