



June 8, 2017

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley, Senator Feinstein, and Committee Members:

On behalf of the hundreds of thousands of members of People For the American Way, I write to express our strong opposition to the confirmation of Damien Schiff to a seat on the U.S. Court of Federal Claims.

Like Article III courts, the Court of Federal Claims can bring fairness and justice to litigants only if it has judges of the highest caliber and character. It is hard to imagine any litigants trusting someone with Schiff's record to be a disinterested judge applying the law fairly, regardless of politics. That trust is essential in establishing and maintaining a court's legitimacy, so that all parties regard its proceedings as fair and abide by its judgments.

As part of the far right Pacific Legal Foundation, Schiff has spent much of his career litigating against environmental regulations or agency actions, demonstrating an ideological agenda in an area of importance to the Court of Federal Claims. This is particularly problematic because it has taken place against a background of statements ridiculing and impugning the motives of environmentalists. Such statements unquestionably disqualify him from judicial service. For instance, he has [stated](#) that environmentalists use the Endangered Species Act to "push an agenda that has more to do with stifling productive human activity than fostering ecological balance." How could any litigant supporting regulations and actions protecting the environment possibly believe they would get a fair hearing in a Schiff courtroom?

A nominee cannot malign an entire class of litigants and then expect to be confirmed to any court, be it Article I or Article III. Indeed, the integrity and legitimacy of our judicial system relies on not having people like Schiff on the bench.

Schiff has also demonstrated that he lacks the demeanor we expect from a federal judge. As [Chairman Grassley has stated](#):

So, it's not a question of whether or not a nominee has been engaged politically. It's a question of how that individual has conducted himself.

Does he have the temperament that we look for in a federal judge? Suppose a nominee has been extremely politically active. That's not a disqualifier.

But has his political dialogue been so coarse – so strident – that we, as Senators, lack confidence that he can render judgment without regard to political considerations?

Schiff's blog posts are the epitome of the coarse, strident political dialogue that the Chairman stated he was worried about. His baseless and inflammatory attacks against environmentalists are just an example of that. Perhaps most notorious is [Schiff's very personal and vulgar attack on Justice Anthony Kennedy](#), who is so often the swing vote in important 5-4 cases:

It would seem that Justice Kennedy is (and please excuse the language) a judicial prostitute, 'selling' his vote as it were to four other Justices in exchange for the high that comes from aggrandizement of power and influence, and the blandishments of the fawning media and legal academy.

That language speaks for itself. It shows an absence of character. And it indicates a lack of respect for our nation's judicial system that is shocking coming from someone who now wants to become part of it.

Under what the Chairman might call "the Grassley Rule," and under just plain common sense, Damien Schiff is a nominee who the Senate Judiciary Committee should unanimously reject.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker
Executive Vice President for Policy and Program