

A D D E N D U M
to
CONFIRMATION HEARING ON
FEDERAL APPOINTMENTS

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Submitted by Ranking Member Durbin:

Reproductive Rights Organizations Opposition to Gaiser, statement 2

May 20, 2025

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chair Grassley, Ranking Member Durbin, and Committee Members:

The undersigned 25 reproductive rights, health, and justice organizations and organizations committed to health equity are writing to share our concerns regarding the nomination of T. Elliot Gaiser to the role of Assistant Attorney General for the Office of Legal Counsel (OLC) at the Department of Justice (DOJ).

The OLC plays a key role in the Department's fundamental activities, as well as in shaping critical interpretations of law throughout the federal government. The OLC is responsible for advising the President on legal issues, reviewing and providing input on the legality of executive orders, drafting legal opinions on behalf of the attorney general, and advising executive agencies on complex or controversial legal matters.¹ It has been described as the office that "traditionally often had the final say on legal debates within the executive branch."²

This office can have an enormous impact on reproductive freedom. In addition to advising the President on various legal and executive actions that could impact reproductive freedom, such as executive orders, it can also weigh in on complex legal questions from executive agencies. Gaiser has a deeply problematic record on reproductive freedom and other fundamental rights. With him leading the OLC, the DOJ could attempt to undermine longstanding interpretations of settled authority to jeopardize access to abortion and other reproductive health care.

For these reasons, it is clear that Gaiser is unfit to lead the critical work at the OLC.

Record on Reproductive Freedom

From his law school days working at the organization that would lead Project 2025 to his role as the Ohio Solicitor General, Gaiser has made his opposition to reproductive freedom apparent throughout his career.

Gaiser's opposition to abortion is a fundamental part of his record. In a 2020 article outlining why he planned to vote for then-candidate Trump, Gaiser spewed anti-abortion disinformation and used his extremist beliefs to broadly condemn anyone who disagreed with extreme, conservative positions.³ In the article, he used extremist, so-called "personhood ideology" to claim that Trump "has been the greatest protector of unborn lives since the atrocity of *Roe v. Wade*."⁴ He also spread disinformation about abortion care when he falsely alleged that Democrats "endorse[] abortion up to the moment of birth and even on the operating table, and celebrate[] this moral evil by lighting the One World Trade Center pink."⁵

Gaiser was able to materialize his extreme anti-abortion beliefs into government action when he became the Solicitor General of Ohio in 2023. In this capacity, Gaiser fought to defend the state's strict abortion restriction – even after a majority of Ohioans voted to pass the Reproductive Freedom Amendment to enshrine reproductive freedom into the state's constitution. Disregarding the fact that Ohioans had exercised their political power to protect abortion access, Gaiser continued to defend Ohio's abortion restrictions.⁶ The court issued a permanent injunction in October 2024, striking down the six-week abortion ban.⁷ In the decision, the judge admonished the decision of the Attorney General, for whom Gaiser was counsel of record, to bring the appeal when he wrote: "Unlike the Ohio Attorney General, this Court will uphold the Ohio Constitution's protection of abortion rights."⁸ Gaiser also authored an amicus brief on behalf of an anti-abortion organization in a U.S. Supreme Court case challenging a Louisiana law that unlawfully applied targeted restrictions on abortion providers, that was designed to close clinics and undermine access to abortion, and that was identical to a Texas law struck down by the Supreme Court less than four years earlier, *June Medical Services, LLC v. Russo*.⁹

Gaiser's opposition to reproductive freedom does not stop at abortion. In 2019, Gaiser authored an amicus brief¹⁰ in support of Trump Administration rules that allowed religious employers to undermine the Affordable Care Act's contraception benefit under the guise of "exemptions," *Commonwealth of Pennsylvania v. President, United States of America*.¹¹ In the brief, Gaiser argued that the plaintiffs he represented were "following the authoritative teaching of the Catholic Church" in their belief "that use of artificial contraception and abortion are grave moral evils" and that they should therefore be exempt from a federal law that sought to expand access to essential health care for all Americans.¹² In 2020, the Supreme Court sided with the religious employers, upheld the exemptions, and allowed the Trump rules that limited access to contraception coverage to take effect.¹³

As Ohio Solicitor General, he also joined other anti-abortion states in challenging the Biden Administration's efforts to enhance privacy protections for reproductive health care information under HIPAA¹⁴ and a Title X rule reversing a rule from the first Trump Administration that prevented providers from counseling patients on the full spectrum of reproductive health care options, including abortion counseling and referrals.^{15,16}

Opposition to other fundamental freedoms and rights

At a 2024 Heritage Foundation event where he received "The Heritage Foundation's Distinguished Intern Alumni Award," a conservative outlet noted how "Gaiser credit[ed] Heritage for developing his commitment to conservative principles."¹⁷ At the same event, he also bragged about how, under his leadership, "Ohio is currently a party to 44 cases against the federal government."¹⁸ These cases range from the HIPAA and Title X challenges described above, to challenging the Biden Administration's decision to extend eligibility for health care coverage under the Affordable Care Act (ACA) to Deferred Action for Childhood Arrivals (DACA) recipients,¹⁹ joining 15 other anti-LGBTQ states in challenging a Biden Administration HHS rule that prohibited discrimination based on gender identity and other sex characteristics under the Affordable Care Act,²⁰ and challenging a Biden Administration Department of Education Rule interpreting Title IX's

prohibition on sex discrimination to include discrimination based on gender identity and sexual orientation.²¹

Gaiser has used his short tenure as Ohio's Solicitor General to attack and undermine other fundamental freedoms and rights, by: defending an Ohio law prohibiting trans youth from accessing gender affirming care;²² leading an amicus brief supporting a legal challenge to a school district's policy that permitted trans students to use communal bathrooms consistent with their gender identity;²³ defending the Ohio Ballot Board's misleading and deceptive ballot language for a proposed amendment that aimed to establish an independent redistricting committee in Ohio;²⁴ and leading Ohio and 20 other states in an amicus brief supporting TX S.B.4²⁵ — a law that the ACLU of Texas called “unconstitutional” and “one of the most extreme pieces of anti-immigrant legislation any state legislature has ever enacted.”²⁶

The undersigned organizations are deeply alarmed about Gaiser's record related to reproductive freedom and his opposition to our fundamental freedoms. It is evident that his nomination poses a serious threat to reproductive freedom, justice, and equality. We call upon the Senate to reject his nomination.

Sincerely,
Advocates for Trans Equality
Alliance for Justice
American Atheists
Americans United for Separation of Church and State
Center for Reproductive Rights
Equality California
Indivisible
Just Solutions
Lawyers for Good Government
MomsRising
NAACP Legal Defense and Education Fund, Inc.
National Abortion Federation
National Council of Jewish Women
National Latina Institute for Reproductive Justice
National Network of Abortion Funds
National Partnership for Women & Families
National Women's Law Center Action Fund
Physicians for Reproductive Health
Planned Parenthood Action Fund
Public Advocacy for Kids (PAK)
Reproductive Freedom for All
Rocky Mountain Equality
Service Employees International Union (SEIU)
Silver State Equality
The California LGBTQ Health and Human Services Network

¹ United States Department of Justice, *Office of Legal Counsel*, <https://www.justice.gov/olc> ((last visited May 14, 2025)).

² Charlie Savage, *Trump to Pick Ohio's Solicitor General for Top Justice Department Legal Post*, New York Times (Apr. 2, 2025), <https://www.nytimes.com/2025/04/02/us/politics/trump-ohio-elliott-gaiser-justice-department.html>.

³ T. Elliot Gaiser, *Middle Management Matters*, Christianity Today (Feb. 10, 2020), <https://web.archive.org/web/20240912001116/https://www.christianitytoday.com/2020/02/t-elliott-gaiser-middle-management-matters/>.

⁴ *Id.*

⁵ *Id.*

⁶ Brief of State Defendants-Appellants, *Preterm-Cleveland v. Dave Yost*, 1st Dist. Hamilton Case No. C2400668 (Ohio 2025), <https://assets.aclu.org/live/uploads/2022/09/2025.03.21-Brief-of-State-Defendants-Appellants-1.pdf>.

⁷ *Preterm-Cleveland et al. v. Yost*, Case No. A2203203 (Ohio Com. Pl., Oct. 24, 2024), https://www.acluohio.org/sites/default/files/file_3594.pdf.

⁸ *Id.* at 2.

⁹ Brief of African American Pro-Life Organizations as Amici Curiae in Support of Rebekah Gee, *June Medical Service, LLC v. Russo*, 591 U.S. 299 (2020) (Nos. 18-1323, 18-1460).

¹⁰ Brief of Amicus Curiae Religious Sisters of Mercy in Support of Appellants, *Commonwealth of Penn. v. President, USA*, 930 F.3d 543 (3d Cir. 2019), (Nos. 17-3752, 18-1253, 19-1129, 19-1189) (2019 WL 1568029).

¹¹ *Commonwealth of Penn. v. President, USA*, No. 17-3752, 18-1253, 2018 WL 4740118 (3rd Cir.).

¹² See *supra*, note 12 at 2.

¹³ *Little Sisters of the Poor Saints Peter & Paul Home v. Penn.*, 591 U.S. 657 (July 8, 2020).

¹⁴ *Tenn. et al. v. U.S. Dep't of Health and Human Servs.* (No. 3:25-CV-00025).

¹⁵ *State of Ohio et al. v. Sec., Dep't of Health and Human Servs. et al.*, 577 F.Supp.3d 678 (S.D. Ohio. 2021) (No. 1:21-CV-00675); *Ohio et al. v. Becerra et al.*, 87th F.4th 759 (6th Cir. 2023) (No. 21-4235).

¹⁶ Brief of Amici Curiae State of Ohio and 21 Other States in Support of Appellants' Petition for Rehearing en Banc, *Tenn. v. Becerra*, 117 F. 4th 348 (6th Cir. 2024), (No. 24-5220) (2024 WL 1709797).

¹⁷ Audrey Streb, *Ohio's Solicitor General Credits Heritage Internship for His Conservative Principles*, The Daily Signal (Dec. 18, 2024), <https://www.dailysignal.com/2024/12/18/ohio-solicitor-general-credits-heritage-internship-for-conservatism/>.

¹⁸ *Id.*

¹⁹ *Kan. v. U.S.*, 124 F. 4th 529 (8th Cir. 2024).

²⁰ *State of Tenn. et al. v. Kennedy*, 1:24cv161, ECF No. 01, Compl. (May 30, 2024) (this case name was formerly *State of Tenn. et al v. Becerra*).

²¹ The States' Consolidated Reply Brief Supporting Their Summary Judgment Motion and Opposition to Defendants' Cross-Motion for Summary Judgment and Supporting Memorandum, *Tenn. v. Cardona*, No. 2:24-cv-00072, 2024 WL 4814229 (E.D. Ky.).

²² *Moe v. Yost*, No. 24AP-483, 2025 WL 844497 (Ohio App.).

²³ Brief of Amicus Curiae Ohio Supporting Appellants, *Doe v. Bethel Local School Dist. Bd. of Ed. et al.*, No. 3:22-CV-00337, 2024 WL 869207 (6th Cir. 2024) (No. 23-3740).

²⁴ *State ex rel Citizens Not Politicians v. Ohio Ballot Bd.*, No. 2024-1200, 177 Ohio St. 3d 444 (Ohio 2024).

²⁵ Brief of Amici Curiae Ohio, S.C., and 20 Other States Supporting Appellants and Reversal, *U.S. v. Tx.*, 97 F. 4th 268 (5th Cir. 2024), (No. 24-50149) (2024 WL 1287387).

²⁶ ACLU, Know Your Rights Under Texas' Deportation Scheme SB4 (last updated Mar. 27, 2024), <https://www.aclutx.org/en/know-your-rights/know-your-rights-under-texas-deportation-scheme-sb4>.