

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
Hilary 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
Sherilyn 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
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

December 12, 2017



OPPOSE THE CONFIRMATION OF MATTHEW KACSMARYK TO THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

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 Matthew Kacsmaryk to be a U.S. District Judge for the Northern District of Texas.

Nominees to the federal courts must be committed to respecting the law, Constitution, and core American values of justice, fairness, and inclusivity. Mr. Kacsmaryk does not meet this standard. He is an anti-LGBT activist and culture warrior who does not respect the equal dignity of all people. His record reveals a hostility to LGBT equality and to women's health, and he would not be able to rule fairly and impartially in cases involving those issues.

LGBT Animus: Mr. Kacsmaryk fundamentally disapproves of LGBT people. In a 2015 op-ed, he wrote: "In this century, sexual revolutionaries are litigating and legislating to remove the fourth and final pillar of marriage law: sexual difference and complementarity.... The major and growing Abrahamic religious denominations – Catholic, Protestant, Jewish – share a binary view of the human person and human sexuality.... [T]he Catechism holds that 'homosexual acts are intrinsically disordered,' 'contrary to the natural law,' and 'do not proceed from a genuine affective and sexual complementarity.'"¹

Marriage Equality: Mr. Kacsmaryk has expressed strong opposition to the Supreme Court's opinion in *Obergefell v. Hodges*, which established a constitutional right to marriage equality in America. He filed an amicus brief in the *Obergefell* case in which he argued against marriage equality, and after he lost, he wrote disparagingly: "On June 26, five justices of the Supreme Court found an unwritten 'fundamental right' to same-sex marriage hiding in the due process clause of the Fourteenth Amendment – a secret knowledge so cleverly concealed in the nineteenth-century amendment that it took almost 150 years to find."² Mr. Kacsmaryk expressed support for Kim Davis, the county clerk in Kentucky who violated a federal court order by refusing to issue marriage licenses to gay couples after *Obergefell*. Mr. Kacsmaryk said Ms. Davis should not have been forced to go to jail, and he compared her actions to "pacifistic Quakers" who refused to hold combat positions in the military.³ Such disrespect for federal court orders is something rarely seen in a federal

¹ <http://www.ncregister.com/daily-news/the-abolition-of-man---and-woman>.

² <http://www.thepublicdiscourse.com/2015/09/15612/>.

³ Matthew Kacsmaryk, radio interview with Drew Mariani, Relevant Radio, September 8, 2015.

judicial nominee and for good reason, given that the position to which he is nominated would require adherence to federal court precedent and procedures.

LGBT Equality Legislation: Mr. Kacsmaryk has vigorously opposed bipartisan federal legislation that would prohibit discrimination based on sexual orientation and gender identity. He wrote that the “deceptively titled Equality Act . . . seeks to weaponize *Obergefell*, moving with lightning speed from a contentious five-to-four victory on same-sex marriage to a nationwide rule that ‘sexual orientation’ and ‘gender identity’ are privileged classes that give no quarter to Americans who continue to believe and seek to *exercise* their millennia-old religious belief that marriage and sexual relations are reserved to the union of one man and one woman.”⁴ He also wrote: “Like some voracious legal Pac-Man, the *Obergefell*-fueled Equality Act devours any preexisting constitutional rights that might impede absolute victory in the march for ‘marriage equality.’”⁵

In addition, Mr. Kacsmaryk expressed support for Mississippi’s draconian anti-LGBT law that has been called “the worst in the nation.”⁶ The law allows businesses and government officials with religious objections to refuse to serve LGBT couples and individuals. When the Mississippi law was struck down by a federal judge, Mr. Kacsmaryk stated: “If his logic holds, it calls into question the entire category of conscience protections for religious dissenters, and that’s just not the American tradition. That just cannot be right. We have this robust tradition of accommodating religious dissent.”⁷ The Fifth Circuit overturned the district judge’s decision on standing grounds.

Anti-Transgender Bias: Mr. Kacsmaryk has a particular animus and insensitivity toward transgender people. In 2015, he wrote: “*The Daily Beast* recently reported that Facebook offers 51 gender-identity options: agender, cisgender, genderqueer, pangender, transgender, etc., making it seem as though the human person is more like a pluripotent cell whose sex and sexuality are subject to autonomous self-definition.... The view of ‘male’ and ‘female’ cannot easily coexist with a malleable view that recognizes and affirms 51 gender identities – with more to come.”⁸

Mr. Kacsmaryk has also lambasted the regulation implementing Section 1557 of the Affordable Care Act provision, which extended the non-discrimination mandate in federal health care law to gender identity and sex stereotyping. These are critical protections because transgender and gender nonconforming individuals consistently face health care discrimination, including verbal abuse, physical abuse, and outright refusals of treatment. Mr. Kacsmaryk formally opposed these protections in a comment he submitted to the Department of Health and Human Services during the rulemaking process.⁹ He said these protections constituted a “radical self-definition and sex-actualization” and warned that “litigation threats will continue unless Congress repudiates the false premise that faith-based providers, physicians,

⁴ <http://www.thepublicdiscourse.com/2015/09/15612/>.

⁵ Id.

⁶ <https://www.thedailybeast.com/mississippis-draconian-anti-lgbt-law-the-worst-in-the-nation-is-set-to-take-effect>.

⁷ <http://www.mystatesman.com/news/state--regional-govt--politics/will-mississippi-ruling-against-religion-law-deter-texas-republicans/DK8RW69jPlZRaPI8VmojYP/>.

⁸ <http://www.ncregister.com/daily-news/the-abolition-of-man---and-woman>.

⁹ <http://www.usccb.org/about/general-counsel/rulemaking/upload/Comments-Proposal-HHS-Reg-Nondiscrimination-Federally-Funded-Health.pdf>.

and practitioners must forfeit their deepest religious convictions to participate in federally funded programs.”¹⁰ He also said about Section 1557: “This is not diversity but displacement, the imposition of a different morality via administrative regulation. You must constantly affirm the sexual revolutionary view of the human person or you will be on the wrong side of federal law.”¹¹

Mr. Kacsmaryk used similar invective in criticizing a Fort Worth, Texas school district effort to implement the Obama administration’s guidance by permitting transgender students to use the bathroom of their gender identity. Mr. Kacsmaryk stated: “This is not diversity but displacement, the absolutist imposition of a sexually revolutionized view of the human person without any accommodation for religious dissenters who may have a different view of man and woman, male and female.”¹²

In addition, Mr. Kacsmaryk filed briefs in opposition to the efforts of Gavin Grimm to use school bathrooms that corresponded with his gender identity. In one brief, Mr. Kacsmaryk argued: “[T]he term ‘sex’ in Title IX must not be read to include gender identity. Congress has rejected attempts to modify civil rights statutes to include gender identity, and could reverse course at any time to provide a clear statement that lawmakers intend to press what would be the consequent constitutional issues.”¹³ Given his hostile remarks, it is hard to imagine transgender individuals would have confidence that they would receive a fair hearing from Mr. Kacsmaryk if he is confirmed as a federal judge.

Public Accommodations: First Liberty Institute, where Mr. Kacsmaryk serves as deputy general counsel, recently filed an amicus brief in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* on behalf of the petitioner baker who seeks to deny baking wedding cakes for same-sex couples. Their brief argues hyperbolically that if the Supreme Court rules against the baker, “the coercive exercise of authoritarian power below threatens to quash dissent not only on debates regarding marriage, but also on all hotly contested issues of public concern.”¹⁴ In a separate case raising the same issue, *Klein v. Oregon Bureau of Labor and Industries*, Mr. Kacsmaryk represents an Oregon couple who owned a bakery and who refused to bake a cake for a same-sex wedding.¹⁵ Mr. Kacsmaryk would turn back the clock in America and allow businesses to openly discriminate against people for who they are or whom they love.

Women’s Health: Mr. Kacsmaryk wrote a Supreme Court amicus brief in *Zubik v. Burwell* attacking the Affordable Care Act’s contraceptive access requirement, making the sweeping argument that “Congress, in short, enacted RFRA to protect *all* religious objectors from *all* laws that substantially burden their religious beliefs.”¹⁶ The Supreme Court remanded the case and requested that the parties attempt to find a mutually satisfactory accommodation to provide contraceptive access.

¹⁰ <https://www.firstthings.com/blogs/firstthoughts/2016/11/defending-conscience-rights-at-hacksaw-ridge-and-in-the-hhs-cases>.

¹¹ <http://thefederalist.com/2016/06/22/new-rule-requires-doctors-to-treat-trans-patients-as-their-pretend-sex/>.

¹² <http://dailysignal.com/2016/07/24/parents-beat-back-obamas-transgender-bathroom-mandate-in-texas-schools/>.

¹³ <https://firstliberty.org/wp-content/uploads/2016/09/16-273-Gloucester-Cnty-Sch-Bd-v-GG-Amici-Brief-First-Liberty.pdf>.

¹⁴ <https://firstliberty.org/wp-content/uploads/2017/09/16-111-tsac-Aaron-and-Melissa-Klein.pdf>.

¹⁵ <https://firstliberty.org/wp-content/uploads/2017/02/SM16-04-25-Klein-Opening-brief-and-ER-FILE-STAMPED-COPY.pdf>.

¹⁶ https://firstliberty.org/wp-content/uploads/2016/01/AmicusBriefinHHSMandatecase_LittleSistersofthePoor.pdf.

In addition, Mr. Kacsmaryk has fought for the ability of pharmacists to deny critical health care services to women such as access to emergency contraceptives. In an amicus brief filed with the Supreme Court, Mr. Kacsmaryk wrote that a Washington state law requiring pharmacists either to fill a medical prescription or find an available pharmacist who will, which had been upheld by the Ninth Circuit, “authorizes an unprecedented and dangerous intrusion on the most basic right of conscience.”¹⁷ The Supreme Court denied certiorari and let the Ninth Circuit decision stand.

Mr. Kacsmaryk has also been highly critical of the right to reproductive freedom. He wrote: “On January 22, 1973, seven justices of the Supreme Court found an unwritten ‘fundamental right’ to abortion hiding in the due process clause of the Fourteenth Amendment and the shadowy ‘penumbras’ of the Bill of Rights, a celestial phenomenon invisible to the non-lawyer eye.... But *Roe* did not resolve the fierce controversy of abortion. Instead, sexual revolutionaries suffered loss after loss when they rammed *Roe* into state and municipal policies restricting public funds or forced participation in the ‘fundamental right’ of abortion.”¹⁸ Embracing the rhetoric of the far right, he has stated: “Today, pro-abortion and pro-life adversaries continue to litigate the points where the unwritten constitutional right to abortion collides with written constitutional rights to speech, association, assembly, and religion.”¹⁹ His record demonstrates that Mr. Kacsmaryk could not be fair and impartial in cases involving reproductive freedom.

An overall summary of Mr. Kacsmaryk’s worldview is captured by a statement he made in 2015, when he wrote that the Sexual Revolution “sought public affirmation of the lie that the human person is an autonomous blob of Silly Putty unconstrained by nature or biology, and that marriage, sexuality, gender identity, and even the unborn child must yield to the erotic desires of liberated adults.”²⁰ It is deeply disturbing that Mr. Kacsmaryk believes LGBT rights and reproductive freedom are premised on a “lie” that resulted from nothing more than “the erotic desires of liberated adults.”

Federalist Society: Like many of President Trump’s judicial nominees, Mr. Kacsmaryk has been very active in the archconservative Federalist Society. He co-founded the Fort Worth, Texas Federalist Society lawyers chapter in 2012 and serves as its vice president and programs director. This legal organization represents a sliver of America’s legal profession – just 4 percent – yet 94 percent of Trump’s circuit court nominees, and a significant number of his district court nominees, have been Federalist Society members. President Trump has openly outsourced his judicial selection to the Federalist Society and the Heritage Foundation in an effort to pursue his radical right agenda in the courts.

¹⁷ <https://www.libertyinstitute.org/file/ThriftwayNo.-15-862-Members-of-Congress-Amicus-with-Appendix1.pdf>.

¹⁸ <http://www.thepublicdiscourse.com/2015/09/15612/>.

¹⁹ Id.

²⁰ Id.

For the foregoing reasons, The Leadership Conference urges you to reject the nomination of Matthew Kacsmaryk to be a U.S. District Judge for the Northern District of Texas. 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