June 6, 2018

Dear Senator,

On behalf of the Anti-Defamation League (ADL), we write to urge you to oppose the confirmation of Howard Nielson to be a judge for the United States District Court for the District of Utah.

Founded over a century ago to stop the defamation of the Jewish people and secure fair and just treatment to all, ADL advocates for the civil rights of all people and combats discrimination and hate across the country. We don’t often oppose judicial nominees, but we are deeply disturbed by the nomination of Mr. Nielson and believe he lacks the required temperament and demonstrated commitment to fair treatment for all to merit a lifetime appointment to the federal bench.

During his career, Mr. Nielson has pursued positions that undermine civil rights and equality. Even more, his advocacy has, disturbingly, sought to undermine the credibility of the judiciary. Further, he was involved with an effort to politicize the Justice Department. His willingness to undermine the people’s trust in our working government, including the judiciary, should automatically disqualify him as a candidate to sit as a jurist in our nation’s courts.

Mr. Nielson famously represented the proponents of Proposition 8, a ballot measure passed in California in 2008 that denied same-sex couples the freedom to marry. Disturbingly, when Mr. Nielson filed a motion asking to vacate the ruling, he argued that the judgment should be vacated because Judge Vaughn Walker was in a long-term same-sex relationship and therefore, the public could not have confidence in his rendering a fair and impartial decision unless he “unequivocally disavowed any interest in marrying his partner.”¹ By attacking the judge’s integrity based on his sexual orientation, it was Mr. Nielson himself who attempted to cast doubt on the impartiality of all LGBT judges, undermining public confidence in the judiciary and the value of diversity on the court. When asked about this argument in his confirmation hearing, Mr. Nielson maintained that he felt that the motion was “in the fair bounds of advocacy.”²

In 2015, Mr. Nielson wrote an amicus brief in the U.S. Supreme Court case Obergefell v. Hodges, in which he proffered the insulting argument that same-sex marriage should be prohibited in order 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.”³

² https://www.judiciary.senate.gov/imo/media/doc/Nielson%20Responses%20to%20QFRs.pdf
³ https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV5/14-556_amicus_resp_scholars.authcheckdam.pdf

ADL Community Support Center

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Also disturbing are reports about Nielson’s service as a political appointee for the Justice Department under John Ashcroft. According to a 2008 report written by the Justice Department’s Inspector General and Office of Professional Responsibility, Nielson worked as a part of a 2002 four-person team that politicized the hiring process. Among other things, they reportedly discriminated against job applicants who had either worked for civil rights or liberal public interest groups, or for Democratic officials.⁴

Finally, Mr. Nielson has advocated for positions that ADL believes tear at the fabric of our democracy. Mr. Nielson authored amicus briefs on behalf of Republican members of Congress who challenged the legality of the Affordable Care Act (ACA) in King v. Burwell⁵, Halbig v. Sebelius⁶, and in Whole Woman’s Health v. Hellerstedt⁷. He has represented the NRA and its allies in at least three cases in which they fought against common-sense public safety laws that sought to reduce gun violence.

ADL is very concerned about this candidate’s nomination. Mr. Nielson’s willingness to undermine the credibility of the judiciary is indefensible and wholly inappropriate for an individual seeking a seat on the bench. The fact that a nominee has been a zealous advocate for causes in which he believes is in no way disqualifying. However, where, as is the case here, the nominee’s overall record is marked by consistent, ideologically-driven legal advocacy targeted at limiting equality and restricting rights and freedoms for women and LGBT communities, it gives rise to significant doubts about his ability to administer justice fairly and equally to all litigants.

In ADL’s view, the Senate’s role in the nomination process is equally as important as the president’s responsibility to nominate. For these reasons, ADL urges you to reject the nomination of Howard Nielson to be a United States District Court Judge.

Sincerely,

Jonathan A. Greenblatt
CEO

⁴ https://oig.justice.gov/special/so0806/report.htm
⁵ https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/14-114_amicus_pet_Cornyn.authcheckdam.pdf