

Alliance for Justice: Brennan nomination flawed from the start

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WASHINGTON, D.C., January 9 – Alliance for Justice today released a comprehensive report on the record of Michael Brennan, President Trump’s nominee for a seat on the U.S. Court of Appeals for the Seventh Circuit. AFJ President Nan Aron released the following statement:

“The White House’s nomination of Michael Brennan has been flawed from the very start, when it became clear that President Trump had picked him before Wisconsin’s judicial nominating commission had even started interviewing candidates for the post. When the commission did evaluate Brennan, it found him lacking, but he was nominated anyway. What matters most to this White House is that judicial nominees be party loyalists, and Brennan is a close crony of Governor Scott Walker. His record is that of a hard-right ideologue who has opposed civil rights and takes the dangerous view that conservative judges should not follow legal precedents they disagree with.”

Among other things, the AFJ report notes:

- In nominating Brennan, the White House ignored the Wisconsin Federal Nominating Commission, used by every Wisconsin senator since 1979. By his own admission, Brennan was apparently selected before the commission even began to interview candidates.
- After the commission considered his potential nomination, Brennan failed to meet commission standards, that a candidate receive the support of five out of six

commissioners. Senator Ron Johnson himself insisted on this standard under President Obama and reaffirmed it under President Trump.

- Brennan's nomination occurred without any meaningful consultation with one of Wisconsin's U.S. Senators, Tammy Baldwin: a blatant breach of courtesy and custom.
- In 2011, Brennan wrote an op-ed saying that it was appropriate for Ron Johnson to block the nomination of Victoria Nourse to the Seventh Circuit. If Tammy Baldwin does not return her blue slip on Michael Brennan's nomination, by Michael Brennan's own standard his nomination should not proceed.
- Brennan has been dismissive of the existence of sex discrimination, writing critically of the idea "that a certain group was denied an opportunity to advance by a 'glass ceiling,'" adding, "[i]mplicit in that phrase is the notion that rules were rigged against some individual or group."
- Brennan has been outspoken in praising a U.S. Supreme Court decision that struck down part of the Violence Against Women Act, as well as another Supreme Court decision that people with disabilities can't sue state governments for damages under the ADA. He criticized Wisconsin's supreme court for ruling that certain caps on malpractice claims were unconstitutional.
- Brennan has written that conservative judges should only follow precedents they believe are "correct." During his tenure as a judge in Milwaukee, Brennan in fact ignored precedents, facts, and basic legal principles in making several rulings.
- As the head of Governor Scott Walker's advisory committee for selecting state judges, Brennan supported virulently anti-LGBTQ candidates for the state bench.
- Brennan has argued for an extremely expansive definition of executive power, and believes national security threats justify sweeping use of authority. He wrote: "The greater threat a war poses to domestic order ... the greater deference exists to the executive's suspension of civil liberties."
- Brennan has questioned the Exclusionary Rule, which prevents evidence from being admitted in court if it was obtained in violation of a defendant's Fourth Amendment rights.

Read the full report here: <https://www.afj.org/our-work/nominees/michael-brennan>