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Oral Testimony of Sarah Warbelow
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To the

U.S. Senate Committee on the Judiciary

Nomination of the Honorable Neil M. Gorsuch to the Supreme Court of the United States

March 23, 2017

Good afternoon. My name is Sarah Warbelow and I am the legal director for the Human Rights Campaign, the nation's largest organization advocating for the civil rights of lesbian, gay, bisexual, transgender, and queer (LGBTQ) people. On behalf of our nearly 2 million members and supporters nationwide, I am honored to be speaking to you today. However, I am disappointed and distressed to be here to discuss President Trump's nominee to the Supreme Court Judge Neil Gorsuch.

LGBTQ people are no stranger to the Supreme Court. We understand the power of the Court to affirm or deny our most basic rights. Jim Obergefell and his partner John Arthur had to be medi-vacced to Maryland in order to marry before John died from ALS because their home state of Ohio refused to issue them a marriage license. Their heartbreak didn't end on that Maryland tarmac. The state of Ohio attempted to erase their marriage by refusing to place Jim's name as the surviving spouse on John's death certificate. By a narrow 5-4 vote the Supreme Court validated Jim and John's relationship and extended marriage equality nationwide. By his own words, Judge Gorsuch admitted he would have forced same-sex couples to pay the price of inequality for decades to come. That is why Judge Gorsuch can not be given a lifetime appointment to the Supreme Court.

Originalism

Time and again, Judge Gorsuch has employed a dangerous brand of originalism that ignores the essential contexts and values of each case and the lives they touch. His record and statements place him squarely in the mold of Justice Antonin Scalia, who consistently demeaned and denied the dignity of LGBTQ people from the bench. Judge Gorsuch has directly questioned the Court's recognition of the fundamental right to personal autonomy that has served as a keystone for multiple LGBTQ rights cases.

Distressingly, Judge Gorsuch accepted a quote from Justice Scalia in its entirety equating marriage equality to bestiality and made no effort to distinguish between marriage—one of our society's most sacred traditions—and criminal, anti-social behavior. Despite reports that Judge Gorsuch is personal friends with LGBTQ people, his choice to embrace this line of reasoning reveals a level of indifference to the LGBTQ community that should be disqualifying for a lifetime appointment to the United States Supreme Court.

Kastle

During his time on the bench, Judge Gorsuch ruled against Rebecca Kastle, a transgender woman working for a community college. After being re-hired to teach for a second school year, Rebecca transitioned and began using the women's restroom. Halfway through the semester, the school informed her that she would have to begin using the men's restroom, citing "safety" concerns. Rebecca was terminated at the end of semester for refusing to subject herself to danger by using the men's restroom.

As Justice Kennedy made clear in *Romer v. Evans*, false justifications may never be used to cloak bare animus. That's what happened in Rebecca Kastle's case. Supreme Court Justices must be able to discern legitimate government interests from clear hostility to vulnerable communities.

Hobby Lobby/Harris

Judge Gorsuch's other rulings, such as *Hobby Lobby*, while not directly addressing the LGBTQ community, have been used to defend blatant discrimination against LGBTQ people.

Aimee Stephens is one of these people. After working at a for-profit funeral home for nearly six years she informed the owner that she would be transitioning and that when she returned she would conform to the women's dress code. Ignoring her strong employment record, the funeral home owner stripped Aimee of her job based on his belief that it is unacceptable to be transgender. In providing the funeral home a pass from complying with Title VII, the Judge adopted Judge Gorsuch's views regarding moral culpability which callously disregards the harm to real people. If this reasoning is widely adopted, it will undermine our core civil rights laws allowing pervasive discrimination against LGBTQ people and so many others.

Threats to Progress Attained by LGBTQ Community

Areas of the law that the majority of Americans view as settled, including marriage equality, are being litigated and debated by groups who are emboldened that a Supreme Court Justice like Judge Gorsuch will re-open settled law. The Supreme Court will be asked to hear cases such those that could decide whether public school counselor in Mississippi can turn away LGBTQ youth in need, whether City of Houston employees who may be stripped of their spousal benefits, or whether moms like Marisa and Terrah Pavan must both be listed on their daughter's birth certificate.

Conclusion

We might not agree with every decision a Supreme Court Justice may make. But we must believe in their commitment to reaching impartial judgments based upon fact, not political ideology or bias. And they must agree that LGBTQ people have fundamental rights protected by the Constitution and that we, as individuals and as a community, are entitled to equal treatment under the law. We need a Justice who recognizes our basic equality and shared humanity. Judge Gorsuch has never met this bar.