

January 17, 2018

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

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

**RE: 34 LGBT Groups Oppose Confirmation of Mark Norris**

Dear Chairman Grassley and Ranking Member Feinstein:

We, the undersigned 34 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 Mark S. Norris, Sr., to the United States District Court for the Western District of Tennessee. After a comprehensive review of Mr. Norris's 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. Norris is demonstrably unqualified for a lifetime appointment to the federal bench. We strongly urge you to oppose his nomination.

While Mr. Norris's broader anti-civil rights record is so voluminous that it took the Alliance for Justice nearly 20 pages to summarize,<sup>1</sup> this letter underscores the lengths to which Mr. Norris has gone to oppose the basic civil rights of LGBT people. Unlike attorneys who seek to claim that they were merely advancing the views of their client, Mr. Norris has expended significant personal effort to advance legislation that would privilege and protect those who seek to discriminate against LGBT people.

For example, in 2011, after Nashville enacted an ordinance prohibiting city contractors from discriminating on the basis of sexual orientation or gender identity, Mr. Norris supported preemption legislation that prohibits cities from passing non-discrimination protections for LGBT people. When asked about why he supported the ordinance, Mr. Norris responded that the law was "intended to balance the right of local governments and businesses to adopt anti-discrimination policies with the

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<sup>1</sup> Alliance for Justice, *AFJ Nominee Report: Mark Norris: U.S. District Court for the Western District of Tennessee* (Oct. 2017), available at <https://www.afj.org/wp-content/uploads/2017/10/AFJ-Norris-Report.pdf>.

proper level of state oversight.”<sup>2</sup> As commentators noted at the time, however, the legislation effectively eliminated the possibility of ever establishing local protections against discrimination based on sexual orientation or gender identity.<sup>3</sup> Because Tennessee’s anti-discrimination laws did not include any protections on the basis of sexual orientation or gender identity, the legislation clearly and swiftly rendered Nashville’s ordinance invalid and unenforceable, leaving LGBT workers vulnerable to discrimination on the basis of sexual orientation and gender identity. The legislation has been used as a model for other preemptive state legislation.

In 2016, Mr. Norris supported legislation<sup>4</sup> which allows mental health counselors to discriminate against LGBT clients—what American Counseling Association (ACA) dubbed the “Hate Bill 1840.”<sup>5</sup> The ACA’s CEO said that “of all of the state legislation I have seen passed in my 30 years with ACA, the new Tennessee law based on Senate Bill 1556/House Bill 1840 is by far the worst.”<sup>6</sup> When asked about why he supported the legislation, Mr. Norris responded that the law was “intended to protect the religious liberty of professional counselors,”<sup>7</sup> without so much as acknowledging, let alone giving consideration to, the rights and well-being of LGBT clients.

In 2017, Mr. Norris supported legislation that prohibits any government from taking “discriminatory action” against a business based on its internal policies, including personnel and employee benefit policies.<sup>8</sup> Also this year, Mr. Norris endorsed legislation, which became known as the “LGBTQ Erasure Bill,” that “attempt[ed] to undermine the impact of the Supreme Court’s marriage equality ruling by requiring courts and federal agencies to apply a plain meaning interpretation of gendered statutory language, including those involving the rights of husbands and wives.”<sup>9</sup>

Mr. Norris has taken special steps to diminish the rights and safety of LGBTQ youth. In 2011, Mr. Norris supported legislation dubbed the “Don’t Say Gay Bill.”<sup>10</sup> The bill, which passed the State Senate, sought to prohibit teachers from providing any information about homosexuality to public school students. Human Rights Watch has found that laws like the “Don’t Say Gay Bill” discourage school personnel from intervening to stop bullying and harassment, deter teachers from providing basic

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<sup>2</sup> Mark Norris, *News from Nashville* (May 23, 2016), available at <http://www.marknorris.org/blog1/2016/05/23/news-from-nashville-may-23-2016/>.

<sup>3</sup> Leslie Fenton, *The anti-gay Tennessee bill no one’s talking about*, Salon (May 26, 2011), available at [http://www.salon.com/2011/05/26/tennessee\\_antigay\\_bill\\_open2011/](http://www.salon.com/2011/05/26/tennessee_antigay_bill_open2011/).

<sup>4</sup> SB 1556, 2015-2016, 109th General Assembly, <https://legiscan.com/TN/rollcall/SB1556/id/500053>.

<sup>5</sup> Andy Sher, *Tennessee experiences backlash from new LGBT counseling law*, Times Free Press (May 11, 2016), available at <http://www.timesfreepress.com/news/politics/state/story/2016/may/11/tennessee-sees-repercussions-new-lgbt-counsel/364900/>.

<sup>6</sup> *Id.*

<sup>7</sup> Mark Norris, *News from Nashville* (May 23, 2016), available at <http://www.marknorris.org/blog1/2016/05/23/news-from-nashville-may-23-2016/>.

<sup>8</sup> SB 0127, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB0127>.

<sup>9</sup> Human Rights Campaign, *Anti-LGBTQ Bills in Tennessee Attempt to Undermine Supreme Court’s Marriage Equality Ruling*, HRC Blog (Apr. 26, 2017), available at <http://www.hrc.org/blog/anti-lgbtq-bills-in-tennessee-attempt-to-undermine-supreme-courts-marriage>.

<sup>10</sup> SB 49, <https://openstates.org/tn/votes/TNV00000507/>.

information, and limit students' ability to form and organize LGBT groups.<sup>11</sup> When asked whether he had taken these documented harms on LGBTQ youth into account when supporting the bill, Mr. Norris dismissed the question as "political" and declined to respond.<sup>12</sup>

Federal judges are required to identify and balance different interests when applying legal tests, like whether religious accommodations place "significant burdens" on third parties. Yet, Mr. Norris's positions and responses suggest that he may be incapable of even recognizing, let alone balancing, the rights and interests of vulnerable minorities. Indeed, nowhere does Mr. Norris acknowledge how laws that he has repeatedly supported harm members of the LGBT community. As numerous constitutional precedents make clear, by bestowing legal privileges on those who would discriminate against members of the targeted groups, these laws "stigmatiz[e] members of the[se] disfavored group[s] as 'innately inferior' and therefore as less worthy participants in the political community."<sup>13</sup> And they also make it "more difficult for" particular "group[s] of citizens than for all others to seek aid from the government."<sup>14</sup>

Along with Mr. Norris's ability to apply legal tests in an even-handed manner, his willingness to follow legal precedent with which he personally disagrees is also in question. Mr. Norris opposed the Obama Administration's 2016 guidelines intended to assist schools in protecting transgender students from discrimination and complying with their obligations under Title IX, and even encouraged Tennessee to sue the Obama Administration, which he said was taking a "reckless post-constitutional approach to our government."<sup>15</sup> At a time when transgender students are less likely to graduate and more likely to suffer violence and severe physical and emotional injuries, Mr. Norris declared his commitment to "mak[ing] sure that nothing will be done to give this 'guidance' any effect."<sup>16</sup> When asked about why he opposed the guidelines, Mr. Norris responded that it was out of concern that the guidelines "represented an improper attempt to rewrite Title IX without Congressional approval,"<sup>17</sup> even though courts have repeatedly ruled that transgender people are protected from discrimination under civil rights statutes, including Title IX, and specifically established that schools must treat students consistent with their gender identity and cannot deny transgender students access to bathrooms and other

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<sup>11</sup> Human Rights Watch, *"Like Walking Through a Hailstorm": Discrimination Against LGBT Youth in US Schools* (Dec. 7, 2016), available at <https://www.hrw.org/report/2016/12/07/walking-through-hailstorm/discrimination-against-lgbt-youth-us-schools>.

<sup>12</sup> Senate Judiciary Committee, *Nomination of Mark Norris to the U.S. District Court for the Western District of Tennessee, Questions for the Record, Submitted October 24, 2017*, available at <https://www.judiciary.senate.gov/imo/media/doc/Norris%20Responses%20to%20QFRs.pdf>.

<sup>13</sup> *Heckler v. Mathews*, 465 U.S. 728, 739 (1984).

<sup>14</sup> *Romer v. Evans*, 517 U.S. at 633.

<sup>15</sup> Joel Ebert, *26 Tennessee senators call on Haslam to join North Carolina lawsuit over transgender bathrooms*, Knoxville News Sentinel (May 16, 2016), <http://archive.knoxnews.com/news/politics/twenty-six-senators-call-on-haslam-to-join-nc-lawsuit-over-transgender-bathrooms-32fa0930-3f68-1c72--379709801.html/>.

<sup>16</sup> Mark Norris, *News from Nashville* (May 23, 2016), available at <http://www.marknorris.org/blog1/2016/05/23/news-from-nashville-may-23-2016/>.

<sup>17</sup> Senate Judiciary Committee, *Nomination of Mark Norris to the U.S. District Court for the Western District of Tennessee, Questions for the Record, Submitted October 24, 2017*, available at <https://www.judiciary.senate.gov/imo/media/doc/Norris%20Responses%20to%20QFRs.pdf>.

single-sex facilities that correspond with their gender identity.<sup>18</sup> Mr. Norris’s response suggests that he either does not understand the import of Title IX case law, or feels entitled to ignore it; in either case, his answer raises serious doubts that he would faithfully and accurately interpret Title IX case law when the issues at stake conflict with his personal beliefs.

Mr. Norris’s record suggests that he would not respect the Supreme Court’s precedent concerning marriage equality. In 2004, Mr. Norris was a leading sponsor of SJR 0027, calling upon Congress to pass a Federal Marriage Amendment defining marriage in a way that would have denied the freedom to marry to same-sex couples, and permitting states to give no legal effect or recognition to same-sex marriages performed in other states. That same year, he supported SB 2661, which prohibited Tennessee from recognizing any same-sex civil union or domestic partnership, even if valid in another state. Speaking about that bill, Mr. Norris said that unless Tennessee refused to recognize same-sex civil unions, “marriage may fall by the wayside in favor of civil unions,” and “if marriage falls by the wayside, so does our society.”<sup>19</sup> After the Supreme Court’s 2015 decision in *Obergefell v. Hodges* recognized marriage equality as the law of the land, Mr. Norris supported a resolution of the Tennessee General Assembly “express[ing] its disagreement with the constitutional analysis in *Obergefell v. Hodges* and the judicial imposition of a marriage license law that is contrary to the express will of this body and the vote of the people of Tennessee.”<sup>20</sup> Mr. Norris’s decade of anti-marriage-equality advocacy and publicly avowed “disagreement with the constitutional analysis in *Obergefell v. Hodges*” is fundamentally at odds with his duty to faithfully apply *Obergefell* if he becomes a federal judge. Through his words and actions, Mr. Norris has left no doubt that he would seek to restrict and roll back *Obergefell* and other constitutional precedents protecting the liberty, equality, and dignity of LGBT people.

Mr. Norris’s record demonstrates that his appointment to the bench would cause grave harm to the LGBT community, as well as many other communities that rely on the federal judiciary to administer fair and impartial justice. Mark Norris is not the kind of judge that this country wants, needs or deserves. We strongly urge you to reject his nomination.

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<sup>18</sup> See, e.g., *G.G. ex rel. Grimm v. Gloucester Cty. Sch. Bd.*, 822 F.3d 709 (4th Cir.), cert. granted in part, 137 S. Ct. 369 (2016), and vacated and remanded, 137 S. Ct. 1239 (2017); *Bd. of Educ. of the Highland Local Sch. Dist. v. United States Dep’t of Educ.*, 208 F. Supp. 3d 850 (S.D. Ohio 2016); *Whitaker By Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d1039 (7th Cir. 2017).

<sup>19</sup> Mark Norris, *Defense of Marriage in Tennessee*, The Covington Leader (Feb. 18, 2004), page A11.

<sup>20</sup> HRJ 0529 General Assembly, *Statement of Intent or Position-Expresses disagreement with the U.S. supreme court’s decision in Obergefell v. Hodges* (Apr. 28, 2016). See also HRJ 0529 2015-2016, 109th General Assembly, <https://legiscan.com/TN/rollcall/HJR0529/id/537864>.



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](mailto:smcgowan@lambdalegal.org).

Very truly yours,

Lambda Legal  
Advocates for Youth  
American Atheists  
CenterLink: The Community of LGBT Centers  
Equality Alabama  
Equality California  
Equality Federation  
EqualityMaine  
Equality NC  
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  
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  
Witness to Mass Incarceration

cc: United States Senate Judiciary Committee Members