



October 10, 2018

**OPPOSE THE CONFIRMATION OF JONATHAN KOBES 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 opposition to the confirmation of Jonathan Kobes to the U.S. Court of Appeals for the Eighth Circuit.

Mr. Kobes – the General Counsel for Senator Mike Rounds, who presumably recommended him for this judgeship – is a conservative ideologue who received a rating of Not Qualified from the independent and nonpartisan American Bar Association’s (“ABA”) Standing Committee on the Federal Judiciary. The Senate should reject his nomination.

Rated Not Qualified by the ABA: Mr. Kobes is now the sixth Trump judicial nominee to be rated Not Qualified by the ABA. This appears to be the highest number of judicial nominees to be ranked Not Qualified during the first two years of a presidency.

While the ABA rating is only one factor in determining whether a nominee is qualified for a lifetime appointment to the federal judiciary, Mr. Kobes’s nomination exemplifies the poor judgment of President Trump in removing the ABA from the pre-nomination process, and the poor judgment of Chairman Grassley in providing hearings to nominees like Mr. Kobes before their ABA rating is submitted. Chairman Grassley held a hearing for Mr. Kobes on August 22, 2018, despite the fact that the ABA didn’t complete and submit its rating to the Senate Judiciary Committee until September 17, 2018. Chairman Grassley has also jettisoned the committee’s tradition of allowing the ABA to offer live testimony about its rationale for rating a nominee Not Qualified. Chairman Grassley’s partisan and relentless effort to steamroll Trump judicial nominees through the committee will be an indelible stain on his legacy.

The ABA looked carefully at Mr. Kobes’s career – which has consisted primarily of working as a Senate staff member and an in-house counsel – and determined that he lacked the writing and appellate experience necessary to perform the job of a federal appellate judge. Indeed, Mr. Kobes has had only one appellate argument.¹ In a statement explaining its rating of Mr. Kobes as Not Qualified, the ABA wrote:

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

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- “Mr. Kobes has neither the requisite experience nor evidence of his ability to fulfill the scholarly writing required of a United States Circuit Court Judge.... [H]e was unable to provide sufficient writing samples of the caliber required to satisfy Committee members that he was capable of doing the work of a United States Circuit Court Judge.”²
- “None of the writing that we received is reflective of complex legal analysis, knowledge of the law, or ability to write about complex matters in a clear and cogent manner.”³
- “[H]is career path has not resulted in sufficient evidence of a developed ability to do the written work of a United States Circuit Court Judge. Without sufficient evidence that the nominee possesses an especially high degree of legal scholarship and excellent analytical and writing experience, the Standing Committee voted that the nominee was ‘Not Qualified’ to serve on the Eighth Circuit Court of Appeals.”⁴

These troubling comments from the ABA paint a vivid picture of an individual who is clearly unworthy of a lifetime appointment to the federal judiciary. An ABA rating of Qualified or Well Qualified doesn’t automatically render a nominee suitable to serve as a federal judge, because the ABA doesn’t consider a nominee’s judicial philosophy or ideology. But a rating of Not Qualified should be a per se bar.

Insensitivity to LGBTQ Equality: In 2012, Mr. Kobes served on the board of Bethany Christian Services, a foster care agency with a policy of discriminating against same-sex families. Earlier this year, the city of Philadelphia accused this agency of violating city contracting laws and threatened to cut off public funding for this agency unless it changed its policy.⁵ Mr. Kobes admitted he was fully aware of the agency’s policy when he joined the board. In response to a question from Senator Harris, Mr. Kobes stated: “I was aware that Bethany did not place children with same-sex couples in 2012.”⁶ It is disturbing that he would knowingly serve on the board of an agency that discriminates against LGBTQ families.

Mr. Kobes also expressed skepticism about LGBTQ rights in an interview he gave last year to a Dutch newspaper reporter. In the interview, Mr. Kobes was asked about cultural issues, and he said: “I think culturally the country has come apart a little bit.... Gay marriage is brand new in this country. Was it last summer or the summer before? So 1-2 years. That’s a huge shock for people on the conservative side. Transgender issues in public schools was a huge issue under President Obama that struck a lot of people here in this part of the country as very difficult.”⁷ These comments suggest Mr. Kobes would not approach LGBTQ issues with an open mind.

Worked to Limit Reproductive Freedom: In the case *Planned Parenthood of Minnesota v. Rounds*, Mr. Kobes represented, on a pro bono basis, fake women’s health centers that defended a state counseling law

² <https://www.americanbar.org/content/dam/aba/uncategorized/GAO/2018-9-14ChairtoGrassleyFeinstein-statementon-JonathanKobesnominee-EighthCCA.authcheckdam.pdf>.

³ *Id.*

⁴ *Id.*

⁵ <https://whyy.org/articles/philly-halts-foster-placements-2-faith-based-agencies-shutting-lgbt-couples/>.

⁶ <https://www.judiciary.senate.gov/imo/media/doc/Kobes%20Responses%20to%20QFRs.pdf>.

⁷ Interview with W.B. Kranendonk, Reformatorisch Dagblad, (June 20, 2017).



requiring abortion providers to tell a woman seeking abortion care that abortions end “the life of a whole, separate, unique, living human being” and that having an abortion increases the likelihood of suicide.⁸ A federal district court struck down the law as unconstitutional, and an Eighth Circuit panel affirmed that ruling, but the case went *en banc* and the full Eighth Circuit reversed. Mr. Kobes’s role in defending this unwise and inflammatory anti-abortion law is troubling.

Ideological and Partisan Affiliations: Mr. Kobes was a member of the Federalist Society for several years. This out-of-the-mainstream legal organization represents a sliver of America’s legal profession – just four percent – yet more than 80 percent of President Trump’s circuit court nominees, and a significant number of his district court nominees, have been Federalist Society members. Mr. Kobes was also a member of the National Rifle Association. Since 2014, he has worked for Senator Mike Rounds, a staunch conservative, and he has also worked on several Republican political campaigns. Mr. Kobes has a clear ideological bent, and he would not serve as a neutral and fair-minded jurist.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Jonathan Kobes 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, at (202) 466-3311.

Sincerely,



Vanita Gupta
President & CEO

⁸ https://www.prochoiceamerica.org/wp-content/uploads/2018/08/Jonathan-Kobes_NARAL.pdf.