



May 5, 2020

The Honorable Lindsey Graham
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein,

On behalf of the Human Rights Campaign (HRC), America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality, we write to oppose the nomination of Justin Walker to the U.S. Court of Appeals for the D.C. Circuit. In confirming a judge to lifetime service on the federal bench, Senators entrust that the judge will be a thoughtful, but neutral arbiter – guided by a devotion to the law, the Constitution, and justice for every litigant over bias, self-interest, or personal political belief. Although we expect these basic but exacting qualities from every federal judge, we must acknowledge the unique, national reach of the D.C. Circuit. Justin Walker has devoted his brief legal career to promoting divisive partisan talking points and excusing radical conservative ideology under the guise of legal theory. He also earned an “unqualified” rating from the American Bar Association because of his lack of experience for his nomination to the District court just six months ago.

Today our nation faces a generation-defining pandemic. As death rates continue to rise, this crisis is testing our healthcare system and exposing the persistent disparities that have plagued marginalized communities – including LGBTQ people – for decades. This crisis also forces us to evaluate all federal government leaders through a critical public health lens. A lens that prioritizes access to care, respect for science, and human dignity and survival over partisanship. Justin Walker has built his career by promoting opposing values. His unrelenting critique of the Affordable Care Act (ACA), as recently as March 13, 2020 at his investiture for his seat on the District Court, belies the tangible threat his nomination is to the health of millions of Americans.

The ACA has served as a lifeline for millions of LGBTQ people and has proven to be a critical tool in ending health disparities within our community. Before passage of the ACA, LGBTQ people reported some of the lowest rates of insurance coverage of any population in the country. The individual market reforms, including the ban on preexisting conditions have made it possible for many in our community to obtain health insurance for the first time in their lives. The Medicaid expansion has helped to improve coverage rates among low-income LGB people by eight percent. In addition, tens of thousands of people living with HIV have qualified for care and treatment under the Medicaid expansion, gaining access to life-saving treatments before becoming disabled by the virus. As a result, people living with HIV are able to lead healthier, and longer lives.

Justin Walker has repeatedly asserted that the ACA is unconstitutional and has described the Supreme Court’s decision upholding it as “indefensible” and “catastrophic.”¹ He also praised Justice Kavanaugh’s opinion in the 2011 challenge to the law in *Seven-Sky v. Holder*² as a “thorough and principled takedown” of the ACA and as a “roadmap” for the Supreme Court justices “who said Obamacare was unconstitutional.”³ Walker’s persistent attacks on the ACA in his professional capacity during this healthcare crisis reveal the extent to which partisan ideology colors his judgment and is ingrained in his approach to the law.

¹ *Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful*, Justin Walker, The Federalist, (July 3, 2018).

² 661 F. 3d 1 (2011).

³ *Supra* note 1.

We are also deeply concerned by Justin Walker’s views regarding executive power and administrative decision-making. In hundreds of media interviews and articles, Walker has asserted extreme views of executive power. In January 2020, Walker joined a meeting with Mitch McConnell and President Trump in a discussion involving the status of his nomination to the D.C. Circuit, as well as the extent of Congressional oversight authority in exercising impeachment powers. If confirmed, Walker would be tasked with working through the D.C. Circuit docket with multiple cases challenging the President’s attacks on the rule of law and claims of “total authority” over government. Walker’s previous statements raise serious concerns regarding his commitment to enforcing the law and the Constitution regarding executive power and privilege. In response to the firing of FBI Director James Comey in the midst of the Bureau’s investigation into Trump campaign ties with Russia, Walker penned a law review article asserting that “the FBI Director should not think of himself as the nation’s protector; instead, he must think of himself as an agent of the President.”⁴ Since his nomination to the federal bench, Walker has refused to distance himself from this statement.⁵

Despite his relatively brief legal career, Justin Walker’s record reveals intense partisanship that compromises his ability to exercise reasoned juristic judgement. If confirmed, he will have the opportunity to rule on numerous cases and controversies addressing some of the most critical questions facing our democracy today. Accordingly, we urge you to vote against his lifetime appointment to a seat on the United States Court of Appeals for D.C. Circuit. Thank you for your consideration. If you have any questions or need more information, please contact me at David.Stacy@hrc.org.

Sincerely,



David Stacy

Government Affairs Director

⁴ *FBI Independence as a Threat to Civil Liberties: An Analogy to Civilian Control of the Military*
George Washington Law Review, Vol. 86, 2018.

⁵ Senate Judiciary Committee Hearing, Nominations, July 31, 2019.