



April 24, 2018

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

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

On behalf of our hundreds of thousands of members throughout the United States, People For the American Way writes to express serious concern about the nomination of Michael Truncale to be a federal judge in the Eastern District of Texas. Both directly and through carefully coded language, the nominee has expressed an extreme legal ideology at odds with long-accepted constitutional norms, criticizing judges for not ruling consistent with that ideology.

Truncale has made statements that indicate he lacks due respect for the American people's basic liberties. In his unsuccessful primary campaign to be a member of Congress, he presented himself as having "strong pro-life and pro-family values," terms equating to opposition to abortion rights and LGBTQ equality. He attacked Texas Democrat Wendy Davis for her support of the Constitution, saying that her "claim to fame is the fact that she wants to kill babies five months into term."ⁱ

In a 2016 article on a future Supreme Court should Donald Trump lose the election, he made clear how he believes judges should rule on various legal issues:

- The liberal Supreme Court will also consider President Obama's actions in rewriting laws like Title IX, which prohibits discrimination based on sex—by redefining the word "sex" to mean "gender identity" or even a person's "internal sense of gender."
- [We] can expect more "modifications" to the Bill of Rights from a 5-4 liberal Supreme Court. For example, liberals want to require pharmacists to sell abortion drugs despite religious objections and to force Christian photographers to use their artistic skills to celebrate same-sex weddings.ⁱⁱ

While these statements reflect his personal opposition to reproductive rights and LGBTQ equality, they also clearly indicate how he believes judges should rule on such issues.

He has also stated:

I do not believe that judges should legislate from the bench...and, really, overlook the plain meaning of the United States Constitution. That's how we've got into a lot of trouble now. That's why government has gotten too big. That's why we've forgotten about the Tenth Amendment, which means that power is to be retained by the people and by the states, and that the people and the states don't exist for the furtherance of the federal government...ⁱⁱⁱ

"Legislating from the bench" is well-worn conservative code designed to delegitimize the Constitution's protections of the right to privacy (including reproductive and sexual autonomy), the equal protection of LGBTQ people under the law, and the separation of church and state, among other ideals opposed by the religious right. And opponents of a vigorous federal government often claim that the Tenth Amendment mandates their anti-government ideology. But the Founders wrote a Constitution that empowers the American people to protect our health, safety, and rights in an extremely complex world filled with powerful corporate interests that would otherwise be unrestrained. That has long been recognized by the Supreme Court and, accordingly, the lower federal courts in the United States.

Truncale's statement suggests he believes judges should rule otherwise. To be confirmed for a lifetime seat on the federal bench, he must provide persuasive evidence that he would be faithful to the Constitution and precedent as they exist, not as he wishes them to be.

His views on the rights and basic humanity of immigrants also merit exploration. When running for Congress in 2012, he stoked fear of immigrants, saying:

We have all sorts of bad influences coming in [through the US-Mexico border]. We have drugs. We have illegal gangs. There is the possibility of bombs.^{iv}

He discussed his desire for "boots on the ground" at the border, adding that "we must not continue to have the magnets coming in."^v He was presumably referring to immigrants who help undocumented family members who have joined them. But these are people, not lifeless chunks of metal. A judge should recognize the basic humanity of all parties that come before him.

Truncale's record is one of opposition to the constitutional values of equality and justice. He has not met his burden of proving his suitability for a lifetime appointment to the United States judiciary, and the Senate Judiciary Committee should carefully consider these troubling concerns about his nomination.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

ⁱ Notes from Speeches: Final Reflections Upon Eight Years of Service on the State Republican Executive Committee before the Golden Triangle Republican Women (May 5, 2014) and Report on State Republican Executive Committee before the Golden Triangle Republican Women (April 7, 2014) (attachments to Questionnaire for Judicial Nominees: Michael Joseph Truncale, United States Senate Committee on the Judiciary).

ⁱⁱ Michael Truncale, The Reason to Vote for Trump, Golden Triangle Republican Women Gazette, (September 2016), <http://gtrw.us/wp-content/uploads/2016/08/GTRW-Sept-2016-email.pdf>.

ⁱⁱⁱ "Michael Truncale – Nominee for the U.S. District Court for the Eastern District of Texas," The Vetting Room, updated April 19, 2018, <https://vettingroom.org/2018/04/19/michael-truncale>, citing Michael Truncale, Interview with the Police News (Feb. 18, 2012) (available at <https://www.youtube.com/watch?v=Kzb9XP3Xago>).

^{iv} Paula Smith, Michael Truncale, CD14 Job Interview (uploaded on May 23, 2012) (available at <https://www.youtube.com/watch?v=Hr3rSPRTGJM>).

^v Id.