

December 11, 2017

To the Honorable Members of the United States Senate
Washington, D.C. 20510

RE: 29 LGBT Groups Oppose Confirmation of Leonard Steven Grasz

Dear Senator:

We, the undersigned 29 national, state and local advocacy organizations, representing the interests of lesbian, gay, bisexual and transgender (LGBT) people and everyone living with HIV, write to urge you to oppose the nomination of Leonard Steven Grasz to the United States Court of Appeals for the Eighth Circuit. After a comprehensive review of his record, we have concluded 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, and that he will not be able to overcome his personal beliefs when asked to administer fair and impartial justice. We are convinced that Mr. Grasz is demonstrably unqualified for a lifetime appointment to the federal bench. We strongly urge you to oppose his nomination.

As outlined below, we have grave concerns about Mr. Grasz's ability to serve as a fair and impartial judge due to his long history of targeting LGBT people. Although we will focus on the anti-LGBT aspects of Mr. Grasz's record, it is important to emphasize that these are not concerns unique to the communities that we serve. The Senate should heed the warning of the American Bar Association (ABA) that Mr. Grasz is not qualified for an appointment on the federal bench because he is unable to put the law ahead of his personal beliefs and to administer fair and impartial justice to all litigants who might come before him.¹ The ABA is non-partisan and non-ideological, so when the organization deems a judicial nominee 'Not Qualified' out of concerns about bias, it suggests that the nominee has failed to meet even basic requirements of fairness. The ABA's assessment of Mr. Grasz is extraordinary. It has issued only four unanimously unqualified ratings since 1989, and two of those nominees were not confirmed, with the other two nominations (including Mr. Grasz) still pending.

As part of their routine evaluation process, the evaluators for the ABA Committee on the Federal Judiciary contacted more than 1,800 lawyers and judges concerning Mr. Grasz's nomination, and received 183 responses. Many of those individuals were peers of Mr. Grasz who questioned whether he would be able to detach himself from his "deeply-held social agenda and political loyalty to be able to judge objectively, with compassion and without bias."² Such responses are particularly troubling in light of Mr. Grasz's deep and longstanding animus toward the LGBT community that he has demonstrated throughout his legal career. This demonstrated animus only exacerbates the severity of the concerns raised by the ABA in declaring Mr. Grasz unfit to serve in the federal judiciary.

¹ American Bar Association, *Statement of Pamela A. Beshnahan on Behalf of the Standing Committee on the Federal Judiciary Concerning the Nomination of Leonard Steven Grasz* (Oct. 30, 2017), available at <https://www.americanbar.org/content/dam/aba/uncategorized/GAO/GraszStatement.authcheckdam.pdf>.

² American Bar Association, *Supplemental Statement on Behalf on Pamela A. Breshnahan* (Nov. 13, 2017), available at <https://www.americanbar.org/content/dam/aba/uncategorized/GAO/GraszSupplementalStatement111317.authcheckdam.pdf>

This assessment from the ABA reaffirmed our own evaluation that Mr. Grasz is simply incapable of administering fair and impartial justice to those who do not fit within his particular worldview, including, in particular, LGBT people. Since 2015, Mr. Grasz has served as Board Director of the Nebraska Family Alliance (NFA), an organization affiliated with Focus on the Family, an organization that has worked extensively to undermine protections for LGBT people. Mr. Grasz’s connections to the NFA run deep. In fact, Mr. Grasz’s son, Nate Grasz, currently serves as Director of Policy for the organization and has opposed marriage equality, bans on conversion therapy, and anti-discrimination protections for LGBT people.

While Steven Grasz served as Director of the Board, the NFA took extreme positions that targeted members of the LGBT community—positions that he has never repudiated. During the confirmation process, Senator Hirono offered Mr. Grasz multiple opportunities to clarify and renounce some of these “deeply-held personal views” and the positions of the NFA.³ In each instance, Mr. Grasz refused. Specifically, Mr. Grasz was unwilling to say whether he supported prohibiting discrimination in employment based on sexual orientation and gender identity; refused to commit to recuse himself in cases involving questions of marriages, families and LGBT rights, and in cases involving whether religious liberty trumps anti-discrimination laws; and declined to say whether he shared the NFA’s view that same-sex couples and their families are “less optimal” than different-sex couples and their families.⁴

Among the most disturbing content in the NFA’s written materials are articles supporting the dangerous and inhumane practice of conversion therapy. Virtually every leading medical and therapeutic organization in the United States has rejected conversion therapy as unnecessary, ineffective, and dangerous. In 2009, the American Psychiatric Association issued a report concluding that the reported risks of conversion therapy include depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame and self-hatred, among others.⁵ When asked to simply clarify whether he thought that conversion therapy was good or bad, Mr. Grasz declined to respond.⁶ Mr. Grasz further refused to answer Senator Feinstein’s question about whether, as a Board Member of the NFA, he had ever expressed concern when the organization took its position to oppose bans on conversion therapy or whether he stood behind the organization’s position that the science behind these types of therapies is “far from settled” and that bans deny parents the right “to seek a counselor for their children that aligns with their family values.”⁷

³ Senate Judiciary Committee, *Nominations* (Nov. 1, 2017), available at <https://www.judiciary.senate.gov/meetings/11/01/2017/nominations>.

⁴ *Id.* See Brief for Amicus Curiae Organizations and Scholars of Gender-Diverse Parenting in Support of Respondents, *Obergefell v. Hodges*, 2015 U.S. S. Ct. Briefs LEXIS 1320 at *12–13 (Apr. 2, 2015) (NFA brief arguing that only the parenting of “a mother and a father[,]” rather than a same-sex couple, “provides children with the optimal environment for their cognitive, social, and emotional development from infancy through adolescence.”).

⁵ American Psychological Association, *Report of the American Psychological Association Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009), available at <https://www.APA.org/pi/LGBT/Resources/Therapeutic-Response.pdf>

⁶ Senate Judiciary Committee, *Nomination of Leonard Steven Grasz to the U.S. Court of Appeals to the Eighth Circuit Hearing, Submitted November 8, 2017*, available at <https://www.judiciary.senate.gov/imo/media/doc/Grasz%20Responses%20to%20QFRs.pdf>.

⁷ *Id.* See also Zoe Tillman, *One of Trump’s Judicial Nominees Sits on the Board that Defends Conversion Therapy*, BuzzFeed, (Sept. 25, 2017), available at https://www.buzzfeed.com/zoetillman/one-of-trumps-judicial-nominees-sits-on-the-board-of-a?utm_term=.ulxKPaG86#.laaMdYxOQ.

It is clear that Mr. Grasz’s “deeply-held social agenda” would render him incapable of following established legal precedent in decisions that affect LGBT people. While working as the Chief Deputy Attorney General of Nebraska, Mr. Grasz opposed the legal recognition of same-sex marriages from other states. In one of Mr. Grasz’s legal opinions, he cautioned of “a grave danger that the Nebraska Supreme Court might well recognize same-sex marriages performed in Hawaii as being valid in Nebraska.”⁸ Mr. Grasz argued before the Nebraska Supreme Court that state law did not allow an unmarried lesbian couple to adopt a child and stated in an interview that, “[t]he state’s adoption law was not written with the intent to sanction gay adoption.”⁹ In addition, in 2015, while Mr. Grasz was Director of the Board, the NFA filed an amicus brief in *Obergefell v. Hodges*, arguing that only the parenting of “a mother and a father[.]” rather than a same-sex couple, “provides children with the optimal environment for their cognitive, social, and emotional development from infancy through adolescence.”¹⁰ After the *Obergefell* ruling, the NFA issued a statement stating that the Supreme Court’s marriage equality decision “redefines marriage to be a genderless relationship based upon the emotions of adults.”¹¹ During his Senate Judiciary Committee hearing, Mr. Grasz refused to answer whether he believed that same-sex parents had the same rights under the Constitution as different-sex parents, even though *Obergefell* clearly recognized that the benefits of marriage have to be extended on the same terms and conditions for all married couples. Through his record, statements and writings, Mr. Grasz has made clear that he would seek to defy precedent on these and other important questions affecting LGBT people and their families. On this basis alone, Mr. Grasz’s nomination should be rejected.

Mr. Grasz has channeled his biased views into building a career of hollowing out laws designed to protect LGBT people from discrimination. In 2013, during the City of Omaha’s convention, Mr. Grasz introduced a charter amendment to permit discrimination against LGBT people in employment and public accommodation under the guise of religious liberty. When asked by a fellow Convention member if this amendment would “create an exemption for business owners who don’t want to hire gays and lesbians to circumvent or do any end run around the city human rights ordinance,” Mr. Grasz replied “Yes.”¹² Likewise, the NFA advocates against legislation that would prohibit employment discrimination against people based on sexual orientation or gender identity.¹³

Mr. Grasz also appears to share the NFA’s distorted and dangerous views about transgender people. The organization essentially argues that transgender people do not exist by claiming that the “social construct of a gender spectrum, instead of the biological reality of male and female” is a “trend

⁸ *Same-Sex Marriage – Impact of Baehr v. Lewin and the Defense of Marriage Act on Nebraska Law*, Neb. Op. Att’y Gen, No. 96090, 1996 WL 739040 (Dec. 30, 1996).

⁹ Robynn Tysver, *Court to Tackle Gay-Adoption Question*, Omaha World-Herald (Oct. 3, 2001).

¹⁰ See Brief for Amicus Curiae, *supra* note 4.

¹¹ WOWT, *The Heartland Responds to Gay Marriage*, WOWT.com, available at (June, 26, 2015)

<http://www.wowt.com/home/headlines/The-Heartland-Responds-to-Gay-Marriage-Ruling-310083571.html>.

¹² See Proposed Amendment to Omaha Charter Section 8, 8.02A: *Religious Freedom and Rights of Conscience* (2013); See also City of Omaha Charter Study Review Convention, Testimony, 147–48 (Dec. 3, 2013).

¹³ Fred Knapp, *Property taxes, LGBT rights, teachers’ religious clothing discussed in Capitol*, NET News (Feb. 21, 2017), available at <http://netnebraska.org/article/news/1064309/property-taxes-lgbt-rights-teachers-religious-clothing-discussed-capitol>.

that should be rejected at every level.”¹⁴ The NFA has worked aggressively to defeat basic equal opportunity protections for transgender people. While Mr. Grasz served on its Board, the organization fought policies that protect the rights of transgender students based on “safety concerns”—a myth that relies on assumptions that transgender people are inherently dangerous. When Ms. Pamela Bresnahan, an ABA representative, was recently questioned under oath during a Senate Judiciary Committee hearing about the “Not Qualified” rating that the ABA Committee on the Federal Judiciary gave to Mr. Grasz. Ms. Bresnahan was pressed to articulate exactly which issues led Mr. Grasz’s peers to conclude that he could not separate the law from his personal beliefs. Ms. Bresnahan identified Mr. Grasz’s personal beliefs about transgender rights as one of the issues.

Mr. Grasz’s relentless efforts to target the rights of vulnerable groups are particularly troubling for a nominee to the federal judiciary because, if confirmed, he would be expected to administer justice equally to litigants of various racial backgrounds, and all genders and sexual orientations. As his ABA rating suggests and as we have found, Mr. Grasz will not be able to move from an advocate targeting LGBT people to the role of an impartial interpreter of the law. In other words, Mr. Grasz is not fit for the job. 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, Director of Strategy for Lambda Legal, at smcgowan@lambdalegal.org.

Very truly yours,

Lambda Legal
Advocates for Youth
CenterLink: The Community of LGBT Centers
Equality Alabama
Equality California
Equality Utah
Family Equality Council
FORGE, Inc.
FreeState Justice
Gender Spectrum
GLAAD
GLBTQ Legal Advocates & Defenders (GLAD)
GLMA: Health Professionals Advancing LGBT Equality
Los Angeles LGBT Center
Mazzoni Center
National Center for Lesbian Rights
National Center for Transgender Equality

¹⁴ *School Defends Controversial “Transition Ceremony” in Kindergarten Classroom*, Nebraska Family Alliance (Aug. 29, 2017), available at, <https://www.nebraskafamilyalliance.org/>.



National Coalition for LGBT Health
National LGBT Bar Association
National LGBTQ Task Force Action Fund
OutServe-SLDN
Pride at Work
Sexuality Information and Education Council of the U.S. (SIECUS)
The Trevor Project
Transcend Legal
Transgender Law Center
Transgender Legal Defense & Education Fund
URGE: Unite for Reproductive & Gender Equity
Whitman-Walker Health