



May 13, 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 Justin D. Smith to fill a vacancy in the Eighth Circuit Court of Appeals.

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. Smith has spent his legal career siding with the rich and powerful and advancing an extreme conservative agenda, including serving as a board member with far-right dark money organizations such as First Principles Action and Publius Fund. This background raises serious doubts about his ability to set aside an ideological agenda to be a fair and independent member of the judiciary. Indeed, Mr. Smith's LinkedIn page begins with the statement, "I am an attorney and strategist who fights for conservative values."

What Mr. Smith's "[fight] for conservative values" means in practice is exemplified in cases such as *Doe v. Horne* and *Petersen v. Doe*, in which Mr. Smith represents the Arizona State Legislature in its defense of the "Save Women's Sports Act," which categorically bans transgender girls from playing on girls' sports teams. Before the Ninth Circuit, Mr. Smith argued that the law was an "objective standard that was not meant to target" transgender students, despite the very name of the law and its intended effect. Such reasoning by Mr. Smith, and the stock answer he gave in response to your written questions, begs the question whether he will uphold the U.S. Supreme Court's precedent in *Bostock v. Clayton County* or bow to an ideology that seeks to erase and disempower trans individuals in our society.

Mr. Smith also currently serves as Donald Trump's personal lawyer, defending him in appeals of adverse sexual abuse and defamation verdicts in *Carroll I* and *Carroll II*. In the course of his representation, Mr. Smith has alleged that Ms. Carroll lied and formed her narrative based on a 2012 episode of *Law & Order: SVU*, raising controversy over his mischaracterization of the episode in a *writ of certiorari* to the U.S.

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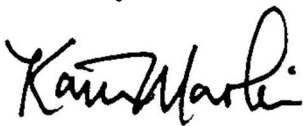
Supreme Court. This behavior again calls into question whether a victim of sexual assault or harassment in the workplace would encounter a fair and impartial judge in Mr. Smith.

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. Smith's record instead demonstrates a drive to protect those who already have power and to enact an ideological agenda that targets vulnerable populations.

We strongly urge you to oppose Mr. Smith's nomination to the Eighth Circuit Court of Appeals.

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