



November 7, 2017

**OPPOSE THE CONFIRMATION OF GREGORY KATSAS TO THE  
U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in opposition to the confirmation of Gregory Katsas to the U.S. Court of Appeals for the District of Columbia Circuit.

Mr. Katsas has advanced an agenda to restrict voting rights, LGBT rights, and access to women's health. He has also worked to expand executive power at the expense of civil liberties. A longtime member of the Federalist Society and former law clerk to Supreme Court Justice Clarence Thomas, Mr. Katsas has advanced his ultraconservative agenda in high level positions in both the Trump administration and Bush administration. He has not demonstrated the necessary independence and fair-mindedness needed to serve in a lifetime appointment on the powerful D.C. Circuit.

**Voting Rights:** As Deputy White House Counsel, Mr. Katsas has been closely involved in many of the most abusive and controversial practices of the Trump White House. Although he refused to disclose the substance of his advice, Mr. Katsas has acknowledged significant involvement with many of the most notorious actions of this administration. Take, for example, the executive order that created the Pence-Kobach voter suppression commission. This commission was stacked with voter suppression advocates and has been discredited because of its biased membership, botched attempts to solicit highly personal voter information in order to assemble a massive national voter database, and violations of various federal laws that require transparency and disclosure. The stated rationale for the formation of the Pence-Kobach commission was to investigate President Trump's preposterous allegation that millions of people voted illegally in last year's election. Mr. Katsas refused to criticize this premise.

**LGBT Rights:** Mr. Katsas has been personally involved in the most infamous anti-LGBT actions of the Trump administration. He was involved in the administration's shameful amicus brief on behalf of the Colorado baker who is attempting to establish a constitutional right to discriminate against LGBT individuals in the case *Masterpiece Cakeshop v. Colorado Civil Rights Commission*.<sup>1</sup> He also worked or advised on the administration's troubling amicus brief in *Zarda v. Altitude Express*,<sup>2</sup> which argued that Title VII of the Civil

<sup>1</sup> <https://www.judiciary.senate.gov/imo/media/doc/Katsas%20Responses%20to%20QFRs.pdf>.

<sup>2</sup> Id.

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Rights Act of 1964 does not protect workers on the basis of their sexual orientation – an argument that directly contradicted the position of another federal agency, the Equal Employment Opportunity Commission. Mr. Katsas also acknowledged that he worked or advised on the Trump administration’s decision to reinstate a ban on transgender people from serving in the military, as well as on the Trump administration’s disgraceful decision to withdraw 2016 agency guidance regarding the obligation of educational institutions to permit transgender students to use the restrooms of their choice.<sup>3</sup> Mr. Katsas was directly involved in these discriminatory decisions by the Trump administration that have dramatically curtailed LGBT rights in America. And Mr. Katsas revealed that he had worked on the Trump administration’s religious liberty executive order,<sup>4</sup> which laid a foundation for potential discrimination against the LGBT community and women.

Mr. Katsas also criticized LGBT rights before he joined the Trump administration. He criticized the Supreme Court’s 2015 decision in *Obergefell v. Hodges* that established the constitutional right to marriage equality; in a speech to the Federalist Society, he said the decision was “long on rhetoric and short on what one might think of as traditional legal reasoning.”<sup>5</sup> In 2011, at another Federalist Society presentation, he stated: “It seems to me pretty self-evident, but at least a debatable point that other things [being] equal, the best arrangement for a child is to be raised by both of the child’s biological parents.”<sup>6</sup>

**Women’s Health:** Mr. Katsas has long worked to restrict women’s access to comprehensive health coverage. He was so involved in the recent creation of federal agency interim rules allowing employers to stop providing women employees with contraceptive health insurance coverage that he agreed to recuse himself in any litigation that arose from challenges to these rules.<sup>7</sup> In 2012, while in private practice, Mr. Katsas represented the lead plaintiff National Federation of Independent Businesses (NFIB) in the landmark case *NFIB v. Sebelius*.<sup>8</sup> In that case, the Supreme Court rejected Mr. Katsas’s argument that the Affordable Care Act should be struck down as unconstitutional. Representing the Bush administration, Mr. Katsas also sought to limit abortion rights for women in *Planned Parenthood v. Gonzales* and *Carhart v. Gonzales*.<sup>9</sup> And he has personally made dismissive comments about abortion rights, stating in a 2016 Federalist Society podcast that “the right to abortion, which isn’t in the Constitution, which has all these made-up protections [sic].”<sup>10</sup>

**Executive Power:** As Deputy White House Counsel in the Trump administration, and as a high level political appointee in the Bush Justice Department, Mr. Katsas helped shape a number of executive branch national security policies that trampled on civil rights and liberties. He has acknowledged that he provided legal advice on the Trump administration’s discriminatory Muslim bans that have been struck down or stayed by multiple federal courts.<sup>11</sup> He has also defended the Trump administration in litigation challenging the executive order punishing cities unwilling to have their police officers carry out the

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<sup>3</sup> Id.

<sup>4</sup> <https://www.judiciary.senate.gov/meetings/10/17/2017/nominations>.

<sup>5</sup> <https://www.judiciary.senate.gov/imo/media/doc/Katsas%20Responses%20to%20QFRs.pdf>.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> <https://www.judiciary.senate.gov/imo/media/doc/Katsas%20SJQ.pdf>.

<sup>9</sup> Id.

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

<sup>11</sup> Id.



Trump administration's harsh deportation policies.<sup>12</sup> Mr. Katsas worked on President Trump's disturbing decision to end the Deferred Action for Childhood Arrivals (DACA) program, an action that will devastate the lives of young men and women who have known no other home than America. He also testified at his hearing that "I have given legal advice on a few discrete legal questions arising out of the [Russian interference with the 2016 election] investigation,"<sup>13</sup> but he refused to divulge any details.

When he served in the Bush Justice Department from 2001 to 2009, Mr. Katsas worked on at least five major executive power cases in which, according to one commentator, he "pushed for positions that were rejected by the Supreme Court or by the D.C. Circuit itself as abuses of authority."<sup>14</sup> In each of those cases – *Rasul v. Bush*, *Hamdan v. Rumsfeld*, *Boumediene v. Bush*, *Parhat v. Gates*, and *Bismullah v. Gates* – Mr. Katsas was unsuccessful in attempting to severely restrict due process and habeas rights of suspected terrorists, arguing that a president could detain suspected terrorists indefinitely without legal process or court review.<sup>15</sup> Mr. Katsas's track record makes it highly unlikely he would have the necessary independence to serve as a check on the president's power as prescribed by the Constitution.

**Judicial Nominations:** In his Senate questionnaire, Mr. Katsas indicated that he is involved in "interviewing and recommending candidates for various executive and judicial appointments."<sup>16</sup> President Trump has nominated a long list of extreme nominees who were interviewed and vetted by Mr. Katsas. Confirming him would be a continuation of this ongoing effort to remake the federal judiciary so that President Trump's extreme policies will have a more receptive audience when challenged in court.

For the foregoing reasons, The Leadership Conference urges you to reject the nomination of Gregory Katsas to the U.S. Court of Appeals for the D.C. Circuit. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel and Legal Director, at (202) 466-3311.

Sincerely,

Vanita Gupta  
President & CEO

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<sup>12</sup> Id.

<sup>13</sup> <https://www.judiciary.senate.gov/meetings/10/17/2017/nominations>.

<sup>14</sup> [https://www.huffingtonpost.com/entry/the-latest-chapter-in-trumps-plan-to-fill-our-courts\\_us\\_59de60fde4b075f45223a362](https://www.huffingtonpost.com/entry/the-latest-chapter-in-trumps-plan-to-fill-our-courts_us_59de60fde4b075f45223a362).

<sup>15</sup> Id.

<sup>16</sup> <https://www.judiciary.senate.gov/imo/media/doc/Katsas%20SJQ.pdf>.