



May 16, 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 in opposition to confirming Michael Truncale to be a federal judge in the Eastern District of Texas. Rather than dispelling the concerns we had about his record before the hearing, his testimony reinforced them.

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."<sup>i</sup>

At his confirmation hearing, when asked by Sen. Harris if he stands by that statement, he said only that his personal views were not relevant to the job of a judge. He also stated without explanation that Davis' statements "probably went beyond *Roe v. Wade*."<sup>ii</sup> In response to Sen. Feinstein's follow-up written question asking specifically which of Davis' statements he was referring to, he unhelpfully replied that he had been referring to "some of her previously articulated positions that went well beyond *Roe v. Wade*."<sup>iii</sup> That extremely evasive response reinforces our concern that Truncale would likely elevate his personal ideology over women's constitutional right to abortion.

Truncale also manifests a hostility to voting rights. In notes for remarks in 2014 before the Beaumont Rotary Club, he wrote that "voter fraud makes a mockery of our elections" and that voter ID laws are needed "so that everyone's vote is protected from being diminished by someone who votes several times." In an exchange with Sen. Hirono at his hearing, he admitted that he'd had no research on widespread voter fraud to back those sweeping claims, but he cited his personal experience:

I was once an election judge and had people from other states come by wanting to vote and I denied their ballot because they weren't even Texans or were properly registered so I mean I've seen that.<sup>iv</sup>

In his written responses, he acknowledged that he had no idea if those people had been trying to engage in voter fraud, and that he had no additional information to support his 2014 claim of voter fraud.<sup>v</sup>

Legislation premised on preventing in-person voter fraud could very well come before him if he were confirmed, and his willingness to demagogue on the issue creates an appearance of bias that would be extraordinarily difficult to dispel.

His willingness to make factually unsupported and inaccurate statements to support legislation affecting the constitutional right to vote also raises an even more basic problem. At the district court level, we rely on judges not only to interpret the law without bias, but also to make factual findings without an agenda and without preconceptions. Appellate courts generally rely on those findings, accepting them as a given, and reviewing only the lower court's legal analysis of those facts. A district court judge's good-faith effort to determine what the facts are in the face of uncertainty is essential if the courtroom is going to serve its role as defender of justice and guardian of the rule of law.

Although Truncale was not a judge in 2014, his statements nevertheless evince a dangerous willingness to make up facts to support an ideological agenda involving other people's constitutional rights. To confirm him to a lifetime position where objective fact-finding is central to the job would be grave disservice to litigants and to the federal judicial system.

The nominee also demonstrated an alarming lack of knowledge or even concern about implicit racial bias in the criminal justice system.<sup>vi</sup> While Truncale promised not to allow racism in his courtroom, that is a necessary but not sufficient response to the problem. His hearing responses suggested that he did not understand the term "implicit bias," seeming to confuse it with more explicit racism (although he displayed a better grasp of the definition in his follow-up written responses). He stated at the hearing that it would be inappropriate for him as a judicial nominee to discuss the various types of racial disparities in the criminal justice system, and that it was an issue for the other branches to address. This abdication of responsibility makes it harder to deliver equal protection under the law and, in fact, contributes to the problem.

Truncale also failed to address evidence from his record that his legal views are hostile to LGBTQ equality, reproductive rights, and a federal government constitutionally empowered to impose reasonable regulations on powerful corporate interests.

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.<sup>vii</sup>

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...<sup>viii</sup>

“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 needed to provide persuasive evidence that he would be faithful to the Constitution and precedent as they exist, not as he wishes them to be. However, he failed to address these concerns.

Truncale’s record is one of opposition to the constitutional values of equality and justice, a record that does not warrant a lifetime appointment to the United States judiciary. We urge senators to vote against his confirmation.

Sincerely,



Marge Baker  
Executive Vice President for Policy and Program

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<sup>i</sup> 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).

<sup>ii</sup> Senate Judiciary Committee, Nomination Hearing, April 25, 2018 (“Truncale Hearing”), video online at <https://www.judiciary.senate.gov/meetings/04/25/2018/nominations>, from 2:05:30 – 2:07:30.

<sup>iii</sup> Truncale Responses To Questions For The Record (“Truncale QFRs”), p. 4, <https://www.judiciary.senate.gov/download/truncale-responses-to-questions-for-the-record>.

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<sup>iv</sup> Truncale Hearing, 2:21:45.

<sup>v</sup> Truncale QFRs, p. 5.

<sup>vi</sup> Truncale Hearing, from 2:07:30 – 2:10:30.

<sup>vii</sup> 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>.

<sup>viii</sup> “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>).