AFJ NOMINEE REPORT

DANIEL COLLINS

U.S. Court of Appeals for the Ninth Circuit

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INTRODUCTION

On November 13, 2018, President Trump nominated Daniel P. Collins to the Ninth Circuit Court of Appeals for the seat previously held by Judge Harry Pregerson. The Senate did not act on Collins's nomination before the end of the Congress, and on January 3, 2019, Collins's nomination was returned to the President. On February 6, 2019, President Trump renominated Collins.

Collins's record offers no evidence that if he is elevated to the federal bench, he could act as a fair-minded and neutral arbiter. His record shows that he has fought to undermine civil liberties, weaken women's reproductive rights, and criticized important Supreme Court decisions necessary for a just criminal justice system. Moreover, he has carved out a career as the go-to lawyer for a host of entities accused of discrimination, egregious human rights violations, and endangering the health and safety of persons in the U.S. and abroad.

Collins's nomination to the Ninth Circuit also comes in the wake of President Trump's repeated attacks on the independence of the circuit, and his stated desire to obtain different rulings (see our report on fellow Ninth Circuit Trump nominee Kenneth Lee for more information). It is clear that Trump brings an agenda to any nomination he makes to the circuit: the selection of a reliable ideologue. Therefore, the White House has pointedly avoided meaningful consultation with either of Collins's home-state senators, Dianne Feinstein and Kamala Harris – and neither senator has returned her blue slip on his nomination. Moreover, both senators have criticized Collins's record. As Senator Feinstein wrote, "I repeatedly told the White House I wanted to reach an agreement on a package of 9th Circuit nominees, but…the White House moved forward without consulting me, picking controversial candidates from its initial list."

Senators Feinstein and Harris have voiced significant concerns about Collins's ability to serve as a neutral arbiter. They noted in a January 2018 statement that:

> [We] also told the White House that we could not support Daniel Collins because concerns about **his temperament and rigidity** were raised during his vetting. In particular, we were told that Mr. Collins has a history of taking strong litigation positions for no reason other than **attempting to overturn precedent and push legal boundaries**. This should be a concern to all senators—it should

> not be a partisan issue. Consistency and stability are vital in the law [emphasis added].

Once again, it is clear that the White House is seeking extreme partisans and ultraconservatives for Ninth Circuit seats, and Collins's record strongly suggests that he meets those requirements.

AFJ strongly opposes his nomination.

BIOGRAPHY

Collins, currently a partner at Munger, Tolles & Olson LLP, earned his A.B. from Harvard College in 1985 and J.D. from Stanford Law School in 1988. He was a law clerk to Judge Dorothy W. Nelson on the Ninth Circuit from 1988–1989 and then clerked for Justice Antonin Scalia on the Supreme Court from 1991–1992. Between clerkships, he worked as an attorney advisor in the Department of Justice Office of Legal Counsel. From 1992–1996 he served as an assistant United States attorney in the Central District of California, followed by working as associate deputy attorney general at the United States Department of Justice from 2001–2003.[1]

As associate deputy attorney general, Collins coordinated several major legislative policy initiatives, but one stands out: his contribution to what ultimately became the Bush Administration's U.S. attorneys firing scandal. Collins designed the effort to give "the [Bush] administration unprecedented powers to replace ousted U.S. Attorneys." Previously, if a new U.S. attorney had not been confirmed by the Senate within 120 days, the district court could appoint an interim U.S. attorney. Collins proposed, however, to allow the attorney general to appoint interim federal prosecutors *indefinitely*, without Senate confirmation.

Ultimately, the Department of Justice's Assistant Attorney General for Legislative Affairs, William Moschella, working with Senate Judiciary Committee staffer Brett Tolman, "slipped" the "Daniel Collins Special" (as Moschella titled an e-mail on the provision), into the 2006 USA PATRIOT Act reauthorization.[2] The new "secretly passed" language allowed the attorney general to appoint interim U.S. attorneys for the remainder of President Bush's term without Senate confirmation.[3]

Senator Arlen Specter noted that the evidence suggested there was "a calculation" on the part of Justice Department officials "to utilize this new provision to avoid confirmation by the Senate and to avoid scrutiny by the Senate and to avoid having Senators participate in the selection of

replacement U.S. Attorneys."[4] In fact, Kyle Sampson, then-chief of staff to Attorney General Alberto Gonzales, sent an e-mail to a White House lawyer about using Collins's provision to replace the existing U.S. attorney from Arkansas with Timothy Griffin, a former Bush campaign operative and protégé of Karl Rove. Sampson wondered in the e-mail whether Griffin's was the best case in which to "test drive" this authority, asking at the same time "if we don't ever exercise it then what's the point of having it?" Sampson admitted before the Senate Judiciary Committee that he proposed to "run out the clock" and "never have these replacement U.S. Attorneys submitted to the Senate for confirmation."[5]

After Collins's change was enacted, seven U.S. Attorneys were fired. As Senator Feinstein noted:

> For over 150 years, the process of appointing interim U.S. Attorneys has worked well, with virtually no problems. Now, just 1 year after receiving unchecked authority in a little known section added to the Patriot Act last spring, the administration has significantly abused its discretion.[6]

After investigations by the House, Senate and Department of Justice, the Senate Judiciary Committee wrote the evidence indicated "grave threats to the independence of law enforcement from political manipulation."[7] The Committee emphasized that:

> The evidence shows that senior officials were focused on the political impact of Federal prosecutions and whether Federal prosecutors were doing enough to bring partisan voter fraud and corruption cases. It is now apparent that the reasons given for these firings, including those reasons provided in sworn testimony by the Attorney General and Deputy Attorney General, were contrived as part of a cover-up.[8]

Collins, in press reports, said his intent in pushing for the provision was to address separation-of-powers issues and concerns about judges having the power to name interim U.S. attorneys. As Senator Charles Schumer noted, however, "[t]he evidence we've gotten seems to indicate the Patriot Act wasn't changed for the purposes that they first announced . . . but rather to make it easier to get rid of U.S. attorneys and appoint their own people without Senate confirmation."

Like most Trump judicial nominees, Collins is a member of the Federalist Society, an outside group to which Trump has delegated important

aspects of the judicial nomination process. He joined in 1995 and has been a member since then.[9]

EXECUTIVE POWER AND CIVIL LIBERTIES

Throughout his career, Collins has demonstrated troubling views on executive power and civil liberties. This raises serious doubts as to whether he will be an independent check on the President, particularly in the national security realm.

I. PATRIOT ACT, SURVEILLANCE, AND PRIVACY

While serving as associate deputy attorney general during the George W. Bush Administration, Collins was actively involved in drafting portions of, implementing, and defending the Patriot Act. Notably, Collins supported two of the most controversial sections of the Patriot Act: Section 215 (the "bulk collection" provision which the office of Senator Mike Lee said allowed the "government's dragnet collection of Americans' data") and Section 213 (known as the "sneak and peek" provision, which "authorizes delayed notice of criminal search warrants," expanding the ability to search private property without notice to an owner).

Collins supported Section 215, stating it is "designed to ensure that a tool available to assist law enforcement in ordinary criminal investigations will have an appropriate counterpart in foreign intelligence investigations."[10] Collins also defended Section 213, testifying that the provision "codifies long-standing authority to delay notification of the execution of a warrant . . . with proper safeguards."[11]

The Justice Department named Collins as the "Privacy Czar" in 2002. His appointment raised many concerns, as Collins had previously been "a key player in drafting the language in [the Patriot Act] that dictates how law enforcement can use the software program, known as Carnivore, that can reveal where an e-mail has been sent, its header, and contents."

The ACLU described the Carnivore program as being "roughly equivalent to a wiretap capable of accessing the contents of the conversations of all of the phone company's customers, with the 'assurance' that the FBI will record only conversations of the specified target." They explained:

> [U]nlike the operation of a traditional a [sic] pen register, trap and trace device, or wiretap of a

conventional phone line, Carnivore gives the FBI access to all traffic over the ISP's network, not just the communications to or from a particular target. Carnivore, which is capable of analyzing millions of messages per second, purportedly retains only the messages of the specified target, although this process takes place without scrutiny of either the ISP or a court.

II. *HAMDAN V. RUMSFELD*

Collins filed an amicus brief on behalf of Citizens for Common Defence in support of the government in *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006). *Hamdan* involved the question of what kind of legal process that detainees at Guantanamo Bay were due: whether a military tribunal at Guantanamo that omitted certain protections was sufficient process for a prisoner under U.S. and international law. The Supreme Court held that the military tribunal at issue provided insufficient process, and therefore was illegal.

In its brief, the organization describes itself as "an association that advocates a conception of robust Executive Branch authority to meet the national security threats that confront the nation in its war against international terrorists." The group emphasizes that "vigorous Executive power necessary to defend our nation against foreign enemies was seen by the Framers as a vital precondition to securing those blessings and an integral part of the same libertarian enterprise."[12]

Members of Citizens for the Common Defense include Robert Bork, John Yoo, Steven Bradbury, Bradford Berenson, and Kris Kobach.

Moreover, when commenting on the *Hamdan* case, Collins opposed extending protections outlined by the Geneva Conventions to combatants whose affiliated groups did not sign on to international human rights treaties (such as the Taliban and al Qaeda). He argued that recognizing such rights would be fruitless as "[i]t would discourage combatants from complying with the laws of war if they could claim its protections without having to obey its obligation." As the Supreme Court ruled in *Hamdan*, non-state actors are entitled to protections of the Geneva Conventions, specifically Common Article 3. Collins, in contrast, opposed extending these basic protections.

WOMEN'S RIGHTS

I. HEALTH CARE

Collins fought to make it harder for women to obtain contraceptives, filing an amicus brief in *Burwell v. Hobby Lobby, Inc.*, 134 S. Ct. 2751 (2014), arguing that corporations could deny contraceptive coverage as part of employer-sponsored health insurance plans. He filed this brief on behalf of the Ethics and Public Policy Center.

Collins also authored an amicus brief on behalf of the Ethics and Public Policy Center in *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), supporting religious nonprofits' challenges to the Affordable Care Act's contraceptive mandate. In the brief, Collins argued that "provid[ing] seamless coverage of contraceptive services for women" and "provid[ing] cost-free contraceptive coverage" are not "compelling governmental interests."[13]

In *Greater Balt. Ctr. for Pregnancy Concerns v. Mayor of Balt.*, 879 F.3d 101 (4th Cir. 2018), Collins filed an amicus brief challenging a Baltimore City ordinance that required pregnancy clinics that do not offer or provide referrals for abortion care to post disclosure signs in their waiting areas. The ordinance was an attempt to reduce the deceptive practices employed by fake women's health centers, but was struck down as violative of the First Amendment.[14]

II. VIOLENCE AGAINST WOMEN

Collins argued in defense of Internet Brands, Inc. against negligence claims after a woman utilizing Internet Brands' model networking website was lured into a fake audition and sexually assaulted. The corporation allegedly knew about the rapists' use of the website but did not warn users.[15]

CRIMINAL JUSTICE

In his academic writings and legal advocacy, Collins has promoted policy positions and argued for legal outcomes that would increase mass incarceration and disproportionately impact people of color in the criminal justice system.

I. CRIMINAL SENTENCING

While working in the Office of the Deputy Attorney General, Collins defended Attorney General John Ashcroft's controversial policy that undermined prosecutorial discretion.

The policy required prosecutors to pursue the maximum charges and sentences against criminal defendants and minimized the ability of local U.S. attorneys to offer plea bargains for lesser sentences.

II. MIRANDA RIGHTS

Collins has advocated for eliminating Miranda warnings, which require police to give certain warnings before interrogating a suspect. In *Dickerson v. United States*, 530 U.S. 428 (2000), Collins submitted an amicus brief arguing that Congress had the ability to reverse the Supreme Court's decision in *Miranda*: "there is simply no basis for concluding that an unyielding, inflexible exclusionary rule is an indispensable element of a constitutionally adequate prophylactic regime."[16] The Supreme Court disagreed, in an opinion by Chief Justice William Rehnquist, holding that Miranda announced a constitutional rule that cannot be overruled by Congress.

With regard to *Miranda*, Collins also wrote a book review, entitled "Farewell *Miranda?*," that reveals Collins's own skepticism toward the constitutional requirement. While critiquing one of the author's points, Collins explained, "[i]f the price of correcting ***Miranda***'s **error** is accepting an even greater and more harmful one, then that price is too high" [emphasis added].[17] His review suggests he agrees with the book's argument for overruling *Miranda*.

IIII. JURY SELECTION

Collins expressed dissatisfaction with attempts to diversify jury pools. In an article entitled "Making Juries Better Factfinders," Collins questioned the wisdom of *Batson v. Kentucky*, 476 U.S. 79 (1986), a seminal decision that ruled prosecutors cannot dismiss jurors (using peremptory challenges) based solely on their race. He wrote:

> A further structural issue concerns the use of peremptory challenges. I have come reluctantly, but firmly, to the view that they should be all but abolished; each side should be permitted only one or two peremptories at most. *Batson v. Kentucky* and its progeny have created so much satellite litigation about peremptories that I no longer think the option is worth retaining. Criminal defendants routinely object to almost every strike of a juror who is a member of a racial minority, regardless of *Batson*'s requirement of a prima facie showing. Judges all too often incorrectly sustain these challenges. . .there is an enormous practical incentive to rule against

> the government on these sorts of questions.[18]

In essence, Collins argued that *Batson* and its progeny unnecessarily complicated the jury selection process. His analysis further ignored that racial discrimination is still a significant problem in the jury selection process, and he fails to affirm the principle that juries must be selected without undue bias or discrimination.

IV. POLICE ACCOUNTABILITY

Collins submitted an amicus brief in *Los Angeles v. Mendez*, 137 S.Ct. 1539 (2017), arguing that police officers who shot a couple, leading to amputation of one person's leg, should not be held liable for excessive force. Searching for a felon, two deputy sheriffs had entered a shack inhabited by the Mendezes without a search warrant or announcing their presence. Angel Mendez stood and moved his BB gun when he heard someone entering. Upon seeing the BB gun in Mendez's hand, the deputies opened fire, firing a total of 15 rounds.

Despite the police officers' violation of the Fourth Amendment, Collins argued they should not be held personally liable for severely injuring the Mendezes. Arguing for the injured couple, the NAACP wrote, "[p]eople of color will be among those to most acutely feel the effect of any decision that retreats from the Court's traditional totality of circumstances analysis, particularly in the context of facts like these."[19] Ultimately, the Supreme Court issued a narrow ruling in favor of the officers.

Collins also authored an amicus brief in *Chicago v. Morales*, 527 U.S. 41 (1999), defending the city of Chicago's wide-ranging loitering ordinance. The ordinance purportedly targeted street gangs, but in effect offered a free pass to Chicago police to conduct "street sweeps," which led to 45,000 arrests. Those arrested were mostly African-American and Hispanic, and were not gang members. The Supreme Court struck down the ordinance as unconstitutionally vague.

LENDING DISCRIMINATION

Collins is defending Wells Fargo's racially discriminatory lending practices, which allegedly led to high rates of foreclosures for families of color as well as deepened racial segregation within the city.

The city of Oakland is suing Wells Fargo for engaging in what is called modern-day redlining. Banks' racially discriminatory lending practices have not only increased housing segregation and divested wealth from communities of color, they have also entrenched

generational poverty. Joining the city of Oakland as amici in the suit are civil rights groups such as the National Fair Housing Alliance, the Lawyers' Committee for Civil Rights Under Law, and the Poverty & Race Research Action Council.

The suit is currently pending in the Northern District of California. In *City of Oakland v. Wells Fargo Bank*, 2018 U.S. Dist. LEXIS 100915 (N.D. Cal. 2018), the court denied Collins's argument for dismissal of the city of Oakland's lawsuit.

HUMAN RIGHTS

Collins's record demonstrates his hostility to the protection of human rights.

The Alien Tort Statute (ATS) provides jurisdiction in U.S. courts for foreign nationals in "all causes where an alien sues for a tort only in violation of the law of nation or of a treaty of the United States." A lawsuit brought under ATS "can proceed for any harm resulting from a violation of international law, no matter where the harm occurred, or who inflicted the harm, as long as the plaintiff serves process in U.S. Territory."

Collins has repeatedly defended the interests of corporations that were sued under the ATS for alleged human rights violations. For example, Collins defended food producer Archer Daniels Midland in *John Doe I, et al. v. Nestle USA, et al.*, 766 F.3d 1013 (9th Cir. 2014). The case involved victims of child slavery who alleged that the defendant corporations were responsible for aiding and abetting child slavery on cocoa farms in Ivory Coast. The Ninth Circuit took notice of the widespread documentation of human rights abuses and child slavery in Ivory Coast, and how child slaves like the plaintiffs "were forced to work on Ivorian cocoa plantations for up to fourteen hours per day six days a week, given only scraps of food to eat, and whipped and beaten by overseers."[20]

The Ninth Circuit explained how defendants, as the corporations "largely in charge of the work of buying and selling cocoa," and as importers of "most of the Ivory Coast's cocoa harvest into the United states," were "well aware of the child slavery problem in the Ivory Coast."[21] Moreover, the court noted how the companies controlled most of the cocoa exports in the country and "acquired this knowledge [of child slavery] firsthand through their numerous visits to Ivorian farms" and through "many reports issued by domestic and international

organizations." Further, the court explained how:

> Despite their knowledge of child slavery and their control over the cocoa market, the defendants operate in the Ivory Coast "with the unilateral goal of finding the cheapest sources of cocoa." The defendants continue to supply money, equipment, and training to Ivorian farmers, knowing that these provisions will facilitate the use of forced child labor. The defendants have also lobbied against congressional efforts to curb the use of child slave labor.[22]

In his petition to the Supreme Court, Collins argued against the Ninth Circuit's conclusion that the complaint was proper.[23] The court found "the complaint allege[d] that the defendants obtained a direct benefit from the commission of the violation of international law, which bolsters the allegation that defendants acted with the purpose to support child slavery."[24] In response Collins argued "[t]he Ninth Circuit panel majority pointed to *no* allegation here of an unlawful purpose on petitioners' part [emphasis in original]." He also called the majority's finding a "**faulty conclusion**" [emphasis added], claiming it meant the "standard is satisfied whenever a defendant acts with the purpose of maximizing profit – here, seeking to purchase inexpensive cocoa – coupled with the knowledge that third parties **may be engaged in human-rights violations that might contribute to achieving the profit-maximizing goal**" [emphasis added].[25]

In the year before *John Doe I*, Collins wrote an amicus brief on behalf of former State Department legal advisors and in support of the corporate defendants in *Kiobel v. Royal Dutch Petroleum Co. et al.*, 133 S. Ct. 1659 (2013). Petitioners alleged that, in violation of the ATS, "certain Dutch, British, and Nigerian corporations. . .aided and abetted the Nigerian Government in committing violations of the law of nations in Nigeria."[26] The alleged violations included claims that – following residents' complaints of the effects of pesticides being used by the parent company – "respondents enlisted the Nigerian Government to violently suppress the burgeoning demonstrations." These reprisals included "Nigerian military and police forces attack[ing] [] villages, beating, raping, killing, and arresting residents and destroying or looting property."[27]

Collins argued that the Supreme Court should categorically deny this case due to its occurrence outside of the United States, and thereby "decline the United States' suggestion

that such issues be decided on a case-by-case basis."[28]

Similarly, in *Mujica v. AirScan Inc.*, 771 F.3d 580 (9th Cir. 2014), Collins represented an American oil company, Occidental Petroleum, against a claim brought under ATS and the Torture Victim Protection Act (TVPA). Occidental and another oil company were being sued by Colombian villagers for the corporations' complicity in a 1998 bombing of their village by members of the Colombian Airforce (CAF). The district court found that "[d]efendants worked with the Colombian military, providing them with financial and other assistance, for the purpose of furthering Defendant Occidental's commercial interests." Occidental's assistance included supplying a room in its facilities to CAF to plan a raid on Santo Domingo "for the purpose of providing security for Defendant Occidental (i.e. protecting its oil pipeline)."[29] Equipment and personnel, including a plane used in the attack, were paid for by Occidental.

The bombing raid resulted in CAF dropping cluster bombs on civilians in the village – civilians who had covered their heads with white shirts to signal to the overhead planes that they were not combatants. Further, after the attack, "CAF troops entered the town, blocked civilians from leaving, and ransacked their homes." In total, 25 civilians were injured and 17 were killed. Six of the dead were children. After failing to find justice in Colombian courts, plaintiffs brought their claim against the American companies in a U.S. court.[30]

Collins defended Occidental. He diminished the complicity of the oil company in the bombing, claiming "[t]he only two specific acts by Occidental that allegedly contributed to the raid were Occidental's alleged provision of office space to the CAF and of an airplane that was used by AirScan" and noting "[t]he complaint does not allege that any Occidental personnel were present during the planning or execution of the raid."[31]

The court held for the oil companies based on international comity and political question doctrine concerns. Foreign Policy summed up the court's holding by explaining how "even though the plaintiffs allege that Occidental helped fund and plan the Colombian military raid that killed more than a dozen people, the company won't be punished in U.S. courts because the conspiracy didn't take place in the United States." In the end, the Colombian villagers were left without justice for their injuries and their murdered family members.

In addition, Collins defended corporate defendant Jeppesen Dataplan, Inc. in *Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070 (9th Cir. 2010). The case involved the Central Intelligence Agency's (CIA) Extraordinary Rendition Program, where plaintiffs contended that the CIA:

> working in concert with other government agencies and officials of foreign governments, operated an extraordinary rendition program to gather intelligence by apprehending foreign nationals suspected of involvement in terrorist activities and transferring them in secret to foreign countries for detention and interrogation by the United States or foreign officials.[32]

Plaintiffs argued "that publicly available information" showed how the defendant corporation "provided flight planning and logistical support services to the aircraft and crew on all of the flights transporting each of the five plaintiffs among the various locations where they were detained and allegedly subject to torture."[33] The alleged human rights abuses included abduction, forced disappearances, detention without due process, and torture. Plaintiffs alleged that they were "severely and repeatedly beaten," kept without food or water, exposed to loud and continuous noises, deprived of sleep, and brutally tortured by barbaric methods (such as inflicting electric shock on sensitive body parts and cutting the detainees' skin followed by pouring hot liquids on the wounds).[34]

The court eventually dismissed the claim based on a state secrets doctrine.

Collins, in his defense of Jeppesen, argued that the company's "only purported connection to the claimed abuse is the allegation that, from its San Jose, California office, Jeppesen remotely provided commercial flight planning services (such as procuring landing rights and filing flight plans) for the particular overseas flights on which Plaintiffs were allegedly transported."[35] He argued that plaintiffs' claim amounted to only a "highly tenuous nature of Jeppesen's alleged connection."[36]

This "highly tenuous" connection included how, based on publicly available documents, "'Jeppesen played an integral role in the forced' abductions and detentions and 'provided direct and substantial services to the United States for its so-called 'extraordinary rendition program.'" [37]

Collins also fought a claim brought by Holocaust survivors against the

Vatican Bank and others, _Alperin v. Vatican Bank_, 410 F.3d 532 (2005). The survivors claimed that, during the Holocaust, the Vatican Bank and its local affiliates "profited from the genocidal acts of the Croatian Ustasha political regime . . . which was supported throughout World War II by Nazi forces." Moreover, the survivors alleged that the profits "passed through the Vatican Bank in the form of proceeds from looted assets and slave labor." The claim sought damages under theories of "conversion, unjust enrichment, restitution, the right to an accounting, and human rights violations and violations of international law."[38]

CLIMATE

Collins's record shows that he defends the interests of big oil and energy companies at the expense of the deteriorating climate and Americans' well-being.

For example, as recently as 2018, Collins defended Royal Dutch Shell (Shell) in a global warming case brought by the City of Oakland in _City of Oakland v. BP P.L.C._, 2018 U.S. Dist. LEXIS 126258 (N.D. Cal. 2018). The city sued four of the five largest oil corporations, including Shell, for their contributions to global emissions. The court noted how:

> Defendants have allegedly long known the threat fossil fuels pose to the global climate. Nonetheless, defendants continued to produce fossil fuels in large amounts while engaging in widespread advertising and communications campaigns meant to promote the sale of such fossil fuels. These campaigns portrayed fossil fuels as environmentally responsible and essential to human well-being. These campaigns also downplayed the risks of global warming by emphasizing the uncertainties of climate science or attacking the credibility of climate scientists.[39]

Moreover, data used in the case showed that the five largest oil companies account for 11% of all global emissions, and that Shell is individually responsible for 2.12% of all global emissions. The court eventually dismissed the claims on personal jurisdiction grounds.[40]

Collins also defended Shell in a 2012 case brought by victims of Hurricane Katrina, _Comer v. Murphy Oil USA, Inc._, 839 F. Supp. 2d 849 (S.D. Miss. 2012).

In another 2012 case, Collins defended Shell in a suit brought by a Native Alaskan village, _Native Vill. of Kivalina v. ExxonMobil Corp._, 696 F.3d 849 (9th Cir. 2012). The village sued several leading oil and energy corporations,

alleging that their contributions to global warming amounted to a public nuisance that was threatening the village's very existence. The court warned that "[i]f the village is not relocated, it may soon cease to exist."[41]

The court dismissed the action, stating the Clean Air Act displaced federal common law claims for public nuisance. However, the court sympathetically stated that their "conclusion obviously does not aid Kivalina, which itself is being displaced by the rising sea. But the solution to Kivalina's dire circumstance must rest in the hands of the legislative and executive branches of our government, not the federal common law."[42]

BIG TOBACCO

As an attorney for Big Tobacco, Collins fought health protections for consumers and helped tobacco companies avoid liability for injuries inflicted on victims of fraudulent advertising.

Collins dedicated much of his career to fighting tobacco advertising restrictions—even restrictions aimed at reducing advertisement campaigns' targeting of minors. In *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525 (2001), Collins helped write the cigarette manufacturers' brief, arguing that the Massachusetts regulations aiming to prevent the exposure of children to tobacco advertising were "unabashedly censorial."[43]

Utilizing the precedent set by this case, Collins successfully defended the tobacco company Philip Morris against a class action lawsuit alleging that the company directed marketing studies to determine how best to induce children to begin smoking.[44] The lawsuit also alleged Philip Morris targeted children in advertising, campaigning near schools and playgrounds.[45]

Collins also sought a preliminary injunction to prevent the City of San Francisco from enforcing an ordinance banning the sale of tobacco products in many stores. His preliminary injunction was denied and the Ninth Circuit affirmed.

In the 1990s, Collins successfully prevented union trust funds from receiving monetary damages from tobacco companies to assist in paying for union workers' tobacco-induced health problems. He achieved a dismissal in *Hawaii Health and Welfare Trust Fund v. Philip Morris*, 52 F. Supp. 2d 1196 (D. Ha. 1999), insulating the tobacco industry from liability in this case. In similar suits in

California and across the country, he continued to protect tobacco companies at the expense of people who had been misled as to the health effects of smoking.

CONCLUSION

President Trump's own words and actions make it abundantly clear that he is eager to bring about a dramatic change in the makeup of the Ninth Circuit. His selection of Daniel Collins for a seat on the court indicates that the President and his advisors have high confidence that Collins would be a reliably right-wing vote on the court – and his record confirms that.

Throughout his career, Daniel Collins has shown his dedication to defending the interests of the wealthy and powerful at the expense of all Americans. He has been involved in eroding constitutional rights. He has supported racially-biased practices in the criminal justice system and in lending. He has worked to strip women of their right to essential reproductive health care. He has represented big oil and tobacco corporations at the expense of the health of Americans and the climate. He has also defended atrocious human rights abuses committed by powerful corporations.

Finally, Collins's nomination is being forced to proceed over the strong objections of his two home-state senators. Based on these factors, we believe Daniel Collins would bring a partisan agenda to the court at the expense of litigants who would come before him, and that his nomination represents yet another agenda-driven and cynical end-run around the normal nomination process.

For these reasons, AFJ strongly opposes his confirmation.

ENDNOTES

1 Senn. Comm. on the Judiciary, 116th Cong., Daniel P. Collins Questionnaire for Judicial Nominees, at 1-3, available at https://afj.org/wp-content/uploads/2019/03/Daniel-Collins-Senate-Questionnaire-PUBLIC.pdf.
2 Emails, "Dan Collins Special,' at 16, available at https://media.washingtonpost.com/wp-srv/politics/pdf/DAG1990-2062.pdf.
3 United States. Senate Comm. on the Judiciary, *Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?*, 110th Cong., 2007, at 76, available at https://www.govinfo.gov/content/pkg/CHRG-110shrg35800/pdf/CHRG-110shrg35800.pdf.
4 *Id.* at 89.
5 *Id.* at 126.
6 *Id.* at 7.
7 United States. Senate Comm. on the Judiciary, Report 110-522, 110th Cong., 2008, at 2, available at https://www.congress.gov/110/crpt/srpt522/CRPT-110srpt522.pdf.
8 *Id.*
9 Senn. Comm. on the Judiciary, 116th Cong., Daniel P. Collins Questionnaire for Judicial Nominees, at 5, available at https://afj.org/wp-content/uploads/2019/03/Daniel-Collins-Senate-Questionnaire-PUBLIC.pdf.
10 United States Senate Select Committee on Intelligence, *The US Patriot Act of 2001.* 109th Cong., 2005, at 216 (testimony of Daniel P. Collins).
11 United States Senate Select Committee on Intelligence, *The US Patriot Act of 2001.* 109th Cong., 2005, at 406 (written statement of Daniel P. Collins).
12 Amicus Curiae Brief at 1, *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006), available at https://afj.org/wp-content/uploads/2019/03/Hamdan-brief.pdf.
13 Amicus Curiae Brief at 3, *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), available at https://afj.org/wp-content/uploads/2019/03/Burwell-brief.pdf.
14 *Greater Balt. Ctr. for Pregnancy Concerns v. Mayor of Balt.*, 879 F.3d 101, 113 (4th Cir. 2018).
15 *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 847 (2016).
16 *Id.* at 10.
17 Daniel P. Collins, Farewell Miranda?, 1995 Pub. Interest L. Rev. 185, 186 (1993), available at https://afj.org/wp-content/uploads/2019/03/Farewell-Miranda.pdf.
18 Daniel P. Collins, Making Juries Better Factfinders, 20 Harv. T. Law & Pub. Policy 489, 498 (1997), available at https://afj.org/wp-content/uploads/2019/03/MakingJuriesBetterFactfinders.pdf.
19 Amici Curiae Brief at 4, *Los Angeles v. Mendez*, 138 S.Ct. 1539 (2017), http://www.southerncoalition.org/wp-content/uploads/2017/01/LA-Cnty.-v.-Mendez-NAACP-PCLEMI-Amicus-Brief-FINAL.pdf.
20 *John Doe I, et al. v. Nestle USA, et al.*, 766 F.3d 1013, 1017 (9th Cir. 2014).
21 *Id.*
22 *Id.*
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ENDNOTES

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