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May 17, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Chairman
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Diane Feinstein
Ranking Member
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell, Minority Leader Schumer, Chairman Grassley and Ranking Member Feinstein:

In our respective roles in the Congressional Black Caucus (CBC) and in the Texas Congressional delegation, we write to urge you and your colleagues to reject Andrew Oldham's nomination for a seat on the Fifth Circuit. Mr. Oldham has devoted much of his career to challenging legal protections that help ensure minorities' access to employment, voting rights, public housing, and even integrated education. His nomination should be unacceptable.

Mr. Oldham's career is full of instances in which he sought to curtail the legal protections afforded to minorities. For example, when the Equal Employment Opportunity Commission issued guidance to assist employers in understanding their responsibility to ensure they did not violate Title VII of the Civil Rights Act by asking questions concerning criminal histories, Mr. Oldham argued that evidence of disparate impact of minorities was not sufficient to justify the guidance. He wrote, "[t]he State of Texas respectfully requests a declaration of its right to maintain and enforce its laws and policies that absolutely bar convicted felons (or certain categories of convicted felons) from serving as police officers, youth-correction officers, state-supported-living-center employees, GLO employees, lottery officials, game wardens, school teachers, and any other job the State and its Legislature deem appropriate."

In his previous role as Deputy Solicitor General for the State of Texas, Mr. Oldham co-authored an amicus brief to the Supreme Court supporting positions that eviscerate important protections of the Voting Rights Act. In his brief, Mr. Oldham argued that “Texas’s ongoing efforts to gain preclearance of its voter-identification law demonstrate that section 5 continues to impose ‘substantial federalism costs’ at a time when the need for a preclearance regime has receded.” A U.S. District Court recently found that the Texas law not only had a discriminatory effect, but intentionally discriminated against racial minorities. We must not accept nominees who support gutting voting rights protections.

Mr. Oldham also argued for policies that would have perpetuated segregation of minority communities. In a brief for the State of Texas that he co-authored, Mr. Oldham argued that housing discrimination cases should not be brought based upon disparate impacts on minority communities. The Supreme Court rejected these arguments and concluded that the Fair Housing Act “must play a part in avoiding the . . . grim prophecy that ‘[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.’”

Lastly, though perhaps most disturbingly, Mr. Oldham refused to say during his confirmation hearing whether the seminal case of Brown v. Board of Education was correctly decided. Refusing to say whether this most important of cases, which established so many of the rights that we enjoy today, was properly decided should completely disqualify a nominee seeking a lifetime appointment to the federal bench.

Unfortunately, Mr. Oldham represents a disconcerting trend in judicial nominees from this Administration. Thus far into his presidency, President Trump has nominated 105 individuals for federal appellate and district judgeships. Of those, 91.4 percent were white, and only one percent were African American. Moreover, 75.2 percent were male and only 24.8 percent female. With a record that all but excludes minorities and women from nomination, those who the Administration does nominate must at least demonstrate a record of fairness to all Americans.

We appreciate your consideration, and urge you to reject this nominee.

Sincerely,



Cedric L. Richmond
Chair, Congressional Black Caucus

Eleanor Holmes Norton
Chair, CBC Judicial Nominations Working Group



Eddie Bernice Johnson
Member of Congress



Sheila Jackson Lee
Member of Congress



Marc Veasey
Member of Congress