

AFL-CIO

LEGISLATIVE ALERT

January 31, 2018

Chairman Charles Grassley
Ranking Member Diane Feinstein
US Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510-6050

Dear Chairman Grassley and Ranking Member Feinstein:

The AFL-CIO urges you to oppose the nomination of Michael Brennan to serve on the United States Court of Appeals for the Seventh Circuit. There are significant procedural deficiencies with this nomination, as well as substantive concerns about his record. Mr. Brennan's testimony during his Senate Judiciary Committee hearing did not assuage our concerns.

This nomination is counter to Wisconsin's long-standing selection process for federal judges. Since 1979, the state's bipartisan Federal Nominating Commission has had the responsibility of making judicial recommendations to the state's U.S. Senators. According to Mr. Brennan's Senate Judiciary Committee questionnaire, however, the Administration selected him prior to the Commission even beginning its work. Moreover, when the Commission considered his nomination, Mr. Brennan failed to receive the required support of five of the six commission members.

Further, ignoring long-standing Senate protocol, the Administration failed to consult Senator Baldwin before announcing its intention to nominate Mr. Brennan. Accordingly, Senator Baldwin has not returned her blue slip on this nominee. We note that, for a prior Seventh Circuit nominee, no less than Mr. Brennan himself staunchly defended in an opinion editorial Senator Johnson's right to exercise the blue slip. In his words, "There are [] two senators from Wisconsin from different political parties, so to exclude Johnson and those citizens who voted for him would be a purely partisan move."

We also have substantive concerns about Mr. Brennan's approach to the law and what it means for working families. He has aggressively argued for conservative judges to "reexamine" stare decisis and "follow only correct precedent. Such an "originalist" approach would cause him to "reexamine" decades of established case law, despite his efforts during the Senate Judiciary Committee hearing to obscure his earlier work (by referring to "vertical" and "horizontal" stare decisis and reviewing the procedural rules of the Seventh Circuit that are triggered when established precedent in that circuit is revisited).

Last, as chair of Wisconsin Governor Scott Walker's three-member state judicial selection committee, which appoints lawyers to the state bench, Mr. Brennan helped the Governor implement his highly partisan and divisive agenda. He supported both of Walker's ideologically extreme state Supreme Court appointments. One of them was Daniel Kelly, who expressed the view that affirmative action is "morally, and as a matter of law... the same" as slavery and harshly criticized the U.S. Supreme Court's *Obergefell v. Hodges* decision on marriage equality. The other appointee described the "feminist movement" as "largely composed of angry, militant, man-hating lesbians who abhor the traditional family." The AFL-CIO is deeply troubled that Mr. Brennan considers nominees with such extremist views to be appropriate arbiters for the claims of people of color, women, and LGBTQ individuals.

Our federal judiciary should be comprised of judges who apply established law fairly, no matter the parties' personal characteristics or political affiliations. Our review of Mr. Brennan's record leads us to the conclusion that Michael Brennan will not be such a judge.

The procedural failings of this nomination should block it from consideration, but if Mr. Brennan's nomination does come to a vote, we urge your opposition.

Sincerely,



William Samuel, Director
Government Affairs Department

WS/CC/aeb

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