

AFJ NOMINEE REPORT

CHAD READLER



U.S. Court of Appeals for the Sixth Circuit

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INTRODUCTION

On June 7, 2018, President Trump [announced](#) his intention to [nominate](#) a Justice Department official, Chad Readler, to the Sixth Circuit Court of Appeals. This announcement was particularly striking for one notable reason: on that very day, Readler had become a leader in the Trump Administration's fight to destroy the Affordable Care Act and the protections it offers to millions of Americans. Readler, as acting head of the Civil Division, filed a [brief](#) to strike down the ACA, including its protections for people with preexisting conditions. If Readler and the Trump Justice Department are successful, the ACA's protections for tens of millions of people, including cancer patients, people with diabetes, pregnant women, and many other Americans, would be removed.

Reaction to Readler's assault on the ACA was swift and severe. Lamar Alexander, the Republican Chairman of the Senate Committee on Health, Education, Labor, and Pensions, [called](#) Readler's argument "as far-fetched as any I've ever heard." Three career Justice Department lawyers refused to sign Readler's brief, and a veteran Justice Department lawyer [resigned](#) in protest. An ideologically diverse group of legal scholars [said](#) Readler's arguments "violate[d] basic black-letter principles" of law."

It's important to point out that Judiciary Committee Chairman Chuck Grassley once opposed an Obama nominee because of a brief she filed regarding gun violence, [saying](#) "no one forced [her] to approve and sign this brief." So we note: no one forced Chad Readler to concoct an argument to take health insurance from people with preexisting conditions, including the [millions](#) of Americans who would lose protections in the Sixth Circuit.

Moreover, Readler's action in this context is consistent with his record. Throughout his career, Readler has been an ideological warrior. He [professes](#) that "[m]y day job is being a lawyer, (but) I want to work on cases that do have policy implications."²

As the acting head of the Department of Justice Civil Division under Attorney General Jeff Sessions, Readler defended the Trump Administration's most odious policies, including separating immigrant children from their parents at the border, while [claiming](#) that "[e]verything that the Attorney General does that I've been involved with he's . . . being very respectful of precedent and the text of the statute and proper role of agencies."³

His track record is equally atrocious in other respects. He has tried to undermine public education in Ohio; supported the efforts of Betsy DeVos to protect fraudulent for-profit schools; fought to make it harder for persons of color to vote; advanced the Trump Administration's anti-LGBTQ

and anti-reproductive rights agenda; fought to allow tobacco companies to advertise to children, including outside day care centers; sought to undermine the independence of the Consumer Financial Protection Bureau; and advocated for executing minors.

Chad Readler's record of diehard advocacy for right-wing causes suggests he will be anything but an independent, fair-minded jurist. Alliance for Justice strongly opposes Readler's confirmation.

BIOGRAPHY

Chad Readler [received](#) his B.A. from the University of Michigan in 1994 and his J.D. from the University of Michigan Law School in 1997.⁴ He clerked for Judge Alan E. Norris on the U.S. Court of Appeals for the Sixth Circuit before joining Jones Day. He has been in the Trump Administration since [January 30, 2017](#), serving, until [August 28, 2018](#), as Acting Assistant Attorney General for the Civil Division of the Justice Department; he is [currently](#) the Principal Deputy Assistant Attorney General of the Civil Division. On June 18, 2018, President Trump formally [nominated](#) him to the Sixth Circuit Court of Appeals for the seat of [Judge Deborah Cook](#).

Like many Trump judicial nominees, Readler is a member of the ultraconservative Federalist Society,

an outside group to which Trump has delegated important aspects of the judicial nomination process. He [joined](#) the organization at age [29](#) and was a member until 2017.⁵ Readler has spoken at least [ten times](#) at Federalist Society [events](#) and has contributed at least two articles in Federalist Society [publications](#).⁶ Readler was also a member of two clubs whose memberships are limited to men: the Kit-Kat Club and the Review Club.⁷

HEALTH CARE

In February 2018, a group of Republican attorneys general and governors [filed](#) a lawsuit arguing that the Affordable Care Act (ACA) was unconstitutional. In June, Chad Readler filed a [brief](#) supporting that effort, specifically attacking the law that ensures insurance companies cannot deny coverage or charge higher rates to people with preexisting conditions. Readler's brief argued that the Republican tax bill's elimination of the tax penalty in the ACA caused the individual mandate and the bulk of the Affordable Care Act, including protections for those with preexisting conditions, to suddenly become unconstitutional.

As previously mentioned, Readler's brief was criticized by experts and members of both political parties for its blind partisanship and lack of merit. The potential repercussions of this litigation, for the reputation of the

Justice Department and for the millions of Americans who rely on affordable health coverage, are staggering.

I. READLER'S PARTISAN ATTACK ON THE ACA

If Readler is successful, [insurance companies](#) will be able to hike prices, deny or drop coverage because of preexisting conditions, and charge women more than men. In fact, Readler's efforts would reportedly take health care away from [52 million Americans](#), including cancer survivors, people with diabetes, and pregnant women. The suit also threatens other [popular provisions](#) of the ACA, including the provision that allows children to stay on their parents' insurance until they are 26.

As the American Medical Association and other physicians' groups [made clear](#), a ruling for Readler "would have a devastating impact on doctors, patients, and the American health care system as a whole."⁸ The American Cancer Society, American Diabetes Association, American Heart Association and other leading health groups [said](#) striking down these provisions "would be devastating for the millions of Americans who suffer from serious illnesses or have preexisting conditions and rely on those protections under current law to obtain life-saving health care."⁹ They added, if Chad Readler's position is adopted:

[P]eople with serious illnesses are likely to be denied coverage due to their preexisting conditions or charged such high premiums because of their health status that they will be unable to afford any coverage that may be offered. Without access to comprehensive coverage, patients will be forced to delay, skip, or forego care.¹⁰

II. CRITICISM OF ACA BRIEF

The Constitution requires the executive branch to "take care that the law be faithfully executed." As the [Justice Department](#) has stated, the "Attorney General has a duty to defend and enforce both the Acts of Congress and the Constitution; when there is a conflict between the requirements of the one and the requirements of the other, it is almost always the case that he can best discharge the responsibilities of his office by defending and enforcing Acts of Congress." Attorney General Jeff Sessions [made clear](#) at his confirmation hearing, laws "should be defended vigorously, whether or not the solicitor general agrees with them or not, unless it can't be reasonably defended." As a former DOJ lawyer [said](#), "[t]he Justice Department has a long-standing, durable, bipartisan commitment to defend acts of Congress. It's a cornerstone of what they do."

Chad Readler ignored his duty. In stark contrast to Readler's rank partisanship, three career Justice Department lawyers refused to sign the brief, and a

veteran Justice Department lawyer even [resigned](#) in protest. As former Solicitor General Donald Verrilli said, calling Readler’s brief “[a sad moment](#),” “I find it impossible to believe that the many talented lawyers at the Department could not come up with any arguments to defend the ACA’s insurance market reforms, which have made a difference to millions of Americans.” An ideologically diverse group of legal scholars filed an [amicus brief](#) against Readler, saying the Justice Department was arguing for an “unlawful usurpation of congressional power” that “violate[d] basic black-letter principles” of law. Even Lamar Alexander, the Republican Chairman of the Senate Committee on Health, Education, Labor, and Pensions [called](#) Readler’s [brief](#) “as far-fetched as any I’ve ever heard.”

Belying the argument that the ACA could not be “reasonably defended,” in the absence of the Justice Department defending the law, a [coalition](#) of state attorneys general stepped in to protect Americans’ health insurance, led by California Attorney General Xavier Becerra. Oral arguments were [held](#) on September 5, 2018 in the District Court for the Northern District of Texas.

EDUCATION

I. AGAINST PUBLIC EDUCATION

Readler once [described](#) the legal arguments against school

privatization and charter schools as “at bottom, [] nothing more than outdated preferences for public education.”¹¹ Readler, serving as the Chair of the Education, Public Institutions, Miscellaneous and Local Government Committee of the Ohio Constitutional Modernization Commission,¹² then [pushed](#) to eliminate a provision of Ohio’s Constitution that provides students with the right to a “[thorough and efficient](#)” education. The former president of the Ohio School Boards Association [noted](#) that eliminating this provision of the Ohio Constitution would mean there would be no right to public education in Ohio.

Readler’s proposal would have reversed [DeRolph v. State](#), 78 Ohio St. 3d 193 (1997), a landmark Ohio Supreme Court case that found the state had “failed in its constitutional responsibility to provide a thorough and efficient system of public schools.” *Id.* 202.¹³ William Phillis, executive director of the Ohio Coalition for Equity and Adequacy of School Funding, made clear [that](#) “[t]here are over 1,000 new school buildings in Ohio that wouldn’t be there without [the] ‘thorough and efficient’” provision of the Constitution that Readler fought, but [failed](#), to eliminate. Phillis [added](#), “The ‘thorough and efficient’ standard has held the legislature’s feet to the fire for 160 years. Without a standard, public education could be diminished

markedly and citizens would have no viable recourse via the courts.”

In defending his position, Readler [said](#), “I think education policy is better set by educators and legislators than judges.”¹⁴ He [reportedly added](#): “the legislative and executive branches are best poised to decide education policy and that the check on their actions is re-election, not the courts.”¹⁵

At a time when many Trump judicial nominees [won't affirm](#) the correctness of *Brown v. Board of Education*, when a Trump judicial nominee argued that Title IX is [unconstitutional](#), and when [Jeff Sessions](#) and [Betsy DeVos](#) criticized the Individuals with Disabilities Education Act, it is deeply troubling that Readler is so dismissive of the role of the courts in enforcing bedrock constitutional and statutory protections to ensure equal education.

II. LACK OF ACCOUNTABILITY IN SCHOOL PRIVATIZATION

While trying to gut public education, Readler, who served as [Chair](#) of the Ohio Alliance for Public Charter Schools from 2010 to 2016,¹⁶ also supported school privatization and [fought](#) oversight of Ohio's charter schools, which have long been enmeshed in [corruption](#) and [scandals](#). In fact, Ohio has been [referred](#) to as the “Wild, Wild West” of charter schools because of the system Readler vigorously fought to maintain.

Studies repeatedly show Ohio's charter schools fail students. A [report](#) from the pro-charter National Alliance

for Public Charter Schools said that Ohioans should be “outraged” by the “well-documented, disturbingly low performance” of its charter schools. “If traditional public schools were producing such results, we would rightly be outraged.” [Reportedly](#), “more than 95 percent of local charter schools got grades of a D or F in overall performance towards making kids proficient, according to the latest state report cards.”

When Ohio's attorney general tried to add public scrutiny and accountability to charter schools, Chad Readler fought those efforts. In [Hope Acad. Broadway Campus v. White Hat Mgmt., L.L.C.](#), 46 N.E.3d 665 (Ohio 2015), White Hat, a for-profit school management company, was attempting to take possession of the publicly funded assets of charter schools – schools that White Hat had mismanaged – and then charge the public to [buy them back](#). In an amicus brief supporting White Hat, Readler argued that holding management companies – which received millions of dollars in taxpayer dollars to run schools – accountable as public entities [would](#) “have substantial detrimental effects on the operation of community schools in Ohio.”¹⁷ It bears mentioning that the accountability measures he worried would cause “detrimental effects” included “audits” and “ethics obligations,” hardly unreasonable expectations for institutions charged with the education of children.¹⁸

While the Ohio Supreme Court ruled in favor of White Hat as a matter of contract law, Justice William O’Neill in dissent [called](#) the White Hat-charter school relationship “a fraudulent conversion of public funds into personal profit.”¹⁹ Justice Paul Pfeifer in dissent described the charter school agreement that Readler was defending as too corrupt to be enforceable: “[T]he contracts in this case are plainly and obviously unconscionable.”²⁰

In fact, Readler repeatedly questioned the ability of courts to hold failing charter schools accountable, [arguing](#) that “public policy debates over education should remain on the floor of the General Assembly rather than the courtrooms of the judiciary.”²¹ Indeed, when Ohio Attorney General Marc Dann attempted to hold other charter schools accountable for failing to meet academic benchmarks, [alleging](#) that the schools “violated their charitable status that allows them to receive tax payer money,” Readler [criticized](#) his efforts: “Given the unprecedented nature of the lawsuit where the attorney general is taking an aggressive role in trying to regulate the performance of public schools, I would expect the new attorney general to examine whether this is an action worth continuing.”²²

In keeping with his public statements and his work in the *White Hat* case, Readler has consistently sided against charter school accountability in

litigation. See e.g., [League of Women Voters of Wash. v. State](#), 355 P.3d 1131 (Wash. 2015) (Readler argues for Washington school privatization law that unconstitutionally shifts money from common schools to charter schools without “local control and local accountability”); [State ex rel. Ohio Cong. of Parents & Teachers v. State Bd. of Educ.](#), 111 Ohio St.3d 568 (2006) (Readler advocates for Ohio school privatization law over concerns that the law “effects a schismatic educational program under which an assemblage of divergent and deregulated privately owned and managed community schools competes against public schools for public funds”); [See State ex rel. Rogers v. New Choices Cmty.](#), 2009 Ohio 4608 (Ohio Ct. App. Sept 4, 2009) (Readler argues that a charter school is not subject to oversight by the attorney general as a charitable trust).

In part due to Readler’s efforts, malfeasance in Ohio’s school privatization movement continued. One example is the scandal [involving](#) Electronic Classroom of Tomorrow (ECOT), an online charter school. Ohio spent \$929 million between 2016-2017 funding charter schools. The state’s largest charter school, ECOT, received \$104.3 million of that money. But [reportedly](#) “an audit of the 2015-2016 school year found ECOT was getting money for 9,000 students without proof that those students ever existed or were learning anything.” Another review found [up to 70 percent](#) of

ECOT's students failed to log on for classes so frequently that they could technically be considered truant.

Ohio's auditor [released](#) a report finding that ECOT leaders may have broken the law. In 2018, unable to pay back \$80 million it owed the state, [ECOT closed](#).

Given the poor results and scandals, it is no surprise that in 2016, Readler's organization, "after a decade of shaping the state's charter-school policy" [disbanded](#).

III. PROTECTIONS FOR LGBTQ STUDENTS

Before joining DOJ, in his personal capacity, Readler [proposed](#) language, as chair of Ohio's Constitutional Modernization Commission, that explicitly excluded anti-discrimination protections for LGBTQ youth in Ohio schools. In fact, when the vice chair of the commission pointed out to Readler that his language omitted protections based on both disability and sexual orientation, Readler agreed that protections for persons with disability should be included, but did not do the same for sexual orientation. As recounted in the commission's recorded [minutes](#), "[i]n regards to sexual orientation [Readler] recognized that it was a topic on the minds of many policymakers and that this is an evolving issue that would require some discussion."²³

IV. WORK WITH BETSY DEVOS

Along with U.S. Education Secretary Betsy DeVos, Readler sided with for-profit schools over defrauded students.

Readler [defended](#) DeVos's repeated delay of an Obama-era rule which would have made it easier for students to receive debt relief when they are victims of illegal or deceptive tactics by colleges. In addition to a suit by students, 19 state attorneys general [filed](#) suit challenging the Department of Education's efforts to delay implementation of the regulations.

Readler also [defended DeVos](#) when four borrowers [filed](#) a nationwide class action against DeVos's Department of Education for, according to Harvard Law School's Project on Predatory Student Lending, "illegally and unfairly denying relief to tens of thousands of former [Corinthian Colleges, Inc.] students whom the Department of Education determined are entitled to have their loans discharged and their loan payments refunded." Corinthian, which ultimately declared bankruptcy and had its own debt relieved, [according](#) to Harvard's Project, "took in billions in taxpayer money and used boiler-room-style high-pressure tactics and racially-targeted advertising to build its business, all while producing outcomes for students so terrible that it had to lie about them."

And Readler [defended](#) DeVos when 18 state attorneys general [sued](#) the Department of Education for failing to enforce the Gainful Employment Rule, which implemented the requirement in the Higher Education Act that all for-profit schools “prepare students for gainful employment in a recognized occupation.” The current version of the rule had been upheld by courts after challenges from the for-profit college sector.

VOTING RIGHTS

Readler, at Jones Day, [worked](#) for Donald Trump’s campaign during the 2016 election, [defending](#) the campaign from allegations of [voter intimidation](#). Readler also served as an [attorney](#) for the [Koch](#)-funded “[Buckeye Institute](#),” a far-right think tank that has filed numerous briefs in support of restrictive voting laws in Ohio, including [voter roll purges](#), [rolling back early voting](#), and limitations on allowing voters to cast [absentee and provisional ballots](#).

In [NE. Ohio Coalition for the Homeless v. Husted](#), 837 F.3d 612 (6th Cir. 2016); [NE. Ohio Coalition for the Homeless v. Husted](#), 2016 U.S. App. LEXIS 18451 (6th Cir. 2016) (denial of petition for en banc review), Readler represented the Buckeye Institute in support of Ohio voter laws that required perfectly matched addresses or birthdates on provisional and absentee ballots, reduced the amount of time allowed

to address clerical errors before ballots are thrown out, and limited the ways that poll workers can assist voters. As the district court observed, “[t]he history of Ohio’s racially discriminatory voting laws goes back to its founding[,]” citing expert data that minority voters used provisional balloting at higher rates and had their provisional and absentee ballots rejected at higher rates than whites in Ohio elections. See [NE. Ohio Coalition for the Homeless v. Husted](#), 2016 U.S. Dist. LEXIS 74121 (SD Ohio June 7, 2016).²⁴

The district court found that all three challenged provisions imposed an undue burden on the right to vote and disproportionately impacted minority voters. See [NE. Ohio Coalition for the Homeless](#), 837 F.3d at 618. However, a divided Sixth Circuit panel reversed as to two of the provisions, still finding the “perfection requirement” to be an undue burden on the right to vote but overturning the district court’s determination that the law disproportionately impacted minority voters. *Id.*

Also representing the Buckeye Institute, Readler [helped](#) to end early voting in Ohio during “Golden Week.” After the 2004 elections in Ohio forced voters to wait in lines that lasted into the early morning of the following day, the Sixth Circuit found many voters to be “[effectively disenfranchised](#).” Accordingly, Ohio adopted a policy to allow a five-day “[Golden Week](#)” for

voters to register and vote at the same time before registration closed 30 days before the election. After Republicans in Ohio attempted to eliminate Golden Week in 2014, a district court issued an [injunction](#) reinstating it, finding that removing it would disproportionately impact minority voters. The Sixth Circuit, in a divided opinion, [reversed](#) the lower court ruling.

At Jones Day, Readler defended the state of Ohio's efforts to stop young people who turned 18 before a general election from voting in a presidential primary in [Ohio ex rel. Schwerdtfeger v. Husted](#), 2016 Ohio Misc. LEXIS 18 (Mar. 11, 2016).

Later, at DOJ, [Readler repeatedly defended](#) President Trump's Commission on Election Integrity. In [ACLU v. Trump](#), 266 F. Supp. 3d 133 (D.D.C. 2017), [Joyner v. Presidential Advisory Commission on Election Integrity](#), 2018 U.S. Dist. LEXIS 20196 (SD Fla. Feb 6, 2018) and [EPIC v. Presidential Advisory Commission on Election Integrity](#), 878 F.3d 371 (D.C. Cir. 2017), Readler defended the actions of a commission that sought to [boost voter suppression laws](#) based on the President's various widely renounced conspiracy theories about voter fraud. The commission, which found no credible evidence of widespread voter fraud, was [disbanded](#) in January 2018.

Readler also [defended](#) the Trump Administration's controversial "Citizenship Question" proposal for the 2020 census in [Kravitz v. United States Dep't of Commerce](#), No. GJH-18-1041 (D.

Md., Aug. 22, 2018). Civil rights organizations [pointed out](#) that the Citizenship Question will lead to an undercount of historically under-represented communities, which will lead to a direct loss of federal funding and representation. The administration argued that adding the Citizenship Question was required to enforce Section 2 of the Voting Rights Act (VRA) of 1965, and Commerce Secretary Wilbur Ross even [testified](#) before Congress that the question was originally proposed by the Justice Department based on VRA concerns. Civil rights groups challenged this assertion as being pretextual and sought discovery from the administration. In fact, [released documents](#) in June showed that Ross was asked by Kris Kobach "at the direction of Steve Bannon," not DOJ, to propose the citizenship question. And in September, even more documents were [released](#) by the New York Attorney General that show that the Justice Department originally opposed, rather than conceived the question.

Despite these facts, Readler [asserted](#) in July that the challengers had "failed to make the 'strong showing' of bad faith or improper behavior," such as pretextual motives, necessary to justify discovery for the Department of Commerce's decision to add a Citizenship Question to the census. In other words, based on materials available to the public both before and after his brief was filed, the overwhelming evidence now suggests that Readler defended a clearly pretextual policy meant to

undercount historically under-represented communities.

IMMIGRATION

Readler is a chief legal defender of President Trump's and Jeff Sessions's assault on immigrants.

I. SEPARATION OF CHILDREN AT THE BORDER

Most notably, Readler [defended](#) the Trump Administration's policy of separating immigrant children from their parents at the border.²⁵

Thousands of families were torn apart by the inhumane practice Readler defended, and the policy sparked global outrage. To date, [hundreds](#) of children remain separated from their families without any plan to reunite them.

Illustrative is the case of [L. v. United States Immigration & Customs Enft \("ICE"\)](#), 310 F. Supp. 3d 1133 (S.D. Cal. 2018), which involved a then-six-year-old girl who came to the United States with her mother, Ms. L., from the Democratic Republic of Congo (DRC).²⁶ At the border, an asylum officer determined that Ms. L. had a credible fear of persecution if forced to return to the DRC and thus properly showed she had demonstrated a significant possibility of ultimately being granted asylum. Yet, after four days of being detained together in San Diego, Ms. L's daughter was taken

from her and sent halfway across the country to Chicago. Readler was quick to [defend](#) the policy after the ACLU [sued](#) Immigration and Customs Enforcement (ICE) on behalf of Ms. L in February 2018.²⁷ A federal judge subsequently issued a nationwide [injunction](#) disagreeing with Readler's position and requiring the reunification of families.²⁸ Despite Readler's efforts to [oppose](#) the injunction, Ms. L and her daughter were finally [reunited](#) in March 2018.

II. INDEFINITE DETENTION OF IMMIGRANT CHILDREN

Following the ruling that children could not be separated from their parents at the border, President Trump signed an [executive order](#) he claimed would resolve the family separation issue. Trump's solution, as dictated in the executive order, was to detain immigrant families at the border for an indefinite duration. In defense of this executive order, Readler filed a [brief](#) requesting the court to modify a policy called the Flores Agreement, which had prevented the government from detaining immigrant children for a period longer than 20 days.²⁹ In DOJ's brief, Readler requested the court remove the 20 day time limit "so that ICE may detain alien minors who have arrived with their parent or legal guardian together in ICE family residential facilities" for an indefinite amount of time.³⁰

III. MUSLIM BAN

Readler also defended Trump's Muslim ban. In the Trump Administration's brief to the Supreme Court, Readler and others [argued](#) that the executive order was "not a so-called 'Muslim ban,' and campaign comments cannot change that basic fact."³¹ Further, Readler's brief [contended](#) that controversial sections of the order were "not even arguably related to religion."³²

IV. ENDING DACA FOR DREAMERS

Additionally, Readler defended efforts to end the Deferred Action for Childhood Arrivals (DACA) program for Dreamers who were brought to the U.S. as children.³³ When the Texas attorney general sought to end even current protections for Dreamers, Readler [advanced](#) the administration's "conclusion that DACA is unlawful" and "DHS's efforts to end DACA on an orderly timeline."³⁴ Although litigation remains ongoing, ending DACA could place approximately [690,000](#) Dreamers at risk of deportation.

V. THREATENING CUTTING FUNDING TO "SANCTUARY JURISDICTIONS"

On January 25, 2017, President Trump issued an [executive order](#), titled "Enhancing Public Safety in the Interior of the United States." The order threatened to cut federal funding for local jurisdictions that Trump and Sessions argued were so-called "sanctuary jurisdictions." Readler defended the order and the Trump

administration's policies in court, fighting constitutional challenges by local governments, including [Philadelphia](#),³⁵ [Chicago](#),³⁶ and [San Francisco](#).³⁷

The U.S. District Court for the Eastern District of Pennsylvania, the Fourth Circuit, and the Ninth Circuit have disagreed with Readler and blocked the order. Illustrative of these holdings, after Readler's oral arguments, the Ninth Circuit [ruled](#) to uphold an injunction restricting the implementation of the executive order, finding that "[i]n sum, by its plain terms, the Executive Order directs the agencies of the Executive Branch to withhold funds appropriated by Congress in order to further the Administration's policy objective of punishing cities and counties that adopt so-called 'sanctuary' policies."³⁸ The Ninth Circuit also commented how "[n]ot only has the Administration claimed for itself Congress's exclusive spending power, it has also attempted to coopt Congress's power to legislate."³⁹

In the Eastern District of Pennsylvania, Readler [argued](#) that "[t]he modest intergovernmental cooperation called for by the challenged conditions" aligned with Supreme Court precedent.⁴⁰ Just as the Ninth Circuit did, the district court for the Eastern District of Pennsylvania rejected this argument and upheld the injunction against the executive order.⁴¹

VI. DENYING IMMIGRANTS HUMANE CONDITIONS

In [Doe v. Kelly](#), 878 F.3d 710 (9th Cir. 2017), immigrants detained in U.S. Customs and Border Protection Facilities in the Tucson sector of the border challenged the denial of access to basic, humane conditions during the course of their confinement.⁴² The immigrants [described](#) the conditions in the facilities:

[D]etainees are packed into overcrowded and filthy holding cells, stripped of outer layers of clothing, and forced to endure brutally cold temperatures. They are denied beds, bedding, and sleep. They are deprived of basic sanitation and hygiene items like soap, sufficient toilet paper, sanitary napkins, diapers, and showers. And they are forced to go without adequate food, water, medicine, and medical care.⁴³

The District Court of Arizona issued a preliminary injunction, forcing the U.S. Customs and Border Protection Facilities in the Tucson sector to provide basic standards of living for detained immigrants at the border while they waited to be transferred to long-term ICE detention facilities: clean bedding, personal hygiene needs, and proper delivery of medical care.⁴⁴

In response, Readler [challenged](#) the preliminary injunction in the Ninth Circuit. The court ultimately [rejected](#) Readler's arguments that "compliance with this requirement reduced hold room capacities" and overextended

processing times.⁴⁵ Instead the court upheld the district court's injunction, requiring the facilities to provide the initial basic requests.⁴⁶

CONSUMER PROTECTIONS

As an [attorney](#) for Big Tobacco, Readler fought health protections for consumers.

In one case Readler, on behalf of R.J. Reynolds, [challenged](#) Buffalo's effort to prohibit tobacco ads around schools, playgrounds and day care centers. Because of his work on behalf of the tobacco industry, health advocates, such as [Tobacco Free Kids](#) and [Truth Initiative](#), urged Readler to recuse himself from working on issues involving tobacco at DOJ. Once Readler was at the Justice Department, his name [appeared](#) on filings to delay implementing an [FDA rule](#) concerning electronic cigarettes, cigars, and tobacco used in hookahs. It was reported by The [Washington Post](#) that "[t]he Justice Department said in a filing that Readler's name appeared in filings 'as a matter of course,' but he had not participated in the case."

In another case, Readler [challenged](#) the structure of the independent Consumer Financial Protection Bureau (CFPB). Congress [created](#) the CFPB after the largest financial crisis

since the Great Depression, to protect consumers from unscrupulous banks. To help ensure the agency was independent from special interests, Congress established the CFPB as an independent agency, headed by a director who cannot be removed by the President without cause. Since the CFPB was created, its enforcement work [has](#) returned over \$12 billion in relief to 29 million consumers.

In [PHH Corp. v. CFPB](#), 881 F.3d 75 (D.C. Cir. 2018) (en banc), the CFPB found that PHH Corp. harmed consumers when it took kickbacks from mortgage insurers to which it referred customers, and CFPB fined PHH \$109 million. When PHH responded by challenging CFPB's existence, a panel led by D.C. Circuit Court Judge Brett Kavanaugh [found](#) that the CFPB was "unconstitutionally structured."⁴⁷

Chad Readler, in his [brief](#), agreed that the CFPB's provision that the director can only be removed "for cause," should be struck down. Kavanaugh's ruling and Readler's argument were later [overturned](#) by the full D.C. Circuit.

REPRODUCTIVE RIGHTS

Throughout his tenure at DOJ, Readler has supported the Trump Administration's efforts to restrict women's reproductive rights across the country.

Readler [attacked](#) the right of a young immigrant woman in government custody, Jane Doe, to have access to abortion care in [Garza v. Hargan](#), 874 F.3d 735 (D.C. Cir. 2017) (en banc), (vacated as moot), even after she successfully followed and completed all of the burdensome requirements mandated by Texas to have the procedure. Readler, in a petition for Supreme Court review, [argued](#) against allowing the young woman to access the abortion care, as she had "[n]o [c]onstitutional [r]ight [t]o [a]n [a]bortion" because she is "not a U.S. citizen. She is not a permanent resident, legal or otherwise" and she "cannot avail herself of the constitutional rights afforded those legally within our borders."⁴⁸ However, as D.C. Circuit Court Judge Patricia Millet [explained](#) in her concurrence allowing Doe to access her abortion care, Doe's "capacity to make the decision about what is in her best interests by herself was approved by a Texas court consistent with state law. She did everything that Texas law requires to obtain an abortion."⁴⁹ The young woman [ultimately won](#) the case and was able to make the right choice for herself regarding her own body and health.

On another occasion, Readler [supported](#) overturning in part the Ninth Circuit's decision against fake women's health centers in [NIFLA v. Becerra](#), 138 S. Ct. 2361 (2018). In [NIFLA](#), anti-abortion centers challenged a California [law](#) requiring licensed centers to "disseminate a notice to all

clients, as specified, stating, among other things, that California has public programs that provide immediate free or low-cost access to comprehensive family planning services, prenatal care, and abortion, for eligible women.”

Readler submitted a brief as amicus curiae that supported the fake health centers.⁵⁰ The Supreme Court, 5-4, ruled for the fake women’s health center.

LGBTQ RIGHTS

As the Acting Assistant Attorney General of DOJ’s Civil Division, Readler has been responsible for advancing the anti-LGBTQ agenda of Jeff Sessions, defending discrimination by signing an [amicus brief](#) in support of the discriminatory actions of the bakery in [Masterpiece Cakeshop v. Colorado Civil Rights Commission](#), 138 S. Ct. 1719 (2018). Notably, in Readler’s [Masterpiece Cakeshop brief](#), he took the position that Colorado’s antidiscrimination law was applied unconstitutionally under the First Amendment’s Free Speech Clause – a position that only Justices Gorsuch and Thomas took.

Readler also [defended](#) Trump’s [transgender military ban](#). The ban has since been [blocked](#) by federal courts across the country, including the Ninth Circuit Court of Appeals’ recent [denial](#) of the Trump Administration’s attempt to stay an injunction on the ban.

WORKPLACE DISCRIMINATION

Chad Readler has questioned laws that prohibit discrimination in employment. In a 1998 [article](#) for the University of Michigan Law Review headlined “*Local Government Anti-Discrimination Laws: Do They Make a Difference?*” Readler wrote:

A final alternative that may be preferable to state regulation, and even federal regulation, is leaving private companies free to choose their own employment policies . . . The free market often is far more innovative than government . . . Private employers are ‘regulated’ by consumers who can punish them for adopting unpopular employment practices by choosing not to be employees or purchase products and services. The private sector is more effective and efficient in crafting employment policies than local, state, and federal governments.⁵¹

A central aspect of Readler’s [article](#) was opposition to local laws that prohibit discrimination based on sexual orientation. Using the examples of gay rights ordinances in Florida, Ohio, and Colorado, Readler argued, “[w]hen local governments pass anti-discrimination ordinances, local communities engage in heated

debate and controversy . . . Although these measures may allow citizens to discuss these issues and help form local policy, the harm done to community morale may outweigh any purported advantages of local government enforcement. Federal control would largely eliminate the numerous local battles that can tear apart local communities.”

At DOJ, Readler opposed federal employment protections for LGBTQ Americans when he signed an [amicus brief](#) in [Zarda v. Altitude Express Inc.](#), 883 F.3d 100 (2d Cir. 2018), arguing that a worker can be fired, or not hired, because of their sexual orientation. In *Zarda*, an employee, Donald Zarda, sued his former employer alleging that it had violated the Civil Rights Act of 1964 by discriminating against him because he was gay.

The employer, with the Trump Administration as amicus curiae, argued that Title VII does not apply to a worker who was fired, or not hired, because of their sexual orientation. Notably, the Justice Department, under Readler’s leadership, took the rare step of [reversing](#) its own position. The Justice Department had previously taken the [position](#), during the Obama Administration, that “the protection of Title VII of the Civil Rights Act of 1964 extends to claims of discrimination based on an individual’s gender identity, including transgender status.”

Not only did Readler reverse DOJ’s own position, but he refused to defend the position of the Equal Employment Opportunity Commission, [saying](#) “the EEOC is not speaking for the United States.” The EEOC remained consistent, and successfully [argued](#) to the Second Circuit that “Sexual Orientation Discrimination is Discrimination ‘Because of . . . Sex’ Under Title VII.”

WORKERS’ RIGHTS

Readler, in [Nevada v. United States Department of Labor](#), No. 4:16-CV-00731 (E.D. Tex. May 1, 2018) [helped disqualify](#) millions of American workers from overtime pay by dropping the defense of a rule that [reportedly](#) “doubled the minimum salary required” for exemptions under the Fair Labor Standards Act. Readler’s brief stated, “The Department has decided not to advocate for the specific salary level (\$913 per week) set in the final rule at this time and intends to undertake further rulemaking to determine what the salary level should be.”

The Obama Administration had issued [a rule](#) that required employers to pay overtime to most salaried workers earning less than \$47,476 annually. The salary cutoff for overtime pay now stands at \$23,660. The overtime rule would have made an estimated four

million additional workers eligible for overtime pay.

In November 2016, a judge in the Eastern District of Texas [blocked](#) the new overtime eligibility rules. Rather than defending the rules, Readler dropped the defense of the raise for millions of workers.

DEATH PENALTY

Readler has advocated for subjecting children to the death penalty, which would be in violation of both Supreme Court [precedent](#) and [norms](#) recognized throughout the world. In an [article](#) titled, “*Make Death Penalty for Youth Available Widely*,”⁵² he argued that “[i]f the United States is to have a death penalty, and 38 states and the federal government have said that we should, then the penalty should be available in nearly all instances in which someone commits a capital offense, including when the offender is 16 or 17.”⁵³ Readler defended this position by arguing “children are growing up faster than at any time before” and “the execution of those who commit capital offenses at 16 or 17 does not constitute cruel and unusual punishment.”⁵⁴ He elaborated, “[o]ne may quickly imagine an 11-year-old being sentenced to death for bringing a gun to school and shooting his teacher

because he was upset about not being allowed on the playground the day before. That is a far cry from a 17-year old committing a premeditated and heinous murder.”⁵⁵ Instead of prohibiting the death penalty for minors – which the Supreme Court ultimately did in 2005 in [Roper v. Simmons](#), 543 U.S. 551 (2005) – Readler argued that “[r]ather than declaring the penalty cruel and unusual when it is applied to a juvenile offender, states, local prosecutors and, in the end, juries should decide the punishment that fits each capital crime.”⁵⁶

3D GUNS

On August 15, 2018, Readler submitted a [brief](#) on behalf of the State Department in a case involving untraceable plastic firearms produced by 3D printers. Earlier in 2018, the Trump Administration had shifted course and moved to provide a private company with a special exemption to publish designs for firearms that wouldn’t be detected by metal detectors or traceable by law enforcement after a crime.

When a coalition of states and the District of Columbia moved to block this new State Department decision to remove 3D firearm material from a munitions classification list, Readler’s brief defended the government’s actions.

In the [brief](#), Readler recognized the states' claim that the federal government's new position would "make it significantly easier to produce undetectable, untraceable weapons, pos[e] unique threats to the health and safety of the States' residents and employees, and compromis[e] the States' ability to enforce their laws and keep their residents and visitors safe."⁵⁷ However, Readler argued that the "harms alleged by Plaintiffs with respect to the specific items at issue in this motion fall well short of irreparable harm," the standard required for a preliminary injunction.⁵⁸

Further, Readler argued that it was not the role of the State Department to regulate these dangerous weapons in the manner the states proposed, as "the domestic harms about which Plaintiffs are allegedly concerned are not properly regulated by the Department under current law."⁵⁹ Readler added that it is not "in the public interest for the Court to second-guess the national security determinations of the Executive Branch."⁶⁰

Judge Robert Lasnik of the District Court for the Western District of Washington ruled against Readler and granted the preliminary injunction, [noting](#):

The plaintiff States and the District of Columbia, as sovereigns, represent more than 160 million people, many of whom have seen the threat level of their daily lives

increase year after year. The District of Columbia, New York, California, Virginia, Maryland, Minnesota, New Jersey, and Pennsylvania have all endured assassinations or assassination attempts. School shootings involving students of all ages have occurred in Colorado, Oregon, Washington, Connecticut, Illinois, California, Virginia, Pennsylvania, North Carolina, Massachusetts, Maryland, Iowa, Hawaii, Minnesota, New York, and New Jersey during the past twenty years. During the same time frame, California, Colorado, Connecticut, Illinois, Minnesota, Hawaii, Massachusetts, Maryland have experienced workplace shootings with multiple victims. And, of course, hijackers were able to crash airplanes into fields and buildings in Pennsylvania, New York, and the District of Columbia/Virginia in 2001. Plaintiffs have a legitimate fear that adding undetectable and untraceable guns to the arsenal of weaponry already available will likely increase the threat of gun violence that they and their people experience.⁶¹

ACCESS TO JUSTICE

In [Walmart v. Dukes](#), 131 S. Ct. 2541, 2556–57 (2011), the Supreme Court found against female employees of Walmart who suffered under a

company-wide pattern of discrimination based on sex. The Court decided that the victims' injuries were not in "common" enough to form a class-action suit. By dismissing the class action, a court majority of five male justices not only prevented the women of Walmart from banding together to pursue their case against the discriminatory practices of Walmart management, but they dealt a bigger blow against the fight for equal pay and promotion.

Readler, in a Jones Day [presentation](#) "Litigation Trends: The Good, The Bad And The Ugly," wrote with his colleagues: "**Good:** The USSC (*Walmart, Comcast*) and the OHSC (*Stamco, Cullen*) have given life to Rule 23 certification requirements, requiring courts to 'rigorously analyze' Rule 23 requirements, including a review of the 'merits' of the case and requiring close scrutiny of expert evidence."⁶²

Later, in a 2015 [article](#), "The bitter and sweet of the Wal-Mart/Comcast/Halliburton triumvirate: more grounds for defeating class certification, but more exposure to discovery," Readler wrote, "Corporate litigants are still celebrating recent United States Supreme Court victories by defendants in high profile class-action cases. As they should."⁶³

In 2013, Readler presented before the Federalist Society a [teleforum](#) on: "The Class Action Fairness Act goes to Court: *Standard Fire Insurance Co. v.*

Knowles." There does not appear to be a recording of this presentation available.

CONCLUSION

Readler has built a career on rolling back protections for America's most vulnerable citizens, including children who are separated from their families, communities of color, and people with preexisting health conditions. Even among Trump nominees, Readler's record stands out as one that has negatively impacted the lives of millions. He has overwhelmingly used the legal system for ideological and partisan gain, and there is no credible reason to believe that he could put aside his views and become a neutral arbiter. He should not be rewarded with a lifetime seat on the federal bench. Alliance for Justice strongly opposes Chad Readler's nomination to the Court of Appeals for the Sixth Circuit.

ENDNOTES

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