

## Howard C. Nielson

### Nominee for United States District Judge for the District of Utah

**He actively sought to deny civilians the protections of the Geneva Conventions.**

- In 2005, while serving as Deputy Assistant Attorney General at the Office of Legal Counsel (OLC), Mr. Nielson wrote a memo that determined that “persons captured and detained by the United States in Afghanistan are not eligible for “protected person” status”<sup>1</sup> under the Geneva Conventions. In doing so, Mr. Nielson argued that Afghan civilians were therefore not entitled to the Convention’s humane treatment protections if captured.
- The role of the OLC is to provide unbiased legal analysis, yet Mr. Nielson’s memo directly contradicted clearly established law. In *Hamdan v. Rumsfeld*, the Supreme Court noted that the Geneva Conventions were drafted to be intentionally broad, so their protections would not be limited.<sup>2</sup> Yet Mr. Nielson’s memo attempted to do just that, without any legal basis.
- One law of war expert and former State Department official wrote of Mr. Nielson’s OLC memo: “rather than being an effort to provide rigorous, candid, and objective legal advice, the memorandum is actually an exercise in shoddy,

results-oriented advocacy poorly masked as legal analysis.”<sup>3</sup>

**He defended Stephen Bradbury and the OLC’s authorization of torture.**

- In a 2007 *Washington Post* letter, Mr. Nielson labeled an editorial<sup>4</sup> that criticized the OLC’s torture memos “deeply unfair.” He argued that torture memo-author Stephen Bradbury was a “careful lawyer of unimpeachable integrity and sound judgment” who “always strives to get the law right.”<sup>5</sup>
- In a speech opposing Mr. Bradbury’s recent nomination to be General Counsel of the Department of Transportation, Senator John McCain said “Mr. Bradbury’s memos were permission slips for torture,” and that his work “did a disservice to our nation and its defenders.”<sup>6</sup>

**He frequently demonstrates disdain for the rights of LGBT people.**

- Mr. Nielson authored an amicus brief<sup>7</sup> in *Obergefell v. Hodges*, arguing that marriage must necessarily be between men and women.
- He believes being gay is a choice, and does not think discrimination against LGBTQ people has any impact on their well-being.<sup>8</sup>

<sup>1</sup><https://www.justice.gov/sites/default/files/olc/legacy/2009/12/30/aclu-ii-080505.pdf>

<sup>2</sup> <https://www.supremecourt.gov/opinions/05pdf/05-184.pdf>

<sup>3</sup> <https://www.justsecurity.org/50739/parsing-howard-nielsons-sources-thesis-support/>

<sup>4</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/06/AR2007100600940.html>

<sup>5</sup> [http://www.washingtonpost.com/wp-dyn/content/article/2007/10/11/AR2007101102148\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/10/11/AR2007101102148_pf.html)

<sup>6</sup> <https://www.mccain.senate.gov/public/index.cfm/2017/11/remarks-by-senator-john-mccain-opposing-the-nomination-of-steven-bradbury>

<sup>7</sup> [https://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/BriefsV5/14-556\\_amicus\\_resp\\_scholars.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV5/14-556_amicus_resp_scholars.authcheckdam.pdf)

<sup>8</sup> <https://www.mercurynews.com/2010/01/14/prop-8-trial-day-4-live-coverage-from-the-courtroom/>