

September 12, 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: 19 National, State and Local LGBT Advocacy Organizations Oppose the Confirmation of Stephen Clark**

Dear Chairman Grassley and Ranking Member Feinstein:

We, the undersigned 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 Stephen Clark to the United States Eastern District Court for the District of Missouri. After a comprehensive review of his record, we have grave concerns 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. We have no reason to believe that he will be able to overcome his personal beliefs when asked to administer fair and impartial justice, and therefore urge you to oppose his nomination.

Almost 4% of the Missouri population (over 160,000) identifies as LGBT, and 30% of LGBT people living in Missouri have children.<sup>1</sup> Consequently, Mr. Clark's views on the equal dignity of LGBT people and their families are highly relevant to whether LGBT people living in Missouri will receive fair and impartial justice in his courtroom.

Mr. Clark's record is tremendously disturbing on this front. First and foremost, he has repeatedly expressed his animus towards marriage equality. In a 2016 presentation, Mr. Clark criticized the Supreme Court's decision in *Obergefell v. Hodges*. Mr. Clark stated that marriage equality "is not an issue for nine unelected, unaccountable people with lifetime tenure...[to] be deciding because there is not a constitutional right to same sex marriage."<sup>2</sup> When asked about this statement in a question for the record, Mr. Clark asserted that he was not offering his own personal opinion and that he was simply

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<sup>1</sup> The Williams Institute, LGBT Data & Demographics, Missouri, *available at* <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=29#density>.

<sup>2</sup> Stephen Clark, *Same Sex Marriage, The Conservative Justice*, DAILY INSIGHTS, Thomas International Center, Daily (February 2016).

characterizing the dissents in the decision.<sup>3</sup> Mr. Clark’s supposed objectivity is belied by the fact that he chose to create a video entitled “Same Sex Marriage: the Conservative Justice.” In another presentation, Mr. Clark suggested that “one of the next evolutions of same-sex marriage is polygamy.” Many anti-LGBTQ movements use this language to argue against marriage equality.<sup>4</sup> Mr. Clark’s amplification of this slippery slope argument illuminates his hostility to the *Obergefell* decision and to marriage equality in general.

Also troubling is a response Mr. Clark gave to a question regarding his substantive due process and fundamental rights analysis. Mr. Clark responded to the question by saying that his analysis would be guided by history and tradition that would in turn be determined by looking to the colonies, the history of state statutes and long established traditions.<sup>5</sup> Mr. Clark’s invocation of the “colonies” or “tradition” as a reason to turn back challenges to discriminatory laws turns a blind eye to the fact that many traditions deeply rooted in our history reflect longstanding patterns of discrimination based on gender, sexual orientation, gender identity, national origin and race. That approach—which the Supreme Court long ago rejected—stands in stark opposition to the principles embodied in case law that has developed over the last 50 years – case law that guarantees the right to contraception and a woman’s freedom to choose and secures other protections enshrined in such landmark cases as *Roe v. Wade*, *Planned Parenthood v. Casey*, *Romer v. Evans* and *Lawrence v. Texas*. Mr. Clark’s emphasis on the “colonies” and “long established traditions” reflects his desire to turn back the clock and reveals he poses a clear and present danger to the fundamental rights of LGBT people, women and all vulnerable minorities.

Other aspects of Mr. Clark’s record indicate that he will be driven by ideology and will not be a fair minded constitutionalist. For example, as part of his advocacy on behalf of anti-choice organizations, Mr. Clark submitted an amicus brief arguing that the Affordable Care Act’s contraceptive coverage policy is arbitrary and capricious because the government did not properly consider the demonstrably false argument that contraceptive care “works directly against women’s health.” To make this groundless assertion, Mr. Clark cited discredited medical advisors who argued there is a “robust body of medical evidence indicating that hormonal contraceptives...significantly increase women’s risk of breast, cervical, and liver cancer, stroke and a host of other diseases including the acquisition and transmission of human immunodeficiency virus (HIV).”<sup>6</sup> Mr. Clark’s decision to submit a brief containing such “junk science” to advance his ideologically driven litigation should not be dismissed as mere “zealous advocacy.” Rather, in this context, it must be understood as an example of Mr. Clark’s willingness to cast aside facts when they contradict with his preferred policy outcome.

A lifetime appointment to the federal bench is a position of public trust that demands fidelity to the principles of fairness and impartiality. The aspects of Mr. Clark’s record that we have highlighted here cast serious doubt on whether he is capable of putting the law ahead of his own personal beliefs. For this reason, we believe that his 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

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<sup>3</sup> Nomination of Stephen Clark to the District Court for the Eastern District of Missouri Questions for the Record (July 18, 2018).

<sup>4</sup> Stephen Clark, *Pious & Professional: Living the Faith at Work* DUKE CATHOLIC CENTER, Duke University (Feb. 25, 2016).

<sup>5</sup> *Supra* note 4.

<sup>6</sup> Brief Amicus Curiae of Breast Cancer Prevention Institute, Bioethics Defense Fund, and Life Legal Defense Foundation in Support of Plaintiffs-Appellants and Reversal, *Korte v. Health and Human Services* (7th Cir. 2013) (No. 12-3841).



impartial justice. Mr. Clark is not the kind of judge that this country, wants, needs or deserves. We urge you to reject his nomination.

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, Chief Strategy Officer and Legal Director for Lambda Legal at [smcgowan@lambdalegal.org](mailto:smcgowan@lambdalegal.org).

Very truly yours,

Lambda Legal  
American Atheists  
CenterLink: The Community of LGBT Centers  
Empower Missouri  
Equality California  
Equality Florida  
Equality Florida  
Equality Maine  
Equality North Carolina  
Equally Wed  
FORGE, Inc.  
FreeState Justice  
Garden State Equality Action Fund  
National Black Justice Coalition  
National Center for Transgender Equality  
National LGBTQ Task Force Action Fund  
OutServe-SLDN  
The Trevor Project  
Transgender Law Center