



October 9, 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 opposes the nomination of Chad Readler of Ohio to the Sixth Circuit Court of Appeals. His record demonstrates that he should not be given the power and responsibility that come with a lifetime seat on the body that is just one step below the Supreme Court in importance and influence. President Trump has bypassed traditional norms in selecting him (as well as Eric Murphy) over the objections of their home state senator, Sherrod Brown, and the Judiciary Committee is bypassing traditional norms by holding a hearing for them despite those objections.

Chairman Grassley's policy on home-state senators' consent changes, depending on the party of the president making the nominations. As a result of this corruption, several far-right nominees strongly opposed by their home state senators have appeared before the committee: David Porter (Third Circuit), Michael Brennan (Seventh Circuit), David Stras (Eighth Circuit), and Ryan Bounds (Ninth Circuit).

The latest beneficiary of this corruption is Chad Readler (along with Eric Murphy).

Until last year, Readler was a partner at Jones Day, which he joined in 1998. He left the firm and joined the Justice Department in 2017 in order to help the Trump administration advance the radical and frightening vision of America that Trump had presented as a candidate. Rather than making the legal argument that most helps his client, he picked the client in order to make the legal arguments he believes in. Therefore, the positions this nominee has defended for the administration can fairly be attributed to him, including the separation of immigrant children from their parents, the Muslim ban, and the inclusion of a citizenship question in the 2020 Census for partisan, anti-democratic reasons.

One case in particular highlights Readler's willingness to subvert the rule of law in pursuit of an ideological and political goal, which disqualifies him from the bench. Specifically, as acting head of the Civil Division, he submitted a legal brief so dishonest, so poorly reasoned, and so antithetical to the rule of law in a case involving the ACA that three career lawyers refused to sign their names to it.

*Texas v. United States* is the latest meritless lawsuit designed to use the courts to further the Republican Party's political goal of destroying the ACA. In its tax overhaul last year, the GOP-controlled Congress reduced the tax penalty for not having health insurance to zero. Texas's Republican state government argues that this makes the ACA's protection of people with pre-

existing conditions unlawful. In June, the Justice Department submitted a brief agreeing with Texas. Its argument is that (1) the individual mandate still exists but (since it now raises no revenue) it has no constitutional basis; (2) several of the ACA's consumer protections are not severable from the mandate; therefore, (3) the consumer protections the mandate helped pay for are unconstitutional.

But severability is only relevant when a court strikes down part of a statute and tries to determine congressional intent: Was the provision so vitally connected to other parts of the statute that without the stricken provision, Congress would not have adopted the other provisions? But in this case, it was Congress and not a court that eliminated the penalty for not having health insurance. Congress chose to do this without changing the consumer protections, so there is no ambiguity about congressional intent.

Yet the Justice Department's brief argues exactly the opposite. It is so poorly reasoned, so dishonest, and so antithetical to the rule of law that three career lawyers refused to sign their names to it. They were true to their oaths to uphold the Constitution and took a principled stand. One of the attorneys even resigned.

The rule of law depends on lawyers and judges adhering to such principles.

As acting head of the Civil Division, Readler signed the brief that others would not. His willingness to sacrifice the rule of law to his ideological agenda makes him woefully unqualified for a lifetime position as a federal judge.

People For the American Way urges you to oppose Readler's confirmation to the Sixth Circuit.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker  
Executive Vice President for Policy and Program