



October 9, 2018

The Honorable Charles Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: 27 LGBT Groups Oppose Confirmation of Eric Murphy and Chad Readler

Dear Chairman Grassley and Ranking Member Feinstein:

We, the undersigned 27 national, state and local advocacy organizations, representing the interests of lesbian, gay, bisexual and transgender (LGBT) people and everyone living with HIV, urge you to oppose the nominations of Eric Murphy and Chad Readler to the U.S. Court of Appeals for the Sixth Circuit.

Almost a million LGBT people live in Kentucky, Michigan, Ohio and Tennessee.¹ Consequently, the views of these nominees on the equal dignity of LGBT people and their families are highly relevant to whether LGBT people living in these states will receive fair and impartial justice if these nominees are confirmed to the Sixth Circuit Court of Appeals.

The records of these two nominees, particularly with respect to civil rights issues, reflect a deep hostility to the principles of equality, liberty, justice and dignity under the law for LGBT Americans, among others. Accordingly, we do not believe these nominees will provide impartial justice to LGBT people and their families, and therefore urge you to oppose their nominations.

Eric Murphy

Mr. Murphy's record demonstrates that he is one of the country's most vigorous opponents of marriage equality. Following two federal District Court decisions striking down Ohio's and Michigan's bans on marriage for same-sex couples,² Mr. Murphy worked relentlessly to defend the state bans on marriage equality. Mr. Murphy served as lead counsel and personally argued that same-sex

¹ The Williams Institute, LGBT Data & Demographics, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#density>.

² *Obergefell v. Wymyslo*, 962 F. Supp. 2d 968 (S.D. Ohio 2013), rev'd sub nom. *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014), rev'd sub nom. *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015); *DeBoer v. Snyder*, 973 F. Supp. 2d 757, 760 (E.D. Mich.), rev'd, 772 F.3d 388 (6th Cir. 2014), rev'd sub nom. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

couples should be denied equal protections under the law before the Sixth Circuit Court of Appeals,³ which reversed the lower courts' decisions.⁴ After the Supreme Court took up an appeal of the Sixth Circuit's decision, Mr. Murphy doubled down on his work to deny same-sex couples the freedom to marry by serving as counsel of record in what became known as *Obergefell v. Hodges*, one of the most important cases affirming LGBT equality in our nation's history.⁵ In his brief opposing that equal liberty for same-sex couples, Mr. Murphy's brief referred to same-sex couples' marriages as "disruptive...to our constitutional democracy" and claimed that Ohio's constitutional amendment banning same-sex marriage was "not intentionally discriminatory" toward same-sex couples.⁶ It is impossible to believe that Mr. Murphy would have devoted so much of his career to arguing that same-sex couples are inferior to different-sex couples and that their marriages would be "disruptive" to our democracy if he did not passionately believe that to be the case. It is equally unlikely that any gay, lesbian, bisexual or transgender person could be confident that they would receive equal justice under the law in Mr. Murphy's courtroom.

We also oppose Mr. Murphy due to his long record of working to undermine voting rights. Mr. Murphy has worked tirelessly to continue Ohio's practice of purging voters from the state's rolls simply because they had not voted in a two-year period and then did not promptly respond to a notice from election officials.⁷ After this voting-purge scheme was challenged and the state lost on appeal to the Sixth Circuit Court of Appeals, Mr. Murphy championed the voter suppression scheme as lead counsel in the Supreme Court. Voting rights are a cornerstone of our democracy, and are essential to the legitimacy of our entire political system. In addition to all of the other troubling aspects of Mr. Murphy's record, we urge the Senate Judiciary Committee to consider seriously the further damage that may be done to voting rights and to the legitimacy of the judiciary by elevating a nominee who has played such a prominent role in effectively denying people the right to vote.

Chad Readler

Mr. Readler has served as political appointee in the role of principal Deputy Assistant Attorney General for the Civil Division of the U.S. Department of Justice since January 30, 2017.⁸ Mr. Readler is one of the chief architects behind almost every one of the Trump administration's most odious actions—especially those policies targeting the LGBT community. Mr. Readler's fingerprints can be found on almost all of the DOJ litigation seeking to deprive LGBT people of legal protections. In July 2017, for

³ See Ohio Same-Sex Marriage Oral Argument (Aug. 6, 2014), available at <https://www.c-span.org/video/?320907-2/ohio-marriage-oral-argument-audio>.

⁴ *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014), rev'd sub nom. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)

⁵ Brief for Respondent, *Obergefell v. Hodges*, No. 14-556 (Mar. 27, 2015), available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2015/03/14-556bs.pdf>.

⁶ *Supra* p. 10, 43.

⁷ See John Husted, Ohio Secretary of State Directive 2016 General Voter Records Maintenance Program – Supplemental Process (July 29, 2016), available at <https://www.sos.state.oh.us/globalassets/elections/directives/2016/dir2016-20.pdf> (if voters fail to vote within a two-year period, they are sent a notice to confirm, and if they do not respond timely, they are purged from the voter rolls.)

⁸ See Acting Assistant Attorney General, "Meet the Acting Assistant Attorney General), available at <https://www.justice.gov/civil/staff-profile/acting-assistant-attorney-general>.

example, the Justice Department intervened in *Zarda v. Altitude Express*, a private employment lawsuit, to argue that the ban on sex discrimination in the Civil Rights Act of 1964 does not protect workers from sexual orientation discrimination.⁹ In August 2017, Mr. Readler co-signed the amicus brief from the Justice Department in support of the business in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, presenting arguments that sought to limit the protections against discrimination on the basis of sexual orientation that existed under Colorado law.¹⁰

In fact, Mr. Readler has been at the forefront of almost every anti-civil rights initiative that has emerged out of the Trump administration. Mr. Readler has defended the Trump administration's policy of separating immigrant children from their parents at the border¹¹ and he defended the anti-Muslim "travel ban" and efforts to permanently rescind the DACA program.¹² Mr. Readler filed a brief on behalf of the DOJ asking the federal District Court to issue a declaratory judgment holding that the ACA's provisions prohibiting insurers from denying people health care coverage or charging them more for preexisting will be held invalid as of January 1, 2019¹³ when the "Tax Cuts and Jobs Act" goes into effect.¹⁴ If these provisions are struck down, an estimated 52 million people will lose their health care coverage.¹⁵ This is not a matter of a lawyer representing the government's interest. Mr. Readler used his authority to force this brief through even though *three* career Department of Justice attorneys refused to add their names and promptly withdrew from the case.¹⁶ One of the three reportedly was so frustrated by the Department's decision to support that legal argument that he resigned.¹⁷

Like Mr. Murphy, Mr. Readler has also worked tirelessly to undermine the voting rights of Americans. After the Ohio state legislature rescinded "Golden Week," (a week-long period where voters

⁹ Brief for the United States as Amicus Curiae, *Zarda v. Altitude Express, Inc.*, No. 15-3775 (July 26, 2017).

¹⁰ Brief for the United States as Amicus Curiae Supporting Petitioners, *Masterpiece Cakeshop v. Colorado Civil Rights Commission, et al.*, No. 16-111 (Sept. 7, 2017).

¹¹ Respondent-Defendants' Reply in Support of Motion to Dismiss, *Ms. L. v. U.S. Immigration and Customs Enforcement*, No. 18-cv-428 DMS (May 4, 2018), available at <https://www.afj.org/wp-content/uploads/2018/06/MS-L-v-US-ICA.pdf>.

¹² See Petition for a Writ of Certiorari Before Judgment, *United States v. Regents of the University of California*, available at <https://www.afj.org/wp-content/uploads/2018/06/Dept-of-Homeland-Security-v.-Regents-of-University-of-California.pdf>.

¹³ Federal Defendants' Memorandum in Response to Plaintiffs' Application for Preliminary Injunction, *Texas v. United States*, No. 4:18-cv-00167 (N.D. Tex.) (June 7, 2018), available at https://www.justsecurity.org/wp-content/uploads/2018/06/ACA.Azar_filing.pdf.

¹⁴ H.R. 1, 115th Congress (2017-2018), available at <https://www.congress.gov/bill/115th-congress/house-bill/1>.

¹⁵ See Gary Claxton et al. *Pre-existing Conditions and Medical Underwriting in the Individual Insurance Market Prior to the ACA* (Dec. 12, 2016), KAISER FAMILY FOUNDATION, available at <https://www.kff.org/health-reform/issue-brief/pre-existing-conditions-and-medical-underwriting-in-the-individual-insurance-market-prior-to-the-aca/> (according to this 2016 analysis, approximately 52 million Americans under the age of 65 could find their health insurance at risk because of a wide range of preexisting conditions).

¹⁶ Unopposed Motion to Withdraw Appearances, *Texas v. United States*, No. 4:18-cv-00167 (N.D. Tex.) (June 7, 2018).

¹⁷ Devlin Barrett and Matt Zapotsky, *Senior Justice Dept. Lawyer Resigns after Shift on Obamacare*, THE WASHINGTON POST, (June 12, 2018), available at https://www.washingtonpost.com/world/national-security/senior-justice-dept-lawyer-resigns-after-shift-on-obamacare/2018/06/12/b3001d7c-6e55-11e8-afd5-778aca903bbe_story.html?utm_term=.4030ad69b870.

could register to vote and cast an early ballot),¹⁸ Mr. Readler defended challenges to the law from minority voters.¹⁹ Mr. Readler also defended Ohio’s voter-ID law that had the effect of suppressing voter turn-out by requiring county boards of elections to reject the ballots of absentee voters and provisional voters whose identification envelopes contained an address or birth date that did not perfectly match voting records, and also reduced the number of post-election days for provisional voters to present valid identification.²⁰ Lastly, Mr. Readler also vigorously defended President Trump’s notorious “Commission on Election Integrity”²¹ and defended the President from allegations of voter intimidation after then-candidate Donald Trump encouraged rally attendees to monitor “certain areas” in Altoona, Pennsylvania.²² As noted above with Mr. Murphy, elevating someone with a track record on voting rights as troubling as Mr. Readler’s would send a dangerous message to the public that these kinds of outrageous efforts to intimidate voters are acceptable, and in doing so, would undermine the credibility of our courts as a place where all people are entitled to fair and impartial justice.

Due to these concerns and others, Senator Brown announced his opposition to Mr. Murphy and Mr. Readler and has refused to return his blue slip, a decision that would have been honored in the past. And yet, Chairman Grassley has once more chosen to ignore a home state senator’s refusal to return a “blue slip” in order to advance highly controversial extremist nominees to the Court of Appeals. Notwithstanding Chairman Grassley’s past dedication to and defense of the blue slip tradition (when his party was in the minority),²³ these nominations mark the fifth and sixth time in just over a year in which Chairman Grassley has chosen to ignore the input of a home state senator for a circuit court judicial nomination.²⁴ The removal of these norms and safeguards renders the Senate nothing more than a rubber stamp for the executive branch, whose actions become more dangerous to constitutional norms and core American values by the minute. Instead, in service of raw partisan and political interests, the Senate continues to abdicate its duty to serve as an independent check when it comes to the integrity of our federal judiciary and, by extension, the health of our democracy.

¹⁸ Senate Bill 238 shortened the early, in-person voting period by eliminating “Golden Week,” the week-long window where voters may simultaneously register to vote and cast an early in-person ballot.

¹⁹ Brief of the Buckeye Institute and the Judicial Education Project as Amici Curiae in Support of Defendants-Appellants and Reversal, *Ohio Democratic Party v. Husted*, No. 16-3561 (July 1, 2016), available at <https://www.buckeyeinstitute.org/library/doclib/Brief-of-The-Buckeye-Institute-and-the-Judicial-Education-Project-as-Amici-Curiae.pdf>.

²⁰ *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016), cert. denied, 137 S. Ct. 2265, 198 L. Ed. 2d 699 (2017).

²¹ See Memorandum in Opposition to Plaintiffs’ Motions for a Temporary Restraining Order and/or Preliminary Injunction, *ACLU v. Trump*, No. 1:17-cv-1351 (D.D.C July 13, 2017), available at <https://www.afj.org/wp-content/uploads/2018/06/ACLU-v.-TRUMP-2017-U.S.-Dist.-Ct.-Motions-LEXIS-321.pdf>.

²² *Ohio Democratic Party v. Ohio Republican Party*, No. 16-CV-02645, 2016 WL 6542486, at *1 (N.D. Ohio Nov. 4, 2016), appeal dismissed, No. 16-4268, 2016 WL 10570271 (6th Cir. Dec. 12, 2016) (President Trump told voters that, “I hope you people can...not just vote on the 8th, [but also] go around and look and watch other polling places and make sure that its 100-percent fine.”)

²³ Sen. Chuck Grassley, *Working to Secure Iowa’s Judicial Legacy* (Apr. 14, 2015) DES MOINES REGISTER, available at <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2015/04/15/working-secure-iowas-judicial-legacy/25801515/>.

²⁴ Chairman Grassley has now held hearings for nominees without support from both home state senators for David Stras, Michael Brennan, Ryan Bounds, David Porter, Eric Murphy and Chad Readler.

* * *

During their confirmation hearings, we expect these nominees will invite you to entertain the idea that once they put on the black robe, they will immediately relinquish their anti-LGBT perspectives and become impartial evaluators of the law. Their records indicate otherwise. Mr. Murphy and Mr. Readler have demonstrated throughout their legal careers that they hold a longstanding animus toward the LGBT community. This animus simply must not be ignored or overlooked in determining their fitness to serve in the federal judiciary. Our concern is not just about these nominees' extremist views and willingness to gut landmark decisions that form the basis of all protection for LGBT people. Our concern goes further. These nominees have challenged LGBT peoples' right to form families at all, and have argued expressly that the families they form are less legitimate than other families. Their records reveal that they will be incapable of treating LGBT litigants fairly—no matter what body of law is at issue in the cases over which they may preside—because they do not acknowledge LGBT people as having a right to exist. These are not the kinds of judges that this country wants, needs or deserves. We strongly urge you to reject their respective nominations.

Thank you for considering our views on this important issue. Please do not hesitate to reach out if we can provide additional information throughout the confirmation process. You can reach us through Sharon McGowan, Director of Strategy for Lambda Legal, at smcgowan@lambdalegal.org.

Very truly yours,

Lambda Legal
Advocates for Youth
American Atheists
Athlete Ally
CenterLink: The Community of LGBT Centers
Equality California
Equality New Mexico
Equality North Carolina
Equality Ohio
Equality South Dakota
Equality Utah
Fair Wisconsin
Fairness Campaign
Family Equality Council
FORGE, Inc.
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Los Angeles LGBT Center
National Black Justice Coalition
National Council of Jewish Women
National Equality Action Team (NEAT)
National Latina Institute for Reproductive Health
Secular Coalition for America
The LGBT Bar Association of Greater New York



The Trevor Project
Transgender Law Center
URGE: Unite for Reproductive & Gender Equity
Whitman-Walker Health