

AFJ NOMINEE REPORT

LEONARD STEVEN GRASZ



U.S. Court of Appeals for the Eighth Circuit

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INTRODUCTION

On August 3, 2017, President Trump nominated Leonard Steven “Steve” Grasz, a former Chief Deputy Attorney General of Nebraska, to serve as a federal judge on the Court of Appeals for the Eighth Circuit. Grasz is the President’s third nominee to that court, along with David Stras and Ralph Erickson.¹ Grasz is nominated to fill the seat of former Chief Judge William J. Riley, who took senior status on June 30, 2017.

Grasz’s record is deeply concerning, particularly his opposition to the rights of women and the LGBTQ community. Alliance for Justice strongly opposes Grasz’s nomination.

Grasz’s nomination is in keeping with President Trump’s promise to name candidates to the federal judiciary who are hostile to *Roe v. Wade*.² Notably, Grasz has compared the “personhood” of fetuses to the civil rights of Native and African Americans.³ Moreover, since August 2015, Grasz has served on the Board of the Nebraska Family Alliance, and is currently a director.⁴ The Family Alliance has celebrated the mass closings of clinics that offer women’s reproductive services,⁵ condemned Supreme Court decisions that protect women’s rights,⁶ and claimed that abortion rights “put[] women’s lives at risk.”⁷ As an attorney, Grasz fought

vigorously against women’s reproductive rights. He defended Nebraska’s unconstitutional statute in *Stenberg v. Carhart*,⁸ and sought to deny Medicaid coverage, as required by federal law, to a woman who sought to terminate her pregnancy because she had been raped.⁹

Grasz has argued with equal enthusiasm against LGBTQ equality. In 2013, he proposed an Amendment to the Omaha City Charter that would have allowed employers to discriminate against LGBTQ people in hiring.¹⁰ While Grasz was on the board, the Family Alliance opposed legislation to “[p]rohibit discrimination based upon sexual orientation and gender identity” in the workplace by arguing that the terms “sexual orientation” and “gender identity” describe “behaviors,” rather than “traits” like race.¹¹

Among the most disturbing content in the Family Alliance’s written materials are articles supporting the cruel practice of conversion therapy.¹² The Alliance has claimed that “[a] generation of children is being raised to believe in the social construct of a gender spectrum, instead of the biological reality of male and female. This is a trend that should be rejected at every level.”¹³ To that end, the Family Alliance also signed an amicus brief in

⁸ *Stenberg v. Carhart*, 530 U.S. 914, 945–46 (2001).

⁹ See *Little Rock Family Planning Servs., P.A. v. Dalton*, 60 F.3d 497 (8th Cir. 1995); see also Paul Hammel, *Accusation Called ‘Unfounded’*, OMAHA WORLD-HERALD (Oct. 1, 1994).

¹⁰ See Proposed Amendment to Omaha Charter Section 8, 8.02A: *Religious Freedom and Rights of Conscience* (2013); see also City of Omaha Charter Study Review Convention, Testimony, 147–48 (Dec. 3, 2013).

¹¹ See Jake Bliss, *Sexual Orientation, Gender Identity, and Race: Are They Three of a Kind?*, NEBRASKA FAMILY ALLIANCE (April 7, 2017), <https://nebraskafamilyalliance.org/sexual-orientation-gender-identity-race-three-kind/>.

¹² See Paul Weber, *How Jayson Found Help for Unwanted Same-Sex Attraction*, NEBRASKA FAMILY ALLIANCE (Aug. 4, 2017), <https://nebraskafamilyalliance.org/jayson-counseling-same-sex-attraction/>; see also Nate Grasz, *Legislation Criminalizing Conversion Therapy Sweeping the Nation*, NEBRASKA FAMILY ALLIANCE (July 21, 2017), <https://nebraskafamilyalliance.org/legislation-criminalizing-conversion-therapy-sweeping-nation/>.

¹³ See *School Defends Controversial ‘Transition Ceremony’ in Kindergarten Classroom*, NEBRASKA FAMILY ALLIANCE (August 29, 2017), <https://nebraskafamilyalliance.org/school-defends-controversial-transition-ceremony-kindergarten-classroom/>.

¹ David Stras, ALLIANCE FOR JUSTICE (May 12, 2017), <https://www.afj.org/wp-content/uploads/2017/08/AFJ-Report-David-Stras.pdf>; Ralph Erickson, ALLIANCE FOR JUSTICE (July 24, 2017), <https://www.afj.org/wp-content/uploads/2017/07/AFJ-Erickson-Report.pdf>.

² See e.g., Dan Mangan, *Trump: I’ll appoint Supreme Court justices to overturn Roe v. Wade abortion case*, CNBC (Oct. 16, 2016), <http://www.cnbc.com/2016/10/19/trump-ill-appoint-supreme-court-justices-to-overturn-roe-v-wade-abortion-case.html>.

³ See Steven Grasz, *If Standing Bear Could Talk... Why There is No Constitutional Right to Kill a Partially-Born Human Being*, 33 CREIGHTON L. REV. 23, 28–29 (1999).

⁴ Sen. Comm. On the Judiciary, 115th Cong., Leonard Steven Grasz: Questionnaire for Judicial Nominees, Financial Disclosure Report.

⁵ Cheryl Sullenger, *Pro-Life Victory: A Record 87 Abortion Clinics Closed in 2013*, NEBRASKA FAMILY ALLIANCE (Dec. 23, 2013), <https://nebraskafamilyalliance.org/pro-life-victory-a-record-87-abortion-clinics-closed-in-2013/>.

⁶ Al Risowski, *What the Supreme Court’s Ruling on Texas HB2 Means for Nebraska*, NEBRASKA FAMILY ALLIANCE (June 27, 2016), <https://nebraskafamilyalliance.org/what-the-supreme-courts-ruling-about-texas-hb2-means-for-nebraska/>.

⁷ See *Abortion Harms Women*, NEBRASKA FAMILY ALLIANCE, <https://nebraskafamilyalliance.org/policy/life/abortion-harms-women/> (last visited Sept. 17, 2017).

Obergefell v. Hodges arguing that only the parenting of “a mother and a father[,]” rather than a same-sex couple, “provides children with the optimal environment for their cognitive, social, and emotional development from infancy through adolescence.”¹⁴

On another front, Grasz has vigorously advocated for the implementation of the death penalty in Nebraska, fighting to reinstate the practice even after the state legislature repealed capital punishment statutes.¹⁵

Grasz has also displayed troubling views regarding separation of church and state, raising questions about whether he will properly enforce Supreme Court precedent on the issue.

Indeed, for someone who wants to be a federal judge, responsible for fairly applying Supreme Court precedent, it is worrying that Grasz has not only disagreed with Supreme Court jurisprudence but has questioned the Court’s legitimacy when it issues decisions he personally disagrees with. For example, in 2012, following *National Federation of Independent Businesses v. Sebelius*, Grasz claimed, “[t]he Roberts opinion has itself placed the legitimacy of the court, as well as our freedom as Americans, in great jeopardy.” He said the Chief Justice (whom Grasz had publicly supported) “ushered in the ultimate transfer of limitless power to the federal government.”¹⁶

Moreover, Grasz, a member of the Federalist Society Nebraska Lawyers Chapter Steering Committee, in an article for the Federalist Society, lamented the influence of special

interest groups in the judicial selection process:

Observers state that there are a number of interest groups with potentially disproportionate influence including the ACLU, Planned Parenthood, the Nebraska Association of Trial Attorneys, the Nebraska Defense Counsel Association, and the Nebraska State Bar Association itself. As with the political influence discussed above, they say, the current system appears to foster disproportionate influence from special interest groups on one side of the political spectrum[.]¹⁷

Authoring a paper that opposes the involvement of special interest groups in judicial selection for the Federalist Society, a special interest group responsible for selecting lists of nominees for the President, is not only rank hypocrisy; it is highly telling.¹⁸ Grasz’s open disparagement of the “disproportionate influence” of groups that he perceives to be on one side of the ideological spectrum raises questions about his ability to act as an impartial and unbiased jurist.

Finally, it bears noting, Grasz’s nomination continues President Trump’s disturbing trend of nominating overwhelmingly white, male nominees to the federal judiciary. Following the retirement of Judge Diana Murphy, who Trump nominated David Stras to replace, Judge Jane Kelly remains the lone woman on the Eighth Circuit (she and

¹⁴ Brief for Amicus Curiae Organizations and Scholars of Gender-Diverse Parenting in Support of Respondents, *Obergefell v. Hodges*, 2015 U.S. Ct. Briefs LEXIS 1320 at *12–13 (Apr. 2, 2015), <https://nebraskafamilyalliance.org/wp-content/uploads/2015/04/Citizen-Link-Amicus-Brief.pdf>.

¹⁵ See Sen. Comm. On the Judiciary, 115th Cong., Leonard Steven Grasz: Questionnaire for Judicial Nominees, 47–48; see also NEBRASKANS FOR THE DEATH PENALTY, <http://www.voterepeal.com/>.

¹⁶ See Steve Grasz, *Roberts jeopardized legitimacy of high court*, LINCOLN JOURNAL STAR (July 10, 2012).

¹⁷ L. Steven Grasz, *Judicial Selection in Nebraska*, THE FEDERALIST SOCIETY WHITE PAPER (May 8, 2012), <https://www.fed-soc.org/publications/detail/judicial-selection-in-nebraska>.

¹⁸ See Melissa Maleske, *Trump Says Federalist Society Will Pick His Judges For Him*, LAW 360 (June 14, 2016), <https://www.law360.com/articles/806797/trump-says-federalist-society-will-pick-his-judges-for-him>.

Murphy were the only two female judges ever in the history of the Eighth Circuit). Last year, Senate Republicans refused to consider the nomination of Assistant U.S. Attorney Jennifer Puhl for the Eighth Circuit, despite bipartisan support from her home-state senators and the unanimous approval of the Judiciary Committee. Of the three vacancies on the Eighth Circuit, President Trump has nominated white men to fill them all.

BIOGRAPHY

Steve Grasz graduated with a degree in Agriculture from the University of Nebraska-Lincoln in 1984. After graduating, Grasz spent a year working as a legislative assistant for Republican Congresswoman Virginia Smith.

In 1985, Grasz began attending the University of Nebraska College Of Law.¹⁹ During law school, he took a leave of absence to work on the Attorney General campaign of his future boss, Don Stenberg, as a state campaign coordinator. While Stenberg lost that election in the Republican primary, he was eventually elected Attorney General of Nebraska in 1990. Grasz returned to law school and obtained his J.D. in 1989. He then joined the Omaha firm Kutak Rock LLP (formerly Kutak, Rock and Campbell) as an associate.

In 1991, Grasz joined the Nebraska Attorney General's Office where he served as Don Stenberg's Chief Deputy Attorney General until 2002.²⁰ During his tenure as Chief Deputy, Grasz represented the State of Nebraska

before the Supreme Court in *Stenberg v. Carhart*.²¹ Grasz also authored briefs in multiple other Supreme Court, federal Court of Appeals, and State Supreme Court cases, and "researched and wrote more than 80 published Attorney General Opinions as well as many unpublished confidential opinions."²²

In May 2002, Grasz left the Nebraska Attorney General's Office and joined Husch Blackwell LLP in Omaha, where he has been Senior Counsel since 2013. Grasz's practice specializes in civil and appellate litigation and administrative law.²³

LEGAL AND OTHER VIEWS

I. REPRODUCTIVE RIGHTS

Grasz has fought against reproductive rights for decades. His academic writings and interviews make clear his strong opposition to a woman's right to decide whether to have an abortion. And, in his role as Chief Deputy Attorney General of Nebraska, Grasz defended the constitutionality of laws banning abortion procedures.²⁴ During that time, Grasz wrote opinions defending laws that

²¹ *Stenberg*, 530 U.S. at 914.

²² Sen. Comm. On the Judiciary, 115th Cong., Leonard Steven Grasz: Questionnaire for Judicial Nominees, 46-47, 55.

²³ *Id.* at 44-45.

²⁴ See *Constitutionality of a Statutory Ban on "Partial-Birth" Abortions in Nebraska*, Neb. Op. Att'y Gen. No. 96043, 1996 WL 281882 (May 29, 1996).

¹⁹ Sen. Comm. On the Judiciary, 115th Cong., Leonard Steven Grasz: Questionnaire for Judicial Nominees, 1.
²⁰ *Id.* at 2.

prohibited the use of public funds for state grants to organizations that provided abortion-related services,²⁵ prohibited insurance paid with public funds from paying for a “selective reduction” abortion to enhance the medical prospects for the remaining fetuses,²⁶ and banned the use of tissue and organs from aborted fetuses for research.²⁷ His office also fought the federal mandate requiring public financing for abortions for low-income patients who are victims of rape and incest.²⁸

The Eighth Circuit is especially vulnerable to Grasz’s views on reproductive rights. Arkansas, Missouri, and South Dakota have all recently passed or attempted to pass bills limiting the right to have an abortion.²⁹

Rights of Fetuses

In 1999, Grasz wrote an article for Creighton Law Review, “If Standing Bear Could Talk. . . Why There is No Constitutional Right to Kill a Partially-Born Human Being.”³⁰ In that article Grasz attempted to compare the denial of civil rights to Native Americans to the denial of civil rights to aborted fetuses. Grasz asked whether aborted fetuses should be considered “persons” under federal law based on the precedent of the *Standing Bear v. Crook* case that recognized the personhood of Native Americans:

It was not until 1879 that a federal court held, in the historic case of *United States ex rel. Standing Bear v. Crook*, that

²⁵ *Constitutionality of Amendment Prohibiting Use of Public Trust Funds to Award Grants to Entities Providing Abortion-Related Services*, Neb. Op. Att’y Gen. No. 98021, 1998 WL 141371 (Mar. 30, 1998).

²⁶ *Selective Reduction Abortion – Insurance Coverage*, Neb. Op. Att’y Gen. No. 99005, 1999 WL 91937 (Feb. 19, 1999).

²⁷ *Legality of a Statutory Ban on the Use of Tissue and Organs from Aborted Human Infants for Research and Experimentation*, Neb. Op. Att’y Gen. No. 00006, 2000 WL 150959 (Feb. 2, 2000).

²⁸ See Hammel *supra* note 9; see also Leslie Boellstorff, *Vote Boosts Nebraska Abortion Fight*, OMAHA WORLD HERALD (Aug 4, 1995).

²⁹ *Legislative Tracker: Dilation and Evacuation Bans*, REWIRE (last updated Aug. 17, 2017), <https://rewire.news/legislative-tracker/law-topic/dilation-and-evacuation-bans/>.

³⁰ Steven Grasz, *supra* note 3.

Native Americans were “persons” for purposes of federal law. Now, 120 years later, some of the same legal arguments that were made in an attempt to deny civil rights protections to Standing Bear and other Native Americans are once again being made to deny legal protection to other vulnerable human beings. This time the victims are partially-born children, delivered up to their head and dangling just inches from complete independence. Once again, the threshold legal issue which must be addressed is whether such children are “persons” for purposes of federal law.³¹

Grasz’s article makes the case that “birth,” which to Grasz is defined by whether or not the fetus is located “within the uterus” without regard to time or viability, is the moment when personhood is reached.³² Moreover, he claims that this definition of personhood was instructed by the precedent set by the Supreme Court in *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* not finding personhood status for the “unborn.” The article admits that it is making a semantic distinction, but claims that distinction is following Supreme Court precedent:

[T]he [Supreme] Court has arbitrarily chosen birth, not viability, as the thaumaturgical moment when a child gains the constitutional status of personhood. . . .Abortion jurisprudence is, to a significant extent, a word game. In a legal

³¹ *Id.* at 24.

³² See *id.* at 29–30.

context where a child is a non-person one minute and a person the next, terminology and definitions are of critical importance.³³

Grasz concludes that this personhood movement is one in a long line of personhood movements that went initially unrecognized by the courts. Grasz claims that the denial of civil rights to the partially-born is the latest case in the American history of civil rights. Accordingly, Grasz also compares the pursuit of these rights to the emancipation movement for American slaves:

[C]ourts have faced similar questions throughout the history of the development of civil rights in the United States. In 1856, the United States Supreme Court held that a “free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a ‘citizen’ within the meaning of the Constitution of the United States and ‘the special rights and immunities guaranteed to citizens do not apply to them.’”³⁴

Grasz also argues that the practical impact of *Roe* has been an increase in abortions and the murder of newborn babies. He goes as far as claiming that the rationales underlying *Roe* are akin to those that lead to neonaticide:

Shocking cases of “neonaticide,” or the killing of newborn children, have come to light in recent years across the United States. . . Newsweek magazine quotes a psychiatry professor as saying, “the mother who kills a newborn. . . doesn’t see it as a human or a child. . . They think of it as a foreign body that has passed through them.” Although, this thinking

may be consistent with the reasoning of *Roe*, the practice of neonaticide is still a criminal act. According to the Federal Bureau of Investigation statistics, the number of children murdered, under a week old, has increased ninety-two percent since 1973 - the year *Roe* was decided.³⁵

Nebraska Family Alliance

Grasz is a member of the board of directors of the Nebraska Family Alliance – a religious-based organization affiliated with Focus on the Family that has advocated extensively against reproductive rights. And his son, Nate Grasz, serves as the organization’s policy director. The Family Alliance condemned the Supreme Court’s decision in [Whole Women’s Health v. Hellerstedt](#), which invalidated laws in Texas that unduly burdened women’s rights.³⁶ The Nebraska Family Alliance also continues to propagandize that advocating for legalized abortion “does put[] women’s lives at risk,” while ignoring the risks of pregnancy generally.³⁷

Litigation

Through his work in the Nebraska Attorney General’s Office, Grasz fought against the rights of women.

For example, in [Little Rock Family Planning Servs., P.A. v. Dalton](#), Grasz fought efforts by a woman to obtain reimbursement under Medicaid for the costs of her abortion when the pregnancy was the result of rape. The state of Nebraska

³³ *Id.* at 30.

³⁴ *Id.* at 28 (quoting *Dred Scott v. Sandford*, 60 U.S. 393, 393 (1856) (from syllabus)).

³⁵ *Id.* at 37.

³⁶ Risowski, *supra* note 6.

³⁷ NEBRASKA FAMILY ALLIANCE, *supra* note 7.

stipulated that no state funds would be used to pay for abortions except to save the life of the mother, despite the fact that federal law bars states from denying abortion funding to low-income patients who are victims of rape or incest. The plaintiff had filed an action for declaratory and injunctive relief, alleging that the state regulation was inconsistent with federal law, which the district court granted. In a consolidated appeal, the Eighth Circuit affirmed the ruling. Grasz's office was also accused by the Omaha abortion clinic of using "delaying tactics" to fight the federal mandate.³⁸

Moreover, as Chief Deputy Attorney General, Grasz represented the State of Nebraska in [Stenberg v. Carhart](#).³⁹ The case involved a Nebraska abortion ban that "cover[ed] not just the dilation and extraction (D&X) procedure, but also the dilation and evacuation (D&E) procedure."⁴⁰ After the law was struck down by the district court, the Eighth Circuit upheld the decision, finding that Nebraska's statute was so broadly written that it could also be read to ban abortion procedures other than "partial-birth abortion," and therefore imposed an undue burden on women seeking an abortion.⁴¹ Despite Grasz's argument to read the law more narrowly, the court declined to "twist the words of the law and give them a meaning they cannot reasonably bear."⁴² Following the Eighth Circuit ruling, Mr. Grasz stated, "[w]e can't lose this case. If we win, it will set a barrier to infanticide. And if we lose it will turn the public against abortion and help ensure that the next Justices have a different view."⁴³

In defense of the Nebraska law not providing an exception for the health of the mother, Grasz

³⁸ See Hammel, *supra* note 9.

³⁹ *Stenberg*, 530 U.S. at 914.

⁴⁰ *Id.* at 948.

⁴¹ See *Carhart v. Stenberg*, 192 F.3d 1142, 1150–51 (8th Cir. 1999).

⁴² See *id.* at 1150.

⁴³ David Savage, *High Court to Hear Arguments in Abortion Case*, L.A. TIMES (Apr. 24, 2000).

stated:

[The Nebraska state legislature] didn't want to just put something on the books that would look good but not have any real effect. And, in order to do that, they made a conscious decision to leave out the health exception. The courts have basically interpreted those health exceptions so broadly that the exception swallows the rule.⁴⁴

The Supreme Court affirmed the Eighth Circuit, holding that the Nebraska abortion ban was unconstitutional because it caused doctors to "fear prosecution, conviction, and imprisonment" and did not provide an exception for the health of the woman.⁴⁵ Furthermore, the lack of a health exception and the vagueness of the statute's restrictions imposed an undue burden on a woman's right to have an abortion.

II. LGBTQ EQUALITY

Grasz has defended laws that discriminate against the LGBTQ community through his work at the Nebraska Attorney General's Office and as a private citizen.

In 2013, Grasz served on the City of Omaha Charter Review Convention – a committee responsible for reviewing and recommending amendments to the city charter. Grasz used his position to promote an amendment that would have allowed for discrimination by employers against LGBTQ employees under the guise of

⁴⁴ *STENBERG V. CARHART*, 530 U.S. 914 (2000) (Voices of American Law, Duke University School of Law 2007).

⁴⁵ See *Stenberg*, 530 U.S. at 945–46.

religious liberty.⁴⁶ When asked by a fellow convention member, “[w]ould this [amendment] in the city charter, would you say that this would create an exemption for business owners who don’t want to hire gays and lesbians to circumvent or do any end run around the city human rights ordinance?” Grasz responded, “The basic answer to your question, [] is that a person’s religious civil rights would trump a city ordinance, if they had a sincerely held religious belief that was being violated. Yes.”⁴⁷

Moreover, as a director of the Nebraska Family Alliance, Grasz has proven his disdain for the rights of the LGBTQ community. Perhaps most disturbing is Nebraska Family Alliance’s support for conversion therapy.⁴⁸ In defense of this barbaric practice, the Alliance claims that “[c]onversion therapy bans for minors trample on parental rights and decrease options for young people struggling with unwanted same-sex attraction or gender dysphoria.”⁴⁹ In response to evidence that conversion therapy is dangerous and abusive, the Family Alliance claims that “the science is far from settled and members of the [LGBTQ] movement can’t seem to decide if people are ‘born that way’ or if sexuality and gender is fluid and changeable.”⁵⁰ As recently as August 24, 2017 the Family Alliance posted an article describing state conversion therapy bans as “a stunning attack on parental rights and religious freedom.”⁵¹

The Family Alliance this year opposed LB 173, a statute proposed in Nebraska to “[p]rohibit discrimination based upon sexual orientation and gender identity” in the workplace.⁵² In

the article “Sexual Orientation, Gender Identity, and Race: Are They Three of a Kind?” the Family Alliance argues that the terms “sexual orientation” and “gender identity” describe “behaviors,” rather than “traits” like race.⁵³ The article posits that “sexual orientation and gender identity are inherently ambiguous terms, whereas race is not,” as a rationale for not ensuring equality for LGBTQ Nebraskans in the workforce. The Family Alliance has also shown hostility towards the rights of transgender students and expressed alarm at trans students coming out in the school environment.⁵⁴

As Chief Deputy Attorney General of Nebraska, Grasz opposed the recognition in Nebraska of same-sex marriages contracted in other states.⁵⁵ An opinion signed by Grasz states, “[t]here is, however, a grave danger that under [Nebraska state law], the Nebraska Supreme Court might well recognize same-sex marriages performed in Hawaii as being valid in Nebraska, even though such a result is not required under the U.S. Constitution.”⁵⁶ The opinion goes on to explain ways around the “grave danger” of acknowledging same-sex marriages.⁵⁷

Unsurprisingly, after Congress passed the Defense of Marriage Act (DOMA), Grasz wrote an opinion suggesting that Nebraska pass legislation “expressly prohibiting or excluding recognition of same-sex marriages” in order to ensure Nebraska

46 See Proposed Amendment to Omaha Charter Section 8, 8.02A: *Religious Freedom and Rights of Conscience* (2013).

47 City of Omaha Charter Study Review Convention, Testimony, 147–48 (Dec. 3, 2013).

48 Nate Grasz, *supra* note 12.

49 See *id.*

50 See *id.*; but see *Just the Facts about Sexual Orientation and Youth*, AM. PSYCHOLOGICAL ASSOC., ET AL., <http://www.apa.org/pi/lgbt/resources/just-the-facts.aspx>.

51 Weber, *supra* note 12.

52 LB 173, Prohibit Discrimination Based Upon Sexual Orientation and Gender Identity, available online at http://nebraskalegislature.gov/bills/view_bill.php?DocumentID=30802.

53 Bliss, *supra* note 11.

54 *School Defends Controversial “Transition Ceremony” in Kindergarten Classroom*, NEBRASKA FAMILY ALLIANCE (Aug. 29, 2017), <https://nebraskafamilyalliance.org/school-defends-controversial-transition-ceremony-kindergarten-classroom/>.

55 *Validity in Nebraska of Same-Sex Marriages Contracted in Another State*, Neb. Op. Att’y Gen. No. 96025, 1996 WL 132907 (Mar. 25, 1996).

56 *Id.* at 6.

57 See *id.*

would be protected under DOMA.⁵⁸ Nebraska did eventually pass a constitutional amendment prohibiting legal recognition of same-sex marriage, Initiative 416, which Grasz defended.⁵⁹

Further, in 1999, Grasz represented Nebraska as amicus curiae in a suit regarding marriage licenses for same-sex couples.⁶⁰ In *Baker v. Vermont*, same-sex couples were denied marriage licenses, denied marriage benefits, and sued the state. Legal marriage at that time in Vermont was limited to unions between a man and a woman, which applied to the state statute controlling marriage records and licensure.⁶¹ Grasz, on behalf of Nebraska, urged the Vermont Supreme Court to continue to recognize the traditional definition of marriage. The Vermont court ultimately held that the denial of marriage benefits to the couples violated Vermont's constitution.

Also illustrative is *In re Adoption of Luke*. There, Grasz argued before the Nebraska Supreme Court that state law did not allow an unmarried lesbian couple to adopt a child.⁶² At that time, same-sex marriage was illegal and unrecognized in Nebraska. The boy's biological mother, one of the women in the relationship, applied jointly with her partner to adopt the child. The county court in Nebraska denied the application, keeping the partner from becoming a legal parent. The court took this action despite the couple's decision years in advance to have the child through artificial insemination and raise him together. Grasz stated in an interview that, "[t]he state's adoption law was not written with the intent to sanction gay adoption."⁶³

⁵⁸ *Same-Sex Marriage – Impact of Baehr v. Lewin and the Defense of Marriage Act on Nebraska Law*, Neb. Op. Att'y Gen. No. 96090, 1996 WL 739040 (Dec. 30, 1996).

⁵⁹ Nancy Hicks, *ACLU Will Challenge Initiative 416 in Court*, LINCOLN JOURNAL STAR (Nov. 19, 2000).

⁶⁰ *Baker v. Vermont*, 744 A.2d 864 (Vt. 1999).

⁶¹ See *id.* at 868.

⁶² See *In re Adoption of Luke*, 640 N.W.2d 374 (2002).

⁶³ Robynn Tysver, *Court to Tackle Gay-Adoption Question*, OMAHA WORLD-HERALD (Oct. 3, 2001).

On appeal the State argued that Nebraska's statute only addressed husbands, wives, and spouses, and therefore intended that only married couples could legally adopt.⁶⁴ The Nebraska Supreme Court agreed, claiming that the case merely turned on statutory interpretation, rather than on the rights of the plaintiffs.⁶⁵ Of course, since same-sex marriages were illegal in Nebraska, the statute's requirement left the couple without recourse.

III. DEATH PENALTY

Grasz was Assistant Secretary for Nebraskans for the Death Penalty Inc. and Nebraskans for Capital Punishment, Inc. from 2015 to March 2017.⁶⁶ In 2015, the Nebraska Legislature abolished the death penalty, overriding a veto by Governor Pete Ricketts. In response, Nebraskans for the Death Penalty organized a referendum petition to reinstate the capital punishment laws.⁶⁷

Grasz subsequently represented Nebraskans for the Death Penalty, Inc. before the Nebraska Supreme Court in *Hargesheimer v. Gale*.⁶⁸ The subject of *Hargesheimer* was a complaint filed by anti-death penalty proponents challenging the legality of Nebraskans for the Death Penalty's referendum petition.⁶⁹ The Nebraska Supreme Court found that the petition was legally filed, allowing the petition to take effect. As a result, the death

⁶⁴ See *In re Adoption of Luke*, 640 N.W.2d at 377.

⁶⁵ See *id.* at 379.

⁶⁶ Sen. Comm. On the Judiciary, 115th Cong., Leonard Steven Grasz: Questionnaire for Judicial Nominees, 3.

⁶⁷ Julie Bosman, *Nebraska to Vote on Abolishing Death Penalty After Petition Drive Succeeds*, NY TIMES (Oct. 16, 2015).

⁶⁸ *Hargesheimer v. Gale*, 881 N.W.2d 589 (Neb. 2016).

⁶⁹ See *id.*

penalty was reinstated in Nebraska.⁷⁰

IV. CHURCH AND STATE

Grasz has an expansive view of the role of religion in government. While serving in the Nebraska Department of Justice, Grasz petitioned the Nebraska State Board of Education to teach evolution as a theory, and not “objective fact.”⁷¹ Grasz argued that teaching evolution as fact could interfere with religious rights.⁷²

Also while Deputy Attorney General, Grasz opined on government-sponsored prayer in public institutions. In 1993, Grasz wrote an opinion defending the constitutionality of graduation invocations and benedictions at graduations for law enforcement training in Nebraska.⁷³ Similarly, Grasz has advocated for religion-specific, student-led prayers before school baccalaureate ceremonies and sports events.⁷⁴ After the Fifth Circuit Court of Appeals ruled that only nondenominational prayer was constitutional for official school functions, Grasz commented, “[i]t’s not government business to be writing the prayer for students.”⁷⁵ The State of Nebraska signed an amicus brief asking the Supreme Court to hear the case.⁷⁶ The Supreme Court disagreed with Grasz’s characterization, finding in [Santa Fe Independent School District v. Doe](#) that when students lead prayers at school functions, “the members of the listening audience must perceive the pregame message as a public

expression. . .”⁷⁷ Accordingly, such speech is government speech endorsing religion and unconstitutional.⁷⁸

Grasz has also advocated for “adult representatives of a Christian-based youth group” to meet with public middle and high school children for a mentorship program on school grounds during school hours.⁷⁹

V. MONEY AND POLITICS

While serving as Chief Deputy Attorney General, Grasz represented Nebraska in [State ex rel. Stenberg v. Moore](#).⁸⁰ In 1997, the Nebraska Legislature amended the Campaign Finance Limitation Act. Among other things, the Act prohibited a political group from making independent expenditures exceeding \$2,000 unless it filed a statement of intent to expend a specific amount at least 45 days before the election, and did not spend more than 120% of the projected amount. Challenging its own Legislature’s actions and the views of the Nebraska Secretary of State, the Nebraska Attorney General’s office disputed the constitutionality of these campaign finance reforms by arguing that the restrictions were not narrowly tailored. The Nebraska Supreme Court agreed, and the campaign finance reforms were struck down.

⁷⁰ Sen. Comm. On the Judiciary, 115th Cong., Leonard Steven Grasz: Questionnaire for Judicial Nominees, 47–8.

⁷¹ Scott Bauer, *State Board of Education Agrees, Says Evolution Should Be Taught as a Theory*, THE ASSOCIATED PRESS (June 11, 1999).

⁷² See *id.*

⁷³ *Graduation Invocations and Benedictions at the Nebraska Law Enforcement Training Center*, Neb. Op. Att’y Gen. No. 93056, 1993 WL 292824 (July 23, 1993).

⁷⁴ See Robynn Tysver, *Nebraska Joins Texas to Seek Prayer Ruling*, OMAHA WORLD-HERALD (Aug. 10, 1999).

⁷⁵ *Id.*

⁷⁶ Jill Zeman, *Nebraska Plays Role in Supreme Court School Prayer Case*, DAILY NEBRASKAN (Dec. 6, 1999).

⁷⁷ *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 307–08 (2000).

⁷⁸ See *id.*

⁷⁹ Erin Grace, *Christian Group’s School Access Debated in Elkhorn*, OMAHA WORLD-HERALD (Feb. 13, 2001).

⁸⁰ *State ex rel. Stenberg v. Moore*, 605 N.W.2d 440 (2000).

CONCLUSION

Steve Grasz's record shows his appointment to the Eighth Circuit Court of Appeals would be an abject disaster for LGBTQ and reproductive rights. Throughout his personal and professional life, Grasz has demonstrated his disdain for groups whose rights he would be responsible for protecting as a federal judge. He is an ideologue whose ultraconservative views on reproductive rights, LGBTQ issues, the separation of church and state, and capital punishment are incompatible with a fair conception of justice. His temperament is not suitable for a member of the federal judiciary. For the foregoing reasons, Alliance for Justice opposes Leonard Steven Grasz's nomination to the United States Court of Appeals for the Eighth Circuit.

