



April 9, 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 strongly opposes the nomination of Cory Wilson to be a judge on the Fifth Circuit Court of Appeals. His extreme views and the demagogic way in which he communicates them make him woefully unqualified for a lifetime position on the federal bench.

As a threshold matter, the Senate should not be processing any lifetime judicial nominees because President Trump remains under the cloud of impeachment for actions undermining the core foundation of our constitutional democracy: free and fair elections. During the impeachment trial, his lawyer argued that nothing Trump does to stay in power can be impeachable because Trump believes his reelection is in the public interest. This view seeks to legitimize his effort to rig the 2020 elections. Moreover, it eliminates the most important constitutional protection against a lawless executive: impeachment and removal. When the Senate majority voted to bar witnesses and end the trial prematurely, they accepted this frightening and dangerous distortion of our Constitution. The sham trial made clear that Senate Republicans cannot be trusted to adequately vet judicial nominations, because their agenda is diametrically opposed to the goals of a properly functioning judicial system.

But since Trump has proceeded to make this nomination and Republican leadership in the Senate has chosen to proceed nonetheless, we take this opportunity to address the merits of Wilson's nomination.

Attacks on Healthcare: As unelected lifetime arbiters of justice, federal judges have a unique role in our constitutional system. Unlike the other branches, Article III courts maintain their legitimacy by eschewing politics. Elected officials and political pundits have the latitude that judges don't to give voice to their ideological passions in a way that often does not show due respect to their opponents. Nevertheless, throughout our history, many political partisans have been able to put their past behind them, become federal judges, and be regarded by their communities with the respect a federal judge needs in order to protect the legitimacy of the court.

But some partisan rhetoric is so toxic, so dishonest, and so openly contemptuous of those with different views that it would not be possible for litigants to trust that the person who expressed it would decide their case fairly. Unfortunately, that is the type of rhetoric Wilson has specialized in.

As an example, in 2014, Wilson wrote a newspaper column calling the Affordable Care Act “perverse” and “illegitimate.”ⁱ For an attorney, calling a law illegitimate is a strong statement, and it certainly offers insight on how he would regard that law as a judge. Part of his justification was the fact that no Republicans voted for the law. But his party’s decision to oppose insurance coverage for their constituents with pre-existing conditions spoke to the values and priorities of those members of Congress, not the legitimacy of the law. The Constitution makes clear that a bill must pass both houses of Congress to become law; it does not have the additional requirement that Republicans must agree with it. Wilson’s other justification for calling the law perverse and illegitimate—that members of Congress made deals to get the bill passed—would likely make nearly every major piece of legislation ever passed by Congress illegitimate. Again, his position is unmoored from reason and the rule of law.

Especially when discussing the ACA, Wilson demonstrated a willingness to mislead his readers with known distortions. For instance, he wrote that “Nancy Pelosi famously said we had to pass Obamacare to find out what was in it.”ⁱⁱ But he chose to leave out the second half of her statement, which reveals the meaning. Rather than urging Congress to pass a bill that no one had read, which is what the ACA’s opponents said she meant, she was condemning the many falsehoods being told about the bill by its opponents and stating that passage of the bill would finally reveal the dishonesty of its opponents’ statements about it: “But we have to pass the bill so that you can find out what is in it, away from the fog of the controversy.”ⁱⁱⁱ A person who chooses to so seriously mislead his readers on a life-or-death matter such as healthcare does not merit a seat on the federal bench.

Wilson wrote numerous newspaper columns that were factually inaccurate and dripping with undisguised scorn for President Obama. For instance, when President Obama made the simple (and correct) assertion in 2012 that the Affordable Care Act would be upheld by the courts because it is constitutional, Wilson distorted the president’s statement in a way designed to inflame Obama-haters and delegitimize his presidency:

I hope the [Supreme] Court checks Obama’s dangerous standard of what is constitutional: Obamacare “will be upheld because it should be upheld.” A valid law is what King Barack says is a valid law. His comments Monday are a clear glimpse of Obama’s imperial mind.^{iv}

A decade after its passage, the ACA’s opponents are still trying to have it struck down by the courts. Were such a case to come again before the Fifth Circuit with Wilson on the bench, his extremism could endanger millions of Americans’ access to healthcare.

Judicial Temperament: While his record on healthcare demonstrates that he lacks the temperament to be a judge, he made this clear in other areas of public importance and debate. For instance, as an example of President Obama’s supposedly “imperial” mindset, Wilson wrote:

Obama deemed that he would not enforce the Defense of Marriage Act ... DOMA would not be upheld (by those sworn to enforce it) because Obama thinks it should not be upheld.^v

But the administration did enforce DOMA, even as it argued in court that it was not constitutional under heightened scrutiny. The Justice Department had made this clear a year earlier when it announced its conclusion that the law was unconstitutional, stating explicitly that it would nevertheless enforce the law until it was repealed by Congress or struck down by the courts.^{vi} Surely an honest lawyer knows the difference between not defending a law in court and not enforcing a law at all.

Wilson's columns regularly included standard right-wing talking points that glossed over reality. For instance, he parroted the claim that President Obama had skipped more than half of his daily security briefings during his first term.^{vii} This accusation was false, meriting "three Pinocchios" from the Washington Post.^{viii}

The nominee's hostility extends to progressives in general, and he used his column as an opportunity to disseminate falsehoods about those he disagreed with. For instance, he wrote:

"[E]nlighthened liberals everywhere have honestly believed from the inception of this debate: The power of government is unlimited and should be used by the governing class to impose whatever it wishes on the rest of us. The liberal mindset views the checks and balances designed by the Founders, and anyone who still adheres to them, as quaint historical relics."^{ix}

No one who actually believes this caricature can be trusted by litigants and the public to competently and without bias assess complex legal arguments about how constitutional checks and balances function in the real world. Similarly, Wilson wrote that an "intellectually honest Democrat" is a "relic of days gone by," and "very seldom do they actually hold office."^x He characterized those who disagree with progressives as "the real Americans"^{xi} Any Democratic litigant, or for that matter, any progressive one in Wilson's courtroom would know that the judge has already determined that they are intellectually dishonest, a bias from the bench that would be toxic to the legitimacy of any Fifth Circuit decision Wilson was part of.

Abortion Rights: Wilson is a longtime opponent of abortion rights. When he ran for office in 2007, he made that clear in a questionnaire he filled out for Mississippi Right to Life. He told them that he "support[ed] the complete and immediate reversal of the *Roe v. Wade* and *Doe v. Bolton* decisions."

Wilson also supported several anti-abortion bills when he was a state legislator, including one that would have banned abortion before most women know they are pregnant^{xii} and one that denied critical Medicaid funding to any organization that provides abortion services or is affiliated with such an organization.^{xiii}

In 2018, Wilson supported Mississippi H.B. 1510, which prohibited abortion after 15 weeks. Material he was required to disclose to the Judiciary Committee includes his notes for speeches he gave about bills passed that year. A key talking point was that he had voted for the “[m]ost restrictive abortion law in the country,” indicating that the intent of the law was to impose an undue burden on women’s constitutional right to abortion. Not surprisingly, the law was struck down as unconstitutional in December by a unanimous three-judge panel of the Fifth Circuit.^{xiv} If given a seat on that same court, Wilson would do great damage to abortion rights and to the rule of law.

LGBTQ+ Equality and Religious Liberty: Wilson’s writings and legislative voting record betray an animus against LGBTQ+ people and equality proponents that is inconsistent with the judge’s responsibility to ensure equal justice under the law. Moreover, he has a conception of religious liberty that transforms it from a shield to protect the free exercise of religion as it has always been into a sword targeted at particular communities, especially LGBTQ+ people.

In 2016, Wilson voted for the misleadingly named Religious Liberty Accommodations Act, a facially discriminatory law elevating certain religiously-based beliefs over others in the eyes of the law.^{xv} The law provided enormous exemptions from anti-discrimination laws for those who share Wilson’s and the legislative majority’s religiously-based hostility to the rights and dignity of LGBTQ+ people. However, those with different religiously-based beliefs on the same matter received no such “benefit,” and those with sincerely held religious beliefs on other issues received no such favors from the state. Fifth Circuit judges decide critically important issues interpreting the Constitution’s Religion Clauses, as well as the statutory Religious Freedom Restoration Act. Wilson’s distorted and self-serving view of religious liberty indicates that the Senate should not entrust him with this responsibility.

Wilson has little patience for LGBTQ+ people or their supporters. For instance, when one of his colleagues in the state legislature was criticized for a social media post widely interpreted as calling for gay people to be executed, Wilson wrote:

that “tolerance,” as that word is used by liberals, really means zero tolerance for traditional, religious or conservative views. The culture warriors on the left demand unconditional surrender.^{xvi}

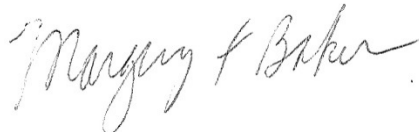
Well in advance of presenting their legal arguments, litigants in cases addressing these issues could be confident in how a Judge Wilson would rule, based on his clear record. This would erode the legitimacy of our nation’s federal courts, which depends on litigants’ trusting that they will have a fair day in court.

Voting Rights: When functioning properly, our federal judiciary protects our democracy and the right to vote on which it is based. Cory Wilson’s record stands opposed to that fundamental mission. For instance, he strongly supports strict voter ID laws, which he and other supporters portray as necessary to address in-person voter fraud—but which is a problem that is almost non-

existent. In fact, such laws suppress the vote of targeted populations in vastly greater numbers than any fraudulent ballots prevented.^{xvii} He sharply criticized the Justice Department for looking into the voter-ID law passed by Pennsylvania,^{xviii} which the state's Speaker of the House bragged to his fellow Republicans would "allow Governor Romney to win the state of Pennsylvania."^{xix} Wilson has even condemned the Justice Department for sending poll monitors to ensure that African Americans are able to exercise their constitutional right to vote.^{xx} Particularly in this election year when there are serious concerns about preserving the right to vote, confirming Wilson to the Fifth Circuit could seriously harm voting rights.

Conclusion: Cory Wilson's view of the law and his strong animus against vast numbers of likely litigants disqualify him from the federal bench. We urge senators to oppose his nomination.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

ⁱ Cory Wilson, "ACA: Big, Intrusive Government," Madison County Journal, Feb. 20, 2014, p. A-4.

ⁱⁱ Cory Wilson, "The Democrat's [sic] New Math," Madison County Journal, Sept. 6, 2012, p. A-4.

ⁱⁱⁱ Tommy Christopher, "The Context Behind Nancy Pelosi's Famous 'We Have to Pass the Bill' Quote," Mediaite, Nov. 7, 2013, <https://www.mediaite.com/tv/the-context-behind-nancy-pelosis-famous-we-have-to-pass-the-bill-quote>.

^{iv} Cory Wilson, "Contempt of Court," Madison County Journal, April 5, 2012.

^v Id.

^{vi} Department of Justice, "Statement of the Attorney General on Litigation Involving the Defense of Marriage Act," Feb. 23, 2011, <https://www.justice.gov/opa/pr/statement-attorney-general-litigation-involving-defense-marriage-act>.

^{vii} Cory Wilson, "The Empty Chair," Madison County Journal, Sept. 20, 2012, p. A-4.

^{viii} Glenn Kessler, "The Bogus Claim That Obama 'Skips' His Intelligence Briefings," Washington Post, Sept. 24, 2012, https://www.washingtonpost.com/blogs/fact-checker/post/the-bogus-claim-that-obama-skips-his-intelligence-briefings/2012/09/22/100cb63e-04fc-11e2-8102-ebee9c66e190_blog.html.

^{ix} "Contempt of Court."

^x Cory Wilson, "Lost Equity," Madison County Journal, May 24, 2012, p. 4.

^{xi} Cory Wilson, "Chickens Coming Home to Roost," Madison County Journal, Aug. 9, 2012, p. A-4.

^{xii} Mississippi H.B. 732 (2019 Session).

^{xiii} Mississippi S.B. 2238 (2016 Session).

^{xiv} [Jackson Women's Health Organization v. Dobbs](#), 945 F.3d 265 (5th Cir., 2019).

^{xv} Mississippi H.B. 1523 (2016 Session).

^{xvi} Cory Wilson, "When Tolerance Is Really 'Zero Tolerance,'" Mobile Press-Register, June 1, 2012.

^{xvii} The Brennan Center, "The New Voter Suppression," Jan. 16, 2020, <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression>.

^{xviii} Cory Wilson, "Suppressing Common Sense," Madison County Journal, Nov. 1, 2012.

^{xix} <https://youtu.be/EuOT1bRYdK8>.

^{xx} Cory Wilson, "Hattiesburg puts finishing touches on divisive mayoral election sequel," Mobile Press Register, Oct. 2, 2013.