January 29, 2018

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of the hundreds of thousands of members of People For the American Way across the nation, we urge you to oppose the confirmation of Minnesota Supreme Court Justice David Stras to be a judge on the U.S. Court of Appeals for the Eighth Circuit. Since he has not received blue slips from both home state senators, his confirmation would be a blow to the Senate as an institution, as well as to each senator. But this letter focuses on Stras' record, which demonstrates that he is not a fair-minded constitutionalist who will protect the rights of all people rather than just the few or the powerful.

Perhaps the most ominous danger sign is that Donald Trump included Stras on his first pre-election list of 11 potential Supreme Court nominees. Every individual on that list passed the non-public litmus tests of two highly ideological right-wing organizations, the Federalist Society and the Heritage Foundation.

That Stras was on this list is no surprise. In his writings, Stras has mischaracterized judicial recognition of certain fundamental constitutional rights as "ventures into contentious areas of social policy—such as school integration, abortion, and homosexual rights."[i] But systemic deprivations of fundamental liberties and equal protection under the law are significant constitutional issues, exactly the kind that our federal courts were established to protect. Stras' conception of them as nothing more than "social policy" not only betrays his ideological opposition to judicial recognition of these rights, but also attacks the legitimacy of judges even considering these issues when aggrieved parties turn to the federal courts to protect the rights guaranteed to them under the Constitution and the laws of the United States.

We are disturbed by Stras' cramped reading of statutes that leads to results that are both absurd and unfair. For instance, in dissent he sided with an insurance company over a young boy injured in a school bus accident and would have limited the damages he could receive to only a quarter of the actual damages he suffered to his right leg, hip and lower back. Reaching this result in *Sleiter v. American Family Mutual Insurance*[ii] required misreading a state insurance statute and going against the clear objective of the legislature that passed it.

Cody Sleiter suffered extensive back, leg and hip damage when a driver ran a stop sign and struck the school bus he was on, injuring 19 people. Cody's damages totaled $140,000. The damages for all of the victims were $5.3 million, but the insurance coverages for the at-fault vehicle and the school bus didn't go that high, adding up to only a little more than $1.1 million. Sleiter received a pro-rated share amounting to only $36,144, which didn't even come close to covering his $140,000 in damages. Fortunately, Minnesota state law allows the purchase of "under-insured motorist (UIM) coverage" to make up the difference when the coverage available to an injured person from others' insurance companies doesn't provide full compensation. In this case, the Sleiters had purchased a policy from American Family that insured them for up to $100,000 in excess UIM coverage.

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The Sleiters sought $65,456, to reach that limit, but American Family denied their claim because (they asserted) the "coverage available" to Cody from the other insurance companies wasn't the amount he actually received ($36,144, because it was pro rata), but was instead the amount of the entire policy limits from the other insurance companies before it was split up among the 19 victims (over $1 million).

Stras agreed with the insurance company, saying the statutory language "limit of liability of the coverage available" unambiguously meant what American Family said it did. But Stras' dissent pays insufficient attention to the rest of the phrase in the statute: it refers to the "limit of liability of the coverage *available to the injured person*." As every other member of the court recognized, American Family's interpretation was "unreasonable in the context of accidents involving multiple injured passengers" and "leaves victims insufficiently compensated for their injuries and unable to access the coverage limits they purchased." Instead, they interpreted the law to give people "nothing more than access to the coverage that they have selected and purchased."

The effect of the law on real people can be a vital component of determining the intent of the legislature (including Congress). A judge who puts that aside is not living up to his or her responsibilities.

Stras evinced a similar disregard for the real world in an age discrimination case when he interpreted the term "dispute resolution process" to exclude a city's investigation of an employee's discrimination complaint.[iii] A city police officer named Scott Peterson believed he had been unlawfully transferred due to his age. Consistent with the city's workplace policy, he filed a complaint with the human resources department, and the city spent 14 months investigating Peterson's claim. When it concluded that Peterson's transfer had not been motivated by age discrimination, he turned to the judiciary to vindicate his rights.

State law established a one-year statute of limitations, which is "suspended during the time a potential charging party and respondent are voluntarily engaged in a dispute resolution process." The Minnesota Supreme Court ruled that the city's investigation had stopped the clock on the statute of limitations because it was "a formal process with the capacity to resolve Peterson's claims."

But Stras dissented, claiming that the investigation was not a "dispute resolution process." He would have thrown Peterson's complaint out as having been filed too late, punishing him for using a city mechanism that can resolve such conflicts without the need to go to court. His extremely narrow interpretation of "dispute resolution process" would have done more than close the courthouse doors to Scott Peterson. It would have discouraged employees from availing themselves of the city's formal internal processes for resolving their complaints.

We are also concerned about the potential for Stras allowing partisan politics to affect judicial reasoning. For instance, Stras sided with the Republican-appointed justices in ruling in favor of the GOP state legislature in a case involving the ballot description of a photo voter ID constitutional amendment.[iv] The legislature chose not to include the text of the amendment on the ballot; instead, it crafted a summary that would stand alone as the only description on the ballot. Although the description was inaccurate, misleading, and deceptive, Stras voted with the majority to uphold it.

Stras' dissenting colleagues went so far as to describe him and the rest of the majority as being "complicit" in an effort to mislead Minnesota voters:

> Underlying this case is the Legislature's purported concern about threats to the integrity of the ballot. Thus, it is ironic, if not Orwellian, that in the name of "protecting" the vote and preventing unspecified voting "fraud," the Legislature has resorted to a ballot question that deliberately deceives and misleads the very voters it claims must be protected. I cannot explain, nor can I understand, the court's willingness to be complicit with the Legislature in this effort. Nor can I explain or understand the court's fear of putting before voters for their approval or rejection the actual language of the proposed amendment as drafted by the Legislature.

Another case with a partisan tinge involved the titles of two ballot measures to amend the state constitution: the one discussed above, and one prohibiting same-sex couples from marrying.[v] Stras joined his Republican-appointed colleagues in allowing the GOP-controlled legislature to usurp the clear statutory authority of the secretary of state to provide titles for ballot questions. The secretary was a Democrat whose titles were accurate and complete. Nevertheless, Stras and the others allowed the legislature could override the secretary and provide titles less descriptive of the content and undisputed consequences of the measures.

Adding to our concern is the harmful absence of diversity on the Eighth Circuit. The least diverse circuit court in the United States, it has had only two women and two people of color in its entire history. Even worse, only one woman and one person of color is still serving as an active judge. Justice Stras, a white man, would only continue the nearly complete lockout of judges who are not white men.

Adding insult to injury, Senate Republicans last year chose to collaborate in the lockout by denying a floor vote to Jennifer Puhl, a woman with bipartisan home state senator support who was approved for the Eighth Circuit by the Judiciary Committee by unanimous voice vote. But President Trump has not nominated anyone but white men to serve on this court, a disservice not only to the people of Minnesota, but also to those of the six other states within the circuit: Arkansas, Iowa, Missouri, Nebraska, North Dakota, and South Dakota.

For these reasons, we urge you to oppose cloture on Stras and to vote against confirmation.

Sincerely,

Marge Baker
Executive Vice President for Policy and Program

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[i] David R. Stras, *Understanding the New Politics of Judicial Appointments*, 86 Tex. L. Rev. 1033, 1034 (2008).
[ii] *Sleiter v. American Family Mutual Insurance Co.*, 868 N.W.2d 21 (Minn. 2015).
[iii] *Peterson v. City of Minneapolis*, 892 N.W.2d 824 (Minn. 2017).
[iv] *League of Women Voters v. Ritchie*, 819 N.W.2d 636 (Minn. 2012).
[v] *Limmer v. Ritchie*, 819 N.W.2d 622 (Minn. 2012).