

January 29, 2018

To the Honorable Members of the United States Senate
Washington, D.C. 20510

RE: Lambda Legal Opposes Confirmation of David Ryan Stras

Dear Senator:

Lambda Legal, the oldest and largest national legal organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and everyone living with HIV, urges you to oppose the nomination of David Ryan Stras to the U.S. Court of Appeals for the Eighth Circuit.

Justice Stras’s record raises serious concerns about his willingness to adhere to the Supreme Court’s landmark LGBT rights decisions. In a 2008 law review article, then-Professor Stras suggested that the U.S. Supreme Court had inappropriately “venture[d]” into addressing constitutional issues regarding “homosexual rights,” and he denigrated critical constitutional protections for LGBT people as mere “social policy.”¹ He further expressed skepticism about the core holding of *Lawrence v. Texas*, the Supreme Court’s 2003 ruling that struck down Texas’s sodomy law as an unconstitutional deprivation of liberty. He called into question his respect for the well-established fundamental rights of liberty, privacy and self-determination at the core of the ruling when he skeptically noted that sodomy bans violated privacy rights, at least “according to the Court.”² Although these fundamental constitutional protections are important to everyone, they have been the lynchpin of our community’s legal progress. Therefore, questioning the legitimacy of this line of cases—from *Lawrence* to *Windsor* to *Obergefell*—must be understood as a threat to established civil rights protections for LGBT people.

Although Justice Stras has sought to downplay his writings as work he did “as a law professor, not as a judge,”³ there is a clear continuity of views across these two roles. For instance, in 2008, then-Professor Stras lamented that “citizens and legislators are relegated to observers as the Supreme Court determines the extent of existing and new rights” concerning marriage and racial equality.⁴ The sentiment that constitutional issues concerning vulnerable minorities should be decided in the political sphere continues today for Justice Stras, whose campaign website proudly announces his deference to “laws passed under the political process,” rather than what he characterizes as “political leanings or personal preferences” of judges.⁵ His vision of the role of the courts as a nefarious force that seeks to

¹ David Ryan Stras, *Understanding the New Politics of Judicial Appointments*, 86 TEX. L. REV. 1033, 1034 (2008).

² *Id.* at 1039 (emphasis added).

³ *Nomination of David Stras to the U.S. Court of Appeals for the Eighth Circuit, Questions for the Record, December 6, 2017*, available at <https://www.judiciary.senate.gov/imo/media/doc/Stras%20Responses%20to%20QFRs.pdf>.

Notwithstanding Justice Stras’s attempt to avoid giving any answers that would shed light on his personal views, his writings as a professor should be viewed as instructive, as they clearly represent his personal thinking on the issues discussed.

⁴ Stras, *supra* note 1, at 1069.

⁵ See <http://justicestras.org>.

block the will of the majority sends a dangerous message to vulnerable minorities that their constitutional rights are not guaranteed. Justice Stras' failure to appreciate the important role that an independent judiciary plays in our constitutional democracy causes communities like ours grave concern.

Indeed, Justice Stras's views of the role of the courts and the rights of LGBT people are exemplified in his judicial opinions. For instance, Justice Stras joined an opinion that prevented Minnesota's Secretary of State from changing the title of anti-marriage-equality ballot measure from "Recognition of Marriage Solely Between One Man and One Woman" to "Limiting the Status of Marriage to Opposite Sex Couples," even though Minnesota law clearly required that the Secretary of State shall "provide an appropriate title for each question printed on the [constitutional amendment] ballot."⁶ Fortunately, Minnesotans rejected the proposed constitutional amendment despite the misleading title that Justice Stras allowed.

Finally, it is important to emphasize that Justice Stras has apparently cleared President Trump's litmus test for potential Supreme Court nominees, which includes a commitment to overturning *Roe v. Wade*. As noted previously, *Roe* is the foundation for the cases that have brought LGBT people out of the shadows, including *Lawrence v. Texas*, which decriminalized our relationships, and *Obergefell v. Hodges*, which ensured that our families could access the same legal protections as married heterosexual couples. Consequently, Justice Stras's elevation to the federal bench would be rightly understood as a threat not only to *Roe* but also to the LGBT equality jurisprudence that was built upon *Roe*'s foundation. We urge you to reject his nomination.

Thank you for considering our views on this important issue. Please do not hesitate to reach out if we can provide additional information throughout the confirmation process. You can reach us through Sharon McGowan, Director of Strategy for Lambda Legal, at smcgowan@lambdalegal.org.

Very truly yours,

Lambda Legal

⁶ *Limmer v. Ritchie*, 819 N.W.2d 622 (Minn. 2012).