



November 29, 2017

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OPPOSE THE CONFIRMATION OF MARK NORRIS TO THE U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE

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 Mark Norris to be a U.S. District Judge for the Western District of Tennessee.

Mr. Norris, the Senate Majority Leader of the Tennessee State Senate, has a fervent hostility to civil rights as demonstrated by legislation and policies he has promoted during his 17 years in the state senate. Mr. Norris has amassed a legislative record that demonstrates a radical right policy agenda which makes it difficult to fathom that he would approach cases with fairness and an open mind if confirmed to serve as a federal judge.

Voting Rights: As a legislator, Mr. Norris supported voter suppression legislation to make it more difficult for people in Tennessee to vote.

- In 2011, Mr. Norris supported a photo ID bill that would require photographic identification in order to vote.¹ During the debate over the bill, he led a failed effort to make the law even more disenfranchising by pushing for an amendment that would have required people seeking to register to vote to document their citizenship with driver's licenses, passports or birth certificates, rather than just requiring voters to check a box to affirm they are citizens.² The bill excluded student IDs from the list of acceptable forms of identification.

LGBT Rights: Mr. Norris has supported numerous legislative and legal efforts to diminish the civil rights of LGBT individuals.

- Following the Obama Administration's guidance that Title IX discrimination policies require Tennessee schools to allow transgendered students to use the restroom or locker room of their gender identity, Mr. Norris urged his state to sue the Obama administration and said that he does not consider the guidance letter to have legal force or effect.³

¹ SB 16.

² <http://www.timesnews.net/News/2009/04/14/Bill-to-require-photo-ID-to-vote-passes-Tennessee-Senate>.

³ <https://www.marknorris.org/blog1/2016/05/23/news-from-nashville-may-23-2016/>.



- In 2011, Mr. Norris supported a bill known as the “Don’t Say Gay Bill,” which sought to prohibit teachers from providing any information about LGBT issues to public school students. The bill stated: “Notwithstanding any other law to the contrary, no public elementary or middle school shall provide any instruction or material that discusses sexual orientation other than heterosexuality.”⁴
- In 2011, Mr. Norris supported legislation that prohibited cities and counties in Tennessee from passing local laws that protected LGBT residents from discrimination.⁵ The legislation was passed after Nashville passed an ordinance banning city contractors from discriminating on the basis of sexual orientation or gender identity.
- After the Supreme Court’s 2015 decision in *Obergefell v. Hodges* establishing marriage equality under the Constitution, Mr. Norris supported a resolution expressing “disagreement with the constitutional analysis in *Obergefell v. Hodges* and the judicial imposition of a marriage license law that is contrary to the express will of this body and the vote of the people of Tennessee.”⁶
- Mr. Norris tried to intervene in a same-sex divorce proceeding of two Knoxville women who were arguing over child custody. The Family Action Council of Tennessee represented 53 Republican lawmakers, including Mr. Norris, in filing a motion to intervene in the divorce case in which Erica Witt argued that, following *Obergefell*, a 1977 Tennessee statute that stated in cases of artificial insemination, only “husbands” of the birth mother have parenting rights, should be interpreted to include female spouses.⁷ Mr. Norris disagreed and attempted to defend the state law. He then supported legislation that requires that any undefined words in Tennessee law “be given their natural and ordinary meaning, without forced or subtle construction that would limit or extend the meaning of the language.”⁸ The bill was dubbed the “LGBT Erasure” bill because under this law, terms like “husband,” “wife,” “mother” and “father” can only be interpreted as gender-specific under the law.⁹ The Tennessee attorney general issued an opinion stating that the legislation could force some Tennessee laws to conflict with the *Obergefell* decision.¹⁰
- In 2007, Mr. Norris cosponsored a joint resolution urging Congress to pass the Federal Marriage Amendment, defining marriage exclusively as the union of a man and a woman. Mr. Norris wrote: “In anticipation that activist courts in states like Massachusetts might one day attempt to usurp the will of the people as expressed by their elected legislatures, The [sic] Defense of Marriage Act was written so that, if another state were to issue a license for the sort of marriages prohibited in Tennessee (i.e., marriage between couples of the same sex), any such marriage would be void and

⁴ SB 49.

⁵ HB 600.

⁶ https://www.lambdalegal.org/blog/20171101_mark-norris-anti-lgbtq-record.

⁷ <http://www.tennessean.com/story/news/politics/2016/09/12/53-gop-lawmakers-seek-intervene-knoxville-womens-divorce/90274248/>.

⁸ HB 1111.

⁹ <http://www.tennessean.com/story/news/politics/2017/04/27/senate-passes-natural-ordinary-meaning-bill-slammed-lgbt-groups-discriminatory/100976184/>.

¹⁰ <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op17-029.pdf>.



unenforceable in Tennessee.”¹¹ Mr. Norris also supported legislation that would disallow Tennessee from recognizing a same-sex union or partnership even if valid in another state.¹²

Immigrant Rights: Mr. Norris has shown a clear hostility to immigrants, particularly Muslims.

- Mr. Norris opposed allowing undocumented students enrolled in the Deferred Access for Childhood Arrivals (DACA) program to receive in-state tuition. He said that “it doesn’t make sense to have that many illegals in the state of Tennessee.”¹³ He voted against a bill authorizing a student to be classified as a Tennessee resident and charged in-state tuition if the student is lawfully present in the United States and graduated from a Tennessee high school, obtained a GED or HiSET credential through a state approved institution or organization, or completed high school in a Tennessee home school program.¹⁴
- Mr. Norris cosponsored a resolution authorizing the state attorney general to sue the federal government to stop refugee resettlement in Tennessee. The resolution states that the federal program is a violation of the Tenth Amendment because it impermissibly commandeers state funds to finance a federal program.¹⁵ Mr. Norris said, “At issue is state sovereignty. Our rights and responsibilities under the Tenth Amendment to the U.S. Constitution and the Tennessee Constitution are at stake. We seek a declaration of these rights. Indifference to our constitutional rights is indifference to our duty. We are not indifferent.”¹⁶ After introduction of this resolution, Mr. Norris created a website – keeptnsafe.com – that equated refugees with terrorists. It juxtaposed images of ISIS fighters with what appeared to be refugees waiting in line, and stated: “Don’t let potential terrorists come to Tennessee” and “Reports that terrorists posing as refugees from Syria may infiltrate Western nations, including the United States, are cause for concern and call for increased protection.”¹⁷
- In another attempt to foment anti-Muslim sentiment, in a 2015 speech Mr. Norris declared that he was working on “strengthening Tennessee law (not Sharia law) for Tennessee courts.”¹⁸
- When President Trump signed an executive order suspending refugee resettlement in the United States, Mr. Norris expressed support for the decision, saying, “I think President Trump is doing the right thing. It’s a step in the right direction towards keeping Tennesseans safe.”¹⁹ Mr. Norris also expressed support for President Trump’s controversial Muslim ban.²⁰

¹¹ SJR 27, <http://www.marknorris.org/NNews2004/03-05-04.htm>.

¹² SB 2661.

¹³ <https://www.memphisdailynews.com/news/2017/apr/20/tearful-end-for-non-citizen-tuition-relief-bill/>.

¹⁴ SB 612.

¹⁵ SJR 467.

¹⁶ <https://www.thomasmore.org/news/represent-tennessee-refugee-resettlement/>.

¹⁷ <https://www.judiciary.senate.gov/imo/media/doc/Norris%20Responses%20to%20QFRs.pdf>.

¹⁸ Id.

¹⁹ The Tennessean, January 28, 2017.

²⁰ <https://www.usatoday.com/story/news/politics/2017/06/12/sen-mark-norris-being-vetted-appointment-federal-judgeship/388904001/>.



- Earlier this year, Mr. Norris sponsored a bill requiring state judges, when imposing a sentence, to consider whether a person is in the United States “illegally or unlawfully” at the time of the offense, and providing longer sentences for undocumented immigrants.²¹
- In 2006, Mr. Norris voted to require the state driver’s license exam be taken only in English.²²
- In 2006, Mr. Norris sponsored a bill to empower Tennessee highway patrol officers “to enforce federal immigration and customs laws while performing within the scope of their authorized duties.”²³ After the bill passed the state senate, he issued a press release claiming that the State’s “troopers must have the authority in the course of their regular duties to detain, interrogate and arrest illegal aliens.”²⁴

Women’s Rights: As a state senator, Mr. Norris has supported legislation that would greatly restrict women’s reproductive freedom and disregard established precedent protecting such freedom.

- Mr. Norris voted to urge Congress to overturn the Obama administration’s rule on contraceptive coverage for religiously-affiliated employers, which required private health insurance plans to cover contraceptives.²⁵
- He has opposed a woman’s right to choose, even in cases of rape, incest and when the life of the mother is in danger. Mr. Norris opposed amendments that would allow abortion if it is medically necessary to save the mother's life,²⁶ allow abortion to end a pregnancy resulting from the rape of a minor when the procedure is necessary to save the life of the pregnant minor,²⁷ and to allow abortion when the pregnancy has resulted from rape or incest or when the procedure is necessary to save the pregnant woman’s life.²⁸
- Mr. Norris cosponsored an amendment to the state constitution stating that “nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion.”²⁹ The amendment stated that the people retain the right through their elected state representatives and state senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.

²¹ SB 1260.

²² SB 303.

²³ SB 2426.

²⁴ <http://www.marknorris.org/NNews2007/03-16-07.htm>.

²⁵ HJR 667.

²⁶ SA 839.

²⁷ SA 841.

²⁸ SA 837.

²⁹ SJR 127.



- He voted to require a physician to wait 48 hours before performing an abortion,³⁰ and for the Tennessee Infants Protection Act, which would ban abortion after 20 weeks.³¹ In 2015, he introduced a bill that would require any abortion facility to be licensed as an “ambulatory surgical treatment center.”³²

Other Troubling Legislation: Mr. Norris has also embraced a host of other right-wing legislative efforts that further demonstrate his ideological bias.

- Mr. Norris cosponsored the Tennessee Heritage Protection Act of 2016, which would prohibit local communities from removing Confederate monuments by requiring a two-thirds vote by the Tennessee Historical Commission’s board to remove the statues.³³
- In 2010, in response to an attempt to consolidate Memphis schools with those in Shelby County, Tennessee, Mr. Norris authored legislation governing the consolidation of those school systems and allowing new municipal school districts to be formed in the suburbs.³⁴ Former Tennessee House Speaker Jimmy Naifeh described this legislation to the *Memphis Daily News* on March 23, 2012 in this way: “I hope they’re proud of what they did. The only thing they were doing with that bill was segregation. . . . This is to allow those four or five towns in Shelby County to be able to form their white school districts.”³⁵
- Mr. Norris voted to prohibit school authorities from limiting teachers’ authority to help students critique scientific theories in the classroom, such as evolution and climate change.³⁶
- In 2014, he introduced a resolution urging Congress to propose the so-called “Regulation Freedom Amendment,” which would require a majority of the House and Senate to approve a regulation “[w]hensoever one-quarter of the Members of the United States House of Representatives or the United States Senate transmit to the President their written declaration of opposition to a proposed federal regulation.”³⁷ In a *Washington Times* op-ed, Mr. Norris claimed the amendment would “protect our constitutional rights and personal freedom against infringement by federal regulators.”³⁸
- Mr. Norris sponsored the Tennessee Civil Justice Act which altered the Tennessee Consumer Protection Act by prohibiting lawsuits for securities fraud, consumer class-action lawsuits, and some lawsuits filed by individuals, providing instead for enforcement of key provisions by the state attorney general, who has discretion over whether to file suit. One consequence is that the

³⁰ SB 1222.

³¹ SB 1180.

³² SB 1280.

³³ SB 2138.

³⁴ SB 25.

³⁵ <https://www.memphisdailynews.com/news/2012/mar/23/muni-school-district-votes-on-hold/>.

³⁶ HB 368.

³⁷ SJR 2.

³⁸ <https://www.washingtontimes.com/news/2015/dec/7/mark-norris-wayne-niederhauser-rallying-states-to-/>.



Tennessee Consumer Protection Act no longer applies to insurance companies, making it easier for insurance companies to deny claims without justification.³⁹

- In 2013, Mr. Norris voted for a bill prohibiting Tennessee municipalities from requiring private employers to pay a higher minimum wage than the minimum required under state or federal law.⁴⁰
- In 2009, Mr. Norris introduced a bill that would eliminate the requirement that gun purchasers provide fingerprints to the Tennessee Bureau of Investigation as part of the background check process.⁴¹
- In 2006, Mr. Norris cosponsored a resolution urging Congress to pass the Constitution Restoration Act of 2005, which would have prohibited the Supreme Court or any federal district court “from reviewing any matter involving the federal, state, or local government, or agent thereof, acknowledging God as the sovereign source of law, liberty, or government.”⁴² The resolution also stated that the Act would protect the ability of Tennesseans and all Americans to, among other things, “[d]isplay the Ten Commandments in public buildings and public places in this State and Nation.”

Lastly, I would note that Mr. Norris received a partial Not Qualified rating from the American Bar Association (ABA), meaning that one or more members, though not a majority, of the ABA’s Standing Committee on the Federal Judiciary deemed him to be unqualified for a federal judgeship. The ABA does not provide explanations for their ratings unless a majority rates a nominee Not Qualified, but given that Mr. Norris has ample legal experience – he has practiced law for 37 years – the ABA’s concerns were related to either his integrity or temperament (which includes bias). That is troubling.

For the foregoing reasons, The Leadership Conference urges you to reject the nomination of Mark Norris to be a U.S. District Judge for the Western District of Tennessee. 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

³⁹ <https://www.marknorris.org/blog1/tag/tennessee-civil-justice-act-of-201/>.

⁴⁰ SB 35.

⁴¹ SB 554.

⁴² SB 542.