



1201 16th St., N.W. | Washington, DC 20036 | Phone: (202) 833-4000

Lily Eskelsen García
President

Rebecca S. Pringle
Vice President

Princess R. Moss
Secretary-Treasurer

John C. Stocks
Executive Director

February 7, 2018

United States Senate
Committee on the Judiciary
Washington, DC 20510

Dear Senator:

On behalf of our three million members and the 50 million students they serve, we strongly urge you to oppose the nomination of Michael Brennan to the U.S. Court of Appeals for the Seventh Circuit. As a federal judge, Mr. Brennan would disregard judicial precedents, legislative and trial court fact finding, and fundamental legal principles to advance a far-right ideology. His extreme judicial philosophy is a danger to civil rights, public education, and an independent judiciary. Votes on this issue may be included in NEA's Report Card on the 115th Congress.

Central to Mr. Brennan's judicial philosophy is his belief that conservative judges should not follow precedents they disagree with. He supports overturning congressional actions conservatives disagree with, such as those protecting civil rights. In a 2001 [National Review op-ed](#), "Bush's Judiciary," Mr. Brennan wrote that a judge's duty is first to the Constitution and the laws of the United States, not to other judges' interpretations thereof... If, after reexamination of a legal decision, a court concludes that the ruling was incorrect, *stare decisis* does not require that the rule of that case be followed." This belief is especially alarming in light of Mr. Brennan's views on what is "correct precedent."

Key court decisions about the rights of LGBTQ community, people of color, and women could be undermined by Mr. Brennan. As chair of Wisconsin Governor Scott Walker's judicial selection commission, he endorsed nominees who called LGBTQ people degenerate, equated abortion to the Holocaust, and argued that affirmative action is the legal and moral equivalent of slavery. As a state trial judge, he ignored U.S. Supreme Court precedent and denied a defendant's motion to suppress evidence — a decision reversed on appeal by a unanimous ruling of the Wisconsin Supreme Court. He praised two U.S. Supreme Court decisions that rejected extensive congressional fact finding — one struck down part of the Violence Against Women Act while the other limited damages recovered under the Americans with Disabilities Act. Yet when the Wisconsin Supreme Court invalidated legislative action that protected the interests of insurance companies, he dismissed the ruling as improper judicial activism.

An outspoken critic of government involvement in K-12 education, Mr. Brennan supported Wisconsin's voucher program despite extensive evidence of its shortcomings. Teachers in voucher-supported schools were not required to be licensed, hold more than a high school diploma, or teach an approved curriculum. And the schools were not required to meet state

standards, participate in the state's school accountability system, or provide services to students with disabilities. As a result of this lack of oversight, thousands of Milwaukee's most vulnerable students were denied educational opportunities and millions of taxpayer dollars were lost to fraud.

Moreover, the treatment of Mr. Brennan's candidacy has undercut the role of both the states and the U.S. Senate in shaping the federal judiciary; it has also damaged the public's faith in an independent judiciary. The White House advanced his candidacy despite its rejection by the Wisconsin Federal Nominating Commission, a bipartisan process used by every Wisconsin senator since 1979. Wisconsin Senator Baldwin has yet to return her blue slip on Mr. Brennan's nomination, an act that Mr. Brennan himself has stated should exclude a nomination from proceeding.

For all of these reasons, we strongly urge you to oppose the nomination of Mr. Brennan to the U.S. Court of Appeals for the Seventh Circuit.

Sincerely,

A handwritten signature in black ink that reads "Marc Egan". The signature is written in a cursive, flowing style.

Marc Egan
Director of Government Relations
National Education Association