October 9, 2018

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Feinstein, and Committee Members:

On behalf of our hundreds of thousands of members throughout the United States, People For the American Way opposes the nomination of Eric Murphy of Ohio to the Sixth Circuit Court of Appeals. His record demonstrates that he should not be given the power and responsibility that come with a lifetime seat on the body that is just one step below the Supreme Court in importance and influence. President Trump has bypassed traditional norms in selecting him (as well as Chad Readler) over the objections of their home state senator, Sherrod Brown, and the Judiciary Committee is bypassing traditional norms by holding a hearing for them anyway.

Chairman Grassley's policy on home-state senators' consent changes, depending on the party of the president making the nominations. As a result of this corruption, several far-right nominees strongly opposed by their home state senators have appeared before the committee: David Porter (Third Circuit), Michael Brennan (Seventh Circuit), David Stras (Eighth Circuit), and Ryan Bounds (Ninth Circuit).

The latest beneficiary of this corruption is Eric Murphy (along with Chad Readler).

A 2005 law school graduate and former clerk of Justice Kennedy, Eric Murphy left Jones Day in 2013 and accepted a political appointment from the state attorney general to be state solicitor of Ohio. In that capacity, he has taken a number of extremely disturbing positions.

Of course, the role of a judge is wholly different from that of an advocate, and nominees do not necessarily agree with the legal arguments they make as part of their zealous representation of their clients. This is especially so for the typical solo lawyer hanging his or her name on a shingle and taking on a variety of clients.

But that model is harder to apply to a lawyer who leaves his practice in order to work for—and advance the legal positions of—a political client. Rather than choosing his legal arguments to fit the client, Murphy seems to have chosen a client to pursue his legal philosophy.
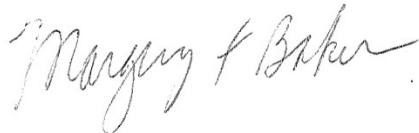
In pursuit of that philosophy, he defended Ohio's disenfranchising voter purge before the Supreme Court in Husted v. *A. Philip Randolph Institute*. (He even helped persuade the Justice Department to reverse its position in that case, from opposing the law to supporting it.[i]) He argued to maintain marriage discrimination in *Obergefell v. Hodges*. He filed an amicus brief in *Whole Woman's Health v. Hellerstedt*, supporting Texas's unconstitutional TRAP (targeted regulation of abortion providers) laws designed to shut clinics down and end women's access to

safe abortions. The law was struck down by the Supreme Court in *Whole Woman's Health v. Hellerstedt*.

The agenda he chose to advance when he accepted the position of state solicitor of Ohio reflects a cramped understanding of Equal Protection, an unacceptable deference to partisan efforts to impede the right to vote, and a fundamental hostility to women's constitutional right to abortion and the Supreme Court precedents protecting that right. His vision of the law would ruin the lives of millions and millions of Americans by stripping them of their most important rights.

Eric Murphy is not a constitutionalist who would understand the impact of his rulings on people who are not like him. He should not be having a hearing over Sen. Brown's objection, and he should not be confirmed to the Sixth Circuit.

Sincerely,

Marge Baker
Executive Vice President for Policy and Program

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[i] Right Wing Watch, "Why Did DOJ Switch Sides In Ohio Voter Purge Case? New Documents Provide Some Partial Answers," January 5, 2018, http://www.rightwingwatch.org/post/why-did-doj-switch-sides-in-ohio-voter-purge-case-new-documents-provide-some-partial-answers/.