



June 11, 2019

United States Senate  
Washington, DC 20510

Dear Senator:

On behalf of our 1.5 million supporters nationwide, People For the American Way opposes the nomination of Thomas Barber to be a federal judge in the Middle District of Florida. In his testimony before the Senate Judiciary Committee, he did not express agreement with *Brown v. Board of Education*, a core belief that is indispensable to a lifetime position on the federal bench.

May 17, 1954 ranks among the most important days in the history of the United States: When the Supreme Court issued its unanimous decision in *Brown v. Board of Education* 65 years ago, the essential humanity of African Americans was finally recognized as fundamental to the fabric of our society. The legal overturning of “separate but equal” gave legitimacy to a federal judiciary that had previously sanctioned the political, social, and economic oppression of people based on their race.

The backlash was intense and violent—and unmistakably overt. But fair-minded constitutionalists on the Supreme Court and throughout the federal judiciary brought the principles of the case to life, often at great personal risk. Over time, a national consensus finally emerged that *Brown* was correctly decided. In a nation still rife with racial divisions and conflict, everyone could at least agree on that.

Nominees for the court that issued *Brown* have long expressed their agreement with the decision without generating headlines.<sup>i</sup> But since President Trump took office, judicial nominees’ support for *Brown* has gone the way of so many other democratic norms. Refusal to acknowledge the correctness of the case has become commonplace.<sup>ii</sup>

The excuse for many is that judicial ethics prohibit them from suggesting how they might rule in a particular case that might come before them. But do these nominees really believe it likely—or even possible—that the principle of *Brown* is going to be re-litigated? Revisiting separate but equal has not been a subject of any serious debate, at least in public.

Judicial nominees should be committed to the principles *Brown v. Board of Education* represents and to a judiciary that reliably applies those principles. Senators should have the same commitment: That means taking seriously judicial nominees’ refusal to acknowledge that *Brown* was correctly decided.

Sincerely,

Marge Baker  
Executive Vice President for Policy and Program

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<sup>i</sup> <http://www.pfaw.org/blog-posts/all-current-scotus-justices-supported-brown-v-board-at-their-nominations-hearings-why-wont-some-of-trumps-nominees>.

<sup>ii</sup> <http://www.pfaw.org/blog-posts/64-years-after-brown-v-board-why-arent-trumps-judicial-nominees-committed-to-this-unassailable-ruling>.