



November 14, 2017

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: 27 LGBT Groups Oppose Confirmation of Don Willett, Stuart Kyle Duncan and Matthew Kacsmark**

Dear Chairman Grassley and Ranking Member Feinstein:

We, the undersigned 27 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 Don Willett to the U.S. Court of Appeals for the Fifth Circuit. We also write to oppose the nominations Stuart Kyle Duncan to the U.S. Court of Appeals for the Fifth Circuit and the nomination of Matthew Kacsmark to the U.S. District Court for the Northern District of Texas who have not yet been scheduled for consideration by the Senate Judiciary Committee.

The largest percentage (35%) of LGBT people in the United States live in the south. Approximately 772,000 LGBT people live in Louisiana, Mississippi and Texas, and there are an estimated 57,000 same-sex couples living in those states. LGBT families in the south are more likely to lack employment protections, earn less than \$24,000 a year, and report that they cannot afford food or health care and are less likely to have insurance than anywhere else in the country.<sup>1</sup> In addition, LGBT in these states report high rates of discrimination. In Louisiana and Mississippi, polls have found that 81% of residents think that LGBT people experience discrimination (79% in Texas).<sup>2</sup> While there is widespread support for employment protections for LGBT people in these states, there are few local protections.

If confirmed to the bench, these dangerous nominees will increase the likelihood that LGBT people living in these states will continue to experience discrimination with no meaningful access to justice in their lifetime. We strongly urge you to oppose them.

---

<sup>1</sup> The Williams Institute, *LGBT in the South*, (Mar. 2016), available at <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-in-the-south/>.

<sup>2</sup> *Id.*

## Justice Willett

After reviewing the judicial record of Justice Willett and his personal writings, we have concluded that his views on civil rights issues are fundamentally at odds with the principles of equality, liberty, justice and dignity under the law, particularly with regard to LGBT Americans.

Justice Willett has boasted about being the “most conservative justice”<sup>3</sup> on the Texas Supreme Court and has stated that “there is no ideological daylight to the right of me.”<sup>4</sup> He has opposed equality for women in the workplace and has minimized concerns of sexual harassment.<sup>5</sup> Justice Willett’s enduring bias against LGBT people is visible not just on his Twitter feed, where he has trivialized marriage equality and disparaged transgender people,<sup>6</sup> but also in his judicial opinions. In 2016, Justice Willett wrote a scathing concurrence criticizing a Texas trial court for approving the state’s first same-sex marriage petition. Justice Willett excoriated the Court for failing to notify Attorney General Ken Paxton of the move so that the Paxton would have the opportunity to defend the marriage ban.<sup>7</sup> Before *Obergefell* was decided, Justice Willett also attacked the Texas Supreme Court for failing to take up a case on the validity of a same-sex divorce (and marriage) in Texas because he was eager to uphold the ban.<sup>8</sup> Most recently in 2017, Justice Willett signed onto a Texas Supreme Court decision issued last June holding that *Obergefell* does not guarantee equal publicly funded benefits for the spouses of gay and lesbian public employees.<sup>9</sup> Defying the Supreme Court’s ruling in *Obergefell* as well as its summary reversal earlier that week in *Pavan v. Smith*, stating explicitly that states may not treat same-sex married couples differently than other married couples, the Texas Supreme Court (including Justice Willett) argued that “*Obergefell* is not the end” and cited other pending cases to deny benefits for the spouses of gay and lesbian public employees.<sup>10</sup> In light of his proudly held antipathy toward the equal rights of LGBT people, it is an inescapable conclusion that LGBT people will not be able to obtain a fair hearing from him.

Justice Willett espouses views about the role of the state to regulate commerce that would turn the clock back 100 years at the expense of important gains in workers’ protections and civil rights by urging courts to be more vigorous in reviewing and invalidating acts of government designed to protect health and safety. If this theory were to gain traction, it would return us to the “*Lochner*” era when workplace protections were frequently struck down because the court did not consider the regulation a

---

<sup>3</sup> *Justice Don Willett Commercial: Conservative*, YOUTUBE (May 7, 2012), available at <https://www.youtube.com/watch?v=WJQFioXc4Mg>.

<sup>4</sup> *Justice Don Willett – The Arlington Voice – 2012 TCGOP Straw Poll*, YOUTUBE (Feb. 6, 2012), available at <https://www.youtube.com/watch?v=ImznoCBCrnE>

<sup>5</sup> Ken Herman, Bush advisor’s memo critical of women’s issues, AUSTIN AMERICAN-STATESMAN (July 15, 2000).

<sup>6</sup> See, e.g., Don Willett @JusticeWillett, “I could support recognizing a constitutional right to marry bacon.” (Apr. 29, 2015, 5:43p.m. Tweet) <https://twitter.com/JusticeWillett/status/593591597641531392>; “Go away, A-Rod.” “@FoxNews: California’s transgender law allows male high schooler to make girls’ softball team.” (Feb. 14, 2014, 2:48p.m. Tweet) <https://twitter.com/justicewillett/status/434474201638920192>.

<sup>7</sup> *In re State*, 489 S.W.3d 454, 456 (Tex. 2016).

<sup>8</sup> *State v. Naylor*, 466 S.W.3d 783, 795 (Tex. 2015) (Justice Willett, joined by Justice Guzman and Justice Devine, dissenting) (Willett asks in his dissent whether the marriage ban rests “properly” with state voters and their elected representatives or with judges).

<sup>9</sup> *Pidgeon v. Turner*, No. 15-0688, 2017 WL 2829350 (Tex. June 30, 2017).

<sup>10</sup> *Id.* at 12.

valid exercise of the state’s power to protect the public welfare<sup>11</sup> Specifically, rather than applying traditional “rational basis review,” Justice Willett has advocated that even economic regulations should be assessed against a searching standard of judicial review that gives significant weight to “individual liberty.” Justice Willett argues in a long concurrence (in a case striking down a licensing requirement) that, “occupational freedom, the right to earn a living as one chooses, is a nontrivial constitutional right entitled to nontrivial judicial protection.”<sup>12</sup> Justice Willett unpersuasively asserts that much economic regulation is driven less by a desire to protect workers, than by a desire to drive out competitors. Justice Willett’s views take direct aim at important workplace protections, including nondiscrimination protections, and would seriously undermine civil rights laws were they to gain currency. Not only does Justice Willett’s approach fly in the face of longstanding deferential standard of review in federal law and throughout the country, it would cause serious harm if this view were to gain traction.

All of the above should cause any reasonable person to seriously doubt Justice Willett’s willingness or capacity to faithfully adhere to constitutional precedent and principles and administer justice equally to litigants of various racial backgrounds, and all genders and sexual orientations. We have grave doubts concerning his ability to impartially interpret the law and serious concerns about his strict approach to judicial review of economic regulations that would impact LGBT workers and all workers.

\* \* \*

Two other individuals who have been nominated cause us equal concern. Neither Mr. Duncan nor Mr. Kacsmatyk has any judicial experience. In addition, although these nominees have not received the public outcry over their writings and public statements as have those of fellow nominee Mr. Jeff Mateer, their public statements and writings have demonstrated comparable contempt for LGBT Americans and other vulnerable populations. While Mr. Duncan and Mr. Kacsmatyk have not made glaringly inflammatory statements about LGBT people to the same degree that Mr. Jeff Mateer has (*e.g.*, asserting that transgender children were evidence of “how Satan’s plan is working”<sup>13</sup>), it is clear that they hold the same degree of animus toward the LGBT community. Because we believe that these nominees would use a lifetime appointment to the bench to advance their objective of relegating LGBT people to second-class status under the law, we write now, well in advance of any hearing on these nominees, to raise our concerns. We wish to call to your attention aspects of their records that illustrate why these nominees are unfit for the bench, and pose a grave threat to the communities that our organizations serve.

### **Stuart Kyle Duncan**

---

<sup>11</sup> See *Lochner v. New York*, 198 U.S. 45 (1905) (the Supreme Court struck down an economic regulation limited working hours in bakeries to 60 hours per week based on the freedom to contract).

<sup>12</sup> *Patel v. Texas Dep’t of Licensing & Regulation*, 469 S.W.3d 69 (Tex. 2015).

<sup>13</sup> Chris Massie and Andrew Kacznski, *Trump judicial nominee said transgender children are part of ‘Satan’s plan’, defended ‘conversion therapy,’* CNN.COM (Sept. 20, 2017), available at <http://www.cnn.com/2017/09/20/politics/kfile-jeff-mateer-lgbt-remarks/index.html>.

Mr. Duncan has built his career around pursuing extreme positions that target members of the LGBT community, and especially transgender Americans. The combination of Mr. Duncan's approach to important legal issues affecting the LGBT community and his history of seeking out opportunities to oppose the civil rights of LGBT and other marginalized people render him unqualified for this position.

We are particularly concerned by the fact that, for the majority of his professional life, Mr. Duncan's career has been dedicated to advancing positions that seek to marginalize, and often vilify, groups who do not conform to his ultraconservative social views. In recent years, Mr. Duncan has achieved national notoriety for his niche practice opposing LGBT equality at every turn. Between 2012 and 2014, Mr. Duncan served as general counsel of The Becket Fund for Religious Liberty, an extremely conservative organization focused on bringing right-wing religious liberty campaigns and work tirelessly to defeat LGBT equality.<sup>14</sup> While at the Becket Fund, Mr. Duncan worked aggressively to eliminate the Affordable Care Act's contraceptive mandate by, among other things, advancing the position that for-profit corporations have religious rights that can override the government's interest in eliminating historic discrimination against women in health care. Perhaps most notable among the clients for whom Mr. Duncan advanced this theory was Hobby Lobby, the for-profit craft stores that Mr. Duncan represented in the Supreme Court, and whose case resulted in a controversial decision that closely held corporations are exempt from regulations requiring those companies to provide contraceptive care.<sup>15</sup>

Mr. Duncan has made no secret of the fact that he views the *Hobby Lobby* litigation as not only a way to use religious liberty arguments to limit access to contraception, but as a sword that can be wielded more broadly to curtail the rights of LGBT people by, among other things, providing a path by which employers can evade their obligation to provide health care to transgender individuals.<sup>16</sup> Indeed, while the Supreme Court tried to clarify in *Hobby Lobby* that the government has a compelling interest in ending employment discrimination based on race, the case has already been used by at least one court to hold that the religious liberty of a business owner to fire its transgender employee overrides the compelling interest of the government to end discrimination on the basis of sex (transgender status).<sup>17</sup>

Mr. Duncan left The Becket Fund in 2014 to become a partner at Schaerr Duncan LLP, where he would have greater control over his choice of clients and the legal theories he could pursue. His initial focus at the law firm was to relentlessly pursue litigation designed to undermine the legal recognition of same-sex couples and their families. As made clear through his personal writing, Mr. Duncan is driven

---

<sup>14</sup> E.g., The Becket Fund ran a full-page advertisement in the New York Times entitled "No Mob Rule" in support of California's Proposition 8, which outlawed same-sex marriage (Dec. 8, 2008), available at <http://www.towleroad.com/2008/12/becket-fund-lau/>. The Becket Fund has and has worked to end adoption programs in Massachusetts and Illinois rather than place children with same-sex couples.

<sup>15</sup> *Wheaton Coll. v. Sebelius*, 703 F.3d 551 (D.C. Cir. 2012); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

<sup>16</sup> Kyle Duncan, *How Fares Religious Freedom?*, FIRST THINGS (Oct. 2013), available at <https://www.firstthings.com/article/2013/10/how-fares-religious-freedom>.

<sup>17</sup> *Equal Employment Opportunity Comm'n v. R.G. & G.R. Harris Funeral Homes, Inc.*, 201 F. Supp. 3d 837 (E.D. Mich. 2016).

by a deeply held view that same-sex marriage “imperils civil peace” and he has gone to great lengths to thwart efforts to achieve legal equality for same-sex couples.<sup>18</sup> Specifically, Mr. Duncan has:

- defended Louisiana against a challenge to the state’s ban on same-sex marriage;<sup>19</sup>
- defended the state against a challenge to its refusal to recognize same-sex marriages from other jurisdictions;<sup>20</sup>
- defended the state of Alabama against a challenge from a lesbian mother whose parental rights were stripped away by the state;<sup>21</sup>
- represented the state of Louisiana when it refused to issue a birth certificate to a same-sex couple after they adopted a child;<sup>22</sup>
- organized an amicus brief filed by 15 states opposing the freedom to marry in *Obergefell v. Hodges*, the landmark marriage equality decision holding that same-sex couples have a constitutional right to marriage.<sup>23</sup>

Mr. Duncan has also worked aggressively to defeat basic equal opportunity protections for transgender people. Mr. Duncan chose to represent North Carolina legislators Phil Berger and Tim Moore (the architects of the House Bill 2 which restricted transgender people’s ability to access public restrooms) in a lawsuit against the Department of Justice seeking a declaratory judgment that HB2 was constitutional.<sup>24</sup> Mr. Duncan upped the ante by representing the same legislators in a separate action to intervene in litigation against then Governor Pat McCrory. Mr. Duncan supported the writers and defenders of HB2 to ensure there was a vigorous defense of the discriminatory law (the governor’s initial lawsuit did not seek a declaration that HB2 does not violate Title IX).<sup>25</sup> During the litigation, Mr. Duncan filed expert declarations on behalf of the legislators that relied upon “junk science” that described transgender people as delusional (arguing in essence, that transgender people don’t exist) and advocating that parents should discourage “transgender persistence.”<sup>26</sup>

---

<sup>18</sup> Stuart Kyle Duncan, *Marriage, Self-Government, and Civility*, PUBLIC DISCOURSE (Apr. 23, 2015), available at <http://www.thepublicdiscourse.com/2015/04/14894/>

<sup>19</sup> *Constanza v. Caldwell*, 2014-2090 (La. 7/7/15).

<sup>20</sup> *Robicheaux v. Caldwell*, 791 F.3d 616 (5<sup>th</sup> Cir 2015).

<sup>21</sup> *V.L. v. E.L.*, 136 S. Ct. 1017 (2016).

<sup>22</sup> *Adar v. Smith*, 639 F.3d 146 (5th Cir. 2011).

<sup>23</sup> Brief of Amicus Curiae Louisiana, Utah, Texas, Alaska, Arizona, Arkansas, Georgia, Idaho, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, and West Virginia Supporting Respondents, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (Nos. 14-556, 14-562, 14-571, 14-574).

<sup>24</sup> Complaint for Declaratory Relief, *Berger v. United States*, No. 5:16-cv-00240-FL (E.D. NC. May 9, 2016).

<sup>25</sup> Memorandum in Support of Motion to Intervene, *Carcaño v. McCrory*, No. 1:16-cv-00236-TDS-JEP (M.D. NC. May 25, 2016) available at [https://docs.google.com/viewerng/viewer?url=http://files.eqcf.org/wp-content/uploads/2016/05/34-Memo-iso-Berger\\_Moore-Motion-to-Intervene.pdf](https://docs.google.com/viewerng/viewer?url=http://files.eqcf.org/wp-content/uploads/2016/05/34-Memo-iso-Berger_Moore-Motion-to-Intervene.pdf).

<sup>26</sup> Supplemental Brief of State Defendants and Intervenor-Defendants in Opposition to Plaintiff’s Due Process Claim, *Carcaño v. McCrory*, No. 1:16-cv-00236-TDS-JEP (M.D. NC. Oct. 28, 2016) available at <https://docs.google.com/viewerng/viewer?url=http://files.eqcf.org/wp-content/uploads/2016/11/173-Ds-and-I-Ds-Supp-Brief-Oppn-Ps-Due-Process-Claim.pdf> (*E.g.*, Decl. of Paul W. Hruz, M.D. ¶ 38: “With regard to public restrooms and other intimate facilities, there is no evidence to support social measure that promote or encourage gender transition as medically necessary or effective treatment for gender dysphoria”; Quentin L. Van Meter, M.D. ¶ 50 (p. 170): “what is missing is sound science to show that gender identity discordance is not a delusional state.”; Decl. Allan M. Josephson, M.D. ¶ 42 (p. 189), “In psychiatry, a delusion is defined as a fixed belief which is held despite evidence to the contrary... Similarly, those who are gender incongruent believe they are of the opposite sex despite clear and overwhelming evidence to the contrary.”)



In the midst of representing the architects of HB2, Mr. Duncan then chose to defend the Gloucester County School Board after they implemented a discriminatory anti-transgender policy that singled out transgender students from their peers by requiring them to use separate “alternative, private” facilities, a policy that was struck down by the Fourth Circuit Court of Appeals.<sup>27</sup> As lead counsel for the School Board in the *G.G.* case, Mr. Duncan filed a merits brief with the Supreme Court appealing the decision and arguing that Title IX of the Education Amendments Act of 1972 does not protect transgender students.<sup>28</sup> Title IX is critical to ensuring that LGBT students have access to an education free from discrimination and harassment. Numerous circuit courts have held that laws prohibiting discrimination on the basis of sex, including Title IX, prohibit discrimination against individuals for being transgender or discrimination for failing to conform to gender stereotypes.<sup>29</sup> However, in his brief in the *G.G.* case, Mr. Duncan urged the court to adopt a constricted view of the law that would deny transgender students like Gavin the ability to go to school without fear of discrimination. In particular, Mr. Duncan’s brief deployed offensive and baseless “gender fraud” arguments, suggesting that schools were entitled to refuse to respect a student’s gender identity in order to “prevent[ ] athletes who were born male from opting onto female teams, obtaining competitive advantages and displacing girls and women”—a myth that has not materialized across hundreds of school districts with nondiscriminatory policies over many years.<sup>30</sup>

Mr. Duncan’s relentless pursuit of litigation targeting the rights of vulnerable groups and promoting dogmatic and exclusionary views couched in the language of religion renders him patently unqualified for a lifetime appointment to a federal court of appeals. In light of his words and actions, it is quite unfathomable that Mr. Duncan would administer justice equally to litigants of various racial backgrounds, and all genders and sexual orientations.

### **Matthew Kacsmatyk**

Like Mr. Duncan, Mr. Kacsmatyk is an anti-LGBT activist whose 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.

Mr. Kacsmatyk currently serves as deputy general counsel at First Liberty Institute (FLI), an organization that, like the Becket Fund, chooses its causes and clients.<sup>31</sup> Like Mr. Duncan, Mr.

---

<sup>27</sup> *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709 (4th Cir.), cert. granted in part, 137 S. Ct. 369 (2016), and vacated and remanded, 137 S. Ct. 1239 (2017).

<sup>28</sup> Brief of Petitioner at 1, *Gloucester Cty. Sch. Bd. v. G.G.*, 137 S. Ct. 1239 (No. 16-273), 2017 WL 65477.

<sup>29</sup> See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. Of Educ.*, 858 F.3d 1034 (7th Cir. 2017); *Chavez v. Credit Nation Auto Sales, L.L.C.*, 2016 WL 158820 (11th Cir. 2016); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. 2011); *Barnes v. City of Cincinnati*, 401 F.3d 729 (6th Cir. 2005); *Smith v. Salem*, 378 F.3d 566 (6th Cir. 2004); *Rosa v. Parks W. Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. 2000).

<sup>30</sup> Brief of Petitioner at 41.

<sup>31</sup> See Brief of Amicus Curiae Aaron and Melissa Klein in support of Petitioners, *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm’n*, 137 S. Ct. 2290 (2017).

Kacsmaryk’s history of advancing anti-LGBT causes is rightfully imputed to him, and must be taken into consideration when assessing his fitness for a lifetime appointment to the federal bench.

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, “Under 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.”<sup>32</sup> Likewise, Mr. Kacsmaryk opposed the Equal Employment Opportunity Commission’s (EEOC) position that sexual orientation and gender identity are covered under Title VII and referred to the position as “another step in a decades-long process to remove the pillars of marriage law.”<sup>33</sup> 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.<sup>34</sup>

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.”<sup>35</sup>

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.”<sup>36</sup> 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.<sup>37</sup>

\* \* \* \* \*

---

<sup>32</sup> *Melissa Klein v. Oregon Bureau of Labor and Industries*, Nos. 44-14 45-14 CA A159899, 8-9 (2016).

<sup>33</sup> 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](https://world.wng.org/2015/09/a_few_states_are_protecting_religious_freedom).

<sup>34</sup> *Id.*

<sup>35</sup> Matthew Kacsmaryk, *The Inequality Act: Weaponizing Same-Sex Marriage*, THE WITHERSPOON INSTITUTE, (Sept. 4, 2015) available at <http://www.thepublicdiscourse.com/2015/09/15612/>.

<sup>36</sup> 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/>.

<sup>37</sup> Matthew Kacsmayrk, *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\\_](http://www.ncregister.com/daily-news/the-abolition-of-man-...-and-woman_)

The records of Justice Willett, Mr. Duncan, and Mr. Kacsmaryk demonstrate that their appointment to the bench would cause grave harm to the LGBT community, as well as many other communities who rely on the federal judiciary to administer fair and impartial justice. Justice Willett has established his longstanding antipathy toward the LGBT community through his judicial record and personal statements. Mr. Duncan’s and Mr. Kacsmaryk’s deep professional commitment to resisting equal rights for LGBT people, as well as their public statements to that effect, inspire no confidence that they could be fair and impartial when adjudicating key legal questions affecting the lives LGBT people. As noted previously, these judges will have a profound impact on the lives of LGBT living in states – Texas, Louisiana and Mississippi – that have historically needed a strong and independent judiciary to vindicate the rights of unpopular minority groups. We are concerned that generations of LGBT people in these states will have the courthouse doors literally and figuratively shut in their face if these nominees are confirmed.<sup>38</sup>

During their confirmation hearings, we expect these nominees will invite you to entertain the idea that once they put on the black robe, they will immediately relinquish their anti-LGBT perspectives and become impartial evaluators of the law. Their records indicate otherwise. Justice Willett, Mr. Duncan and Mr. Kacsmaryk have demonstrated throughout their legal careers that they hold a longstanding animus toward the LGBT community. This animus simply must not be ignored or overlooked in determining their fitness to serve in the federal judiciary. Our concern is not just about these nominees’ extremist views and willingness to gut landmark decisions that form the basis of all protection for LGBT people. Our concern goes further than that. These nominees have challenged LGBT peoples’ right to form families at all, and argued expressly that the families that they have formed are less legitimate than other families. These nominees have denied in some cases that LGBT people really exist. Their records reveal that they will be incapable of treating LGBT litigants fairly—no matter what body of law is at issue in the cases over which they may preside—because they do not acknowledge LGBT people as having a right to exist. These are not the kinds of judges that this country wants, needs or deserves. We strongly urge you to reject their respective nominations.

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](mailto:smcgowan@lambdalegal.org).

Very truly yours,

Lambda Legal  
CenterLink: The Community of LGBT Centers  
Equality Alabama  
Equality California  
Equality New Mexico  
Equality North Carolina

---

<sup>38</sup> For this reason as well, Lambda Legal joined by 35 other organizations have already expressed our grave concern about the nomination of Jeff Mateer. See Attachment A (Oct. 16, 2017) (letter of 36 LGBT national, state and local organizations, calling for the withdrawal of the nomination of Jeff Matter).





Equality Pennsylvania  
Equality South Dakota  
Equality Texas  
Equality Utah  
FORGE, Inc.  
Forum for Equality Louisiana  
FreeState Justice  
Garden State Equality  
Georgia Equality  
National Black Justice Coalition  
National Coalition for LGBT Health  
National Center for Transgender Equality  
National LGBT Bar Association  
National LGBTQ Task Force  
OutFront Minnesota  
SC Equality  
Trans Women of Color Collective  
Transgender Law Center  
The Trevor Project  
Whitman-Walker Health  
Witness to Mass Incarceration

cc: United States Senate Judiciary Committee Members