



September 7, 2017

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 the hundreds of thousands of members of People For the American Way, I write to express our strong opposition to the nomination of Stephen S. Schwartz to a seat on the U.S. Court of Federal Claims.

This nomination did not occur in a vacuum. In fact, this vacancy should not even exist. But the fact that it does, and the reasons for its continued existence, warrant opposition to the current nominee. Confirming Schwartz would reward a dangerous politicization of the American judicial system.

Judge Lynn Bush took senior status in 2013, and President Obama nominated Thomas L. Halkowski to fill her seat on the Court of Federal Claims. Halkowski's first job after graduating law school was as a law clerk to a judge on this court. He also spent eight years as a trial attorney in the Justice Department's Environment and Natural Resources Division litigating cases in the Court of Federal Claims. He subsequently became a partner at a respected law firm in Wilmington, Delaware. A working attorney since 1989, Halkowski would have brought the Court of Federal Claims a wealth of experience directly relevant to his work.

In June of 2014, the Senate Judiciary Committee voted Halkowski and another Court of Federal Claims nominee out by unanimous voice vote. They were two of five Court of Federal Claims nominees approved by the Judiciary Committee during the 113<sup>th</sup> Congress, each one by unanimous voice vote:

1. Armando O. Bonilla
2. Nancy B. Firestone (reappointment; she is now a senior judge)
3. Thomas L. Halkowski
4. Patricia M. McCarthy
5. Jeri K. Somers

Senate Republicans, then in the minority, prevented the Senate from holding a full confirmation vote on any of the nominees. President Obama renominated them in 2015, and they once again cleared the Judiciary Committee (now controlled by Republicans) by unanimous voice vote. That was in February of 2015.

But once again, Republicans—now in control of the chamber—refused to allow confirmation votes for any of them. Five highly qualified, fully vetted jurists with enormous bipartisan support needlessly had their nominations languish for the entirety of the 114<sup>th</sup> Congress.

Like Merrick Garland, their qualifications were not in doubt, and they would almost certainly have been confirmed if a floor vote were held. And as with Garland, the vacancies would be available for a Republican president to fill.

We cannot help but ask why a group of indisputably qualified people with wide bipartisan support who will make rulings based on the law rather than on political ideology were blocked for more than two years. And we cannot help but ask why President Trump chose to put them aside and instead nominate Stephen Schwartz.

Schwartz is only 34 years old, and his experience compares poorly to that of Thomas Halkowski. When Halkowski was starting his clerkship at the Court of Federal Claims, Schwartz was starting first grade.

Notably, Schwartz only graduated from law school nine years ago. When the American Bar Association evaluates judicial candidates, it generally requires at least ten years of legal practice in order to be considered even minimally qualified. The ABA does not evaluate nominees for the Court of Federal Claims, but Schwartz would likely be considered unqualified for the position to which he has been nominated.

The ABA also considers litigation experience as essential for non-appellate judges. According to his committee questionnaire, Schwartz has only been chief counsel in two cases that have reached final appellate or trial court decisions. He has never litigated before the court to which he has been nominated and has not even been admitted to practice before the court.

It appears that this nomination is based on an expectation by his supporters that Schwartz would let his conservative political ideology shape his judicial opinions. He has chosen a career in litigation advancing high-profile right wing causes. He has:

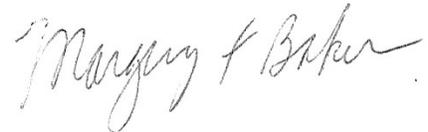
- defended legislation in Louisiana that places substantial burdens on women’s ability to exercise their right to have an abortion;
- argued that Title IX does not prohibit discrimination against transgender students;
- defended North Carolina’s notorious HB2 (the “bathroom bill”);
- represented North Carolina in litigation over its major voter suppression law (which the Fourth Circuit struck down, finding it “target[ed] African Americans with almost surgical precision”);
- argued that President Obama’s 2012 DACA program was not lawful and that states could therefore legally deny driver’s licenses to Dreamers covered by the program.

Our nation’s courts are fundamental to our liberty. They need judges who put their political views aside. Five experienced, nonpartisan, highly qualified men and women were blocked from

the Court of Federal Claims for a reason. Young conservative nominees like Stephen Schwartz and Damien Schiff are that reason.

Confirming Schwartz would reward efforts to turn our nation's courts into extensions of a political party. We urge you to oppose the nomination.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker  
Executive Vice President for Policy and Program