National Center for TRANSGENDER EQUALITY

July 3, 2018

Dear Senator:

We write in opposition to the nomination of Chad Readler to the U.S. Court of Appeals for the Sixth Circuit. We are deeply troubled by the decision to advance the nomination of Mr. Readler's nomination over the objection of his home-state senator. Additionally, we have serious substantive concerns about Mr. Readler's record, a review of which demonstrates that he is unable to be fair and impartial and has a record of making extreme arguments beyond the bounds of zealous advocacy to advance ideological positions. Every judge has a duty to cast their personal politics aside when deciding cases before them, and Mr. Readler has exhibited he will be unable to do so.

Mr. Readler does not have the support of both of his home-state senators, and we are deeply concerned that the Senate Judiciary Committee decided nonetheless to hold a hearing on Mr. Readler's nomination. The century-old blue slip tradition has been honored (including, until recently, by Chairman Grassley) because it ensures that a qualified, non-ideological nominee is put forward.

Permitting Mr. Readler's nomination to go forward will exacerbate the erosion of the blue slip policy that has occurred in recent months as nominees such as Michael Brennan and Ryan Bounds have advanced over the objections of home-state senators. Abandoning the blue slip policy would dramatically undermine the nominations process and strip senators of their constitutional role of providing advice and consent for judicial appointments in their states, setting a harmful precedent not only for judicial appointments under the current administration but for appointments under all future administrations. The blue slip policy is not simply a courtesy or an antiquated custom: it is a check on presidents' ability to appoint unqualified, ideological judges. It ensures that presidents consult with home-state senators before making a nomination, encourages consensus nominees, and recognizes senators' duty to serve the interests of their constituents, as well as honoring the Senate's constitutional role in the appointment of judges. As Senator Hatch noted in 2014, "Weakening or eliminating the blue slip process would sweep aside the last remaining check on the president's judicial appointment power. Anyone serious about the Senate's 'advice and consent' role knows how disastrous such a move would be."[1]

The importance of the checks and balances provided by the blue slip policy are especially evident when presidents nominate individuals whose records raise serious questions regarding their ability to decide cases in a fair and unbiased manner. Unfortunately. Mr. Readler's record raises just such serious questions. Mr. Readler has a record of advancing extreme and dubious legal arguments, sometimes reaching beyond the bounds of zealous advocacy, in support of efforts to strip individuals of their civil rights.

[1] Orrin Hatch, *Protect the Senate's Important 'Advise and Consent' Role,* THE HILL (May 11, 2014), http://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role.

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Mr. Readler's recent decision to attack rather than defend the constitutionality of certain portions of the Affordable Care Act demonstrates his inability to cast aside his personal and political views in order to conform himself with his legal and professional obligations. That three career attorneys at the Department refused to make the arguments that Mr. Readler made, and one resigned his position rather than take part in the argument, evidences the unreasonableness of Mr. Readler's chosen course of conduct. Mr. Readler's legal arguments against the law Congress passed are so spurious that even legal experts known for opposing the ACA have called them "beyond the pale."[2] These actions cannot be squared with the neutrality required of judges.

Mr. Readler has also led the Civil Division in refusing to defend an ACA regulation recognizing that the law prohibits discrimination against transgender people—even though the vast majority of federal courts have agreed with the regulation. Mr. Readler is currently leading the defense of the attempted ban on transgender individuals from the armed services, which has been criticized by military leaders and lawmakers from both parties and repeatedly enjoined by the courts. These and other aspects of his record raise grave questions regarding Mr. Readler's qualifications and ability to act as a fair and impartial judge for all Americans, including LGBT Americans.

Judges, especially those nominated for lifetime appointments, must be impartial actors who respect the rule of law and their obligations as officers of the court. The blue slip process is a critical safeguard to ensure that result. Reversing the blue slip policy by advancing Mr. Readler's nomination threatens the important constitutional role of the Senate now and in years to come, and we urge you to oppose his confirmation.

Thank you for considering our views on this important nomination. You may reach NCTE's Director of Policy, Harper Jean Tobin, at (202) 804-6047 or hjtobin@transequality.org with any questions you may have.

Sincerely,

Mara Keisling
Executive Director

[2] Jonathan H. Adler and Abbe R. Gluck, *An Obamacare Case So Wrong It Has Provoked a Bipartisan Outcry*, WALL STREET JOURNAL (June 19, 2018), https://www.nytimes.com/2018/06/19/opinion/an-obamacare-case-so-wrong-it-has-provoked-a-bipartisan-outcry.html.