

January 17, 2018

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

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

RE: 39 LGBT Groups Oppose Confirmation of Matthew Kacsmaryk

Dear Chairman Grassley and Ranking Member Feinstein:

We, the undersigned 39 national, state and local advocacy organizations, representing the interests of lesbian, gay, bisexual and transgender (LGBT) people and everyone living with HIV, urge you to oppose the nomination of Matthew Kacsmaryk to the U.S. District Court for the Northern District of Texas.

Mr. Kacsmaryk is an anti-LGBT activist who serves as deputy general counsel at First Liberty Institute (FLI). Mr. Kacsmaryk was nominated to the federal bench alongside his former FLI colleague Jeff Mateer, who described transgender children as part of “Satan’s plan.” Now, Mr. Kacsmaryk may not have been filmed uttering the words “Satan’s plan” in reference to trans children, but his suggestion that transgender people are “delusional”¹ shows that he is cut from the same cloth as Mr. Mateer, whose nomination was widely criticized and eventually (and appropriately) withdrawn. Like Mr. Mateer, Mr. Kacsmaryk’s history of targeting those who do not live according to his particular social and religious beliefs calls into doubt his ability to administer fair and impartial justice.

For example, in the course of representing a client who refused retail services to a same-sex couple based on the owner’s religious beliefs, Mr. Kacsmaryk argued that “[u]nder Supreme Court precedent, even the state’s interest in preventing sexual orientation-based discrimination cannot justify serious burdens on the Kleins’ constitutionally protected religious freedom.”² Likewise, Mr. Kacsmaryk opposed the Equal Employment Opportunity Commission’s position that sexual orientation and gender identity are covered under Title VII and referred to the position as “another step in a decades-long

¹ CMS comment on the Medicare and Medicaid Programs; Hospital and Critical Access Hospital Changes to Promote Innovation, Flexibility, and Improvement in Patient Care, CMS-3295-P, (August 12, 2016), *available at* <http://www.usccb.org/about/general-counsel/upload/Comments-on-Medicare-and-Medicaid-Programs-August-2016.pdf>.

² *Melissa Klein v. Oregon Bureau of Labor and Industries*, Nos. 44-14 45-14 CA A159899, 8-9 (2016).

process to remove the pillars of marriage law.³ Mr. Kacsmaryk also opposed nondiscrimination protections for LGBT people in Utah on the grounds it might suggest that discrimination on the basis of sexual orientation and gender identity is a problem that should be taken as seriously as other forms of discrimination.⁴

But perhaps even more than the cases that he has litigated, Mr. Kacsmaryk's personal writings reveal the depths of his antipathy toward legal equality for LGBT people and other populations that depend on the federal judiciary. For example, Mr. Kacsmaryk disparages the LGBT movement in a section of an article entitled, "The Long War Ahead." Mr. Kacsmaryk characterizes efforts to achieve LGBT civil rights as seeking "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."⁵

Mr. Kacsmaryk has also publicly disparaged the nondiscrimination regulation promulgated by the Department of Health and Human Services protecting transgender people from health care discrimination, as "imposition of a different morality via administrative regulation." Decrying the regulation as "not diversity but displacement," Mr. Kacsmaryk couched his opposition in global terms about the perniciousness of the "sexual revolution," insisting that HHS's regulations demand that "you must constantly affirm the sexual revolutionary view of the human person or you will be on the wrong side of federal law."⁶ In a separate article, Mr. Kacsmaryk denigrates as "problematic" the very *idea* of gender identity, notwithstanding the fact that gender identity is recognized as a core aspect of human identity by major medical and mental health associations.⁷

Our concern is not just about Mr. Kacsmaryk's extremist views and willingness to gut landmark decisions that form the basis of all protection for LGBT people. Our concern goes further than that. Mr. Kacsmaryk has challenged LGBT peoples' right to form families at all, and argued that the families that they have formed are less legitimate than other families. He has denied in some cases that LGBT people really exist. His record reveals that he will be incapable of treating LGBT litigants fairly—no matter what body of law is at issue in the cases over which he may preside—because he does not acknowledge LGBT people as having a right to exist. Matthew Kacsmaryk is not the kind of judge that this country wants, needs or deserves. We strongly urge you to reject his nomination.

³ Mary Reichard, *A Few States Are Protecting Religious Freedom*, THE WORLD (Sept. 15, 2015), available at https://world.wng.org/2015/09/a_few_states_are_protecting_religious_freedom.

⁴ *Id.*

⁵ Matthew Kacsmaryk, *The Inequality Act: Weaponizing Same-Sex Marriage*, THE WITHERSPOON INSTITUTE, (Sept. 4, 2015) available at <http://www.thepublicdiscourse.com/2015/09/15612/>.

⁶ Maria Servold, *New Rule Requires Doctors to Treat Trans Patients As Their Pretend Sex*, THE FEDERALIST, (June 26, 2016), available at <http://thefederalist.com/2016/06/22/new-rule-requires-doctors-to-treat-trans-patients-as-their-pretend-sex/>.

⁷ Matthew Kacsmaryk, *The Abolition of Man...and Woman*, NATIONAL CATHOLIC REGISTER (June 24, 2015), available at http://www.ncregister.com/daily-news/the-abolition-of-man-...-and-woman_



Thank you for considering our views on this important issue. Please do not hesitate to reach out if we can provide additional information throughout the confirmation process. You can reach us through Sharon McGowan, Director of Strategy for Lambda Legal, at smcgowan@lambdalegal.org.

Very truly yours,

Lambda Legal
Advocates for Youth
Alaskans Together For Equality
American Atheists
CenterLink: The Community of LGBT Centers
Equality Alabama
Equality California
Equality Federation
Equality Illinois
EqualityMaine
Equality NC
Equality New Mexico
Equality North Carolina
Equality Ohio
Equality Pennsylvania
Equality South Dakota
Equality Texas
Equality Utah
Family Equality Council
FORGE, Inc.
Forum for Equality Louisiana
FreeState Justice
Garden State Equality
Gender Justice League
Georgia Equality
Mazzoni Center
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Transgender Equality
National Coalition for LGBT Health
National LGBT Bar Association
National LGBTQ Task Force Action Fund
OutFront Minnesota
SC Equality
The Trevor Project
Trans Women of Color Collective
Transgender Law Center



Whitman-Walker Health
Witness to Mass Incarceration

cc: United States Senate Judiciary Committee Members