

FREEDOM FROM RELIGION *foundation*

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October 17, 2017

Sent via U.S. Mail

The Honorable Donald Trump
The President
White House
1600 Pennsylvania Avenue
Washington DC 20500



Re: Withdraw the nomination of Jeffrey C. Mateer to be U.S. District Judge for the Eastern District of Texas

Dear Mr. President:

On behalf of the Freedom From Religion Foundation, a national state/church watchdog with 29,000 nonreligious members, and the Secular Coalition for America, we respectfully request that you withdraw the nomination of Jeffrey C. Mateer to be U.S. District Judge for the Eastern District of Texas. Mateer was improperly vetted and should never have been nominated in the first place.

Mateer spent six years at First Liberty Institute, an extremist organization that aims to “promote Judeo-Christian values.” He joined the Texas Attorney General’s office in March 2016 and seemingly has used that state office to promote the Institute’s agenda, including having the office intervene into cases the Institute is litigating.

While at the Institute (2010 – March 2016), Mateer served as executive editor of a report called “Undeniable,” so deliberately misleading and defective that we have included an appendix highlighting some of its worst flaws. Nobody who could edit and publish such a purposefully deceptive report is fit to sit on the federal bench.

FFRF and SCA urge you to rescind Mateer’s nomination for the reasons below.

1. Mateer has said that separation of state and church is a myth.

Since 1879, the Supreme Court has repeatedly invoked the phrase “separation of church and state” to explain the legal principle underlying the first clause of the First Amendment. Mateer has stated that because the words “separation of church and state” do not appear “verbatim” in the Constitution that the legal principle is itself invalid. Mateer often makes this claim, including, by his own admission, to schoolchildren. In fact, he bragged about going into schools to miseducate children on this important point.¹

¹ “I’ll hold up my hundred-dollar bill and say, ‘for the first student who can cite me the provision in the Constitution that guarantees the separation of church and state verbatim, I’ll give this hundred dollar bill. ... It’s not there. ... The protections of the First Amendment were to protect us from government, not to cause government to persecute us because of our religious beliefs.” Jeff Mateer, University of St. Thomas (Houston, 2013), available at <https://www.bitchute.com/video/Ka7037mcw0c8/>.

The rights to a “fair trial,” to privacy and to choose contraception or abortion are not explicitly stated verbatim in the Constitution. Mateer will not uphold those rights.

2. Mateer has shown contempt for *stare decisis* and a desire to overturn key cases that protect women’s rights and LGBTQ rights.

Mr. Mateer has expressed a desire to overturn long-settled precedent, including *Roe v. Wade*, and recent cases that have upheld LGBTQ rights, such as *Obergefell v. Hodges* and *Lawrence v. Texas*. This shows a disregard for *stare decisis* that cannot be given voice on the federal bench. “I’ve read the 14th Amendment thousands of times. . . . I don’t see anything about right to same sex marriage, I don’t see anything saying right to homosexuality, I don’t see anything about right to privacy.”²

Mateer wrote at length about *Roe v. Wade* in a blog post for his wife’s website:

“In 1973, seven unelected judges determined that, despite hundreds of years of contrary precedent, the unborn had no right to life. Since that time, 52 million innocent lives have been taken. This past year over 1 million lives were terminated. Today alone, in abortion mills through out [sic] the country, 2,739 babies will be killed. For over the past 30 years, we seem to be living in a society that does not honor life, but instead promotes a culture of death. The unborn, the old, the imperfect are often seen as expendable instead of having a right to life—including a right to impact our lives in ways that might make us uncomfortable. Or might even require some sacrifice on our part. As followers of Jesus Christ, we can also rejoice knowing that He came to save us from death and to grant us true life. God’s word expressly tells us that while the thief comes only to steal and kill and destroy (sounds a lot like today’s culture of death), Jesus came so that we might have life and have it abundantly. (John 10:10) Simply put, we have freedom and a right to life today only through the death and resurrection of our Savior and Lord. So as we celebrate freedom this weekend, let’s remember that our freedom includes a right to life—physically and spiritually— as we stop to thank the One who created life in His image. Let’s also pausing [sic] to remember that the battle for the right to life and the protection of the unborn, the infirm and elderly continues.”³

Mateer made similar comments about overturning *Obergefell*, 135 S.Ct. 2584 (2015):

“Again, this is a five-four decision. *Five-four*. One vote changes and we’re not talking about this today. And I think that’s so important on so many different levels, and I think it’s important in selecting Supreme Court justices, as to how they interpret the Constitution. . . . If you’re a strict constructionist and you believe the text [of the Constitution] actually means what it says, and you believe in history, and you believe in context, you can’t get to the [*Obergefell*] decision.”⁴

Mateer also acknowledges that *Obergefell* is a majority opinion, not a plurality, but also believes that it’s not the law of the land because four “liberal” justices voted in the majority:

² Jeff Mateer, *No ‘Right to Homosexuality’ In Fourteenth Amendment*, RWW NEWS, available at soundcloud.com/rightwingwatch/rww-news-jeff-mateer-no-right-to-homosexuality.

³ Jeff Mateer, *A Short Lesson in History*, INKWELL INSPIRATIONS (June 30, 2010), available at www.inkwellinspirations.com/2010/06/.

⁴ Jeff Mateer, *Jeff Mateer Discusses SCOTUS Marriage Ruling*, CHOSEN GENERATION (2015) at 38:25, available at soundcloud.com/firstliberty/jeff-mateer-discusses-scotus-marriage-ruling-on-chosen-generation.

“In the majority opinion, again, 5-4. One justice. *Obergefell* is not the law of the land. It’s a 5-4 decision with Justice Kennedy joining the four liberals.”⁵

Around the time of the *Obergefell* oral arguments, Mateer spoke to a large group of ministers about the “homosexual agenda.”⁶ He called homosexuality “sinful conduct,” “the elephant in the room,” and portrayed the fight for equal rights using fear-mongering and hyperbole. Mateer not only doubts LGBTQ marriage rights, but he also clearly does not think there is even the right to “engage in homosexual conduct,” as he put it:

“Your churches need to be protected. Your people in your churches need to hear about these issues. Look, we’re going to talk about the elephant in the room and the elephant in the room is homosexuality. And the agenda that this small group is seeking and imposing on the rest of us . . . I’m not here today to talk to you about your obligations and loving those who are engaged in that sinful conduct . . . Like all of you, I’m a sinner saved by grace and because of that, born again. And that’s what I pray for anybody who’s engaged in that conduct. What we’re going to talk about are the legal attacks that that group of individuals and their surrogates are unleashing on the rest of the country. And what you can do to protect yourselves. Because there’s a clash of absolutes, make no question about that, and it is coming, and, quite frankly, it’s actually upon us: religious liberty rights, our rights to believe, to speak and act on those beliefs versus, what is now being raised as the new sexual orthodoxy. . . . They speak of it as same-sex marriage, but it’s really so much more than that. It’s really a right to engage in homosexual conduct and to be protected in that.”⁷

Nearly fifteen years ago in *Lawrence v. Texas*, the Supreme Court struck down laws criminalizing “homosexual conduct,” recognizing that two consenting adults do indeed have such a right. 539 U.S. 558 (2003). Mateer apparently refuses to recognize this case.

Mateer does not think that there is a legal right “to engage in homosexual conduct” as he put it. Mateer does not believe that two single, loving, consenting adults have the right to marry, whatever their sex. Mateer does not believe that women’s right to choose abortion is protected under the Constitution.

Mateer would do his best to circumvent *stare decisis* and impose his personal faith upon the parties in his courtroom.

3. Mateer has repeatedly abused his public office to promote the religious agenda of his former employer.

Mateer is a mediocre lawyer with no judicial experience who did not get his job with the Texas Attorney General’s office on merit. The job was not publicly posted, as state law 656.001 requires.⁸

⁵ Jeff Mateer, *No ‘Right to Homosexuality’ In Fourteenth Amendment*, RWW NEWS (at 0:45), available at soundcloud.com/rightwingwatch/rww-news-jeff-mateer-no-right-to-homosexuality.

⁶ Jeff Mateer remarks, May, 2015, available at <https://www.bitchute.com/video/JN1nfPqtoT4y/>.

⁷ *Id.*

⁸ “Any agency, board, bureau, commission, committee, council, court, department, institution, or office in the executive or judicial branch of state government that has an employment opening for which persons from outside the agency will be considered shall list the opening with the Texas Workforce Commission.” TX GOVT § 656.001 (2003).

Instead, Texas Attorney General Ken Paxton—who is under indictment for multiple counts of felony fraud⁹—simply appointed Mateer, a move of dubious legality.¹⁰ Paxton is very close with the Institute’s executive director, Kelly Shackelford, and credits him with encouraging Paxton to run for the state House seat he won in 2002.¹¹ Shackelford and the Institute also supported Paxton when he ran for Texas Attorney General.¹²

Mateer has used this public office to promote the Institute’s religious agenda. Two publicly available examples prove the point: the El Paso domestic partner benefits lawsuit and the courtroom prayer lawsuit.

a. Example #1: Bringing the state into an Institute case, hiding records, and then concealing that involvement.

The Institute and Mateer represented a conservative Christian bishop, Tom Brown, who led a political challenge against the El Paso civil rights ordinance that granted domestic partner benefits. Tom Brown Ministries is considered an anti-LGBTQ hate group.¹³ Here’s how *Texas Monthly* described the lawsuit and ensuing ethical quagmire:

The suit began with Mayor John Cook’s backing a nondiscrimination ordinance, which led to an effort to recall the mayor spearheaded by Bishop Tom Brown and his Tom Brown Ministries and Word of Life Church. The recall vote failed, and Cook turned around and filed a lawsuit alleging that Bishop Brown violated state campaign finance law during the recall election by utilizing forbidden corporate money. Before joining Paxton’s staff, Mateer represented Brown in the case on behalf of First Liberty. And, in another interesting twist, the court had once asked then-Attorney General Abbott’s office whether it wanted to become involved in the case, and Abbott’s staff declined.¹⁴

The Institute had been litigating the case for at least four years (although all mention of this representation has since been scrubbed from the Institute’s website). Less than a month after Mateer moved to the Texas AG’s office, the Texas AG filed a brief in the case.¹⁵ The AG’s office had shown no interest in the case prior to that brief. In short, Mateer represented Brown, took a job with the state, and one month later the state supported Brown in court. In an interview with *Texas Monthly*:

Mateer said he had nothing to do with the El Paso filing and that he had immediately recused himself once he learned about it. “I had no discussions with anyone, so I don’t know how it

⁹ See Lauren McGaughy, *Attorney General Ken Paxton will fight felony indictment in December trial*, DALLAS NEWS (July 27, 2017), available at www.dallasnews.com/news/texas-politics/2017/07/27/attorney-general-ken-paxton-will-go-trial-dec-11.

¹⁰ See Lauren McGaughy, *Ken Paxton hires 2 top aides without posting jobs; AG’s office says state law doesn’t apply*, DALLAS NEWS (April 1, 2016), available at www.dallasnews.com/news/politics/2016/04/01/ken-paxton-hires-2-top-aides-without-posting-jobs-ags-office-says-state-law-doesnt-apply.

¹¹ Morgan Smith, *Religious Liberty Champion Joins Paxton’s Team*, THE TEXAS TRIBUNE (Mar. 10, 2016), available at www.texastribune.org/2016/03/10/new-top-ag-lawyer-champion-religious-liberty/.

¹² Richard Whittaker, *Smitherman: It’s Always the Quiet Ones*, AUSTIN CHRONICLE (Sept. 3, 2013), available at www.austinchronicle.com/daily/news/2013-09-03/smitherman-its-always-the-quiet-ones/.

¹³ Southern Poverty Law Center, *Active Anti-LGBT Hate Groups in 2016*, available at www.splcenter.org/fighting-hate/extremist-files/ideology/anti-lgbt.

¹⁴ R.G. Ratcliffe, *The Televangelism of Ken Paxton*, TEXAS MONTHLY (Dec. 2016), available at www.texasmonthly.com/politics/ken-paxton-texas-attorney-general-first-two-years/.

¹⁵ Marty Schladen, *Attorney General intervenes in Tom Brown Suit*, EL PASO TIMES (Apr. 26, 2016), available at www.elpasotimes.com/story/news/2016/04/26/attorney-general-intervenes-tom-brown-suit/8355928/.

came in,” he said. But an email obtained through the Public Information Act shows that Dave Welch, the head of the U.S. Pastor Council, had contacted Mateer and another Paxton aide, asking them to intervene on Brown’s behalf.¹⁶

Paxton and Mateer fought to prevent the release of those emails, going so far as to ask for an attorney general opinion . . . *from himself.*¹⁷ On the losing end of the suit, Brown eventually settled for more than \$400,000.¹⁸

b. Example #2: Judge Mack courtroom prayer case.

A second example of Mateer using his position at the AG’s office to promote the Institute’s private agenda also involves religion. When FFRF with several lawyers and citizens sued Judge Wayne Mack, a justice of the peace, for imposing prayer on the lawyers and citizens present in his courtroom, Mack hired the Institute to represent him. The Texas AG’s office waded into the fray, issuing a statement¹⁹ and a formal opinion²⁰ supporting Mack’s imposed prayers. Then, in an extraordinary move, the AG’s office attempted to intervene in the case on legally tenuous grounds. The Institute and AG’s office, under Mateer, hosted a joint press event to grandstand on their efforts to advance Christian prayer. They then used their joint appearance before the court to circumvent court rules, from the simple, such as page limits, to the complex, such as filing briefs that fully incorporated each other.

Mateer will almost certainly continue to use his public office, this one a lifetime appointment, to promote the anti-LGBTQ and religious agenda of Liberty Institute, his former employer.

4. Mateer misrepresented the law when opposing Plano LGBTQ protections.

When the city of Plano, where the Institute is based, was considering amending its nondiscrimination ordinance to protect LGBTQ citizens, Mateer testified angrily before the city council.²¹ Mateer harangued the council for not vetting (he belittled it as “so-called ‘vetting’ so to speak,” complete with air quotes) the ordinance through local “ministries” or “faith-based owners,” as though the city council had an obligation to seek out conservative religious opinions on civil rights laws. He called the ordinance “unlawful, unconstitutional” and charged that it “goes way beyond federal and state law.” He even argued that “it violates the *Hobby Lobby* case,” a mystifying claim since Hobby Lobby was based on a federal law, the Religious Freedom Restoration Act, that does not apply to the state and local government, as Mateer must know.²² He concluded with a threat: “If you pass it, we

¹⁶ Ratcliffe, *The Televangelism of Ken Paxton*.

¹⁷ Marty Schladen, *Paxton seeks Tom Brown lawyer-records exemption*, EL PASO TIMES (May 11, 2016), available at www.elpasotimes.com/story/news/2016/05/11/paxton-seeks-tom-brown-lawyer-records-exemption/84252742/.

¹⁸ Marty Schladen, *Bishop Brown upset over \$419,000 payout to Cook*, EL PASO TIMES (Aug. 10, 2016), available at www.elpasotimes.com/story/news/local/el-paso/2016/08/10/bishop-brown-upset-over-419000-payout-cook/88544142/.

¹⁹ Texas Attorney General press release, *AG Paxton Statement in Support of Judge Wayne Mack*, (Mar. 22, 2017), available at www.texasattorneygeneral.gov/news/releases/ag-paxton-statement-in-support-of-judge-wayne-mack.

²⁰ Texas Attorney General opinion No. KP-0109 (Aug. 15, 2016), available at www.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2016/kp0109.pdf.

²¹ Jeff Mateer, Testimony to Plano City Council, Dec. 11, 2014, available at www.bitcute.com/video/IFiDPAb68fGm/.

²² *City of Boerne v. Flores*, 521 U.S. 507 (1997).

will sue you. We've done so five other times, we've won each one, we'll win again."²³ The city voted to expand the civil rights ordinance anyway.²⁴

We found no evidence that suggests the Institute successfully challenged five civil rights ordinances, as Mateer claimed. Mateer did not mention those other successful challenges in his December 8 letter to Plano, in which he called the proposed rule “manifestly bad” and argued that it would “criminalize” religious business owners.²⁵ The Institute’s challenge to the El Paso civil rights ordinance (discussed above) failed and resulted in a \$400,000-plus settlement against the Institute’s client.²⁶

Mateer testified against the adoption of a nondiscrimination ordinance as an attorney representing the Institute and misrepresented the state of the law, the *Hobby Lobby* case, and, perhaps, how many times he had successfully challenged such laws. The Texas Disciplinary Rules of Professional Conduct, rule 4.01 states: “In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.” It appears that Mateer violated this rule.

5. Mateer advised clients to violate the law when it furthered the religious agenda of the Institute, in some cases costing local governments tens of thousands of dollars.

Mateer has often given bad legal advice—advice contrary to explicit court precedent—to serve a private religious agenda, rather than the interests of clients he’s representing. Two publicly available examples prove this point, although there may be many more such instances given the confidential nature of attorney/client relationships.²⁷

In the first example, a public school in Jackson, Ohio, displayed an image of Jesus and a student brought suit.²⁸ The Institute and Mateer got involved in the case, offering to represent the school district. The law on religious displays in public schools is clear, and has been for decades.²⁹ The 6th U.S. Circuit Court of Appeals, which controls Ohio, had held more than 20 years before *that a public school violated the Establishment Clause by displaying the exact same image*.³⁰ Despite the clear constitutional mandate, Mateer advised the district to continue displaying the portrait, using an unnecessary “investigation” as cover. That bad legal advice, so clearly contrary to longstanding law,

²³ Jeff Mateer, Testimony to Plano City Council, Dec. 11, 2014, available at www.bitchute.com/video/LW2C2iCwXrZ/.

²⁴ Nearly three years later, local attorney Cleve Doty, who worked at the Institute until just before this lawsuit, sued, not alleging that the ordinance is unconstitutional, only that the Plano City Council violated open meetings rules. Plano Star Reporter, *Plano residents sue city officials for allegedly violating Texas Open Meeting Act* (Apr. 20, 2017), available at starlocalmedia.com/planocourier/plano-residents-sue-city-officials-for-allegedly-violating-texas-open/article_d8214af0-2602-11e7-988f-578ab4ef6a54.html.

²⁵ Jeff Mateer, *Unconstitutional and Unlawful Amendments to the City of Plano code of Ordinances Section 2-11*, Liberty Institute (Dec. 8, 2014), available at www.libertyinstitute.org/document.doc?id=313.

²⁶ Marty Schladen, *Bishop Brown upset over \$419,000 payout to Cook*, EL PASO TIMES (Aug. 10, 2016), available at www.elpasotimes.com/story/news/local/el-paso/2016/08/10/bishop-brown-upset-over-419000-payout-cook/88544142/.

²⁷ FFRF is only aware of the first example because we represented the students in the case.

²⁸ *Does v. Jackson City Sch. Dist.*, No. 2:13-cv-112 (S.D. Ohio, 2013). FFRF and the ACLU represented the students.

²⁹ See, e.g., *Stone v. Graham*, 449 U.S. 39 (1980).

³⁰ *Washagesic v. Bloomingdale Pub. Sch.*, 33 F.3d 679 (6th Cir. 1994).

cost the school nearly \$100,000.³¹ This bill may have been an unpleasant surprise to the school district, since Mateer and the Institute convinced the district that the case would be “at no cost to the district.”³²

The second example is as bad. Mateer advised churches to violate a law that he believes is unconstitutional, even though the second highest court in the land has explicitly shot down his arguments. Speaking of the Johnson Amendment, Mateer said:

“[T]he IRS’s rule which prohibits, for instance, a priest, a pastor, or religious leader from endorsing a candidate is unconstitutional. . . . it’s an IRS rule, so we’re looking for priests and pastors who are willing to stand up and challenge [lots of inaudible talk] and if David Barton were here, he’d tell you about how active—we all know this, we all should know this—how active religious leaders were in the founding of our nation. If that rule were in effect, then who knows what would have happened.”³³

When a Catholic church official said that his denomination approves of this prohibition and actually has stricter internal rules than the IRS requirement, Mateer appeared angry: “If you regulate what they say, then the next step is, you’re not going to be allowed to talk and give a homily on abortion. You’re not going to be allowed to talk about the sanctity of marriage. Because that’s what’s happening in other countries and that’s what they’re [the IRS] doing and that’s where they’re headed.”³⁴

Mateer called the Johnson Amendment a burden on free speech and religious exercise. It’s not. The D.C. Circuit upheld the rule as constitutional more than 15 years ago, explaining that it is not a violation of churches’ free speech rights, free exercise rights, or rights under the Religious Freedom Restoration Act. *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000). Yet, Mateer told churches to break the law and risk their tax exemption.

Mateer also distorted the law. The Johnson Amendment does not prevent churches from talking about abortion and would not have prevented the religious leaders at the nation’s founding from promoting independence, which he seems to understand given his reply to the Catholic prelate. The Johnson Amendment simply prevents nonprofits, including churches, from engaging in partisan politics.

Mateer instructed clients to violate federal law to pursue a private agenda. He risked the tax exemption of churches and cost public schools hundreds of thousands of dollars because he advised them to act against very clear and longstanding court precedent. He will almost certainly continue to pursue this private religious agenda from his new position on the federal bench.

³¹ Theodore Decker, *School agrees to keep Jesus picture off its property*, THE COLUMBUS DISPATCH (Oct. 4, 2013), available at www.dispatch.com/content/stories/local/2013/10/04/1004-jackson-school-jesus-portrait-settlement.html.

³² Pete Wilson, *Liberty jumps to rescue of Jackson, Jesus*, THE TELEGRAM NEWS (Jan. 11, 2013), available at www.thetelegramnews.com/main.asp?SectionID=6&SubSectionID=83&ArticleID=17176. Incidentally, the tactic of deceptively promising no-cost litigation is common among Christian law firms, such as First Liberty Institute, Alliance Defending Freedom, Liberty Counsel, etc. See Andrew Seidel, “Pro bono” religious law firms are costing taxpayers millions and blaming everyone else, FREETHOUGHT NOW! (Aug. 7, 2017), available at www.patheos.com/blogs/freethoughtnow/pro-bono-religious-law-firms-costing-taxpayers-millions/.

³³ Jeff Mateer, *Panel Discussion, MAKE STRAIGHT THE PATHWAY* (2013), available at www.bitcute.com/video/CCVrEhGbyvHs/.

³⁴ *Id.*, available at www.bitcute.com/video/qn1lwwVeNDyH/.

6. Weaponizing religious freedom: Mateer believes “religious liberty” allows believers to impose their beliefs on others, especially women and LGBTQ.

There is a tension in the ongoing religious freedom debate between the right to believe and the right to act on religious beliefs. The conflict arises because only the right to believe is absolute, not the right to act. When religiously motivated acts impact the rights of others, they come under the purview of our secular law. And no belief, no matter how fervent, should change that. There is no religious right to infringe the rights of others.

Mateer dedicated his career at the Institute and the Texas AG’s office to weaponizing religious freedom. Mateer and the Institute have worked to enshrine a new right into the law, permitting any religiously motivated act, no matter what the impact on others.

The Institute’s “motto is to protect people, not only to believe, but also to be able to act on those beliefs,” according to Mateer, “We think that’s very consistent with what the founders envisioned.”³⁵

Mateer believes free exercise is unlimited: “This isn’t about freedom of worship, it’s about free exercise. It’s about believing what we believe, it’s about speaking those beliefs, and then acting on those beliefs. That’s what free exercise protects.”³⁶

He litigated cases to forward this agenda (see below), including writing an op-ed that defended a Texas AG order stating that state officials and clerks could prevent gay couples from marrying if it conflicted with their religious beliefs.³⁷

Mateer displays an inability to distinguish action and belief: “In too many situations, in case after case, we’re seeing that the government is attacking and, in fact, punishing people of faith because of their constitutionally protected thoughts and beliefs.”³⁸ Nobody has been attacked or punished for their beliefs, only potentially for their actions. Courts have explained that not every *action* motivated by religion is permitted. And this should be obvious: Human sacrifice is not permitted just because someone hears a divine command to kill someone else, as even the Supreme Court pointed out.³⁹

If Mateer cannot differentiate between belief and action, then he is unqualified for judicial office.

If Mateer does not recognize that there are any limits on the free exercise of religion, or views religion as a permanent license to sidestep legal obligations, he is unfit for office.

³⁵ Jeff Mateer, Texas Public Policy Foundation (July 28, 2015), available at www.bitchute.com/video/d3GIXJSNmEkj/.

³⁶ Jeff Mateer remarks, May, 2015, available at www.bitchute.com/video/iLO5i5N9gShl/.

³⁷ Jeff Mateer, *Lawyers’ petition against Paxton is frivolous*, DALLAS NEWS (Op-ed, July 20, 2015), available at www.dallasnews.com/opinion/commentary/2015/07/20/jeff-mateer-lawyers-petition-against-paxton-is-frivolous. Tex. Att’y Gen. Op. No. KP-0025 (2015), available at www.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2015/kp0025.pdf. See also Austin Kaplan, *Letter to the Editor*, THE STATESMAN (Mar. 23, 2016), available at www.statesman.com/news/opinion/letters-the-editor-march-2016/lnOakT2nDX2r5J6B9t5wdK/ (“Mateer’s appointment [as First Assistant Attorney General] suggests that Paxton is still avoiding the truth: that LGBT individuals are now finally entitled to equal rights under the law, even in Texas.”).

³⁸ Jeff Mateer, *Current Threats to Religious Liberty*, MAKE STRAIGHT THE PATHWAY (2013), available at www.bitchute.com/video/CwcGlr5kA2E/.

³⁹ *Reynolds v. United States*, 98 U.S. 145, 166–67 (1878) (“Suppose one believed that human sacrifices were a necessary part of religious worship; would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and, in effect, to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.”).

7. Mateer distorts reality about “religious hostility” in America.

Mateer and the Institute sought to scare religious Americans into donating to the Institute by constantly telling them that they are under attack:

“Where is America today? . . . As bad as you think it is, it’s worse. Trust me. As bad as you think it is, it’s worse. And I’ve just seen it in the last five years. . . . There is nothing that’s sacred anymore. There’s nothing that’s untouchable anymore. . . . Hostility [he’s referring to ‘attacks on churches’ and hostility toward religion] is at an all time high in the history of our nation. The current administration [President Obama’s] is the most hostile, but it doesn’t stop with the current administration, it’s throughout. And these groups on the left, they have war chests of money [sic] upon money in which they are funding lawsuit against lawsuit [sic] that anytime people of faith engage in public someone is going to be there to counter them.”⁴⁰

“At no time in our nation’s history have religious ministries, churches, and its pastors and faith-based organizations been under attack more so than today. And unfortunately, the people on the other side are powerful and they are well-funded. And their objective, let’s not mince words, is to purge religion from public life. That’s what they want. There are those who are fully committed to remove any mention of god or religion from our public life . . . It starts with the ACLU.”⁴¹

Mateer does not understand that the First Amendment ensures that government officials cannot use their offices to promote their personal religion. Instead, he views this constitutional protection as an attempt to purge religion from public life.

8. Mateer edited a dishonest, misleading annual report.

At the Institute, Mateer was the executive editor of a report called “Undeniable.” The report repeatedly claimed that attacks on religion, specifically Christianity, are on the rise in this country, in which Christianity is overrepresented at every level of government and makes up some 70% of the population. The report is sent to members of Congress and the White House.

Mateer repeatedly used the report to stir up fear:

- “The first time we did it, we collected about 600 cases,” Mateer told CBN News. “We went from 600 to 1,200. And this year we’re up to about 1,600. So, the threats are continuing to increase at a dramatic pace.”⁴²
- “The atheists and the secularists are well organized and they’re well funded. . . . The rate of hostility to people of faith is overwhelming. It’s increasing. Every day we’re getting calls.”⁴³
- “So in 2012 we released our first survey and we gathered 600 instances of where folks’ religious liberty rights were threatened. . . . Last year, we completed our third edition and we have gone from 600 two years ago to 1400 this past year. . . . So that’s 133%.”⁴⁴

⁴⁰ Jeff Mateer remarks, May, 2015, available at www.bitchute.com/video/94c4ILFsMT8p/.

⁴¹ *Id.*, available at www.bitchute.com/video/G2CknG1TA3g0/.

⁴² Paul Strand, *US Entering Dangerous New Era in Religious Hostility*, CHRISTIAN BROADCASTING NETWORK, available at www1.cbn.com/us-entering-dangerous-new-era-religious-hostility.

⁴³ ‘Jesus Not Allowed’: Anti-Faith Sentiment Sweeps US, THE 700 CLUB, available at www.cbn.com/tv/1859894140001?mobile=false.

The attached appendix details the enormous deception in the Institute’s annual reports. The reports track cumulative items going back to the 1980s, but regularly suggest—and at times have outright asserted—that every item in a particular report is from that particular year. To make matters worse, the Institute counts as “attacks” on religion court decisions upholding religious liberty, including unanimous Supreme Court decisions *favoring* churches and religious organizations *and* decisions striking down obvious violations of the Establishment Clause, such as a Supreme Court ruling that prevent schools from using the machinery of the state to impose religion on all students.

The “Undeniable” report distorts facts and argues that parts of the First Amendment are hostile to religion. Mateer likely will continue to stand by this report despite its extensive methodological flaws and the way it deliberately warps and twists reality.

9. Mateer holds extremist views on LGBTQ citizens and their rights.

Mateer spoke at a 2015 conference that some referred to as the “kill the gays rally,” because it was organized by a preacher who has called for the imposition of the death penalty against LGBTQ Americans based on Leviticus 20:13 and the words of Paul.⁴⁵

The Institute and Mateer frequently represented individuals and businesses accused of anti-LGBTQ discrimination in high-profile cases, including:

- A bishop on a hate group list that violated election law trying to overturn domestic partner protections in El Paso.⁴⁶
- An Oregon bakery that refused to serve a same-sex couple.⁴⁷
- A Hood County, Tex. clerk who, like Kim Davis, denied a marriage license to a same-sex couple after the *Obergefell* decision.⁴⁸ (The case cost the county \$43,000).⁴⁹
- A newspaper writer who lost his job after writing a post opposing an LGBTQ-friendly bible—“I’d like to talk a little bit about deceivers among us, most notably the LGBTQXYZ crowd and the Gaystapo effort to reword the Bible to make their sinful nature ‘right with God.’ If you ask me, it sounds like the Gaystapo is well on its way. We must fight back against the enemy.”⁵⁰

⁴⁴ Jeff Mateer remarks, May 2015, available at www.bitchute.com/video/fYx2WvqThsr2/.

⁴⁵ See Paul Gordon, *Trump’s Texas Judicial Nominee Jeff Mateer Is Unfit to Serve*, PEOPLE FOR THE AMERICAN WAY (Sept. 21, 2017), available at www.pfaw.org/blog-posts/trumps-texas-judicial-nominee-jeff-mateer-is-unfit-to-serve/.

⁴⁶ See *supra*, n. 14–19.

⁴⁷ First Liberty, *Kleins*, available at firstliberty.org/cases/kleins/.

⁴⁸ Alexa Ura, *Gay Couple Suing Hood County Gets Marriage License*, TEXAS TRIBUNE (July 6, 2015), available at www.texastribune.org/2015/07/06/gay-couple-sues-hood-county-clerk-over-marriage-li/; see also Mary Tuma, *Local Advocates Fight for Marriage Equality in Texas*, AUSTIN CHRONICLE (July 8, 2015), available at www.austinchronicle.com/daily/news/2015-07-08/local-advocates-fight-for-marriage-equality-in-texas/.

⁴⁹ Robert Wilonski, *Hood County Clerk’s refusal to issue same-sex marriage license costs taxpayers \$43,000*, DALLAS NEWS (Aug. 17, 2015), available at www.dallasnews.com/news/news/2015/08/17/hood-county-clerks-refusal-to-issue-same-sex-marriage-license-cost-taxpayers-43000.

⁵⁰ See Daniel Finney, *Iowa newspaper editor criticizes ‘Gaystapo’ rewrite of Bible*, DES MOINES REGISTER (Apr. 29, 2014), available at www.press-citizen.com/story/news/2014/04/29/iowa-newspaper-editor-criticizes-gaystapo-rewrite-of-bible/8470813/; Jim Romenesko, *Iowa Newspaper Editor Blasts the ‘Enemy Gestapo’ and the ‘LGBTQXYZ Crowd’*, JimRomenesko.com (Apr. 29, 2014), available at jimromenesko.com/2014/04/29/iowa-newspaper-editors-blog-post-blasts-the-gaystapo-and-the-lgbtqxyz-crowd/; David Badash, *Local Iowa Editor: ‘The LGBTQXYZ Crows And The Gaystap’ Are ‘The Enemy’* (May 7, 2014), available at www.thenewcivilrightsmovement.com/local_iowa_editor_the_lgbtqxyz_crowd_and_the_gaystapo_are_the_enemy.

These are just a few of the cases, all of which seek to legalize or normalize discrimination against LGBTQ citizens.

a. Mateer views the mere existence of LGBTQ people as an attack on religious liberty.

Mateer appears to consider the mere existence of LGBTQ citizens an attack on religion. Mateer wrote an article for the Institute entitled “A READY DEFENSE: How to Protect Your Ministry or Faith-Based Business from Legal Attack and Ruin”⁵¹ that was also picked up by Charisma News. In it, Mateer argues that an LGBTQ call for equal rights is hostility and an attack on his religion:

“It was right there in the *New York Times* earlier this year: blatant hostility toward the religious liberty rights of people of faith. Openly gay columnist Frank Bruni didn't candy-coat it: ‘I do support the right of people to believe what they do and say what they wish—in their pews, homes and hearts. But outside of those places? You must put up with me, just as I put up with you.’ That's the reality of today in America, where it's now open season on people of faith who are vulnerable to growing attacks by litigious individuals and organizations offended by traditional religious viewpoints.”⁵²

It would be impossible for any LGBTQ person or any case involving an LGBTQ issue to get a fair hearing in Mateer's courtroom.

b. Mateer views the mere existence of LGBTQ people as a “conspiracy.”

Mateer thinks that LGBTQ people seeking to participate fully in their communities, including in religious communities, is a “conspiracy,” a “concentrated” one:

“I think there is a concentrated effort now, especially even in North Texas, we're getting more and more calls where ministries are getting inquiries, saying ‘I'm a lesbian couple, would you allow my child to come there for your mother's day out program?’ Or, in one of our clients, ‘We see you guys have a mission trip, are you gay friendly? Would you let two men come on your mission trip if you let nonmembers come on your mission trip?’ We're seeing more and more of that. Schools, ‘would you take a student of a same-sex couple? Would you take a student who says that they're, you know, homosexual?’ Almost like maybe they're setups. Especially here. It just seems like it's more and more, unless every homosexual in the country is moving to North Texas, which maybe is a possibility, I don't know.”⁵³

For Mateer, the desire of LGBTQ citizens to enjoy their rights and fully participate in the community indicates that there is a legal conspiracy in North Texas.

c. Mateer views a class of Americans with “disgust” and says that they live lives of “debauchery.”

⁵¹ May 4, 2015, available at web.archive.org/web/20150518024011/http://blog.libertyinstitute.org/2015/05/a-ready-defense-how-to-protect-your.html.

⁵² Jeff Mateer, *How to Protect Your Faith-Based Business From Leftist Attacks*, CHARISMA NEWS (May 25, 2015), available at www.charismanews.com/marketplace/49766-how-to-protect-your-faith-based-business-from-leftist-attacks.

⁵³ Jeff Mateer remarks, May 2015, available at www.bitchute.com/video/uMXTavH2e7EZ/.

Mateer calls LGBTQ Americans, especially those fighting for their rights, “disgusting.” He has claimed that two loving, consenting adults wishing to marry is leading to “people marrying themselves” and others “want[ing] to marry a tree,” and yet others “marrying their pets.” He even likened this to the end times of the New Testament, a time “where debauchery rules.” This fight for equality means “‘anything goes’ being elevated into our Constitution,” Mateer charges. Here’s what he said in context, discussing the *Obergefell* ruling:

“The case deals with, does the 14th amendment require that all states redefine marriage to include same sex couples? And I’d submit to you that the real issue is, does the 14th Amendment require a redefinition that would destroy marriage? Because marriage is between—I mean, the definition of marriage is one man and one woman, it’s been that way for millennia. And what they’re saying is, ‘We want to completely destroy that and they’re arguing now for two men to be able to get married or two women to get married, I’d submit to you that there will be no line there. And actually, in the arguments Chief Justice Roberts said, ‘What is the limiting? I mean, why couldn’t four people want to get married?’ Why not one man and three women or three woman and one man? And we’re going to spare you some of those slides. We actually have a presentation that we get into it and I will tell you, we say it’s PG-13, it may be R or—what do they call the next, one?—NC-17 or whatever. I mean, it’s disgusting—words, I’ve learned words I didn’t know . . . Have any of you heard of the word ‘throuple?’ ‘Throuple.’ So that’s three people coming together, of different sexes, maybe mixed sexes or whatever, they’re coming together. There are people who are marrying themselves. Somebody wanted to marry a tree. People marrying their pets. I mean, you read the New Testament and you read about all the things and you think, ‘That’s not going on in our community.’ Oh yes it is. We’re back to that time where debauchery rules and that’s really what was presented at the Supreme Court: the complete destruction of marriage. And elevating this right to really, ‘anything goes’—that’s really the right they’re seeking. ‘Anything goes’ being elevated into our Constitution.”⁵⁴

Mateer’s analysis of this case was tainted by a personal animus toward LGBTQ citizens. He cannot be trusted to sit on a court and offer fair, unbiased judgments on any issue, let alone something involving LGBTQ or his religion.

d. Mateer says that adultery, homosexuality, and no-fault divorce are against God’s law.

Mateer has said the his god calls on believers to act on their religious beliefs. At the same time, he explained that he is against homosexuality, against no-fault divorce, and against adultery. Mateer holds these positions because he believes his religion requires it. And again, he believes he has a duty to act on those beliefs:

“I know we’re here to talk about homosexuality, but there is more to this issue than homosexuality. Right? I mean, part of the problems is, why we’ve seen the destruction of marriage is—I mean, we’re together, right? I’m one of you . . . I’m one of you, so I’m speaking to myself too. Where we have failed as a church is— We’re real good today on speaking out against homosexuality. I would submit most of you in this room understand that that violates God’s law. But where we failed is we failed when divorce became no fault. Where was the church on divorce? We failed on the issue of adultery. How many churches . . .

⁵⁴ *Id.*, available at <https://www.bitchute.com/video/l3mWWNDkTTPq/>.

. . . How many of my friends have gone through devastating divorces for lots of different reasons where the church, as best as I could tell, was not there. And again, I'm not condemning, just like I'm not condemning the homosexual, I'm not condemning the person who's gone through that. But what I am condemning is where's the church? . . . So, when we talk about this religify [sic], it can't just be about homosexuality. It's got to be about what God's conduct that he's called us to live as believers and we've got to write that down and then we've got to act on those. Because what we're seeing is, and we kind of felt that God kind of started with us on staff at Liberty [Institute] about 18 months ago...⁵⁵

It appears Mateer would not decide legal issues on their legal merits but instead in accordance with what he believes is religious law. People who he imagines have violated his god's law—whether they are divorced or have had an affair or are homosexual—would be unlikely to receive fair, unbiased treatment.

e. Mateer believes that protecting civil rights is an attack on faith.

Mateer thinks that civil rights ordinances, especially in a “good Baptist city” like some in Texas, are “attack[s] on people of faith.” In a 2013 panel discussion, Mateer clearly expressed this view:

“City of Dallas, City of Houston, putting in their city ordinances protections for prohibiting discrimination on the basis of sexual orientation, using their language. So they're attacking people of faith through those ordinances. So you're exactly right, the battleground are the cities, states— Waco, this week, Waco is considering passing—Waco! That's a good Baptist city isn't it?—Waco City is going to do some protections for homosexuals.”⁵⁶

Mateer thinks that protecting the civil rights of minorities who suffer discrimination is an attack on his faith.

f. Mateer is transphobic.

Mateer has not attempted to hide his transphobia:

“In Colorado, a public school has been sued because a first-grader—and I forget the sex, she's a girl who thinks she's a boy or a boy who thinks she's a girl, it's probably that, a boy who thinks she's a girl—and the school said, well she's not using the girl's restroom. And so she has now sued to have a right to go in. Now, I submit to you, as a parent of three children, who are now young adults, but still, a first-grader really knows what their sexual identity—I mean, it's just, I mean, it just shows you how Satan's plan is working and the destruction that is going on.”⁵⁷

On another occasion, he said:

“This is the number one employment lawyer for the federal government and what she said, ‘When religious liberty and sexual liberty conflict, I'm having a hard time coming up with any case in which religious liberty should win.’ At the time, we're saying, ‘well, the First Amendment is part of the Constitution.’ And this new sexual orthodoxy—and that ‘sexual

⁵⁵ *Id.*, available at <https://www.bitchute.com/video/n4kg5w9xUUA/>.

⁵⁶ Jeff Mateer, *Panel Discussion, MAKE STRAIGHT THE PATHWAY* (2013), available at www.bitchute.com/video/SEtLP8UD5D6w/.

⁵⁷ Jeff Mateer remarks, May 2015, available at www.bitchute.com/video/50UaIaXAluVz/.

liberty’ is code for homosexuality, transgenderism, bisexuality, it’s LGBTQ—Chelsea, do you know the rest? [inaudible answer]—no wonder, it’s longer than the alphabet, 51 different, I mean you just see—We were looking at something on Facebook now, there’s male, female, *other*? So this is ‘other’ wins over religious liberty.”⁵⁸

Mateer could never offer fair, unbiased judgments on any case involving a transgender person or an issue of transgender rights.

In conclusion, Mateer demonstrably lacks the temperament, the impartiality, and the devotion to equal justice under the law required of those who serve on the federal bench. FFRF and SCA again urge you to withdraw Mateer’s nomination and to examine the attached appendix for further information on Mateer’s unfitness for the federal bench.

Respectfully,



Dan Barker & Annie Laurie Gaylor
Co-Presidents
Freedom From Religion Foundation



Larry Decker
Executive Director
Secular Coalition for America

DB/ALG/LD:als

⁵⁸*Id.*, available at www.bitchute.com/video/U4WtKdyCIEDv/.