



May 18, 2020

VIA EMAIL

Re: National Employment Lawyers Association (NELA) Opposes Nomination of Cory Wilson to the United States Court of Appeals for the Fifth Circuit

Dear Chair Graham, Ranking Member Feinstein, and Members of the Senate Judiciary Committee:

On behalf of the National Employment Lawyers Association (NELA), and its 4,000 circuit, state, and local affiliate members across the country, we write to express our strong opposition to the confirmation of Mississippi state court judge Cory Wilson to the United States Court of Appeals for the Fifth Circuit. NELA is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. Our members represent plaintiffs in employment cases in every circuit, including the Fifth Circuit to which Judge Wilson has been nominated. Our members and the thousands of clients they represent afford NELA a unique perspective on how judicial decisions impact the daily lives and the rights of working people.

At the outset, we wish to register our dismay that at this time, the Senate is moving forward with consideration of Mr. Wilson's nomination—or any judicial nomination, in view of the unprecedented crisis that our nation, and every worker in the nation, faces as the COVID-19 pandemic rages on. Over 35 million American workers are out of work and many of those returning to work are returning to dangerous conditions in the workplace. In the face of this public health crisis, it is indefensible to use precious time and resources to advance a nominee who publicly scorns democratically elected officials with whom he disagrees and who is committed to dismantling the Affordable Care Act.

NELA is committed to doing everything possible to ensure that lifetime appointments to the federal judiciary will be filled by individuals who adhere to the rule of law and who are deeply committed to protecting the rights of *all* working people, especially in matters of civil rights and the well-established doctrines protecting underrepresented communities in the workplace. NELA carefully considers each nominee, including his or her record, through this lens.

We oppose Judge Wilson's confirmation because his record clearly reflects strongly held beliefs that are counter to existing civil and workers' rights laws. There is no countervailing evidence suggesting that if confirmed he will set aside his strongly held private views and administer justice to all individuals equally. Judge Wilson's public record reflects someone who has sought to diminish the civil rights of certain groups, rather than rigorously uphold them.

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Further, his record clearly indicates that he does not have the temperament of dignity, non-partisanship, respect for the law, and respect for our elected officials, all of which are essential to ensure actual fairness and the appearance of fairness toward all litigants.

Judge Wilson Lacks Judicial Temperament

Impartiality and neutrality are hallmarks of the American judicial system that were built into the Constitution by the Framers. Any nominee for a seat on the federal bench should model exemplary temperament and display respect for our democratic system. We are stating the obvious when we say a federal judge must show respect for elected officials, members of both political parties, and for the judiciary itself, even when he disagrees.

Judge Wilson is not fit for the federal bench because he lacks judicial temperament. This is underscored by the volume, crudeness, and disrespectful tone of his many partisan tweets. We note here just a few among many such tweets and public comments made by Judge Wilson about, among others, Secretary of State Hillary Clinton, President Barack Obama, the Democratic Party, and Representative Alexandria Ocasio-Cortez. The comments reveal a man who opts for name-calling rather than discussion of issues and someone who resorts to deeply disrespectful stereotypes as a way of garnering support rather than addressing facts or opinions about issues. At best these are comments that lack the decorum any litigant has the right to expect from any judge, let alone a judge sitting on a federal circuit court of appeals. Many of the comments are dishonest, another characteristic that is obviously not in keeping with qualities one expects from the legal profession:

- In an August 23, 2016 tweet, Mr. Wilson wrote “#Crooked Hillary” after asserting: “More emails, more evidence of Clinton pay-for-play and dishonesty.”¹ A few weeks later, he tweeted: “Felony dumb or willfully ignorant? Troubling read: FBI Data Dump Shows #CrookedClinton Is Criminal and Clueless.”²
- In a May 24, 2012 op-ed, Mr. Wilson sarcastically wrote that “an intellectually honest Democrat” was a “rare sighting” and “exotic creature.”³
- Judge Wilson repeatedly has referred to President Barack Obama as “King Barack,”⁴ “the Anointed One,” and “a radical leftist with no experience in governing.”⁵
- In a May 2013 op-ed entitled “Obamination,” Judge Wilson wrote “Many of us thought that electing as President a radical leftist with no experience in governing was a disaster waiting to happen. It’s no longer waiting...For those who still support this President, it’s time to put down the Kool-aid, and start paying attention.”
- In a July 28, 2018 tweet, Judge Wilson disparaged Congressional candidate Congresswoman Alexandria Ocasio-Cortez as, “the new face of

¹ <https://twitter.com/CoryWilsonMS/status/768171181052755968>

² <https://twitter.com/CoryWilsonMS/status/773487358956171264>

³ <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p202-203.pdf>

⁴ <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p220-221.pdf>

⁵ <https://afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p220-221.pdf>

@TheDemocrats...And this claptrap is rapidly becoming the Dem agenda.
#CanSheFindVenezuelaOnAMap”⁶

By these repeated statements, Judge Wilson has demonstrated that he lacks respect for those with whom he disagrees.

Judge Wilson’s Record Demonstrates Extreme Hostility Toward LGBTQ People And Existing Laws Protecting LGBTQ Individuals

A federal judge should embody both in words *and* in deeds commitment to the rule of law. Judge Wilson’s record evidences that he cannot make such a commitment to laws with which he disagrees. Several examples follow. In 2016, while serving as a Mississippi legislator, Judge Wilson voted for HB 1523,⁷ which has been called the nation’s most extreme anti-LGBTQ law. The law allows Mississippians with anti-LGBTQ religious beliefs to *discriminate* by refusing service to married same-sex couples, people who have sex outside of marriage, and/or transgender people. The law permits state employees to refuse to issue marriage licenses to same-sex couples, public school counselors to turn away LGBTQ youth in crisis, and allows health care providers to deny transgender people access to health care at any time. Notably, Judge Wilson’s vote in favor of the bill occurred after the Supreme Court’s decision in *Obergefell v. Hodges* legalizing same-sex marriage, after a Kentucky district court found illegal in *Miller v. Davis* the refusal of Kentucky county clerk Kim Davis to issue marriage licenses to same sex couples, and after the Sixth Circuit denied a stay of the district court’s order.

In a 2012 op-ed, Mr. Wilson wrote that “gay marriage is a pander to liberal interest groups and an attempt to cast Republicans as intolerant, uncaring and even bigoted.” He continued: “At the time [1990s], the idea of homosexual marriage was so beyond seriousness that I thought it could never happen... The culture warriors on the left demand unconditional surrender.”⁸ In a second op-ed that same year opposing a boycott of Chick Fil-A, whose founder opposed marriage equality, Judge Wilson wrote, “So it has come to this. Private citizens who dare oppose marriage ‘equality’ (read: full sanction of homosexual marriage) will now be bashed, banned, and bankrupted, simply for expressing their view.”⁹

Judge Wilson’s voting record and statements make clear that he regards as illegitimate any view other than his own, and that he would be unable or unwilling (or both) to serve as a fair and unbiased decisionmaker, in any case involving LGBTQ rights or even a case involving a litigant from the LGBTQ community. Such bias should be disqualifying for a federal judge.

Judge Wilson’s Record Evinces Extreme Hostility Toward Laws With Which He Disagrees

Not only is Judge Wilson unwilling to accept judicial precedent with which he disagrees, but he also has expressed repeated animus towards the Affordable Care Act and has vowed to invalidate it if given the opportunity, calling into question his ability to fairly judge disputes that might come before him. Dating back from before the 2016 presidential campaign through this year, Republican and Democratic Senate candidates alike have made vigorous promises that they would protect health care and access to insurance for those who have or

⁶ <https://twitter.com/CoryWilsonMS/status/1023250752104476673>

⁷ <https://www.aclu-ms.org/en/news/lgbtq-advocates-condemn-mississippi-hb-1523>

⁸ *Id.*

⁹ <https://afj.org/wp-content/uploads/2019/11/Wilson-Attachments-p187-188.pdf>.

whose spouses or dependents have preexisting conditions. If the importance of access to health care wasn't evident before the health pandemic that we currently face, it should be clear at this moment that someone who has committed to dismantle the Affordable Care Act is no friend to working people across the country. Judge Wilson has not been shy about expressing his opposition to the ACA. In a 2014 op-ed, he referred to the law as “perverse” and “illegitimate” despite its passage by Congress.¹⁰ Judge Wilson claims that the ACA is “illegitimate” because only Democrats voted in its favor. Applying this logic, the enactment of any piece of legislation that has ever been the result of a party-line vote, such as, for example, the 2017 tax cut legislation, was illegitimate. He stated, “For the sake of the Constitution, I hope the Court strikes down the [ACA] and reinvigorates some semblance of limited government the Founders intended.”¹¹ In the name of limited government, the Founders also authorized slavery in Mississippi and other states; that did not make it any the more legitimate. Judge Wilson also has claimed that “Obamacare is less about healthcare than it is about redistribution of wealth and power. For those objectives, liberals are apparently happy to shut down the American dream.”¹²

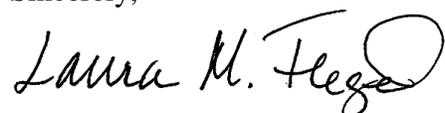
Judge Wilson’s Nomination Should Not Be Advanced

We urge the Senate Judiciary Committee to vote not to advance this dangerous and unqualified nominee. Judge Wilson should not be confirmed, nor should his nomination be approved by this Committee.

Conclusion

If confirmed, Judge Wilson’s extreme views will cause incalculable harm to civil and employee rights that have been part of the mainstream for decades. Our nation, and each one of us, functions on a daily basis thanks to the every-day working people who are NELA members’ clients. As the COVID-19 crisis has revealed, our society to function is dependent upon healthcare workers, sanitation workers, grocery workers, and tens of millions of other essential working people. The working people of our nation and their families who depend on them deserve federal judges who clearly demonstrate that they respect both the rule of law and the intent of Congress in passing our civil and workplace rights laws. Loyalty to our Constitution and civil rights laws is a baseline qualification for a federal judge. NELA strongly urges you to stand on behalf of working people across this country and to oppose the confirmation of Cory Wilson. If you have questions or wish to discuss this letter, please contact Laura Flegel, Legislative & Public Policy Director at lflegel@nelahq.org. Thank you for your consideration.

Sincerely,



Laura M. Flegel

¹⁰ <https://www.afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p76-77.pdf>; <https://www.afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p192.pdf>

¹¹ <https://www.afj.org/wp-content/uploads/2020/01/Wilson-Attachments-p193.pdf>

¹² <https://afj.org/wp-content/uploads/2019/11/Wilson-Attachments-p93-94.pdf>