



September 12, 2018

**OPPOSE THE CONFIRMATION OF STEPHEN CLARK TO THE
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI**

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 Stephen Clark to be a U.S. District Judge for the Eastern District of Missouri.

Mr. Clark holds extreme views on LGBT equality and reproductive freedom and would be incapable of serving as a neutral and fair-minded jurist in cases involving those issues. He refused to agree to recuse himself in such cases. His affiliations with discriminatory private clubs and right-wing organizations are also troubling. I urge the Senate to reject Mr. Clark's nomination.

Hostility to LGBT Equality: In a speech he made in 2016 at Duke University, Mr. Clark made clear that he opposes marriage equality. In discussing the dilemma that lawyers can face if they are asked to work on issues with which they disagree, he asked the audience: "If you're thinking of going to law school and thinking of practicing law, think about what would you do if you are asked to work on a brief filed in the U.S. Supreme Court in support of same-sex marriage."¹ He showed a PowerPoint slide of the names of major U.S. law firms and said: "These are 27 of the largest law firms in this country that all filed briefs with the U.S. Supreme Court in support of same-sex marriage."² He then stated: "So what would you do if you were asked to work on that, or nowadays one of the next evolutions of same-sex marriage is polygamy. What would you do if you were asked to work on a brief in support of polygamy?"³ Mr. Clark's likening of marriage equality with polygamy indicates a profound insensitivity to issues involving LGBT equality. This is reinforced by another 2016 presentation Mr. Clark made, entitled "Same Sex Marriage, The Conservative Justice," in which he defended the arguments put forth by the dissenters in *Obergefell v. Hodges*, the case that recognized marriage equality in America.⁴

Efforts to Undermine Women's Reproductive Freedom: Mr. Clark's hostility to LGBT equality is matched by a similar antipathy to the constitutional right of women to make personal decisions about their reproductive health. He is on the board of directors of an anti-

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
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 Murguia
UnidosUS
Debra L. Ness
National Partnership for
Women & Families
Rabbi Jonah Pesner
Religious Action Center
Of Reform Judaism
Lisa Rice
National Fair Housing Alliance
Anthony Romero
American Civil Liberties Union
Anisa Tootla
League of Women Voters of the
United States
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

¹ https://drive.google.com/file/d/1Eqviq_fl_0m3kmU00SIYEo5LjdqhZiof/view.

² *Id.*

³ *Id.*

⁴ https://drive.google.com/file/d/1K4K1p48k_rikNyKCX7Ylp273eU7tHw4N/view.

abortion group called Lawyers for Life, which issued a flyer in 2016, with Mr. Clark's name on it, declaring: "Roe vs. Wade gave doctors a license to kill unborn children. Like the Dred Scott decision, Roe is BAD LAW."⁵ A 2015 newsletter, which lists Mr. Clark's name, states that Planned Parenthood is "the nation's #1 institution for killing innocent life."⁶ In his 2016 Duke lecture, Mr. Clark asked the audience what they would do if they were assigned to work at a hospital that had a partnership with Planned Parenthood with the goal of "training the abortionists of the future."⁷ He also posed the question: "What would you do if you were asked to invest in a company that does experimental research on fetal tissue harvested from aborted babies?"⁸ Mr. Clark made a presentation to Lawyers for Life in 2012 entitled "Legal Tools for Preventing Coerced Abortions" in which he encouraged lawyers to seek the appointment of a guardian ad litem for fetuses.⁹

Mr. Clark has also filed amicus briefs to advance his extreme agenda. In a 2013 case, *Korte v. U.S. Department of Health and Human Services*, he filed a brief on behalf of anti-abortion organizations challenging the legality of the Affordable Care Act's contraception coverage requirement. Mr. Clark wrote that "the Government entirely failed to consider the robust body of medical evidence indicating that hormonal contraceptives have biological properties that significantly increase women's risk of breast, cervical, and liver cancer, stroke, and a host of other diseases...."¹⁰ As Senator Hirono noted at his hearing, the evidence that Mr. Clark relied on in this brief consisted of assertions from discredited sources. One of those sources, Dr. John Thorp, Jr., has been found by other courts to be not credible,¹¹ and another source, Dr. Angela Lanfranchi, is the author of a controversial brochure called "The Pill Kills" in which she asserts that "women who had taken the pill had higher rates of violent death" and "more infidelity and adultery."¹²

In his *Korte* brief, Mr. Clark also challenged the basic rationale of the Affordable Care Act's contraception requirement – that women should be entitled to increased access to affordable health care. He wrote: "The Government apparently assumes without proof that men – whether husbands, roommates, or in some other role – in intimate relationships with women do not contribute to the costs of whatever contraceptive method is used by the couple. But without such proof, there is no reason to believe that women are carrying an inequitable burden when it comes to the costs of contraceptives."¹³ Mr. Clark has also filed amicus briefs in several cases on behalf of religious employers such as Hobby Lobby, claiming that virtually any effort to accommodate their religious beliefs is a type of moral complicity.¹⁴ Despite his extreme advocacy of these positions and his strongly held personal views, Mr. Clark refused to agree to recuse himself in cases that conflict with his views.¹⁵

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

⁶ *Id.*

⁷ https://drive.google.com/file/d/1Eqviq_fl_0m3kmU00SIYEo5LjdqhZiof/view.

⁸ *Id.*

⁹ <https://www.judiciary.senate.gov/imo/media/doc/Clark%20Responses%20to%20QFRs.pdf>.

¹⁰ <https://lifelegaldefensefoundation.org/wp-content/uploads/2015/05/korte-v-usdhhs-amicus-may2015.pdf>.

¹¹ <https://www.judiciary.senate.gov/imo/media/doc/Clark%20Responses%20to%20QFRs.pdf>.

¹² <https://web.archive.org/web/20150923205536/http://www.bcpinstitute.org/PDF/bcpi-pill-kills-brochure.pdf>.

¹³ <https://lifelegaldefensefoundation.org/wp-content/uploads/2015/05/korte-v-usdhhs-amicus-may2015.pdf>.

¹⁴ https://www.prochoiceamerica.org/wp-content/uploads/2018/07/Stephen-Clark_NARAL.pdf.

¹⁵ <https://www.judiciary.senate.gov/imo/media/doc/Clark%20Responses%20to%20QFRs.pdf>.

These are troubling and extreme statements and positions, demonstrating significant bias and an inability to serve as a fair-minded and impartial fact-finder.

Member of Discriminatory Private Clubs: Mr. Clark is or has been a member of three discriminatory private clubs. He indicated on his Senate questionnaire that he joined the St. Louis Country Club in 1998 when, according to Mr. Clark, the club “excluded persons of certain races or religions from membership.”¹⁶ He stated that such policies have not been in place since 2003. Thus, he joined and remained a member of a club that had a policy of excluding, in all likelihood, people of color and non-Christians. The Senate questionnaire requires nominees to describe, for membership in discriminatory clubs, “any action you have taken to change these policies and practices.”¹⁷ Mr. Clark listed no such actions. He is also a member of the Missouri Athletic Club, which, when he joined in 1991, was “open only to men.”¹⁸ Although he indicated the club now includes women as well, he again listed no actions he took to bring about the non-discriminatory policy. Finally, he indicated membership in an organization called the Veiled Prophets of St. Louis, which, according to Mr. Clark, “is limited to men” and “previously excluded members on the basis of race” before he became a member.¹⁹ Mr. Clark listed no actions he has taken to open the club to women. It is troubling and should be disqualifying that he has been a member of three discriminatory clubs and that he has taken no actions to change their discriminatory policies.

Ideological and Partisan Affiliations: Mr. Clark is deeply involved in the Federalist Society. He served as the president of the Federalist Society St. Louis Chapter from 2011 to 2016, he currently serves on their board of advisors and steering committee, and he has given 26 speeches to Federalist Society audiences according to his Senate questionnaire. 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. Clark is also a member of the right-wing Republican National Lawyers Association (“RNLA”), which he joined in 2008. The RNLA opposed the Sonia Sotomayor and Elena Kagan nominations to the Supreme Court, supported voter suppression efforts such as photo ID laws, and waged an ideological attack on the Obama Justice Department’s Civil Rights Division.²⁰ Mr. Clark is a member of the National Rifle Association. He is also a member of the Republican National Committee and has served as a fundraiser for Senator Roy Blunt, who recommended him for this judgeship.²¹ Mr. Clark has a clear ideological bent, and he would not serve as an objective and fair-minded judge.

¹⁶ <https://www.judiciary.senate.gov/imo/media/doc/Clark%20Sr.%20SJQ1.pdf>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ <http://www.rnla.org/Documents/Jud.Comm.Ltr.pdf>; http://www.rnla.org/Documents/Kagan_RNLA_Ltr.pdf;
<http://www.rnla.org/news/mediaarchive.asp>; <https://www.rnla.org/Newsletter/ViewArticle.aspx?ArticleID=391>.

²¹ <https://www.judiciary.senate.gov/imo/media/doc/Clark%20Sr.%20SJQ1.pdf>.

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For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Stephen Clark to be a U.S. District Judge for the Eastern District of Missouri. 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,

A handwritten signature in black ink, appearing to read "Vanita Gupta". The signature is fluid and cursive, with a long horizontal stroke at the end.

Vanita Gupta
President & CEO