



October 23, 2017

The Honorable Charles Grassley
Chairman, Senate Judiciary Committee
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Judiciary Committee
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein,

I write in opposition to the nomination of Gregory Katsas to serve on the U.S. Court of Appeals for the D.C. Circuit. Given the critical importance of this circuit court, I urge you to reject this nominee. A qualified nominee must believe in and uphold our fundamental constitutional rights, including reproductive freedom. Katsas does not.

In fact, throughout his career as a senior attorney at the Justice Department, Katsas was a key litigator defending the anti-choice policies of the George W. Bush Administration before the Supreme Court and appellate courts. In 2002, Katsas defended a challenge to the “global gag” rule, a policy re-instituted by President Bush that prohibited foreign nongovernmental organizations from either providing or referring for an abortion or advocating for abortion access as a condition for receiving U.S. federal funding.ⁱ He also argued in a pair of cases that the military insurance policies TRICAREⁱⁱ and CHAMPUSⁱⁱⁱ did not cover an abortion for women with anencephalic pregnancies; in both cases, the woman had won at district court for coverage but lost on appeal.

Katsas was part of the Bush Administration’s legal team defending the so-called Partial-Birth Abortion Ban, which banned a specific medical procedure for abortion. During oral arguments before the Eighth Circuit, Katsas argued that Congress, not physicians, could make the determination that “partial birth abortion is not safer than other forms of abortion” and that there was no need for an exception to preserve women’s health.^{iv} Although the government was unsuccessful in the lower courts,^v the Supreme Court ultimately upheld the Partial-Birth Abortion Ban as constitutional.

Reproductive rights are under intense attack in Congress and in the states. In 2017 alone, states so far have enacted 54 new anti-choice measures. Now, more than ever, women must be able to rely on the courts to protect their constitutional rights. But as the attached memo detailing Katsas’s record shows, he will undermine, not protect, the freedoms Americans depend on.

This nominee would put reproductive freedom in danger. I urge you to vigorously oppose the nomination of Gregory Katsas to serve on the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,

A handwritten signature in black ink, reading "Ilyse G. Hogue". The signature is written in a cursive, flowing style.

Ilyse G. Hogue

ⁱ Center for Reproductive Law and Policy v. Bush, 304 F.3d 183 (2nd Cir. 2002).

ⁱⁱ Doe v. United States, 372 F.3d 1308 (Fed.Cir. 2004).

ⁱⁱⁱ Brittel v. United States, 372 F.3d 1370 (Fed.Cir. 2004).

^{iv} Betsy Taylor, "Appeals court hears Nebraska abortion case," *Lincoln Journal Star* (Apr. 13, 2005).

^v Planned Parenthood v. Gonzales, 435 F.3d 1163 (9th Cir. 2006); Carhart v. Gonzales, 413 F.3d 791 (8th Cir. 2005).



Gregory G. Katsas

President Trump nominated Gregory Katsas to serve on the U.S. Court of Appeals for the D.C. Circuit on September 7, 2017. Katsas is anti-choice.

Career

- Bachelor of Arts, Princeton University, 1986¹
- Juris Doctorate, Harvard Law School, 1989²
- Clerk, Judge Edward Becker, U.S. Court of Appeals for the Third Circuit, 1989-1990³
- Clerk, Associate Justice Clarence Thomas, U.S. Supreme Court, 1990-1991⁴
- Associate and Partner, Jones Day, 1992-2001⁵
- Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice, 2001-2006⁶
- Principal Deputy Associate Attorney General, Civil Division, U.S. Department of Justice, 2006-2008⁷
- Assistant Attorney General, Civil Division, U.S. Department of Justice, 2008-2009⁸
- Partner, Jones Day, 2009-2016⁹
- Deputy Assistant to the President and Deputy Counsel to the President, 2016-present¹⁰

Record on Choice-Related Issues

Court Cases

- Throughout his career as a senior attorney at the Justice Department, Katsas was a key litigator defending the anti-choice policies of the George W. Bush Administration before the Supreme Court and appellate courts. In 2002, Katsas defended a challenge to the “global gag” rule, a policy re-instituted by President Bush that prohibited foreign nongovernmental organizations from either providing or referring for an abortion or advocating for abortion access as a condition for receiving U.S. federal funding.¹¹ He also argued in a pair of cases that the military insurance policies TRICARE¹² and CHAMPUS¹³ did not cover an abortion for women with anencephalic pregnancies; in both cases, the woman had won at district court for coverage but lost on appeal.

- Katsas was part of the Bush Administration’s legal team defending the so-called “Partial-Birth” Abortion Ban, which banned a specific medical procedure for abortion. During oral arguments before the Eighth Circuit, Katsas argued that Congress, not physicians, could make the determination that “partial birth abortion is not safer than other forms of abortion” and that there was no need for an exception to preserve women’s health.¹⁴ Although the government was unsuccessful in the lower courts,¹⁵ the Supreme Court ultimately upheld the Partial-Birth Abortion Ban as constitutional.

Notable Information

- As a litigator at Jones Day, Katsas represented the plaintiffs in two of the major cases challenging the constitutionality of the Affordable Care Act (ACA): *Florida v. U.S. Department of Health and Human Services*¹⁶ and *NFIB v. Sebelius*.¹⁷ At a panel sponsored by the Federalist Society at the Georgetown University Law Center, Katsas spoke in opposition to the ACA and favorably on pending litigation, noting that the birth-control refusal challenges were “really strong” and said that the failed origination-clause challenge “had constitutional merit.”¹⁸
- During his tenure at the Justice Department, Katsas defended anti-LGBTQ policies from legal challenge. In *Cook v. Gates*, Katsas defended the U.S. government against a lawsuit brought by twelve former members of the U.S. military who had been separated from service due to the “don’t ask, don’t tell” policy.¹⁹ Katsas also defended the Defense of Marriage Act against a legal challenge brought by a lesbian couple married in Canada.²⁰
- The anti-abortion Susan B. Anthony List endorsed the Katsas nomination when it was first announced, specifically noting his work arguing cases before the U.S. Supreme Court.²¹
- Katsas has donated to several anti-choice candidates including Massachusetts Governor Mitt Romney, Senate Judiciary Chairman Chuck Grassley, and Senator Ted Cruz.²²
- Katsas is listed as an “expert” by the conservative Federalist Society.²³

October 10, 2017

Notes

¹ Carrie Severino, "Who is Greg Katsas?" NATIONAL REVIEW (Sept. 7, 2017), available at <http://www.nationalreview.com/bench-memos/451153/who-greg-katsas> (last visited Oct. 9, 2017).

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ "Gregory Katsas to rejoin Jones Day," Jones Day Firm News (Oct. 2009), available at <http://www.jonesday.com/gregory-katsas-to-rejoin-jones-day-10-29-2009/> (last visited Oct. 9, 2017).

⁶ Carrie Severino, "Who is Greg Katsas?" NATIONAL REVIEW (Sept. 7, 2017), available at <http://www.nationalreview.com/bench-memos/451153/who-greg-katsas> (last visited Oct. 9, 2017).

⁷ Ibid.

⁸ Ibid.

⁹ "Gregory Katsas to rejoin Jones Day," Jones Day Firm News (Oct. 2009), available at <http://www.jonesday.com/gregory-katsas-to-rejoin-jones-day-10-29-2009/> (last visited Oct. 9, 2017).

¹⁰ Carrie Severino, "Who is Greg Katsas?" NATIONAL REVIEW (Sept. 7, 2017), available at <http://www.nationalreview.com/bench-memos/451153/who-greg-katsas> (last visited Oct. 9, 2017).

¹¹ Center for Reproductive Law and Policy v. Bush, 304 F.3d 183 (2nd Cir. 2002).

¹² Doe v. United States, 372 F.3d 1308 (Fed.Cir. 2004).

¹³ Brittel v. United States, 372 F.3d 1370 (Fed.Cir. 2004).

¹⁴ Betsy Taylor, "Appeals court hears Nebraska abortion case," *Lincoln Journal Star* (Apr. 13, 2005).

¹⁵ Planned Parenthood v. Gonzales, 435 F.3d 1163 (9th Cir. 2006); Carhart v. Gonzales, 413 F.3d 791 (8th Cir. 2005).

¹⁶ 648 F.3d 1235 (11th Cir. 2011).

¹⁷ 567 U.S. 519 (2012); see also Timothy Jost, "The Supreme Court ACA Arguments: Timothy Jost on the Anti-Injunction Act," *Health Affairs blog* (March 26, 2012) ("Their arguments are sufficiently similar that both parties were effectively represented by a single lawyer, Greg Katsas of Jones, Day."), available at <http://healthaffairs.org/blog/2012/03/26/the-supreme-court-aca-arguments-timothy-jost-on-the-anti-injunction-act/>.

¹⁸ Jane Norman, "Fight Over the Health Care Law Spawns a Second Generation of Lawsuits," *CQ HealthBeat* (Nov. 30, 2012).

¹⁹ 528 F.3d 42 (1st Cir. 2008).

²⁰ *In re Kandu*, 315 B.R. 123 (2004).

²¹ "SBA List Supports Judicial Nominee Gregory Katsas," Susan B. Anthony List (Sept. 7, 2017), available at <https://www.sba-list.org/newsroom/press-releases/sba-list-supports-judicial-nominee-gregory-katsas> (last visited Oct. 9, 2017).

²² "Donor Lookup," Open Secrets, <http://www.opensecrets.org/search?cof=FORID%3A11&cx=010677907462955562473%3Anlldkv0jvam&q=gregory+katsas&type=donors> (last visited Oct. 9, 2017).

²³ Carrie Severino, "Who is Greg Katsas?" NATIONAL REVIEW (Sept. 7, 2017), available at <http://www.nationalreview.com/bench-memos/451153/who-greg-katsas> (last visited Oct. 9, 2017); see also "Gregory Katsas," Federalist Society, available at <http://7up.stage.enga.ge/contributors/gregory-katsas> (last visited Oct. 9, 2017).