



HUMAN
RIGHTS
CAMPAIGN®

January 10, 2018

The Honorable Charles Grassley
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Feinstein and Members of the Senate Judiciary Committee:

On behalf of the Human Rights Campaign (HRC), America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTQ) equality, we write to oppose the nomination of Howard Nielsen, Jr. for the U.S. District Court for the District of Utah. Based on our review of his record, we believe Nielsen has proven that he fails to possess the judicial temperament critical to reach impartial judgments and to fairly assess laws and policies based upon fact rather than ideology.

HRC believes that all judicial nominees should have a distinguished record and make decisions fairly and with an open mind. However, Nielsen has a demonstrable record opposing LGBTQ rights and recognition. For example, Nielsen represented the proponents of Proposition 8, the California measure amending the state constitution stripping same-sex couples of the right to marry, in *Perry v. Schwarzenegger*.¹ His defense of Proposition 8 heavily relied on outdated science used to further stigmatize LGBTQ people² as well as anti-LGBTQ arguments suggesting sexual orientation was a choice rather than an immutable characteristic.³ Any attempt to rationalize bias and animus against a particular minority group is not only alarming in itself, but also conflicts with a judge's mandate: to be impartial.

Perhaps most troubling, following the district court's decision finding Proposition 8 unconstitutional, Nielsen filed a motion to vacate the decision arguing the presiding judge, Chief

¹ 704 F. Supp. 2d 921 (N.D. Cal. 2010).

² Howard Mintz, *Prop. 8 Trial Day 9: Live Coverage from the Courtroom*, The Mercury News (Bay Area, CA) Jan. 22, 2010, <https://www.mercurynews.com/2010/01/22/prop-8-trial-day-9-live-coverage-from-the-courtroom/>. "Prop. 8 lawyer Howard Nielson Jr. is still cross-examining UC-Davis prof. Greg Herek in the Prop. 8 trial. Nielson has tried to press Herek on the notion that gays and lesbians cannot successfully be transformed into heterosexuals through therapy. Among other things, Nielson invoked a 1935 paper by Freud that said it was possible." *Id.*

³ Def's Mot. Vacate at 26-27, *Perry v. Schwarzenegger*, No. 90-2292 (N.D. Cal. 2011).

Judge Walker, could not be impartial in his decision because of his sexual orientation.⁴ Nielsen stated, “Given that Chief Judge Walker was in a committed, long-term, same-sex relationship throughout this case (and for many years before the case commenced), it is clear that his ‘impartiality might reasonably [have been] questioned’ from the outset.”⁵ Although the motion was rightly denied, such a tactic to discredit Judge Walker and undermine the court’s decision is a glaring indication of Nielsen’s inability to be fair.

Nielsen’s disregard for the rights and recognition of LGBTQ individuals is rife with misconceptions and biases. In 2015, Nielsen opposed the landmark case, *Obergefell v. Hodges*, where the Supreme Court established marriage equality.⁶ He authored an *amicus* brief opposing marriage equality arguing marriage as inherently a relationship between a man and a woman because, “through the institution of marriage, societies seek to increase the likelihood that children will be born and raised in stable and enduring family units by both the mothers and the fathers who brought them into this world.”⁷

Nielsen’s record raises grave concerns and serious doubts about his nomination. Only a nominee who has demonstrated that he can be a fair and impartial judge for all Americans, regardless of their sexual orientation and gender identity, is entitled to confirmation for the federal courts. Because of our commitment to a fair judiciary, we urge you to vote against Nielsen’s appointment to a seat on the U.S. District Court for the District of Utah.

Thank you for your consideration. If you have any questions or need more information, please contact Government Affairs Director David Stacy at david.stacy@hrc.org.

Sincerely,



David Stacy
Government Affairs Director

⁴ See Def’s Mot. Vacate at 2, *Perry v. Schwarzenegger*, No. 90-2292 (N.D. Cal. 2011).

⁵ *Id.* at 2.

⁶ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (U.S. 2015).

⁷ https://www.supremecourt.gov/ObergefellHodges/AmicusBriefs/14-556_Scholars_of_History_and_Related_Disciplines.pdf.