



September 12, 2018

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Feinstein, and Committee Members:

On behalf of the hundreds of thousands of members of People For the American Way, I write to express our strong opposition to the confirmation of Stephen Clark to be a federal district court judge for the Eastern District of Missouri. He has a record of strong opposition to women's constitutional rights and the rights of LGBTQ people. In addition, he has a disturbing pattern of misleading the courts and the Judiciary Committee to advance his ideology, a lack of integrity that disqualifies him from the bench.

Clark has a long record of anti-choice advocacy, seeking a variety of ways to rob women of their constitutional right to abortion under *Roe* and *Casey*. Rather than simply framing the facts to his client's advantage, he has sought to perpetrate a fraud on the court in order to advance the anti-choice movement.

He tried this in *Korte v. HHS*, a challenge to the department's contraception coverage regulations under the Affordable Care Act. To justify his legal argument that the regulations were arbitrary and capricious, he argued that HHS had failed to consider the "significantly increased cancer and other health risks associated with hormonal contraceptives." Specifically, he told the court that contraception increases the risk of breast cancer, heart attack, stroke, cervical cancer, and liver cancer (among other threats).

The "experts" he presented in support of his claims—Dr. John Thorp and Dr. Angela Lanfranchi—are widely recognized as frauds. Lanfranchi peddles the anti-choice myth that contraception causes women to "die a violent death," and "increases suicide attempts." Thorp's presentations are so untrustworthy that in one case, the trial judge sharply criticized the "disturbing apathy toward the accuracy of his testimony," and noted that his research was not driven by a desire for accuracy but instead "seemed to be driven more by a bias against abortion."

Our judicial system protects the right of activists to simply make up facts to win a political argument. But it should not and does not protect an attorney who sets out to deceive the court by passing off fantasy as science. While there is ample room for zealous representation of one's client, seeking to perpetrate a deception on the court has never been within the realm of acceptable conduct. Indeed, our judicial system cannot fulfill its role of equal justice before the law otherwise.

Clark also has strong opposition to equal protection under the law for LGBTQ people. In a 2016 presentation for the Thomas International Center, he criticized the Supreme Court's decision in

Obergefell, stating that marriage equality “is not an issue for nine unelected, unaccountable people with lifetime tenure ... [to] be deciding because there is not a constitutional right to same sex marriage.” Clark claims he was simply stating the views of the dissenters in that case, but his antagonism toward LGBTQ people is clear from other contexts. For instance, in a 2016 presentation at Duke University, he made the irrational claim that “one of the next evolutions of same-sex marriage is polygamy.”

This has long been a standard talking point for equality opponents, but someone being considered for the federal bench should immediately recognize how irrational it is. In order to make it appear a cogent legal argument, Clark stated that there were multiple cases working their way through the court system that seek to establish a right to polygamy. In written follow-up questions, Sen. Coons asked the nominee to provide a list of those cases.

Clark responded as follows:

The following are pending cases that, *inter alia*, seek to establish a right to polygamy:

Kohl, et al. v. Hutchinson, et al., Case No. 4:17-cv-00598-KGB (E.D. Ark.),

Gunter, et al. v. Bryant, et al., Case No. 3:17-cv-00177-NBB-RP (N.D. Miss.), and

Penkoski, et al. v. Justice, et al., Case No. 1:18-cv-00010-IMK-MJA (N.D.W.Va.).

These appear to be three unrelated cases, since the names are all different and they are in three different parts of the country. But appearances are deceiving: All three cases involve the same four parties—Chris Sevier, John Gunter Jr, Whitney Kohl, and Joan Grace Harley—and a fifth party (Richard Penkoski) included in West Virginia. They have also had cases in Alabama and Utah. Each of their cases is a long invective against *Obergefell* intended to make a political point, and apparently not to assert any right they actually want to exercise. (Sevier is a “self-identified machinist” or “objectophile.”) For instance, they pleaded:

This is an "if not this, then that" lawsuit. If the Establishment Clause does not enjoin the state from legally recognizing non-secular parody marriages, then the Plaintiffs warrant the same rights to marry under the Equal Protection and Due Process Clause of the Fourteenth Amendment and visa versa [sic]. Either way, the current definition of marriage and the State's decision to only legally recognize one form of non-secular parody marriage is wildly unconstitutional from every angle. The reason why the shallow liberal media will only focus on the parody marriage request is because legally recognized gay marriage is their convention, and they are willing to defend it at all cost.

...

For better or worse, the Plaintiffs simply ask that they be afforded the same benefits and treatment under the law based on their self-asserted sex-based identity narratives that self-identified homosexuals are permitted to enjoy or, otherwise, the Court must hold that legally recognized gay marriage is a sham and enjoin under the Establishment Clause.

As Stephen Clark has presented these cases to the Judiciary Committee, they appear to be separate, independent, and legitimate federal litigation where parties genuinely seek the right to marry multiple partners. The cases are, in fact, none of that. The Senate should not degrade itself by confirming a nominee who presents such material to its committees.

We urge you to oppose Clark's confirmation.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker
Executive Vice President for Policy and Program