



May 1, 2020

Senator Lindsey Graham
United States Senate
290 Russell Senate Office Building
Washington, D.C. 20510

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

We write to oppose to the nomination of Cory Wilson to the Fifth Circuit Court of Appeals.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) was founded in 1940 by Thurgood Marshall. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF has been a pioneering force in our nation's quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained.

No Judicial Nominees Should be Advanced During this Crisis

The COVID-19 pandemic has become one of the worst public health and economic crises the United States has ever faced. COVID-19 is having a catastrophic impact on life in the United States, with recent reports indicating that since the start of the pandemic more than 60,000 Americans have died, there have been more than 1 million confirmed cases,¹ and more than 30 million people have filed for

¹ *Coronavirus in the U.S.: Latest Map and Case Count*, New York Times (last visited Apr. 30, 2020, 11:00am) <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

unemployment.² The coronavirus pandemic is disproportionately impacting black people. The CDC reports that, while Black people are only 12% of the U.S. population, we constitute 20% of all U.S. coronavirus deaths.³ Additionally, 45% of Black workers have lost their jobs or had their hours cut due to the COVID-19 pandemic, compared to 31% of White workers.⁴

The U.S. Congress is faced with multiple critically important measures necessary to ensuring the protection and survival of millions of Americans whose jobs, health care, housing, and livelihood are threatened by the challenges raised by this health crisis. The Senate must prioritize the need to respond to the COVID-19 pandemic with measures that will support struggling Americans during this precarious period.

Alarming, the Senate has chosen to divert its attention from the emergency measures needed to protect Americans during this pandemic to prioritize the confirmation of judicial nominees. We urge the Senate to put on hold consideration of any judicial nominees until all measures associated with COVID-19 protections and support have been considered and voted on by the Senate.

Cory Wilson’s Nomination to the Fifth Circuit Court of Appeals Should Not be Advanced

It is further alarming that the administration would choose to advance a nominee whose record demonstrates clear hostility to the broad provision of health care and the democratic right of voting as these issues are particularly pertinent as we endure the current pandemic during a critical election cycle.

² Emily Stewart and Christina Animashaun, *30 million Americans have lost their jobs in 6 weeks*, Vox (Apr. 30, 2020) <https://www.vox.com/covid-19-coronavirus-economy-recession-stock-market/2020/4/30/21241776/jobless-claims-unemployment-rate-april-coronavirus-economy>.

³ *Provisional Death Counts for Coronavirus Disease (COVID-19): Data Updates by Select Demographic and Geographic Characteristics*, National Center for Health Statistics, Centers for Disease Control and Prevention, (last updated Apr. 28, 2020) https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/

⁴ Danielle Kurtzleben, *Job Losses Higher Among People of Color During Coronavirus Pandemic*, National Public Radio (Apr. 22, 2020) <https://www.npr.org/2020/04/22/840276956/minorities-often-work-these-jobs-they-were-among-first-to-go-in-coronavirus-layo>

Moreover, a position on the federal judiciary is a lifetime commitment which requires impartiality, even temperament and the ability to apply the law in an unbiased manner. Mr. Wilson’s published writings and record as an elected official in the Mississippi state legislature demonstrate a clear bias and unwillingness to consider differing views. If confirmed to the Fifth Circuit Court of Appeals, any litigant advancing rights or arguments contrary to Mr. Wilson’s professed beliefs would be unable to trust that Mr. Wilson would fairly or impartially administer equal justice under the law.

We urge the committee to vote against the nomination of Cory Wilson to the Fifth Circuit Court of Appeals.

Lack of Experience

On October 15, 2019, the President nominated Mr. Wilson to the district court for the Southern District of Mississippi.⁵ Not 6 months later, with his nomination to the district court still pending and without any significant change in experience, Mr. Wilson has now been nominated to the Fifth Circuit Court of Appeals.⁶ Mr. Wilson’s level of experience fails to support his nomination to the District Court and is woefully lacking to support a nomination to the Court of Appeals.

Mr. Wilson currently serves as a judge on the Mississippi Court of Appeals having assumed that position just a little over a year ago in February of 2019.⁷ His lack of experience is apparent in his responses to the Senate Judiciary Committee’s Questionnaire, wherein Mr. Wilson indicated that he has “not served as a trial judge...[and] has not presided over any cases.”⁸ Mr. Wilson’s questionnaire also reveals that he has authored only 20 opinions during his time as a state court judge,

⁵ *Twenty-five Nominations and Three Withdrawals Sent to the Senate*, White House (Oct. 15, 2019) <https://www.whitehouse.gov/presidential-actions/twenty-five-nominations-three-withdrawals-sent-senate/>

⁶ *President Donald J. Trump Announces Judicial Nominees*, White House (Mar. 30, 2020) <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-judicial-nominees-10/>

⁷ *Judge Cory T. Wilson*, Administrative Office of Courts, State of Mississippi Judiciary (last visited Apr. 30, 2020) <https://courts.ms.gov/appellatecourts/coa/bios/judgeCoryWilson.php>

⁸ *Responses to Senate Judiciary Committee Questionnaire*, <https://www.judiciary.senate.gov/imo/media/doc/Cory%20Wilson%20SJQ%20-%20PUBLIC.pdf>

and “has not written any significant opinions on federal or state constitutional issues.”⁹ Finally, Mr. Wilson estimates that over the course of his career he has tried only three cases to judgement.¹⁰

Furthermore, while Mr. Wilson received a rating of “Qualified” from the American Bar Association for his nomination to the district court,¹¹ a nomination to the Circuit Court is an entirely different position with separate and distinct qualifications. Circuit court judges are tasked with opining on complex litigation often involving dense constitutional analysis. We do not find Mr. Wilson’s experience consistent with the rigor and high standard required of a circuit court judge.

Lack of Judicial Temperament

The legitimacy of courts and judges derives confidence from the fact that decisions are grounded in the law and legal precedent and not influenced by politics and partisan ideology. Mr. Wilson’s record is so rife with partisan rhetoric that it would be impossible for litigants to trust him to be a fair and neutral arbiter of justice.

In 2012, responding to a comment from President Obama regarding the constitutionality of the Affordable Care Act (“ACA”), Mr. Wilson resorted to ad hominem attacks rather than engaging in a constitutional analysis of ACA. Specifically, Mr. Wilson wrote:

“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.”¹²

⁹ Id.

¹⁰ Id.

¹¹ *Ratings of Article III and Article IV Judicial Nominees, 116th Congress*, Standing Committee on the Federal Judiciary (last updated Apr. 8, 2020) https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/webratingc_hart-trump116.pdf?logActivity=true

¹² Cory Wilson, *Contempt of Court*, Madison County Journal (Apr. 5, 2012) <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p220-221.pdf>.

He has also referred to President Obama as the “anointed one,”¹³ a “radical leftist” and suggested supporters of President Obama should “put down the Kool-aid.”¹⁴ Similarly, Mr. Wilson has made disparaging remarks about former Secretary of State Hillary Clinton, referring to her as “Crooked Hillary”¹⁵ and “felony dumb or willfully ignorant.”¹⁶ His unbridled hostility towards President Obama and Secretary Clinton is unbecoming of a federal judge and calls into question his ability to fairly review policies associated with President Obama or his administration.

Mr. Wilson’s disregard for legitimate political differences clearly extends to, and prejudices him against, entire groups of people. In a 2012 article, Mr. Wilson wrote that an “intellectually honest Democrat” was a “rare sighting,” “[an] exotic creature,” “a relic of days gone by” and “very seldom do they actually hold office.”¹⁷ In July 2018, Mr. Wilson described remarks made by Democratic Congresswoman Alexandria Ocasio-Cortez, as “claptrap.”¹⁸ These statements are recent and cannot be explained as merely political. Mr. Wilson’s remarks demonstrate a deep disrespect for the political opinions for those with whom he disagrees and a strong lack of dignity. Such language and views are incongruous with the high honor of a lifetime appointment to the federal judiciary.

¹³ Cory Wilson, *The Democrat’s new math*, Madison County Journal <https://afi.org/wp-content/uploads/2020/01/Wilson-Attachments-p176.pdf>.

¹⁴ Cory Wilson, *Obamination*, Madison County Journal (May 30, 2013) <https://afi.org/wp-content/uploads/2020/01/Wilson-Attachments-p120.pdf>.

¹⁵ Cory Wilson (@CoryWilsonMS), Twitter (Aug. 23, 2016, 3:40PM) <https://twitter.com/CoryWilsonMS/status/768171181052755968>.

¹⁶ Cory Wilson (@CoryWilsonMS), Twitter (Sep. 7, 2016, 7:45AM) <https://twitter.com/CoryWilsonMS/status/773487358956171264>.

¹⁷ Cory Wilson, *Lost equity*, Madison County Journal (May 24, 2012), <https://afi.org/wp-content/uploads/2020/01/Wilson-Attachments-p202-203.pdf>.

¹⁸ Cory Wilson (@CoryWilsonMS), Twitter (Jul. 28, 2018, 12:56 PM) <https://twitter.com/CoryWilsonMS/status/1023250752104476673>.



Mr. Wilson’s hostility towards Voting Rights

Mississippi has a notorious and well-documented history of voter suppression and intimidation.¹⁹ Indeed, these issues still plague the state today.²⁰ Despite this well-established history, over the course of his career, Mr. Wilson has trivialized the severity of voter suppression and has worked to increase restrictions on voting. LDF has long opposed voter ID laws because of their disproportionate suppressive impact on voter turnout in communities of color.²¹ LDF has litigated—and won—cases that have alleged such laws are discriminatory.²² Mr. Wilson, however, has repeatedly dismissed evidence that voter ID laws could have any suppressive effect on voter turnout, describing these fears as “faux concern[s]” and part of a “hysterical liberal narrative.”²³ He has suggested that describing voter ID laws as voter suppression is

¹⁹ Gabriel Jackson Chin and Lori Wagner, *Reports on Voting*, U.S. Commission on Civil Rights, (2005). Available at SSRN: <https://poseidon01.ssrn.com/delivery.php?ID=943123069103074088019109006099113030020017019079008048067087109089127116087095098126048032053025045113109016095126066114083022058047033053071066116114091095100039060010098068071112000096089111030114088016120065125088100013087005011007124112029006&EXT=pdf>; *Political Participation*, United States Commission on Civil Rights (May 1968) <https://www2.law.umaryland.edu/marshall/usccr/documents/cr12p753.pdf>; *The Long Shadow of Jim Crow: Voter Intimidation and Suppression in America Today*, People for the American Way and the National Association for the Advancement of Colored People (date unknown) <http://archive.fairvote.org/righttovote/PFAW-NAACP.pdf>; William Alexander Mabry, *Disfranchisement of the Negro in Mississippi*, *The Journal of Southern History* 4, no. 3 (Aug. 1938). Available at JSTOR https://www.jstor.org/stable/2191292?read-now=1&seq=1#page_scan_tab_contents.

²⁰ NAACP Legal Def. & Educ. Fund, *Democracy Defended: Analysis of Barriers to Voting in the 2018 Midterm Elections*, at 15-18 (Sep. 6, 2019), https://www.naacpldf.org/wp-content/uploads/Democracy_Defended_9_6_19_final.pdf.

²¹ *Citizens without Proof: A Survey of Americans’ Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice (2006) http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.

²² In Texas, a trial court held that the state enacted its strict voter ID law with the purpose of discriminating against Black and Latinx voters (*Veasey v. Abbott*, No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017)).

²³ *Id.*

akin to a “smear” or “tyranny”²⁴ and described vote suppression as “phony.”²⁵ Mr. Wilson has also inappropriately described organizations that engage in voter protection efforts as “rent-a-mobs.”²⁶ Moreover, in 2014, Mr. Wilson wrote an article ridiculing the U.S. Justice Department for sending election observers to Mississippi.²⁷ He wrote that the federal government, “might spend less time chasing agendas that aren’t there and more time investigating the voter fraud and other irregularities.”²⁸

The right to vote, free from intimidation and coercion, is foundational to our democracy and must be treated as such. As an organization that has litigated voter ID laws across the country,²⁹ we find Mr. Wilson’s statements deeply troubling. Mr. Wilson’s flippant refusal to consider the real and discriminatory consequences of voter ID laws suggest he does not and will not take seriously issues of voter suppression and intimidation.

Mr. Wilson’s legislative record demonstrates disdain for Supreme Court precedent

Mr. Wilson has also repeatedly indicated a desire to overturn longstanding Supreme Court precedent. In a 2007 state candidate questionnaire, Mr. Wilson confirmed that he “supports the complete and immediate reversal of the *Roe v. Wade* and *Doe v. Bolton* decisions.”³⁰ Additionally, in a 2012 op-ed in support of the presidential candidacy of Mitt Romney, Mr. Wilson characterized the Supreme

²⁴ Cory Wilson, *Voter ID and the IRS*, Madison County Journal (June 5, 2013) www.onlinemadison.com/Content/EDITORIALS/Editorials/Article/WILSON-Voter-ID-and-the-IRS/3/3/26729?s=1.

²⁵ Cory Wilson, *Suppressing Common Sense*, Madison County Journal (date of publication unknown) <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p164.pdf>.

²⁶ Cory Wilson, *Suppressing the Truth*, Madison County Journal (Feb. 1, 2012) <http://www.onlinemadison.com/Content/EDITORIALS/Editorials/Article/WILSON-Suppressing-the-truth/3/3/24665?s=1>.

²⁷ Cory Wilson, *Hattiesburg puts finishing touches on divisive mayoral election sequel*, Mobile Press Register (Oct. 02, 2013) <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p95-97.pdf>.

²⁸ Id.

²⁹ *Veasey v. Abbott*, 830 F. 3d 216 (5th Cir. 2016) (en banc); *Greater Birmingham Ministries v. Merrill*, 250 F. Supp. 3d 1238 (N.D. Ala. 2017); Amicus Curiae Brief by NAACP LDF, et al., *Martin v. Kohls*, 2014 WL 4950020 (Aug. 11, 2014).

³⁰ Cory Wilson, Mississippi Right to Life 20007 Candidate Questionnaire, (Jun. 13, 2007) <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p489-493.pdf>.

Court’s decision in *Roe v. Wade* as being “the result of a liberal activist court.”³¹ Mr. Wilson’s pledged support of the complete and immediate reversal of established Supreme Court precedent is inherently disqualifying. All lower court judges are bound to follow and faithfully apply the precedent set forth by the Supreme Court, yet Mr. Wilson’s record indicates a desire to reject that duty. As such, he has no place in the federal judiciary.

Mr. Wilson’s record as a Mississippi state representative underscores his commitment to the reversal of *Roe v. Wade*. Throughout his legislative career, Mr. Wilson repeatedly voted to restrict or circumvent the decision reached by the Supreme Court in *Roe v. Wade*. From 2016 to 2019, Mr. Wilson voted for at least 3 bills that sought to criminalize abortion.³² Additionally, as a Mississippi State Representative, Mr. Wilson signed an amicus brief³³ in *Whole Woman’s Health v. Hellerstedt* in support of Texas’s medically unnecessary restrictions for abortion providers (later found to be unconstitutional by the Supreme Court).³⁴

Mr. Wilson’s record also indicates an explicit hostility to the Affordable Care Act, and the Supreme Court’s decision in *National Federation of Independent Business v. Sebelius*, providing a clear picture of the agenda he would pursue as a federal judge.³⁵ In a 2012 Op-ed, Mr. Wilson called on the Supreme Court to strike down the ACA “for the sake of the Constitution.”³⁶ In a 2014 Madison County Journal article, Mr. Wilson described the passage of the ACA as “perverse or illegitimate”

³¹ Cory Wilson, *My vote is with Romney*, Madison County Journal (Mar. 8, 2012) <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p228.pdf>.

³² Mississippi Unborn Child Protection from Dismemberment Abortion Act, H.B. 519, Mississippi Legislature Regular Session (2016) <http://billstatus.ls.state.ms.us/2016/pdf/history/HB/HB0519.xml>; Gestational Age Act, H.B. 1510, Mississippi Legislature Regular Session (2018) <http://billstatus.ls.state.ms.us/2018/pdf/history/HB/HB1510.xml>; An Act to Create New Section 41-41-34.1, H.B. 732, Mississippi Legislature Regular Session (2019) <http://billstatus.ls.state.ms.us/2019/pdf/history/HB/HB0732.xml>.

³³ Amicus Brief of More Than 450 Bipartisan and Bicameral state legislators and lieutenant governors in support of the Respondents and Affirmance of the Fifth Circuit, *Whole Woman’s Health v. Hellerstedt*, No. 15-274, <https://www.scotusblog.com/wp-content/uploads/2016/02/15-274-bsac-BipartisanBicameral-StateLegislators.pdf>

³⁴ *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

³⁵ *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012).

³⁶ Cory Wilson, *Obama’s day of reckoning*, Madison County Journal (date of publication unknown) <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p193.pdf>.

because it passed without any Republican votes.³⁷ That logic is indeed concerning, and if applied broadly would render countless laws illegitimate. Nowhere in the Constitution does it specify that a law must pass with votes from both or all parties represented in Congress. The invention of such a standard to buoy political beliefs is inconsistent with the rule of law.

During his nomination hearing, Mr. Wilson declined to answer questions regarding the accuracy of these Supreme Court decisions stating “I don’t think it’s appropriate for a sitting judge or a nominee to express thumbs up or thumbs down on Supreme Court precedent. My job is to apply it faithfully.”³⁸ Despite this recent proclamation, we are unconvinced that Mr. Wilson will put aside his long held personal beliefs and adhere to laws which he has previously derided as perverse or illegitimate.

Conclusion

Mr. Wilson’s views are not consistent with respect for diversity of opinion, civil rights or Supreme Court precedent. Moreover, Mr. Wilson has failed to provide sufficient reason to believe he could rule without bias or prejudice as a judge. Each United States federal judge plays a critical role in upholding the Constitution and

³⁷ Cory Wilson, *ACA: Big, intrusive government*, Madison County Journal (Feb. 20, 2014) <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p76-77.pdf>.

³⁸ Senate Judiciary Committee Hearing, 116th Cong. (Jan. 8, 2019) at 01:27:35 <https://www.judiciary.senate.gov/meetings/01/08/2020/nominations>.



other laws of this country. Mr. Wilson does not have the appropriate experience nor does he meet the requirements of impartiality and respect necessary to be a federal judge. For the foregoing reasons, we urge the Senate Committee on the Judiciary to oppose the nomination of Cory Wilson to the Fifth Circuit Court of Appeals.

Sincerely,

Sherrilyn Ifill
President-Director Counsel
NAACP Legal Defense & Educational Fund
40 Rector Street
5th Floor
New York, NY 10006
sifill@naacpldf.org

cc: Members of the Senate Judiciary Committee