New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org

LDF
DEFEND EDUCATE EMPOWER

Washington, D.C. Office
700 14th Street NW, Suite 600
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

July 30, 2019

Senator Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Senator Charles Schumer
United States Senate
322 Hart Senate office Building
Washington D.C. 201510

Dear Senators McConnell and Schumer:

We write to strongly oppose any consent package on lifetime appointments. We urge that the Senate take seriously its duty to advise and consent and therefore we demand full consideration of each of the 19 pending nominees – including cloture and a roll call vote. From 2015 to 2016, the Senate, under the leadership of Majority Leader Senator Mitch McConnell and Chair of the Judiciary Committee Senator Chuck Grassley, only confirmed 18 district court nominees. Now, the majority party rushes to confirm 19 district court nominees in one day. Not only is this speed reckless and ill-advised, it is only possible because of the unilateral change to Senate Rules, decreasing the amount of post-cloture debate time to only two hours per nominee. Moreover, as a legal organization fighting for racial justice and the protection of civil rights, we take issue with the extremist positions of some of these nominees.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) was founded in 1940 by Thurgood Marshall. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state sponsored racial inequality. From that era to the present, LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF has always been a pioneering force in our nation's quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained. For almost 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color.

Our federal courts play a critical role in enforcing the Constitution and other laws of this country. The legitimacy of our judiciary is derived, in part, from the confidence the people have in it. It is a perversion of our courts, and a relinquishment of Senate responsibility to rush through 19 nominees in one day—many of whom have declined to

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org

LDF
DEFEND EDUCATE EMPOWER

Washington, D.C. Office
700 14th Street NW, Suite 600
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

unequivocally state that the landmark Supreme Court decision, *Brown v. Board of Education,*[1] was correctly decided.

Disturbingly, 11 of the nominees being advanced failed to acknowledge the landmark Brown v. Board Supreme Court decision

The Supreme Court's 1954 *Brown v. Board of Education* decision is one of the most significant in our nation's history. Brown's holding has long been recognized across the political and ideological spectrum as the foundational statement on equality in America. Each sitting U.S. Supreme Court justice testified that Brown was rightly decided at their confirmation hearings, with Justice Samuel Alito calling it "one of the greatest, if not the single greatest thing that the Supreme Court of the United States has ever done." Circuit Court judges nominated by George W. Bush, dating at least back to 2003, all endorsed Brown at their confirmation hearings. The Brown decision is a bedrock of this nation's legal canon that must be accepted and embraced by anyone seeking a lifetime appointment to the federal bench. Brown is on par with Marbury v. Madison in terms of its vitality to the American legal system. No one would or should accept a nominee to the federal bench who refused to publicly acknowledge that Marbury was rightly decided.

Brown not only banned segregation in our schools, but also redefined equality under the law and, in the process, altered the lives of all people in this country, regardless of race, gender, religion, or disability or immigration status. Its legacy reaches almost every aspect of public life and undergirds our nation's legal norms about equality and race. Its importance in shifting the very nature of our society cannot be understated and affirming its significance cannot be coyly dismissed as prohibited by the Code of Conduct. However, 11 of the 19 nominees moved forward by the Senate Majority Leader have refused to state that *Brown v Board of Education* was correctly decided.[2] Federal judges must be prepared to recognize the core canon of equality *Brown* represents and should have demonstrated throughout their careers that they stand behind and support racial equality and justice.

---

[1] *Brown v. Board of Educ.*, 347 U.S. 483 (1954)
[2] Leadership Conference on Civil and Human Rights, *Currently Pending Trump Judicial Nominees and Brown v. Board of Education* (July 25, 2019) http://civilrightsdocs.info/pdf/judicial-nominations/documents/BrownvBoard-Nominees.pdf

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org

LDF
DEFEND EDUCATE EMPOWER

Washington, D.C. Office
700 14th Street NW, Suite 600
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

Unanimously handed down by the Supreme Court, the *Brown* decision must transcend political affiliation, it must transcend ideological differences; it is the foundation for the society we live in and strive towards. We vociferously condemn the growing chorus

judicial nominees who refuse to endorse this landmark decision. We continue to believe that the failure of judicial nominees to offer explicit support for the decision should be disqualifying.

Nominee Brantley Starr has led efforts to disenfranchise voters

Brantley Starr, a nominee for the U.S. District Court for the Northern District of Texas, has played an integral role in advancing discriminatory voting restrictions in Texas and we therefore strongly oppose his nomination. Notably, Mr. Starr defended Texas's discriminatory photo ID law in *Abbott v. Veasey.*[3] The Fifth Circuit sitting en banc, ruled that SB 14 disproportionately and discriminatorily impacted Black and Latino voters. After the *en banc* Fifth Circuit decision, and discriminatorily impacted Black and Latino voters. After the *en banc* Fifth Circuit decision, Mr. Starr worked on a petition for a writ of certiorari arguing SB 14 was enacted to prevent voter fraud and asking the Supreme Court to overturn the Fifth Circuit.

While the Supreme Court denied cert, Mr. Starr's efforts to restrict voting rights for Black and Latino voters under the guise of preventing voter fraud continued. Despite robust evidence that voter fraud is virtually nonexistent,[4] as recently as 2018 Mr. Starr continued to advocate for measures restricting voting rights for the sake of eradicating alleged voter fraud. In a 2018 letter to the Senate Select Committee on Election integrity, Mr. Starr alleged that "[m]edia reports of illegal voting and the widespread practice of seeding and harvesting mail ballots, together with recent prosecutions and investigations conducted by this office, have confirmed that the threat to election integrity in Texas is real, and the need to provide additional safeguards is increasing."[5] He went on to encourage the Texas Legislature to pass a number of restrictive and

---

[3] *Veasey v. Abbott*, No. 17-40884 (5th Cir. 2018)
[4] Justin Levitt *The Truth About Voter Fraud,* Brennan Center for Justice at NYU School of Law (Nov. 9, 2007)
https://www.brennancenter.org/sites/default/files/legacy/The%20Truth%20About%20Voter%20Fraud.pdf
[5] Brantley Starr, *Letter to Senate Select Committee On Election Integrity* http://civilrightsdocs.info/pdf/judicial-nominations/documents/Brantley-Starr-1.pdf

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org

LDF
DEFEND EDUCATE EMPOWER

Washington, D.C. Office
700 14th Street NW, Suite 600
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

discriminatory voter suppression measures, including requiring state agencies to "proactively identify noncitizens on Texas voter rolls;" increasing penalties for mistakes

on voter registration applications; reviewing signature procedures for mail ballot applications; creating restrictive photo ID laws for absentee voting; and reevaluate voter assistance programs.[6]

Through LDF's work defending and protecting voting rights across the country, including several cases in Texas, we have seen dishonest and racist claims of voter fraud and sued states with pernicious voter ID laws that serve to disenfranchise under-resourced communities of color, and sow confusion at the polls. Mr. Starr's legislative recommendations would further disenfranchise Black and minority communities, and furthermore, are founded on the false assertion that large amounts of Black and Latino voters are voting illegally. This stereotype has been repeatedly used to justify unconstitutional voter suppression tactics from poll taxes to photo ID laws, which have a disproportionate and burdensome effect on African American and Latino voters.[7] Mr. Starr's extreme views and support of these decidedly unconstitutional voter suppression measures demonstrate a clear bias. He has provided no reason to believe his biased views and beliefs will change as a judge. No litigant with a voting rights claim could trust that he would fairly, impartially or properly provide equal justice under the law.

Several nominees have displayed a disregard for Supreme Court Precedent

Several of the 19 nominees have made controversial and alarming statements which call into question their ability to make impartial decisions and their fitness to serve.

In 2015, on a panel entitled "Gay Rights, States' Rights," Mr. Starr showed a willful disregard for Supreme Court precedent that conflicts with personal beliefs. On this panel, Mr. Starr defended the right of county clerks to refuse to issue marriage licenses to same-sex couples, despite the recent Supreme Court decision in Obergefell v. Hodges.[8]

---

[6] Ibid.
[7] *Citizens Without Proof*, Brennan Center for Justice at NYU School of Law (Nov. 2006), http://www.brennancenter.org/sites/default/files/legacy/d/download_file_39242.pdf.
[8] Ayan Mittra and Emily Albracht, *2015 Tribune Festival: Audio From the Justice Track*, The Texas Tribune (Oct. 30, 2015) https://www.texastribune.org/2015/10/30/2015-tribune-festival-audio-justice-track/

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org

LDF
DEFEND EDUCATE EMPOWER

Washington, D.C. Office
700 14th Street NW, Suite 600
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

Jeffrey Brown, nominated to the U.S. District Court for the Southern District of Texas, authored a judicial opinion which exemplifies his unwillingness to comply with the Supreme Court's Obergefell decision. In 2017, two years after the Supreme Court

legalized same-sex marriage, Mr. Brown was part of the Texas Supreme Court majority in *Pidgeon v. Turner*,[9] which held that city employees who were married in other states did not have any automatic rights to marriage benefits.

Mr. Starr, along with the other 10 nominees who have refused to affirm that Brown was correctly decided and the above nominees who have demonstrated a clear animus and disregard for Supreme Court precedent must not be confirmed to lifetime judicial positions without full consideration before the Senate. We strongly urge against any consent packages, and recommend the Senate proceed with a roll call vote for each nominee. Finally, we reiterate our position that refusing to affirm Brown v. Board of Education was correctly decided, is disqualifying for lifetime nominees.

Sincerely,

Sherrilyn A. Ifill

Sherrilyn A. Ifill

President and Director Counsel

CC: Members of the Senate

[9] *Pidgeon v. Turner*, 538 S.W.3d 73, 60 Tex. Sup. J. 1502 (2017)