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June 7, 2017

The Honorable Charles Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

**OPPOSE THE NOMINATION OF JOHN K. BUSH TO THE
U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Dear Chairman Grassley and Ranking Member Feinstein:

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 am writing in opposition to the confirmation of John K. Bush to the U.S. Court of Appeals for the Sixth Circuit. The Leadership Conference urges the Senate Judiciary Committee to reject this nomination.

Mr. Bush has a record of extreme partisanship and does not appear to possess the temperament needed to serve as an impartial federal judge. Many of his writings were blog postings published under a different name so they were not previously associated with him before he disclosed these writings to the Committee. We do not know if he disclosed these controversial blog postings before he was recommended to the President or if they were revealed during the administration's vetting process, but they are certainly relevant to the Committee's consideration of his fitness for this lifetime appointment.

Women's Rights: In a 2008 blog posting entitled "The Legacy From Dr. King's Dream That Liberals Ignore," Mr. Bush wrote: "The two greatest tragedies in our country – slavery and abortion – relied on similar reasoning and activist justices at the U.S. Supreme Court, first in the *Dred Scott* decision, and later in *Roe*."¹ Mr. Bush's attempt to appropriate the civil rights legacy of Martin Luther King, Jr. to justify his own extreme anti-abortion views is flawed and offensive. In 1960, Dr. King served on a committee for a Planned Parenthood study on contraception and stated: "I have always been deeply interested in and sympathetic with the total work of the Planned Parenthood Federation,"² and Dr. King later received an award from Planned Parenthood "in recognition of excellence and leadership in furthering reproductive health and reproductive rights."³ Mr. Bush's equating of *Roe v. Wade*, which was a precedent-based extension of constitutional doctrine, with *Dred Scott*, which was a

¹ <https://elephantsinthebluegrass.blogspot.com/2008/01/legacy-from-dr-kings-dream-that.html>.

² [https://swap.stanford.edu/20141218225601/http://mlk-](https://swap.stanford.edu/20141218225601/http://mlk-kpp01.stanford.edu/primarydocuments/Vol5/5Nov1960_ToWalterR.Chivers.pdf)

[kpp01.stanford.edu/primarydocuments/Vol5/5Nov1960_ToWalterR.Chivers.pdf](https://swap.stanford.edu/20141218225601/http://mlk-kpp01.stanford.edu/primarydocuments/Vol5/5Nov1960_ToWalterR.Chivers.pdf).

³ <https://thinkprogress.org/abortion-opponents-claim-martin-luther-king-jr-would-be-fighting-against-planned-parenthood-today-fc82b18e0771>.

Policy and Enforcement

Committee Chair

Michael Lieberman

Anti-Defamation League

President & CEO

Vanita Gupta

constitutional abomination and one of the Supreme Court's darkest hours, strongly suggests he is incapable of ruling dispassionately on women's health issues. It also demonstrates that he does not respect decades of court precedent that he would be charged with following if he is confirmed as a federal judge.

Mr. Bush's extreme views on women's rights can also be seen in an amicus brief he filed in 1993 in a Supreme Court appeal, in which he waged a constitutional defense of the male-only admission policy of the Virginia Military Institute. In his brief, Mr. Bush wrote that the military-style atmosphere of VMI "does not appear to be compatible with the somewhat different developmental needs of most young women."⁴

LGBT Rights: Mr. Bush's insensitivity to LGBT Americans is demonstrated by a blog post he wrote on January 9, 2011, in which he ridiculed an effort by the State Department to change passport application forms in order to accommodate gay and lesbian parents. Responding to the State Department's announcement that it would start asking applicants to list "Mother or Parent 1" and "Father or Parent 2" rather than simply Mother and Father, Mr. Bush wrote: "It's just like the government to decide it needs to decide something like which parent is number one or number two. When that happens, both parents are subservient to the nanny state – more precisely, a nanny Secretary of State."⁵ This commentary reflects a hostility to the need for all parents to have a more neutral way to identify their relationships on their government's forms.

In 2005, Mr. Bush chose to use the word "faggot" in a speech about the city of Louisville he delivered to a private club. According to the text of the speech that Mr. Bush sent to the Senate Judiciary Committee, he said the following: "[Hunter Thompson] wrote *The Kentucky Derby is Decadent and Depraved*, but his target was the city, not the horse race. 'I know this Derby crowd,' a guy named Jimbo from Houston confided to Hunter over a glass of double Old Fitz at the airport. 'I come here every year, and let me tell you one thing I've learned – this is no town to be giving people the impression you're some kind of faggot.'"⁶ Mr. Bush did not condemn or otherwise comment on this highly offensive quote during his speech. Rather, he called Thompson one of the "great writers."⁷

Police Misconduct: In 1994 and 1995, Mr. Bush represented notorious Los Angeles Police Department officer Stacey Koon, who was convicted in 1993 of police brutality for the vicious beating of Rodney King. Mr. Bush served on a conservative legal team that represented Mr. Koon in an appeal of his prison sentence. In his Senate questionnaire, Mr. Bush described the brutal beating, in which Mr. King suffered skull fractures, broken bones, and permanent brain damage, as merely a "police encounter."⁸ Mr. Bush's downplaying of this incident, as well as his boastful representation of Mr. Koon – he listed this case on his Senate questionnaire as one of his ten most significant cases during his 28-year career despite playing a minor role in the case many years ago – raises concerns about his attitude toward police misconduct.

⁴ Brief *Amici Curiae* on Behalf of Women's Washington Issues Network, Women for VMI, Frank F. Hayden and Oscar W. King, III in Support of Petition for Writ of Certiorari at 7, *Virginia Military Institute v. United States*, No. 92-1213.

⁵ <https://elephantsinthebluegrass.blogspot.com/2011/01/parent-2s-outrage.html>.

⁶ John K. Bush, "A Certain Starting Place," Address at The Forum Club of Louisville (Sept. 8, 2005), notes available at Senate Judiciary Committee, 115th Congress.

⁷ *Id.*

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

Club Membership: On his Senate questionnaire, Mr. Bush failed to acknowledge the past exclusionary policies of a private club he belongs to, the Pendennis Club, which for years did not permit women, people of color, or Jews as members.⁹ Although Mr. Bush did not join the club until 2006, when it had lifted its restrictions, the Senate questionnaire requires nominees to indicate whether their clubs “currently discriminate or *formerly discriminated* on the basis of race, sex, religion or national origin.” (Emphasis added.) Mr. Bush wrote merely that none of his clubs discriminated “during any period of my membership.”¹⁰ Unlike other judicial nominees, Mr. Bush failed to acknowledge his club’s past discriminatory practices and thus failed to provide a complete answer to the questionnaire. He should be required to amend his questionnaire and provide a complete answer to this important question.

Mr. Bush co-founded the Louisville chapter of the Federalist Society, and he has served as its president for the past 20 years. President Trump has outsourced the judicial selection process to this very same conservative organization,¹¹ and all of President Trump’s circuit court nominees have been members. But none of them have shown a similar level of commitment to its conservative ideology that Mr. Bush has.

Money in Politics: Mr. Bush has demonstrated hostility to reasonable limits on campaign spending and funding. If confirmed as a judge, he would be in a position to advance his ideological agenda. In 2002, he wrote an amicus brief on behalf of one of the most extreme campaign finance law opponents, Senator Mitch McConnell, that challenged various provisions of a Kentucky state campaign finance law. In the brief, Mr. Bush wrote that “*all* political speech enjoys the highest degree of First Amendment protection,”¹² a position that does not accord with Supreme Court case law and that suggests Mr. Bush would strike down nearly any campaign finance restriction. He has also written several blog posts about money in politics. In one posting, he asserted that public financing of campaigns is unconstitutional.¹³ In another, he argued for increased spending in political campaigns, writing: “The amount of money spent on such commercial speech dwarfs the relatively paltry amounts spent on political speech by candidates running for office.... So why shouldn’t *more* money, not less, be spent on political speech, given how much is spent by advertisers on commercial speech?”¹⁴ And in a May 7, 2008 posting entitled “Democrats’ FEC Obstructionism Benefits Senator ‘Moneybags’ Obama,” Mr. Bush accused Senate Democrats of holding up the nomination of Hans von Spakovsky to the Federal Election Commission because they didn’t want the FEC to have a quorum. He wrote: “The Democrats’ strategy is as brilliant as it is cynical: Keep the FEC debilitated so that it has no oversight over Senator Obama, aka ‘Senator Moneybags,’ as the *WSJ* put it, whose fund raising is ‘headed for the stratosphere’ and who is now more than ‘willing to renege on his pledge to accept public financing.’ And the Democrats continue to spin the problem as Senator McConnell’s fault. Amazing.”¹⁵

Voter Fraud: In the May 7, 2008 blog posting, Mr. Bush also wrote: “The Democrats’ opposition to von Spakovsky’s nomination ostensibly arises from his support of voter identification to prevent election

⁹ <http://www.courier-journal.com/story/news/history/river-city-retro/2016/02/26/retro-self-guided-civil-rights-history-tour/80922218/>.

¹⁰ <https://www.judiciary.senate.gov/imo/media/doc/Bush%20SJQ.pdf>.

¹¹ <https://thinkprogress.org/trump-says-he-will-delegate-judicial-selection-to-the-conservative-federalist-society-26f622b10c49>.

¹² Brief of United States Senator Mitch McConnell as *Amicus Curiae* in Support of Movants/Cross-Respondents at 3, *Martin v. Commonwealth of Kentucky*, No. 2000-SC-1101.

¹³ <https://elephantsinthebluegrass.blogspot.com/2008/06/barack-obama-and-monica-lewinsky-change.html>.

¹⁴ <https://elephantsinthebluegrass.blogspot.com/2008/02/right-to-put-your-money-where-your.html>.

¹⁵ <https://elephantsinthebluegrass.blogspot.com/2008/05/democrats-fec-obstructionism-benefits.html>.

fraud. That position hardly should disqualify him for a seat on the FEC.”¹⁶ This statement ignores the many concerns raised about the opposition to this previous nomination and may be an indication that Mr. Bush sees nothing wrong with voter suppression laws that have an adverse impact on people of color, low-income people, older Americans, people with disabilities, and students, and this must be explored at any future confirmation hearing.

Extreme Partisanship: Mr. Bush has worked extensively over the years contributing to and helping to elect Republican political candidates. Mr. Bush has contributed thousands of dollars to Republican candidates and has volunteered on Senator McConnell’s two most recent re-election campaigns, among many other Republican campaigns for which he has volunteered or contributed money. Mr. Bush’s partisan zeal can also be seen in his 400 blog postings (not posted under his own name). For example:

- On October 15, 2008, under a heading that said “Take That!,” Mr. Bush posted a photo of a large sign that said: “On 10-3 Obama Supporters Vandalized-Trespassed and Stole My Palin-McCain Sign Violating My 1st Amendment Rights to Free Speech. Do It Again – You Will Find Out What the 2nd Amendment Is All About!!!”¹⁷ A few days later, Mr. Bush wrote: “Yesterday, a visitor from Kenya spent over 14 minutes reading this blog. We are beginning to suspect it is one of Barack Obama’s relatives.”¹⁸ On October 9, 2008, Mr. Bush wrote: “But beyond Obama’s egregious misjudgment, the connection between Obama and Ayers demonstrates Obama to be one who associates with the most radical left, with real detrimental implications for the country in education and other areas were he to be elected president.”¹⁹
- In a September 29, 2008 posting entitled “Thanks Mama Pelosi, For That 700 point Stock Market Plunge!,” Mr. Bush railed against Nancy Pelosi for blaming Republicans for the financial market crisis, and he advised: “gag the House Speaker.”²⁰
- In 2016, Mr. Bush attended the Republican national convention and wrote: “Maybe hating Hillary so much will win this election. That certainly was the theme for many of the speakers last night. A Gold Star mother seethed in contempt for what she said were Hillary’s lies to her about the circumstances of her son’s death. In a night when a former fashion model would be the keynote speaker, debate raged over whether Hillary would look better wearing pantsuits in orange or black stripes.”²¹

Mr. Bush’s animus against Democratic officials is well-documented, and if he were a judge, he would need to recuse in any case involving Democratic officials or the Democratic Party. Moreover, his incendiary blog comments strongly suggest Mr. Bush lacks the basic temperament to serve as an impartial federal judge.

In addition to Mr. Bush’s troubling record, as a matter of process, I am concerned by reports that the next Senate Judiciary Committee hearing may include two circuit court nominees. Such stacked hearings have occurred in only rare circumstances in recent years, and when they have occurred, they involved non-

¹⁶ Id.

¹⁷ <https://elephantsinthebluegrass.blogspot.com/2008/10/take-that.html>.

¹⁸ <https://elephantsinthebluegrass.blogspot.com/2008/10/kenya-speak-up.html>.

¹⁹ <https://elephantsinthebluegrass.blogspot.com/2008/10/dick-morris-on-obama-ayers-connection.html>.

²⁰ <https://elephantsinthebluegrass.blogspot.in/2008/09/thanks-mama-pelosi-for-that-700-point.html>.

²¹ <https://elephantsinthebluegrass.blogspot.com/2016/07/the-remarkable-first-day.html>.

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controversial nominees and extenuating circumstances. I urge you to ensure that the Committee has the ability to sufficiently review each lifetime appointee by not stacking the hearing. Doing so would be yet another rejection of Senate traditions by Senate Republicans that were designed to ensure the careful consideration that lifetime appointments warrant.

Finally, the President recently decided not to allow the American Bar Association to conduct its review of judicial candidates' qualifications before he nominates them. President Trump is only the second president to demonstrate such disregard for the critical role the nonpartisan ABA has played in the federal judicial nominations process. The American people and the members of your committee deserve to know a nominee's ABA rating before a hearing is scheduled because it is a threshold determination of whether that person is minimally qualified based on their legal experience and integrity. Not scheduling committee hearings until that rating has been issued protects both the nominee and the Senators who are charged with reviewing the nominee.

In light of Mr. Bush's extreme record, The Leadership Conference urges you to reject the nomination of Mr. Bush to the Sixth Circuit. We appreciate 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