

AFJ NOMINEE REPORT

MARK NORRIS



U.S. District Court for the Western District of Tennessee

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INTRODUCTION

On March 18, 2017, Judge Daniel Breen, a federal district court judge in the Western District of Tennessee, assumed senior status. A few months later, on July 13, 2017, President Trump nominated Mark Norris, current Majority Leader of the Tennessee State Senate, to fill the vacancy.

Alliance for Justice does not customarily produce the same extensive research reports on potential district court judges that we produce for circuit court nominees, but in this case we have done so because Norris's record makes him an extreme outlier even among Trump nominees. Based on his record, particularly his tenure as a state senator, it is overwhelmingly clear that Mark Norris should not serve in a lifetime appointment to the federal bench.

Norris has spread offensive anti-refugee and anti-Muslim rhetoric, sought to undermine the rights of immigrants in Tennessee, and vigorously fought against LGBTQ equality and the right of women to decide whether to have an abortion. He has undertaken efforts to make it harder for African-American children to receive a quality education, made it more difficult for African-Americans, the elderly, and students to exercise their right to vote, undercut workers' rights and protections, and made it more difficult to hold corporations accountable when they break the law.

As a state senator, Norris has repeatedly demonstrated a disdain for the Constitution. Despite taking an oath "to support the Constitution of [Tennessee] and of the United

States,"¹ Norris has on many occasions supported unconstitutional actions, including the following:

- Norris filed a lawsuit trying to block the federal government from settling refugees in Tennessee, which even the state's Republican attorney general and Jeff Sessions's Justice Department said was baseless.
- Norris was instrumental in passing a law enhancing criminal sentences for undocumented immigrants in Tennessee, despite the fact that courts have struck down similar measures.²
- Norris supported legislation that directly conflicted with the Supreme Court's decision in *Obergefell v. Hodges* 135 S. Ct. 1732 (2015). Indeed, as one supporter of the bill noted, the legislation was passed to "compel courts to side with late Supreme Court Justice Antonin Scalia and his dissent."³
- Ignoring legal advice from the Republican state attorney general that *Obergefell* applied to state divorce and child custody proceedings, Norris tried to intervene in a matter in order to prevent a state court from applying *Obergefell*. Not only was Norris's legal position in direct conflict with Supreme Court

1 Oaths of Office, Tennessee Secretary of State, <https://sos.tn.gov/division-publications/oaths-office>.

2 Jake Lowary, *Bill gives judges in Tennessee power to use immigration status as felony sentencing enhancement*, THE TENNESSEAN (May 12, 2017), <http://www.tennessean.com/story/news/politics/2017/05/12/bill-gives-judges-tennessee-power-use-immigration-status-felony-sentencing-enhancement/318877001/>.

3 Jake Lowary, *Senate passes 'natural, ordinary meaning' bill slammed by LGBT groups as discriminatory*, THE TENNESSEAN (Apr. 27, 2017), <http://www.tennessean.com/story/news/politics/2017/04/27/senate-passes-natural-ordinary-meaning-bill-slammed-lgbt-groups-discriminatory/100976184/>.

precedent, the judge in the case noted that Norris's actions "constitute[d] an attempt to bypass the separation of powers provided for by the Tennessee Constitution."⁴

- Norris supported requirements that abortion providers must have hospital admitting privileges and abortion clinics must meet hospital-level surgical standards.⁵ The state dropped its defense to these unconstitutional laws after the Supreme Court struck down nearly-identical Texas laws in *Whole Woman's Health v. Hellerstedt*.⁶
- Norris supported the "Tennessee Infants Protection Act," which bans abortion after 20 weeks,⁷ ignoring the Republican state attorney general who advised that the bill was "constitutionally suspect."⁸

As a federal judge, Norris would be charged with faithfully applying Supreme Court precedent and federal laws. Given that Norris seems unable to uphold the oath he took as a state senator to uphold the U.S. Constitution as interpreted by the Supreme Court, AFJ has grave concerns about his willingness to respect the Constitution as a judge.

Finally, with regard to judicial temperament, there are serious concerns about Norris's statements and behavior. Norris has made ignorant and offensive comments about Muslims, suggesting that being Muslim was

synonymous with being a terrorist. He has bemoaned that, among refugees, there are too "few Syrian Christians."⁹ He has shown a disturbing practice of discounting facts that conflict with his ideological biases: for instance, dismissing analysts who explained why there were not more Christian refugees from Syria.¹⁰ He has justified his anti-refugee position on an alleged public health risk based on evidence not from a reputable health source, but from Breitbart News.¹¹ He has also argued that federal refugee resettlement imposes financial burdens on the state of Tennessee, using figures even the Republican governor has strongly refuted.¹²

Moreover, Norris regularly dismisses those who disagree with him, a disturbing trait for a potential federal judge. When Muslims in Tennessee raised concerns about the state's treatment of Muslims, Norris dismissed their concerns, saying "I understand that there are some groups that are paid to foment that kind of unrest."¹³ When Norris led an effort to give election officials the discretion to require proof of citizenship to vote, opponents argued that this would result in "racial profiling."¹⁴ Again, rather than attempting to

⁴ Jamie Satterfield, *Knox County Judge grants woman rights of 'husband' in Tennessee's first same-sex divorce case*, KNOXVILLE NEWS SENTINEL (May 10, 2017), <http://www.knoxnews.com/story/news/local/2017/05/10/knox-county-judge-grants-woman-rights-husband-tennessee-first-same-sex-divorce/314540001/>.

⁵ *Tenn. Women Lose with Clinic Closure*, CENTER FOR REPRODUCTIVE RIGHTS (Aug. 20, 2012), <https://www.reproductiverights.org/press-room/tennessee-trap-clinic-closure-mississippi>.

⁶ See *Adams & Boyle v. Slatery*, No. 3:15-cv-00705, (M.D. Tenn. Aug. 14, 2017), <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Docket-No-60.pdf>.

⁷ SB 1180 Tennessee Infants Protection Act, 2017-2018, 110th General Assembly, <https://legis-can.com/TN/bill/SB1180/2017>.

⁸ Office of the Attorney General, Opinion No. 17-24, Constitutionality of Proposed Legislation Related to Abortion (Mar. 31, 2017), <https://www.tn.gov/assets/entities/attorneygeneral/attachments/op17-024.pdf>.

⁹ Chas Sisk, *Tennessee Lawmakers Will Still Sue Over Refugees, Despite Trump's Promise to Shut Down Resettlement*, NASHVILLE PUBLIC RADIO (Nov. 18, 2016).

¹⁰ *Id.*

¹¹ Tom Humphrey, *Legislators challenge refugee resettlement on public health grounds*, KNOXVILLE NEWS SENTINEL (June 19, 2016), <http://archive.knoxnews.com/news/politics/legislators-challenge-refugee-resettlement-on-public-health-grounds-35a811e3-cf1d-4759-e053-0100007f-383569751.html>. See also Caitlin Dickerson, *Anxiety About Refugees is Stoked Online by the Far-Right Media*, N.Y. TIMES (Jan. 28, 2017), <https://www.nytimes.com/2017/01/28/us/anxiety-about-muslim-refugees-is-stoked-online-by-the-far-right-media.html?mcubz=1>.

¹² Richard Locker, *Sen. Mark Norris 'troubled' by Bill Haslam's refugee response*, COMMERCIAL APPEAL (May 24, 2016). For instance, Norris attributes a \$33 million increase in federal funding to teach English as a second language to the refugees. However, a spokeswoman of Governor Haslam refutes this claim, noting that although the new public school funding program allocated \$14 million for English language learning, many ELL students are not refugees.

¹³ Holly Meyer & Joel Ebert, *Muslim advocates: State lawmakers should represent all Tennesseans*, THE TENNESSEAN (Jan. 12, 2017), <http://www.tennessean.com/story/news/religion/2017/01/12/muslim-advocates-state-lawmakers-should-represent-all-tennesseans/96258998/>.

¹⁴ Andy Sher, *State Senate favors citizenship proof to vote*, TIMES FREE PRESS (May 11, 2010).

address these legitimate concerns, Norris was indifferent, saying “I don’t think the members feel there is a profiling concern here at all.”¹⁵

Alliance for Justice strongly opposes this nominee.

BIOGRAPHY

Mark Norris received his B.A. from Colorado College, and his J.D. from the University of Denver Sturm College of Law. In 2000, Norris was first elected to the Tennessee Senate, and he has served as Majority Leader since 2007. Prior to the state senate, Norris served on the Shelby County Board of Commissioners. Norris is also special counsel at the Memphis office of Adams and Reese LLP, and he previously practiced law at Armstrong Allen, PLLC.

LEGAL AND OTHER VIEWS

I. IMMIGRANTS’ RIGHTS

Refugee Resettlement

In February 2016, Norris was the ringleader behind Senate Joint Resolution 467 (SJR 467), a resolution directing the Tennessee attorney general to sue the federal government to challenge the refugee resettlement program

in Tennessee. Indeed, Breitbart News identifies Norris as the person who both “took the lead in writing and introducing the resolution.”¹⁶ The lawsuit was purportedly over states’ rights; Norris argued that by placing refugees in Tennessee, the federal government violated the 10th Amendment.¹⁷ Essentially, the purpose of the lawsuit was to give Tennessee the right to prevent any refugees from settling in the state.

If the state attorney general refused to sue, the resolution granted the legislators permission to hire outside counsel to file the suit. After the resolution passed in both the Tennessee Senate and House of Representatives, Norris spearheaded an online campaign encouraging the attorney general to file the lawsuit. Norris set up an online petition and a website called www.keptnsafe.com. (It now redirects to his campaign website, but an [archived link](#) provides an image of the original website.) Norris used the headline “Don’t let potential terrorists come to Tennessee!”¹⁸ and inflammatory imagery, such as juxtaposing an image of refugees with a picture of ISIS terrorists (see example below). In doing so, he spread abhorrent anti-Muslim rhetoric, equating Muslim refugees with ISIS terrorists.

¹⁵ Phil West, *Tennessee Senate OKs requiring proof of citizenship for voter registration*, THE COMMERCIAL APPEAL (May 10, 2010).

¹⁶ Michael Patrick Leahy, *Tennessee Selects Thomas More Law Center to Represent State in Lawsuit Against Feds to Stop Refugees*, BREITBART (Oct. 25, 2016).

¹⁷ Joel Ebert, *Haslam allows Tennessee to sue feds over refugees*, THE TENNESSEAN (May 20, 2016), <http://www.tennessean.com/story/news/politics/2016/05/20/haslam-opts-allow-tennessee-sue-federal-government-over-refugee-resettlement/84457538/>.

¹⁸ Joel Ebert, *Haslam allows Tennessee to sue feds over refugees*, THE TENNESSEAN (May 20, 2016), <http://www.tennessean.com/story/news/politics/2016/05/20/haslam-opts-allow-tennessee-sue-federal-government-over-refugee-resettlement/84457538/>.



In July 2016, Republican state attorney general Herb Slatery refused to file the lawsuit. Slatery said the suit was “based upon untested, novel theories” which are “unlikely to provide a viable basis for legal action.”¹⁹

Indeed, just one month earlier, in June 2016, a federal judge in Texas dismissed a suit brought by the State of Texas against resettlement of Syrian refugees within the state’s borders. The

¹⁹ Joel Ebert, *AG passes on refugee lawsuit, but state presses on*, DESERT SUN (July 6, 2016), <http://ux.desertsun.com/story/news/politics/2016/07/06/ag-passes-refugee-lawsuit-but-state-presses/86773822/>.

court said that Texas had presented “no plausible” claim to counter the federal government’s rights to decide immigration and refugee settlement issues, noting “no indication that Congress affirmatively contemplated private enforcement by states when it passed the Refugee Act.” *Tex. HHS Comm’n v. United States*, 193 F. Supp. 3d 733 (N.D. Tex. 2016). See also *Alabama v. United States*, 198 F. Supp. 3d 1263 (N.D. Ala. 2016) (rejecting similar claim by State of Alabama); *Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718 (S.D. Ind. 2016) (granting a preliminary injunction “prohibiting the State from taking any actions to interfere with or attempt to deter the resettlement of Syrian refugees by Exodus in the State of Indiana”), *aff’d*, *Exodus Refugees Immigration, Inc. v. Pence*, 838 F.3d 902 (7th Cir. 2016).

Ignoring the legal advice of the Republican attorney general, as well as clear case law, Norris filed his lawsuit with the help of the Thomas More Law Center, a law firm whose mission is to “preserve America’s Judeo-Christian heritage.”²⁰

In response to the lawsuit, Jeff Sessions’s Justice Department filed a motion to dismiss, emphasizing how baseless Norris’s suit was. The Department of Justice said Norris and other legislators “lack standing,” their “claim is unripe,” “district court review of their claim is precluded,” and “their claim under the Spending Clause and the Tenth Amendment lacks merit.”²¹ The Justice Department laid out in a brief the extent to which Norris’s claims were contrary to

²⁰ Sarah Goodyear, *Is the Volunteer State’s Campaign to bar refugees really just a veiled expression of Islamophobia*, N.Y. DAILY NEWS (July 2, 2016), <http://interactive.nydailynews.com/2016/07/tennessee-campaign-bar-refugees-veiled-islamophobia/>.

²¹ Carl Wade Gervin, *Feds: TN lacks standing for refugee lawsuit*, NASHVILLE POST (May 9, 2017), <http://www.nashvillepost.com/politics/courts/article/20860855/feds-tn-lacks-standing-for-refugee-lawsuit>.

settled law.²²

Anti-Muslim Legislation

Norris's hateful rhetoric – comparing Muslim refugees with terrorists – contributed to the creation of an extremely hostile environment for refugees, as well as Muslim Americans, in Tennessee. As one article noted, “Muslims used to love living in Tennessee – now it’s a nightmare . . . It became one of the most hostile places in America.”²³ It’s important to note that Norris’s actions not only fueled this anti-Muslim animus but that, given the opportunity to help repair relations with the state’s Muslim community, he declined.

The fight over refugees was not the first time legislators tried to move anti-Muslim legislation. For example, in 2011, State Senator Bill Keaton attempted to pass an “anti-Sharia” law.²⁴ As the Council on American-Islamic Relations (CAIR) noted, “[w]hat the bill ominously calls ‘Sharia’ is nothing more than the religious traditions that all Muslims use to guide the practice of their faith” and in essence the bill would have “ma[de] it illegal to be Muslim in Tennessee.”²⁵ After considerable criticism, the bill did not become law.

Another anti-Muslim piece of legislation was SB 1439, in 2016, which would have prohibited school boards from including “religious doctrine” in school prior to 10th grade.²⁶ The bill was introduced after several Tennessee parents

complained that students were learning the “historical context about the influence [Islam] had on regions of the world.”²⁷

Not surprisingly, Muslim advocates raised concerns about the state’s treatment of Muslims and anti-Muslim bills introduced in the legislature.²⁸ As one Muslim refugee, a 58-year-old professor of engineering at Middle Tennessee State University who left Syria in 1982 and became a citizen 20 years ago, noted, “Legislation after legislation has been proposed in the Tennessee legislature to basically make it more difficult for Muslims to live in the state.”²⁹

Against this backdrop of growing anti-Muslim sentiment in Tennessee, Norris, rather than working to ensure all Tennesseans are welcomed and feel like first-class citizens in the state, minimized such concerns, stating, “I understand that there are some groups that are paid to foment that kind of unrest.”³⁰ He went on to accuse pro-immigrant groups of inciting “much of the emotional rhetoric.”³¹ Given Norris’s own incendiary rhetoric and dismissal of legitimate concerns, there are extremely serious questions as to whether Muslims would receive equal justice from a future Judge Norris.

22 Joel Ebert, *Federal government asks for dismissal of Tennessee refugee lawsuit*, THE TENNESSEAN (June 1, 2017), <http://www.tennessean.com/story/news/politics/2017/06/02/federal-government-asks-dismissal-tennessee-refugee-lawsuit/358867001/>.

23 David Noriega, *Muslims Used To Love Living in Tennessee—Now It’s A Nightmare*, BUZZFEED (Apr. 3, 2016), https://www.BUZZFEED.com/davidnoriega/muslims-used-to-love-living-in-tennessee-now-its-a-nightmare?utm_term=.hwYNAeM0m#_xul26kyWl.

24 HB 1353 2011-2012, 107th General Assembly, <https://legiscan.com/TN/rollcall/HB1353/id/82650>.

25 Ken Whitehouse, *CAIR calls to drop Sharia(h) law law*, NASHVILLE POST (Mar. 1, 2011), <http://www.nashvillepost.com/home/blog/20456831/cair-calls-to-drop-shariah-law-law>. See also, Melissa Jeltsen, *Tennessee Jumps on the Anti-Sharia Bandwagon*, TPM MUCKRACKER (Feb. 24, 2011), <http://talkingpointsmemo.com/muckraker/tennessee-jumps-on-the-anti-sharia-bandwagon>.

26 SB 1439, 2015-2016, 109th General Assembly, <https://legiscan.com/TN/bill/SB1439/2015>.

27 Dave Boucher, *TN bill would ban teaching “religious doctrine” until high school*, THE TENNESSEAN (Oct. 9, 2015), <http://www.tennessean.com/story/news/politics/2015/10/09/tn-bill-would-ban-teaching-religious-doctrine-until-high-school/73681930/>.

28 Holly Meyer & Joel Ebert, *Muslim advocates: State lawmakers should represent all Tennesseans*, THE TENNESSEAN (Jan. 12, 2017), <http://www.tennessean.com/story/news/religion/2017/01/12/muslim-advocates-state-lawmakers-should-represent-all-tennesseans/96258998/>.

29 Sarah Goodyear, *Is the Volunteer State’s Campaign to bar refugees really just a veiled expression of Islamophobia*, N.Y. DAILY NEWS (July 2, 2016), <http://interactive.nydailynews.com/2016/07/tennessee-campaign-bar-refugees-veiled-islamophobia/>.

30 Holly Meyer & Joel Ebert, *Muslim advocates: State lawmakers should represent all Tennesseans*, THE TENNESSEAN (Jan. 12, 2017), <http://www.tennessean.com/story/news/religion/2017/01/12/muslim-advocates-state-lawmakers-should-represent-all-tennesseans/96258998/>.

31 Sarah Goodyear, *Is the Volunteer State’s Campaign to bar refugees really just a veiled expression of Islamophobia*, N.Y. DAILY NEWS (July 2, 2016), <http://interactive.nydailynews.com/2016/07/tennessee-campaign-bar-refugees-veiled-islamophobia/>.

English-Only Driver's Education

In multiple instances, Norris supported legislation that mandated that would have made it prohibitively difficult for immigrants to drive. In 2007, Norris supported a bill that would require that the state's driver's license exam be taken only in English.³² In 2010, Tennessee senators, including Norris, voted to allow "people legally in the U.S." to take the written portion of the exam in English, Spanish, Japanese, and German,³³ thereby excluding the countless other Tennesseans who speak another language.

Criminalizing Immigrants

Norris sponsored a bill, S.B. 1260, which requires state judges to consider, when imposing a sentence, whether a person was "illegally or unlawfully" in the United States at the time of the offense.³⁴ The bill provides for longer sentences – between one and 10 years in prison – for undocumented immigrants, effectively criminalizing a defendant being in the United States without authorization although this is considered a civil, rather than a criminal, offense under federal law.

The bill was signed into law on June 14, 2017 "despite the fact that courts have struck down similar measures in other states."³⁵

Indeed, S.B. 1260 is likely unconstitutional and preempted by federal law, as it constitutes a state attempt to criminalize unlawful presence. As the National Immigration Law Center noted in emphasizing its likely unconstitutionality, "immigration status is a federal civil matter, not

something states can legally determine."³⁶ In fact, Arizona's S.B. 1070 also attempted to create a state criminal penalty for working without authorization, and that was ruled unconstitutional by the Supreme Court in language that is applicable here. As the Supreme Court reasoned, "Congress made a deliberate choice" to impose only *civil* penalties on non-citizens who engage in unauthorized work, finding that "a state law to the contrary is an obstacle to the regulatory scheme Congress chose" and preempted by federal law. [*Arizona v. United States*, 567 U.S. 387, 405-06 \(2012\)](#).³⁷

Moreover, as the National Immigration Law Center stated, "[w]ithout making a case for how this bill keeps communities safe or advances justice, the legislature has once again singled out a group of Tennesseans for differential treatment."³⁸ As Tennessee Senate Minority Leader Lee Harris noted, "a criminal defendant born in Mexico can be expected to be treated differently and more harshly than a criminal defendant born in Tennessee, even if both commit identical crimes."³⁹

Finally, the law instructs judges to make their own determinations of a defendant's immigration status, without federal guidance. As one Tennessee group noted, the "legislation asks judges who are not experienced in immigration matters to make assumptions about a defendant's immigration status, which will inevitably

³⁶ *Id.*

³⁷ See also *South Carolina v. United States*, 840 F. Supp. 2d at 919 ("[T]he federal government has studiously avoided making unlawful presence a federal crime.").

³⁸ Press Release, NILC and TIRRC: New Tennessee Law Does Not Pass Constitutional Muster, NAT'L IMMIGRANT LAW CTR. (June 9, 2017), <https://www.nilc.org/2017/06/09/new-tn-law-does-not-pass-constitutional-muster/>.

³⁹ Tom Humphrey, *Haslam approves bill authorizing longer criminal sentences for illegal immigrants; Democratic leaders 'disappointed'*, THE TENNESSEE JOURNAL'S HUMPHREY ON THE HILL (June 10, 2017), <http://humphreyonthehill.tnjournal.net/haslam-ap-proves-bill-authorizing-longer-criminal-sentences-for-illegal-immigrants/>.

³² Joe Legge, *Tennessee Lawmakers Plan English Only Vote*, WDEF NEWS 12 (Mar. 5, 2007).

³³ Andy Sher, *State Senate favors citizenship proof to vote*, TIMES FREE PRESS (May 11, 2010).

³⁴ Jake Lowary, *Bill gives judges in Tennessee power to use immigration status as felony sentencing enhancement*, USA TODAY (May 12, 2017), <http://www.tennessean.com/story/news/politics/2017/05/12/bill-gives-judges-tennessee-power-use-immigration-status-felony-sentencing-enhancement/318877001/>.

³⁵ *Id.*

result in racial profiling and other civil rights violations.”⁴⁰

Denying “Dreamers” In-State Tuition

Norris was a vocal opponent of legislation which would have enabled undocumented students who are enrolled in the federal Deferred Action for Childhood Arrivals (DACA) program. Despite the fact the legislation was sponsored by Republican legislators, Norris opposed the bill, explaining that “[i]t doesn’t make sense to have that many illegals in the state of Tennessee.”⁴¹ According to Tennessee State Rep. Raumesh Akbari, there was not a “compelling reason that’s not steeped in some sort of prejudice or hate” vocalized by opponents.

La Raza

After Tennessee’s Republican House of Representatives passed a resolution⁴² congratulating Nashville native Renata Roto on becoming chair of the National Council of La Raza, Norris refused to allow the Senate to issue a similar congratulatory statement.⁴³

II. LGBTQ RIGHTS

Discrimination Against LGBTQ Tennesseans

In 2011, Norris supported legislation that prohibits cities from protecting gay and lesbian Tennesseans from being discriminated

against based on sexual orientation.⁴⁴ The legislation, innocuously entitled the “Equal Access to Intrastate Commerce Act,” was quickly passed after the City of Nashville enacted an ordinance prohibiting city contractors from discriminating on the basis of sexual orientation or gender identity.⁴⁵ Businesses, including FedEx, AT&T, Whirlpool and Comcast, all opposed the Tennessee bill.

Even though that legislation was passed in 2011, Norris wasn’t done clearing the way for businesses to refuse to hire LGBTQ employees, or to fire them more easily. This year, in March 2017, he supported legislation, S.B. 127,⁴⁶ that prohibits any government from taking “discriminatory action” against a business based on its internal policies, including personnel and employee benefit policies. As a result, cities may no longer refuse to grant a contract to a company on the basis that it refuses to hire LGBTQ persons.⁴⁷ Gay & Lesbian Alliance Against Defamation (GLAAD) called the bill a “license to discriminate.”⁴⁸ Human Rights Campaign (HRC) also denounced the “discriminatory measure.”⁴⁹

Norris also supported legislation, S.B. 156,⁵⁰ which became law, that allows mental health counselors to discriminate against

40 Aaron Wright, *Bill gives TN judges more power in sentencing, experts is unconstitutional*, WBIR (May 16, 2017), <http://www.wbir.com/news/local/tennessee-lawmakers-give-judges-more-power-in-sentencing-experts-say-law-is-unconstitutional/440021861>.

41 Sam Stockard, *Tearful End for Non-Citizen Tuition Relief Bill*, MEMPHIS DAILY NEWS (Apr. 20, 2017).

42 Chas Sisk, *After Hesitation, Tennessee House Honors Renata Soto*, NASHVILLE PUBLIC RADIO (Jan. 26, 2016), <http://nashvillepublicradio.org/post/after-hesitation-tennessee-house-honors-renata-soto#stream/0>.

43 Chas Sisk, *Tennessee Senate Refuses to Honor Latina Activist Renata Soto, Citing Objections to National Group*, NASHVILLE PUBLIC RADIO (Feb. 8, 2016), <http://nashvillepublicradio.org/post/tennessee-senate-refuses-honor-latina-activist-renata-soto-citing-objections-national-group#stream/0>.

44 Lucas L. Johnson II, *Governor Signs Bill that Voids Nashville Law*, DESERET NEWS (May 24, 2011), <http://www.deseretnews.com/article/700138398/Governor-signs-bill-that-voids-Nashville-law.html>.

45 Leslie Fenton, *The anti-gay Tennessee bill no one’s talking about*, SALON (May 26, 2011), http://www.salon.com/2011/05/26/tennessee_antigay_bill_open2011/.

46 SB 0127, <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB0127>.

47 Zach Ford, *Tennessee lawmakers really want to make sure businesses can discriminate against LGBT people*, THINKPROGRESS (Mar. 10, 2017), <https://thinkprogress.org/tennessee-lgbt-business-law-e0843aa472a0/>.

48 Drew Anderson, *Tennessee’s “License to Discriminate” SB 127 harmful to state economy*, GLAAD (Mar. 9, 2017), <https://www.glaad.org/blog/tennessees-license-discriminate-sb-127-harmful-state-economy>.

49 Stephen Peters, *Tennessee Senate Committee Advances Anti-LGBTQ Proposal Promoting Taxpayer-Funded Discrimination*, HRC BLOG (Feb. 7, 2017), <http://www.hrc.org/blog/tennessee-senate-committee-advances-anti-lgbtq-proposal>.

50 SB 1556, 2015-2016, 109th General Assembly, <https://legiscan.com/TN/rollcall/SB1556/id/500053>.

LGBTQ clients.⁵¹ The American Counseling Association (ACA) dubbed the bill “Hate Bill 1840” and announced that it had canceled its 2017 national convention in Tennessee because of the legislation.⁵² ACA’s CEO said “of all of the state legislation I have seen passed in my 30 years with ACA, the new Tennessee law based on Senate Bill 1556/House Bill 1840 is by far the worst.”⁵³

Opposition to Marriage Equality

After Massachusetts legalized same-sex marriage in the state in 2008, Norris co-sponsored a joint resolution urging the United States Congress to pass the Federal Marriage Amendment, which would define marriage exclusively as the “union of a man and a woman.”⁵⁴

After the Supreme Court legalized same-sex marriage nationwide in *Obergefell v. Hodges* in June 2015, Norris continued to challenge the legitimacy of same-sex couples, starting with his support of a resolution condemning the Supreme Court’s decision in *Obergefell*.⁵⁵

Next, several Republican state legislators, including Norris, tried to intervene⁵⁶ in a same-sex divorce proceeding involving the custody rights of Erica and Sabrina Witt.⁵⁷ The Witts were legally married in Washington, D.C. in 2014.⁵⁸ Sabrina gave birth to their daughter

through artificial insemination. Under Tennessee law, which has been on the books since 1977, in cases of artificial insemination, only “husbands” of the birth mother have parenting rights. Erica Witt argued, however, that based on *Obergefell*, the Tennessee statute should be interpreted to include female spouses as well as “husbands.” Thus, the legal protections that state law provides to husbands must also be available to wives, regardless of the statute’s gendered language.⁵⁹

Even the Republican state attorney general Slatery, in a memorandum of law, made clear that *Obergefell* applied and “must be construed so as to apply to a child born as a result of artificial insemination during a same-sex marriage.”⁶⁰

Ignoring the legal counsel of the Republican attorney general, in September 2016, 53 Republican legislators, including Norris, filed a motion to intervene in the Witts’ divorce and child custody proceedings.⁶¹ The legislators were represented by the Family Action Council of Tennessee (FACT).

In seeking to prevent the non-birth mother from having joint custody of the child, Norris explicitly argued that *Obergefell* should not apply to “custody issues in divorce proceedings,” because if it did,

51 Steve Almasy, *Tennessee governor signs “therapist bill” into law*, CNN (Apr. 27, 2016), <http://www.cnn.com/2016/04/27/politics/tennessee-therapist-bill/index.html>.

52 Andy Sher, *Tennessee experiences backlash from new LGBT counseling law*, TIMES FREE PRESS (May 11, 2016), <http://www.timesfreepress.com/news/politics/state/story/2016/may/11/tennessee-sees-repercussions-new-lgbt-counsel/364900/>.

53 *Id.*

54 Mark Norris, *Defense of Marriage in Tennessee*, THE COVINGTON LEADER (Feb. 18, 2004), page A11.

55 HRJ 0529 General Assembly, Statement of Intent or Position-Expresses disagreement with the U.S. supreme court’s decision in *Obergefell v. Hodges*, Apr. 28, 2016. See also HRJ 0529 2015-2016, 109th General Assembly, <https://legiscan.com/TN/rollcall/HJR0529/id/537864>.

56 Tom Humphrey, *53 GOP lawmakers seek to intervene in Tennessee gay couple’s divorce*, THE TENNESSEAN (Sept. 12, 2016), <http://www.tennessean.com/story/news/politics/2016/09/12/53-gop-lawmakers-seek-intervene-knoxville-womens-divorce/90274248/>.

57 Jamie Satterfield, *Knox County Judge grants woman rights of ‘husband’ in Tennessee’s first same-sex divorce case*, KNOXVILLE NEWS SENTINEL (May 10, 2017), <http://www.knoxnews.com/story/news/local/2017/05/10/knox-county-judge-grants-woman-rights-husband-tennessee-first-same-sex-divorce/314540001/>.

58 Tom Humphrey, *53 GOP lawmakers seek to intervene in Tennessee gay couple’s*

divorce, THE TENNESSEAN (Sept. 12, 2016), <http://www.tennessean.com/story/news/politics/2016/09/12/53-gop-lawmakers-seek-intervene-knoxville-womens-divorce/90274248/>.

59 Nathaniel Frank, *Why Conservatives Are Picking Sides in a Lesbian Child Custody Battle*, VICE NEWS (Sept. 21, 2016), https://www.vice.com/en_us/article/bn3mp5/conservatives-lesbian-child.

60 Memorandum of Law of the State of Tennessee in Defense of the Constitutionality of Tenn. Code Ann. §§ 68-3-306, Oct. 24, 2016, https://www.scribd.com/document/339243790/Tennessee-Attorney-General-opinion-related-to-Knoxville-same-sex-divorce-case#from_embed.

61 Tom Humphrey, *53 GOP lawmakers seek to intervene in Tennessee gay couple’s divorce*, THE TENNESSEAN (Sept. 12, 2016), <http://www.tennessean.com/story/news/politics/2016/09/12/53-gop-lawmakers-seek-intervene-knoxville-womens-divorce/90274248/>.

family law “will have essentially been judicially taken from the states and placed in the hands of federal judges.”⁶²

The trial judge made clear how extraordinary Norris’s actions were, noting “the court finds that the current request to intervene constitutes an attempt to bypass the separation of powers provided by the Tennessee Constitution.”⁶³ And, despite Norris’s efforts and those of his fellow Republican legislators, the court granted custody rights to the non-birth mother.⁶⁴

Before the court ruled, anticipating that the trial court would construe state law in a way that recognized same-sex marriage, Norris also endorsed an effort in the Legislature to change Tennessee law to undermine the Tennessee trial judge’s decision.⁶⁵ The legislation,⁶⁶ which became known as the “LGBTQ Erasure” bill, “attempt[ed] to undermine the impact of the Supreme Court’s marriage equality ruling by requiring courts and federal agencies to apply a plain meaning interpretation of gendered statutory language, including those involving the rights of husbands and wives.”⁶⁷ As the Human Rights Campaign noted, the bill was “in direct conflict with state and federal law that requires gender-specific words be interpreted as gender inclusive.”⁶⁸

Indeed, the bill’s sponsor, Republican Senator

John Stevens, admitted it was in conflict with the Supreme Court, and in fact, one aim of the bill was to “compel courts to side with the late Supreme Court Justice Antonin Scalia and his dissent.”⁶⁹

As Columbia Law Professor Katherine Franke noted, legislators “cannot get around the Supreme Court’s 2015 ruling in *Obergefell v. Hodges* . . . by defining the terms ‘husband,’ ‘wife,’ or ‘spouse’ in such a way that ignores the Supreme Court’s ruling and the rights contained in the U.S. or Tennessee constitutions.”⁷⁰ Republican attorney general Slatery issued an opinion stating that the proposed bill could create constitutional issues, including being “in conflict with the holding in *Obergefell*.”⁷¹ In fact, Slatery instructed judges to ignore the new state law.⁷²

The case of the Witts’ divorce proceeding and child custody dispute illustrates the lengths to which Norris – who took an oath to support the Constitution of the United States – has gone to ignore Supreme Court case law and legal advice from an attorney general of his own party, in the name of undermining equal rights for LGBTQ Tennesseans.

LGBTQ Student Equality

In 2011, Norris supported S.B. 49, the “Don’t Say Gay Bill.”⁷³ The bill, which passed the State Senate, sought to prohibit

62 Tom Humphrey, 53 GOP lawmakers seek to intervene in Tennessee gay couple’s divorce, THE TENNESSEAN (Sept. 12, 2016), <http://www.tennessean.com/story/news/politics/2016/09/12/53-gop-lawmakers-seek-intervene-knoxville-womens-divorce/90274248/>.

63 Jamie Satterfield, Knox County Judge grants woman rights of ‘husband’ in Tennessee’s first same-sex divorce case, KNOXVILLE NEWS SENTINEL (May 10, 2017), <http://www.knoxnews.com/story/news/local/2017/05/10/knox-county-judge-grants-woman-rights-husband-tennessee-first-same-sex-divorce/314540001/>.

64 Jamie Satterfield, Knox County Judge grants woman rights of ‘husband’ in Tennessee’s first same-sex divorce case, KNOXVILLE NEWS SENTINEL (May 10, 2017), <http://www.knoxnews.com/story/news/local/2017/05/10/knox-county-judge-grants-woman-rights-husband-tennessee-first-same-sex-divorce/314540001/>.

65 J.R. Lind, Would a Tennessee Bill Make Children Conceived Via Artificial Insemination “Illegitimate”? NASHVILLE PATCH (Feb. 13, 2017), <https://patch.com/tennessee/nashville/would-tennessee-bill-make-children-conceived-artificial-insemination>.

66 HB 111, 2017-2018, 110th General Assembly, <https://legiscan.com/TN/rollcall/HB111/id/633764>.

67 HRC Staff, Anti-LGBTQ Bills in Tennessee Attempt to Undermine Supreme Court’s Marriage Equality Ruling, HRC BLOG (Apr. 26, 2017), <http://www.hrc.org/blog/anti-lgbtq-bills-in-tennessee-attempt-to-undermine-supreme-courts-marriage>.

68 *Id.*

69 Corrine Segal, LGBTQ groups fear Tennessee bill would roll back civil rights, PBS NEWSHOUR (Apr. 30, 2017), <http://www.pbs.org/newshour/rundown/lgbtq-groups-fear-tennessee-law-will-roll-back-civil-rights/>.

70 *Id.*

71 Office of the Attorney General, Opinion No. 17-29 (Apr. 13, 2017), <http://www.tn.gov/assets/entities/attorneygeneral/opinions/op17-029.pdf>.

72 Jamie Satterfield, Knox County Judge grants woman rights of ‘husband’ in Tennessee’s first same-sex divorce case, KNOXVILLE NEWS SENTINEL (May 10, 2017), <http://www.knoxnews.com/story/news/local/2017/05/10/knox-county-judge-grants-woman-rights-husband-tennessee-first-same-sex-divorce/314540001/>.

73 SB 49, <https://openstates.org/tn/votes/TNV00000507/>.

teachers from providing any information about homosexuality to public school students.⁷⁴

Norris was also a vocal opponent of Obama Administration guidance regarding the rights of transgender students. Norris encouraged the State of Tennessee to sue the Obama Administration, which he said was taking a “reckless post-constitutional approach to our government.”⁷⁵ In a separate statement, Norris reiterated his commitment that he would “make sure that nothing will be done to give this ‘guidance’ any effect.”⁷⁶

III. RACIAL EQUITY

School Equality

Norris was instrumental in weakening Memphis schools, attended largely by African-American children. His actions prevented countless children from receiving a better education.

To understand Norris’s pivotal role in undermining quality education for students of color, it is critical to understand the history of Memphis’s school system.

In Tennessee, counties are responsible for operating and funding public education. In 1869, however, the City of Memphis (which is in Shelby County) was granted permission to operate its own public school system. See *Bd. of Educ. v. Memphis City Bd. of Educ.*, No. 11-2101, 2011 Dist. LEXIS 87803, at *10 (W.D. Tenn. Aug. 8, 2011).

The public schools in Memphis remained

segregated, even after *Brown v. Board of Education*. Indeed, ten years after *Brown v. Board of Education*, fewer than 1% of black students attended integrated schools. As a federal court noted, “[t]he inescapable conclusion is that . . . the schools of Memphis were operated on a basis of ‘white schools’ for white children and ‘Negro schools’ for Negroes.” *Northcross v. Bd. of Educ.*, 302 F.2d 818, 823 (6th Cir. 1962).

Not until 1971, three years after Martin Luther King, Jr. was assassinated in Memphis, did *de jure* segregation come to an end. In 1973, a federal court ordered Memphis to desegregate its schools by busing. This resulted “in astounding white flight from the city to various neighborhoods in Shelby County.”⁷⁷ As one author noted, “immediately, white families flooded out of the Memphis school system and the city itself....Households relocated by the thousands into Shelby County suburbs.”⁷⁸ And “unlike in Nashville, Tennessee and Charlotte, North Carolina, the city schools were never consolidated with the neighboring county district, leaving two public school systems – one largely White, the other largely Black – in a single metropolitan area.”⁷⁹ Moreover, private school attendance exploded in the mid-1970s to accommodate white students fleeing newly desegregated Memphis public schools. These private schools “were found to be the most segregated in the nation.”⁸⁰

74 “Don’t Say Gay” bill passes Tenn. Senate, NBC NEWS (May 20, 2011), http://www.nbcnews.com/id/43115864/ns/us_news-life/t/dont-say-gay-bill-passes-tenn-senate/#.WcQX5bKGPiW.

75 Joel Ebert, 26 Tennessee senators call on Haslam to join North Carolina lawsuit over transgender bathrooms, KNOXVILLE NEWS SENTINEL (May 16, 2016), <http://archive.knoxnews.com/news/politics/twenty-six-senators-call-on-haslam-to-join-nc-lawsuit-over-transgender-bathrooms-32fa0930-3f68-1c72--379709801.html/>.

76 News from Nashville (May 23, 2016), <http://www.marknorris.org/blog/1/2016/05/23/news-from-nashville-may-23-2016/>.

77 Lauren Camera, *White, Wealthy Communities Want Their Own Schools*, U.S. NEWS (June 21, 2017), <https://www.usnews.com/news/education-news/articles/2017-06-21/white-wealthy-communities-line-up-to-create-their-own-school-districts>.

78 Michelle Wilde Anderson, *Making a Regional District: Memphis City Schools Dissolves into Its Suburbs*, 112 COLUM. L. REV. SIDEBAR 47, 50 (2012).

79 Daniel Kiel, *Exploded Dream: Desegregation in the Memphis City Schools*, 26 LAW & INEQ. 261, 263 (2008), <http://scholarship.law.umn.edu/lawineq/vol26/iss2/1>.
80 *Id.*

As a result, the Memphis school system became so segregated that “[i]n 1999 the NAACP’s school desegregation lawsuit was dismissed – not because integration had been achieved, but because the student population of Memphis was too homogenously black to make integration possible.”⁸¹

By 2010, Memphis had a student population that was 85.7% black and 6.5% Hispanic, and 87.2% of students were economically disadvantaged. The remainder of Shelby County’s school-age population was majority white, and only 37% economically disadvantaged.⁸²

While Memphis operated its own schools, under state law Shelby County taxes supported the Memphis City Schools. Shelby County also ran schools for all other children in the county.

Given this dynamic, Shelby County’s mostly white and more affluent suburbs long sought to splinter off from the Memphis City Schools. Doing so would enable them to “stop[] countywide funding from flowing to the mostly black and lower income Memphis district.”⁸³

However, a 1982 state law prevented the predominantly white suburbs from breaking off into an independent school district. But when Republicans took over the State Assembly in 2010, it “seemed likely they would repeal the 1982 law, making it possible for the suburbs to finally create their own district and withdraw their fiscal support.”⁸⁴

In anticipation of this action, in December 2010,

Memphis voted to surrender its charter (and its autonomy) and be absorbed by the Shelby County schools. The result of Memphis’s decision to merge meant an influx of students of color and low-income students into the suburban Shelby County schools.

Deeming this unacceptable, Norris “responded with swift and forceful opposition,” authoring the “Norris-Todd bill.”⁸⁵ The bill required the development of a “transition plan” and delayed any merger for three years. While the “ostensible premise of the bill” was, as Norris said, to “facilitate” the merger, “the crux of it” was in fact to fight efforts to secure integrated schools.⁸⁶ As former Tennessee Speaker of the House Jimmy Naifeh said, “the only thing [Norris and Todd] were doing with that bill was segregation . . . this is to allow those four or five towns in Shelby County to be able to form their white school districts.”⁸⁷

That is because in addition to just delaying the merger and requiring a merger plan, the bill explicitly enabled wealthy suburban schools to leave the newly merged district.⁸⁸

As one author noted, “[t]he impact is apparent: Suburbs within Shelby County can now withdraw from the merged district to form their own enclaves, perhaps leaving the Shelby County district to become little more than Memphis itself and the poorest parts of the county.”⁸⁹

⁸¹ Anderson, at 51.

⁸² See also Michelle Wilde Anderson, *Making a Regional District: Memphis City Schools Dissolves into its Suburbs*, 112 COLUM. L. REV. SIDEBAR 47 (2012).

⁸³ Caroline Bauman, *Memphis-Shelby County Spotlights in national report on school district secession*, CHALKBEAT (June 21, 2017), <https://www.chalkbeat.org/posts/tn/2017/06/21/memphis-shelby-county-spotlighted-in-national-report-on-school-district-secession/>.

⁸⁴ Sarah Garland, *In Memphis Classrooms, the Ghost of Segregation Lingers On*, THE ATLANTIC (Feb. 13, 2012), <https://www.theatlantic.com/national/archive/2012/02/in-memphis-classrooms-the-ghost-of-segregation-lingers-on/252992/>.

⁸⁵ Anderson, at 54.

⁸⁶ Jackson Baker, *The Prince of Nashville*, MEMPHIS FLYER (Jan. 16, 2014), <https://www.memphisflyer.com/memphis/the-prince-of-nashville/Content?oid=3588712>.

⁸⁷ Bill Dries, *Muni School District Votes on Hold*, MEMPHIS DAILY NEWS (Mar. 23, 2012).

⁸⁸ *Id.*

⁸⁹ Anderson, at 54.

A federal judge found several of Norris's efforts to expedite the secession by the Shelby County towns unconstitutional (for example, one piece of legislation authored by Norris impermissibly *only* applied to Shelby County).⁹⁰ But the district court upheld the main law, and ultimately six wealthy suburban towns seceded from the Shelby County school system.⁹¹

The exodus of the suburban schools, enabled by Norris, has had a devastating impact on students in Memphis, most of whom are from communities of color. As the Shelby County Schools superintendent said, the exit of the suburban towns had “a disparate impact on poor black and brown kids.”⁹² A 2017 report concluded that “the allowance of secession” was “disastrous for children.”⁹³ For example, in just one year, the Shelby County School District (now including Memphis but excluding the six wealthy suburbs) had to make \$125 million in cuts, the next year \$86 million in cuts.⁹⁴

Confederate Monuments

Norris, as a co-sponsor of the Tennessee Heritage Protection Act of 2016,⁹⁵ led the effort to *prohibit* local communities from removing monuments to Confederate leaders from parks or public spaces. The Act was specifically passed after the Memphis City Council voted to change Nathan Bedford Forrest Park to Health Sciences Park, Confederate Park to

Memphis Park and Jefferson Davis Park to Mississippi River Park.⁹⁶

As one Memphis City Council member wrote, the act Norris was instrumental in passing “is wrong and must be repealed. It doesn’t protect our heritage. It only serves to protect memories of white supremacy and shrines for modern-day followers.”⁹⁷

IV. VOTING RIGHTS

Norris was an ardent supporter of a strict voter ID law, which passed the Legislature in 2011 and took effect in 2012.⁹⁸ In fact, Norris led the effort to make the law even stricter when he pushed an amendment that required proof of citizenship (the Republican House of Representatives had only required voters to check a box to affirm they are citizens).⁹⁹

The Norris amendment stated that election officials “may” require a voter to provide proof of citizenship. Opponents of the amendment argued that this would result in “racial profiling” and discourage some Tennesseans from registering to vote.¹⁰⁰ One opponent of the bill, Senator Jim Kyle of Memphis, expressed concerns that the “bill would allow officials to impose more restrictions on Americans who have accents, or brown skin.”¹⁰¹ To illustrate this point, Senator Kyle provided a colorful example: “Perhaps they are doing good

90 Jackson Baker, *Mays Put Halt to Municipal School Districts*, MEMPHIS FLYER (Nov. 27, 2012), <https://www.memphisflyer.com/JacksonBaker/archives/2012/11/27/mays-puts-halt-to-municipal-school-districts/>.

91 Caroline Bauman, *Memphis-Shelby County spotlighted in national report on school district secession*, CHALKBEAT (June 21, 2017), <https://www.chalkbeat.org/posts/tn/2017/06/21/memphis-shelby-county-spotlighted-in-national-report-on-school-district-secession/>.

92 Jennifer Pignolet & Clay Bailey, *Hopson: Race, equity were concerns leading up to the formation of municipal schools*, THE COMMERCIAL APPEAL (June 22, 2017), <http://www.commercialappeal.com/story/news/education/2017/06/23/hopson-race-equity-were-concerns-leading-up-formation-municipal-schools/420687001/>.

93 Caroline Bauman, *Memphis-Shelby County spotlighted in national report on school district secession*, CHALKBEAT (June 21, 2017), <https://www.chalkbeat.org/posts/tn/2017/06/21/memphis-shelby-county-spotlighted-in-national-report-on-school-district-secession/>.

94 Laura Faith Kebede, *Budget cuts loom for Shelby County Schools, again—here’s what we know*, CHALKBEAT (Apr. 5, 2016), <https://www.chalkbeat.org/posts/tn/2016/04/05/budget-cuts-loom-for-shelby-county-schools-again-heres-what-we-know/>.

95 SB 1238, Tennessee Heritage Protection Act of 2016, <https://trackbill.com/bill/tn-sb2138-historical-sites-and-preservation-as-enacted-enacts-the-tennessee-heritage-protection-act-of-2016-amends-tca-title-4-chapter-1-part-4/1239100/>.

96 Doug Stanglin, *Memphis changes name of three Confederate-themed parks*, USA TODAY (Feb. 13, 2013), <https://www.usatoday.com/story/news/nation/2013/02/06/memphis-parks-confederate-ku-klux-klan/1895549/>.

97 Bill Morrison, *Time to repeal Tennessee law, repeal symbols of hate*, THE COMMERCIAL APPEAL (Aug. 16, 2017), <http://www.commercialappeal.com/story/opinion/contributors/2017/08/16/time-repeal-state-law-remove-symbols-hate/573533001/>.

98 SB 0016, 2011-2012, 107th General Assembly, <https://legiscan.com/TN/bill/SB0016/2011>.

99 Lucas L. Johnson II, *Voter-ID bill gets Senate OK; Version differs from House as Norris adds ‘proof’ amendment*, THE COMMERCIAL APPEAL (May 11, 2010).

100 Andy Sher, *State Senate favors citizenship proof to vote*, TIMES FREE PRESS (May 11, 2010).

101 Joe White, *Senate Eyes Proof of Citizenship to Vote*, NASHVILLE PUBLIC RADIO (May 10, 2010).

work by not believing some Swedish citizen who has come to Tennessee and wants to register to vote. But perhaps they are profiling citizens based upon their appearance. Perhaps they are profiling citizens based upon their accent. Perhaps they are profiling the citizen because they may not believe their state has accurate birth records.”¹⁰² Norris dismissed opponents’ concerns, saying, “I don’t think the members feel there is a profiling concern here at all.”¹⁰³ Ultimately, Norris’s “proof of citizenship” requirement was not included in the legislation that was signed into law.¹⁰⁴

The local NAACP reported that approximately 625,000 people in the state did not have the proper identification to vote,¹⁰⁵ and the U.S. Government Accountability Office (GAO) reported that the Tennessee voter ID law contributed to a drop in turnout of between 2.2 and 3.2 percentage points.¹⁰⁶ That means, according to GAO, that 88,000 Tennesseans would have voted if the new law was not in place.¹⁰⁷

Chattanooga resident Dorothy Cooper faced an ordeal that illustrates the harshness of the law Norris supported. Ms. Cooper made national news when she went to get her photo voter ID.¹⁰⁸ The African-American 96-year-old, who had even voted during *Jim Crow*, brought along a rent receipt, a copy of her lease, her voter registration card and her birth certificate. Yet

Cooper was denied the photo ID because her birth certificate was in her maiden name. Only after a national outcry and the personal intervention of Tennessee’s Senate speaker was Cooper allowed to vote.

The law Norris championed, moreover, made it more difficult for students to vote. Student ID cards are not an acceptable form of identification for voting, even though college and university faculty ID cards, which are nearly identical to student ones, are. Indeed, Norris and the Legislature repeatedly blocked efforts that would add student IDs as acceptable forms of ID. GAO reported that as a result of the voter ID law, turnout for Tennessee voters aged 18 to 23 dropped by 4 percentage points.¹⁰⁹

Finally, the law has prevented thousands of transgender citizens, whose government identification may not match their gender identity, from voting in Tennessee.¹¹⁰

In October 2013, the Tennessee Supreme Court upheld the law. *City of Memphis v. Hargett*, 414 S.W.3d 88 (Tenn. 2013). Chief Justice Gary Wade ruled that the state did not even have to prove voter fraud existed to pass a voter ID law. And, in 2016, a federal judge also rejected a challenge to the law. *Green Party of Tenn. v. Hargett*, 194 F. Supp. 3d 691 (M.D. Tenn. 2016).

¹⁰² *Id.*

¹⁰³ Phil West, *Tennessee Senate OKs requiring proof of citizenship for voter registration*, THE COMMERCIAL APPEAL (May 10, 2010).

¹⁰⁴ SB 0016, <http://www.capitol.tn.gov/Bills/107/Bill/SB0016.pdf>.

¹⁰⁵ Yolanda Putman, *NAACP says Tennessee’s voter ID law makes it harder for poor, minorities to vote*, TIMES FREE PRESS (July 25, 2016), <http://www.timesfreepress.com/news/local/story/2016/jul/25/naacp-officials-local-leaders-encourage-minor/377604/>.

¹⁰⁶ Kira Lerner, *Students Fight Back Against Voter ID Law That Allows Gun Licenses But Bans Student IDs*, THINK PROGRESS (Mar. 17, 2015), <https://thinkprogress.org/students-fight-back-against-voter-id-law-that-allows-gun-licenses-but-bans-student-ids-90939824dc52/>.

¹⁰⁷ Phillip Bump, *Voter ID laws in Kansas and Tennessee dropped 2012 turnout by 100,000 votes*, WASHINGTON POST (Oct. 9, 2014), https://www.washingtonpost.com/news/the-fix/wp/2014/10/09/gao-voter-id-laws-in-kansas-and-tennessee-dropped-2012-turnout-by-over-100000-votes/?utm_term=.d3ad6adb883d.

¹⁰⁸ Yolanda Putman, *NAACP says Tennessee’s voter ID law makes it harder for poor, minorities to vote*, TIMES FREE PRESS (July 25, 2016), <http://www.timesfreepress.com/news/local/story/2016/jul/25/naacp-officials-local-leaders-encourage-minor/377604/>.

¹⁰⁹ Kira Lerner, *Students Fight Back Against Voter ID Law That Allows Gun Licenses But Bans Student IDs*, THINK PROGRESS (Mar. 17, 2015), <https://thinkprogress.org/students-fight-back-against-voter-id-law-that-allows-gun-licenses-but-bans-student-ids-90939824dc52/>.

¹¹⁰ Joseph Brant, *Voter ID law threatens to disenfranchise 3,000 Tennessee voters*, OUT & ABOUT NASHVILLE, (Oct. 21, 2016), <https://www.outandaboutnashville.com/story/voter-id-law-threatens-disenfranchise-3000#Wba3C7KGPIV>.

V. REPRODUCTIVE RIGHTS

Norris is a longtime opponent of a woman's right to decide to have an abortion. Norris has proclaimed that a woman's right to choose should be "very limited," and that he does not "favor abortion under any circumstances."¹¹¹

Indeed, women's reproductive rights are just another area of law where Norris has repeatedly acted in an unconstitutional manner, directly defying long-standing Supreme Court precedent.

In 2012, Norris was one of only two state senators to receive a "100 percent" voting record on "pro-family" issues, according to the Family Action Council of Tennessee (FACT),¹¹² a conservative organization whose mission is to "promote and defend a culture that values God's design for marriage, the family, life, and religious liberty for the common good."¹¹³

In 2004, Norris co-sponsored a resolution enabling Tennessee to amend its state constitution to undermine the right of women to decide whether to have an abortion.¹¹⁴ The amendment, which ultimately was approved narrowly by the voters, states that:

Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion. The people retain the right through their elected state representatives and state senators to enact, amend, to repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from

rape or incest or when necessary to save the life of the mother.

Illustrating how extreme Norris is with respect to reproductive rights, as the language of the amendment makes clear, Norris even opposes exceptions for rape, incest or to protect the life of a mother. Indeed, Norris opposed an amendment during the debate on the resolution which would have protected abortion rights "to protect her life or when she is the victim of rape or incest."¹¹⁵ Norris was "uncomfortable" with the amendment because it would leave a "vital concern about women's health" with the courts.

Since the amendment's passage, the Legislature, with Norris's support, has passed numerous anti-abortion measures, often based on previous legislation that was later declared unconstitutional.

For example, in 2015, Norris endorsed a law that requires doctor's offices that perform abortions to become licensed as ambulatory surgical treatment centers.¹¹⁶ Notably, a prior similar law had been found unconstitutional. *Tenn. Dep't of Health v. Boyle*, 2002 Tenn. App. LEXIS 894 (Dec. 19, 2002).

Norris supported a law that requires counseling, "orally and in person" and a 48-hour waiting period for women seeking abortions.¹¹⁷ This requirement was also modeled on an earlier statute that was held unconstitutional. *Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W. 1, 22, 24

¹¹¹ Jim East, *Shelby County state senator on fast track to Congress*, THE REVIEW APPEAL (July 27, 2002).

¹¹² Norris' voting record 'perfect' with pro-family issues, GERMANTOWN NEWS (Aug. 1, 2012).

¹¹³ About Us, Family Action Council of Tennessee, <https://factn.org/about/>.

¹¹⁴ SJR 127, Abortion Not Protected by State Constitution, <https://votesmart.org/bill/6120/16958/48790/abortion-not-protected-by-state-constitution#:~:q=WcQhsbKGPIV>.

¹¹⁵ Bill Hiles, *Norris uneasy with proposed addition to abortion amendment to state Constitution*, STATE GAZETTE (Mar. 7, 2004).

¹¹⁶ SB 1280, 2015-2016, 109th General Assembly, <https://legiscan.com/TN/rollcall/SB1280/id/434112>.

¹¹⁷ SB 1222, Requires a 48-hour Waiting Period Prior to an Abortion, <https://votesmart.org/bill/19682/51876/48790/requires-a-48-hour-waiting-period-prior-to-an-abortion#:~:q=WcQkn7KGPIW>.

([Tenn. 2000](#)). Norris and other Republican state senators rejected an amendment Democrats proposed to allow women to receive by phone the state-mandated counseling required before the 48-hour waiting period, as well as an amendment to exempt rape or incest victims from waiting period requirements.¹¹⁸

Norris also supported reenacting a requirement that abortion providers must have hospital admitting privileges (a measure which took effect in 2012 and forced two clinics in the state to close) and a requirement that abortion clinics must meet hospital-level surgical standards.¹¹⁹ The state dropped its defense to these two laws in April 2017, nine months after the U.S. Supreme Court struck down nearly-identical Texas clinic shutdown laws as unconstitutional in [Whole Woman's Health v. Hellerstedt, 136 S.Ct. 2292 \(2016\)](#).¹²⁰

Most recently, Norris supported the “Tennessee Infants Protection Act” which was enacted in May 2017.¹²¹ The law requires a doctor to test for the viability and gestational age of the fetus. It bans abortion after 20 weeks unless the pregnancy was seriously threatening a woman’s health. A doctor violating the law could face Class C felony charges, which carry a penalty of up to 15 years in prison. As the Republican state attorney general noted, “the new Act [is] constitutionally suspect.”¹²²

VI. WORKERS’ RIGHTS

Eliminating Workers’ Protections

Norris supported legislation,¹²³ which became law in 2013, that prohibits local governments from requiring employers to provide more generous health insurance benefits, leave policies, hourly wage standards or prevailing wage standards than those required by state or federal law. The law also prohibited local governments from requiring construction contractors to pay a wage in excess of state minimum wage laws. And the law prohibits local governments from passing any law or regulation to address wage theft.

This legislation overturned living wage laws in Memphis and Shelby County. Memphis, Shelby County, and Davidson County had also passed fair wage laws for local government construction contracts. The Memphis City Council was considering a local wage theft law, after studies reported rampant wage theft in the city,¹²⁴ which was blocked by the law Norris supported. Given that, as a federal judge, Norris could be called to ensure proper enforcement of federal labor laws, it is disturbing that he went out of his way to make it more difficult for Memphis to enforce local wage theft laws.

Norris also supported legislation that prevented local governments from requiring a company bidding on a public construction project to employ individuals

118 Teddy Wilson, *Tennessee Legislature Cracks Down on Reproductive Rights*, REWIRE (Apr. 22, 2015), <https://rewire.news/article/2015/04/22/tennessee-legislature-cracks-reproductive-rights/>.

119 *Tenn. Women Lose with Clinic Closure*, CENTER FOR REPRODUCTIVE RIGHTS (Aug. 20, 2012), <https://www.reproductiverights.org/press-room/tennessee-trap-clinic-closure-mississippi>.

120 See *Adams & Boyle v. Slatery*, No. 3:15-cv-00705, (M.D. Tenn. Aug. 14, 2017), <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Docket-No-60.pdf>.

121 SB 1280 Tennessee Infants Protection Act, 2017-2018, 110th General Assembly, <https://legiscan.com/TN/bill/SB1180/2017>.

122 Office of the Attorney General, Opinion No. 17-24, Constitutionality of Proposed Legislation Related to Abortion (Mar. 31, 2017), <https://www.tn.gov/assets/entities/attorneygeneral/attachments/op17-024.pdf>.

123 HB 0501, 2014-2014, 108th General Assembly, <https://legiscan.com/TN/rollcall/HB0501/id/255811>.

124 Zach Ferguson, et al, *The Epidemic of Wage Theft in Shelby County, Tennessee*, WORKERS INTERFAITH NETWORK, http://www.workersinterfaithnetwork.org/upload/news-letter/sc_wage_theft_report.pdf.

that reside within their jurisdiction.¹²⁵ The law was passed after a law in Nashville, backed by labor unions, required at least 40 percent of work hours to be performed by workers from Davidson County.¹²⁶

Finally, Norris supported legislation that became law in 2013 that removed Davis-Bacon prevailing wage requirements for construction workers.¹²⁷

Workers' Compensation

Norris advanced drastic reforms to workers' compensation law in Tennessee. Norris lamented that "[s]kyrocketing costs [of workers' compensation] are driving employers out of Tennessee" and that the solution was to "get compensation claims out of courts."¹²⁸ Norris was the primary sponsor of S.B. 1275, which passed and went into effect in July 2014.¹²⁹

The significant changes resulting from the law were overwhelmingly favorable to employers, at the expense of workers. First, all worker compensation claims were barred from trial courts. Instead, the claims had to be handled by a new administrative tribunal, the Court of Workers' Compensation Claims.¹³⁰ Since the governor appoints those who sit on the administrative tribunal, there is the risk that decisions "could be affected by the political leanings of the governor's administrative appointees."¹³¹

¹²⁵ SB 1621, 2015-2016, 109th General Assembly, <https://legiscan.com/TN/rollcall/SB1621/id/503694>.

¹²⁶ Joel Ebert, *Senate passes bill nullifying Nashville local-hire rule*, THE TENNESSEAN (Feb. 22, 2016), <http://www.tennessean.com/story/news/politics/2016/02/22/senate-passes-bill-nullify-ing-nashville-local-hire-rule/80779386/>.

¹²⁷ SB 1209, 2013-2014, 108th General Assembly, <https://legiscan.com/TN/rollcall/SB1209/id/265029>.

¹²⁸ Mark Norris, *Workers' compensation a critical issue*, COVINGTON LEADER (Jan. 21, 2004), at A5.

¹²⁹ SB 1275, 108th General Assembly, <http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB1275&qa=108>.

¹³⁰ Gary Peeples, *Tennessee Legislative Update: Significant Changes Favor Employers*, HR PROFESSIONALS MAGAZINE, <http://hrprofessionalsmagazine.com/tennessee-legislative-update-significant-changes-favor-employers/>.

¹³¹ 2013 *Changes to the Tennessee Workers' Compensation Act*, Travelers Workers Compensation Claim Services (July 20, 2013), <https://www.travelers.com/iw-documents/claims/workers-compensation/tennessee.wc.reform.2013.pdf>.

Moreover, prior to the legislation, Tennessee courts required a "liberal construction of (workers comp) law in favor of injured workers."¹³² However, Norris's bill eliminated that requirement. Also, the legislature changed the definition of "injury" to make it more difficult for employees to recover benefits for claims related to the exacerbation of pre-existing conditions or repetitive use injuries. The reforms require the authorized treating physician to find that the employment contributed more than 50 percent in causing the injury.

As one insurance company noted, it "is the most significant, far-reaching revision of the workers compensation law in Tennessee since the original act was passed in 1919."¹³³ After the act was passed, the state Bureau of Workers' Compensation reported that workers' compensation costs dropped by 21 percent.¹³⁴

VII. CORPORATE ACCOUNTABILITY

Norris championed the Tennessee Civil Justice Act.¹³⁵ The Act limited the amount an injured plaintiff could recover for non-economic damages and capped punitive damages in all civil cases while preventing punitive damages in most product liability actions. In March 2015, a trial judge ruled the cap unconstitutional.¹³⁶ The Tennessee

¹³² Roberto Cenicerros, *Tennessee workers compensation reform legislation advances*, BUSINESSINSURANCE.COM (Apr. 3, 2013), <https://www.marknorris.org/blog/tag/workers-compensation-reform/>.

¹³³ 2013 *Changes to the Tennessee Workers' Compensation Act*, Travelers Workers Compensation Claim Services (July 20, 2013), <https://www.travelers.com/iw-documents/claims/workers-compensation/tennessee.wc.reform.2013.pdf>.

¹³⁴ 2015 *Report on the Impact of the 2013 Workers' Compensation Reform Act*, BUREAU OF WORKERS' COMPENSATION (July 1, 2015), https://www.tn.gov/assets/entities/labor/attachments/2015_Annual_Report_to_the_General_Assembly_July_1_WC.pdf.

¹³⁵ Mark Norris, *Remarks of Senator Mark Norris on SB 1522 Pursuant to Rule 61*, The Memphis Medical Society Quarterly, Volume 14, Number 3, Fall 2011, <http://www.jdsupra.com/documents/a38142fb-2366-428d-bf5f-98a34cf571c4.pdf>.

¹³⁶ Claire Wiseman, *Circuit court judge rules Tennessee's tort reform limits unconstitutional*, TIMES FREE PRESS (Mar. 9, 2015), <http://www.timesfreepress.com/news/local/story/2015/mar/09/judge-rules-tennessees-cap-jury-damages-unconstitutional/292361/>.

Supreme Court later reversed on the grounds that the trial court “acted prematurely” because the jury had not rendered a verdict and the cap was not at issue. Thus, the state supreme court did not reach the merits.

The Tennessee Civil Justice Act also altered the Tennessee Consumer Protection Act (TCPA).¹³⁷ It prohibits lawsuits under the TCPA for securities fraud, prohibits consumer-class action lawsuits, and prohibits lawsuits filed under TCPA by individuals. Instead, enforcement of key provisions of the Consumer Protection Act is left to the state attorney general, who may or may not pursue them.

Norris also supported legislation that limited to \$25,000 compensatory damages in retaliatory discharge cases and eliminated individual liability.¹³⁸ Previously, individual supervisors could be held personally liable for violating Tennessee’s version of Title VII.¹³⁹ Under the new law, which was enacted in March 2016, however, individual employees and other agents of businesses are immune from liability for an employer’s unlawful discriminatory acts.¹⁴⁰

Based on Norris’s track record, it is evident that he does not see the importance of preserving the individual’s right to equal justice. Rather, Norris has made it clear that he believes such claims should be kept out of the courts.

VIII. OTHER VIEWS

Other areas of Norris’s record raise serious questions regarding his commitment to ensuring proper application of important

constitutional rights and legal protections.

Federal Protections: Norris has been a supporter of the Regulation Freedom Amendment to the Constitution.¹⁴¹

Under the resolution, whenever one-quarter of the members of the House or Senate oppose a federal regulation, it would require a majority vote of the House and Senate to adopt that regulation. He wrote, “[t]he growing power of federal bureaucrats to dictate regulatory edicts from Washington would be unrecognizable to the authors of the Constitution.”¹⁴² He questioned the ability of “regulators to re-interpret laws passed years ago in ways never intended by Congress” and said that it was a “serious threat to the checks on the executive branch that serve as the foundation for the rule of law.” Given Norris’s views of federal regulations, there are concerns about whether he will, for example, properly enforce regulations that protect workers, consumers, investors and the environment.

Money in Politics: On April 3, 2017, with Norris’s support, the state Senate approved S.B. 38,¹⁴³ which, if enacted into law, would raise the aggregate limit for senators on PAC donations to \$472,000 every two years.¹⁴⁴

The current limit is \$472,000 every four years. In 2011, he supported

141 Lucas L. Johnson II, *Sen. Mark Norris seeks to curtail federal regulation*, THE TENNESSEAN (Dec. 14, 2014), <http://www.tennessean.com/story/news/politics/2014/12/16/sen-mark-norris-seeks-curtail-federal-regulation/20501615/>.

142 C. Boyden Gray & Sen. Mark Norris, *Leadership from states could curb federal regulatory abuse*, THE HILL (Oct. 2, 2015), <http://thehill.com/blogs/congress-blog/the-administration/255688-leadership-from-states-could-curb-federal-regulatory>.

143 SB 38 Amends Provisions for Campaign Fundraising, <https://votesmart.org/bill/22708/58999/48790/amends-provisions-for-campaign-fundraising#Wcv0PtSziV>.

144 Tom Humphrey, *On collecting excess PAC money, then voting to raise limits*, HUMPHREY ON THE HILL (Apr. 13, 2017), <http://humphreyonthehill.tnjournal.net/sen-on-ex->

137 Richard Locker, *Injury, consumer case laws change*, COMMERCIAL APPEAL (Oct. 1, 2011).

138 HB 1774, 2015-2016, 109th General Assembly, <https://legiscan.com/TN/rollcall/HB1774/id/510427>.

139 David L. Johnson, *Major changes in store for wrongful discharge law*, BUTLER SNOW LLP (Sept. 9, 2014), <https://www.butlersnow.com/2014/09/major-changes-store-tennessee-wrongful-discharge-law/>.

140 *Id.*

legislation, which became law,¹⁴⁵ that allowed corporations to make direct campaign contributions.¹⁴⁶

Transparency: Norris introduced legislation, S.B. 1168, that would allow local governments to keep dealings with corporations they are trying to entice to relocate to their cities secret for up to five years.¹⁴⁷ He also led the effort to prevent the disclosure of persons involved in executions under the state death penalty.¹⁴⁸

Prisoners' Rights: As Chairman of the County Commission in Shelby County, Norris discovered that feeding prisoners three meals a day was “wasting” nearly a million dollars per year. Norris claims responsibility for changing the law so that “it’s cooked dried beans for prisoners and a million dollars a day for you!”¹⁴⁹

Persons with Disabilities: Tennessee law states that “no agency, city, town or other municipality or any agency thereof shall exact any fee for parking” in a handicap space by drivers with disabilities. Nevertheless, Norris sought an opinion from the state attorney general exempting the state airport authority from the law, so that the Memphis Airport could charge parking fees to drivers with disabilities.¹⁵⁰

Science Curriculum: Norris supported legislation to weaken the science curriculum in Tennessee schools, including weakening student instruction in evolution. HB 368, the Scientific Theories in the Classroom Act, encourages teachers to present the “scientific strengths and scientific weaknesses” of “controversial” topics such as “biological evolution, the chemical origins of life, global warming and human cloning.”¹⁵¹ Critics refer to it as a “monkey bill” that promotes the teaching of creationism in the classroom.

CONCLUSION

Mark Norris’s record is a virtual catalogue of biases and hostile acts aimed at numerous communities, including immigrants, LGBTQ persons, workers, women, people of color, and others who rely on the courts to uphold their rights. He has shown animosity toward those whose views differ from his own and resistance to facts and evidence that conflict with his ideology. On various grounds, many of them constitutionally suspect, he has sought to deprive millions of Tennesseans of legal rights and protections. By virtue of his record and temperament, Norris is unsuited for the role of a federal judge, and AFJ strongly opposed his confirmation.

[ceeding-pac-money-limits-then-voting-to-raise-limits/](#).

145 SB 1915 Increases Contribution Limits to Campaigns (May 20, 2011), <https://votesmart.org/bill/votes/35229#Wcvz7ItSzIv>.

146 Tennessee Now Allows Corporate Campaign Contributions, WILEY REIN LLP (July 2011), <https://www.wileyrein.com/newsroom-newsletters-item-3844.html>.

147 TN bill would allow local governments to keep business dealings secret, THE TENNESSEAN (Mar. 10, 2011), <https://www.marknorris.org/blog/2011/03/10/tn-bill-would-allow-local-governments-to-keep-business-dealings-secret/>.

148 West v. Schofield, Tenn. Supreme Court, (Dec. 18, 2014), at 8-10, <https://www.comptroller.tn.gov/openrecords/pdf/20150311WestSchofieldTnSCtdisclosureNamesPersonsInvolvedExecution.pdf>.

149 Mark Norris, speech, Congressional Kick-Off, Collierville, Tennessee (Apr. 21, 2002).

150 Office of the Attorney General, State of Tennessee, Opinion No. 07-32, *Ability of airport authority to charge parking fees to handicapped drivers* (Mar. 23, 2007), <https://www.tn.gov/assets/entities/attorneygeneral/opinions/op07-032.pdf>.

151 Anti-Science “Monkey Bill” Passes Tennessee State Senate, THINK PROGRESS (Mar. 21, 2012), <https://thinkprogress.org/anti-science-monkey-bill-passes-tennessee-senate-bf96be2079ef/>.