

October 16, 2017

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Feinstein, and Committee Members:

On behalf of the hundreds of thousands of members of People For the American Way, I write to express our strong opposition to the confirmation of Greg Katsas to a seat on the U.S. Court of Appeals for the District of Columbia.

While we oppose Katsas for a number of reasons, his decision to work in the White House Counsel's office for this particular administration by itself disqualifies him. President Trump is his main client, and Katsas has been serving him since the beginning of the administration. His portfolio is vast: The matters he works on "could be virtually any legal issue of interest," according to his Judiciary Committee questionnaire responses.

He has been providing legal advice to a president who has shown nothing but contempt for our nation's Constitution and the rule of law. Among many other unacceptable and corrupt actions, President Trump:

- Fired James Comey because the FBI Director was investigating potential violations of law by Trump's campaign and family;
- Pardoned Sheriff Joe Arpaio for violating a federal court order directing him to stop violating the Constitution—an unprecedented abuse of the pardon power that destroys the separation of powers and creates a potential class of people who are unconstrained by law;
- Made up and had the White House release a description of his son's meeting with Russian agents to obtain damaging information on Hillary Clinton—a meeting directly relating to an ongoing federal criminal investigation;
- Lied about the existence of millions of fraudulent votes cast in the 2016 election, then formed a commission premised on that lie to recommend changes to our election laws;
- Called for a "total and complete shutdown of Muslims entering the United States" as a candidate then, as president, imposed a ban by executive order that no serious person could think contained sufficient national security justification, and that gave favored status to non-Muslim over Muslim refugees fleeing war;
- Encouraged police to physically abuse criminal suspects when putting them into police vehicles;
- Threatened to terminate the NFL's "massive tax breaks" if it did not take action against football players protesting police violence; and
- Threatened to strip NBC of its FCC licenses in retaliation for coverage he did not like.

Even if Katsas had no direct involvement in these or the many other assaults on the rule of law, he has chosen to continue to serve and provide legal advice to the lawless president who has carried them out.

Not since the Nixon era has it been so important to have an independent judiciary with unbiased judges to rein in presidential abuses of power. At this time in our history, we simply cannot risk confirming a lawyer from the Trump White House Counsel's office to be a federal judge, let alone to serve on the D.C. Circuit Court.

Even before the Trump era, Katsas had advocated for extreme judicial deference to the president. While working in the Justice Department from 2001-2009, he helped develop and advocate unprecedented assertions of unchecked presidential power to imprison non-citizens labeled as "enemy combatants" on Guantánamo and deny them any access to the federal judicial system. The Supreme Court rejected Katsas's expansive view of presidential authority in the *Rasul*, *Hamdan* and *Boumediene* cases, describing one of Katsas's positions as akin to authorizing the executive or legislative branch to "switch the Constitution on or off, at will."

As a rule, attorneys shouldn't be judged by the actions of their clients, but the circumstances of Katsas's service in the Bush administration makes it appropriate to raise concerns about the extreme and dangerous arguments he made in that role. Katsas served in several positions in the Bush administration. He could have left if he had been bothered by having to advocate such extreme legal arguments, but he remained for the entirety of Bush's terms.

Katsas's vision of the Constitution also allows states to target same-sex couples and deny them the right to marry. At a Federalist Society meeting in Rochester, New York in 2015, he sharply criticized the Supreme Court's *Obergefell* decision, asserting that states should have the right to limit marriage to heterosexual couples only. This reflects a cramped view of the Constitution's Equal Protection Clause and begs the question: Who else does Katsas believe is excluded from the protection of the Fourteenth Amendment?

Greg Katsas's record before this year raises serious concerns about his nomination. But his service in the Trump administration disqualifies him from serving on the D.C. Circuit—our nation's second most important court—or on any other federal court. The Senate should reject the nomination.

Sincerely,

Marge Baker
Executive Vice President for Policy and Program