

June 3, 2025



OPPOSE THE CONFIRMATION OF WHITNEY HERMANDORFER TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 240 national organizations to promote and protect the rights of all persons in the United States, we write to express our strong opposition to the nomination of Whitney Hermandorfer to the U.S. Court of Appeals for the Sixth Circuit. The Leadership Conference intends to include your position on the nomination of Ms. Hermandorfer in our voting record for the 119th Congress.

Throughout her limited legal career, Ms. Hermandorfer has been involved in organizations and workplaces that are architects in the rolling back of our civil and human rights. She is an active member in the Federalist Society who has served on their Executive Committee for the Administrative Law & Regulation Practice Group.¹ This out-of-the-mainstream legal organization represents a sliver of America's legal profession, and it has played a large role in shaping the judiciary to produce results that limit the recognition and advancement of civil rights laws and protections for all people.² She is also a member of the Teneo Network, a confidential network that is open only to members in their 40s or younger.³ Leonard Leo, one of the main drivers of the Federalist Society and its attempted judicial takeover, has emboldened the Teneo Network's endeavor to "crush liberal dominance" in many areas of society, including but not limited to the legal profession.⁴ Astonishingly, he describes their mission as "fighting a battle for the heart and soul of our culture."⁵ Ms. Hermandorfer demonstrates through her work as well that she is in this battle and actively working to restrict our rights. In her role as director of strategic litigation in the Tennessee attorney general's office, she not only defends the state in certain cases, but she also leads the state's affirmative litigation strategy and selects particular cases for the state to pursue. It is disturbing that she often chooses to challenge civil rights protections, and in particular she has attacked reproductive rights, LGBTQ equality, birthright citizenship, the labor community, and more.

Reproductive Rights

Throughout Ms. Hermandorfer's legal career, she has worked to strip away crucial reproductive health care rights. For example, pregnant people who were denied medically necessary abortion care and physicians who were prohibited from offering medically indicated treatment to patients in emergencies

¹ *Questionnaire for Judicial Nominees*, U.S. Senate Committee on the Judiciary (accessed May 28, 2025).

² See Emma Green, [How the Federalist Society Won](#), THE NEW YORKER (July 24, 2022); Robert O'Harrow Jr. & Shawn Boburg, [A Conservative Activist's Behind-the-Scenes Campaign to Remake the Nation's Courts](#), THE WASHINGTON POST (May 21, 2019).

³ Andy Kroll and Andrea Bernstein, [Inside the "Private and Confidential" Conservative Group That Promises to "Crush Liberal Dominance"](#), PROPUBLICA (March 9, 2023).

⁴ *Id.*

⁵ [Teneo Community Vision](#), The Teneo Network (accessed June 2, 2025).

challenged the application of Tennessee's criminal abortion ban.⁶ The law's incredibly narrow and confusing medical exception made it difficult for doctors to provide critical life-saving care with confidence that they would not be held criminally liable.⁷ Ms. Hermandorfer minimized the pain that the pregnant people experienced and claimed that the law was clear enough, and she dismissed these as "edge cases."⁸ The court disagreed with Ms. Hermandorfer, however, stating that exceptions outlined in the ban were vague and unclear, and it issued a preliminary injunction for medically necessary abortion care.⁹

In another case, 17 states led by Tennessee and Ms. Hermandorfer sued to invalidate an Equal Employment Opportunity Commission (EEOC) rule that would have guaranteed workplace protections against discrimination and required reasonable accommodations be made for people seeking abortion care as a related medical condition under the Pregnant Workers Fairness Act.¹⁰ As with other related pregnancy conditions, people accessing abortion care should be entitled to the same accommodations, such as adjustments in their schedules for doctor appointments or recovery time.

Ms. Hermandorfer also unsuccessfully led litigation against the U.S. Department of Health and Human Services (HHS) after Tennessee's Title X funding was cut when the state failed to comply with the requirement that state-run clinics receiving Title X funds offer patients abortion counseling and referrals upon request.¹¹ Both the district court and the Sixth Circuit held that Tennessee was required to comply with the necessary requirements under Title X — including offering such services upon request — to receive funding and, if they failed to do so, they would not receive their funding.¹² Title X was created to provide sexual and reproductive health care to those who otherwise would not be able to access it, especially in low-income communities.¹³ These patients deserve to know all of their options when it comes to making the best decision about their families, and Ms. Hermandorfer's efforts to restrict access to crucial information is troubling. These cases taking aim at the health and safety of pregnant people demonstrate Ms. Hermandorfer's alarming bias against reproductive rights. Ms. Hermandorfer has not shown that she would impartially rule on cases involving reproductive health care.

LGBTQ Equality

Ms. Hermandorfer also leads efforts to weaken civil rights protections for the LGBTQ community, especially transgender and nonbinary people. She is heavily involved in the litigation strategy, even sitting second chair at the U.S. Supreme Court for oral arguments in *U.S. v. Skrmetti*, a case that will decide the legality of a Tennessee law that prohibits access to gender-affirming hormonal therapies for

⁶ *Phillips, et al., v. State of Tennessee, et al.* (formerly *Blackmon v. Tennessee*), 23-1196-I (Tenn. Ch. Ct. 2024).

⁷ *Id.*

⁸ Nadine El-Bawab, [Court hears arguments to throw out Tennessee abortion lawsuit, block ban in part](#), ABC NEWS (April 4, 2024).

⁹ *Phillips, et al., v. State of Tennessee, et al.* (formerly *Blackmon v. Tennessee*), 23-1196-I (Tenn. Ch. Ct. 2024).

¹⁰ *Tennessee v. Equal Emp. Opportunity Comm'n*, 737 F. Supp. 3d 685 (E.D. Ark. 2024), *rev'd and remanded*, 129 F.4th 452 (8th Cir. 2025).

¹¹ *Tennessee v. Becerra*, 131 F.4th 350 (6th Cir. 2025).

¹² *Id.*

¹³ [Title X: The Nation's Program for Affordable Birth Control and Reproductive Health Care](#), Planned Parenthood Action Fund (accessed June 2, 2025).

transgender youth.¹⁴ This discriminatory law threatens people's well-being and prohibits families and doctors from making important medical decisions about their bodies free from political interference.

In other cases, Ms. Hermandorfer attempts to dismantle gender identity protections. For example, she challenged an HHS rule that would require the Affordable Care Act's (ACA) prohibition on sex discrimination to include discrimination based on gender identity.¹⁵ This rule protects transgender and nonbinary patients from health care discrimination, a right that should be afforded to all of us. Rather than protecting vulnerable populations in her state, Ms. Hermandorfer spread disinformation, calling this medically necessary care "unproven" in briefs submitted to the court, which ignores the prevailing opinion of the medical community.¹⁶ Every major medical association and health authority worldwide supports gender-affirming care, going so far as to call it life-saving.¹⁷ Instead of deferring to medical experts, Ms. Hermandorfer worked to make health care less safe for transgender and nonbinary people.

In a similar case, she challenged 2024 Title IX guidance issued by the U.S. Department of Education that included gender identity discrimination as a form of sex discrimination.¹⁸ She erroneously claimed that extending Title IX protections would make women's sports less safe, an unproven claim frequently used to villainize transgender youth.¹⁹ With attacks on LGBTQ rights steadily on the rise, our courts must be staffed with fair arbiters who will protect the rights of all people, and Ms. Hermandorfer's anti-LGBTQ record demonstrates she would be biased.

Birthright Citizenship

Ms. Hermandorfer wrote amicus briefs in several cases after the Trump administration issued a patently unconstitutional executive order attempting to end birthright citizenship and to strip citizenship away from millions of Americans.²⁰ This includes *Trump v. CASA*, a case that made its way to the Supreme Court after lower courts issued preliminary injunctions blocking the executive order from implementation.²¹ Since the 14th Amendment's ratification, courts have continually upheld the meaning of the Citizenship Clause to guarantee citizenship to anyone born in the United States with only extremely limited, minor exceptions.²² Indeed, this is a right rooted in the Reconstruction Amendments' purpose, which intends to recognize and protect the full personhood and civil rights of Black Americans and other

¹⁴ *United States v. Skrametti*, 144 S. Ct. 2679, 219 L. Ed. 2d 1297 (2024).

¹⁵ *Tennessee v. Kennedy*, 24-60462 (5th Cir. 2025).

¹⁶ [Brief](#) for Petitioners at 2, *Tennessee v. Kennedy*, 24-60462 (5th Cir. 2025).

¹⁷ [Medical Association Statements in Support of Health Care for Transgender People and Youth](#), GLAAD (June 26, 2024).

¹⁸ *Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880 (6th Cir. July 17, 2024).

¹⁹ [Brief](#) for Petitioner at 11, *Tennessee v. Cardona*, No. 24-5588, 2024 WL 3453880 (6th Cir. July 17, 2024).

²⁰ See [Brief](#) of the State of Tennessee as Amicus Curiae Supporting Defendants, *Doe v. Trump*, 766 F. Supp. 3d 266 (D. Mass. 2025); [Brief](#) of the State of Tennessee as Amicus Curiae Supporting Applicants, *New Jersey v. Trump*, 131 F.4th 27 (1st Cir. 2025); [Brief](#) of the State of Tennessee as Amicus Curiae Supporting Applicants, *Trump v. CASA, Inc.*, No. 24A884, 2025 WL 1132004 (U.S. Apr. 17, 2025).

²¹ [Brief](#) of the State of Tennessee as Amicus Curiae Supporting Applicants, *Trump v. CASA, Inc.*, No. 24A884, 2025 WL 1132004 (U.S. Apr. 17, 2025).

²² Statement of The Leadership Conference on Civil and Human Rights to the House Committee on the Judiciary, [Subject To The Jurisdiction Thereof: Birthright Citizenship And The Fourteenth Amendment](#) (February 25, 2025).

historically excluded communities.²³ The Supreme Court has even ruled that the right is so absolute that Congress could not limit its meaning by statute.²⁴ Ms. Hermandorfer's continued efforts to support a reading of the Citizenship Clause in a way that no court has ever interpreted it shows an astounding lack of legal judgement. Further, it demonstrates a loyalty to the current administration that is pursuing such appalling policies. This is a case that could have far-reaching implications for millions of citizens, particularly Black and Brown citizens, as well as for the ways in which courts can issue preliminary injunctions.

Labor and Employment

Even before she was an attorney, Ms. Hermandorfer was undermining union and labor protections. As a researcher for the conservative think tank American Enterprise Institute, she frequently wrote about supporting the corporatization of public education and busting teachers unions as a way for principals and superintendents to make "necessary" changes.²⁵ She calls union contracts "prescriptive" and claims that they hinder school officials from hiring talented staff.²⁶ Her advice to these school officials is that with "enough persistence, knowledge, or ingenuity" these "smart leaders can frequently find ways to bust them."²⁷ Teachers unions work to guard the workplace protections of our country's educators, a population that is dwindling as the teacher shortage in the United States grows ever higher.²⁸ Disparaging teachers and the crucial work they do, as well as the unions that support them, is unacceptable.

Ms. Hermandorfer has submitted amicus briefs in many cases that undermine fair labor practices and the right of workers to unionize. She submitted a brief on behalf of Tennessee to the U.S. Supreme Court in *Starbucks Corp. v. McKinney*, a case brought in 2024 after several employees at Starbucks were fired after attempting to unionize.²⁹ This is one of many briefs in which she broadly attacks administrative law and agency deference, arguing that National Labor Relations Board (NLRB) members should not be protected from executive oversight and lamenting that the president can only remove board members for "for neglect of duty or malfeasance in office, but for no other cause — including policy disagreements with the Board's approach."³⁰ The NLRB was created as an independent agency to enforce labor rights without the interference of partisan politics, yet if Ms. Hermandorfer's arguments stand, the president would be able to remove any board member with whom they disagree.³¹ Already, the president has fired one NLRB member, Gwynne Wilcox,³² in addition to firing board member Cathy Harris with the Merit Systems Protection Board (MSPB), an agency that studies the federal merit system and reviews the actions taken by the Office of Personnel Management (OPM) to protect the rights of federal employees.³³

²³ [Brief](#) of National Association for the Advancement of Colored People et al as Amici Curiae Supporting Appellees, *Washington v. Trump*, 764 F. Supp. 3d 1050 (W.D. Wash. 2025).

²⁴ *United States v. Wong Kim Ark*, 169 U.S. 649, 18 S. Ct. 456, 42 L. Ed. 890 (1898).

²⁵ Whitney Downs and Frederick Hess, [Combating the "Culture of Can't,"](#) EDUCATION NEXT (January 23, 2025).

²⁶ *Id.*

²⁷ *Id.*

²⁸ Scott White, [Teacher Funding Cut As National Shortage Reaches Breaking Point](#), FORBES (March 7, 2025).

²⁹ [Brief](#) For the State of Tennessee and Twenty Other States as Amici Curiae Supporting Petitioner, *Starbucks Corp. v. McKinney*, U.S. No. 23-367, 602 U.S. 339 (2024).

³⁰ *Id.*

³¹ [Why the attacks on the NLRB attack should alarm you](#), AFSCME (April 15, 2025).

³² Emily Peck, [Former NLRB board member sues Trump over firing](#), AXIOS (February 5, 2025).

³³ [About MSPB](#), U.S. Merit Systems Protection Board (accessed May 29, 2025).

This left the NLRB and the MSPB unable to meet quorum requirements needed to continue their work.³⁴ Ms. Hermandorfer filed amicus briefs in both of these cases,³⁵ arguing that the president should be able to fire board members for differences in policy opinions, in direct defiance of a longstanding Supreme Court precedent set in *Humphrey's Executor*.³⁶ Ms. Hermandorfer's extreme legal arguments are in direct contrast to the current precedent and demonstrate the lengths to which she is willing to go to not only defy longstanding precedent but to advance the president's regressive agenda.

Expanding Executive Power

Ms. Hermandorfer's belief that the president should be able to fire anyone he chooses without oversight is not specific to the boards. She also filed an amicus brief on behalf of Tennessee in *Storch v. Hegseth*, a U.S. Supreme Court case that was filed after President Trump fired more than a dozen inspectors general at various independent government agencies.³⁷ These firings are extremely concerning, as the inspectors general offices exist independently within an agency to root out fraud and corruption by investigating suspected ethics or conflict violations.³⁸ Ms. Hermandorfer applauds this effort in her brief, stating that Tennessee has an interest in "pushing against positions that further enable a 'headless fourth branch of government.'" ³⁹ Oversight investigations are one way to hold our government accountable, and this is especially critical at a time when we have an administration that favors unwavering loyalty to the president and not to the American people. Ms. Hermandorfer's constant attacks on administrative and agency power shows that she has already chosen a side in these cases.

Environmental Protections

Ms. Hermandorfer also supported efforts to roll back important environmental protections, particularly those that protect clean air. In a House Financial Services Committee hearing, Ms. Hermandorfer called the U.S. Securities and Exchange Commission's (SEC) climate disclosure rule — which required companies to disclose their climate risk and greenhouse gas emissions — "climate puffery" and said that the "greenwashing" was misguided.⁴⁰ Ms. Hermandorfer ignored the prevailing opinion of the scientific experts, choosing instead to make this a screed against the SEC rather than about limiting the amount of hazardous emissions that are in the air we breathe.⁴¹

³⁴ Emily Peck, [Former NLRB board member sues Trump over firing](#), AXIOS (February 5, 2025); Jacob Knutson, [Supreme Court Halts Court Order Reinstating Federal Board Members Fired By Trump](#), DEMOCRACY DOCKET (April 9, 2015).

³⁵ [Brief](#) of Tennessee as Amicus Curiae State Supporting Defendants, *Wilcox v. Trump*, 1:25-cv-00334 (D.D.C. 2025); [Brief](#) of Tennessee as Amicus Curiae Supporting Defendants, *Harris v. Bessent*, 1:25-cv-00412 (D.D.C. 2025).

³⁶ *Humphrey's Executor v. United States*, 295 US 602 (1935).

³⁷ [Brief](#) of Tennessee as Amicus Curiae Supporting Defendants, *Storch v. Hegseth*, 1:25-cv-00415 (D.D.C. February 24, 2025).

³⁸ Danielle Caputo, [The Significance of Firing Inspectors General: Explained](#), Campaign Legal Center (January 31, 2025).

³⁹ *Supra* note 37, at 5.

⁴⁰ Testimony of Whitney Hermandorfer to U.S. House Financial Services Committee, [SEC Overreach and States' Role in Safeguarding the Separation of Powers](#) (March 18, 2024).


⁴¹ See e.g., Center for Global Sustainability, [Leading U.S. Energy Modeling Teams Find that EPA Power Plant Rules Could Reduce Emissions, Speed Up Coal Plant Retirements](#), University of Maryland (January 9, 2025); Elliot Negin, [Ask a Scientist: Gas Power Plants Disproportionately Harm Marginalized Communities](#), Union of

Further, she unsuccessfully challenged an Environmental Protection Agency (EPA) rule that sought to limit an excess of greenhouse gas emissions produced by fossil fuel plants⁴² and a similar EPA rule that sought to cut down on hazardous air emissions from coal-fired power plants.⁴³ While the U.S. Supreme Court allowed both of these rules to take effect,⁴⁴ Ms. Hermandorfer again used her position to voice disdain for administrative agencies and environmental protections. These repeated efforts show that she has an agenda and therefore would not be able to administer unbiased equal justice.

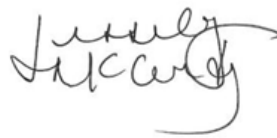
Conclusion

At a time when so many of our fundamental civil rights are under attack, we need to trust that our judges will impartially and fairly rule on cases without bias or animus. Unfortunately, a careful review of Ms. Hermandorfer's record shows a demonstrated hostility towards our civil and human rights that is disqualifying for a judicial nominee. We strongly urge the Senate to oppose her nomination to the Sixth Circuit. If you would like to discuss this matter further, please contact Lena Zwarensteyn, senior director of the fair courts program and advisor, at (202) 466-3311. Thank you for your consideration.

Sincerely,



Maya Wiley
President & CEO



Jesselyn McCurdy
Executive Vice President of Government Affairs

Concerned Scientists (February 9, 2024); Mary Marshall, [The insidious impact of coal power plant pollution on kids' performance in schools](#), YALE ENVIRONMENT REVIEW (July 26, 2023).

⁴² *West Virginia v. EPA*, U.S. No. 24A95 (October 2024).

⁴³ *North Dakota v. EPA*, U.S. No. 24A1 80 (October 2024).

⁴⁴ Amy Howe, [Supreme Court declines to block EPA methane, mercury rules](#), SCOTUSBLOG (October 4, 2024).