



December 12, 2017

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
S-230 U.S. Capitol  
Washington, D.C. 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
S-221 U.S. Capitol  
Washington, D.C. 20510

Dear Majority Leader McConnell, Minority Leader Schumer and members of the Senate:

As an organization that is dedicated to expanding opportunities for women, promoting reproductive health and rights, access to quality affordable health care, and policies that help women and men meet the dual demands of work and family, the National Partnership for Women & Families writes to express strong opposition to the nomination of Don R. Willett to the United States Court of Appeals for the Fifth Circuit.

As a current justice on the Supreme Court of Texas, Mr. Willett's record raises serious concerns on issues that are vital to women's health and economic security, including workplace equality, sexual harassment, health care and LGBTQ rights. Mr. Willett's record – both on the bench and off – demonstrates a blatant disregard for women's efforts to achieve equality, as well as an ideological judicial philosophy that raises concerns about whether Mr. Willett has the requisite impartiality to serve on the federal bench.

In fact, throughout his career, Mr. Willett has gone to great lengths to undermine women's rights, and in particular, to disparage efforts to address women's inequality in the workplace. For example, in his role as a state official under then-Governor of Texas George W. Bush, Willett objected to Governor Bush's proclamation to honor the Texas Federation of Business and Professional Women. In his objection, Willett demonstrated hostility and skepticism towards women's well-founded concerns about workplace inequality, the challenges of finding affordable, quality child care, reproductive health and rights, and concerns about workplace safety and sexual harassment:

I resist the proclamation's talk of "glass ceilings," pay equity (an allegation that some studies debunk), the need to place kids in the care of rented strangers, sexual discrimination/harassment, and the need generally for better 'working conditions' for women (read: more government). Issue-wise, they support the [Equal Rights Amendment], affirmative action, abortion rights, legislation adding teeth to the Equal Pay Act, etc. and they regularly line up with the AFL-CIO and similar groups.<sup>1</sup>

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<sup>1</sup> See Ken Herman, *Bush Adviser's Memo Critical of Women's Issues*, AUSTIN AMERICAN-STATESMAN (Nov. 15, 2017, 6:20 PM), <http://www.statesman.com/news/local/bush-adviser-memo-critical-women-issues/0qZW8b3DV3fAj4WU1PKqTK/#>.

More recently, on the bench, Willett has used his judicial power to undermine efforts to advance workers' rights, and in particular, to weaken laws that protect women from sexual harassment, sexual assault and other forms of sex discrimination in the workplace. For example, in *Waffle House, Inc. v. Williams*, Willett blocked a woman who had faced repeated sexual harassment and assault from fully recovering damages.<sup>2</sup> In doing so, he severely limited the ability of sexual assault survivors to bring suit in Texas. As the dissent in the case noted, Willett's opinion "exposes an employer who tolerates a bully's assaultive conduct to greater liability under the common law than an employer who tolerates the same behavior accompanied by the indignity of sexual abuse."<sup>3</sup>

Additionally, both on and off the bench, Willett has been an outspoken opponent of LGBTQ equality. On Twitter following the Supreme Court's landmark ruling in *Obergefell v. Hodges*, Mr. Willett openly mocked marriage equality, tweeting that he "could support recognizing a constitutional right to marry bacon."<sup>4</sup> In his judicial role, he has further disparaged the rights of LGBTQ people, joining a decision in June 2017 that held that the Supreme Court's ruling in *Obergefell* does not guarantee equal, publicly funded benefits for married gay and lesbian public employees, clearly contrary to the decision in *Obergefell*.<sup>5</sup>

As a candidate, President Trump repeatedly stated that he would nominate Supreme Court justices that are opposed to *Roe v. Wade*.<sup>6</sup> He then included Willett on a shortlist of potential Supreme Court nominees.<sup>7</sup> Given President Trump's unprecedented and unrelenting dedication to nominating anti-abortion jurists, we presume that Willett meets his test. Moreover, Mr. Willett himself has boasted about his views being far outside the mainstream, indicating that he may not act with the commitment to equal justice required for a lifetime appointment to a federal court. Willett stated that he is "universally regarded" as "the most conservative member of the [Texas Supreme Court,]" noting that it is a "label that [he] accept[s] with, frankly, gladness and gusto."<sup>8</sup> He has also stated that "there is no

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<sup>2</sup> *Waffle House, Inc. v. Williams*, 313 S.W.3d 796 (Tex. 2010).

<sup>3</sup> See *id.* at 815 (O'Neill, J., dissenting) ("The Court's decision exposes an employer who tolerates a bully's assaultive conduct to greater liability under the common law than an employer who tolerates the same behavior accompanied by the indignity of sexual abuse. Surely in its statutory attempt to afford greater workplace protection from sexual harassment the Legislature did not intend to curtail relief for victims of assault.").

<sup>4</sup> Justice Don Willett (@JusticeWillett), TWITTER (Apr. 29, 2015, 5:49 PM), <https://twitter.com/JusticeWillett/status/593591597641531392> ("I could support recognizing a constitutional right to marry bacon.").

<sup>5</sup> *Pidgeon v. Turner*, No. 15-0688, 2017 Tex. LEXIS 654 (Tex. June 30, 2017).

<sup>6</sup> See, e.g., *Full Transcript: Third 2016 Presidential Debate*, POLITICO (Oct. 20, 2016, 12:04 AM), <http://www.politico.com/story/2016/10/full-transcript-third-2016-presidential-debate-230063> (within which Donald Trump describes how he is "putting pro-life justices on the court.").

<sup>7</sup> E.g., Amber Phillips, *Who Are the 11 People on Donald Trump's Short List for the Supreme Court?*, WASH. POST (May 18, 2016), [https://www.washingtonpost.com/news/the-fix/wp/2016/05/18/who-are-the-11-people-on-donald-trumps-short-list-for-the-supreme-court/?utm\\_term=.9d7df6d99af4](https://www.washingtonpost.com/news/the-fix/wp/2016/05/18/who-are-the-11-people-on-donald-trumps-short-list-for-the-supreme-court/?utm_term=.9d7df6d99af4).

<sup>8</sup> ArlingtonVoiceDotCom, *Justice Don Willet – Arlington Voice – 2012 TCGOP Straw Poll*, YOUTUBE (Feb. 6, 2012), <https://www.youtube.com/watch?v=ImznoCBCrnE>. See also *justicedonwillett, Justice Don Willett Commercial: Conservative*, YOUTUBE (May 7, 2012), <https://www.youtube.com/watch?v=WJQFioXc4Mg>.

ideological daylight to the right of me.”<sup>9</sup> He described himself as “the consensus conservative choice from every corner of the conservative movement: pro-life, pro-faith, pro-family, pro-liberty, pro-Second Amendment, pro-private property rights and pro-limited government.”<sup>10</sup>

In sum, Willett’s record both from and off the bench are deeply problematic for women and families. As his record reflects, Mr. Willett has a deeply held conservative bias that demonstrates a lack of impartiality on sexual assault, workplace equality, LGBTQ rights and more.

For all of these reasons, the National Partnership for Women & Families strongly urges you to vote against the confirmation of Don R. Willett to the Fifth Circuit Court of Appeals.

Sincerely,

National Partnership for Women & Families

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<sup>9</sup> ArlingtonVoiceDotCom, *Justice Don Willet –Arlington Voice – 2012 TCGOP Straw Poll*, YOUTUBE (Feb. 6, 2012), <https://www.youtube.com/watch?v=ImznoCBCrnE>.

<sup>10</sup> Chuck Lindell, *Supreme Court Challengers Say Court is Too Pro-Business*, AUSTIN AMERICAN-STATESMAN (May 13, 2012, 11:22 PM), <http://www.statesman.com/news/state--regional-govt--politics/supreme-court-challengers-say-court-too-pro-business/ITDVM0ZBoNdzFRorbGoPzL/>.