

AFJ NOMINEE REPORT

JUSTIN WALKER

U.S. District Court for the Western District of Kentucky

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INTRODUCTION

On June 24, 2019, President [Trump nominated](#) University of Louisville Associate Professor of Law Justin Walker to the United States District Court for the Western District of Kentucky for the seat previously held by Judge [Joseph McKinley Jr.](#) Alliance for Justice strongly opposes Walker's confirmation.

This nomination exposes the Trump Administration's far-right agenda in judicial nominations. It would be hard to argue that President Trump nominated Walker because of his legal experience and trial skills (which are minimal) or his ability to be a fair and unbiased jurist. Rather, Walker (just 37 years old and out of law school only a decade) was nominated as a reward for his vocal defense of Brett Kavanaugh, for whom he clerked on the D.C. Circuit, and in recognition of his own far-right ideology.

When right-wing critics questioned Kavanaugh's conservative bona fides, Walker was trotted out on Fox News and other media outlets. He made clear that Kavanaugh was a "[warrior](#)" for "conservative legal principles," who would "not go[] wobbly." Later, after the credible allegations of Dr. Christine Blasey Ford that Kavanaugh had sexually assaulted her, Walker publicly defended the accused assailant, minimized corroborating evidence of sexual assault,

and [attacked](#) the integrity of Democratic senators.

In fact, Walker conducted over 70 media [interviews](#) defending his former boss. In contrast, by his own admission, Walker has [never](#) "served as sole or chief counsel in any case tried to verdict or judgment." Only once has he been "associate counsel at a federal criminal jury trial." Only once has he "taken an expert deposition." Walker was not even admitted to practice in the Western District of Kentucky, the court to which he is being nominated to be a judge, until this year. The Trump Administration is known for valuing conservative media punditry over other credentials for high office: True to form, Walker's qualifications to be a federal trial judge consist of at least 69 more media appearances defending Kavanaugh than federal jury trials or expert depositions.

Walker – a critic of the [Mueller investigation](#) who wrote an [article](#) arguing *against* the independence of the FBI after Trump fired the FBI Director because of "[this Russia thing](#)" – is apparently being rewarded for his loyalty and ideological extremism. His outspokenness extends to vehement opposition to the Affordable Care Act (ACA), [calling](#) the Supreme Court's decision to uphold the Act "indefensible." He also supports reinvigorating doctrines last used over 80 years ago in order to roll back protections for workers, consumers, and clean air and water. He has fought workers'

rights and praised a dissent arguing it was unconstitutional to [ban](#) semi-automatic rifles.

BIOGRAPHY

Walker, just 37 years old, [received](#) his BA from Duke University in 2004 and his JD from Harvard Law School in 2009. Prior to law school, he was a speechwriter for Secretary of Defense Donald Rumsfeld. Walker was a law clerk to Brett Kavanaugh on the D.C. Circuit and then for Justice Anthony Kennedy. He is currently an associate professor at the University of Louisville's Brandeis School of Law.

In 2018, Walker was a prominent national figure in support of Kavanaugh's confirmation to the Supreme Court, even after multiple women [came forward](#) with credible allegations of sexual assault.

Like many of Trump's nominees, Walker is an active member of the Federalist Society. He has been a [member](#) since 2006, has [spoken](#) at over 15 Federalist Society events, was on the Executive Board of the Harvard Federalist Society as a student, and is currently the faculty advisor to the Brandeis School of Law Federalist Society. Walker is also a [co-director](#) of the Ordered Liberty Program at Brandeis School of Law. As far back as 2004, when he was barely into his twenties, Walker [identified](#) as a "tax-cutting, Iraq-invading Republican."

DEFENSE OF KAVANAUGH

Walker's vocal support for Kavanaugh raises serious questions regarding his own temperament, veracity, and judgment – all critical qualities for a federal judge. For example:

- In defending Kavanaugh, Walker [resorted](#) to ad hominem attacks on Democratic senators. He attacked "Senator Blumenthal, who claimed to be a Vietnam War veteran, falsely...Senator Hirono, whose mentor, Daniel Inouye, was accused of twenty years of being a sexual predator...[and] Senator Dianne Feinstein, who learned about Dr. Ford's accusations in July, and did not do anything to investigate them." Walker even [implied](#) that the FBI ought to investigate Senator Feinstein. Walker cannot credibly assert impartiality as a judge after having shown open animus toward a political party, one which likely will have business before him. Judges are required to rise above politics, a standard Walker, in his attacks on Democratic senators, demonstrated an inability to uphold.
- Walker [said](#) that then-Judge Kavanaugh is "the kind of person who would rather lose a job than tell a lie. His word is a word I trust, absolutely." In fact,

Kavanaugh repeatedly [misled](#) the Senate. He misled the Senate about his work on highly controversial Bush nominees, his views on reproductive rights, his knowledge of stolen Democratic files, and his involvement in some of our nation's most controversial national security policies. It does not bode well for Walker's future judgment and ability to evaluate evidence – important functions for a trial judge – if he was willing to ignore contradictory evidence to advance his agenda as an advocate for Kavanaugh.

- Even after Dr. Christine Blasey Ford [accused](#) Justice Kavanaugh of sexual assault, Walker [continued](#) to [defend](#) his former boss. Despite Dr. Ford's testimony, Walker [decided](#) that Dr. Ford was "mistaken" about her own experience of sexual assault. In an [interview](#), Walker told a reporter that "[Kavanaugh's] word is a word I trust absolutely, because I worked with him every day and I came to know him for the trustworthy person he is." Walker is willing to overlook credible evidence of assault – Dr. Ford's own testimony plus [corroborating](#) evidence, including conversations she had with others before Donald Trump was even President, her therapist's notes, and the polygraph exam – simply because he knows and likes the accused perpetrator. This raises serious questions as to whether he can be trusted to apply the law in a fair and

balanced manner as a judge, particularly in cases of sexual assault.

- In his attempts to reassure conservatives that Kavanaugh would work to destroy the ACA, Walker described Kavanaugh's position in terms that are strikingly different from the ones Kavanaugh himself used to characterize his position. Walker [wrote](#) that "Kavanaugh's thorough and principled takedown" of the Affordable Care Act in an opinion he wrote on the D.C. Circuit was a "roadmap" for justices who said ACA was unconstitutional. Yet Kavanaugh [distanced](#) himself from Walker's guarantee that he opposed the ACA. When asked about Walker's remarks, Kavanaugh said, "My opinion has been described as the roadmap for both sides because I described both positions. And actually it wasn't a roadmap at all." He added, "I speak for myself and my own opinion speak [sic] for themselves [sic]." Either Walker was misrepresenting Kavanaugh's position when he implied for the sake of conservative skeptics that Kavanaugh would indeed strike down the ACA, or Kavanaugh was being dishonest when he distanced himself from Walker's remarks. Either way, Walker should be asked about this discrepancy between his claims and Kavanaugh's.
- In one instance, a reporter [summarized](#) comments by Walker in a headline

claiming, “Former Clerk Says Supreme Court Nominee Kavanaugh Values Legal Precedent.” When asked about “rumors by Kavanaugh’s opponents that he is eager to overturn precedents he doesn’t like,” Walker said, “It is a myth.” In reality, in just one term on the Court, Kavanaugh has already voted to overturn a 34-year-old precedent, in [Knick v. Township](#), and a 40-year-old precedent, in [Franchise Tax Board of California v. Hyatt](#). Walker’s misleading statements about Kavanaugh raise serious questions as to his willingness to mislead the public in order to help his former boss, again raising questions about his own veracity.

HEALTH CARE

President Trump explicitly stated he was looking for nominees who are hostile to the Affordable Care Act. Trump [said](#), “my judicial appointments will do the right thing unlike Bush’s appointee John Roberts on Obamacare.” Walker passes President Trump’s test.

Walker has repeatedly said he believes the ACA is unconstitutional. In an [article](#) defending Brett Kavanaugh, Walker called the Supreme Court’s decision to uphold the ACA “indefensible,” and praised Kavanaugh for his “thorough and principled takedown” of the ACA and for providing a “roadmap” for

Supreme Court justices “who said Obamacare was unconstitutional.”

Tragically, the stakes for the health and wellbeing of millions of people are all too real. Since the Republican Congress failed in its attempts to repeal the Affordable Care Act, Trump is trying now to use the courts to do so. Trump’s Justice Department has already attacked the ACA and one Republican-appointed federal judge has already [declared](#) the entire ACA unconstitutional. Trump’s legal attack would take health care away from millions, including cancer survivors, people with diabetes, and pregnant women. As the American Medical Association and other physician groups made [clear](#), it “would have a devastating impact on doctors, patients, and the American health care system as a whole.”

Walker also threatens the health care of women specifically. He [praised](#) Kavanaugh for a dissent arguing that the Obama Administration’s contraceptive-coverage policy, ensuring that employer-based insurance policies made the full range of birth control options available to employees, was unconstitutional, a position that would allow employers to restrict access to contraception for their employees.

EDUCATION

In a 2019 symposium discussion, Walker made clear his hostility to public education. He [bemoaned](#) the “billions of taxpayer dollars” spent on maintaining “a minimum level of funding to offer an adequate education for all students.” He criticized the right to quality public education found in many state constitutions. For example, he criticized Ohio’s constitutional responsibility to provide a thorough and efficient system of public schools, a provision [responsible](#) for over 1,000 new schools in the state.

Remarkably, Walker [equates](#) “the African-American minority in segregated schools” in the 1950s with “the wealthy minority in affluent schools” in the 1990s, claiming that “the latter is...a fairly popular class to take political aim at.” Seemingly without irony, Walker uses the language of minority rights to complain that the right to education contained in state constitutions, and increased spending on public education, would infringe upon the liberty of “the minority of individuals who pay the majority of income taxes.”

WORKERS’ RIGHTS

As noted, Walker has limited legal experience as a practicing attorney. So it is notable that one of the few cases he has worked on involves [representing](#) a mining corporation in a dispute with the United Mine Workers of America International Union. In the [case](#), the National Labor Relations Board found that Rockwell Mining Company violated the National Labor Relations Act “by refusing to recognize, bargain with, and provide. . . information” to the union “as the duly certified collective-bargaining representative” of mine workers at Rockwell’s mine in Wharton, West Virginia.

The NLRB, [including](#) Republican members Marvin Kaplan and William Emanuel, had denied Rockwell’s challenge to union certification, a position Walker disagrees with.

Walker has also [denigrated](#) labor unions, claiming that it is hypocritical to both support labor unions and advocate for “people power” over “special interest power.”

PUBLIC HEALTH AND SAFETY

Walker wants to tie the hands of the agencies that Congress has recognized as having the knowledge and experience to enforce critical laws, safeguard essential protections, and ensure the health and safety of the public.

In an [article](#) titled “The Kavanaugh Court and the Schechter-to-Chevron Spectrum: How the New Supreme Court Will Make the Administrative State More Democratically Accountable,” Walker has called for reinvigorating a doctrine—the non-delegation doctrine—last used successfully in 1935 by a famously reactionary Supreme Court majority bent on invalidating the New Deal. See [A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 \(1935\)](#). Currently, executive agencies are permitted to exercise rulemaking authority pursuant to a valid delegation from Congress. As long as the delegation provides a “sufficiently intelligible principle, there is nothing inherently unconstitutional about it.” [Whitman v. Am. Trucking Ass’ns, 531 U.S. 457, 490 \(2001\)](#) (Stevens, J., concurring).

Walker disagrees with this long-established principle of law, arguing that agencies should not be able to exercise such authority, even if Congress properly delegates it. Justice Antonin Scalia himself

made clear this position’s radical nature. As he explained, reviving that doctrine would deprive Congress of the authority essential to empower agencies to effectively implement and enforce critical statutes that protect the American people in countless areas from ensuring financial stability to controlling health hazards. As Scalia [noted](#), “we have almost never felt qualified to second-guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law” because “a certain degree of discretion, and thus of lawmaking, inheres in most executive and judicial action,” *Mistretta v. United States*, 488 U.S. 361, 417 (1989) (Scalia, J., dissenting). Walker would flout these principles and disable Congress from making government work for the American people.

In addition to accepting the non-delegation doctrine, Justice Scalia also accepted the legal principle that gives agencies the authority to determine how they will carry out their mandates when the congressional act governing their actions might be open to different interpretations – referred to as “Chevron deference.” As Justice Scalia [noted](#), “in the long run *Chevron* will endure and be given its full scope” because “it more accurately reflects the reality of government, and thus more adequately serves its needs.” Walker [disagrees](#) on this point and has expressed hostility towards the decades-old doctrine that is a cornerstone of administrative law. He has criticized the

federal government's ability to regulate corporations and protect consumers, the environment, workers, and more.

Walker has also [argued](#) that agencies, including independent agencies that historically have been independent of political management, should have less power to issue public protections and enforce safety standards. He opined that such agencies should no longer be independent. Agencies such as the Consumer Financial Protection Board, the Securities and Exchange Commission, the National Labor Relations Board, and the Occupational Safety and Health Review Commission play critical roles in upholding the rights of consumers, workers, and investors; Walker would be hostile to the protection of these rights.

CONCLUSION

Contrary to our nation's establishment of the judiciary as a neutral arbitrator, Justin Walker believes a jurist should be a "warrior" for political causes. His actions and statements reveal that he is a zealot who is primarily concerned with promoting conservative causes. He is not being nominated for his trial experience or legal experience, but because he has been loyal to the Republican Party. For these reasons, Alliance for Justice strongly opposes his confirmation.