



April 10, 2026

Senator Chuck Grassley  
Chair, Senate Judiciary Committee

Senator Dick Durbin  
Ranking Member, Senate Judiciary Committee

Dear Senator Grassley and Senator Durbin:

On behalf of our hundreds of thousands of supporters and activists nationwide, People For the American Way opposes the nominations of all four judicial nominees expected to have a hearing on April 15: Justin Smith for the Eighth Circuit, and Jeffrey Kuhlman, Tony Mattivi, and Anthony Powell for the District of Kansas.

As explained in more detail in the second half of this letter, we do not support confirming any judicial nominees of Donald Trump. He is dangerously unqualified to be making lifetime appointments to the one branch of government that is in a position to provide checks and balances to his lawless actions.

But first, this letter focuses on one of those nominees: Justin Smith, for the Eighth Circuit. If confirmed, Smith would be a rubber stamp for Trump's worst authoritarian tendencies.

### **Justin Smith: A Trump Loyalist, not an Independent Judge**

Justin Smith is a committed Trump loyalist. Since 2023, he has been in service to Trump as one of his personal attorneys at the James Otis Law Group. That firm was founded by his former defense lawyer John Sauer, who Trump last year installed as United States solicitor general.

Smith is currently representing Trump in litigation involving his defaming of E. Jean Carroll, who Trump sexually abused in the 1990s. When she publicly revealed that he had attacked her, Trump accused her of lying. In 2022, a jury concluded that Trump had indeed sexually abused her and, by calling her a liar, had defamed her.

In an effort to avoid the consequences of his misconduct, Trump has appealed his loss all the way to the United States Supreme Court. Smith is serving Trump as the lead attorney in the case.<sup>i</sup>

This is not the first time Smith has chosen to use his legal training to help Donald Trump bypass the law. He collaborated in helping Trump avoid criminal prosecution for his role in conspiring to unlawfully overturn the 2020 presidential election. Specifically, he contributed to briefing and oral argument preparation in *Trump v. United States*. Smith was part of the

team that devised a legal argument that Trump had vast immunity from criminal prosecution for abuses he committed while in office – including that Trump could order the assassination of his political rivals and still be immune from prosecution.

Trump's own nominees to the Supreme Court provided him the votes to turn this dangerous, extreme, and lawless position into the law of the land in one of the most criticized judicial opinions in U.S. history.<sup>ii</sup> And now Trump wants to put one of the lawyers who made it possible onto another powerful court: the Eighth Circuit.

In the Carroll case, Trump's lawless misconduct had a particular victim: the woman he sexually abused and then defamed. In the election case, the victims were the entire nation, the American people, and our right to freely elect our own leaders. In each case, Smith has been at Trump's side, serving his whims at great cost to others.

The Senate has seen what happens when it confirms Trump's personal attorneys to important positions in the federal government. Pam Bondi abused her authority as attorney general to turn the Justice Department into an instrument to carry out Trump's personal vendettas. Emil Bove directed DOJ attorneys to violate court orders, according to a whistleblower's report. Then, even after he was confirmed as a judge on the Third Circuit, he violated judicial ethical canons by attending a Trump political rally.

Solicitor General Sauer, who argued the immunity case, has used his role as solicitor general to defend blatantly unconstitutional abuses of power.. These include stripping Americans of citizenship in violation of the Fourteenth Amendment,<sup>iii</sup> sending in military forces to cities controlled by Trump's political opponents,<sup>iv</sup> and sending U.S. residents to a foreign concentration camp with little to no due process.<sup>v</sup>

All of these nominees assured the Judiciary Committee they could be trusted to follow the law and the constitution. But each one of them has put their fealty to Donald Trump ahead of their obligation to our nation and the American people. There is no reason to think Smith would be any different.

Smith showed his loyalty to Trump even before becoming his lawyer. Before joining the Otis Law Group, Smith was chief of staff and first assistant to Missouri Attorney General Eric Schmitt (who is now a senator). Smith participated in writing an amicus brief after the 2020 election to help Trump unlawfully hold onto power. With his assistance, Missouri supported the state of Texas in a meritless lawsuit against four swing states that had voted for Joe Biden. The case was filed directly in the Supreme Court on the basis of the court's original jurisdiction over lawsuits by one state against another.

This was widely recognized at the time as an abuse of the court system in an effort to subvert the will of the voters. For instance, UCLA law professor Rick Hasen called Texas's filing "a press release masquerading as a lawsuit."<sup>vi</sup> The Supreme Court agreed, dismissing it in a

three-sentence order. The justices noted that Texas had failed to show “a judicially cognizable interest in the manner in which another State conducts its elections.”<sup>vii</sup> Smith’s choice to participate in this abuse of the judicial system in the interest of subverting our democracy is disqualifying for a lifetime position as a federal judge.

Smith’s fealty to Trump over the law is only part of his disturbing record. He revealed other aspects of his views of the law in a 2024 article supporting Will Scharf in the Republican primary for Missouri attorney general. Smith wrote:

Republican attorneys general are critical in the fight against the radical left. We need true conservatives to defeat the abortion industrial complex, the lawlessness plaguing blue cities, and the woke ideology invading our schools.<sup>viii</sup>

It is hard to imagine the person who made those statements putting aside his personal feelings to fairly and neutrally decide cases involving abortion care, the Trump administration’s lawless assaults on Democratic-run jurisdictions, or any civil rights principle that MAGA labels as “woke.”

Transgender Americans have felt the brunt of Smith’s attacks. He represented Arizona elected officials in defending a state law limiting trans people’s participation in sports.<sup>ix</sup> He also helped them defend a law prohibiting trans people from correcting their birth certificates unless they have had surgery.<sup>x</sup> Courts have ruled in favor of the trans plaintiffs in both cases.

Smith has also worked to limit abortion access in direct contradiction to the law. In 2024, the people of Arizona adopted a state constitutional amendment enshrining abortion as a fundamental right. Soon afterward, a lawsuit was filed challenging several burdensome and medically unnecessary abortion restrictions under the newly adopted provision. Smith represented anti-choice lawmakers who intervened in the case to defend the restrictions. The court rejected Smith’s efforts to defend clearly unconstitutional laws, finding that their “suppression of medical judgment and choice ... renders them invalid in all circumstances.”<sup>xi</sup>

Giving Justin Smith a lifetime position on the powerful Eighth Circuit would threaten the rights of millions of people living in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota. We urge senators to oppose his confirmation.

### **The Senate Should Not Confirm Judicial Nominees of a President Who Defies the Courts and Expects Absolute Loyalty From His Nominees**

The federal courts are essential to providing the checks and balances needed to prevent tyranny. At present, they are the only branch of the federal government carrying out this essential function.

President Trump does not share that vision of the courts. He expects the judges he nominates to show him personal loyalty and always rule in his favor.

This has been clear for a long time. However, on March 16, Trump himself made it impossible to pretend otherwise. In a Truth Social post, he condemned the Court for striking down his tariffs even though he supported them:

The Court knew where I stood, how badly I wanted this Victory for our Country, and instead decided to, potentially, give away Trillions of Dollars to Countries and Companies who have been taking advantage of the United States for decades.<sup>xii</sup>

He then went on to condemn the independence of justices who have ruled against him:

They openly disrespect the Presidents who nominate them to the highest position in the Land, a Justice of the United States Supreme Court, and go out of their way, with bad and wrongful rulings and intentions, to prove how "honest," "independent," and "legitimate" they are.<sup>xiii</sup>

No president who is looking for unfettered loyalty from his judicial nominations can be allowed to put more judges on the bench at any level.

This development does not come out of the blue. Soon after returning to office, Trump began defying court orders and threatening judges who rule against him. In a May 30, 2025, letter to the Judiciary Committee, we explained that a president who does this should not be allowed to name anyone to the one branch of the federal government that is checking his power.<sup>xiv</sup>

Events since then have only strengthened our case. For instance, an extensively-documented whistleblower complaint revealed that senior Justice Department official Emil Bove suggested in March that the administration violate court orders.<sup>xv</sup> President Trump subsequently nominated Bove to a seat on the Third Circuit, to which he was confirmed. The administration now routinely defies the courts. In fact, a July study revealed that the Trump administration had defied one in three judges who had ruled against him.<sup>xvi</sup>

Nationwide concern over the Trump administration's deceptive filings and court defiance continues to grow. The administration even risks losing the "presumption of regularity," in which judges presume that the federal government and its lawyers are telling the truth and acting in good faith.<sup>xvii</sup> Indeed, an October 2025 report revealed dozens of instances of judges expressing distrust in the government's representations, as well as growing concerns within the federal bench about noncompliance with judicial orders.<sup>xviii</sup>

And in November 2025, a sitting federal judge nominated by President Reagan resigned from his lifetime position in order to speak frankly and in depth about Trump's threat to the rule of law. Mark L. Wolf wrote:

I no longer can bear to be restrained by what judges can say publicly or do outside the courtroom. President Donald Trump is using the law for partisan purposes, targeting his adversaries while sparing his friends and donors from investigation, prosecution, and possible punishment. This is contrary to everything that I have stood for in my more than 50 years in the Department of Justice and on the bench. The White House's assault on the rule of law is so deeply disturbing to me that I feel compelled to speak out. Silence, for me, is now intolerable.<sup>xix</sup>

Later that same month, President Trump even called for the execution of members of Congress for stating the undisputed legal fact that members of the military may not follow unlawful orders.<sup>xx</sup>

In January 2026 alone, the Trump administration violated nearly 100 court orders relating to ICE's reign of terror in the Minneapolis area that led to brutal killings of American citizens Alex Pretti and Renee Good. These orders were issued to protect the people of Minnesota from unlawful abuses of power by ICE. On January 28, Chief Judge Patrick Schiltz released a list of those violated orders.<sup>xxi</sup> He wrote:

[It] identifies 96 court orders that ICE has violated in 74 cases. The extent of ICE's noncompliance is almost certainly substantially understated. This list is confined to orders issued since January 1, 2026, and the list was hurriedly compiled by extraordinarily busy judges. Undoubtedly, mistakes were made, and orders that should have appeared on this list were omitted.

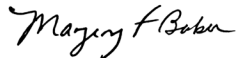
This list should give pause to anyone—no matter his or her political beliefs—who cares about the rule of law.<sup>xxii</sup>

At least 35 times between August 2025 and February 2026, federal district court or magistrate judges in California, Texas, Florida, Massachusetts, Michigan, New York, West Virginia and Puerto Rico ordered the administration to explain why it should not be punished for violating court orders.<sup>xxiii</sup>

This is a unique moment of crisis for our nation. Fortunately, the framers of our Constitution anticipated a moment such as this. Through the confirmation process, they gave the Senate the power and the responsibility to prevent a president such as this from sabotaging the independence of our courts.

The Senate should not confirm any judicial nominee of President Trump's at any level.

Sincerely,



Marge Baker  
Executive Vice President

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<sup>i</sup> Petition for Certiorari, *E. Jean Carroll v. Donald J. Trump*, U.S. Supreme Court, Docket No. 25-573, <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/25-573.html>.

<sup>ii</sup> *Trump v. United States*, 144 S. Ct. 2312 (2024).

<sup>iii</sup> *Trump v. Barbara*, U.S. Supreme Court, Docket No. 25-365 (decision pending).

<sup>iv</sup> *Trump v. Illinois*, 146 S. Ct. 432 (2025).

<sup>v</sup> *A.A.R.P. v. Trump*, 145 S. Ct. 1364 (2025).

<sup>vi</sup> "Texas Asks Supreme Court for Permission to Sue Georgia, Pennsylvania, Michigan, and Wisconsin Over How They Conducted the Election, To Disenfranchise Voters in These States and Let State Legislators Choose Electors. It Won't Work," Election Law Blog, <https://electionlawblog.org/?p=119395>.

<sup>vii</sup> *Texas v. Pennsylvania*, 141 S. Ct. 1230 (2020).

<sup>viii</sup> Justin Smith, "Missouri Conservatives Have a Clear Choice for Attorney General in Trump's Attorney Will Scharf," Breitbart, July 30, 2024.

<sup>ix</sup> *Doe v. Horne*, 683 F. Supp. 3d 950 (2023).

<sup>x</sup> *Roe v. Sjolander*, 805 F. Supp. 3d 1083 (2025).

<sup>xi</sup> *Isaacson v. State*, 2026 Ariz. Super. LEXIS 139, 2026 LX 186753.

<sup>xii</sup> <https://truthsocial.com/@realDonaldTrump/posts/116236850873003597>.

<sup>xiii</sup> *Id.*

<sup>xiv</sup> [https://www.peoplefor.org/sites/default/files/downloads/2025-06/Hermendorfer\\_and\\_4\\_MO\\_noms-opposition\\_letter.pdf](https://www.peoplefor.org/sites/default/files/downloads/2025-06/Hermendorfer_and_4_MO_noms-opposition_letter.pdf).

<sup>xv</sup> "Justice Dept. Leader Suggested Violating Court Orders, Whistle-Blower Says," New York Times, June 24, 2025, <https://www.nytimes.com/2025/06/24/us/politics/justice-department-emil-bove-trump-deportations-reuveni.html>.

<sup>xvi</sup> "Trump officials accused of defying 1 in 3 judges who ruled against him," Washington Post, July 21, 2025, <https://www.washingtonpost.com/politics/2025/07/21/trump-court-orders-defy-noncompliance-marshals-judges>.

<sup>xvii</sup> See, e.g., David French, "How a Trump Judge Exposed the Trump Con," New York Times, Oct. 12, 2025, <https://www.nytimes.com/2025/10/12/opinion/trump-judge-immertgut-portland-national-guard.html>; "Judges Openly Doubt Government as Justice Dept. Misleads and Dodges Orders," New

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York Times, Aug. 4, 2025, <https://www.nytimes.com/2025/08/04/us/politics/trump-justice-department-judges-courts.html>.

<sup>xviii</sup> “The ‘Presumption of Regularity’ in Trump Administration Litigation,” Just Security, updated Oct. 15, 2025, <https://www.iustsecurity.org/120547/presumption-regularity-trump-administration-litigation>.

<sup>xix</sup> “Why I Am Resigning,” Judge Mark L. Wolf, The Atlantic, Nov, 9, 2025, <https://www.theatlantic.com/ideas/2025/11/federal-judge-resignation-trump/684845>.

<sup>xx</sup> “Trump says Democrats’ message to military is ‘seditious behavior’ punishable by death,” Associated Press, Nov. 20, 2025, <https://apnews.com/article/trump-military-traitors-sedition-illegal-orders-c5fc3c5bd2fbc6b1204550e4203c24b2>.

<sup>xxi</sup> “ICE is not a law unto itself,’ Minnesota judge says after immigrant released following contempt threat,” CNBC, Jan. 28, 2026, <https://www.cnbc.com/2026/01/28/ice-immigrant-minnesota-contempt-released.html>.

<sup>xxii</sup> Juan v. Noem, Case No. 26-CV-0107 (PJS/DLM), order of Jan. 28, 2026, [https://storage.courtlistener.com/recap/gov.uscourts.mnd.230171/gov.uscourts.mnd.230171.10.0\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.mnd.230171/gov.uscourts.mnd.230171.10.0_2.pdf).

<sup>xxiii</sup> “Judges Grow Angry Over Trump Administration Violating Their Orders,” New York Times, Feb. 23, 2026, <https://www.nytimes.com/2026/02/23/us/politics/judges-contempt-immigration-trump.html>.