



ADVANCING FAITH, FAMILY AND FREEDOM

April 10, 2014

Senator
U.S. Senate
Washington, DC 20510

Dear Senator:

On behalf of Family Research Council (FRC) and the families we represent, I urge you to oppose the confirmation of Michelle Friedland to the United States Circuit Court of Appeals for the Ninth Circuit. Friedland's legal writing and arguments to the court indicate her willingness to use the judiciary to usurp legislative power. She has treated Constitutional Amendments that run contrary to her agenda as statutes and has shockingly claimed that the Constitution only creates rights to the extent a judiciary says it does. FRC will be scoring the confirmation vote.

In a 2004 Columbia Law Review Article on judicial elections, Friedland writes, "There is no independent truth about the content of rights in state constitutions such that we can say the state judicial systems are inadequate to protect them. The rights are no more than what enforceable judgments of the state courts say they are." This judicial philosophy wrests final legislative control from lawmakers and places it in the hands of unelected judges. This thinking defies the separation of powers doctrine of the Constitution.

In *In Re Marriage Cases*, 43 Cal.4th 757 (Cal. 2008), Friedland acknowledges that California voters passed Proposition 8 to express disapproval with the courts and protect marriage in their state's Constitution as between one man and one woman. Nevertheless, she invites the Supreme Court of California to reject the intent of the California Constitution by treating Proposition 8 as "a state law" that can be struck down rather than the Constitution itself.

Friedland argues: "The separation of powers question that Proposition 8 poses is unprecedented. This Court should hold that... the initiative power cannot be used to enact a measure such as [Constitutional Amendment] Proposition 8 that renders the judicial branch incapable of guaranteeing that the laws [mandate gay marriage]." (Emphasis added.) This ignores the very meaning of a Constitutional Amendment which provides the very standard against which judicial review is performed.

Friedland also performed *pro bono* work enforcing California Senate Bill 1172 that would punish the Free Exercise Rights of faith based counselors if they worked with minors and families of faith to avoid unwanted homosexual practices. In her brief for Equality California, she argues that, "...no therapist reasonably could believe it necessary or beneficial" to engage in change therapy. Yet a 2009 APA task force found that there is "no clear evidence of the prevalence of harmful outcomes among people who have undergone efforts to change their sexual orientation." Friedland, instead,

rushes headlong into subordinating the First Amendment rights of consenting families and counselors to her liberal agenda.

If confirmed as a Circuit Court Judge, there is no assurance Friedland will not exercise her lifetime appointment to the bench as an opportunity to replace those portions of the U.S. Constitution she does not like with non-textual, judicially created provisions she prefers. Friedland has been recognized for her work in arguing for activist decisions and has lobbied for the confirmation of two of the President's most controversial nominees, Goodwin Liu and Edward Chen, who are like-minded in their views of judicial advocacy.

Again, we urge you to oppose the confirmation of Michelle Friedland to the United States Circuit Court for the Ninth Circuit. FRC will be scoring the confirmation vote.

Sincerely,

A handwritten signature in black ink that reads "David Christensen". The signature is written in a cursive style with a small horizontal line above the "i" in "Christensen".

David Christensen
Vice President of Government Affairs