



May 10, 2018

Submitted Via Email

The Honorable Charles Grassley, Chair
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein, Ranking Member
United States Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of the National Employment Lawyers Association (NELA), and its 4,000 circuit, state, and local affiliate members across the country, I write to express our strong opposition to advancing the nomination of Wendy Vitter to serve as a U.S. District Court judge for the Eastern District of Louisiana.

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 litigate on behalf of employees in every circuit, affording NELA a unique perspective on how employment cases, courts, and the judges who are entrusted with decision-making affect the lives of thousands of working people.

Every nominee to the federal bench is being considered for a lifetime appointment. It should go without saying that a threshold qualification for such appointment should be that the nominee meet a standard of impeccable honesty and forthrightness. Nominees to the federal bench have a constitutional obligation to demonstrate that they will rigorously apply the laws and Constitution and safeguard the rights and liberties of every individual who appears before the court. Because of the serious impact of the decisions a federal judge makes daily on matters of civil procedure and federal practice, nominees to the federal bench should have significant relevant experience that is essential to perform a complex and challenging job. Mrs. Vitter has failed to satisfy each of these baseline requirements.

Mrs. Vitter failed to disclose relevant information to the Senate Judiciary Committee. Mrs. Vitter holds many views that are controversial, but we are particularly concerned that she has tried to hide some of her most public expressions of those views by omitting reference to them in her submissions to the Senate Judiciary Committee. One of the

most controversial was her role moderating a panel at the Louisiana Right to Life Conference in 2013. The panel, entitled “Abortion Hurts Women’s Health,” focused on claims that have been debunked by scientific evidence, and Vitter’s endorsement of dangerous misinformation about women’s reproductive health was omitted from her submission.¹

Senators of both parties have taken very seriously the failure of a judicial nominee to be completely honest and forthcoming. In 2010, the Republican members of the Senate Judiciary Committee – including four who currently serve on the committee (Senators Grassley, Hatch, Graham, and Cornyn) – wrote a letter criticizing Ninth Circuit nominee Goodwin Liu, for his failure to include speeches he gave from his Senate questionnaire. The Republican senators wrote: “At best, this nominee’s extraordinary disregard for the Committee’s constitutional role demonstrates incompetence; at worst, it creates the impression that he knowingly attempted to hide his most controversial work from this Committee. Professor Liu’s unwillingness to take seriously his obligation to complete these basic forms is potentially disqualifying and has placed his nomination in jeopardy.”² Mr. Liu was not confirmed. Ms. Vitter’s disregard for Senate disclosure requirements should be disqualifying.

Mrs. Vitter’s record casts serious doubt on her commitment to inclusion, fundamental fairness, and civil rights. Mrs. Vitter’s record of extreme views about women’s right to make reproductive health choices for themselves, are just one example.

During her confirmation hearing, Ms. Vitter was asked if *Brown v. Board of Education* was rightly decided, and she refused to answer. She testified only that she would put aside her own “personal, political or religious views [about segregation]” and follow *Brown* because it is binding precedent. Her answer reflects a profound lack of clarity regarding the current significance of the *Brown* decision, as well as a lack of commitment to the role of the courts in addressing the prevalence of implicit bias and racism.

Other judicial nominees, including Chief Justice Roberts, Justices Kagan, Sotomayor, Alito, Kennedy, Gorsuch, and many others have had no trouble praising the *Brown* decision and do not believe it is inappropriate for them to do so. When Chief Justice Roberts was asked during his confirmation hearing whether he thought *Brown* was rightly decided, he unequivocally responded, “I do.” Justice Gorsuch described *Brown* as a “great and important decision.” Justice Kagan testified, “I hope and I know that the principles that *Brown v. Board of Education* set forth are still relevant today ... [T]he idea of equality under law is a fundamental American constitutional value.” It is extremely troubling to us that Mrs. Vitter could not commit herself to such clearly settled civil rights law.

Finally, Mrs. Vitter lacks sufficient legal and federal court experience. Although she is a 1986 law graduate, according to her Senate questionnaire, she has practiced law for only 11 years.³ The American Bar Association sets 12 years as the minimum number of years in practice

¹ https://news.vice.com/en_us/article/vbpdny/a-trump-judge-pick-left-anti-abortion-speeches-off-her-senate-disclosure-form ; <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=A7592231-992B-4FB0-967E-A3AEA9EF3977> .

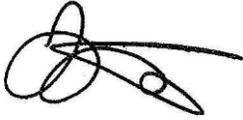
² <https://www.hatch.senate.gov/public/cache/files/ec371967-f490-4856-b968-049a5ebe829c/040610lettertoLeahy.pdf> .

³ <https://www.judiciary.senate.gov/imo/media/doc/Vitter%20SJO.pdf> .

that it considers necessary to perform the complex duties and responsibilities of a federal judge.⁴ During Ms. Vitter's five years as an assistant district attorney (1987-1992), she did not work in federal court. She also served for one year in a New Orleans law firm (1992-1993); and five years as the general counsel to the Archdiocese of New Orleans (2013-present). Not only does Ms. Vitter lack sufficient legal experience generally, she lacks federal court experience.

Working people in the Eastern District of Louisiana, like all people in the nation, deserve a judge who has substantial federal court experience, a record of impeccable honesty and integrity, and a strong demonstrated commitment to the rights of the individuals who appear before her or him. As set out in this letter, Wendy Vitter falls far short of these standards. NELA strongly urges you to oppose the confirmation of Wendy Vitter. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'James H. Kaster', with a long horizontal stroke extending to the right.

James H. Kaster
NELA President

A handwritten signature in black ink, appearing to read 'Terry O'Neill', with a stylized, cursive script.

Terry O'Neill
Executive Director

⁴ <https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Backgrounder.authcheckdam.pdf>.