



January 21, 2026

The Honorable Richard J. Durbin
Ranking Member
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Durbin,

On behalf of the National Employment Lawyers Association (NELA), and its 4,000 national, circuit, state, and local affiliate members across the country, we write to express our opposition to the nomination of Andrew Davis to fill a vacancy in the U.S. District Court for the Western District of Texas (Austin).

NELA is the largest professional membership organization in the country comprised of lawyers who represent workers in employment, labor, and civil rights disputes. Founded in 1985, NELA's mission is to empower workers' rights attorneys through legal training, promoting a fair judiciary, and advocating for laws and policies that level the playing field for workers. Our members litigate daily in every federal district and circuit, affording NELA a unique perspective on how employment cases actually play out on the ground and an accurate understanding of the profound impact of the judiciary on the daily lives and rights of working people.

Mr. Davis's background and experience indicate that he is not a standard conservative nominee; rather, he appears to be a highly specialized architect of the modern conservative legal movement's most aggressive structural arguments. His career path—from Gibson Dunn & Crutcher, to the Texas Solicitor General's Office, to Senator Ted Cruz's Chief Counsel, and finally to the boutique litigation firm Lehotsky Keller Cohn—reveals a consistent dedication to two primary jurisprudential projects: (1) the use of state preemption to dismantle local labor protections, and (2) the weaponization of Article II "Unitary Executive" theories to invalidate private enforcement of public laws.

For example, as the lead attorney for the State of Texas in *Texas Association of Business v. City of Austin*, Mr. Davis successfully argued that paid sick leave constitutes a "wage" under the Texas Minimum Wage Act. This argument did not just defeat the Austin ordinance; it established a "ceiling" preemption model that prohibits cities from mandating any benefits that could be monetized, effectively freezing labor standards at the (lower) state level.

Further, Mr. Davis is currently spearheading a constitutional attack on *qui tam* provisions in the False Claims Act (FCA). In briefs before the U.S. Supreme Court and appellate courts, he argues that allowing private parties to sue on behalf of the government violates the Vesting Clause and the Take Care Clause of Article II. If this theory is accepted, it threatens the foundational standing mechanisms of numerous civil rights statutes that rely on private enforcement as a supplement to agency action.

NELA's foremost goal with respect to the federal judiciary is to ensure that when everyday working people go to court, their cases will be presided over by a judge who is fair-minded, independent, and has a deep understanding of both the law and the lives of individuals who turn to the legal system when things go wrong. Mr. Davis's record instead demonstrates a drive to dismantle protections for workers and access to justice.

We strongly urge you to oppose Mr. Davis's nomination to the district court in the Western District of Texas (Austin).

If you have any questions or would like more information, please feel free to contact the undersigned at (415) 625-5423 or kmaoki@nelahq.org.

Sincerely,



Karen Maoki
Interim Executive Director
National Employment Lawyers Association