



February 23, 2019

The Honorable Representative Matt Claman
Chairman
State House Judiciary Committee
State Capitol Room 118
Juneau, Alaska 99801

RE: LGBT and Allied Organizations Oppose Confirmation of Kevin Clarkson

Dear Chairman Claman:

We, the undersigned state and local advocacy organizations representing the interests of lesbian, gay, bisexual and transgender (LGBT) people here in Alaska, urge you to oppose the nomination of Kevin Clarkson as Attorney General for the state of Alaska.

Between 16,000 and 20,000 LGBT adults live in the state of Alaska, making up approximately 3% of the population.¹ 26% of those LGBT people are raising children.² Consequently, the views of this nominee on the dignity and rights deserved by LGBT people and their families are highly relevant to whether LGBT Alaskans will receive proper respect and protection by their state's lead attorney, and whether our state's residents as a whole can have confidence that their top lawyer serves fairly on behalf of everyone. After examining the record of Kevin Clarkson, we believe his record on civil rights issues makes clear that he is an inappropriate choice for this position. He has shown a deep hostility towards the LGBT community, as evidenced by his opposition to marriage equality, his use of "religious freedom" laws to encourage discrimination, and his personal writings. Especially given the divisive nature of our state and national politics these days, we believe this nomination is exceedingly counterproductive for Alaska, and urge you to not confirm him.

Mr. Clarkson's determined advocacy against marriage equality for same-sex couples

Mr. Clarkson has spent a large part of his career advocating against marriage equality. He helped draft the 1998 Alaska State Constitution amendment that restricted marriage to

¹ See *Alaska's Equality Profile*, Movement Advancement Project (2017) (estimating adult LGBT population at 17,000), available at http://www.lgbtmap.org/equality_maps/profile_state/AK; Christy Mallory & Brad Sears, *Employment Discrimination Based on Sexual Orientation and Gender Identity in Alaska*, Williams Institute, UCLA School of Law, pp. 1, 2, 6 (July 2015) (estimating adult LGBT population at 19,000 and noting public support among Alaskans for employment protections for LGBT people at 79%), available at <https://williamsinstitute.law.ucla.edu/research/discrimination/employment-discrimination-based-on-sexual-orientation-and-gender-identity-in-alaska/>.

² *Alaska's Equality Profile*.



different-sex couples.³ This became the law of the land in Alaska until it was overturned in 2015 by the Supreme Court in *Obergefell v. Hodges*.⁴ In his 1999 Alaska Law review article, Mr. Clarkson wrote, “The three of us are not neutral bystanders in this debate. We support the Alaska Marriage Amendment.”⁵ It has been clear that his views are so entrenched that he felt compelled not only to support this restriction, but to lead the charge against equality. In his Attorney General Senate hearing, Mr. Clarkson acknowledged that the Supreme Court decision, *Obergefell v. Hodges*, is now the law. Were he to be confirmed as Attorney General, however, Mr. Clarkson very likely would have opportunities to try to undermine the implications *Obergefell v. Hodges* should have for enforcement of Alaska’s laws. As a cautionary example from other states, some individuals who opposed marriage equality for same-sex couples have denied marital rights that should have been obvious after *Obergefell*, causing pointless litigation, delay and stress for married couples, and needless expense all around.⁶ Consequently, even if Mr. Clarkson were now to respect the constitutional right of same-sex couples to marry, his record of dedication to blocking equal rights for LGBT people creates a strong public presumption that he would not respect the rights that must flow from this recognition, such as full spousal benefits for same-sex married couples and recognition of their parental rights and responsibilities.

Mr. Clarkson’s discriminatory rejection of transgender people

Most recently, Mr. Clarkson has been the counsel of record in a case against the Alaska Equal Rights Commission (AERC) for its representation of a transgender woman who was turned away from a domestic violence shelter.⁷ Mr. Clarkson filed a lawsuit against the AERC arguing that the local non-profit agency should have a religious right to exclude transgender individuals, despite Anchorage law. The arguments delegitimize the existence of transgender people, and ignore both the disproportionate amount of violence experienced by the transgender community⁸ and applicable housing law.

³ Becky Bohrer, *Alaska Attorney General Says He Can Set Aside Personal Views*, THE HERALD COURIER (January 29, 2019), available at https://www.heraldcourier.com/news/alaska-attorney-general-says-he-can-set-aside-personal-views/article_7422270a-252b-55ee-b22a-0a3a1cf0f8df.html.

⁴ 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

⁵ Kevin G. Clarkson *et al.*, *The Alaska Marriage Amendment: The People’s Choice on the Last Frontier*, 16 Alaska L. Rev. 213, 216 (1999).

⁶ See, e.g., *Pavan v. Smith*, 137 S. Ct. 2075 (2017) (U.S. Supreme Court overruled Arkansas Supreme Court’s denial of birth certificate identifying married lesbian couples both as mothers of their child).

⁷ Jill Burke, *Women’s Shelter Challenges Anchorage Non-Discrimination Law*, KTUU (Sept. 13, 2018), available at <https://www.ktuu.com/content/news/Womens-shelter-challenges-Anchorage-non-discrimination-law-493216781.html>.

⁸ Emily Walters *et al.*, *Lesbian, Gay, Bisexual, Transgender, Queer and HIV Affected Intimate Partner Violence in 2015*, National Coalition of Anti-Violence Programs (2016), available at https://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf.



In addition, despite the arguments of Mr. Clarkson to the contrary, it is public record that the agency in question receives assistance from the U.S. Department of Housing and Urban Development (HUD)⁹ and turning away a transgender woman is in violation of HUD's 2016 Equal Access Rule.¹⁰ Moreover, Mr. Clarkson is pursuing this case with such extreme zeal that the AERC filed a discrimination complaint against him because his public statements about religious reasons to exclude transgender people violated the rules concerning AERC proceedings.¹¹

Mr. Clarkson's dedication to anti-LGBT discrimination

Mr. Clarkson is a grossly inappropriate choice to defend the equal rights of all Alaskans as Attorney General because he has worked relentlessly to undermine LGBT legal protections. He is an active cooperating attorney with the Alliance Defending Freedom (ADF), which the Southern Poverty Law Center has designated as a hate group due to the extremist nature of their anti-LGBT views and advocacy.¹² This advocacy includes calling for the re-criminalization of homosexuality,¹³ advocating for the sterilization of transgender people,¹⁴ supporting the dangerous practice of so-called "conversion therapy,"¹⁵ and linking homosexuality to pedophilia.¹⁶ ADF consistently works to develop so-called "religious freedom" case law that excuses discrimination against LGBT people. Mr. Clarkson frequently takes on such cases, which has won him praise from ADF officials.¹⁷ Publicly embracing his role as an ADF champion, Mr. Clarkson has said, "There are forces out there determined to inflict their agenda on America through the courts. It's essential that we be

⁹ Jill Burke, *Women's Shelter Challenges Anchorage's Non-Discrimination Law*, KTUU (Sept. 13, 2018), *supra* note 7.

¹⁰ https://www.hud.gov/LGBT_resources.

¹¹ Sean Maguire, *Anchorage attorney faces discrimination complaint while defending faith-based homeless shelter*, KTUU (July 9, 2018), available at <https://www.ktuu.com/content/news/Anchorage-attorney-faces-discrimination-complaint-while-defending-faith-based-homeless-shelter--487725491.html>.

¹² *Alliance Defending Freedom*, SOUTHERN POVERTY LAW CENTER, available at <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.

¹³ *Lawrence v. Texas*, 2003 WL 367566 (U.S.) (U.S. Amicus Brief, 2003).

¹⁴ *A.P. Garçon Nicot v. France*, Written Observations of Third Party Intervener: ADF International (July 1, 2015), available at <http://adfinternational.org/wp-content/uploads/2018/01/AP-and-others-v-France-ECHR-brief.pdf>.

¹⁵ Kevin Rector, *Therapy to Change Sexual Orientation at Center of Debate in Maryland*, THE BALTIMORE SUN (May 11, 2014), available at <https://www.baltimoresun.com/features/gay-in-maryland/gay-matters/bs-md-gay-therapy-fight-20140511-story.html>.

¹⁶ Alan Sears & Craig Osten, *The Homosexual Agenda: Exposing the Principal Threat to Religious Freedom Today*, B&H Publishing Group (2003).

¹⁷ Alliance Defending Freedom, *Kevin Clarkson*, Testimonials (2019), available at <https://www.adflegal.org/detailspages/testimonials-details/kevin-clarkson>.



there to defend our beliefs.”¹⁸ To be clear, the “agenda” to which Mr. Clarkson refers is the simple wish of LGBT people for equal treatment under law and the opportunity to participate in society free of pervasive discrimination, just as others wish to do. If confirmed to the position of Attorney General, no one can expect him suddenly to abandon ADF’s crusade.

Indeed, beyond his collaborations with ADF, Mr. Clarkson has spent much of his career working to undermine the legal protections of LGBT families. He was the attorney for North Star Civil Rights Defense Fund, Inc. and Marriage Law Project¹⁹ on an amicus brief in *Alaska Civil Liberties Union v. State of Alaska*.²⁰ This case involved an equal protection challenge seeking equal benefits for public employees with a same-sex domestic partner who were denied any way to qualify for family benefits, unlike their coworkers with a different-sex partner who could qualify by marrying. In his brief, Mr. Clarkson argued that public employees with a same-sex partner must remain ineligible for family health insurance and other employment benefits because benefits and marital status are “inseparable” and same-sex couples had no valid right to marry.²¹ In other words, Mr. Clarkson not only worked to make sure that Alaska didn’t recognize the fundamental right to marry of lesbian, gay and bisexual Alaskans, but then worked to make sure that they could not have legal protections for their families through any alternate legal status.

Mr. Clarkson was also the attorney of record for Defense of Marriage Fund in *Li v. State*, arguing against the recognition of same-sex couples’ marriages from an Oregon County that allowed them.²² Mr. Clarkson also argued a case on behalf of an Alaskan landlord who claimed a religious right to turn away unmarried couples, contrary to controlling Alaska Supreme Court precedent.²³ After losing in the Superior Court, he appealed to the Alaska Supreme Court, asserting that “there is no strong public policy to eliminate” discrimination against unmarried couples in the rental housing market, despite the Supreme Court already having authoritatively rejected similar arguments.²⁴ He acknowledged that the exclusion of

¹⁸ Alliance Defending Freedom, *Man of the Hours: An Alaska Attorney Brings in a Huge Return on His ADF Investment*, Alliance Profile, available at <http://www.adflegal.org/detailspages/faith-and-justice-details/man-of-the-hours>.

¹⁹ The Marriage Law Project is located at the Columbus School of Law at The Catholic University of America in Washington, D.C., and its mission is to oppose marriage equality for same-sex couples. North Star Civil Rights Defense Fund is an Alaska organization which “opposes any form of judicially mandated recognition of homosexual partnering in lieu of or as an alternative to traditional marriage.” See Mr. Clarkson’s amicus brief cited *infra* note 21.

²⁰ *Alaska Civil Liberties Union v. State*, 122 P.3d 781 (Alaska 2005).

²¹ Brief of Amici Curiae North Star Civil Rights Defense Fund, Inc. et al., in *ACLU v. State*, No. S-10459, 2002 WL 33456614, at *2 (Aug. 5, 2002).

²² *Li v. State*, 338 Or. 376, 110 P.3d 91 (2005), abrogated by *Obergefell v. Hodges*, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).

²³ *Thomas v. Anchorage Equal Rights Comm’n*, 102 P.3d 937 (Alaska 2004).

²⁴ Petition for Writ of Certiorari, *Bubna v. Anchorage Equal Rights Com’n*, Case No. 04-1146, 2005 WL 474026, *6-7 (Feb. 23, 2005).



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unmarried couples from renting an apartment is discrimination, but deemed it not discriminatory enough for the civil rights law to be enforceable against a religious objection.²⁵ The Alaska Supreme Court rejected Mr. Clarkson's extreme religious exemption arguments and again affirmed the validity of the fair housing law.²⁶

Mr. Clarkson is also a frequent contributor to the Anchorage Daily News. In a 2009 op-ed (which was updated in 2016), Mr. Clarkson opined that a local anti-discrimination ordinance, which prohibited discrimination based on sexual orientation or gender identity, did not have a broad enough religious exemption because, among other reasons, it applied to individuals engaged in commercial activity while treating religious organizations differently. Critically, however, the U.S. Supreme Court rejected precisely this type of religious exemption from civil rights laws fifty years ago, and reaffirmed that principle less than a year ago.²⁷

Furthermore, Mr. Clarkson has gone beyond religion-based arguments to make plain his disdain and willful ignorance about members of the transgender community, characterizing the Anchorage ordinance's inclusion of gender identity protections as "mean[ing] it covers men who dress and act like women and vice versa -- i.e., crossdressing, transvestitism (if that's the right 'ism')." ²⁸ He has tried to veil his contempt, saying "If this proposed ordinance simply prohibited discrimination on the basis of homosexuality, and then exempted persons or associations of persons based upon sincere religious conviction, you wouldn't hear me objecting to it." ²⁹ Mr. Clarkson apparently believes that anti-discrimination ordinances are fine—just so long as anyone who wishes to exclude or otherwise mistreat LGBT people for religious reasons is free to do so. As noted above, however, that is not how our civil rights laws have operated for the past half century. The legal framework should not change now simply because those seeking equal treatment are a minority in their gender identity or their sexual orientation.

²⁵ *Id.*

²⁶ *Thomas v. AERC*, 102 P.3d at 937.

²⁷ *Masterpiece Cakeshop v. Colorado Civil Rts. Com'n*, 138 S.Ct. 1719, 1727 (2018) ("while 'religious and philosophical objections [to same-sex couples marrying] are protected, it is a general rule that such objections do not allow business owners and other actors in the economy and in society to deny protected persons equal access to goods and services under a neutral and generally applicable public accommodations law") (citing *Newman v. Piggy Park Enterprises, Inc.*, 390 U.S. 400, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968)).

²⁸ Kevin Clarkson, *Individuals Have Rights Like Religious Groups*, ANCHORAGE DAILY NEWS (June 5, 2009, updated Sept. 27, 2016), available at <https://www.adn.com/voices/article/individuals-have-rights-religious-groups/2009/06/05/>.

²⁹ *Id.*



Approval of this appointment would disserve the people of Alaska

As noted above, Alaskans strongly reject anti-LGBT discrimination.³⁰ Mr. Clarkson promised in his Senate hearing that, if confirmed, he would respect the law rather than following his personal views.³¹ But he has shown, through his actions and his writings, the depth of his personal animus toward LGBT people and their families. It is impossible to believe that anyone could spend their entire career zealously opposing the equality and inclusion of a particular minority group, and then turn on a dime and enforce their right to equal protection of the laws, as the Alaska and United States Constitutions require. Moreover, given Mr. Clarkson's long, official devotion to ADF's discriminatory mission, it would be impossible for the LGBT community and many others to have confidence that he would serve in the impartial manner to which all Alaskans are entitled.

While the religious beliefs of all people are firmly protected by the Constitution, that does not give anyone a license to discriminate. Mr. Clarkson has been a top defender of discrimination in the causes he's championed. His weaponization of the First Amendment against LGBT people, his staunch opposition to marriage equality, and his personal writings show an animus towards LGBT people that cannot be reconciled with the position of Attorney General. We strongly urge you to oppose his confirmation.

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 Elias Rojas, Board President at Alaskans Together For Equality, at (907) 382-6153 or via email at alaskanstogether@gmail.com.

Very truly yours,

Alaskans Together For Equality
Identity, Inc.
PFLAG Anchorage
Lambda Legal Defense and Education Fund, Inc.

cc: Alaska State House Judiciary Committee Members

³⁰ Mallory & Sears, *Employment Discrimination Based on Sexual Orientation and Gender Identity in Alaska*, *supra* note 1, at pp. 1, 2, 6 (reporting public support among Alaskans for LGBT employment protections at 79% as of 2011).

³¹ Becky Bohrer, *Alaska Attorney General Says He Can Set Aside Personal Views*, THE ASSOCIATED PRESS (Jan. 29, 2019), available at <https://www.seattletimes.com/seattle-news/northwest/alaska-attorney-general-says-he-can-set-aside-personal-views/>.



House Judiciary Committee
Alaska State Capitol
Juneau, AK 99081

Re: Nomination of Kevin Clarkson for Attorney General

February 25, 2019

Dear committee members:

Thank you for the opportunity to testify today. I am writing to voice Planned Parenthood's strong opposition to the nomination of Kevin Clarkson for Alaska Attorney General. We do not trust he is qualified to uphold the state Constitution. Alaskans deserve an Attorney General who will advocate for the constitutionally-protected rights of all people, not elevate one group's rights over all others.

Throughout his legal career, Mr. Clarkson has elevated religious freedom rights above other basic human rights and needs, like creating a family with the person you love and controlling one's own body free of discrimination. Mr. Clarkson has consistently shown a disregard for the reproductive and sexual health of Alaskans, as well as a disregard for the state's Constitution. He has spearheaded unsuccessful lawsuits supporting laws that would have rolled back the right to privacy for Alaskans. Each of these anti-abortion laws were correctly deemed unconstitutional by the state Supreme Court.

Mr. Clarkson was also involved in the more recent unpopular fight to bar qualified Planned Parenthood educators from Alaska public schools, despite overwhelming public support for comprehensive sex education from educators, parents and students. The initial effort began in the [Sitka School District](#) by a parent Mr. Clarkson's law firm represented. Working to ban qualified sexual health educators from providing instruction in schools when invited does deny students' rights to knowledge and medically-accurate information they need to stay healthy and safe.

In addition, Mr. Clarkson has an unacceptable record of opposing equal rights for members of the lesbian, gay, bisexual, transgender and queer, or LGBTQ, community. Most notably, he supported an amendment to the state Constitution to ban same-sex marriage.

Alaskans deserve an Attorney General who will protect their basic human rights and uphold their legal protections, regardless of their own ideological agenda. Mr. Clarkson's track record of opposing such basic protections demonstrate that he is unfit for this position and cannot be trusted to uphold the state Constitution. Not to mention he received the [lowest rating](#) among his colleagues out of eight applicants to a vacant seat on the state Supreme Court.

Alaska has already spent millions of state dollars trying to defend unconstitutional laws in court. With Mr. Clarkson as Attorney General we can expect more of the same, which the state cannot afford. Mr. Clarkson is too extreme for Alaska and I urge the committee to reject his nomination.

Thank you for your thorough review of his qualifications and for the opportunity to offer comments.

Sincerely,

Alyson Currey
Alaska Legislative Liaison
Planned Parenthood Votes Northwest & Hawaii