



November 29, 2017

**OPPOSE THE CONFIRMATION OF LEONARD STEVEN GRASZ TO THE  
U.S. COURT OF APPEALS FOR THE EIGHTH 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 strong opposition to the confirmation of Leonard Steven Grasz to the U.S. Court of Appeals for the Eighth Circuit.

The Grasz nomination is highly troubling not only because the nominee received a unanimous rating of Not Qualified from the independent and nonpartisan American Bar Association (ABA), but also because Mr. Grasz is a right-wing extremist who has worked throughout his career to restrict LGBT rights and reproductive freedom. To a greater degree than any president in history, President Trump is attempting to advance his radical agenda by packing the courts with individuals who have a demonstrated record of undermining civil rights, including LGBT equality and women's rights.

**Not Qualified**: The ABA has given Mr. Grasz its lowest possible rating: unanimous Not Qualified.<sup>1</sup> Such ratings result when all members of the ABA's Standing Committee on the Federal Judiciary rate someone unqualified to serve as a federal judge. Mr. Grasz is only the fourth judicial nominee since 1989 to receive such a rating, and the other three were not confirmed,<sup>2</sup> although one – Brett Talley, a nominee to the Middle District of Alabama – is currently pending and remains the subject of significant opposition due to his numerous misrepresentations to the Senate Judiciary Committee.

The ABA has explained its opposition to Mr. Grasz both in writing<sup>3</sup> and in Senate testimony.<sup>4</sup> As part of its rating process, the ABA conducted 207 confidential interviews with judges and lawyers in Nebraska, where Mr. Grasz has lived and practiced law for the past 28 years. Two different ABA evaluators conducted interviews and studied Mr. Grasz's record, and both recommended a Not Qualified rating based primarily on his bias and lack of open-mindedness.

<sup>1</sup><https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Web%20rating%20Chart%20Trump%20115.authcheckdam.pdf>.

<sup>2</sup><http://www.businessinsider.com/trump-judicial-nominees-increase-in-aba-not-qualified-ratings-2017-11>.

<sup>3</sup><https://www.americanbar.org/content/dam/aba/uncategorized/GAO/GraszStatement.authcheckdam.pdf>;  
<https://www.judiciary.senate.gov/imo/media/doc/Bresnahan%20Testimony1.pdf>.

<sup>4</sup><https://www.judiciary.senate.gov/meetings/11/15/2017/nominations>.

Officers  
Chair  
Judith L. Lichtman  
National Partnership for  
Women & Families  
Vice Chairs  
Jacqueline Pata  
National Congress of American Indians  
Thomas A. Saenz  
Mexican American Legal  
Defense and Educational Fund  
Hillary Shelton  
NAACP  
Secretary  
Jo Ann Jenkins  
AARP  
Treasurer  
Lee A. Saunders  
American Federation of State,  
County & Municipal Employees

Board of Directors  
Helena Berger  
American Association of  
People with Disabilities  
Kimberly Churches  
AAUW  
Kristen Clarke  
Lawyers' Committee for  
Civil Rights Under Law  
Lily Eskelsen Garcia  
National Education Association  
Fatima Goss Graves  
National Women's Law Center  
Chad Griffin  
Human Rights Campaign  
Wylecia Wiggs Harris  
League of Women Voters of the  
United States  
Mary Kay Henry  
Service Employees International Union  
Sherrilyn Ifill  
NAACP Legal Defense and  
Educational Fund, Inc.  
David H. Inoue  
Japanese American Citizens League  
Derrick Johnson  
NAACP  
Michael B. Keegan  
People for the American Way  
Samer E. Khalaf  
American-Arab  
Anti-Discrimination Committee  
Marc Morial  
National Urban League  
Janet Murguía  
UnidosUS  
Debra L. Ness  
National Partnership for  
Women & Families  
Rabbi Jonah Pesner  
Religious Action Center  
Of Reform Judaism  
Anthony Romero  
American Civil Liberties Union  
Shanna Smith  
National Fair Housing Alliance  
Richard L. Trumka  
AFL-CIO  
Toni Van Pelt  
National Organization for Women  
Randi Weingarten  
American Federation of Teachers  
Dennis Williams  
International Union, UAW  
John C. Yang  
Asian Americans Advancing Justice |  
AAJC

Policy and Enforcement  
Committee Chair  
Michael Lieberman  
Anti-Defamation League  
President & CEO  
Vanita Gupta

There were also concerns about Mr. Grasz's rude and offensive demeanor. The ABA made the following comments:<sup>5</sup>

Bias and Lack of Open-Mindedness:

- “Many questioned whether Mr. Grasz would be able to detach himself from his deeply-held social agenda and political loyalty to be able to judge objectively, with compassion and without bias.”
- “Mr. Grasz’s passionately-held social agenda appeared to overwhelm and obscure the ability to exercise dispassionate and unbiased judgment.”
- “The evaluators found that the people interviewed believed that the nominee’s bias and the lens through which he viewed his role as a judge colored his ability to judge fairly.”
- “The concerns expressed centered on open-mindedness, freedom from bias and commitment to equal justice under the law.”
- “A significant number raised concerns that Mr. Grasz’ strongly held social views and/or his deeply rooted political allegiances would make it impossible for him to have an unbiased and open mind on critical issues.”
- “His writings evidenced a high level of emotional commitment to his strongly held views. They include Opinions he had written for the Attorney General, which are provided to legislators and others in government to provide them objective advice. Because he has not served on a trial court, these are the closest Mr. Grasz has come to writing neutral rulings. Such Opinions included:
  - Statements that the ‘legal question presented [by proposed abortion legislation] is so utterly divorced from moral or rational foundation that it undermines the credibility of the legal system, and necessarily exposes the moral bankruptcy which is the legacy of *Roe v. Wade*.’ While anyone may legitimately agree or disagree with the *Roe* and *Casey* decisions as a matter of policy, to opine, as advice from the Attorney General, that Supreme Court jurisprudence is ‘morally bankrupt’ raises questions of ability to assess issues neutrally and free of bias.
  - Statements that ‘sexual orientation’ in a statute prohibiting hate crimes may be overbroad, because ‘this term [sexual orientation] could conceivably include all orientations of a sexual nature (bigamy, pedophilia, etc.).’”
- “In his article entitled ‘Roberts Jeopardizes Legitimacy of High Court,’ Mr. Grasz wrote that Chief Justice ‘Roberts will go down in history not as the disinterested umpire he promised to be, or the advocate of judicial restraint his supporters believed him to be, but rather as the one who ushered in

---

<sup>5</sup><https://www.americanbar.org/content/dam/aba/uncategorized/GAO/GraszStatement.authcheckdam.pdf>;  
<https://www.judiciary.senate.gov/imo/media/doc/Bresnahan%20Testimony1.pdf>.

the ultimate transfer of limitless power to the federal government.’ In our interview, Mr. Grasz acknowledged that asserting an ‘ultimate transfer of limitless power to the federal government’ was not literally true. But Mr. Grasz explained his exaggeration as a reaction to his sense of betrayal by a Supreme Court Justice whom he had publicly supported.”

- “Because peers had expressed concerns about his ability to apply precedent faithfully, we also discussed his article on partial birth abortion that raised this issue. Mr. Grasz continued to defend its conclusions in his interview with me . . . [W]hat is further concerning about this article – in addition to its suggestion that a trial court should view abortion doctrine as ‘word games’ to avoid application of precedent that it finds ‘questionable’ – is what it shows about Mr. Grasz’ lack of self-awareness. Mr. Grasz insisted in our interview that his personal views did not, and could not, affect his rulings on the bench, nor his position in his article. He was, he said, just applying the law, with judicial restraint, unaffected by his personal beliefs. But regardless of whether one views his legal approach as right or wrong, one thing that is clear is that his fervently held views are having an impact on that approach. His inability, even in 2017, to see the impact his personal views have on his analysis validates a concern expressed by his peers: that it would be extremely difficult for him to evaluate objectively cases at areas of core political tension.”
- “Another important incident is described in a 14-page document that Mr. Grasz provided after our interview that was not included in his SJQ. It reflected his efforts to intervene, in his own name, using information that was confidential, to change an outcome of a non-partisan Judicial Nominating Committee (‘JNC’) process, in order to provide the Governor an opportunity to appoint a preferred candidate. Mr. Grasz recently described this as ‘support of a friend’ in his post-Hearing answers to Senator Sasse. In our interview and a follow-up call, he acknowledged that he used information that was confidential to the JNC under Nebraska law. . . . We can say, at this time, that this incident raised particular concerns because it involved the process of the selection of a non-partisan judiciary. In the Standing Committee’s view, it again substantiated peers’ concerns that Mr. Grasz’ judgment may be overcome by his political and ideological allegiances.”

#### Rude and Offensive Demeanor:

- “[M]embers of the bar shared instances in which Mr. Grasz’s conduct was gratuitously rude.”
- “I received numerous comments from others during the course of the evaluation that Mr. Grasz had been inappropriately aggressive and that his conduct towards opposing counsel could be difficult, bordering on incivility.”

These rare and negative comments provided confidentially to the ABA paint a vivid picture of an individual who is clearly unworthy of a lifetime appointment to the federal judiciary. And these comments may be just the tip of the iceberg. The ABA reported: “There were also an unusually high number of the people contacted who, despite assurances of confidentiality, refused to return repeated calls and inquiries, or who stated that they and others were not willing to voice opinions. Some stated that this reluctance was because Mr. Grasz was very closely connected with and sponsored by the most powerful politicians in the



state; that those politicians deeply valued loyalty; and, that they have the ability to cause serious repercussions to those who speak out.”

**LGBT Rights:** Several of Mr. Grasz’s extreme statements were cited above in the ABA’s testimony, but there are many additional such statements and positions of Mr. Grasz that deserve mention. For example, in 1996 he co-authored a Nebraska Attorney General opinion that discussed the possibility of the Nebraska legislature passing legislation to prohibit the recognition of same-sex marriages that took place in other states. He wrote that the possibility of Nebraska courts recognizing same-sex marriages performed in Hawaii was a “grave danger” and that “we strongly recommend that the Legislature act yet this session if it wishes to prevent same-sex couples ‘married’ in another state from having that arrangement legally recognized in Nebraska.”<sup>6</sup> In *In re Adoption of Luke*, Mr. Grasz argued before the Nebraska Supreme Court that state law did not allow an unmarried lesbian couple to adopt a child. In the brief, he called the case “an attempted end-run” around the state’s constitutional prohibition on the recognition of same-sex marriages.<sup>7</sup> And Mr. Grasz filed an amicus brief for the Nebraska Family Council in *Citizens for Equal Protection v. Bruning*, supporting the state of Nebraska in a case in which the state defended the federal constitutionality of Nebraska Initiative Measure 416, a 2000 ballot initiative proposing a constitutional amendment to prohibit the recognition of same-sex marriages or civil unions.<sup>8</sup>

Mr. Grasz was a board member of the right-wing Nebraska Family Alliance from August 2015 to September 2017. During that time, in July 2017, the organization published an article defending the cruel and inhumane practice of “conversion therapy,” which attempts to convert LGBT individuals. The practice has been condemned by every mainstream medical and psychiatric organization, but the policy director of the Nebraska Family Alliance (who is Mr. Grasz’s son) criticized states that have banned conversion therapy, writing: “Activists have pushed these extreme bans arguing that this form of therapy is dangerous, abusive and can even lead to suicide or homelessness for teenagers. But the science is far from settled and members of the movement can’t seem to decide if people are ‘born that way’ or if sexuality and gender is fluid and changeable.... When certain types of therapy are outlawed, parents are denied the right to seek a counselor for their children that aligns with their family values. All families should be free to choose medical care based upon their needs — not based upon the government’s political agenda.... Parents have a constitutional right to direct the upbringing of their children.” Mr. Grasz refused to tell the Senate if he agreed or disagreed with this analysis.

In 2013, Mr. Grasz advocated for an amendment to the Omaha Charter that would have permitted businesses to cite religious beliefs as a rationale for discriminating against LGBT employees. The proposed amendment began: “All persons have a natural and infeasible right to worship Almighty God and exercise their religion according to the dictates of their own consciences, and there shall be no interference with the rights of conscience of any person.”<sup>9</sup> According to a transcript of a public meeting, Mr. Grasz was asked “So this does create an end run around the city human rights ordinance?” and Mr.

---

<sup>6</sup>Neb. Op. Atty. Gen. No. 96025, 1996 WL 132907.

<sup>7</sup><http://www.glapn.org/sodomylaws/usa/nebraska/nbnews01.htm>; <http://caselaw.findlaw.com/ne-supreme-court/1206212.html>.

<sup>8</sup><http://caselaw.findlaw.com/us-8th-circuit/1466030.html>.

<sup>9</sup>Proposed Amendment to Charter Section 8, 8.02A Religious Freedom and Rights of Conscience.



Grasz responded: “If you want to call protecting religious freedom of individuals an end run and subjugate those individual religious liberties to someone else’s employment rights, yes.”<sup>10</sup>

**Women’s Reproductive Freedom:** Throughout his career, Mr. Grasz has worked to undermine reproductive rights. The ABA section above discusses a law review article he authored in which he expressed strong personal anti-abortion views. The 1999 article also compared the denial of civil rights to blacks in *Dred Scott v. Sanford* and to Native Americans in the nineteenth century with the denial of rights today to “partially-born children.”<sup>11</sup> He wrote that following *Roe v. Wade*: “The result has been that more than one out of every four American children conceived since 1973 have been aborted, mostly for purely elective measures.”<sup>12</sup> His comments demonstrate a lack of respect for longstanding precedent and the rule of law.

As Nebraska’s chief deputy attorney general from 1991 to 2002, Mr. Grasz wrote numerous briefs and opinions that attacked and diminished abortion rights for Nebraska residents. For example, in 1999 he wrote a petition for certiorari in *Stenberg v. Carhart* after the Eighth Circuit struck down Nebraska’s ban on so-called “partial-birth” abortions. One of the questions Mr. Grasz urged the Supreme Court to consider was whether “[i]n light of . . . the lack of any constitutional textual basis, the Court should now recognize that abortion is more properly a public policy legislative matter than a constitutional issue for judicial decision?”<sup>13</sup> He also argued that the “fundamental public policy issue involved in abortion is one that defies judicial determination.”<sup>14</sup> The Supreme Court did grant certiorari and upheld the Eighth Circuit decision; it did not take up Mr. Grasz’s ideologically loaded question.

In 1995, in *Little Rock Family Planning Servs., P.A. v. Dalton*, Mr. Grasz wrote a brief that fought efforts by a woman to obtain reimbursement under Medicaid for the costs of her abortion when the pregnancy was the result of rape. The state of Nebraska stipulated that no state funds would be used to pay for abortions except to save the life of the mother, despite the fact that federal law bars states from denying abortion funding to low-income patients who are victims of rape or incest. The Eighth Circuit affirmed the lower court’s ruling that the Nebraska state regulation violated the federal Medicaid statute and was invalid under the Supremacy Clause.<sup>15</sup>

In addition, Mr. Grasz wrote Attorney General opinions defending state laws that (1) prohibited the use of public funds to organizations that provided abortion services, (2) banned the use of public funds for insurance that paid for selective reduction abortion to improve the medical prospects for the remaining fetuses, and (3) barred the use of fetal tissue and organs for research.<sup>16</sup>

---

<sup>10</sup>City of Omaha 2013 Charter Study Review Convention, November 25, 2013.

<sup>11</sup>Steven Grasz, “If Standing Bear Could Talk... Why There Is No Constitutional Right to Kill a Partially-Born Human Being,” 33 Creighton Law Review 23 (1999).

<sup>12</sup>Id.

<sup>13</sup><https://www.judiciary.senate.gov/imo/media/doc/Grasz%20Responses%20to%20QFRs1.pdf>.

<sup>14</sup>Id.

<sup>15</sup>*Little Rock Family Planning Services v. Dalton*, 60 F.3d 497 (8th Cir. 1995).

<sup>16</sup>Neb. Op. Atty. Gen. Nos. 98021, 99005, 00006; 1998 WL 141371, 1999 WL 91937, 2000 WL 150959.



The Nebraska Family Alliance (Mr. Grasz was recently a board member) website features a page containing misleading information about abortion rights. It states that “abortion harms women,” “[t]here is no such thing as a ‘safe’ abortion,” “Planned Parenthood and the abortion industry don’t stand for women,” and “Pro-lifers stand against abortion because it devastatingly impacts two lives: the terminated life of the preborn child, and the women who are physically harmed and emotionally traumatized by the dangerous procedure.”<sup>17</sup> Mr. Grasz refused to distance himself from these statements.<sup>18</sup>

**Death Penalty:** Mr. Grasz has been a zealous advocate of the death penalty. From June 2015 to March 2017, he served as Assistant Secretary for two pro-death penalty organizations: Nebraskans for the Death Penalty, Inc. and Nebraskans for Capital Punishment, Inc. These organizations were established to promote a referendum petition that would reinstate the death penalty in Nebraska after the state legislature repealed it in 2015, and Mr. Grasz represented them in litigation involving the legality of the petition. In response to a written question from Senator Durbin, Mr. Grasz would not agree to recuse himself in death penalty cases that came before him, if he were confirmed.<sup>19</sup>

**Lack of diversity:** The U.S. Court of Appeals for the Eighth Circuit is the least diverse circuit court in the nation, with only one woman and one minority judge. There have been three vacancies on this 11-member court this year, and President Trump has nominated white men to fill all three. The overall lack of diversity of Trump judicial nominees is stunning. To date, 91 percent of his nominees are white, and 81 percent are men.<sup>20</sup> This is the least diverse slate of nominees in decades. Lack of diversity alone is not sufficient reason to oppose a nomination, but it is an important consideration in the quest to establish a federal judiciary that better reflects the people it serves and to instill greater confidence in this co-equal branch of government.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Leonard Steven Grasz to the U.S. Court of Appeals for the Eighth 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

---

<sup>17</sup><https://nebraskafamilyalliance.org/policy/life/abortion-harms-women/>.

<sup>18</sup><https://www.judiciary.senate.gov/imo/media/doc/Grasz%20Responses%20to%20QFRs1.pdf>.

<sup>19</sup>Id.

<sup>20</sup>[https://www.washingtonpost.com/politics/whitehouse/ap-analysis-finds-little-diversity-in-trumps-judicial-picks/2017/11/14/983ece8c-c916-11e7-b506-8a10ed11ecf5\\_story.html?utm\\_term=.59248637f2e8](https://www.washingtonpost.com/politics/whitehouse/ap-analysis-finds-little-diversity-in-trumps-judicial-picks/2017/11/14/983ece8c-c916-11e7-b506-8a10ed11ecf5_story.html?utm_term=.59248637f2e8).