



January 17, 2018

***Submitted Via Email:***

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The Honorable Charles Grassley, Chairman  
United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Dianne Feinstein, Ranking Member  
United States Senate Committee on the Judiciary  
152 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of the National Employment Lawyers Association (NELA), and its 4,000 circuit, state, and local affiliate members across the country, I write to express our strong opposition to the confirmation of Matthew Kacsmaryk to the United States District Court for the Northern District of Texas.

NELA is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. Our members litigate on behalf of employees in every circuit, affording NELA a unique perspective on how employment cases, courts, and the judges who are entrusted with decision-making affect the lives of thousands of working people.

NELA, our members, and their clients take the role of the judiciary very seriously. It is essential that nominees to the federal courts demonstrate the utmost respect for the law, the Constitution, and core American values of fairness, inclusivity, and justice. Our members and their clients understand that the outcome of employment litigation cannot be guaranteed, but they rely on the expectation that the decisions made by the federal judge before whom they appear will be made respectfully, in adherence to the law, and without bias.

Mr. Kacsmaryk currently serves as Deputy General Counsel to the First Liberty Institute. He has devoted himself to undermining existing gains, and to blocking any future progress on legal protections for Lesbian, Gay, Bisexual and Transgender (LGBT) people. His efforts to deny basic equality to LGBT people have been central to his professional work on behalf of the First

Liberty Institute, as well as a major area of focus in his personal writing and speaking. Mr. Kacsmaryk's record demonstrates a fierce, ideologically-based determination to impose a jurisprudence depriving LGBT people of any legal protection, and to undermine the legitimacy of the movement of LGBT people and their allies to secure and protect their rights.

LGBT people face bias and mistreatment in the workplace, not because of their qualifications or performance, but because of *who they are*. Mr. Kacsmaryk has advocated repeatedly that they are not entitled to protection from such discrimination. Mr. Kacsmaryk's work and views on these issues provide overwhelming evidence that he should not be confirmed for a lifetime appointment to our federal judiciary.

Mr. Kacsmaryk has described the LGBT rights movement as a "clash of absolutes," between religious liberty and sexual liberty.<sup>1</sup> He has characterized efforts to promote LGBT equality as part of a sexual revolution that he describes as being ". . . typified by lawlessness and just a complete refusal to obey basic rule of law principles."<sup>2</sup> His asserted contempt for "lawlessness," however, has not stopped him from supporting others who have engaged in lawless behavior, when done in service of denying LGBT people equal protection under the law. Mr. Kacsmaryk lauded Kim Davis, a county clerk in Kentucky, who violated a federal court order by refusing to issue a marriage license to a same-sex couple following the U.S. Supreme Court's landmark decision in *Obergefell v. Hodges*. In a radio interview, Mr. Kacsmaryk compared Kim Davis' discriminatory actions to those of "pacifistic Quakers who refused to serve as riflemen in the military . . ."<sup>3</sup>

His statements demonstrate a belief that protections that would allow LGBT people rights to fair and equitable treatment would somehow infringe on an undefined "right" to discriminate on the part of those who are uncomfortable with LGBT people, or whose religious beliefs treat same-sex unions as improper. Writing about the introduction of the Equality Act in Congress, he stated that he opposed legislation that would add sexual orientation and gender identity to civil rights protections, characterizing such provisions as "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 orientation are reserved to the union of one and one woman."<sup>4</sup>

Mr. Kacsmaryk has been absolutely consistent in opposing any form of protection from bias, in any context, for LGBT people. He opposed Department of Labor regulations clarifying that discrimination on the basis of gender identity was prohibited by the Workplace Innovation and Opportunity Act,<sup>5</sup> nondiscrimination clauses in the Homeless Youth and Trafficking Prevention Act and the Violence Against Women Act 2013 reauthorization bill,<sup>6</sup> and a rule clarifying that

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<sup>1</sup> Matthew Kacsmaryk, Remarks before the Missouri Catholic Conference, *The Next Clash of Absolutes: Religious Liberty and LGBT Sexual Liberty* (Oct. 4, 2014).

<sup>2</sup> Interview by Drew Mariani with Matthew Kacsmaryk, RELEVANT RADIO (Sept. 8, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> Matthew Kacsmaryk, *The Inequality Act: Weaponizing Same-Sex Marriage*, THE PUBLIC DISCOURSE (Sept. 4, 2015), <http://www.thepublicdiscourse.com/2015/09/15612/> (emphasis in original).

<sup>5</sup> Letter to the Department of Labor on Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workplace Innovation and Opportunity Act (Mar. 24, 2016).

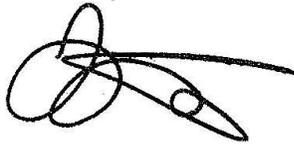
<sup>6</sup> Letter to the United States Senate regarding Runaway and Homeless Youth and Trafficking Prevention Act Amendments (Mar. 9, 2015).

hospitals receiving Medicare and Medicaid cannot discriminate against patients based on sexual orientation and gender identity.<sup>7</sup>

The notion that working people should be treated fairly regarding hiring, pay, opportunities for advancement, and in the workplace generally, forms the underpinning of our civil rights laws and regulations governing employment. Mr. Kacsmark's record does not demonstrate the essential qualities of fair-mindedness needed to properly serve as a judge for the United States District Court for the Northern District of Texas. His unequivocal, visceral bias against LGBT people and clear lack of impartiality should disqualify him from further consideration for a lifetime appointment to the federal judiciary.

We urge you to oppose the confirmation of Matthew Kacsmark.

Sincerely,

A handwritten signature in black ink, appearing to read 'James H. Kaster', with a stylized flourish at the end.

James H. Kaster  
NELA President

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<sup>7</sup> Letter to the Department of Health and Human Services on Centers for Medicare and Medicaid Services Hospital and Critical Access Hospital Changes to Promote Innovation, Flexibility, and Improvement in Patient Care (Aug. 12, 2016).