

NAACP

Trump's Judicial Playbook: **WEAPONIZING THE BENCH TO SUPPRESS THE VOTE**



BALLOT BOX

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I. INTRODUCTION

Six years ago, on June 25, 2013, the Supreme Court dealt the most devastating blow to participatory democracy in modern history. In *Shelby County v. Holder*,¹ the Court effectively gutted the heart of the Voting Rights Act. By disabling Section 5, which required jurisdictions with a history of discrimination to preclear voting changes, the Court lifted voting protections in place since the Voting Rights Act was passed in 1965.

The egregious consequences of this ruling quickly came to pass. The ink was barely dry on the decision before jurisdictions began enacting oppressive voting measures which no longer required pre-approval. Since *Shelby County*, twenty-three states have enacted “newly restrictive statewide voter laws,” which impose voter ID requirements, require proof of citizenship to register to vote, allow voter purging, reduce or close polling places, and eliminate early voting.² New democracy-suppressing tactics are springing up such as Florida’s nullification of a ballot measure to re-enfranchise formerly incarcerated persons³ and a Tennessee law penalizing voter registration efforts with criminal charges and fines.⁴ It is no wonder that the U.S. Commission on Civil Rights reported that discriminatory voter laws have surged in the years since *Shelby County*.⁵ Because the right to vote is “preservative of all rights,”⁶ civil rights in the areas of education, housing, employment, the environment, and the criminal justice system are all in jeopardy.

Compounding this crisis is the Trump administration’s frontal assault on voting rights. The Justice Department, which is charged with enforcing civil rights laws, has completely abandoned its duty to protect voting rights. Because the *Shelby County* ruling eliminated safeguards under Section 5 of the Voting Rights Act, litigation under Section 2 is all the more important, but the Justice Department has filed no such cases. Instead, it reversed positions to support voter suppression measures⁷ and purge voters from voting rolls.⁸ As the nation experienced rampant voter suppression during the 2018 mid-term elections, the Justice Department stood by silently as communities of color were denied access to the polls. The Trump administration created a sham voting commission to propagate the voter fraud myth in support of voter suppression, only to be shamed into disbanding it. Motivated by a desire to maximize white political power, the administration engaged in deceit at the highest levels to add a citizenship question to the Census that constitutes the greatest attack on representational democracy since the Three-Fifths Compromise and that was rejected as fraudulent by this Supreme Court.

The Trump administration is engaged in another form of voter suppression that is equally harmful and will have lasting consequences for our democracy. Donald Trump has appointed an alarming number of nominees to the federal bench who have appalling records of enabling or defending voter suppression. These nominees are appointed to the very courts that rule on challenges under the Constitution and federal voting rights laws, involving issues of voter suppression, racial gerrymandering, and redistricting. If past is prologue, we fully expect these appointees to wield their Article III power to restrict communities of color from fully participating in the democratic political process.

¹ *Shelby Cty., Ala. v. Holder*, 70 U.S. 529 (2013).

² U.S. Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States, 2018 Statutory Report, Sept. 12, 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

³ Mark Joseph Stern, *Florida’s Republican Legislature Votes to Nullify Ballot Initiative*, SLATE, May 30, 2019.

⁴ Tierney Sneed, *NAACP Sues Tennessee Over New Law Targeting Voter Registration Drives*, TALKING POINTS MEMO, May 3, 2019.

⁵ U.S. Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States, 2018 Statutory Report, Sept. 12, 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf.

⁶ *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

⁷ Sari Horwitz, *Justice Department Changes Its Position in High-Profile Texas Voter-ID Case*, WASHINGTON POST, Feb. 27, 2017.

⁸ Sam Levine, *DOJ Reverses Position in Big Voting Case Before Supreme Court*, HUFFINGTON POST, Aug. 8, 2017.

The NAACP seeks to shine a light on the Trump administration’s strategy to weaponize the judiciary to restrict the vote. Enabled by the Senate’s short-circuited confirmation process that minimizes scrutiny of nominees, Trump has appointed 126 individuals to the federal bench. Judges with demonstrated hostility to voting rights are now populating courts at every level, from Brett Kavanaugh’s appointment to the Supreme Court, to the appellate courts which decide most of our law, to the district courts where voting rights cases are first filed. Several nominees were appointed to Southern jurisdictions, which serve large communities of color and hear an outsized share of voting rights cases. Many of the nominees are very young and will serve for decades.

This is no accident. Undermining voting rights is a qualification for nomination by Donald Trump to the federal bench. North Carolina nominee Thomas Farr’s notorious personal engagement in voter intimidation is only one example. Prior to their appointments, several nominees filed briefs seeking to gut the Voting Rights Act in *Shelby County*. In the aftermath of *Shelby County*, nominees aggressively defended the adoption of voter ID laws and other restrictive voting measures. North Carolina’s notorious voter suppression law, which “targeted African Americans with almost surgical precision,”⁹ was defended by not one, not two, but three Trump judicial nominees on the same brief. Another Trump nominee successfully defended the nation’s worst voter purge law before the Supreme Court, allowing its application throughout the country. Yet another nominee defended the Trump campaign from claims of voter intimidation and then defended Trump’s sham voting rights commission. At least two Trump judicial nominees repeated widely discredited arguments to support adding the citizenship question to the Census, which the Supreme Court has now rejected. Still another nominee argued that non-citizens should not even be counted in the Census. At a Judiciary Committee hearing to consider his appointment to the Fifth Circuit which presides over the largest minority population of any circuit, another Trump nominee refused to say whether voting discrimination even exists.

Below is analysis of the most glaring voting rights records of Trump’s judicial nominees. Although each nominee was vigorously opposed by the NAACP and multiple civil rights organizations, only Thomas Farr’s nomination was defeated by the Senate. This is a travesty of justice. We have every reason to expect more objectionable nominations. There are 51 judicial nominees pending before the Senate and 77 more vacancies to fill. We must halt abuse of the judicial appointment process to suppress the voting power of communities of color. We must demand that each of Trump’s judicial nominations receives the Senate scrutiny it deserves under the Constitution. We must ensure that the Senate confirms only those individuals who are committed to our foundational goal of equal political participation for all.

II. BRETT KAVANAUGH — SUPREME COURT OF THE UNITED STATES

At the time of his nomination to the Supreme Court, Brett Kavanaugh posed a severe threat to democracy based on his record on voting rights and campaign finance issues.¹⁰ Serving on the D.C. Circuit Court of Appeals, he signaled a willingness to further restrict communities of color from the political process and to limit exercise of the franchise to the wealthy and powerful. NAACP President and CEO Derrick Johnson published an op-ed warning that voting rights jurisprudence could become even worse if Brett Kavanaugh was confirmed.¹¹ In his first term on the Court, Justice Kavanaugh confirmed our fears. He joined the breathtaking ruling to bar federal court review of extreme partisan gerrymandering,¹² would have allowed

⁹ *North Carolina v. N.C. State Conf. of NAACP*, 832 F.3d 204, 214 (4th Cir.2016).

¹⁰ See Campaign Legal Center & Demos, *Kavanaugh Has an Unsettling Record on Democracy*, July 13, 2018, <https://campaignlegal.org/sites/default/files/2018-07/CLC%20Demos%20Kavanaugh%20Brief%207-12-18%209pm.pdf>.

¹¹ Derrick Johnson, *On Voting Rights, We Have Much More To Lose with Brett Kavanaugh*, THE HILL, Aug. 9, 2018.

¹² *Rucho v. Common Cause*, 588 U.S. ___ (2019).

a citizenship question to be added to the Census despite its fraudulent and racist motivation,¹³ and would have reconsidered a ruling invalidating state legislative districts as racially gerrymandered.¹⁴

While serving on the D.C. Circuit, Kavanaugh wrote the unanimous three-judge court opinion upholding South Carolina's voter ID law in a challenge under the Voting Rights Act.¹⁵ The Justice Department had rejected the law under Section 5 of the Voting Rights Act on the basis that it would disenfranchise tens of thousands of voters of color. The Justice Department concluded: "However analyzed, the state's data demonstrate that nonwhite voters are both significantly burdened by [the photo ID requirement] in absolute terms, and also disproportionately unlikely to possess the most common types of photo identification among the forms of identification that would be necessary for in-person voting under the proposed law."¹⁶

After South Carolina slightly modified the voter ID law, Judge Kavanaugh upheld it, concluding that it did "not have a discriminatory retrogressive effect" and "was not enacted for a discriminatory purpose."¹⁷ He dismissed evidence that the law's provisions would materially burden voters and downplayed evidence of discriminatory intent.¹⁸ Significantly, Kavanaugh refused to join a concurrence that stated "one cannot doubt the vital function that Section 5 of the Voting Rights Act has played here."¹⁹ Section 5 is the heart of the Voting Rights Act and was completely disabled by *Shelby County* one year after Kavanaugh's decision. Although South Carolina offered no evidence whatsoever of voter fraud, Judge Kavanaugh willingly accepted voter fraud as a proper justification for the law: "We conclude that South Carolina's goals of preventing voter fraud and increasing electoral confidence are legitimate: those interests cannot be deemed pretextual merely because of an absence of recorded incidents of in-person voter fraud in South Carolina."²⁰

III. MICHAEL PARK — SECOND CIRCUIT COURT OF APPEALS

Donald Trump nominated Michael Park to the Second Circuit on October 10, 2018. The Senate confirmed Park on May 9, 2019, in a 52-41 vote. The Second Circuit covers Connecticut, New York, and Vermont. By the time he was appointed, Park had already devoted his career to undermining civil rights. Park is an extremely close ally of Edward Blum, who masterminded some of the most destructive anti-civil rights campaigns in recent history.²¹ It was Blum who initiated the lawsuit leading to *Shelby County*, which unleashed countless voter suppression measures in place today.²² That Trump appointed one of Blum's chief lawyers to a lifetime judgeship speaks volumes about the role of court-packing in this administration's voter suppression campaign.

Michael Park was a named partner at Consovoy, McCarthy and Park, known as the "go-to legal shop for conservative ideologues looking to fight everything from voting rights to affirmative action to abortion, particularly at the Supreme Court."²³ Park's partner, William Consovoy, helped Blum dismantle the Voting Rights Act in *Shelby County*. The firm represented Blum in several voting rights cases, including challenging the constitutionality of the California Voting Rights Act.²⁴ The firm's website boasted about

¹³ *Department of Commerce v. New York*, 588 U.S. __ (2019).

¹⁴ *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. __ (2019).

¹⁵ *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012).

¹⁶ Letter from Thomas E. Perez, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, Dec. 23, 2011, <https://www.justice.gov/crt/voting-determination-letter-65>.

¹⁷ *South Carolina*, 898 F. Supp. at 32.

¹⁸ *Id.* at 41-45.

¹⁹ *Id.* at 53.

²⁰ *Id.* at 44.

²¹ Anemona Hartocollis, *He Took On the Voting Rights Act and Won. Now He's Taking on Harvard*, NY TIMES, Nov. 19, 2007.

²² Joan Bikupsic, *Special Report: Behind U.S. Race Cases, A Little Known Recruiter*, REUTERS, Dec. 4, 2012.

²³ Stephanie Mencimer, *Trump Appellate Court Nominee is Working to End Affirmative Action at Harvard*, MOTHER JONES, Oct. 23, 2018.

²⁴ *Id.*

defending public entities accused of voting rights violations.²⁵ Park admitted to joining the firm to work on “fascinating, headline-making cases,” including one seeking to exclude non-citizens from the “one-person, one-vote” requirement, which did not succeed.²⁶

On behalf of Edward Blum, Michael Park vigorously defended the Trump administration’s attempt to add a citizenship question to the 2020 Census, in defiance of longstanding practice, contrary to the Constitution’s mandate to count everyone, and now rejected by the Supreme Court. The citizenship question would have dramatically reduced participation by communities of color, particularly immigrant communities. Seven lawsuits were filed against the Trump administration regarding the Census,²⁷ including one filed by the NAACP alleging that the Census Bureau’s inadequate preparation for the decennial count violates its legal obligation to conduct a full and fair census and would drastically undercount African Americans and other people of color.²⁸ The stakes are tremendous because the Census count is used to determine political representation, allocate federal resources, and help enforce civil rights laws.

Michael Park filed an amicus brief that reiterated the Trump administration’s pretextual reason for adding the citizenship question—that the data is necessary to enforce the Voting Rights Act.²⁹ He wrote: “Reinstating the citizenship question to the decennial census will provide States with the most reliable and usable data regarding the number of eligible voters....Those data are also critical to the Department of Justice and to parties involved in litigation under Section 2 of the Voting Rights Act.”³⁰ As others have noted, it is the height of irony to argue in favor of a voter suppression tactic as a means of enforcing a voting rights law his colleagues helped destroy.³¹ Park also supported the widely discredited argument that the Census Department adopted the citizenship question at the “urging” of the Justice Department.³²

Michael Park’s argument in the Census litigation was simply preposterous. The Justice Department under the Trump administration has taken no action whatsoever to enforce the Voting Rights Act. Moreover, evidence produced revealed the deceit and racism behind efforts to add the question. Secretary of Commerce Wilbur Ross informed Congress that the Justice Department asked him to make the change, but emails uncovered in a lawsuit revealed that Ross asked the Department to justify adding the question after speaking with anti-immigration hard-liners like Steve Bannon and Kris Kobach.³³ Shocking information recently uncovered demonstrated that the citizenship question was specifically designed to enhance white political power at the expense of communities of color.³⁴

U.S District Judge Jesse Furman of the Southern District of New York rejected Michael Park’s arguments and concluded that Secretary of Commerce Wilbur Ross’s decision to add the citizenship question was unlawful.³⁵ Two additional federal courts reached the same conclusion.³⁶ On June 27, 2019, the Supreme

²⁵ <https://consvoymccarthy.com/>.

²⁶ David Lat, *Prominent Young Partners Leave BigLaw for a High-Powered Boutique*, ABOVE THE LAW, May 28, 2015.

²⁷ Hansi Lo Wang, *Hurdles Remain as Final Countdown Begins for 2020 Census*, NPR, Jan 10, 2019.

²⁸ Michael Kunzelman, *Baltimore Judge Refuses to Throw Out NAACP Lawsuit Over 2020 Census*, BALTIMORE SUN, Jan. 30, 2019.

²⁹ Brief Amicus Curiae of Project on Fair Representation in Support of Defendants’ Motion to Dismiss, *New York v. Department of Commerce*, No. 1:18-CV-2921, <https://www.projectonfairrepresentation.org/wp-content/uploads/2018/06/POFR-Census-Amicus-Brief-NY-v.-Commerce-2.pdf>.

³⁰ *Id.* at 2.

³¹ Ari Berman, *In Census Case, Supreme Court Cares a Lot About Voting Rights Act*, MOTHER JONES, Apr. 23, 2019.

³² Brief Amicus Curiae of Project on Fair Representation in Support of Defendants’ Motion to Dismiss, *New York v. Department of Commerce*, No. 1:18-CV-2921, <https://www.projectonfairrepresentation.org/wp-content/uploads/2018/06/POFR-Census-Amicus-Brief-NY-v.-Commerce-2.pdf>.

³³ Jay Michaelson, *Wilbur Ross Lied to Congress About GOP’s Plot to Rig Census*, DAILY BEAST, Oct. 18, 2018.

³⁴ Rick Hasen, *New Memo Reveals the Census Question Was Added to Boost White Voting Power*, SLATE, May 30, 2019.

³⁵ *State of New York v. United States Dep’t of Commerce*, Jan. 15, 2019, <https://www.scotusblog.com/wp-content/uploads/2019/02/State-Of-New-York-et-al-v-United-States-Department-of-Commerce-et-al.pdf>.

³⁶ Hansi Lo Wang, *Supreme Court Hears Oral Argument Over 2020 Census Question*, NPR, Apr. 23, 2019.

Court resoundingly rejected the Trump administration’s reason for adding the citizenship question as fraudulent, stating that it “cannot adequately be explained” and “seems to have been contrived.”³⁷

IV. KYLE DUNCAN — FIFTH CIRCUIT COURT OF APPEALS

Kyle Duncan was nominated to the Fifth Circuit on October 2, 2017. The Senate confirmed Duncan on April 24, 2018, in a 50-47 vote. The Fifth Circuit covers Louisiana, Mississippi, and Texas. On its face, Kyle Duncan’s record on voting rights is deeply disturbing. In considering the Fifth Circuit’s jurisdiction over the largest percentage of residents of color of any circuit and the significance of its voting rights docket to the entire country, Duncan’s record becomes absolutely terrifying. Although a native of Louisiana, Duncan practiced law in Washington D.C., where he contributed to state-sponsored efforts throughout the South to prevent or discourage African Americans from fully participating in our political process.

Kyle Duncan defended the actions of North Carolina’s legislature to enact a host of draconian voter suppression measures that included a strict voter ID requirement, reduced availability of early voting, eliminated same-day voter registration, and prohibited out-of-precinct voting. The North Carolina NAACP led the challenge to this “monster voter suppression law.” The U.S. Court of Appeals for the Fourth Circuit struck down the law, ruling that the legislature purposefully discriminated against Black voters and “targeted African Americans with almost surgical precision.”³⁸ Duncan joined Thomas Farr, Trump’s nominee to the Eastern District of North Carolina, and Stephen Schwartz, Trump’s nominee to the U.S. Court of Federal Claims, in assisting North Carolina with its unsuccessful appeal to the Supreme Court. In their brief seeking Supreme Court review, Duncan, Farr, and Schwartz chastised the Fourth Circuit: “The notion that *these* election laws are reminiscent of the ‘era of Jim Crow’ is ludicrous.”³⁹ They wrote: “In the eyes of the panel, where North Carolina is concerned, it is *always* 1965. The opinion conjures a menacing world where ‘race and politics’ are ‘inextricab[ly] linked,’” and “where ‘powerful undercurrents’ tempt legislators to racial warfare.”⁴⁰ They stated that the Fourth Circuit’s ruling “insults the people of North Carolina and their elected representatives by convicting them of abject racism.”⁴¹ The Supreme Court denied the appeal.⁴²

Duncan just as eagerly defended the Texas voter ID law that federal courts similarly found was adopted with an intent to discriminate against voters of color. The Texas NAACP challenged this law under the Voting Rights Act and the Constitution. More than 600,000 registered voters lacked the required forms of ID, which included a handgun license but excluded student ID. Sitting *en banc*, the Fifth Circuit upheld a district court decision striking down the ID law as racially discriminatory against Black and Latino voters.⁴³ Duncan filed an amicus brief asking the Supreme Court to overturn the Fifth Circuit ruling, which he said “converts a prohibition on abridging minority voters’ right to vote into a mandate for boosting minority voting.”⁴⁴ Texas had relied on the myth of voter fraud to enact the law, and Duncan endorsed this manufactured motive in his brief, writing that “voter identification requirements not only help prevent voter fraud, but also foster public confidence in elections.”⁴⁵ The Supreme Court declined review.⁴⁶

³⁷ *Department of Commerce v. New York*, 588 U.S. ___ (2019).

³⁸ *N.C. St. Conf. of the NAACP v. McCrory*, 831 F.3d 204, 211 (4th Cir. 2016).

³⁹ Petition for Writ of Certiorari, at 20, *N.C. St. Conf. of the NAACP v. McCrory*, 581 U.S. ___ (2017) (emphasis in original), <https://www.scotusblog.com/wp-content/uploads/2017/01/16-833-cert-petition.pdf>.

⁴⁰ *Id.* at 19 (emphasis in original).

⁴¹ *Id.* at 2.

⁴² *N.C. v. N.C. St. Conf. of the NAACP*, 137 S. Ct. 1399 (2017).

⁴³ *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

⁴⁴ Brief for Members of Congress Representing States in the Fifth Circuit as Amicus Curiae Supporting Petitioners, at 15-16, *Abbott v. Veasey*, 137 S. Ct. 612 (2017).

⁴⁵ *Id.* at 1.

⁴⁶ 137 S. Ct. 612 (2017).

V. ANDREW OLDHAM — FIFTH CIRCUIT COURT OF APPEALS

Andrew Oldham was nominated on February 12, 2018. The Senate confirmed Oldham by a 50-47 vote, on July 18, 2018. At age 39, Oldham was one of the youngest people ever nominated to a federal circuit judgeship. He could preside over the Fifth Circuit, which includes Louisiana, Mississippi, and Texas, for decades.

As deputy solicitor general in Texas, Andrew Oldham filed a brief in the *Shelby County* case, urging the Supreme Court to gut the Voting Rights Act. He wrote: “The preclearance proceedings involving Texas’ voter-identification law illustrate the enormous burdens of the section 5 regime.... The only way for this Court to alleviate these unwarranted and burdensome federalism costs is to declare the reauthorization of Section 5 unconstitutional.”⁴⁷

Oldham’s brief strongly defended Texas’s discriminatory voter ID law, which allowed only limited forms of identification but permitted a gun license to qualify. A federal court later struck down the law, holding that the law “creates an unconstitutional burden on the right to vote, has an impermissible discriminatory effect against Hispanics and African Americans, and was imposed with an unconstitutional purpose.”⁴⁸ The Fifth Circuit upheld a majority of the ruling.⁴⁹

In his brief, Oldham vehemently criticized the Justice Department’s refusal to preclear the discriminatory Texas law and railed against the Department’s longstanding role in enforcing Section 5: “Yet for nearly two years, the Civil Rights Division of the Department of Justice has used every weapon in its arsenal to thwart implementation of a law that this Court has recognized as a legitimate and constitutional fraud-prevention measure.... Section 5 has empowered the Department of Justice to thwart the implementation of a constitutional voter-identification measure with abusive and heavy-handed tactics.”⁵⁰ Oldham also condemned the Department for seeking to depose members of the Texas legislature to determine whether the law was passed for a discriminatory purpose.⁵¹

Despite the Fifth Circuit’s majority-minority population and its resulting significance to voting rights jurisprudence, Oldham gave voters of color more cause for alarm during his hearing before the Senate Judiciary Committee. Nomination hearings provide the last significant opportunity for accountability before an individual joins the federal bench. This should be exactly when nominees want to assure the Senate and the American people that they are fair, impartial, and committed to equal justice under law, but not Andrew Oldham. When Senator Kamala Harris (D-CA) asked him whether he believed that “voting discrimination still exists,” Oldham refused to answer the question.⁵²

⁴⁷ Brief of the State of Texas as Amicus Curiae In Support of Petitioner, *Shelby Cty., Ala. v. Holder*, 70 U.S. 529 (2013), https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-96_pet_amcu_texas.authcheckdam.pdf.

⁴⁸ *Veasey v. Perry*, 71 F. Supp. 3d 627, 633 (S.D. Tex. 2014).

⁴⁹ *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016).

⁵⁰ Brief of the State of Texas as Amicus Curiae In Support of Petitioner at 2-3, *Shelby Cty., Ala. v. Holder*, 70 U.S. 529 (2013), https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-96_pet_amcu_texas.authcheckdam.pdf.

⁵¹ *Id.* at 11-15.

⁵² <https://twitter.com/senkamalaharris/status/989601748963741696?lang=en>.

VI. ERIC MURPHY — SIXTH CIRCUIT COURT OF APPEALS

Eric Murphy was nominated to the Sixth Circuit on June 7, 2018. The Senate confirmed Murphy on March 7, 2019, in a 52-46 vote. The Sixth Circuit covers Kentucky, Michigan, Ohio, and Tennessee. As the state solicitor of Ohio, Murphy played a key role in defending the recent wave of voter suppression adopted by states and localities across the country in the wake of *Shelby County*.

Before the Supreme Court, Eric Murphy personally defended Ohio’s draconian voter purge law known as the worst in the nation.⁵³ Voter purges are on the rise nationally as states, unchecked because of *Shelby County*, mount aggressive measures in the name of “election integrity.” The U.S. Election Assistance Commission recently reported that states removed seventeen million voters from rolls in two years.⁵⁴ The Ohio law transformed voting rights into a “use it or lose it” proposition by which voters could be removed from registration lists if they failed to vote in recent elections. Eric Murphy actually convinced the Trump administration to reverse the position taken by the Obama administration during the litigation, in order to defend Ohio’s voter purge law.⁵⁵ Because of Murphy’s successful defense of the law, challenges to voter purge measures in other states were dismissed. For example, the NAACP in Georgia had challenged Georgia’s purging of voters from the rolls. When the Supreme Court issued its ruling, the Georgia case was formally withdrawn, leaving hundreds of thousands of voters at risk of losing their ability to vote.⁵⁶

Eric Murphy defended other attempts by Ohio to restrict voting access. In response to tremendously long voting lines during the 2004 elections, the Ohio legislature passed a law creating “Golden Week,” a five-day period for voters to register and simultaneously vote at the beginning of early in-person voting. However, Ohio eliminated the extended voting period in 2014 and was promptly challenged under the Voting Rights Act and the Fourteenth Amendment. Murphy defended its elimination. A district court reinstated Golden Week, finding that removing it would disproportionately impact voters of color.⁵⁷ The Sixth Circuit reversed.⁵⁸

Murphy also defended Ohio’s laws restricting the use of provisional and absentee ballots, including the “perfection requirement” under which ballots could be discarded because of minor clerical errors.⁵⁹ A district court found that the laws discriminated against voters of color in violation of the Voting Rights Act, but the Sixth Circuit reversed in part.⁶⁰ In a powerful dissent which recounted the nation’s struggle for voting rights and received national attention,⁶¹ Sixth Circuit Judge Damon Keith, who recently passed away, wrote: “Instead of making it easier for all persons, unrestrained and unfettered, to exercise this fundamental right to vote, legislators are making it harder. States are audaciously nullifying a right for which our ancestors relentless fought and—in some instances—even tragically died.”⁶²

⁵³ *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833 (2018).

⁵⁴ Ben Popken, *States Removed 17 Million Voters from Rolls in Two Years*, NBC NEWS, June 27, 2019.

⁵⁵ Elliot Minberg, *Why Did DOJ Switch Sides in Ohio Voter Purge Case?*, RIGHT WING WATCH, Jan. 5, 2018, <http://www.rightwingwatch.org/post/why-did-doj-switch-sides-in-ohio-voter-purge-case-new-documents-provide-some-partial-answers/>.

⁵⁶ Tony Pugh, *Supreme Court Decision Halts Georgia Voting Rights Lawsuit*, MCCLATCHY NEWS, June 12, 2018.

⁵⁷ *Ohio Democratic Party v. Husted*, No. 2:15-cv-1802, (N.D. Ohio, May 24, 2016), https://moritzlaw.osu.edu/electionlaw/litigation/documents/OOC-FactsConclusions052416_001.pdf.

⁵⁸ *Ohio Democratic Party v. Husted*, 834 F. 3d 620 (6th Cir. 2016).

⁵⁹ *Northeast Ohio Coalition for the Homeless v. Husted*, No. 16A405, <https://afj.org/wp-content/uploads/2018/09/Northeast-Ohio-Coalition-v.-Husted-opposition-to-emergency-application-for-a-stay.pdf>.

⁶⁰ *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612 (6th Cir. 2016).

⁶¹ Mark Joseph Stern, ‘Martyrs of the Struggle for Equality,’ SLATE, Sept. 28, 2016.

⁶² *Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d at 667.

VII. CHAD READLER — SIXTH CIRCUIT COURT OF APPEALS

On the same day Donald Trump nominated Eric Murphy, he also nominated Chad Readler to the Sixth Circuit. Readler was confirmed by the Senate on March 6, 2019, in a 52-47 vote. The Sixth Circuit covers Kentucky, Michigan, Ohio, and Tennessee. The simultaneous nominations packed a one-two punch against the voting rights of residents within the Sixth Circuit. Like Murphy, Readler defended anti-democratic activity before becoming a judge.

In 2016, Chad Readler defended Trump’s presidential campaign from allegations of voter harassment and intimidation against voters of color in Ohio. Trump and his surrogates had encouraged supporters to aggressively patrol polling places and engage in racial profiling. Readler defended these actions and argued that Trump’s comments during the campaign about the election being “rigged” and his concerns about voter fraud were protected political speech.⁶³ A federal court enjoined the campaign from engaging in voter intimidation activity during the election,⁶⁴ but the Sixth Circuit blocked the injunction.⁶⁵

Like Michael Park, Chad Readler promoted deceitful arguments to support the Trump administration’s efforts to undercount communities of color in the Census, which the Supreme Court has now rejected. As head of the Civil Division in Jeff Sessions’ Justice Department, Readler authored multiple briefs defending the citizenship question. In the New York litigation, he made the widely repudiated argument that it was necessary to enforce the Voting Rights Act and that the Justice Department had requested it.⁶⁶ In the face of overwhelming evidence that the administration manufactured reasons to justify the question, Readler brazenly asserted in a Maryland lawsuit that civil rights organizations had “failed to make the ‘strong showing’ of bad faith or improper behavior.”⁶⁷

Chad Readler has the distinction among Trump’s judicial nominees of defending Trump’s sham voting rights commission created to perpetuate the myth of voter fraud and support voter suppression.⁶⁸ The commission was a flagrant abuse of federal power and resources. Civil rights organizations filed multiple lawsuits, including one claiming that the commission was formed with the intent to discriminate against voters of color.⁶⁹ Readler defended the commission’s widely criticized attempts to collect sensitive personal data, including social security information, party affiliation, criminal history and voting history.⁷⁰ Trump was finally forced to disband the commission.⁷¹

Similar to fellow Sixth Circuit Judge Eric Murphy, Chad Readler defended multiple Ohio voter suppression measures. He was an attorney for the Koch-funded Buckeye Institute which, in the name of preserving Ohio’s “voting integrity,” vowed it would “not stand idly by while judges ignore legal precedent and cast

⁶³ Mark Gillispie, *Judge Issues Order to Stop Voter Harassment by Trump Backers*, AP, Nov. 4, 2016.

⁶⁴ *Ohio Democratic Party v. Ohio Republican Party*, No. 16-CV-02645, Nov. 4, 2016.

⁶⁵ Dan Berman & Ariane de Vogue, *Appeals Court Rules in Favor of Trump Campaign*, CNN, Nov. 6, 2016.

⁶⁶ Memorandum of Law in Support of Defendants’ Motion to Dismiss, *New York v. Department of Commerce*, No. 1:18-cv-2921, https://www.brennancenter.org/sites/default/files/legal-work/New-York-et-al_v_Department_of_Commerce_Memorandum-of-Law-in-Support-of-Motion-to-Dismiss.pdf.

⁶⁷ Letter to Judge George Hazel, *Kravitz v. Department of Commerce*, No. CHJ-18-1041 (D. Md.), July 13, 2018, https://www.brennancenter.org/sites/default/files/legal-work/KravitzvDeptofComm_Defendantsletter_7.13.18.pdf.

⁶⁸ Federal Defendants’ Motion to Dismiss and Incorporated Memorandum of Law, *Joyner v. Presidential Advisory Commission on Election Integrity*, No. 17-225568, <https://epic.org/privacy/litigation/voter/epic-v-commission/Joyner-v-Commission-Commission-motion-to-dismiss-102017.pdf>.

⁶⁹ Christopher Ingraham, *Trump’s Voter Commission Now Facing at Least 7 Federal Lawsuits*, WASHINGTON POST, July 18, 2017.

⁷⁰ Memorandum in Opposition to Plaintiff’s Amended Motion for Temporary Restraining Order & Preliminary Injunction, *Epic v. Presidential Advisory Commission on Election Integrity*, 878 F.3d 371 (D.C. Cir. 2017), <https://epic.org/privacy/litigation/voter/epic-v-commission/EPIC-v-Commission-amended-TRO-PI-Opposition.pdf>.

⁷¹ Michael Tackett & Michael Wines, *Trump Disbands Commission on Voter Fraud*, NEW YORK TIMES, Jan. 3, 2018.

aside state law intended to protect all voters.”⁷² On the Buckeye Institute’s behalf, Readler defended Ohio’s law that required rejecting absentee and provisional ballots that lacked perfectly matched identification, reduced the time in which to cure those errors, and limited the ways in which poll workers could assist voters.⁷³ Readler also helped the Buckeye Institute to end “Golden Week,” which helped voters of color overcome voting obstacles by allowing Ohioans to register and vote at the same time.⁷⁴

VIII. MARK NORRIS — WESTERN DISTRICT OF TENNESSEE

Mark Norris was nominated on July 13, 2017. The Senate confirmed Norris on October 11, 2018, in a 51-44 vote. Norris served as Majority Leader of the Tennessee Senate, where he led efforts to diminish voting rights for communities of color. Tennessee was already known for one of the lowest voter registration rates in the country and extremely low voter turnout rates.⁷⁵ Mark Norris made it worse.

Norris was a strong supporter of Tennessee’s strict voter ID bill, passed in 2011. Laws requiring photo identification are a potent form of voter suppression because they disproportionately burden otherwise eligible voters of color and low-income persons. For example, 500,000 adults in Tennessee do not possess a driver’s license, and driver’s license offices are available in only one-third of counties in Tennessee.⁷⁶ Similar to the notorious Texas voter ID law, the Tennessee law excluded college IDs from acceptable forms of identification but permitted gun licenses as identification. This provision harmed student voters of color in particular, who challenged the law: “At every step of the voter ID law’s evolution, Tennessee state legislators have purposefully fenced out college and university students, especially targeting out-of-state students, rejecting multiple bills that would have added student ID cards to the voter ID list.”⁷⁷

Astonishingly, Mark Norris believed that this voter ID bill did not go far enough to disenfranchise Tennessee voters and led an unsuccessful effort to pass an amendment requiring proof of citizenship to register to vote.⁷⁸ Instead of allowing voters to check a box to affirm their citizenship, Norris would have empowered local elected officials to demand that persons registering to vote provide proof of citizenship through driver’s licenses, birth certificates, or passports. Opponents of Norris’s amendment argued it was “racial profiling” and “would allow officials to impose more restrictions on Americans who have accents, or brown skin.”⁷⁹ Norris’s proof of citizenship provision was too extreme even for the Tennessee legislature and failed.

⁷² The Buckeye Institute, *Buckeye Institute and Washington DC ‘Super Lawyer’ File Legal Briefings Supporting Ohio Election Laws*, July 12, 2016, <https://www.buckeyeinstitute.org/research/detail/the-buckeye-institute-and-washington-dc-super-lawyer-file-legal-briefings-supporting-ohio-election-laws>.

⁷³ Brief of the Buckeye Institute and the Judicial Education Project as Amici Curiae in Support of Defendants-Appellants and Reversal, *NE Ohio Coalition for the Homeless v. Husted*, Nos. 16-3603, 16-3691, <https://www.buckeyeinstitute.org/library/doclib/The-Northeast-Ohio-Coalition-for-the-Homeless-et-al-v-Jon-Husted-et-al.pdf>.

⁷⁴ 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, <https://www.buckeyeinstitute.org/library/doclib/Brief-of-The-Buckeye-Institute-and-the-Judicial-Education-Project-as-Amici-Curiae.pdf>.

⁷⁵ Tyler Whetstone, *New Tennessee Law Won’t Improve Low Voter Turnout*, KNOXVILLE NEWS SENTINEL, May 8, 2019.

⁷⁶ Andy Sher, *Tennessee Senate Passes Bill Requiring Photo ID to Vote*, TIMES FREE PRESS, Feb. 15, 2011, <https://www.timesfreepress.com/news/news/story/2011/feb/15/senate-passeks-bill-requiring-photo-id-to-vote/42326/>.

⁷⁷ Kira Lerner, *Students Fight Back Against Voter ID Law That Allows Gun Licenses But Bans Student IDs*, THINK PROGRESS, March 17, 2015, <https://thinkprogress.org/students-fight-back-against-voter-id-law-that-allows-gun-licenses-but-bans-student-ids-90939824dc52/>.

⁷⁸ Lucas L. Johnson II, *Voter-ID Bill Gets Senate Ok, Version Differs From House as Norris Adds ‘Proof’ Amendment*, THE COMMERCIAL APPEAL, May 11, 2010.

⁷⁹ Joe White, *Senate Eyes Proof of Citizenship to Vote*, NASHVILLE PUBLIC RADIO, May 10, 2010.

After Tennessee’s strict voter ID law passed, the Tennessee NAACP reported that approximately 625,000 residents lacked proper identification to vote.⁸⁰ The U.S. Government Accountability Office reported that the new law directly contributed to a decrease in turnout between 2.2 and 3.2 percentage points, or 88,000 Tennessee voters.⁸¹ Dorothy Cooper, a 96-year-old African-American resident of Chattanooga made national news in struggling to overcome the new voting obstacles. To obtain a photo ID from a driver’s services center, she brought a rent receipt, a copy of her lease, her voter registration card, and her birth certificate but was turned away because her birth certificate was in her maiden name. Only after a national outcry and personal intervention by the Tennessee Senate Speaker was Ms. Cooper able to obtain her ID and allowed to vote.⁸²

The extreme right defends voter ID laws by relying on the voter fraud myth; Tennessee lawmakers did precisely that to justify their stringent law.⁸³ During his Senate confirmation hearing, Mark Norris refused to distance himself from this widely discredited theory. Senate Judiciary Committee Ranking Member Dianne Feinstein (D-CA) asked Norris about Donald Trump’s absurd claim that three to five million illegal ballots were cast against him in the 2016 election. Instead of using the opportunity to tell the American people there was no factual basis to this assertion, Norris declined to answer, saying this was “a political question about which I cannot opine.”⁸⁴

IX. ANDREW BRASHER — MIDDLE DISTRICT OF ALABAMA

Andrew Brasher was nominated on April 20, 2018. The Senate confirmed Brasher on May 1, 2019, in a 52-47 vote. Alabama is the birthplace of voting rights, making it particularly appalling that Andrew Brasher engaged in aggressive efforts to oppose political participation by voters of color. The Middle District of Alabama has a seminal role in protecting voting rights, from ensuring that marchers from Selma to Montgomery could cross Edmund Pettus Bridge without threat of violence,⁸⁵ to striking down Alabama’s poll tax,⁸⁶ to requiring municipalities to elect local officeholders from single-member districts.⁸⁷ This is the last court that deserved Andrew Brasher as a judge.

As Alabama’s solicitor general, Andrew Brasher filed a brief in the *Shelby County* case, arguing that Congress violated the Constitution by reauthorizing Section 5 of the Voting Rights Act.⁸⁸ Focusing exclusively on Alabama’s violent history in battling voting rights, he refused to recognize Alabama’s recent efforts to restrict the vote: “Just as America has changed since 1965 and even since 1982, so has Alabama. Whatever race-relations issues now exist in the State, they are the same kinds of problems that every State in the Nation faces.”⁸⁹ Brasher made the outrageous argument that Section 5 allowed the Justice Department

⁸⁰ Yolanda Putnam, *NAACP Says Tennessee’s Voter ID Law Makes It Harder for Poor, Minorities to Vote*, TIMES FREE PRESS, July 25, 2016.

⁸¹ Philip Bump, *Voter ID Laws in Kansas and Tennessee Dropped 2012 Turnout by 100,000 Voters*, WASHINGTON POST, Oct. 9, 2014.

⁸² Yolanda Putnam, *NAACP Says Tennessee’s Voter ID Law Makes It Harder for Poor, Minorities to Vote*, TIMES FREE PRESS, July 25, 2016.

⁸³ *Id.*

⁸⁴ Sen. Comm. on the Jud., 115th Cong., Mark Norris, Written Questions for the Record from Sen. Feinstein, Question No. 8(c), <https://www.judiciary.senate.gov/imo/media/doc/Norris%20Responses%20to%20QFRs.pdf>.

⁸⁵ *Williams v. Wallace*, 240 F. Supp. 100 (M.D. Ala. 1965).

⁸⁶ *United States v. Alabama*, 252 F. Supp. 95 (M.D. Ala. 1966).

⁸⁷ *Dillard v. Crenshaw County, Alabama*, 640 F. Supp. 1347 (M.D. Ala. 1986).

⁸⁸ Brief of State of Alabama as Amicus Curiae Supporting Petitioner, *Shelby Cty., Ala. v. Holder*, No. 12-96, https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-96_pet_amcu_soa_authcheckdam.pdf.

⁸⁹ *Id.* at 5.

“to discriminate between covered States,”⁹⁰ and he invoked a states’ rights rationale by arguing that Section 5 “undermines state sovereignty in unanticipated ways.”⁹¹

Brasher also defended Alabama’s overreliance on race in legislative redistricting. African-American state legislators alleged that the Republican-led legislature violated the law by redrawing the state’s legislative districts to pack voters of color into majority Black districts, thereby reducing their influence in other districts.⁹² Brasher argued before the Supreme Court, contending that Alabama’s consideration of race in redrawing legislative districts was constitutional because it was not the predominant factor. Brasher took the absurd position that the Voting Rights Act required lawmakers to racially gerrymander the state. U.S. District Court Judge Myron Thompson, who heard the case below, called his argument a “cruel irony,” noting that, even as Alabama sought to gut Section 5, it was “relying on racial quotas...and seeking to justify those quotas with the very provision it was helping to render inert.”⁹³ The Supreme Court ruled against Brasher, holding that “there is strong, perhaps overwhelming, evidence that race did predominate as a factor.”⁹⁴ On remand, one of the Eleventh Circuit’s most conservative judges, William Pryor, wrote that twelve of Alabama legislative districts were unconstitutional because the legislature relied too heavily on race in drawing their boundaries.⁹⁵ Brasher later complained that the Supreme Court’s rulings on legislative redistricting created “a low bar for plaintiffs to show racial predominance.”⁹⁶

Alabama is notorious for its law that disenfranchises anyone convicted of a felony involving moral turpitude, impacting black voting-age citizens at three times the rate of white voting-age citizens.⁹⁷ Civil rights organizations challenged Alabama’s felony disenfranchisement law as racially discriminatory and alleged that the requirement to pay fines and fees to restore the right to vote amounted to a poll tax.⁹⁸ Brasher sought to dismiss the case, but the court allowed it to move forward.⁹⁹

Perhaps most astonishingly, Andrew Brasher oversaw efforts to deny non-citizens representation in congressional apportionment and electoral college determinations. The solicitor general office headed by Andrew Brasher filed a lawsuit on behalf of Alabama, claiming that it is unconstitutional for the Census Bureau even to count non-citizens as part of the decennial census.¹⁰⁰ This is far more extreme than the Trump administration, which sought to collect citizenship data through the Census, but has not argued against including non-citizens in the Census itself. While Brasher was not listed on the complaint filed after his nomination to the Alabama bench,¹⁰¹ he headed the solicitor general office and supervised the attorneys who filed the litigation.¹⁰²

⁹⁰ *Id.* at 17.

⁹¹ *Id.* at 17, 19.

⁹² Stephanie Mencimer, *After Gutting Voting Rights Act, Alabama Cites It As an Excuse for Racial Gerrymandering*, MOTHER JONES, Nov. 12, 2014.

⁹³ *Id.*

⁹⁴ *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015).

⁹⁵ Mike Cason *Federal Judges Rule Alabama Must Redraw Legislative Districts*, AL.COM, Jan. 20, 2017.

⁹⁶ Andrew Brasher, Symposium: A Recipe for Continued Confusion and More Judicial Involvement in Redistricting, May 23, 2017, <https://www.scotusblog.com/2017/05/symposium-recipe-continued-confusion-judicial-involvement-redistricting/>.

⁹⁷ Anna Bodi & Danielle Lange, *Thompson v. Alabama: Addressing the Racist Roots of Felon Disenfranchisement*, ACSBlog, Sept. 30, 2016, <https://www.acslaw.org/acsblog/thompson-v-alabama-addressing-the-racist-roots-of-felon-disenfranchisement/>.

⁹⁸ *Id.*

⁹⁹ *Thompson v. Alabama*, 2017 U.S. Dist. LEXIS 211512 (M.D. Ala.).

¹⁰⁰ Complaint, *State of Alabama et al. v. United States Dep’t of Commerce*, No. 2: 18-cv-00772-RDP (N.D. Ala.), https://www.brennancenter.org/sites/default/files/legal-work/Alabama_v_Dept-of-Commerce_Complaint.pdf.

¹⁰¹ *Id.*

¹⁰² Brasher Responses to Written Questions from Judiciary Committee Ranking Member Dianne Feinstein, on file with Ranking Member.

X. THOMAS FARR — EASTERN DISTRICT OF NORTH CAROLINA

Thomas Farr was nominated to the Eastern District of North Carolina on July 13, 2017, but he was never confirmed by the Senate. He is the only Trump nominee with an egregious voting rights record to be defeated. Although Farr had defended voter suppression for his entire career, his nomination was ultimately derailed by revelations that he had personally engaged in voter intimidation.

Thomas Farr had a long and sordid history on racial justice issues.¹⁰³ Early in his career, he joined forces with Jesse Helms, a staunch segregationist who served as North Carolina’s Senator for three decades. Farr became North Carolina’s defender-in-chief of voter suppression. In 1996, in his only argument before the Supreme Court, Farr challenged two majority-Black congressional districts in North Carolina as unconstitutional racial gerrymandering.¹⁰⁴ Two decades later, he defended the same districts when the North Carolina legislature packed African-American voters into the districts to dilute their voting power elsewhere.¹⁰⁵ Farr also defended unconstitutional racial gerrymandering for state legislative districts.¹⁰⁶ Farr helped to create¹⁰⁷ and defend notorious North Carolina’s voter suppression law which the Fourth Circuit called “the most restrictive voting law North Carolina has seen since the era of Jim Crow.”¹⁰⁸

Thomas Farr represented Jesse Helms’ Senate campaigns in 1984 and 1990, two of the most notoriously racist campaigns in modern American history. The 1990 Helms campaign engaged in voter suppression so egregious that the Justice Department under President George H.W. Bush filed a complaint against it for intimidating black voters in violation of the Voting Rights Act. The campaign sent 125,000 postcards mostly to African-American voters in North Carolina, suggesting they were ineligible to vote and warning that voting could result in criminal prosecutions. Although there was evidence that Farr had engaged in the activity, he denied it.¹⁰⁹

On the eve of Farr’s confirmation vote in the Senate, a Justice Department memo was disclosed indicating that Farr had coordinated almost identical voter suppression activities in the 1984 Helms Senate race. The memo stated: “Farr was the primary coordinator of the 1984 ‘ballot security’ program conducted by the 1984 Helms for Senate Committee. He coordinated several ‘ballot security’ activities in 1984, including a postcard mailing to voters in predominantly black precincts which was designed to serve as a basis to challenge voters on election day.”¹¹⁰ The revelation that Farr himself engaged in voter intimidation proved too much for certain Republican senators, and Farr’s nomination was withdrawn.¹¹¹

¹⁰³ Alex Amend, *From Eugenics to Voter ID Laws: Thomas Farr’s Connections to the Pioneer Fund*, Southern Poverty Law Center, Dec. 4, 2017, <https://www.splcenter.org/hatewatch/2017/12/04/eugenics-voter-id-laws-thomas-farrs-connections-pioneer-fund>.

¹⁰⁴ *Shaw v. Hunt*, 517 U.S. 899 (1996).

¹⁰⁵ *Cooper v. Harris*, 137 S. Ct 1455 (2017).

¹⁰⁶ *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016).

¹⁰⁷ Jim Rutenberg, *A Dream Undone, Inside the Fifty-Year Campaign to Roll Back the Voting Rights Act*, NEW YORK TIMES, July 29, 2015.

¹⁰⁸ *N.C. St. Conf. of the NAACP v. McCrory*, 831 F.3d 204, 211 (4th Cir. 2016).

¹⁰⁹ Thomas Goldsmith, *Did Former Helms Lawyer Lie to Senate Judiciary Committee*, INDYWEEK, Nov. 15, 2017.

¹¹⁰ Memorandum from Lee Rubin to John R. Dunne, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, at 12, n. 7, June 19, 1991, <http://apps.washingtonpost.com/g/documents/politics/the-department-of-justice-makes-case-against-1990-helms-campaign-and-north-carolina-gop/3323/>.

¹¹¹ Seung Min Kim & John Wagner, *Senator Tim Scott Says He Will Oppose Trump’s Nominee for North Carolina Judgeship*, WASHINGTON POST, Nov. 29, 2018.

XI. CONCLUSION

The right to vote defines our nation as a democracy. But our longstanding struggle for inclusion requires constant vigilance. The *Shelby County* decision was an assault on our democracy. It unleashed a proliferation of voter suppression laws that have blocked our communities from the political process. Instead of using the power of the federal government to defend communities of color against the barrage of anti-democratic actions, the Trump administration has doubled down to further voter disenfranchisement.

For better or worse, the federal courts have always been key to the civic engagement of African Americans. The judiciary plays a substantial role in defining the contours of the right to full political participation afforded by the Constitution and civil rights laws. When presiding over voting rights and all other cases, federal judges must be fair, impartial, and committed to equal justice under law.

Donald Trump's appointees to the Supreme Court, federal appellate courts, and federal district courts have appalling records of defending, enabling, and, in at least one instance, engaging in voter suppression. There is no mistaking that Trump's judicial selection has become a central feature of this administration's broad-based assault on voting rights. This must end, now. It is time for the country to rise up and object to this extraordinary perversion of the judicial appointment process to undermine our democracy. The American people are entitled to judges who will decide cases on the facts and the law, not deeply rooted ideology or rank partisanship. Our rights to fully participate in every facet of political, social, and economic life, on an equal basis, lie in the balance.