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June 7, 2018

Dear Senator,

On behalf of the Anti-Defamation League (ADL), we write to urge you to oppose the confirmation of Matthew Kacsmark to be a judge for the United States District Court for the Northern District of Texas.

Founded over a century ago to stop the defamation of the Jewish people and secure fair treatment to all, ADL advocates for the civil rights of all people and combats discrimination and hate across the country. We do not often oppose judicial nominees, but we are deeply disturbed by the nomination of Matthew Kacsmark and believe he lacks the necessary demonstrated commitment to fair treatment for all to merit a lifetime appointment to the federal bench.

Mr. Kacsmark has spent virtually his entire professional career dedicated to pursuing positions that undermine civil rights and equality for women and those in the LGBT communities. His own statements, which have been highly controversial, and his years of targeted advocacy raise serious doubts about his ability to serve as a fair and impartial jurist. On a number of occasions, he has also attempted to undermine the legitimacy of a U.S. Supreme Court opinion, thereby casting doubt on the credibility of the judiciary.

Mr. Kacsmark has personally authored several articles on issues of religious freedom and conscience that have made clear his hostility toward anti-LGBT discrimination laws, offering his view that LGBT rights and women's reproductive rights stem from the "libertine sexual revolution."¹

He vehemently disagreed with the U.S. Supreme Court decision in the landmark marriage equality case *Obergefell v. Hodges*. In a piece published shortly before the decision was handed down, Kacsmark characterized same-sex marriage as an extension of the weakening of one of marriage's four pillars by "sexual revolutionaries," the other three pillars being no-fault divorce, the decriminalization of consensual extra-marital sexual conduct, and the decriminalization of contraception & abortion.² After the decision, he derided the Court and wrote, "On June 26, five justices of the Supreme Court 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."³

¹ See Matthew Kacsmark, *The Inequality Act: Weaponizing Same-Sex Marriage, The Public Discourse* (Sept. 4, 2015) <http://www.thepublicdiscourse.com/2015/09/15612/>

² Kacsmark, *The Abolition of Man ... and Woman*, *National Catholic Register* (June 24, 2015), <http://www.ncregister.com/daily-news/the-abolition-of-man-...-and-woman>.

³ See Matthew Kacsmark, *The Inequality Act: Weaponizing Same-Sex Marriage, The Public Discourse* (Sept. 4, 2015), <http://www.thepublicdiscourse.com/2015/09/15612/>

ADL Community Support Center

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Showing his disregard for court orders, Mr. Kacsmatyk reportedly expressed support for Kim Davis, the county clerk in Kentucky who violated a federal court order by refusing to issue marriage licenses to gay couples after *Obergefell*. In a radio interview, he reportedly said that she should not have been forced to go to jail for her refusal to comply with the court order.⁴ Without doubt, advocating for defiance of court orders undermines the legitimacy of court decisions, and the judiciary as a whole.

Kacsmatyk made clear his disrespect for closely-divided Court decisions, such as in the *Obergefell* case, and the legal precedent they set in his vociferous opposition to the pending Equality Act, about which he wrote: the “deceptively titled Equality Act . . . seeks to weaponize *Obergefell*, moving with lightning speed from a contentious five-to-four victory on same-sex marriage to 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 relations are reserved to the union of one man and one woman.”⁵ With this statement, Kacsmatyk promotes the notion that certain Supreme Court decisions hold more weight than others based on the vote breakdown of the Court decision, an inappropriate point of view for any jurist, and one that has the potential to undermine the legitimacy of our judicial system.

Further, Mr. Kacsmatyk has consistently fought against efforts to accommodate transgender people, making his views clear when he wrote: “The Daily Beast recently reported that Facebook offers 51 gender-identity options: agender, cisgender, genderqueer, pangender, transgender, etc., making it seem as though the human person is more like a pluripotent cell whose sex and sexuality are subject to autonomous self-definition.... The view of ‘male’ and ‘female’ cannot easily coexist with a malleable view that recognizes and affirms 51 gender identities – with more to come.”⁶

He elucidated his hostility toward the anti-discrimination movement for LGBT people when he laid out what he sees as the difference between the Civil Rights Movement of the 1960’s and the movement for gay rights. The latter, he says, “was rooted in the soil of elitist postmodern philosophy, spearheaded by secular libertines, and was essentially ‘radical’ in its demands. It sought 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.”⁷

In addition to his work to restrict LGBT rights, Mr. Kacsmatyk has shown he does not respect jurisprudence in the area of reproductive freedom. Of the seminal Supreme Court case *Roe v. Wade*, he sarcastically wrote: “On 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.”⁸ He

⁴ Alliance for Justice, AFJ Nominee Report: Matthew Kacsmatyk <https://www.afj.org/wp-content/uploads/2017/11/AFJ-Kacsmatyk-Report.pdf>

⁵ *Supra*, note 2.

⁶ *Supra*, note 1.

⁷ *Supra*, note 2.

⁸ *Supra*, note 2.

went on to say that *Roe* did not settle the matter. He fought against the contraceptive mandate of the ACA, and fought for the ability of pharmacists to deny critical health care services to women, such as access to emergency contraceptives.⁹

ADL is very concerned about this candidate's nomination. His own personal statements convey hostility toward an entire community of people and the rights currently afforded to them. His statements also convey a willingness to degrade the judiciary, thus eroding the public confidence in its decisions and threatening the integrity of an institution of core importance to our democracy. The fact that a nominee has been a zealous advocate for causes in which he/she believes is in no way disqualifying. However, where, as is the case here, the nominee's overall record is marked by consistent, ideologically-driven legal advocacy targeted at limiting equality and restricting rights and freedoms for women and LGBT communities, it gives rise to significant doubts about his ability to administer justice fairly and equally.

In ADL's view, the Senate's role in the nomination process is equally as important as the president's responsibility to nominate. For the above reasons, ADL urges you to reject the nomination Matthew Kacsmaryk to be a Judge for the United States District Court for the Northern District of Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Greenblatt". The signature is written in a cursive, flowing style.

Jonathan A. Greenblatt
CEO

⁹ *Supra*, note 4, at 6.