

May 4, 2020

The Honorable Lindsey Graham
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Reproductive Justice Groups Oppose Confirmation of Justin Walker Due to his Lack of Qualifications, Track Record of Opposing the ACA and Birth Control Access, Demonstrated Hostility Toward Workers' Rights, and Demonstrated Lack of Impartiality Due to his Disregard for Christine Blasey Ford's Testimony Against Brett Kavanaugh

Dear Chairman Graham:

We are 21 reproductive justice organizations and allied reproductive health and rights organizations, writing to express our strong opposition to the confirmation of Justin Walker to the United States Court of Appeals for the DC Circuit.

We are organizations based throughout the country that advocate for reproductive justice, joined by partners who advocate for reproductive rights and health.

Reproductive Justice framework is rooted in the human right to control our own bodies, our sexuality, our gender, and our reproduction. Reproductive justice will be achieved only when all people, of all immigration statuses have the social, economic, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-preservation.

Every individual should have the right to make their own reproductive decisions, without facing impossible obstacles. They should be able to make decisions about their health care based on their own living conditions and circumstances. This also means that they should be able to plan whether or when to start or add to their family without outside interference, no matter where they seek care and without discrimination.

Given our commitment to reproductive justice, we strongly oppose Judge Justin Walker's nomination to the District of Columbia ("D.C.") Circuit. His record shows a legal career built on opposition to issues that are fundamental to Reproductive Justice and support for laws and policies that disproportionately harm people of color. Moreover, as organizations that work on a number of issues within the reproductive justice framework, including access to healthcare and contraceptives, survivor's rights and worker's rights. Judge Walker's record of eroding these

rights is alarming. His record demonstrates a career built on opposition to issues fundamental to Reproductive Justice. In light of his record, we believe he lacks the qualifications to serve with impartiality and fairness required of a judge.

1. His Peers Considered Judge Walker “Not Qualified” for the Bench

The American Bar Association (“ABA”) rated Judge Walker as “Not Qualified” during his confirmation to his current bench at the Western District of Kentucky. The ABA found Judge Walker was not qualified for his current bench because he lacked experience.¹ The ABA estimated that at best, Judge Walker practiced law for less than ten years since his graduation from law school. *Id.* Despite a “Not Qualified” rating from the ABA, Judge Walker was confirmed to his current bench on October 25, 2019.²

Since his confirmation to the bench, Judge Walker has, at most, accumulated all of six months of judicial experience. Six months is not enough to circumvent his lack of legal experience prior to his nomination; it is certainly not enough to deem Judge Walker qualified for the D.C. Circuit Court, which is often known as the second highest court in the land. It is very concerning that Judge Walker is being nominated for this bench despite the glaring lack of legal experience.

2. Judge Walker Spent His Career Working Against Providing Healthcare for Millions of Americans

The current COVID-19 pandemic has revealed the deep inequities of healthcare access in our country.³ For example, in the ongoing COVID-19 crisis, Black communities are currently facing significantly greater incidence of COVID-19 hospitalizations.⁴ Based on current data, 1 in 3 people who become sick enough with COVID-19 to be hospitalized are Black, while Black Americans make up 13% of the total United States population.⁵

¹ AMERICAN BAR ASSOC., NOMINATION OF JUSTIN R. WALKER TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY (2019), *available at* https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2019-07-30NQ-rating-Justin-R-Walker.pdf?logActivity=true.

² UNITED STATES CONGRESS, <https://www.congress.gov/nomination/116th-congress/898> (last visited Apr. 16, 2020).

³ Elisabeth Rosenthal and Emmarie Huetteman, *Analysis: He Got Tested For Coronavirus. Then Came The Flood Of Medical Bills*, KAISER HEALTH NEWS (Apr. 1, 2020), <https://khn.org/news/covid19-coronavirus-test-surprise-medical-bill/>; *see also* SHARON PARROTT ET AL., CARES ACT INCLUDES ESSENTIAL MEASURES TO RESPOND TO PUBLIC HEALTH, ECONOMIC CRISES, BUT MORE WILL BE NEEDED, <https://www.cbpp.org/sites/default/files/atoms/files/3-27-20econ.pdf> (last visited Apr. 16, 2020).

⁴ Allison Aubrey, *CDC Hospital Data Point to Racial Disparity in COVID-19 Cases*, NPR (Apr. 08, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/08/830030932/cdc-hospital-data-point-to-racial-disparity-in-covid-19-cases>.

⁵ *Id.*

Many, despite the numerous successes of the Patient Protection and Affordable Care Act (“ACA”), still do not have health insurance.⁶ During this time of healthcare crisis, nominating Judge Walker, who has demonstrated his hostility against healthcare access, is deeply troublesome.

During his numerous public support for now-Justice Brett Kavanaugh, he extolled Justice Kavanaugh’s “strongest, most consistent, most fearless record of constitutional conservatism . . .”⁷ He also noted with approval that Justice Kavanaugh provided the “roadmap” for Supreme Court Justices to dissent from upholding the individual mandate of the ACA.⁸

Women of color face deeply troubling barriers to healthcare such as language, economic, geographic, and cultural barriers to receiving healthcare. Despite the passage of the ACA, Latina women continue to be one of the most uninsured groups in the United States.⁹ The rate of insured greatly differs in subgroups of APIs and when broken down by occupation.¹⁰

Women of color need more access to healthcare, not less. Judge Walker’s record does not lend confidence that he will uphold the ACA and recognize women of color’s right to healthcare access.

3. Judge Walker’s Record Against Free and Accessible Contraception Goes Against Reproductive Justice

As reproductive justice organizations, we are also concerned by Judge Walker’s statements against the right of women to access contraceptive healthcare in order to make best decisions about themselves, their families, and their communities.

Judge Walker called Justice Kavanaugh a “warrior” and a “steadfast and fearless supporter of religious liberty” while pointing out Justice Kavanaugh’s dissent against ACA’s mandate for employer-sponsored health plans to supply contraceptives without out of pocket costs.¹¹ In this article, Judge Walker is highly laudatory of Justice Kavanaugh’s stance against this mandate.

Judge Walker’s opposition to the ACA and its mandate for employer-sponsored plans to provide contraceptives is particularly harmful to women of color employees with lower incomes. Access to contraceptives through the ACA is a vital component of women’s health and undermining

⁶ JENNIFER TOLBERT ET. AL., KEY FACTS ABOUT THE UNINSURED POPULATION, <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/> (last visited Apr. 16, 2020).

⁷ Justin Walker, *Brett Kavanaugh Said Obamacare Was Unprecedented And Unlawful*, THE FEDERALIST (July 3, 2018), <https://thefederalist.com/2018/07/03/brett-kavanaugh-said-obamacare-unprecedented-unlawful/>.

⁸ *Id.*

⁹ Munira Gunja et. al, *The Impact of the Affordable Care Act on Latinas in the U.S.*, <https://wafmag.org/2016/10/impact-affordable-care-act-u-s-latinas/> (last visited Apr. 24, 2020).

¹⁰ NAPAWF calculations based on American Community Survey (ACS) 2015 1-year using Ruggles, S., Genadek, K., Goeken, R., Grover, J., & Sobek, M. (2015). Integrated Public Use Microdata Series: Version 6.0 [dataset]. Minneapolis: University of Minnesota. Retrieved 16 Apr. 2020, from <https://usa.ipums.org/usa/>; see *infra* section 3.

¹¹ Justin Walker, *Judge Brett Kavanaugh: A Warrior for Religious Liberty*, NATIONAL REVIEW (July 6, 2018), <https://www.nationalreview.com/2018/07/judge-brett-kavanaugh-religious-liberty-warrior/>.

ACA's coverage would create higher out-of-pocket costs for women of color employees, thus taking away their power to make decisions about their own bodies and families.¹²

4. Judge Walker's Records Demonstrates Hostility Against Workers' Rights

We are also concerned by Judge Walker's record against worker's rights. Women of color are especially vulnerable to employer mistreatment and are consistently underpaid compared to their white, non-Hispanic male counterparts.

On average, Hispanic women make 54 cents for every dollar and Black women earn 64 cents for every dollar a white, non-Hispanic man earns.¹³ Within the AAPI community, there are stark wage disparities within AAPI subgroups. Burmese, Cambodian, Nepalese, and Fijian women earn less than 60 percent of what white, non-Hispanic men are typically paid.¹⁴

Women of color also disproportionately make up the personal care sector and also make up a disproportionate number of tipped workers.¹⁵ Women of color are also more likely to work involuntarily in part-time positions because they are unable to secure full-time work.¹⁶

Service workers and personal care workers work in harsh conditions that often do not provide for workplace protections or fair wages.¹⁷ Currently, the federal minimum wage for tipped workers is \$2.13.¹⁸ Tipped workers are also far less likely to have health coverage.

Almost 17 percent of healthcare workers are born outside the United States. Of these, most were from Asia.¹⁹ For example, 23 percent of home health, psychiatric, and nursing aides were born

¹² Marcella Howell & Ann M. Starrs, *For Women of Color, Access to Vital Health Services Is Threatened*, GUTTMACHER INSTITUTE (July 2017),

<https://www.guttmacher.org/article/2017/07/women-color-access-vital-health-services-threatened>

¹³ CENTER FOR AMERICAN PROGRESS, WOMEN OF COLOR AND THE WAGE GAP (2015)

<https://www.americanprogress.org/issues/women/reports/2015/04/14/110962/women-of-color-and-the-gender-wage-gap/>.

¹⁴ *Id.*

¹⁵ *Id.*; *Making America Work: Asian Americans, Native Hawaiians and Pacific Islanders in the Workforce and Business* (2014), <https://advancingjustice-la.org/sites/default/files/MakingAmericaWork2015.pdf>; Sylvia Allegretto & David Cooper, *Twenty-Three Years and Still Waiting for Change*, (July 10, 2014)

<https://www.epi.org/publication/waiting-for-change-tipped-minimum-wage/>.

¹⁶ CENTER FOR AMERICAN PROGRESS, WOMEN OF COLOR AND THE WAGE GAP (2015).

¹⁷ Annette Bernhardt et. al., NATIONAL EMPLOYMENT LAW PROJECT, BROKEN LAWS. UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES, (Sep. 21, 2009) available at

<https://www.nelp.org/publication/broken-laws-unprotected-workers-violations-of-employment-and-labor-laws-in-america-cities/>.

¹⁸ *Minimum Wages for Tipped Employees*, DEP'T OF LABOR (Jan. 1, 2020).

<https://www.dol.gov/agencies/whd/state/minimum-wage/tipped>.

¹⁹ Lisa Rapaport, *U.S. Relies Heavily on Foreign Born Workers*, (Dec. 4, 2008),

<https://www.reuters.com/article/us-health-professions-us-noncitizens/u-s-relies-heavily-on-foreign-born-healthcare-workers-idUSKBN1O32FR>

outside the United States.²⁰ Currently, these healthcare workers are on the frontlines of the pandemic.

Within this context, it is important that worker's rights are recognized and respected so women of color have the agency and economic power to assist them in making their own decisions. However, Judge Walker's career does not spark confidence that he will work to uphold workers' rights.

For example, Judge Walker represented a corporation against a labor union found to have refused to bargain with their employees' union. We find this representation is not an exception but a manifestation of his long-standing views against workers. In college, Judge Walker noted that there was "hypocrisy" around individuals who support unions.²¹

Judge Walker's bias against workers' rights is especially troubling because he is being considered for the D.C. Circuit, which frequently adjudicates in matters arising from federal agencies such as the National Labor Relations Board. Women of color need our courts to uphold workers' rights to ensure their economic power and the personal autonomy that stems from obtaining economic power.

5. His Response to Sexual Harassment Casts Doubt on His Impartiality

Judge Walker's ability to be impartial is in doubt. During Supreme Court Justice Brett Kavanaugh's hearing, Judge Walker stated Dr. Christine Blasey Ford's statements regarding her experience of sexual harassment was "mistaken."²² Rather than believing Dr. Blasey Ford's statements, Judge Walker was quick to come to the defense of his mentor because he worked with Justice Kavanaugh, disregarding her testimony.

As a judge on the D.C. Circuit, Judge Walker must impartially rule on matters based on fact and reason, not based on his personal experiences. Judge Walker's quickness to dismiss Dr. Blasey Ford's testimony is troubling for reproductive justice organizations as we continue to advocate for autonomy over our own bodies, free from anyone's control.

Women of color disproportionately experience sexual assault in their lifetime but are less likely to report it to authorities.²³ When Black women report sexual assault, they are less likely to be believed.²⁴ Further, transwomen of color are more likely to be victims of sexual violence.²⁵

²⁰ *Id.*

²¹ Justin Walker, *Headed to New Hampshire*, DUKE NEWS (Jan. 20, 2004),

https://web.archive.org/web/20040306123238/http://www.dukenews.duke.edu/news/campaign_headednh.html.

²² Fox News, *Fox News Breaking*, DAILYMOTION, (Sept. 27, 2018), <https://www.dailymotion.com/video/x6ucaa2>.

²³ END RAPE ON CAMPUS, PREVALENCE RATES <https://endrapeoncampus.org/new-page-3>

²⁴ Maya Finoh & Jasmine Sankofa, *The Legal System Has Failed Black Girls, Women, and Non-Binary Survivors of Violence*, AMERICAN CIVIL LIBERTIES UNION (Jan. 28, 2019)

<https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/legal-system-has-failed-black-girls-women-and-n>

[on](#)

²⁵ OFFICE FOR VICTIMS OF CRIME (June 2014) https://www.ovc.gov/pubs/forge/sexual_numbers.html.

During the current COVID-19 pandemic, AAPI women were two to three times more likely to report harassment than men.²⁶ Centuries of denigrating them as exotic and submissive sexual beings have made them targets of unwanted attention and harassment.²⁷ When issues like this rise in courts, we look to judges to examine facts and rule on the side of justice. Judge Walker's dismissal of Dr. Blasey Ford's testimony causes us concerns on whether he will be able to rule with impartiality necessary to examine facts of cases as they appear before him, especially in cases related to sexual harassment.

For people of color, threats to health care, economic justice, and survivors' rights are threats to our bodily autonomy and undermine our ability to make decisions about our own lives and families. People of color rely on the protections enforced by courts, yet Judge Walker repeatedly demonstrated a career-long commitment to rolling back the rights that determine our health, freedom, and well-being. As a judge in the influential District of Columbia Circuit, Judge Walker will have the power to decide many cases involving critical legal protections for groups and civil rights he has long worked against. We cannot support a nominee who will disregard the daily realities and needs of communities of color. For the foregoing reasons, we urge you to strongly oppose the confirmation of Judge Justin Walker to the District of Columbia Circuit.

Sincerely,

National Asian Pacific American Women's Forum (NAPAWF)

In Our Own Voice: : National Black Women's Reproductive Justice Agenda

SisterReach

SIECUS: Sex Ed for Social Change

URGE: Unite for Reproductive & Gender Equity

Positive Women's Network-USA

We Testify

The Afiya Center

SPARK Reproductive Justice NOW!, inc.

²⁶ Asian Pacific Policy & Planning Council, Incidence of Coronavirus Discrimination (Mar. 25, 2020) http://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/A3PCON_Public_Weekly_Report_3.pdf;

Asian Pacific Policy & Planning Council, Incidence of Coronavirus Discrimination (Apr. 3 2020) http://www.asianpacificpolicyandplanningcouncil.org/wp-content/uploads/Press_Release_4_3_20.pdf.

²⁷ *Sexual Violence*, ASIAN PACIFIC INSTITUTE ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/about-gbv/types-of-gbv/sexual-violence/>; NiCole T. Buchanan et. al., *Sexual Harassment, Racial Harassment, and Well-Being among Asian American Women: An Intersectional Approach*, 41 *Women & Therapy* 261-280 (2018) <https://www.tandfonline.com/doi/full/10.1080/02703149.2018.1425030?scroll=top&needAccess=true>.

SisterSong Women of Color Reproductive Justice Collective

SisterLove, Inc.

Jane's Due Process

Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)

The Womxn Project

National Network of Abortion Funds

If/When/How: Lawyering for Reproductive Justice

Religious Coalition for Reproductive Choice

Civil Liberties and Public Policy

National Women's Health Network

Physicians for Reproductive Health

National Partnership for Women & Families