



### Matthew Kacsmaryk

President Trump nominated Matthew Kacsmaryk to serve on the U.S. District Court for the Northern District of Texas on September 7, 2017. Kacsmaryk is anti-choice.

#### Career

- Bachelor of Arts, Abilene Christian University, 1999<sup>1</sup>
- Juris Doctorate, University of Texas School of Law, 2003<sup>2</sup>
- Associate, Baker Botts, 2003-2008<sup>3</sup>
- Assistant U.S. Attorney, Northern District of Texas, 2008-2013<sup>4</sup>
- Deputy General Counsel, First Liberty Institute, 2013-present<sup>5</sup>

#### Record on Choice-Related Issues

##### Court Cases

- As deputy counsel for the conservative First Liberty Institute, Kacsmaryk represented several religious and religiously-affiliated institutions that opposed the Affordable Care Act's contraceptive-coverage policy. Kacsmaryk proclaimed successful lawsuits would "protect innocent life from conception to natural death"<sup>6</sup> and "defend unborn human life."<sup>7</sup>
- On behalf of the First Liberty Institute, Kacsmaryk also was part of an amicus brief filed on behalf of 43 Members of Congress in support of a Washington pharmacy that refused to carry emergency contraception.<sup>8</sup> Although state law allows pharmacists to refuse to fill a prescription themselves based on a religious belief, a pharmacy is required to fill all legal prescriptions. Dozens of complaints had been filed against this particular pharmacy for denying women access to care.<sup>9</sup>
  - In this same case, Kacsmaryk co-signed a brief that criticized the Ninth Circuit's decision in favor of Washington State, calling it "an unprecedented and dangerous intrusion"<sup>10</sup> and a radical departure from national norms.<sup>11</sup>
  - Kacsmaryk also blogged that the Supreme Court's denial of cert in the case meant the end of "an unbroken tradition of protecting conscientious objectors who cannot abide the government's mandate to kill, cut, or medicate another human being."<sup>12</sup>

##### Notable Information

- Kacsmaryk has disputed the legal foundation of Roe and argued that the legal right to abortion has weakened the institution of marriage. He summarized Roe as finding "an

unwritten ‘fundamental right’ to abortion hiding in the due process clause of the Fourteenth Amendment and the shadowy ‘penumbras’ of the Bill of Rights, a celestial phenomenon invisible to the non-lawyer eye.”<sup>13</sup>

- In a scathing article against equal marriage entitled *The Abolition of Man... and Woman*, Kacsmaryk wrote: “Sexual revolutionaries litigated and legislated to remove three pillars of marriage law: first, permanence; second, exclusivity; and third, procreation. The first pillar fell when California Gov. Ronald Reagan signed the Family Law Act of 1969, and 48 states followed with their own no-fault divorce statutes. The second pillar fell when the vast majority of states adopted versions of the 1971 Model Penal Code, which eliminated legal penalties for fornication and adultery. The third pillar fell when the Supreme Court declared unconstitutional nearly all restrictions on contraceptives and abortion in *Griswold v. Connecticut* (1965), *Eisenstadt v. Baird* (1965), *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992).”<sup>14</sup> He continued, “In this century, sexual revolutionaries are litigating and legislating to remove the fourth and final pillar of marriage law: sexual difference and complementarity.”<sup>15</sup> In closing, Kacsmaryk warned that, if in the *Obergefell* case, “five justices invent a constitutional right to same-sex ‘marriage,’” church leaders would face a “clash of absolutes” in other areas as well.<sup>16</sup>
- In an additional article decrying the Equality Act, Kacsmaryk wrote that the “Sexual Revolution... sought public affirmation of the lie that the human person is an autonomous blob of Silly Putty unconstrained by nature or biology, and that marriage, sexuality, gender identity, and even the unborn child must yield to the erotic desires of liberated adults.”<sup>17</sup>
- As deputy counsel for the Liberty Institute, Kacsmaryk joined a meeting in the summer of 2017 between the First Liberty Institute and the Trump Administration about efforts to reverse the Obama Administration’s contraceptive-coverage policy, which would erode the healthcare gains that millions of women have achieved under the Affordable Care Act.<sup>18</sup> In a press release, Kacsmaryk called for finalizing a new regulation that would end “the government’s effort to punish business owners and ministry leaders for following their religious beliefs and moral convictions.”<sup>19</sup> Subsequently, the Trump Administration issued an interim final rule that allows any employer to refuse to provide coverage of contraceptives on the basis of any religious belief or moral conviction.<sup>20</sup>
- Kacsmaryk has consistently opposed marriage equality and efforts to protect LGBT individuals from discrimination.
  - Although he disputed any “fundamental right” in *Roe*,<sup>21</sup> Kacsmaryk believes that the Obama Administration’s attempt to protect transgender students and similar local efforts “violated the free speech clause, ...the free exercise

clause, and...the 14th Amendment rights of parents to the care, custody, and management of their children.”<sup>22</sup>

- As deputy counsel for the First Liberty Institute, Kacsmaryk joined a brief in support of a baker who refused to provide a cake for a same-sex wedding ceremony.<sup>23</sup>
- When an HHS rule implementing Section 1557 of the Affordable Care Act (ACA) was released, Kacsmaryk expressed opposition to it because it included protections against discrimination on the basis of gender identity and reproductive-health choices. He said the new protections were on a “collision course with millennia-old religious beliefs” and alleged that they would force “faith-based providers, physicians, and practitioners [to] forfeit their deepest religious convictions to participate in federally funded programs.”<sup>24</sup>
- Kacsmaryk called efforts to add “sexual orientation” and “gender identity” to the Civil Rights Act<sup>25</sup> an attempt to “weaponize Obergefell” to “devour any preexisting constitutional rights that might impede absolute victory in the march for ‘marriage equality.’”<sup>26</sup>

- Kacsmaryk has been active in the conservative Federalist Society.<sup>27</sup>

December 4, 2017

## Notes

---

<sup>1</sup> President Donald J. Trump Announces Seventh Wave of Judicial Candidates, THE WHITE HOUSE, Sept. 7, 2017, at <https://www.whitehouse.gov/the-press-office/2017/09/07/president-donald-j-trump-announces-seventh-wave-judicial-candidates> (last visited Oct. 21, 2017).

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> First Liberty Institute, *Federal Court Grants Injunctive Relief: Christian And Missionary Alliance Ministries Not Forced To Dispense Abortion-Inducing Pill*, CISION PR NEWSIRE, Feb. 4, 2015, at <https://www.prnewswire.com/news-releases/federal-court-grants-injunctive-relief-christian-and-missionary-alliance-ministries-not-forced-to-dispense-abortion-inducing-pill-300030717.html> (last visited Oct. 17, 2017).

<sup>7</sup> First Liberty Institute, *Federal Court Grants Insight for Living Ministries Relief from Federal Abortion Pill Mandate Fines*, NEWS & COMMENTARY, Nov. 14, 2014, available at <https://firstliberty.org/newsroom/victory-federal-court-grants-insight-for-living-ministries-relief-from-federal-abortion-pill-mandate-fines/> (last visited Oct. 17, 2017).

<sup>8</sup> Brief of Amici Curiae 43 Members of Congress in Support of Petitioners, *Stormans, Inc. v. Wiesman*, 794 F.3d 1064 (9th Cir. 2015).

<sup>9</sup> Emma Green, *Even Christian Pharmacists Have to Stock Plan B*, THE ATLANTIC, June 29, 2016, at <https://www.theatlantic.com/politics/archive/2016/06/pharmacists-have-to-sell-emergency-contraceptioneven-if-it-violates-their-religious-beliefs/489182/> (last visited Nov. 17, 2017).

<sup>10</sup> Brief of Amici Curiae in Support of Petitioners at 16, *Stormans v. Wiesman*, 794 F.3d 1064 (9th Cir. 2015) (No. 15-862).

---

<sup>11</sup> Ibid at 14.

<sup>12</sup> Matthew Kacsmaryk, Defending Conscience Rights at Hacksaw Ridge and in the HHS Cases, FIRST THINGS, November 4, 2016, at <https://www.firstthings.com/blogs/firstthoughts/2016/11/defending-conscience-rights-at-hacksaw-ridge-and-in-the-hhs-cases> (last visited Oct. 17, 2017).

<sup>13</sup> Matthew Kacsmaryk, With new bill, US elitists plotting to weaponized gay ‘marriage’ and stamp out dissent, LIFE SITE News, Sept. 11, 2015, available at <https://www.lifesitenews.com/opinion/with-new-bill-us-elitists-plotting-to-weaponize-gay-marriage-and-stamp-out> (last visited Oct. 17, 2017).

<sup>14</sup> Matthew Kacsmaryk, The Abolition of Man...and Woman, NATIONAL CATHOLIC REGISTER, June 24, 2015, available at <http://www.ncregister.com/daily-news/the-abolition-of-man---and-woman> (last visited Oct. 20, 2017).

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Matthew Kacsmaryk, The Inequality Act, THE WITHERSPOON INSTITUTE, September 4, 2015, at <http://www.thepublicdiscourse.com/2015/09/15612/> (last visited Dec. 4, 2017).

<sup>18</sup> First Liberty Institute, First Liberty Institute Attorneys Meet with Executive Agency on Draft HHS Contraceptive Mandate Rule; Attorneys hope meeting with the Office of Management and Budget will help resolve years of litigation, PR NEWswire, July 24, 2017.

<sup>19</sup> Ibid.

<sup>20</sup> Alison Kodjak, Trump Guts Requirement That Employer Health Plans Pay For Birth Control, NPR SHOTS, Oct. 6, 2017, at <http://www.npr.org/sections/health-shots/2017/10/06/555970210/trump-ends-requirement-that-employer-health-plans-pay-for-birth-control> (last visited Oct. 17, 2017).

<sup>21</sup> Matthew Kacsmaryk, With new bill, US elitists plotting to weaponized gay ‘marriage’ and stamp out dissent, LIFE SITE News, Sept. 11, 2015, available at <https://www.lifesitenews.com/opinion/with-new-bill-us-elitists-plotting-to-weaponize-gay-marriage-and-stamp-out> (last visited Oct. 17, 2017).

<sup>22</sup> Leah Jensen, Parents Beat Back Obama’s Transgender Bathroom Mandate in Texas Schools, THE DAILY SIGNAL, July 24, 2016, at <http://dailysignal.com/2016/07/24/parents-beat-back-obamas-transgender-bathroom-mandate-in-texas-schools/> (last visited Oct. 21, 2016).

<sup>23</sup> Petitioners’ Opening Brief, Klein v. Oregon Bureau of Labor & Industries, (Or. Ct. App. 2016) (Nos. 44-14, 45-14).

<sup>24</sup> Matthew Kacsmaryk, Defending Conscience Rights at Hacksaw Ridge and in the HHS Cases, FIRST THINGS, November 4, 2016, available at <https://www.firstthings.com/blogs/firstthoughts/2016/11/defending-conscience-rights-at-hacksaw-ridge-and-in-the-hhs-cases> (last visited Oct. 17, 2017).

<sup>25</sup> S.1858 (114<sup>th</sup> Congress).

<sup>26</sup> Matthew Kacsmaryk, With new bill, US elitists plotting to weaponized gay ‘marriage’ and stamp out dissent, LIFE SITE News, Sept. 11, 2015, at <https://www.lifesitenews.com/opinion/with-new-bill-us-elitists-plotting-to-weaponize-gay-marriage-and-stamp-out> (last visited Oct. 17, 2017).

<sup>27</sup> Cameron Langford, Trump’s Texas Judicial Nominees Not Without Controversy, COURTHOUSE NEWS SERVICE Oct. 6, 2017, at <https://www.courthousenews.com/trumps-texas-judicial-nominees-not-without-controversy/> (last visited Oct. 17, 2017).