



June 19, 2019

Judiciary Committee
United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we strongly urge you to oppose any judicial nominee who refuses to affirm that *Brown v. Board of Education* was rightly decided. Votes associated with this issue may be included in NEA's Report Card for the 116th Congress.

On May 17, 1954—more than 65 years ago—a unanimous Supreme Court held in *Brown* that racial discrimination by the government violates the Constitution. A watershed in our nation's history, the words of that decision ring as true today as they did in 1954:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

Before *Brown*, Jim Crow, *de jure* racial segregation, and racially segregated and unequal schools were the norm—and considered constitutional. *Brown* helped our nation turn the corner on that shameful history. While much more must be done to fulfill its promise, the decision itself is fundamental to our nation's progress.

Yet, when asked during the confirmation process whether *Brown* was rightly decided, these individuals refused to answer directly:

- Jason Pulliam, nominee to the Western District of Texas
- Gary Brown, nominee to the Eastern District of New York
- Diane Gujarati, nominee to the Eastern District of New York
- Eric Komitee, nominee to the Eastern District of New York
- Lewis Liman, nominee to the Southern District of New York
- John Sinatra, nominee to the Western District of New York
- Mary Kay Vyskocil, nominee to the Southern District of New York

We strongly urge the nominees named above to correct the record and affirm the correctness of *Brown*. The decision is too important for us to allow the erosion of this vital norm. Other recent nominees, including Supreme Court justices, praised the decision:

- Asked during his confirmation hearing whether *Brown* was rightly decided, Chief Justice Roberts unequivocally responded, “I do.”
- Justice Thomas spoke of the awe of being appointed to the court that decided *Brown* and said it “changed my life and changed the South . . . certainly even before I knew all of the legal ramifications.”
- Justice Alito said “certainly” when asked whether he supported *Brown*.
- Justice Kagan testified, “I hope and I know that the principles of *Brown v. Board* are still relevant today. . . . The idea of equality under law is a fundamental American constitutional value.”
- Justice Gorsuch described *Brown* as a “great and important decision.”
- Justice Kavanaugh called *Brown* “inspirational” and “the single greatest moment in Supreme Court history.”
- Now-retired Justice Kennedy testified, “I think *Brown v. Board of Education* was right when it was decided, and I think it would have been right if it had been decided 80 years before. I think *Plessy v. Ferguson* was wrong on the day it was decided.”

The four words engraved on the facade of the United States Supreme Court are the bedrock of our system: “Equal justice under law.” A nominee to the federal bench who does not pledge fidelity to those words cannot be confirmed.

For all these reasons, we urge you to VOTE NO on all the nominees named above unless they correct the record and affirm that *Brown* was rightly decided.

Sincerely,



Marc Egan
 Director of Government Relations
 National Education Association