



June 26, 2019

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

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way opposes the nomination of Peter Phipps of Pennsylvania to be a judge on the Third Circuit Court of Appeals. In his testimony before the Senate Judiciary Committee, he demonstrated a lack of basic respect for transgender people.

Phipps has served as a district court judge for eight months, and home state senator Bob Casey has cited the brevity of Phipps' time on the bench as a reason he does not support the nomination.<sup>i</sup> In 2016, when President Obama nominated Assistant United States Attorney Rebecca Haywood<sup>ii</sup> to the Third Circuit, she did not have home state senator Pat Toomey's support. Consequently, Toomey's fellow Republicans who controlled the Judiciary Committee did not advance Haywood's nomination.

But now the majority has a fellow Republican in the White House, and the Pennsylvania senator opposing the nominee is a Democrat. As with the David Porter<sup>iii</sup> nomination, and emblematic of the decline in democratic norms ailing our nation, the committee majority is again setting the rules based solely on the identity of those involved. Phipps is getting the committee consideration that was denied to Haywood. This is the exact opposite of the rule of law that the Judiciary Committee is tasked to protect through the judicial nominations process.

Concerns have also been raised by Phipps' response to a question relating to the dignity of transgender people, where he evinced what could most charitably be described as discomfort with treating transgender people with respect. Sen. Booker asked a simple, straightforward question:

Would you honor the request of a plaintiff, defendant, or witness in your courtroom who is transgender to be referred to in accordance with that person's gender identity?

Instead of saying yes, Phipps dissembled:

Appellate courts generally review the record from district courts and the briefs of the parties without the occasion to address parties or witnesses directly by name in open court. If there is a need to use a pronoun to refer to a plaintiff, defendant, or witness in a written opinion, I would review the record and the parties' briefing to assess the appropriate pronoun.<sup>iv</sup>

This was not a trick question. Showing basic respect for those who appear in your courtroom does not signal how you would rule on any particular legal issue. All three of the district court

nominees whose hearings were held on the same day as Phipps’—including two fellow Pennsylvanians—answered the same question with an unqualified “yes.”<sup>v vi vii</sup>

It is difficult to imagine the public accepting as unbiased a ruling against a transgender litigant (or someone represented by a transgender attorney) when the judge shows such discourtesy toward transgender people.

We oppose elevating Phipps to the Third Circuit.

Sincerely,



Marge Baker  
Executive Vice President for Policy and Program

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<sup>i</sup> “Trump Nominates Six for Federal Court Seats,” Courthouse News Service, May 3, 2019, <https://www.courthousenews.com/trump-nominates-six-for-federal-court-seats>.

<sup>ii</sup> “Grassley Should Not Hold a Hearing for 3rd Circuit Nominee David Porter,” PFAW Blog, April 10, 2018, <http://www.pfaw.org/blog-posts/grassley-should-not-hold-a-hearing-for-3rd-circuit-nominee-david-porter/>.

<sup>iii</sup> Ibid.

<sup>iv</sup> Peter Joseph Phipps, nominee for the United States Court of Appeals for the Third Circuit, Questions for the Record (QFRs), <https://www.judiciary.senate.gov/download/06/17/2019/phipps-responses-to-questions-for-the-record>, p. 44.

<sup>v</sup> Jennifer Philpott Wilson, nominee for the Middle District of Pennsylvania, Questions for the Record, <https://www.judiciary.senate.gov/download/06/17/2019/wilson-responses-to-questions-for-the-record>, p. 30.

<sup>vi</sup> William Shaw Stickman IV, nominee for the Western District of Pennsylvania, Questions for the Record, <https://www.judiciary.senate.gov/download/06/17/2019/stickman-responses-to-questions-for-the-record>, p. 31.

<sup>vii</sup> Charles R. Eskridge III, nominee for the Southern District of Texas, Questions for the Record, <https://www.judiciary.senate.gov/download/eskridge-responses-to-questions-for-the-record>, page 36.