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June 18, 2019

Senator Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Senator Chuck Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators McConnell and Schumer:

We write to strongly oppose the nomination of Matthew Kacsmaryk to serve on the District Court for the Northern District of Texas. Our opposition to Mr. Kacsmaryk is based on his long record of advancing positions that restrict civil and human rights in this country. His testimony at his nomination hearing did not assuage our concerns about his recognition of past precedent or his ability to be a fair and impartial jurist.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) was founded in 1940 by Thurgood Marshall. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. From that era to the present, LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF has always been a pioneering force in our nation's quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained. For almost 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color.

Our federal courts play a critical role in enforcing the Constitution and other laws of this Country. It is not only critical that every person who goes before a judge feel confident that they will receive fair, impartial and equal protection—it is essential to maintain the legitimacy of our legal system. Matthew Kacsmaryk's record of extreme bias towards LGBT people, coupled with his lack of regard for fundamental civil rights precedent calls into question his ability to serve as an impartial and fair jurist.

Disregard for Supreme Court Precedent

In an article published just four years ago, Mr. Kacsmaryk blatantly attacked Supreme Court decisions asserting that both the *Obergefell v. Hodges* (marriage equality) and *Roe v. Wade* (right to abortion) decisions were manufactured.¹ In the article, Mr. Kacsmaryk asserts that the Supreme Court Justices in *Obergefell* “found an unwritten ‘fundamental right’ to same sex marriage hiding in the due process clause of the Fourteenth Amendment—a secret knowledge so cleverly concealed in the nineteenth-century amendment that it took almost 150 years to find.”² Mr. Kacsmaryk made similar assertions regarding the *Roe* case stating that, “[O]n January 22, 1973, seven justices of the Supreme Court found an unwritten “fundamental right” to abortion hiding in the due process clause of the Fourteenth Amendment and the shadowy “penumbras” of the Bill of Rights, a celestial phenomenon invisible to the non-lawyer eye.”³ Additionally, Mr. Kacsmaryk expressed support for a county clerk in Kentucky who violated a federal court order by refusing to issue a marriage license to a same-sex couple after the *Obergefell* decision.⁴ Mr. Kacsmaryk’s statements show a blatant disregard for Supreme Court decisions. His testimony during his December hearing, did not convince us that he could put aside such vehement beliefs, nor that he could bind himself to laws which he previously belittled and mocked as poorly reasoned.

Extreme views and statements about LGBTQ Community

Mr. Kacsmaryk’s statements and writings demonstrate a clear hostility toward the LGBT community. In a 2015 article he described the anticipated legislative and litigation focus on marriage equality post-*Obergefell* as “The Long War Ahead.”⁵ Mr. Kacsmaryk currently serves as a deputy general counsel at the First Liberty Institute, a conservative advocacy organization which has tried prominent anti-LGBT cases. In 2015, while at First Liberty Institute, Mr. Kacsmaryk argued that the Equal Employment Opportunity Commission’s policy designating sexual orientation and gender identity as covered under Title VII was “another step in a decades-long process to remove the first three the pillars of marriage law.”⁶

¹ Matthew Kacsmaryk, The Inequality Act: Weaponizing Same-Sex Marriage, THE PUBLIC DISCOURSE (Sept. 4, 2015), <http://www.thepublicdiscourse.com/2015/09/15612/>.

² Matthew Kacsmaryk, The Inequality Act: Weaponizing Same-Sex Marriage, THE PUBLIC DISCOURSE (Sept. 4, 2015), <http://www.thepublicdiscourse.com/2015/09/15612/>.

³ Matthew Kacsmaryk, The Inequality Act: Weaponizing Same-Sex Marriage, THE PUBLIC DISCOURSE (Sept. 4, 2015), <http://www.thepublicdiscourse.com/2015/09/15612/>.

⁴ <https://www.afj.org/wp-content/uploads/2017/11/AFJ-Kacsmaryk-Report.pdf>

⁵ *Supra*, note 3

⁶ Mary Reichard, A Few States Are Protecting Religious Freedom, World (Aug. 14, 2015), https://world.wng.org/2015/09/a_few_states_are_protecting_religious_freedom

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Mr. Kacsmaryk further clarified that he opposes nondiscrimination protection for LGBT people because it might suggest that sexual orientation discrimination and gender identity discrimination be treated as seriously as racial discrimination.⁷ In a public comment submitted opposing a regulation put forth by the Department of Health and Human Services (HHS) to protect transgender people from health care discrimination, Mr. Kacsmaryk joined 14 others, to assert claims that transgender people and their experiences are a “delusion.”⁸ The letter further elaborates that trans people’s self-conception does not conform to reality, and that sex reassignment surgery “offers a surgical solution for psychological problems.”⁹

Lastly, in an article opposing the Equality Act, Mr. Kacsmaryk likened affirming sexual orientation and gender identity as protected classes to “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.”¹⁰

Mr. Kacsmaryk has repeatedly demonstrated who he is and what he believes. We have rarely seen a nominee for a seat on the federal bench who has expressed such open hostility to human rights, and willingness to ignore precedent and the rule of law in furtherance of his biased beliefs.

Mr. Kacsmaryk has provided no reason to believe his biased views and beliefs will change as a judge. No litigant with a civil rights claim, and especially an LGBT litigant, could trust that he would fairly, impartially or properly provide equal justice under the law. The Senate must use its “advice and consent” power to ensure that our nation is served by judges who will uphold the rule of law and equal rights for all Americans. We call on the U.S. Senate to protect the rule of law and the integrity of the federal judiciary by voting ‘no’ on Mr. Kacsmaryk nomination.

Sincerely,

Sherrilyn Ifill
President and Director-Counsel

CC: Members of the Senate

⁷ Ibid.

⁸ Comment 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). <https://www.regulations.gov/contentStreamer?documentId=CMS-2016-0095-0135&attachmentNumber=1&contentType=pdf>

⁹ Ibid.

¹⁰ Matthew Kacsmaryk, The Inequality Act: Weaponizing Same-Sex Marriage, THE PUBLIC DISCOURSE (Sept. 4, 2015), <http://www.thepublicdiscourse.com/2015/09/15612/>.