

December 6, 2017

Dear Senator,

On behalf of Alliance for Justice, a nationwide association representing a broad array of groups committed to justice and civil rights, I write to oppose the nomination of Don Willett to a seat on the U.S. Court of Appeals for the Fifth Circuit.

Willett has belittled the efforts of women to achieve equal rights. Before joining the Texas Supreme Court, Willett objected to a draft proclamation of then-Governor George W. Bush honoring the Texas Federation of Business and Professional Women. He wrote:

I resist the proclamation's talk of "glass ceilings," pay equity (an allegation that some studies debunk), the need to place kids in the care of rented strangers, sexual discrimination/harassment and the need generally for better "working conditions" for women (read: more government).

It is perhaps not surprising that in the years since, Willett as a judge has weakened critical laws that protect women against discrimination, sexual harassment, and sexual assault. For example, in *Waffle House, Inc. v. Williams*, Cathie Williams, a Waffle House employee, was repeatedly sexually harassed and assaulted by one of her co-workers. When Waffle House took almost no action to correct the problem, Williams sued and a jury found Waffle House liable. Because of Willett's decision on appeal, however, Williams's rights were limited and a jury award was substantially decreased. As the dissent in the case pointed out, because of Willett's decision a victim of sexual assault was entitled to less compensation than a person who experienced a non-sexual assault.

Willett has also ruled, again over a vigorous dissent, to make it harder for workers to establish discrimination based on age in the workplace.

Willett has also fought against equality for LGBTQ Americans. For example, he denied benefits to same-sex spouses of Houston's city workers. In *Pidgeon v. Turner*, he joined a majority opinion that ruled, contrary to the clear language of the Supreme Court, that *Obergefell* "did not hold that states must provide the same publicly funded benefits to all married persons, and . . . it did not hold that the Texas DOMAs are unconstitutional."

Moreover, he used his widely-followed Twitter feed to mock the legitimate concerns of LGBTQ Americans. Willett derided the progress of marriage equality for LGBTQ couples, tweeting that he would support a "right to marry bacon." Such a low regard for the rights of millions of people, regardless of whether it is masked as humor, is not a desirable quality in any judge and should not be encouraged with a promotion to an influential federal bench.

Finally, Willett's writings reveal an intense hostility to the government in protecting the health and welfare of the public. Willett, apparently based on his own particular view of what constitutes a "convincing public-welfare showing," would use the courts, and not our elected officials, to decide which health and safety measures are appropriate. He has advocated for courts to second guess legislatures, challenge and ultimately limit critical regulations, and revive *Lochner*-era jurisprudence. Willett's philosophy, most notably articulated in his concurrence in *Patel v. Texas Dep't of Licensing & Regulation*, would erode worker, consumer, and environmental protections; and is so far outside the

mainstream that it has been repudiated by several prominent conservative jurists, including Chief Justice John Roberts and Judge Robert Bork.

Indeed, Chief Justice Nathan Hecht, who was appointed by Governor Rick Perry, highlighted how extreme Willett's views are, noting that Willett's concurrence in *Patel* "fills the Court's sails and sets a Lochner-ian course." Criticizing Willett's "wild championing of economic liberty," Hecht decried how "the Lochner monster" has been "rediscovered and unleashed by" Willett. He said that Willett's views will lead the court to "stray far from the Judiciary's proper sphere of authority [.]"

Given all these concerns, and as detailed in our report on his nomination issued prior to his hearing (which can be found at the following link: <https://www.afj.org/our-work/nominees/don-r-willett>), we call on the Judiciary Committee to reject Don Willett as a candidate for the U.S. Court of Appeals for the Fifth Circuit. We stand ready to answer any questions you may have about our conclusions regarding this nominee.

Sincerely,



Nan Aron