

AFJ NOMINEE REPORT

ANDREW OLDHAM



U.S. Court of Appeals for the Fifth Circuit

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INTRODUCTION

On February 15, 2018, President [Trump nominated](#) Andrew S. Oldham to the Fifth Circuit Court of Appeals for the seat then held by Judge Edward Prado. In [January 2018](#), Trump nominated [Prado](#) to be the U. S. Ambassador to Argentina; the Senate confirmed Prado on March 22, 2018. Prado was the [only remaining Latino](#) judge active on the Fifth Circuit. This is Trump's fifth nominee to the Fifth Circuit since taking office last year.

Significantly, Oldham's record paints a clear picture of an ideological warrior bent on curtailing critical rights and protections for everyday people. His nomination is entirely in keeping with the Trump Administration's stated goal of appointing judges who will assist in tearing down health, safety and consumer protections and the federal agencies that create and enforce them.

At 39, Oldham is also the youngest person Trump has nominated for a seat on the circuit courts of appeals, which means that if confirmed, he could wield influence on the Fifth Circuit for three to four decades or more. This, too, is in keeping with the administration's strategy of naming ever-younger individuals to the federal bench to cement in place a rightward tilt to our system of justice. Alliance for Justice strongly opposes Oldham's confirmation.

- » **The environment.** Oldham [repeatedly](#) helped Texas join then-Oklahoma Attorney General Scott Pruitt in suing the Environmental Protection Agency (EPA) and [undermining](#) efforts to address climate change. Oldham even questioned the legitimacy of the EPA, [saying](#): "One of the reasons why the administrative state is enraging, is not that you disagree with what the EPA

does, although, I do disagree with a lot of what it does. That's not the thing that makes it enraging. It's the [illegitimacy](#) of it,"¹ and "no one ever pauses to wonder about whether the entire edifice of both the Clean Power Plan and the agency that promulgated it is just utterly and fundamentally illegitimate."²

- » **Workers and consumers.** Oldham has questioned the legitimacy of safeguards protecting the public and consumers. [Oldham](#) was reportedly "[heavily involved](#)" in the "[Texas Plan](#)" to radically amend the U. S. Constitution and gut the enforcement of modern consumer, public health, and workplace protections: "What's driving it from our perspective, from the Governor's perspective and mine . . . is much deeper than that."³ "It's not that I disagree with a particular Department of Labor regulation or a particular IRS regulation. It is the entire [existence](#) of this edifice of administrative law is constitutionally suspect."⁴
- » **Dreamers and their parents.** Oldham was the [architect](#) of Texas's [strategy](#) to block the expansion of DACA to additional Dreamers and parents of U.S citizens or green card holders, across the country.
- » **Gun safety.** Oldham [represented](#) Texas in its fight against a California concealed carry law. He also [argued](#) that Texas concealed carry license holders should be [able](#) to carry firearms into some government buildings.
- » **Civil rights.** Oldham [helped](#) Texas sue to block the EEOC's efforts to "Ban the Box" in hiring. He [assisted](#) in gutting the Voting Rights Act in *Shelby County v. Holder* while advocating for Texas's controversial voter ID law, and also [fought](#) against fair housing protections for communities of color.
- » **Reproductive rights.** Oldham [defended](#) Texas's extreme anti-abortion law, HB2,

which the U.S. Supreme Court ultimately declared unconstitutional in *Whole Woman's Health v. Hellerstedt*.

- » **Health care.** Oldham [led](#) Texas's effort with 19 other states to strike down the Affordable Care Act.
- » **Antitrust.** Oldham [argued](#) that the modern day Sherman Act – a [foundation](#) of antitrust law and competition policy – is unconstitutional.

BIOGRAPHY

Oldham is currently general counsel to Texas Governor Greg Abbott. He has worked for Abbott since 2012, serving as deputy solicitor general, deputy general counsel, and acting general counsel.⁵ Abbott [described](#) Oldham's nomination as "an excellent choice of a strict construction constitutionalist. I think he's even better than Gorsuch." In Oldham's [notes](#) for an August 2016 speech, he wrote, "What truly made me passionate about public service can be summed up in two words: Greg Abbott."⁶ Oldham [argued two](#) cases before the U.S. Supreme Court on behalf of Texas.⁷

Previously, Oldham worked as an associate at Kellogg Hansen Todd Figel & Frederick PLLC. He also spent [several years](#) as an attorney adviser in the Department of Justice Office of Legal Counsel ([OLC](#)) during the George W. Bush Administration, serving under [Steven Bradbury](#) from 2006 to 2008. In his nomination paperwork, Oldham [indicated](#) that he "drafted legal briefs and argued before military commissions charged with conducting war-crimes trials."⁸

Oldham clerked for Justice Samuel Alito on the U.S. Supreme Court and Judge David Sentelle on the D.C. Circuit. He received his J.D. from [Harvard](#) Law School in 2005, an

MPhil from the University of Cambridge in 2002, and his B.A. from the University of [Virginia](#) in 2001.⁹ Oldham is 39 years old. He previously worked as a [speechwriter](#) on Capitol Hill. While in [college](#), Oldham helped found an organization designed to educate men about sexual assault.

Oldham joined the ultraconservative [Federalist Society](#) – an outside group to which Trump has [delegated](#) important aspects of the judicial nomination process – at age [24](#) and has been a member since then.¹⁰ Oldham is a frequent speaker at Federalist Society events.¹¹ Oldham has also [spoken](#) multiple times to the Blackstone Legal Fellowship of the Alliance Defending Freedom (ADF);¹² the Southern Poverty Law Center has designated ADF as a [hate group](#).

THE ENVIRONMENT

Through both his legal career and public comments, Oldham has advocated against efforts to protect the environment and prevent climate change. He has also questioned the legitimacy of the EPA. In a [recorded](#) May 2016 speech before the Federalist Society at the University of Chicago, Oldham said:

One of the reasons why the administrative state is engaging, is not that you disagree with what the EPA does, although, I do disagree with a lot of what it does. That's not the thing that makes it engaging. **It's the illegitimacy of it.**¹³ (emphasis added)

As discussed below, Oldham's [comments](#) reflect his view that "the entire existence of this edifice of administrative law is constitutionally suspect." Oldham's "[favorite example](#)" for criticism is the EPA's effort

to limit carbon emissions in order to fight climate change:

[The Clean Power Plan] is the ultimate example, I think, of rule by bureaucrat, right . . . And again, it's not about whether you think the Clean Power Plan is a good idea or a bad idea. What I want to challenge, and what this whole idea of why we need unique constitutional reform, is that it is a fundamentally illegitimate exercise of ways to come up to govern modern American life. . . .¹⁴

And you go down and you talk to the folks, and they just, like, everybody thinks about how they don't like the Clean Power Plan, [but] **no one ever pauses to wonder about whether the entire edifice of both the Clean Power Plan and the agency that promulgated it is just utterly and fundamentally illegitimate.**¹⁵(emphasis added)

Oldham also helped Texas sue to block the EPA from limiting pollution and enforcing the Clean Air Act. In [Utility Air Regulatory Group v. EPA](#), 134 S. Ct. 2427 (2014) (consolidated with *Texas v. EPA*, No. 12-1269), Oldham [submitted](#) a brief claiming that “the Clean Air Act cannot be construed to authorize EPA to regulate greenhouse-gas emissions” under the Clean Air Act’s permit scheme. Oldham, joined by then-Oklahoma Attorney General Scott Pruitt, criticized the “far-reaching and near-ridiculous regulatory burdens required by EPA’s decision to regulate greenhouse-gas emissions”¹⁶ in the case at hand, labeling the consequences “preposterous[.]”¹⁷ and the EPA’s arguments “nonsense.”¹⁸ Texas’s arguments even called into question the landmark environmental protection case [Massachusetts v. EPA](#), 549 U.S. 497 (2007), arguing:

If this Court concludes that *Massachusetts* compels EPA to regulate greenhouse-gas emissions under the [Clean Air Act’s permit scheme], then the State Petitioners respectfully request that this Court reconsider *Massachusetts’s* holding that CO₂ and other greenhouse gases unambiguously qualify as “air pollutant[s]” within the meaning of the Act.¹⁹

In the end, the Supreme Court substantially upheld the EPA’s authority to regulate greenhouse gases. In an opinion by Justice Scalia, the Court decided that the EPA reasonably interpreted the Clean Air Act to require large “stationary sources” of pollution (like power plants and factories) to meet certain agency permitting requirements for greenhouse gas pollution, while limiting EPA’s efforts to apply these rules to other sources of pollution. *Utility Air Regulatory Group*, 134 S. Ct. at 2449.

Oldham also challenged the EPA’s efforts to enforce the Clean Air Act in [EPA v. EME Homer City Generation](#), 134 S. Ct. 1584 (2014) (consolidated with *American Lung Association v. EME Homer City Generation*, No. 12-1183). In this case, Oldham again joined a [brief](#) for the state of Texas with Scott Pruitt, this time questioning the EPA’s efforts to reduce pollution across state lines. Oldham’s brief argued that the D.C. Circuit had correctly vacated the EPA’s “Transport Rule.” The EPA issued this rule under the Clean Air Act to address the obligations of states upwind from pollution to reduce emissions. Several states and private plaintiffs challenged the rule, arguing that the EPA’s method for computing obligations exceeded its statutory authority. The Supreme Court upheld the EPA’s authority to create and enforce a federal plan addressing upwind polluters.

WORKERS AND CONSUMERS

In several recorded public appearances, Oldham has questioned the legitimacy of safeguards protecting the public and consumers. In a January 2017 speech before the Texas Public Policy Foundation, Oldham [argued](#):

Over 90% of the law that comes out of Washington, D.C., is in the Code of Federal Regulations . . . it's not in the United States Code . . . it is literally just the dictates of bureaucrats in Washington. And that is unacceptable. And so the Governor has proposed a plan . . . that would **make all of those administrative regulations completely inoperable as a matter of law**, unless and until they are voted on by elected members of Congress.²⁰
(emphasis added)

According to one of his former bosses in the Texas state government, Oldham was "[heavily involved](#)" in the formulation of Governor Greg Abbott's "[Texas Plan](#)" to radically amend the United States Constitution. Oldham then traveled around the country promoting the plan, including at a [recorded](#) University of Chicago talk in May 2016:

But really what I think is actually driving, what's driving it from our perspective, **from the Governor's perspective and mine**, is not so much, you know, we need to abolish the IRS or, you know, we need to have some fundamental reform in some other agency or institution. **It is much deeper than that**; it really goes to the rule of law. . . . I have particular things

that I think are illegitimate in the way that we conduct modern American law . . . but I'm just going to go through a few of mine just to give you a sense of kind of what I think is illegitimate about the way modern American law works. . . . **It's not that I disagree with a particular Department of Labor regulation or a particular IRS regulation. It is the entire existence of this edifice of administrative law is constitutionally suspect.**²¹
(emphasis added)

While Oldham questions the foundation of modern consumer, public health, and workplace protections, the Texas Plan would also dramatically curtail the modern-day Commerce Clause and require a seven-justice supermajority for the Supreme Court to hold a state or federal law unconstitutional.

When testifying before the Texas House in September 2016, Oldham [argued](#) that: "Our Supreme Court seems just as comfortable making up rights that have no bearing in the Constitution, as it is ignoring those that are expressly and explicitly guaranteed by the text of that document."²² In his January 2017 Texas Public Policy Foundation speech, he also [described](#) the Constitution as follows:

It's amended every June when the Supreme Court of the United States adjourns. They issue a bevy of opinions that effectively glom on all sorts of new rights and erase other rights that the Constitution is either supposed to protect or not supposed to protect and is **just the whim of five unelected lawyers who happen to wear black robes.**²³
(emphasis added)

DREAMERS AND THEIR PARENTS

Oldham was the [architect](#) of Texas's legal strategy to halt the [expansion](#) of the Deferred Action for Childhood Arrivals (DACA) program to additional Dreamers and to the parents of U.S. Citizens (Deferred Action for Parents of Americans and Lawful Permanent Residents – DAPA). He was credited with leading the effort by other personnel in Texas state government, who remarked “Deputy Solicitor General Andy Oldham is [lead counsel](#) for this matter and the drafter of the attached [white paper](#),”²⁴ and “Andy was the one who was working day and night for months starting this lawsuit.”²⁵

As Oldham described in the [complaint](#) he filed to [block](#) the expansion: “On November 20, 2014, the President announced that he would unilaterally create legal protections for approximately 4 million undocumented immigrants. Under the President’s plan, the undocumented parents of U.S. citizens and legal permanent residents would receive deferred action status, as well as work permits and tolling of their unlawful presence in the United States. The President also expanded DACA to hundreds of thousands of additional undocumented immigrants.”²⁶

Oldham [elaborated](#): “the President announced his unilateral creation of the DACA program on June 15, 2012. At the President’s direction, the DHS Secretary then suspended the Nation’s immigration laws for approximately 1.7 million undocumented immigrants. . . . The Defendants’ policies (including DACA and the policy described in *Nava-Martinez*) have had and continue to have dire consequences in the Plaintiff States.”²⁷

When discussing what Oldham would later [describe](#) as “a memo fired off by the Secretary of DHS,” Oldham’s complaint [alleges](#), “At the most basic level, the Directive is a promise to openly tolerate entire classes of undocumented immigrants. In addition, the Directive offers affirmative legal inducements to stay, such as work authorization and the tolling of unlawful presence.”²⁸

In addition to starting this lawsuit, as lead counsel Oldham [argued](#) the preliminary injunction motion that led to a nationwide injunction blocking the DAPA/DACA expansion. He also [compiled](#) the record²⁹ that supported Texas’s argument for emergency relief, [explaining](#): “It was a huge time crunch . . . so it was basically three weeks of 24 hour days.”³⁰ Upon moving with Greg Abbott to the Texas Governor’s Mansion, Oldham continued to help with the appeals in this case, [authoring](#) an amicus [brief](#) for Governor Abbott when the case reached the Supreme Court. The Supreme Court ultimately upheld the nationwide injunction blocking the DAPA/DACA expansion 4-4. [U.S. v. Texas](#), 136 S. Ct. 2271 (2016).

Texas Attorney General Ken Paxton later [notified](#) U.S. Attorney General Jeff Sessions that, if the U.S. didn’t end the Dreamers program, Texas intended to [modify](#) this same lawsuit to challenge the original DACA program (“[Texas](#), along with several other states, sent a letter to Attorney General Sessions asserting that the original 2012 DACA memorandum is unlawful for the same reasons stated in the Fifth Circuit and district court opinions regarding DAPA and expanded DACA. The letter notes that if DHS does not rescind the DACA memo by September 5, 2017, the States will seek to amend the DAPA lawsuit to include a challenge to DACA.”).³¹

The [Trump](#) Administration subsequently [ended](#) DACA, citing the same kinds of legal

arguments that Oldham advanced in the original DAPA/DACA expansion litigation (“The Attorney General [sent a letter](#) to the Department on September 4, 2017 . . . The letter further stated that because DACA ‘has the same legal and constitutional defects that the courts recognized as to DAPA, it is likely that potentially imminent litigation would yield similar results with respect to DACA.’”)³²

Although Oldham spoke frequently around the country about the DAPA/DACA expansion litigation, notes or recordings are not yet available for each of his public appearances.

CIVIL RIGHTS

Oldham frequently represented the state of Texas in its challenges to federal civil rights laws.

I. BAN THE BOX

When the Equal Employment Opportunity Commission (EEOC) issued [guidance](#) to employers to help those with criminal histories have a fair chance in hiring decisions, Oldham helped the state of Texas [sue](#) the EEOC in *Texas v. EEOC*. Oldham joined Texas’s amended [complaint](#) that argued “The State of Texas respectfully requests a declaration of its right to maintain and enforce its laws and policies that **absolutely bar** convicted felons (or certain categories of convicted felons) from serving as police officers, youth-correction officers, state-supported-living-center employees, GLO employees, lottery officials, game wardens, school teachers, and **any other job the State and its Legislature deem appropriate**”³³ (emphasis added).

The Texas State Conference of the NAACP intervened, [noting](#) “[a]t a time when millions of people are still struggling to find work, the

Texas attorney general should not be working to erect barriers to employment, particularly when those barriers disproportionately and unfairly affect workers of color.” In [February 2018](#), a U.S. District Court found for Texas in part and for the EEOC in part. See [Texas v. EEOC](#), 2018 U.S. Dist. LEXIS 30558 (N.D. Tex. Feb. 1, 2018).

II. VOTING RIGHTS

When the Supreme Court was considering [Shelby County v. Holder](#), 570 U.S. 529 (2013), Oldham co-authored an amicus brief for the state of Texas in support of gutting the Voting Rights Act (VRA). In Oldham’s [brief](#), Texas argued that its difficulty obtaining preclearance for its extremely controversial voter ID law justified rolling back the Voting Rights Act, stating, “But as the need for section 5’s extraordinary measures has waned, the preclearance regime’s burdens have increased. Texas’s effort to gain preclearance for its recently enacted voter-identification law is a case in point,”³⁴ and “Texas’s ongoing efforts to gain preclearance of its voter-identification law demonstrate that section 5 continues to impose ‘substantial federalism costs’ at a time when the need for a preclearance regime has receded.”³⁵

While the Supreme Court struck down a key portion of the Voting Rights Act 5-4 in *Shelby County*, litigation about Texas’s extremely controversial voter ID law is [ongoing](#). A U.S. District Court [found](#) that Texas’s law both had a discriminatory effect and intentionally discriminated against Latinos and African-Americans. The case remains [pending](#) on appeal in the Fifth Circuit, which stayed the District Court’s order in September. See [Veasey v. Abbott](#), 870 F.3d 387 (5th Cir. 2017).

III. FAIR HOUSING ACT

Oldham fought to maintain policies that

perpetuated the segregation of communities of color, representing Texas in [Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project, Inc.](#), 135 S. Ct. 2507 (2015). In this case, Texas attempted to challenge whether cases of housing discrimination could be brought based on disparate impact to communities of color. Oldham's [brief](#) for the state of Texas argued that the Fair Housing Act (FHA) does not allow these kinds of claims.

The Supreme Court, in a decision by Justice Anthony Kennedy, rejected Oldham's plea to turn back the clock on these civil rights protections, finding that: "The FHA must play an important part in avoiding the Kerner Commission's grim prophecy that '[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.'"³⁶

IV. DISABILITY RIGHTS

Oldham gave an interview to the Dallas Morning News for an [article](#) entitled "Greg Abbott pushes to block disabled Texans' lawsuits against state." It was reported that: "Deputy Solicitor General Andy Oldham said there are good reasons why the state tries to block lawsuits from going to court, even when it has a strong case. Good lawyers use all the tools at their disposal, he said." The article continued:

Dennis Borel, executive director of the Coalition of Texans with Disabilities, said that advocates' frustration stems from Abbott's office consistently seeking immunity for Texas agencies, regardless of the claim. "When you invoke the sovereign immunity defense, you're not responding to the merits of the case," he said. "You're simply saying the state is immune for its violations of the ADA and therefore there's not even a point of having a day in court."

Brian East, senior attorney for Texas Disability Rights, said the repeated efforts to raise sovereign immunity against the disabled cuts off the chance to fix problems. "I wouldn't say they were hostile," East said of the attorney general's legal team. "They are hostile to the notion that individual citizens might have redress against the state, in general. They are not targeting people with disabilities specifically, but doing what they can to limit the rights of individuals to use the courts in civil rights cases against the state."

REPRODUCTIVE RIGHTS

When Texas passed a series of provisions known as Targeted Regulation of Abortion Providers (TRAP) laws, Oldham was a lead attorney [defending](#) the Texas law. The Supreme Court later struck down Texas's House Bill 2 as unconstitutional in [Whole Woman's Health v. Hellerstedt](#), 136 S. Ct. 2292 (2016). The laws had imposed onerous burdens, including mandating hospital admitting privileges for abortion providers and requiring that clinics conform to the structural standards of ambulatory surgical centers.

Oldham defended Texas's TRAP laws in both [Planned Parenthood v. Abbott](#), 951 F.Supp.2d 891 (W.D. Tex. 2013) and *Whole Woman's Health*. In *Planned Parenthood v. Abbott*, Oldham gave Texas's [closing](#) argument at trial, defending Texas's provisions limiting medication abortions and requiring admitting privileges for providers. Oldham [also](#) helped represent Texas in the initial phases of *Whole Woman's Health*, which challenged the restrictive admitting privileges and the ambulatory-surgical center requirements.

In striking down these portions of House Bill 2, the Supreme Court held that “the challenged provisions of H. B. 2 close most of the abortion facilities in Texas and place added stress on those facilities able to remain open. They vastly increase the obstacles confronting women seeking abortions in Texas without providing any benefit to women’s health capable of withstanding any meaningful scrutiny.”³⁷

When discussing the case at a recorded September 2016 appearance, however, Oldham spoke [favorably](#) of Justice Alito’s dissent:

[Justice Alito] makes a lot of, I think, very powerful points in that dissent. But one of them is that the Supreme Court seems to have created an area of law that just applies to one particular constitutional right. Right? We don’t apply the normal neutral rules of normal federal litigation, like that would apply to every other case in this particular context. So, for example, we don’t apply the rule of res judicata, apparently. We don’t apply the rule that the relief that is granted to the plaintiffs is limited to the relief that the plaintiffs requested . . . the debates over abortion will continue to rage on, whether and to what extent they are protected by the Constitution. But I think that Justice Alito is quite right in raising a warning flag³⁸

Previously, Oldham also defended Texas’s controversial effort to bar reproductive health organizations from receiving funding through the Texas Women’s Health Program. See [Planned Parenthood Association of Hidalgo County Texas, Inc., v. Suehs](#), 692 F.3d 343 (5th Cir. 2012). In a brief that Oldham [joined](#), Texas argued that “by providing taxpayer funds for Planned Parenthood’s family-planning services, the State boosts the prestige of the Planned Parenthood trademark and gives the organization added stature as it seeks to persuade lawmakers

and the general public to embrace its controversial views on abortion.”³⁹

GUN SAFETY

Oldham worked on concealed carry issues for Governor Abbott and, in recent years, has spoken frequently about firearms law and policy. [Notes](#) or recordings are not available for [all](#) of Oldham’s [speeches](#) on gun safety issues. He is also a member of the National Rifle Association (NRA).⁴⁰

When the California Rifle and Pistol Association Foundation challenged San Diego County’s requirement that individuals show “good cause” in order to receive a permit to carry a concealed firearm in public, Oldham [filed](#) a brief for Texas and other states arguing for a weaker standard. Oldham diminished the [public safety concerns](#) behind these gun violence measures, arguing: “California bases its incapacious view of the right to bear arms on purported ‘public safety’ concerns.”⁴¹ Oldham continued:

California is wrong to suggest that its public safety concerns give the State a legal basis to impose special and **draconian burdens on Second Amendment rights**. . . . Not only are [Concealed Handgun License] CHL holders dramatically less likely to commit crimes themselves, they also incentivize others to commit less crime. Would-be criminals are less likely to break the law when they know that their victims may be carrying firearms. Decades of empirical research prove this. (emphasis added)⁴²

In 2015, [when](#) Texas adopted campus carry and open carry laws, Oldham wrote a [memo](#) for Governor Abbott that took an expansive view of where concealed carry license

holders could carry firearms – including into some government buildings. Oldham’s memo interpreting the new law generated [controversy](#) among local [officials](#). As one editorial [explained](#), “If the top legal experts in Gov. Greg Abbott’s office have their way, a lot of government buildings in Tarrant County will see sharp changes to their security precautions. Officials will have to back away from current gun restrictions — at least when the people carrying guns are licensed to do so. People with handgun licenses have the right to take their guns — concealed for now, but openly carried in a belt or shoulder holster after Jan. 1 — into most areas of those buildings, Abbott’s lawyers say.”

Oldham also gave [several public](#) speeches on firearms, including [speeches](#) on “Irrational Basis: The Scrutiny Applicable Only to Gun Law.”⁴³ In a recorded September 2016 appearance, Oldham [discussed](#) a [Highland Park](#), Illinois ban on AR-15 style weapons and his concerns about the rule of law implications for various lower-court rulings on gun violence issues. Oldham argued that the Supreme Court should have considered the Seventh Circuit ruling upholding Highland Park’s ban:

The AR-15 or modern sporting rifle is the most popular rifle in, in the United States, and you know, the ban in Highland Park is a categorical ban, I mean it is straight up, just like the California [sic] ban is, on that, on that category of weapons. So I agree with you that there should be Supreme Court, constitutional scrutiny on categorical bans on types of weapons, but it strikes me that that is equally true in both of those cases.⁴⁴

HEALTH CARE

Oldham was lead counsel in an effort with 20 states to strike down the Affordable Care

Act (ACA) as unconstitutional. In [Hotze v. Burwell](#), 784 F.3d 984 (5th Cir. 2015) Oldham filed an amicus brief arguing that the ACA violated the Origination Clause of the U.S. Constitution. Then-Chairman of the Senate Finance Committee Ron Wyden [filed](#) an amicus brief supporting the constitutionality of the law, which provides health care coverage to millions of Americans. The Fifth Circuit dismissed the challenge to the ACA on [standing](#) grounds, and the Supreme Court denied review in 2016.

In Oldham’s [brief](#) challenging the law, he argued that “In contravention of the Framers’ plan, public scrutiny and blame for that \$1 trillion tax bill fell on the Senate instead of the more politically-accountable House. And for their part, House members seemed all-too-glad to avoid the political heat.”⁴⁵

ANTITRUST

While an attorney adviser in the Department of Justice, Oldham [wrote](#) an article in his personal capacity that argued that the [foundational](#) antitrust law – the Sherman Act – is unconstitutional. According to [Oldham](#), “the federal antitrust regime is unconstitutional,” “the Sherman Act, as it is currently understood, is unconstitutional,” and “the modern-day scope of the Sherman Act is illegitimate.”⁴⁶

CONCLUSION

Throughout his career, Andrew Oldham has shown his dedication to dismantling health, safety and environmental protections. He has shown hostility to the rights of women, people of color, immigrants, and people with disabilities. He has opposed common-sense gun safety measures designed to enhance public safety. For these reasons, Alliance for Justice strongly opposes his confirmation to a lifetime seat on the federal bench.

ENDNOTES

- 1 Andrew Oldham, Speaker, “Article V and a Convention of States,” Federalist Society, University of Chicago Student Chapter, Recording at 54:16, available at <https://www.law.uchicago.edu/recordings/andy-oldham-texas-plan-amending-constitution-and-restoring-rule-law> (May 9, 2016).
- 2 *Id.* at 57:30
- 3 *Id.* at 6:10
- 4 *Id.* at 10:25
- 5 Sen. Comm. on the Judiciary, 115th Cong., Andrew Stephen Oldham Questionnaire for Judicial Nominees, 1-2, available at <https://afj.org/wp-content/uploads/2018/04/Andrew-S.-Oldham-Senate-Questionnaire-PUBLIC-OCR.pdf>.
- 6 Andrew Oldham, Speaker, “The Office of the Solicitor General: Advocacy for Protecting the People,” Blackstone Legal Fellowship, Washington D.C. (Aug. 2, 2016).
- 7 *Jennings v. Stephens*, 135 S. Ct. 793 (2015); *Trevino v. Thaler*, 569 U.S. 413 (2013).
- 8 Sen. Comm. on the Judiciary, 115th Cong., Andrew Stephen Oldham Questionnaire for Judicial Nominees, 28.
- 9 *Id.* at 1.
- 10 *Id.* at 5.
- 11 *Id.* at 7-11.
- 12 *Id.*
- 13 Andrew Oldham, Speaker, “Article V and a Convention of States,” Federalist Society, University of Chicago Student Chapter, Recording at 54:16, available at <https://www.law.uchicago.edu/recordings/andy-oldham-texas-plan-amending-constitution-and-restoring-rule-law> (May 9, 2016).
- 14 *Id.* at 13:16.
- 15 *Id.* at 57:30.
- 16 Brief for the State Petitioners at 2, *Utility Air Regulatory Group v. EPA*, No. 12-1146 (Dec. 9, 2013), available at <https://www.kattenlaw.com/files/upload/Broome/Merits-Brief-Texas-et-al.pdf>.
- 17 *Id.* at 4.
- 18 *Id.* at 10.
- 19 *Id.* at 24.
- 20 Andrew Oldham, Speaker, “Time for a Convention of States,” Texas Public Policy Foundation, Recording at 19:25, available at <https://www.youtube.com/watch?v=H4R-ErCNafC&feature=youtu.be> (Jan. 12, 2017).
- 21 Andrew Oldham, Speaker, “Article V and a Convention of States,” Federalist Society, University of Chicago Student Chapter, Recording at 6:10, 10:25, available at <https://www.law.uchicago.edu/recordings/andy-oldham-texas-plan-amending-constitution-and-restoring-rule-law> (May 9, 2016).
- 22 Andrew Oldham, Testimony, Hearing before the Texas House Select Committee on State & Federal Power & Responsibility, Recording at 2:10:29, available at http://tlchouse.granicus.com/MediaPlayer.php?view%20_id=3%207%20&clip%20id=%2012213 (Sept. 13, 2016).
- 23 Andrew Oldham, Speaker, “Time for a Convention of States,” Texas Public Policy Foundation, Recording at 21:40, available at <https://www.youtube.com/watch?v=H4R-ErCNafC&feature=youtu.be> (Jan.12, 2017).
- 24 *William Groth v. Mike Pence*, No. 49A04-1605-PL-1116 at *7 (Ind. Ct. App. Jan. 9, 2017), available at <https://www.in.gov/judiciary/opinions/pdf/01091701ewn.pdf>.
- 25 Andrew Oldham, Speaker, “SCOTUS Roundup Panel,” Federalist Society, University of Texas Student Chapter, Recording at 53:00, available at <https://www.youtube.com/watch?v=lgOyrAF-XUE> (Sept. 8, 2016).
- 26 Complaint for Declaratory and Injunctive Relief at 18-19, *Texas, et al. v. U.S., et al.*, 1:14-cv-00254 (Dec. 3, 2014), available at <https://www.afj.org/wp-content/uploads/2018/04/Texas-v.-U.S.-14-cv-00254-SDTX-COMPLAINT.pdf>.
- 27 *Id.* at 9, 11.

- 28 *Id* at 27-28.
- 29 Sen. Comm. on the Judiciary, 115th Cong., Andrew Stephen Oldham Questionnaire for Judicial Nominees, 19.
- 30 Andrew Oldham, Speaker, "SCOTUS Roundup Panel," Federalist Society, University of Texas Student Chapter, Recording at 54:00, available at <https://www.youtube.com/watch?v=lgOyrAF-XUE> (Sept. 8, 2016).
- 31 Memorandum on Rescission Of Deferred Action for Childhood Arrivals (DACA), DEP'T OF HOMELAND SEC. (Sept. 5, 2017), available at <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.
- 32 *Id*.
- 33 First Amended Complaint for Declaratory and Injunctive Relief at 14, *Texas v. EEOC*, No. 5:13-cv-00255 (N.D. Tex. Mar. 18, 2014), available at <https://www.afj.org/wp-content/uploads/2018/04/Texas-v.-EEOC-13-cv-00255-NDTX-Texas-Amended-Complaint-Oldham.pdf>.
- 34 Amici Curiae Brief at 1-2, *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013), No. 12-96, https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-96_pet_amcu_texas.authcheckdam.pdf.
- 35 *Id*. at 2.
- 36 *Texas Dept. of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2525 (2015).
- 37 *Whole Woman's Health*, 136 S. Ct. at 2319.
- 38 Andrew Oldham, Speaker, "Panel: SCOTUS Roundup," Federalist Society, University of Texas Student Chapter, Austin, Texas. Recording at 20:15 available at <https://www.youtube.com/watch?v=lgOyrAF-XUE> (Sept. 8, 2016).
- 39 Appellant's Brief at 53, *Planned Parenthood Association of Hidalgo County Texas, Incorporated v. Suehs*, 692 F.3d 343 (5th Cir. 2012) (No. 12-50377) available at <https://afj.org/wp-content/uploads/2018/04/PP-of-Hidalgo-County-v.-Suehs-appellant-brief-5th-Circuit.pdf>.
- 40 Sen. Comm. on the Judiciary, 115th Cong., Andrew Stephen Oldham Questionnaire for Judicial Nominees, 5.
- 41 Amici Curiae Brief at 2, *Peruta v. County of San Diego*, 742 F.3d 1144 (9th Cir. 2014) (No. 10-56971), available at http://michellawyers.com/wp-content/uploads/2010/11/Peruta_Amici-Curiae-Brief-for-the-Governors-of-Texas-Louisiana-Maine-Mississippi-Oklahoma-and-South-Dakota-in-Support-of-Plaintiffs-Appellants.pdf.
- 42 *Id*. at 9-10.
- 43 Andrew Oldham, Speaker, "Irrational Basis: The Scrutiny Only Applicable to Gun Law," Federalist Society, University of Chicago Student Chapter, Chicago, Illinois (Oct. 17, 2016); Andrew Oldham, Speaker, "Irrational Basis: The Scrutiny Only Applicable to Gun Law," Federalist Society, Fort Worth Lawyers Chapter, Fort Worth, Texas (Oct. 6, 2016).
- 44 Andrew Oldham, Speaker, "Panel: SCOTUS Roundup," Federalist Society, University of Texas Student Chapter, Austin, Texas, Recording at 50:20, available at <https://www.youtube.com/watch?v=lgOyrAF-XUE> (Sept. 8, 2016).
- 45 Brief of Texas, et al. at 26, *Hotze v. Sebelius*, No. 14-20039 (May 15, 2014), available at https://www.afj.org/wp-content/uploads/2018/04/14-20039_Amicus-Brief.pdf.
- 46 Andrew Oldham, *Sherman's March Into the Sea*, 74 TENN. L. REV. 319, 379, 325 (2007), available at <https://www.afj.org/wp-content/uploads/2018/04/Oldham-Shermans-March-Into-the-Sea.pdf>.