

September 20, 2017

VIA EMAIL

Re: *Nomination of Damien M. Schiff to the U.S. Court of Federal Claims*

Dear Senator:

We, the undersigned women's organizations; reproductive health, rights and justice organizations; and civil rights organizations write to express our strong opposition to the nomination of Damien Schiff to a 15-year term on the United States Court of Federal Claims. While the Court of Federal Claims has limited jurisdiction, it frequently adjudicates legal issues of importance to women, and Mr. Schiff's record makes clear that his judicial approach would imperil women's rights and women's interests.

Mr. Schiff, a prolific blogger and attorney with the Pacific Legal Foundation, is stunningly unfit for the federal bench. As an initial matter, his record amply demonstrates his lack of judicial temperament. He has impugned advocates whose views he does not share,¹ raising serious questions about whether he will treat all litigants coming before him with respect and impartiality. He has made numerous outrageous and inflammatory statements, including referring to Justice Anthony Kennedy as "a judicial prostitute,"² which are inconsistent with the judicial role.

In addition, Mr. Schiff has demonstrated hostility to core women's rights and civil rights, raising serious doubts as to whether he would approach these and related issues with an open mind, follow precedents with which he disagrees, and decide cases involving those issues strictly based on the law and the facts. For example:

- Mr. Schiff asserted that Title IX does not apply to high school sports.³ This assertion has been rejected by numerous courts, as well by the Department of Education in regulations and policies.
- He co-authored a law review article asserting that *Grutter v. Bollinger*, 539 U.S. 306 (2003), which upheld the University of Michigan Law School's race-conscious admissions policies against constitutional challenge, "should ... be recognized as one of the Supreme Court's mistakes," along with *Dred Scott*, *Plessy v. Ferguson*, and *Korematsu v. United States*.⁴
- In one blog post, Mr. Schiff stated: "I strongly disagree with the *Lawrence* [v. *Texas* decision] because I can find no historical or precedential basis, pre-1868, for its limitation on the legislative proscription of sodomy."⁵ In another, he objected to a school's anti-bullying curriculum for asserting "not only that bullying of homosexuals qua homosexuals is wrong, but also that the

¹ See, e.g., Damien M. Schiff, *Putting Good Sense on the Endangered Species List*, CASPER STAR TRIB. (Sept. 28, 2009) http://trib.com/news/editorial/forum/putting-good-sense-on-the-endangered-list/article_d158df1c-2736-584d-872e-3ba13bdaf5fd.html (calling the Endangered Species Act "a handy tool for environmentalist extremists to push an agenda that has more to do with stifling productive human activity than fostering ecological balance.").

² Damien M. Schiff, *Kennedy as the Most Powerful Justice?*, OMNIA OMNIBUS (June 29, 2007, 8:35 AM), https://web.archive.org/web/20080610122330/http://omniaomnibus.typepad.com:80/omnia_omnibus/2007/06/index.html.

³ D.A. Tuma, *Libertarian Counterpoint #1044, 8/4/11*, YOUTUBE at 17:20 (Aug. 13, 2011), <https://www.youtube.com/watch?v=cQbBuAYIov4>.

⁴ Joshua P. Thompson & Damien M. Schiff, *Divisive Diversity at the University of Texas: An Opportunity for the Supreme Court to Overturn Its Flawed Decision in Grutter*, 15 TEX. REV. L. & P. 437, 486 (2011), available at https://drive.google.com/file/d/0BxwJ7kpwYA_7FLXV4N0hRMWdfbWM/view.

⁵ Damien M. Schiff, *Federalism and Separation of Powers Part I*, OMNIA OMNIBUS (May 15, 2008, 9:03 PM), https://web.archive.org/web/20080610122430/http://omniaomnibus.typepad.com:80/omnia_omnibus/2008/05/index.html.

homosexual lifestyle is a good, and that homosexual families are the moral equivalent of traditional heterosexual families.”⁶

- Mr. Schiff has written several blog posts in which he expressed opposition to abortion rights. In one post, he asserted that abortion, like infanticide and slavery, violates natural law,⁷ concluding with the statement, “I am not saying that people in favor of legalized abortion are morally decrepit (although I would consider their view on this matter to be gravely in error).”⁸

Damien Schiff’s record demonstrates both troubling legal views and a temperament that is completely unfit for judicial service. While Mr. Schiff claims that he would follow precedent if confirmed and that his previously stated views would be irrelevant to his judicial decision making, nothing in his record shows that he could put aside his strong views about legal issues and his disdain for individuals who disagree with those views. His confirmation would jeopardize fair hearings for those coming to the courts for justice, and undermine public confidence in the judicial system. For all of the reasons described above, the undersigned organizations urge you to reject Damien Schiff’s nomination to the Court of Federal Claims.

Sincerely,

Alliance for Justice
Association of Reproductive Health Professionals (ARHP)
Center for American Progress
Human Rights Campaign
Institute for Science and Human Values, Inc.
Lambda Legal
Leadership Conference on Civil and Human Rights
National Abortion Federation
National Asian Pacific American Women's Forum (NAPAWF)
National Association of Social Workers (NASW)
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Council of Jewish Women
National Education Association
National Health Law Program
National LGBTQ Task Force Action Fund
National Network of Abortion Funds
National Organization for Women
National Partnership for Women & Families

⁶ Damien M. Schiff, *Teaching “Gayness” in Public Schools*, OMNIA OMNIBUS (May 17, 2009, 2:32 PM), https://web.archive.org/web/20090530124852/http://omniaomnibus.typepad.com:80/omnia_omnibus/2009/05/index.html. He did state in his answers to questions for the record that he regretted the blog post “because it has given the . . . false impression that I was or am opposed to anti-bullying curricula for LGBT children, or that I favor legal disabilities for LGBT persons.” DAMIEN M. SCHIFF, QUESTIONS FOR THE RECORD, SENATE JUDICIARY COMMITTEE 21 (2017), available at <https://www.judiciary.senate.gov/download/schiff-responses-to-questions-for-the-record> (note: the pagination within the source is not consecutive, therefore the page numbers refer to the page number of the PDF document in its entirety, rather than the page numbers listed in the document).

⁷ Damien M. Schiff, *Abortion and “Secular Government”*, OMNIA OMNIBUS (July 22, 2008, 10:15 PM), https://web.archive.org/web/20081018211439/http://omniaomnibus.typepad.com:80/omnia_omnibus/2008/07/index.html.

⁸ *Id.*

National Women's Health Network
National Women's Law Center
National Women's Political Caucus
People for the American Way
Planned Parenthood Federation of America
Service Employees International Union (SEIU)
Voting Rights Forward