



November 7, 2018

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our hundreds of thousands of members across the country, People For the American Way urges you to vote against confirming Jonathan Kobes to the Eighth Circuit Court of Appeals.

A panel of the American Bar Association's Standing Committee on the Federal Judiciary conducted two separate evaluations of the nominee. Both times, a substantial majority concluded that he is not qualified for the position to which he has been nominated.ⁱ As the ABA committee chair Paul T. Moxley explained in a September 14, 2018 letter to the Judiciary Committee:

The Standing Committee had difficulty analyzing Mr. Kobes' professional competence because he was unable to provide sufficient writing samples of the caliber required to satisfy Committee members that he was capable of doing the work of a United States Circuit Court judge. Although Mr. Kobes provided some writing samples, they are either from Mr. Kobes' early days as a lawyer, relating to relatively simple criminal law matters, or from his recent legislative work for Senator Rounds. None of the writing that we reviewed is reflective of complex legal analysis, knowledge of the law, or ability to write about complex matters in a clear and cogent manner – qualities that are essential for a Circuit Court judge.

We conducted two separate evaluations of Mr. Kobes, and the Committee came to a split vote, as indicated. Mr. Kobes is a very accomplished, competent, and capable person, but his career path has not resulted in sufficient evidence of a developed ability to do the written work of a United States Circuit Court Judge. Without sufficient evidence that the nominee possesses an especially high degree of legal scholarship and excellent analytical and writing experience, the Standing Committee voted that the nominee was "Not Qualified" to serve on the Eighth Circuit Court of Appeals.ⁱⁱ

Indeed, Mr. Kobes has informed the Judiciary Committee that he has never written or edited any books, articles, reports, letters to the editor, editorial pieces, or other published material; he has never written or contributed to any organization's reports, memoranda, or policy statements; he never delivered a speech or a talk; and he has only twice provided (or had provided on his behalf) testimony, official statements, or other communications relating to matters of public policy or legal interpretation to a public body or to public officials.ⁱⁱⁱ

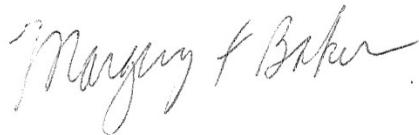
Surely a nominee for a lifetime position on a powerful appellate court with jurisdiction over seven states has the burden to demonstrate that they are qualified for the job. If a nominee cannot

demonstrate an ability to handle the types of complex legal analyses required at the circuit level, then the people living in those seven states would be better served by someone else.

Unfortunately, the Judiciary Committee rushed a hearing for this nominee, holding it weeks before the ABA had an opportunity to complete its evaluation. The ABA panel's procedures call for a second evaluation if the first one indicates the nominee is not qualified. The panel's practice of going the extra mile to ensure fairness to the nominee should not be penalized by the committee refusing to wait for the evaluation. But that is what happened in this case, so committee members have not been able to ask the nominee about the factors cited in the panel's letter of explanation.

Rather than hold another hearing, the committee voted to advance the nomination to the floor. Given the concerns raised by the ABA and the absence of any rebuttal by the nominee himself, the Senate cannot in good conscience confirm him to a lifetime judicial appointment on the Eighth Circuit. We urge you to vote against confirmation.

Sincerely,

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

Marge Baker
Executive Vice President for Policy and Program

ⁱ Ratings of Article III and Article IV Judicial Nominees, 115th Congress, ABA Standing Committee on the Federal Judiciary, [https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Web rating Chart Trump 115.pdf](https://www.americanbar.org/content/dam/aba/uncategorized/GAO/Web%20rating%20Chart%20Trump%20115.pdf).

ⁱⁱ Letter from the ABA's Standing Committee on the Federal Judiciary, September 14, 2018, <https://www.americanbar.org/content/dam/aba/uncategorized/GAO/2018-9-14ChairtoGrassleyFeinstein-statementon-JonathanKobesnominee-EighthCCA.pdf>.

ⁱⁱⁱ <https://www.americanbar.org/content/dam/aba/uncategorized/GAO/2018-9-14ChairtoGrassleyFeinstein-statementon-JonathanKobesnominee-EighthCCA.authcheckdam.pdf>, pp. 6-7.