

November 12, 2019

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington D.C. 20510

RE: 10 LGBT Groups Oppose Confirmation of Lawrence VanDyke

Dear Chairman Graham and Ranking Member Feinstein:

We, the undersigned 10 national, state and local advocacy organizations representing the interests of lesbian, gay, bisexual and transgender (LGBT) people and everyone living with HIV, urge you to oppose the confirmation of Lawrence VanDyke to the U.S. Circuit Court of Appeals for the Ninth Circuit.

As you are aware, a substantial majority of the American Bar Association’s Standing Committee on the Federal Judiciary has concluded that Mr. VanDyke is “Not Qualified” to serve on the United States Court of Appeals for the Ninth Circuit based on a review of his integrity, professional competence and judicial temperament.¹ Based on the feedback from sixty interviews of lawyers, judges and other professionals, the ABA Standing Committee has flagged a number of grave concerns about Mr. VanDyke. Most notable for our purposes, the report states that multiple interviewees had concerns about whether Mr. VanDyke would be fair to the LGBT community. Moreover, the report notes that “Mr. VanDyke would not say affirmatively that he would be fair to any litigant before him, notably members of the LGBTQ community.” There is no reason why this committee should advance a nominee in the face of such serious doubts about his ability to adjudicate cases in a fair and impartial manner where there are certainly other qualified candidates who could be considered for this position.

And yet, this assessment from the ABA should come as no surprise in light of Mr. VanDyke’s long history of advocacy to diminish civil rights protections for the LGBT community, and personal statements denigrating LGBT people. For example, in an op-ed he wrote as a student at Harvard Law School, Mr. VanDyke promoted the stigmatizing and disproven myth that that same-sex marriages will

¹ American Bar Association Standing Committee on the Federal Judiciary letter to the Senate Judiciary Committee (Oct. 29, 2019), available at https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/10-29-2019-vandyke-rating.pdf?logActivity=true.

“hurt families and consequentially children and society.”² Even now, fifteen years later, Mr. VanDyke refuses to concede the utter falsehood of this debunked right-wing talking point. Specifically, when asked whether he still believes that same-sex marriage harms children, Mr. VanDyke evaded the question by insisting that his personal views would play no role in how he would judge.³

Mr. VanDyke has also expended significant personal and professional energy to diminish protections against discrimination on the basis of sexual orientation and gender identity. As a law student, Mr. VanDyke wrote a note for the Harvard Law Review insisting that universities may not constitutionally withhold official recognition from religious-affiliated student groups that refuse to adhere to nondiscrimination requirements when determining their membership.⁴ And then, while serving in the Montana Solicitor General’s office, Mr. VanDyke helped draft, and then recruited other signatories, for an amicus brief in support of a photography business seeking to legally discriminate against same-sex couples.⁵ In urging his colleagues to join the brief, Mr. VanDyke boasted, “[t]his is an important case because there is a fairly obvious collision course between religious freedom and gay rights” and that this case is important to establish that “gay rights cannot always trump religious liberty.”⁶ At the same time, Mr. VanDyke was also busy working relentlessly to persuade the Montana Attorney General’s office to join numerous amicus briefs opposing marriage equality and briefs in support of the Defense of Marriage Act.⁷

Finally, we are deeply concerned about Mr. VanDyke’s long affiliation with extreme anti-LGBT groups like the Alliance Defending Freedom (ADF), an organization that is notorious for their campaigns against LGBT people,⁸ and the Family Research Council (FRC).⁹ While Mr. VanDyke recited the standard line about how he would not allow his personal beliefs to play a role in how he would judge, it is simply impossible to believe that someone who has spent their entire career disparaging and opposing LGBT protections at every turn can be trusted to administer fair and impartial justice. Considering how much of Mr. VanDyke’s career has been spent in coordination with and in support of rabidly anti-LGBT organizations and causes, the serious concerns expressed in the ABA Standing Committee report “about

² Lawrence VanDyke, *One Student’s Response to ‘A Response to Glendon,’* THE HARVARD LAW RECORD (Mar. 11, 2004), available at <https://web.archive.org/web/20180402060657/http://hlrecord.org/2004/03/one-students-response-to-a-response-to-glendon/>.

³ Senate Judiciary Committee Hearing (Oct. 30, 2019): Sen. Leahy, “it worried me when Sen. Cortez-Masto asked you whether your opinion had changed, your response was sort of a flippant, ‘well you haven’t seen up-to-date research on this issue’...do you still stand by your previous view that same-sex marriage harms children?” Mr. VanDyke, “...as far as my personal views, it is important to recognize, they would play no role in how I would judge.” <https://www.judiciary.senate.gov/meetings/10/30/2019/nominations>.

⁴ Lawrence VanDyke, *Leaving Religious Students Speechless: Public University Antidiscrimination Policies and Religious Student Organizations*, 118 Harv. L. Rev. 2882 (2005).

⁵ E-mail from Lawrence VanDyke, SOLIC. GEN., MONT. DEP’T. OF JUST. to Tim Fox Atty. Gen., Mont. Dep’t of Just. (Dec. 5, 2013, 09:52 MDT) (available [here](#) p. 196) (*Elane Photography v. Willock*).

⁶ *Id.*

⁷ *Id.*

⁸ The Southern Poverty Law Center (SPLC) has designated ADF as a hate group for their vicious attacks on LGBT people *Alliance Defending Freedom*, Southern Poverty Law Center (2019) available at <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.

⁹ Miranda Blue, *Family Research Council, Anti-Gay and Anti-Choice Activists, Pitch In For Montana Supreme Court Race*, Right Wing Watch (October 21, 2014) available at <https://www.rightwingwatch.org/post/family-research-council-anti-gay-and-anti-choice-activists-pitch-in-for-montana-supreme-court-race/>.



whether Mr. VanDyke would be fair to persons who are gay, lesbian, or otherwise part of the LGBTQ community” should be treated as credible and thus disqualifying for a lifetime appointment to such a position of public trust.

Thank you for considering our views on this important issue. Please do not hesitate to reach out if we can provide additional information throughout the confirmation process. You can reach us through Sasha Buchert, Senior Attorney for Lambda Legal, at sbuchert@lambdalegal.org.

Very truly yours,

Lambda Legal
American Atheists
Athlete Ally
CenterLink: The Community of LGBT Centers
Equality California
Equality North Carolina
Mazzoni Center
National Center for Transgender Equality
National Council of Jewish Women
Silver State Equality- Nevada