



December 4, 2020

Dear Senator,

On behalf of the Human Rights Campaign (HRC), America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality, we write to oppose the nomination of Stephen Schwartz to the U.S. Court of Federal Claims. The Court of Federal Claims is responsible for adjudicating civil rights claims despite its special jurisdiction. For example, the Court has jurisdiction over claims brought by federal employees under the Equal Pay Act,¹ and has been charged with adjudicating issues particularly relevant to the LGBTQ community including the right to serve openly in the military.² A seat on any federal bench demands a judge who has an exhibited commitment to impartiality and access to justice over personal ideology or partisanship. Unfortunately, Mr. Schwartz fails to meet this most basic standard.

Mr. Schwartz left private legal practice to join the politically charged organization, Cause of Action created and supported by the Koch brothers. This organization has been widely criticized as a “sophisticated charade” by the mainstream media, which has argued that the organization seeks to actualize the conservative and exclusionary Koch brother agenda through sympathetic lawsuits.³ Once represented by Cause of Action, these plaintiffs obfuscate the reality of the Koch brothers' involvement and interest in the cases.

Mr. Schwartz left Cause of Action to join the law firm defending North Carolina House Bill 2, a law restricting access to gender appropriate facilities and prohibiting municipalities from protecting LGBTQ people from discrimination. Mr. Schwartz represented the North Carolina legislators intervening in litigation against the governor and subsequently the Department of Justice to ensure a strong defense of the bill.

¹ *Jordan v. United States*, 122 Fed Cl. 230 (2015).

² See, e.g., *Collins v. United States*, No. 10-778C (Ct. Fed Cl. 2010) and *Loomis v. United States*, 68 Fed. Cl. 503 (2005).


³ Halper, E. (2015, Feb. 7). Koch-backed group with ties to liberal causes? Critics call it a charade. *Los Angeles Times*.

Mr. Schwartz also served as counsel to the Gloucester County School Board defending the school board's discriminatory restroom policy that segregated transgender students from their peers. Mr. Schwartz argued that Title IX of the Education Amendments of 1972 does not protect students from discrimination on the basis of gender identity.⁴ This interpretation disregards robust precedent regarding coverage of gender identity by our nation's civil rights laws including in the Title IX context. Mr. Schwartz peddled dangerous stereotypes and scare tactics regarding "gender fraud," arguing that schools must refuse to recognize a student's gender identity to preserve the integrity of sex segregated sports teams.

In addition to actively seeking to undermine LGBTQ rights, Mr. Schwartz has a troubling record on a range of civil rights issues. He represented North Carolina in a failed effort to have the Supreme Court reconsider the Fourth Circuit's decision to strike down problematic voter ID law that was described by the Fourth Circuit as "target[ing] African Americans with almost surgical precision."⁵ On behalf of a Florida Governor, he filed an amicus brief supporting Arizona's law refusing to provide driver's licenses to Deferred Action Childhood Arrivals (DACA) recipients.⁶ Mr. Schwartz also defended Louisiana against constitutional challenges to multiple state laws restricting access to reproductive care.⁷

When nominated in 2017, Mr. Schwartz's legal career spanned less than a decade. Yet, in that brief career, he has developed a record that raises grave concerns regarding his ability to engage in legal analysis free of bias or ideological interest. Accordingly, we urge you to vote against his appointment to a seat on the U.S. Court of Federal Claims. Thank you for your consideration. If you have any questions or need more information, please contact David Stacy, HRC Government Affairs Director at David.Stacy@hrc.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alphonso David', with a stylized flourish extending from the end.

Alphonso David

President, Human Rights Campaign

⁴ Brief of Petitioner, Gloucester Cty. Sch. Bd. v. G.G., 137 S. Ct. 1239 (No. 16-273), 2017 WL 65477.

⁵ Petition for Writ of Certiorari and Volume I of the Appendix at 1, North Carolina v. N.C.

⁶ Brief of Governor Bush as Amicus Curiae Supporting Petitioners, in Arizona Dream Act Coalition v. Brewer, 757 F.3d 1053 (9th Cir. 2014), petition for cert. filed, No. 16-1180 (U.S. Mar. 29, 2017),

⁷ Sen. Comm. on the Judiciary, 115th Cong., Stephen Sidney Schwartz: Questionnaire for Judicial Nominees.