May 23, 2018

Dear Senator:

On behalf of the two million members of the Service Employees International Union (“SEIU”), I am writing to express opposition to the confirmation of any judicial nominee who refuses to acknowledge that the vital and unanimous Supreme Court decision in Brown v. Board of Education was correctly decided.

This year marks the 65th anniversary of the Supreme Court’s 1954 decision in Brown, which remains one of the most important Supreme Court cases in our nation’s history. The Court unanimously ruled that the shameful doctrine of “separate but equal” – which had been allowed for nearly a century to oppress and dehumanize African Americans – was inherently unequal and unconstitutional. The Brown decision ended legalized apartheid in America’s school system, and it set the stage for African-American integration into all facets of American life. The decision impacted the life of every person in America and helped our nation further the promise of equality at the heart of our democracy.

It is shocking that this even needs to be stated, but no nominee to the federal judiciary who refuses to acknowledge the correctness of Brown is fit to be confirmed as a federal judge. Senators must be very clear about this and no Senator, of either party, should support any judicial nominee who will not reaffirm Brown.

Until very recently it was commonplace for judicial nominees, including Supreme Court nominees, to affirm that Brown was correctly decided:

- At Chief Justice Roberts’s Supreme Court confirmation hearing in 2005, Senator Ted Kennedy asked him: “Do you agree with the Court’s conclusion [in Brown v. Board of Education] that the segregation of children in public school solely on the basis of race is unconstitutional?” Then-Judge Roberts responded: “I do.”
- Justice Kavanaugh stated last year: “I think Brown versus Board of Education, as I’ve said many times before, is the single greatest moment in Supreme Court history…. And it’s correct. It’s correct because it corrected a historic mistake in Plessy versus Ferguson.” He explained his ability to affirm Brown by stating: “There are some historical cases where there’s no prospect of that case coming back….”
- Justice Anthony Kennedy testified that “I think Brown v. Board of Education was right when it was decided, and I think it would have been right if it had been decided 80 years ago or 80 years before.”
- Justice Alito said “certainly” when asked whether he supported Brown.
- Justice Kagan testified, “I hope and I know that the principles of Brown v. Board are still relevant today… The idea of equality under law is a fundamental American constitutional value.”
• Justice Gorsuch described Brown as a “great and important decision.”

Over the past year, however, several nominees have refused to affirm Brown, often testifying that the Code of Conduct for United States Judges precludes them from opining on the merits of any case whatsoever. This interpretation of the Code of Conduct is clearly erroneous, since many previous nominees have been able to state that Brown was correctly decided, including the top federal judicial officer, Chief Justice Roberts.

Nominees who cannot bring themselves to affirm a case as vital to the fabric of our democracy and legal order as Brown do not deserve lifetime appointments as federal judges. Their refusal sends a dangerous signal that Brown could someday be overturned and that our nation could return to the disgraceful days of racial segregation. Affirming Brown is an essential principle of racial equality that must be endorsed by all who seek a lifetime appointment on our federal courts.

Below is a list of judicial nominees who as of the time of this letter have declined to state that Brown v. Board was correctly decided. We urge all senators to uphold the importance of this fundamental civil rights ruling by voting against these nominees unless they clarify their testimony and state unequivocally that Brown was correctly decided. We will consider adding votes on nominees who declined to state that Brown v. Board was correctly decided to our legislative scorecard. If you have any questions, please reach out to John Foti at john.foti@seiu.org or (202)-730-7157.

Sincerely,

Mary Kay Henry
International President

MKH:JG:JH:jf
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afl-cio, clc

Trump Judicial Nominees Who Declined to State that Unanimous Brown v. Board of Education Ruling Was Correctly Decided:

1. Miller Baker (U.S. Court of International Trade)
2. Thomas Barber (Middle District of Florida)
3. Wendy Berger (Middle District of Florida)
4. Ada Brown (Northern District of Texas)
5. Jeffrey Brown (Southern District of Texas)
6. Brian Buescher (District of Nebraska)
7. James Cain (Western District of Louisiana)
8. Daniel Collins (U.S. Court of Appeals for the Ninth Circuit)
9. Clifton Corker (Eastern District of Tennessee)
10. Steven Grimberg (Northern District of Georgia)
11. Greg Guidry (Eastern District of Louisiana)
12. James Hendrix (Northern District of Texas)
13. Richard Hertling (U.S. Court of Federal Claims)
14. Karin Immergut (District of Oregon)
15. Sean Jordan (Eastern District of Texas)
16. Kenneth Lee (U.S. Court of Appeals for the Ninth Circuit)
17. Damon Leichty (Northern District of Indiana)
18. Michael Liburdi (District of Arizona)
19. David Novak (Eastern District of Virginia)
20. Mark Pittman (Northern District of Texas)
21. Nicholas Ranjan (Western District of Pennsylvania)
22. Timothy Reif (U.S. Court of International Trade)
23. Matthew Solomson (U.S. Court of Federal Claims)
24. Brantley Starr (Northern District of Texas)
25. Michael Truncali (Eastern District of Texas)
26. Wendy Vitter (Eastern District of Louisiana)
27. Peter Welte (District of North Dakota)