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November 28, 2017

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

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

RE: *The Nomination of Mark Norris to be United States District Judge for the Western District of Tennessee*

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I write to strongly oppose the confirmation of Mark Norris to be United States District Judge for the Western District of Tennessee. As a state legislator and Majority Leader of the Tennessee Senate, Norris has developed an appalling record opposing equal rights that stands out even among President Trump's long line of anti-civil rights nominees. Norris's record of hostility toward vulnerable and marginalized communities in Tennessee – that is, the very people who depend most on the courts to protect their rights – shows that he cannot fairly and impartially provide equal justice under the law. The Judiciary Committee should reject his nomination.

Throughout the year, LDF has documented how President Trump's judicial nominees reflect a strategy to manipulate the courts to further the administration's far-right and anti-civil rights policy agenda.<sup>1</sup> Trump's nominees are overwhelmingly white, male, young, and extremely conservative in both their personal and legal views.<sup>2</sup> Several lack even the most basic qualifications to serve as a judge, including one trial court nominee, rated unanimously "not qualified" by the American Bar

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<sup>1</sup> See, e.g., Kyle Barry, *The Senate's Big Week on Judges: What You Need to Know*, MEDIUM (Oct. 31, 2017), [https://medium.com/@NAACP\\_LDF/the-senates-big-week-on-judges-what-you-need-to-know-d7b30eca5c59](https://medium.com/@NAACP_LDF/the-senates-big-week-on-judges-what-you-need-to-know-d7b30eca5c59).

<sup>2</sup> See Catherine Lucey & Megan Hoyer, *Trump choosing white men as judges, highest rate in decades*, AP NEWS (Nov. 13, 2017), <https://www.apnews.com/a2c7a89828c747ed9439f60e4a89193e>.



Association, who has never tried a case.<sup>3</sup> Some have misled the Judiciary Committee and failed to make required disclosures.<sup>4</sup> Some have shown injudicious temperament, bias, and extreme partisanship in incendiary blogposts.<sup>5</sup> But the most common characteristic shared among Trump’s nominees – and disturbingly what appears to be most valued by this White House – is a demonstrated hostility to civil rights and the principles of equality enshrined in antidiscrimination laws and in the Constitution’s guarantee of equal protection.<sup>6</sup> Mark Norris embodies that troubling quality.

Norris’s legislative record reads like an exhaustive index of state-sponsored discrimination. He has supported policies, like strict voter ID requirements, to make it harder for people of color to vote. He has deepened the scourge of school segregation in Tennessee, opposed efforts to protect LGBTQ workers from discrimination, and fought marriage equality even after the Supreme Court held that it is a constitutional right. He has equated refugees to terrorists and fueled Islamophobia with fear-mongering about “Sharia law” in Tennessee. He sponsored a resolution – the Tennessee Heritage Protection Act – which would prohibit the removal of Confederate monuments from parks and public spaces in Tennessee.<sup>7</sup>

Below we further detail the aspects of Norris’s record that form the basis of our opposition, focusing on LDF’s core practice areas – specifically voting rights and equal

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<sup>3</sup> See Kyle Barry, *Trump Threatens Judicial Independence and the Rule of Law with “Not Qualified” Nominees*, MEDIUM (Nov. 9, 2017), [https://medium.com/@NAACP\\_LDF/trump-threatens-judicial-independence-and-the-rule-of-law-with-not-qualified-nominees-e6472e27251c](https://medium.com/@NAACP_LDF/trump-threatens-judicial-independence-and-the-rule-of-law-with-not-qualified-nominees-e6472e27251c).

<sup>4</sup> See LDF Statement, *LDF Calls for New Senate Judiciary Committee Hearings for Brett Talley and Thomas Farr* (Nov. 16, 2017), <http://www.naacpldf.org/press-release/ldf-calls-new-senate-judiciary-committee-hearings-brett-talley-and-thomas-farr>.

<sup>5</sup> See, e.g., Letter from LDF President & Director-Counsel Sherrilyn A. Ifill to Hon. Charles Grassley, *Re: The Nomination of John K. Bush to the United States Court of Appeals for the Sixth Circuit* (June 28, 2017), <http://www.naacpldf.org/files/about-us/LDFLetterinOppositiontotheConfirmationOfJohnBush6.28.2017FINAL.pdf>.

<sup>6</sup> See, e.g., Shira A. Scheindlin, *Trump’s Crazy Choices for the Courts*, THE NEW YORK TIMES (Nov. 9, 2017), <https://www.nytimes.com/2017/11/09/opinion/trump-judges-courts.html>; Kyle Barry, *The Strange Civil Rights Views of Trump’s Latest Court Nominees*, POLITICO (June 14, 2017), <https://www.politico.com/magazine/story/2017/06/14/trump-judicial-nominees-civil-rights-newsom-bush-schiff-215253>.

<sup>7</sup> SB 1238, Tennessee Heritage Protection Act of 2016, <https://trackbill.com/bill/tn-sb2138-historical-sites-and-preservation-as-enacted-enacts-the-tennessee-heritage-protection-act-of-2016-amends-tca-title-4-chapter-1-part-4/1239100/>.

access to education – as well as LGBTQ equality and Norris’s discrimination against immigrants and Muslim Americans.<sup>8</sup>

### **Voting Rights.**

- Norris supported Tennessee’s strict voter ID law that took effect in 2012. As various federal courts around the country have recently found, strict photo ID requirements disenfranchise eligible voters and disproportionately burden Black and Latino voters, the elderly, people with disabilities, and low-income people.<sup>9</sup> The Tennessee law also targeted students by excluding college IDs from the acceptable forms of identification while permitting the use of gun licenses.<sup>10</sup>
- Norris also pushed to add another discriminatory provision to the voter ID law; he offered an amendment that would have required proof of citizenship to vote, and empowered local election officials with the discretion to demand that voters provide such proof upon request. Opponents of the provision argued that it “would allow officials to impose more restrictions on Americans who have accents, or brown skin.”<sup>11</sup> This obvious invitation to engage in racial profiling was not included in the legislation signed into law.
- Voter ID laws enacted to discriminate and suppress votes are often justified by false claims of widespread voter fraud, such as President Trump’s ludicrous assertion, made without evidence, that three to five million illegal votes were cast against him in the 2016 election.<sup>12</sup> Senator Feinstein provided Norris with an opportunity to denounce this claim in a written question, but Norris demurred, nonsensically saying that Trump’s purely factual claim is “a political question

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<sup>8</sup> For a full report on Norris’s record on civil rights and other issues, see Alliance for Justice, *AFJ Nominee Report: Mark Norris* (Oct. 19, 2017), <https://www.afj.org/wp-content/uploads/2017/10/AFJ-Norris-Report.pdf>.

<sup>9</sup> See, e.g., *N.C. St. Conf. of the NAACP v. McCrory*, 831 F.3d 204, 219 (4th Cir. 2016); *Veasey v. Abbott*, No. 2:13-CV-193, 2017 WL 3620639 (S.D. Tex. Aug. 23, 2017).

<sup>10</sup> Kira Lerner, *Students Fight Back Against Voter ID Law That Allows Gun Licenses But Bans Student IDs*, THINK PROGRESS (Mar. 17, 2015), <https://thinkprogress.org/students-fight-back-against-voter-id-law-that-allows-gun-licenses-but-bans-student-ids-90939824dc52>.

<sup>11</sup> Joe White, *Senate Eyes Proof of Citizenship to Vote*, NASHVILLE PUBLIC RADIO (May 10, 2010), <https://www.marknorris.org/blog1/2010/05/10/senate-eyes-proof-of-citizenship-to-vote/>.

<sup>12</sup> Abby Phillip & Mike Debonis, *Without evidence, Trump tells lawmakers 3 million to 5 million illegal ballots cost him the popular vote*, THE WASHINGTON POST (Jan. 23, 2017), [https://www.washingtonpost.com/news/post-politics/wp/2017/01/23/at-white-house-trump-tells-congressional-leaders-3-5-million-illegal-ballots-cost-him-the-popular-vote/?utm\\_term=.43c07dde7741](https://www.washingtonpost.com/news/post-politics/wp/2017/01/23/at-white-house-trump-tells-congressional-leaders-3-5-million-illegal-ballots-cost-him-the-popular-vote/?utm_term=.43c07dde7741).

about which I cannot opine.”<sup>13</sup> Norris’s support for discriminatory voter ID laws and his failure to flatly reject dangerous and self-serving claims about widespread voter fraud – indeed, his refusal to address such claims at all – evince a bias against minority voters that disqualifies him from serving as a federal judge.

### **Education Equality.**

- Norris championed legislation that has perpetuated school segregation and led to “one of the nation’s most egregious examples of public education splintering into a system of haves and have-nots over race and class.”<sup>14</sup> In 2010, in a move to preserve essential funding from Shelby County tax revenue, Memphis city schools surrendered their autonomy and planned to merge with the county school district. At the time, the Memphis school population was 85 percent African American and 87 percent of the students were economically disadvantaged; the rest of Shelby County included affluent suburbs and was majority white.<sup>15</sup>

Norris responded to the planned merger with a bill that allowed six wealthy suburban schools to secede from the county school district, leaving Memphis behind. According to former Tennessee Speaker of the House Jimmy Naifeh, “the only thing [Norris was] doing with that bill was segregation . . . this is to allow those four or five towns in Shelby County to be able to form their white school districts.”<sup>16</sup> Norris’s bill has had a devastating financial impact on the mostly students of color in Memphis. The Shelby County Schools superintendent said that the exodus had “a disparate impact on poor black and brown kids,”<sup>17</sup> and a 2017 report from the nonprofit research group EdBuild concluded that “the allowance of secession” was “disastrous for children.”<sup>18</sup>

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<sup>13</sup> Sen. Comm. on the Jud., 115th Cong., Mark Norris, Written Questions for the Record from Sen. Feinstein, Question No. 8(c),

<https://www.judiciary.senate.gov/imo/media/doc/Norris%20Responses%20to%20QFRs.pdf>.

<sup>14</sup> Caroline Bauman, *Memphis-Shelby County spotlighted in national report on school district secession*, CHALKBEAT (June 21, 2017), <https://www.chalkbeat.org/posts/tn/2017/06/21/memphis-shelby-county-spotlighted-in-national-report-on-school-district-secession/>.

<sup>15</sup> See Michelle Wilde Anderson, *Making a Regional District: Memphis City Schools Dissolves into its suburbs*, 112 COLUM. L. REV. SIDEBAR 47 n.3, 50 (2012).

<sup>16</sup> Bill Dries, *Muni School District Votes on Hold*, THE MEMPHIS DAILY NEWS (March 23, 2012), <https://www.memphisdailynews.com/news/2012/mar/23/muni-school-district-votes-on-hold/>.

<sup>17</sup> Jennifer Pignolet & Clay Bailey, *Hopson: Race, equity were concerns leading up to the formation of municipal schools*, THE COMMERCIAL APPEAL (June 22, 2017), <http://www.commercialappeal.com/story/news/education/2017/06/23/hopson-race-equity-were-concerns-leading-up-formation-municipal-schools/420687001/>.

<sup>18</sup> EdBuild, *Fractured: The Breakdown of America’s School Districts*, 9 (June 2017), <https://edbuild.org/content/fractured/fractured-full-report.pdf>.

## LGBTQ Equality.

- Norris has been an ardent opponent of same-sex marriage, and, especially troubling for a nominee to a lower federal court, he has pushed for policies that directly conflict with the Supreme Court’s 2015 marriage equality decision in *Obergefell v. Hodges*.<sup>19</sup> In 2004, Norris sponsored a resolution that called upon Congress to define marriage as between one man and one woman, and permit states to give no legal effect to same-sex marriages performed in other states. Also in 2004, Norris endorsed a bill to prohibit Tennessee from recognizing same-sex civil unions and domestic partnerships performed in other states. He said that if Tennessee recognized same-sex unions, “marriage may fall by the wayside,” and “if marriage falls by the wayside, so does our society.”<sup>20</sup>
- In 2017, Norris worked to undermine the Supreme Court’s *Obergefell* decision with a bill – known locally as the “LGBTQ Erasure” bill – that requires courts to use a plain meaning interpretation of gendered statutory language, including those involving the rights of husbands and wives.<sup>21</sup> The measure was designed to exclude same-sex couples from statutory protections by barring courts from interpreting the terms “husband” or “wife” to mean “spouse.” The intent to unlawfully nullify a Supreme Court decision was hardly disguised. The bill’s primary sponsor admitted that he intended to compel courts to side with Justice Antonin Scalia and his dissent in *Obergefell*.<sup>22</sup>
- Norris has also supported overt discrimination against LGBTQ people in Tennessee, and has opposed efforts to ensure equal treatment for LGBTQ workers. In 2011, after Nashville passed an ordinance prohibiting city contractors from discriminating on the basis on sexual orientation and gender identity, Norris and other legislators countered with a bill, signed into law by Republican Governor Bill Haslam, that prohibits cities from protecting gay and lesbian people

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<sup>19</sup> 135 S. Ct. 1732 (2015).

<sup>20</sup> See Sen. Comm. on the Jud., 115th Cong., Mark Norris, Written Questions for the Record from Sen. Feinstein, Question No. 10,

<https://www.judiciary.senate.gov/imo/media/doc/Norris%20Responses%20to%20QFRs.pdf>.

<sup>21</sup> See HRC Staff, *Anti-LGBTQ Bills in Tennessee Attempt to Undermine Supreme Court’s Marriage Equality Ruling*, HRC BLOG (Apr. 26, 2017), <http://www.hrc.org/blog/anti-lgbtq-bills-in-tennesseattempt-to-undermine-supreme-courts-marriage>.

<sup>22</sup> Jake Lowary, *Senate passes ‘natural, ordinary meaning’ bill slammed by LGBT groups as discriminatory*, THE TENNESSEAN (Apr. 27, 2017), <http://www.tennessean.com/story/news/politics/2017/04/27/senate-passes-natural-ordinary-meaning-bill-slammed-lgbt-groups-discriminatory/100976184/>.

from discrimination.<sup>23</sup> Norris took that anti-equality policy a step further this year, and supported legislation to prohibit cities from taking any action against companies that refuse to hire LGBTQ people. The Gay & Lesbian Alliance Against Defamation (GLAAD) called the bill a “license to discriminate.”<sup>24</sup> In 2016, Norris supported a law – what the American Counseling Association called “Hate Bill 1840” – that allows mental health counselors to discriminate against LGBTQ clients.<sup>25</sup>

### **Hostility Toward Immigrants and Muslim Americans.**

- Norris has often used hostile, inflammatory rhetoric to stoke fear of immigrants and spread Islamophobia.<sup>26</sup> For example, he has repeatedly highlighted his work “strengthening Tennessee law (not Sharia law) for Tennessee courts.”<sup>27</sup> In 2016, he cosponsored a resolution and created a petition directing the state Attorney General to bring a lawsuit challenging the resettlement of refugees in Tennessee. The petition appeared online with two juxtaposed photographs. On the right, a photo appeared to depict refugees holding documents and waiting in line; to its left was a photo of ISIS fighters wearing masks and brandishing assault weapons. The headline: “Don’t let potential terrorists come to Tennessee.”
- In 2017, Norris opposed bipartisan legislation to protect access to education for immigrants who entered the country as children. The bill would have ensured that immigrants who grew up in Tennessee and graduated from Tennessee high schools have access to in-state tuition rates. Norris said that “it doesn’t make sense to have that many illegals in the state of Tennessee.”<sup>28</sup>

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<sup>23</sup> See Lucas L. Johnson II, *Governor Signs Bill that Voids Nashville Law*, *Deseret News* (May 24, 2011), <http://www.deseretnews.com/article/700138398/Governor-signs-billthat-voids-Nashville-law.html>.

<sup>24</sup> Drew Anderson, *Tennessee’s “License to Discriminate” SB 127 harmful to state economy*, GLAAD (Mar. 9, 2017), <https://www.glaad.org/blog/tennessees-license-discriminate-sb-127-harmful-state-economy>.

<sup>25</sup> See Steve Almasy, *Tennessee governor signs ‘therapist bill’ into law*, CNN (Apr. 27, 2016), <http://www.cnn.com/2016/04/27/politics/tennessee-therapist-bill/index.html>.

<sup>26</sup> See Sarah Goodyear, *Is the Volunteer State’s Campaign to bar refugees really just a veiled expression of Islamophobia?*, N.Y. Daily News (July 2, 2016), <http://interactive.nydailynews.com/2016/07/tennessee-campaign-bar-refugees-veiled-islamophobia/>.

<sup>27</sup> See Sen. Comm. on the Jud., 115th Cong., Mark Norris, Written Questions for the Record from Sen. Feinstein, Question No. 17, <https://www.judiciary.senate.gov/imo/media/doc/Norris%20Responses%20to%20QFRs.pdf>.

<sup>28</sup> Sam Stockard, *Tearful End for Non-Citizen Tuition Relief Bill*, THE MEMPHIS DAILY NEWS (Apr. 20, 2017), <https://www.memphisdailynews.com/news/2017/apr/20/tearful-end-for-non-citizen-tuition-relief-bill/>.



Norris's long anti-civil rights record reveals bias and a lack of judicial temperament that render him unfit to serve as a federal judge. No litigant with a civil rights claim before Norris would believe that he could provide an impartial hearing and fairly adjudicate claims involving the nation's civil rights laws. Confirming Norris would thus undermine the rule of law and erode the very legitimacy of the judiciary. We oppose Mr. Norris's confirmation for these reasons, and appreciate your consideration of our views. If you have any questions, please contact LDF Policy Director Todd Cox at 202-682-1300.

Sincerely,

A handwritten signature in black ink that reads 'Sherrilyn A. Ifill'. The signature is written in a cursive, flowing style.

Sherrilyn A. Ifill  
President & Director Counsel

CC: Members of the Senate Judiciary Committee