



April 5, 2019

RE: Opposition to the Re-Nomination of Patrick Wyrick as United States District Judge for the Western District of Oklahoma

Dear Senator:

Earthjustice opposes the confirmation of Patrick Robert Wyrick to a lifetime seat on the United States District Court for the Western District of Oklahoma. Senate Leadership has filed cloture on his nomination meaning he will likely receive a floor vote in the next week. ***We urge you to oppose Mr. Wyrick's nomination.***

As laid out below and in the attached supplemental information, as we did in our June 11, 2018 & February 2, 2019 letters to the Senate Judiciary Committee, we have deep substantive and ethical concerns with Mr. Wyrick's fitness to serve as a federal judge. Our concerns were deepened by the testimony he gave under oath to the Senate Judiciary Committee nearly a year ago, on May 23, 2018.¹ Taken together, we believe Mr. Wyrick should be disqualified as a candidate for the federal bench and we urge you to oppose his nomination.

We urged the committee to hold a new hearing this Congress to properly vet this nominee. That request was ignored. It is now incumbent on the full Senate to assess this nomination, and reject it.

As Solicitor General of Oklahoma from 2011-17, Mr. Wyrick worked in lockstep with then-Oklahoma Attorney General, (and now former) Environmental Protection Agency Administrator Scott Pruitt, as Oklahoma brought more than a dozen cases seeking to roll back public health protections, including clean air and clean water protections, at the behest of the oil and natural gas industry.²

Mr. Wyrick is considered by former Administrator Pruitt to be a "dear friend and trusted counselor,"³ and emails uncovered through a Freedom of Information Act (FOIA) request show Mr. Wyrick was a key go-between for channeling talking points, letters, and even legal briefs from the oil and gas industry to Pruitt.⁴ This fact alone should have warranted further investigation by the Senate Judiciary Committee to assess Mr. Wyrick's role in advising and condoning actions by then Oklahoma AG Pruitt during this six-year period. This investigation never happened. Amid mounting federal investigations and a myriad of ethics violations, Pruitt ultimately resigned in July, 2018.⁵

Importantly, Mr. Wyrick's testimony before the Senate Judiciary hearing on May 23rd, 2018 (and his subsequent written responses) were evasive at best and disingenuous at worst and underscores our concerns that he simply lacks the qualities we should all look for in a federal judge, including openness, truthfulness and a commitment to ensuring everyone in his courtroom receives justice under the law. We find it hard, if not impossible, to reconcile Mr. Wyrick's statements under oath with the public information available.

¹ Senate Judiciary Wyrick hearing ("Wyrick Hearing"), 5/23/18 available at <https://www.judiciary.senate.gov/meetings/05/23/2018/nominations>

² See Wyrick Senate Questionnaire @ 38-47 available at <https://www.judiciary.senate.gov/imo/media/doc/Wyrick%20SJQ.pdf>

³ <http://www.gablelaw.com/wp-content/uploads/2017/02/Patrick-Wyrick-OK-Supreme-Court.pdf>

⁴ *Supra* note 2; see also <https://www.documentcloud.org/documents/3472490-Produce-Box-1-Redacted.html>; and see generally:

<https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html> ("When you use a public office, pretty shamelessly, to vouch for a private party with substantial financial interest without the disclosure of the true authorship, that is a dangerous practice," said [David B. Frohnmayer](#), a Republican who served a decade as attorney general in Oregon. "The puppeteer behind the stage is pulling strings, and you can't see. I don't like that. And when it is exposed, it makes you feel used.")

⁵ <https://on.msnbc.com/2KUs987> (discussing resignation); <https://politi.co/2lpDW2X> (detailing ethics scandals swirling around Pruitt)

Specifically, and *contrary* to Mr. Wyrick's oral and written testimony to the Senate Judiciary Committee, we believe the record reflects the following (see attached supplemental information for further discussion):

1. As Oklahoma Solicitor General, Mr. Wyrick coordinated with -- and took direction from -- industry lobbyists on litigation matters for the state of Oklahoma.
2. During his time as Oklahoma Solicitor General and perhaps including some of his tenure on the state Supreme Court, Mr. Wyrick held multiple individual stock holdings of oil & gas companies, which lobbied and litigated with the state of Oklahoma – yet failed to disclose these conflicts of interest.
3. Mr. Wyrick's seat on the Oklahoma state Supreme Court requires he reside in the State Supreme Court regional seat for one year prior to his appointment or election, which he in fact did not do, making him ineligible for his current position.
4. Mr. Wyrick made false statements to U.S. Supreme Court in 2015.
5. Mr. Wyrick is on video, clearly expressing his personal belief that the "entire administrative state is unlawful" underscoring the inability of Mr. Wyrick to give all litigants a "fair shake" in his court.

In addition to the above enumerated clear discrepancies between Mr. Wyrick's Senate testimony and the publicly available information, Mr. Wyrick also **failed to disclose** that he is (and has been since early 2014) the Registered Agent for an Oklahoma based LLC owned in part by his spouse, "B2LPT, LLC."⁶ This LLC is a health-care-industry related company, in which his spouse owns an approximate \$800,000 equity share.

Mr. Wyrick also initially **failed to disclose** his material financial interest in the company to the Oklahoma Ethics Commission, as required for state Supreme Court justices.⁷ Moreover, despite this substantial financial holding in a health-care-industry company, Mr. Wyrick did not recuse himself from the federal case *Oklahoma ex rel. Pruitt v. Burwell* (or even raise the potential "conflict of interest" under Oklahoma's ethics rules), which he lists as one of the "ten most significant cases he personally litigated." That case challenged provisions of the Affordable Care Act imposing legal and monetary obligations on companies, presumably including B2LPT.⁸

In sum, a district court judge serves as an arbiter of our federal laws on matters affecting the structure of our democracy and the rights and welfare of all Americans. Such a position requires a nominee who is forthcoming to the Committee and the public, and is free of any ethical or professional competency concerns. As important, a federal judge should be fair-minded to all litigants, committed to the rule of law, and dedicated to implementing and defending our core constitutional and statutory protections. Mr. Wyrick's record makes clear he fails all of these standards. We therefore urge all Senators to oppose his nomination.

Sincerely,



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⁶ See Wyrick Senate Questionnaire *supra* note 2 @ pg. 3 (other affiliations); Oklahoma Secretary of State – corporation information for "B2LPT, LL" available at <https://www.sos.ok.gov/corp/corpInformation.aspx?id=3512253478>. In his QFR answers at pg. 19 responding to his "role in B2LPT" he claims "I have no role in that business."

⁷ Oklahoma Ethics Commission, Wyrick amended financial disclosure, at <http://guardian.ok.gov/PublicSite/Homepage.aspx>, <https://www.documentcloud.org/documents/4337204-Justice-2016-Wyrick-Patrick-Amend.html> (filed an amendment statement later in 2017).

⁸ See. Wyrick Senate Questionnaire *supra* note 2 at 47, 52; see also Mr. Wyrick's QFR answer at pgs. 58-59 (*Hobby Lobby* case) – both cases concerned legal requirements of large employers under the law. Oklahoma ethics rules define a "material financial interest" in an LLC to include being a part owner (Mr. Wyrick's spouse) or "agent" (Mr. Wyrick himself) with a financial interest in excess of \$5,000. https://www.ok.gov/ethics/documents/2016%20State%20Off%20and%20Emp%20Guide_Final.pdf @ pg. 7.

APPENDIX

Earthjustice provides the following supplemental information to document the concerns raised in the above letter:

- 1) *Contrary to his testimony, as Oklahoma Solicitor General, Mr. Wyrick was coordinating with, and taking direction from, industry lobbyists on litigation matters for the state of Oklahoma.*

During Mr. Wyrick's hearing and in his written questions, Senator Whitehouse questioned Mr. Wyrick about **at least 11 email exchanges** between Mr. Wyrick and Bill Whitsitt, Executive Vice President for Devon Energy, an Oklahoma-based oil and gas company (and according to a press report, a substantial donor to then-AG Scott Pruitt). Sen. Whitehouse related one exchange in 2011 where Mr. Wyrick had received a draft letter from the Devon lobbyist to send to EPA on behalf of the State of Oklahoma, which was done after only 37 words out of 1016 words were altered before going out on Oklahoma State government letterhead.⁹ Yet, Mr. Wyrick testified to the Senate Judiciary Committee that he simply "passed it on" and that as a litigator he would not have reviewed the documents or taken action on such a letter.

However, the email exchanges between Mr. Wyrick and the Devon Energy lobbyist span several years and a particular 2013 exchange reveal that Mr. Wyrick was wildly down-playing the extent of his efforts on behalf of Devon Energy. Moreover, Mr. Wyrick's written responses to the Senate Judiciary's "Questions for the Record" or "QFRs" do nothing to change this revelation.¹⁰ For example, in the email exchanges from January 2013, the Devon Energy representative alludes to repeated verbal coordinating conversations between Mr. Wyrick and Devon Energy, including a draft litigation document sent from Devon Energy as, "...**we discussed**,"¹¹ and a "...potential first-cut draft of a letter" prepared by Devon Energy to be sent from state AGs to EPA which the lobbyist goes on to tell Mr. Wyrick, "it is also the kind of thing that in the future could be run through **the clearinghouse we discussed**."¹² (emphasis added).

This exchange reveals that Mr. Wyrick was not simply passing along information as a disinterested litigator as he tried to portray in his hearing or his QFR responses, but rather shows coordinating on multiple levels, including discussing the possibility of setting up some type of "clearinghouse" for the oil & gas industry and friendly state AG offices. Importantly, the email exchange also shows Mr. Wyrick received a draft litigation document, called "States Notice of Intent to Sue," written possibly by Devon Energy, which Mr. Wyrick then tried to remove from the email chain (FOIA document indicates attachment was "removed by Patrick Wyrick/OAG").¹³ After the Devon Energy lobbyist writes Mr. Wyrick to say "thanks for the help on this!" Mr. Wyrick writes back to say, "Thanks Bill. Does this mean there's now no action item for us to consider?" at which point the lobbyist suggests the draft letter prepared by Devon Energy to come from state AGs to the EPA.¹⁴

It is hard, if not impossible to read this exchange as anything but sustained coordination between Wyrick, the AG's office, and the oil and gas industry. Mr. Wyrick's QFR answers further underscore his attempt to obscure his close ties where he claims at least **16 times** in his answers that he cannot "recall" **anything** about the emails, his conversations with Devon Energy or his relationship with Devon Energy's executive Vice President, Bill Whitsitt (who he repeatedly refers to in his emails in a very familiar greeting of "Bill" rather than in his QFRs when it

⁹ Wyrick hearing at 1:23:08 thru 1:30:01; see also: <https://www.nytimes.com/2014/12/07/us/politics/energy-firms-in-secretive-alliance-with-attorneys-general.html>

¹⁰ <https://www.judiciary.senate.gov/imo/media/doc/Wyrick%20Responses%20to%20QFRs.pdf>

¹¹ See <https://www.exposedbycmd.org/Scott-Pruitt-Missing-Emails> at "Produce Box 1 Redacted" email cache, 1-18-13 & 1-19-13 emails between Devon Energy and Patrick Wyrick. Also found here <https://www.documentcloud.org/documents/3472490-Produce-Box-1-Redacted.html>

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

becomes a more distant “Mr. Whitsitt”)¹⁵ (In his QFR non-answers regarding this wealth of communications with Bill Whitsitt, Mr. Wyrick repeats the refrain: “I have no memory,” “I do not recall,” “I have no recollection,” “not a term I can recall being used” sixteen separate times). Not without irony, in his written explanation for why he has no written copies or notes of the vast majority of his speeches to deeply conservative policy groups, he responds that “I typically work from memory rather than notes.”¹⁶

- 2) ***Contrary to Mr. Wyrick’s testimony, during his time as Oklahoma Solicitor General and perhaps including some of his tenure on the state Supreme Court, Mr. Wyrick held multiple individual stock holdings of oil & gas companies which lobbied and litigated with the state of Oklahoma, yet failed to disclose these conflicts of interest.***

During Mr. Wyrick’s hearing, Senator Whitehouse raised the concern of “what it means when a staff member for the attorney general is coordinating directly with lobbyist(s)...” and asked whether, at the time Mr. Wyrick was emailing and coordinating with Devon Energy (and perhaps other oil & gas industry companies) whether he was “a shareholder in Devon Energy at that time?”¹⁷ Mr. Wyrick responded without equivocation that he “was not” but then immediately cast doubt on that statement by following up stating, “I’ve held shares in Devon at times. I don’t now, as a judge I’ve divested myself of shares in individual companies.”¹⁸

While Mr. Wyrick repeats this claim in his QFR answers,¹⁹ the Financial Disclosure Report Mr. Wyrick included as part of his Senate Questionnaire reveals that at some point between January 1st, 2017 and April 13, 2018 (the time frame for that Report), Mr. Wyrick received stock dividends from multiple oil & gas companies, including **Devon Energy** and Chesapeake Energy (both headquartered in Oklahoma and engaged in state lobbying), and other crude oil and tobacco individual common stocks.²⁰ Mr. Wyrick should be made to account for exactly when he held Devon Energy stock during all points of his tenure with the Oklahoma AGs office, or any other individual oil & gas industry stock during this period, and how substantial were those holding. Outside of cases before the Oklahoma State Supreme Court, Mr. Wyrick lists no cases in which he identified a conflict of interest or recused himself in his role as state Solicitor General as the result of any holdings in these oil & gas companies. However, Oklahoma Ethics rules required recusal from participation in matter where the state employee has a “material financial interest.”²¹

In addition, for a period from early 2015 to late 2016 there was a state ethics rule in place that “state officers and employees” are required to file “financial disclosure that reveals potential conflicts between their public duties and private economic interests.”²² (since repealed) Mr. Wyrick has not disclosed to the Committee whether he filed such a disclosure while a state employee. His person financial holding seems to indicate that such a filing may have been required.

Finally, as noted above, according to Mr. Wyrick’s 2017-2018 Financial Disclosure submitted to the Judiciary Committee, he owns (or recently owned) common stock in Chesapeake Energy Corporation.²³ This Oklahoma City based company admitted in 2016 to violating federal antitrust laws and is currently litigating claims against it in Oklahoma state court.²⁴

¹⁵ <https://www.judiciary.senate.gov/imo/media/doc/Wyrick%20Responses%20to%20QFRs.pdf> at 3, 15-18.

¹⁶ *Id.* at 15.

¹⁷ Wyrick Hearing, supra note 9.

¹⁸ *Id.*

¹⁹ Supra note 15 at 2 (QFR responses).

²⁰ Wyrick Questionnaire at pgs. 5-6 of Financial Disclosure attachment.

²¹ https://www.ok.gov/ethics/documents/2016%20State%20Off%20and%20Emp%20Guide_Final.pdf at 6-7.

²² <https://www.ok.gov/ethics/documents/2017%20Ethics%20Annotated%20Rulesv.%202017.2.pdf> at Rule 3.1.

²³ Wyrick Questionnaire at pgs 5-6 of Financial Disclosure.

²⁴ <https://newsok.com/article/5586537/oklahoma-court-to-hear-claims-against-chesapeake-energy>

- 3) ***Contrary to Mr. Wyrick's testimony, his seat on the Oklahoma state Supreme Court requires he reside in the State Supreme Court regional seat he is to hold for one year prior to his appointment or election, which he in fact did not do, making him ineligible for his current position.***

As an initial matter, this issue comes to our attention because of a lawsuit filed by residents of Oklahoma's second judicial district, challenging the appointment of Mr. Wyrick to the state's Supreme Court in February, 2017. The lawsuit, which was dismissed for standing grounds, claimed that Mr. Wyrick was ineligible for the seat.²⁵

At Mr. Wyrick's hearing and his QFRs, he answered multiple questions from Sen. Whitehouse regarding Mr. Wyrick's appointment to the Oklahoma State Supreme Court. In the line of questions, Sen. Whitehouse was attempting to elicit what the specific requirements were for sitting on the state's Supreme Court, and whether Mr. Wyrick in fact had met these requirements. Earthjustice believes Mr. Wyrick was intentionally misleading the committee when he responded to Sen. Whitehouse that "there's no requirement that I *live* in the district that I represent." (emphasis added) While his statement may have been marginally accurate, it evaded the substantive question of the specific legal requirements qualifying an individual for sitting on Oklahoma Supreme Court, since the legal point is not where you "live" but where you "reside" *for at least one year prior to appointment* and in particular, where you are a "bona fide resident."

The Oklahoma Constitution, at Article VII §2 states clearly, "each Justice, at the time of his election or appointment... shall have been a ***qualified elector in the district for at least one year immediately prior to the date of filing or appointment...***"²⁶ (emphasis added). The state constitution at Article III §1 defines a "qualified elector" as a "bona fide resident."²⁷ This definition is under the "suffrage" section of the state constitution. So it stands to reason that Mr. Wyrick is a "bona fide resident" of the county in which he votes. As the lawsuit complaint notes, he represents judicial district two, but in the copy of the "Application for Oklahoma Judicial Vacancy" attached to the complaint, on question 13, Mr. Wyrick lists the places he's lived since 1999,²⁸ and none of these residences for the past 20 years have been in the district he represents on the Supreme Court. Furthermore, the complaint avers that during this time Wyrick has never voted in the second judicial district, and instead has voted in Oklahoma City area, most recently in March 1, 2016, which is less than a year from the time of his "appointment" to the state Supreme Court. The inescapable conclusion, if these facts are accurate, is that Mr. Wyrick was either a "qualified elector" in Oklahoma City on March 1, 2016, making him ineligible to be appointed to the second judicial district seat on the state Supreme Court, or he was a "qualified elector" in the second judicial district and committed voter fraud by voting in Oklahoma City from 2000-16.

In the lawsuit challenging Mr. Wyrick's appointment to the state's Supreme Court, as noted above, the Court dismissed for lack of standing, but importantly, Justice Joseph Watt, writing in part to concur and in part to dissent, called the issue of Mr. Wyrick's residency and qualifications for the state supreme court seat to be, "the most critical issue ever to face the court."²⁹

Furthermore, Mr. Wyrick's subtle obfuscation on there being no requirement "to live in the district" he represents on the Oklahoma State Supreme Court fails upon a quick study of decisions of the very same court. In 2006, the

²⁵ <https://www.acluok.org/en/news/aclu-oklahoma-files-suit-challenging-eligibility-patrick-wyrick-represent-oklahomas-second-judicial-district>; <https://www.acluok.org/sites/default/files/wp/wp-content/uploads/2017/02/Petition-for-writ-in-nature-of-quo-warranto.pdf>

²⁶ <http://www.oscn.net/applications/oscn/deliverdocument.asp?id=84949&hits=639+638+637+636+135+134+133+132+>

²⁷ <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=84843>

²⁸ <https://www.acluok.org/sites/default/files/wp/wp-content/uploads/2017/02/Exhibit-1.pdf>

²⁹ See *Spencer v. Wyrick*, 2017 OK 19, 392 P.3d 290 at (Watt concurring in part, dissenting in part) available at <http://www.oscn.net/applications/oscn/deliverdocument.asp?citeid=479806>; see also <http://okcfox.com/news/local/court-rules-controversial-justice-can-stay>; Multiple news stories by KOKH-Fox News Oklahoma City reported on the litigation claims that Mr. Wyrick's appointment to the state supreme court was in violation of Oklahoma's constitution. See <http://okcfox.com/news/local/oklahoma-democratic-party-calls-for-state-supreme-court-appointee-to-step-down>

Oklahoma state Supreme court spoke to what is a “bona fide resident” under the state constitution. In [In Re Initiative Petition No. 379, 2006 OK 89, 155 P.3d 32](#), the court found:

“a bona fide resident for purposes of art. 3, §1 is equated with **a person's honest intent to make a place one's residence or domicile**, a conscious decision to make a location an individual's home. Physical presence, as in merely crossing the Oklahoma state line, will not constitute residency. Residency requires a person to have a true, fixed, permanent home to which the individual, when absent, expects to return. **It is where the person lives.** Although **an individual may have multiple dwellings, a natural person has but one residence.** The dominant element in determining legal residence is the **intention to abandon a former domicile and to acquire another without any intention of returning-present abode, ...”**

Under the precedence of the very court on which Mr. Wyrick now sits, it defies all logic that he could be a “bona fide resident” in the second judicial district. Nor does Mr. Wyrick’s strained view of where he “lives” comport with his actions in October, 2016. At the time he was applying for appointment to the second judicial district of the Oklahoma Supreme Court, Mr. Wyrick took an ownership interest in a property there, and switched his voter registration to Atoka, OK, which is in the second judicial district.³⁰ If he did not need to “live” in the second district, or vote in it, or in his alternative theory that he has *always* resided in Atoka, why take these steps? He now claims in his QFR answers that it was for “familial reasons.”³¹ That answer fails the Occam’s Razor test that the simpler theory is the better one – that he was covering his tracks in case he needed to claim that whatever past deficiencies existed for appointment to the Court under the Constitution, he has since corrected them. And that’s exactly the alternative argument he offered up in the litigation. Unfortunately for Mr. Wyrick, that argument does not, and cannot, reach back in time to wipe out the invalidity of his appointment under the state Constitution in February, 2017. It is simply more smoke screen.

Mr. Wyrick likely remains in an untenable legal situation. News reports also raised the possibility that Mr. Wyrick could face a criminal investigation for voter fraud by “claiming he resides in Atoka” when he switched his voter registration in October 2016 despite continuing to live and work in Oklahoma City.³² (and note the case cited above regarding domicile) Wyrick listed on both his application for the state Supreme Court seat and in his Questionnaire to the Senate Judiciary Committee for this federal judge nomination that he has been a legal resident of Atoka, OK since birth.³³ However, as reported, “property and voting records all show Wyrick lives in Cleveland County (Oklahoma City)” and has for most of his adult life. The contradiction in Mr. Wyrick’s statements are glaring and irreconcilable. Another legal Gordian knot that cannot be ignored.

4) ***Contrary to his testimony, Mr. Wyrick made false statements to U.S. Supreme Court in 2015.***

During Mr. Wyrick’s May 23rd hearing, Senator Whitehouse questioned him about a rebuke he received from Justice Sotomayor during oral argument of a 2015 case he argued in front of the U.S. Supreme Court (note that Mr. Wyrick was “counsel of record” as Solicitor General for the state of Oklahoma.)³⁴ Senator Whitehouse raised that during that 2015 oral argument, Justice Sotomayor was “substantially disturbed” that Wyrick made factual statements not supported by the sources, and then Sen. Whitehouse asked him, “how on earth do you not check and recheck your citations to make sure you are not making false statements to the Supreme Court?”³⁵ In response, Mr. Wyrick said, “I certainly stand by... the citations we made” and then testified to the Committee that Justice Sotomayor “was mistaken...”³⁶

³⁰ Also see QFRs at 21 – the ownership interest he took in Atoka was not claimed as a “homestead” property, raising the question of whether he still take his homestead property exemption for tax purposes, but also for residency/voting purposes, at his address in Oklahoma City.

³¹ QFRs at 21.

³² See <http://okcfox.com/news/fox-25-investigates/newest-okla-supreme-court-justice-calls-lawsuit-challenging-his-eligibility-frivolous>

³³ See <http://okcfox.com/news/local/trump-nominates-oklahoma-supreme-court-justice-to-serve-in-us-district-court> & <https://www.judiciary.senate.gov/imo/media/doc/Wyrick%20SJQ.pdf>.

³⁴ See Wyrick Senate Questionnaire @ 38 – available at <https://www.judiciary.senate.gov/imo/media/doc/Wyrick%20SJQ.pdf>

³⁵ See Wyrick Hearing

³⁶ Id.

However, press reports show that Mr. Wyrick's recent statement to the Senate Judiciary Committee was misleading at best, and reveal he did in fact make a "false statement to the Supreme Court" to which he and the Oklahoma AG's office had to ultimately admit to the Court.³⁷ On May 13, 2015, three weeks after Mr. Wyrick's arguments before the U.S. Supreme Court, it was revealed that Mr. Wyrick's team had misled the Supreme Court on a claim in that case by submitting a redacted letter as an exhibit that Mr. Wyrick claimed had been sent to the Oklahoma Department of Corrections, when in fact, it had not. The document Mr. Wyrick referred to in oral arguments was instead written to the *state of Texas* Department of Criminal Justice, but his legal team had redacted out the word "Texas" and asserted to the Supreme Court it was sent to the *state of Oklahoma*.³⁸ Oklahoma had received no such letter (the case was on the issue of lethal injection and the constitutionality of this form of capital punishment).³⁹

While in his QFR answers Mr. Wyrick now admits he was forced to submit corrections to the Supreme Court, he continues to downplay the importance of this misinformation and even implies its someone else's fault, claiming now that, despite being the attorney of record, it was not his case at the lower court level and, "I thus had no role in the redaction or submission of the letter you referenced."⁴⁰

- 5) ***Contrary to Mr. Wyrick's testimony, Mr. Wyrick is on video, clearly expressing his personal belief that the "entire administrative state is unlawful," underscoring the inability of Mr. Wyrick to give all litigants a "fair shake" in his court.***

As Senator Whitehouse said at the nomination hearing, "You've even said that you think the entire administrative state is unlawful."⁴¹ Importantly, Earthjustice believes Mr. Wyrick misled the Committee in two different ways to this question by first responding, "respectfully... I don't believe the entire administrative state is unlawful,"⁴² and second by arguing that it was in context of legal standing positions he takes on behalf of his clients, not personally held views. The record does not support his statement to the Committee on either count.

To the first point, though Mr. Wyrick denied it under oath, those were ***exactly*** the words he used, saying, "I'm in... (the camp of)... the ***entire administrative state is unlawful***"⁴³ To his second response (which he repeats in his QFR answers), the specific statement he made at the George Mason event was ***not*** related to legal standing at all, but rather was in response to a specific question directed at him from the audience as to whether he thought it made sense to argue for a "stronger form of the non-delegation doctrine to federal regulation," to which he replied, "I think at this point ***I'm*** in the Phil Hamburger⁴⁴ school of the ***entire administrative state is unlawful***....I think we have all sorts of basic fundamental Constitutional problems with the nature of the current administrative state."⁴⁵ This response is quite specific and hard to interpret as anything less than a deep antipathy towards federal agencies and federal regulations, and it is hard to imagine any litigant seeking to have regulations implemented and enforced according to the statutes passed by Congress would ever get a "fair shake" in his courtroom.

³⁷ See <http://okcfox.com/news/fox-25-investigates/fox-25-investigates-ag-pruitt-potentially-using-private-email-for-state-business> (This Oklahoma Fox News story also alarmingly reveals that Mr. Wyrick's boss at the time, then Oklahoma Attorney General Scott Pruitt, was using a private email address to conduct this and other state business, though the story does not address Mr. Wyrick's use of personal email addresses. This revelation confirmed that Scott Pruitt had lied to the Senate EPW Committee when he testified that he had never used private email for state business, see <http://okcfox.com/news/fox-25-investigates/ags-office-confirms-pruitt-used-private-email-for-state-business>).

³⁸ See https://www.buzzfeed.com/chrisdmcdaniel/oklahomas-attorney-general-misled-supreme-court-about-letter?utm_term=.hs0QQgP0b8#.trvggIK4vb

³⁹ Id. see also discussion at <https://vettingroom.org/2018/05/23/justice-patrick-wyrick/#ftnt20>

⁴⁰ QFR answers at pg. 23

⁴¹ See Wyrick hearing

⁴² Id.

⁴³ George Mason video, recording available at <https://vimeo.com/183526443> at 57:15. Note also another panelist says to Wyrick that Wyrick's argument is not standing as the problem, its that the contemporary law treats acts of congress and regulations as the same.." and that federal agencies are preempting state law because of implicate delegation of law and that is the problem -- Wyrick responds, "I agree with you completely."

⁴⁴ Note that the reference to "Phil Hamburger" is to the professor that wrote in 2014 that the administrative state is unlawful and has no authority under the Constitution.

⁴⁵ George Mason video at 28:15, recording available at <https://vimeo.com/183526443>.

Nor is it reasonably believable that Mr. Wyrick's views were somehow, as he said, "as an advocate litigating on behalf of the State of Oklahoma."⁴⁶ Mr. Wyrick repeatedly says, "*I think*," and "*I'm in...*," when he talks about his views of the "unlawful" nature of the "administrative state." At no point in his response to the question asked, does he say anything remotely resembling the idea that these are simply the litigation positions of his client, nor does he now cite to any brief or oral argument in federal court where he argues such a fringe interpretation of the Constitution. Nor could he, since this would be contrary to over eighty years of U.S. Supreme Court precedence.

At the nomination hearing, then Chairman Grassley's asked Mr. Wyrick, "what do you believe are the most important qualities for a judge to have?" – Wyrick responded, "...to ensure that.... Litigants who come into our courtroom understand that they had a fair shake."⁴⁷ Despite this claim, based on the record before us, Earthjustice has deep concerns whether certain litigants could get a fair shake in a Wyrick-run courtroom. In addition to his statements on video about his views on the unlawfulness of the entire administrative state, on his Senate Questionnaire, Mr. Wyrick admitted to giving at least 16 speeches to two advocacy groups with radically conservative legal ideologies, the Federalist Society (14 times) and the Rule of Law Defense Fund⁴⁸ (2 times). Notably, during his tenure with the Oklahoma AG's office, Mr. Wyrick traveled out-of-state to give speeches 11 times in a three-year period, all of which were for far-right audiences including seven to Federalist Society chapters and two to Rule of Law Defense Fund gatherings (in Cal., Utah, Florida, Arizona, Georgia, and Wash., DC).

We are hard pressed to see how these trips (often paid for by the Federal Society or other dark-money groups) were in furtherance of official state business. Rather, this record gives every appearance of someone who is a barnstorming, crusading ideologue. Mr. Wyrick admits in his QFRs that these events were paid for by the "hosting entity" yet claims to have no documentation on how much was spent for food, travel, and lodging to advance his and the "hosting entity's" view. Disturbingly, as noted above, for the vast majority of these speaking engagements (34 of 42 total, and 8 of 11 out-of-state), Mr. Wyrick claims to "have no notes, transcript, or recording" which he could provide the Committee that might allow the Senate to discern another purpose for these trips.⁴⁹

In sum, Patrick Wyrick's record goes far beyond zealous advocacy for his clients and reflects a deep personal hostility towards federal agencies and federal regulations. The administrative state to which he refers is in fact essential to implement the many statutory safeguards Congress has provided the American people across a range of critical issues, such as clean air and water, a healthy environment, worker and consumer protections, and many of our statutory civil rights. Mr. Wyrick's view that the entire federal regulatory framework is "unlawful," calls into serious question his ability to fairly and impartially adjudicate the legality of administrative actions.

⁴⁶ See Wyrick hearing

⁴⁷ *Id.*

⁴⁸ Rule of Law Defense Fund was chaired by Scott Pruitt, and has been associated with the Koch Brothers, the Judicial Crisis Network, and political dark money. See <https://maplight.org/story/conservative-group-led-by-epa-chief-pruitt-received-dark-money-to-battle-environmental-regulations/>

⁴⁹ Wyrick Questionnaire @ 7-12.