



HUMAN
RIGHTS
CAMPAIGN®

July 18, 2017

Dear Senator:

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 John K. Bush to the U.S. Court of Appeals for the Sixth Circuit, and urge you to vote against cloture. Only nominees with exceptional intellectual ability, distinguished experience in law, and a temperament that would enable them to make decisions fairly and with an open mind should be confirmed for lifetime appointments to the bench. Bush's statements during his hearing before the Judiciary Committee, his lengthy public record, and his refusal to clarify in direct questioning his commitment to precedent, demonstrates he does not possess the ability to fairly judge cases involving the rights of LGBTQ Americans. HRC considers the upcoming cloture vote to be a key vote.

Bush has a record of hostility towards LGBTQ Americans. He co-authored a publication for The Federalist Society criticizing the "expansive view" of the Kentucky Supreme Court for striking down the state's sodomy ban;¹ a ban similar to that struck down shortly thereafter by the U.S. Supreme Court in *Lawrence v. Texas*.² The legal reasoning underlying the Court's decision in *Lawrence* informed the Court's later decisions in *United States v. Windsor*³ and *Obergefell v. Hodges*,⁴ recognizing LGBTQ people's right to equal protection under the Constitution and the fundamental right to same-sex marriage.⁵ When pressed later on his understanding of *Obergefell* under an originalist reading, he refused to directly answer the question. Instead, Bush stated that he had not studied the decision and the "methodology of its constitutional interpretation." While he acknowledged that *Obergefell* is currently settled law for purposes of binding Supreme Court precedent on lower courts, he refused to fully commit that the issues in the case were settled from the perspective of the Supreme Court."⁶

¹ JOHN K BUSH & PAUL E. SALAMANCA, THE FEDERALIST SOCIETY FOR LAW & PUBLIC POLICY STUDIES, "EIGHT WAYS TO SUNDAY": WHICH DIRECTION, KENTUCKY SUPREME COURT? (2006), <https://www.bgdlegal.com/clientuploads/Publications/Publications/John%20Bush%20-%20Eight%20Ways%20to%20Sunday.pdf>.

² *Lawrence v. Texas*, 539 U.S. 558 (2003).

³ 133 S. Ct. 2675, 2695-96 (U.S. 2013).

⁴ 135 S. Ct. 2584, 2599 (U.S. 2015)/

⁵ *Id.*

⁶ *Nomination of John. K. Bush to the U.S. Court of Appeals for the Sixth Circuit Questions for the Record*, (June 21, 2017), <https://www.judiciary.senate.gov/imo/media/doc/Bush%20Responses%20to%20QFRs.pdf>.

Bush is an avid contributor on his wife's blog, *Elephants in the Bluegrass*, under the pseudonym "G. Morris." Writing under the pseudonym, Bush criticized the State Department's adoption of gender-neutral language on passport applications, writing, "Henceforth, the application will ask for 'Mother or Parent 1' and 'Father or Parent 2.' I suppose that's better than 'Thing 1' or 'Thing 2'..."⁷ Such a decision by the State Department was made to reflect the reality of same-sex couples; Yet, Bush not only viewed this change as unnecessary action that he believed would spark outrage,⁸ he chose to frame it in a demeaning and derogatory way.

We are also troubled by his outlandish statement comparing abortion to slavery.⁹ Bush took to his blog calling both "[t]he two greatest tragedies in our country" and that both were based on the same legal philosophy led by activist justices.¹⁰ Such a gross misunderstanding of either case is alarming. When questioned about his statement at the hearing, Bush attempted to reframe the "tragedies" as something entirely different than what he wrote: That *Roe* was a tragedy because it divided the nation. Not only does Bush's statement conflict with his own blog post, but calls into question his ability to adhere to precedent. This is of particular importance to LGBTQ Americans because the constitutional right to privacy that underlies *Roe* informs the liberty rights that enable LGBTQ Americans to live as equal citizens.¹¹

Any federal judge should have a demonstrated commitment to full equality under the law for all Americans— this is particularly crucial for an appellate court judge. In light of his judicial record, HRC believes Bush fails this test. The Sixth Circuit often decides important cases and controversies addressing critical questions of American democracy and liberty. The addition of Bush to that bench would endanger those fundamental rights, and expose litigants to the risk that their cases will not be decided in accordance with established constitutional and legal principles. Accordingly, we urge you to vote against his lifetime appointment to a seat on the United States Court of Appeals for the Sixth Circuit.

Thank you for your consideration. If you have any questions or need more information, please contact me at david.stacy@hrc.org.

Sincerely,



David Stacy

Government Affairs Director

⁷ G. Morris, *A Parent 2's Outrage*, ELEPHANTS IN THE BLUEGRASS (Jan. 9, 2011, 8:01 PM), <https://elephantsinthebluegrass.blogspot.com/2011/01/parent-2s-outrage.html>.

⁸ *Id.*

⁹ G. Morris, *The Legacy from Dr. King's Dream that Liberals Ignore*, ELEPHANTS IN THE BLUEGRASS (Jan. 23, 2008, 1:13 PM), <https://elephantsinthebluegrass.blogspot.com/2008/01/legacy-from-dr-kings-dream-that.html>.

¹⁰ *Id.*

¹¹ See *Lawrence*, 539 U.S. at 564–566.