

October 16, 2018

The Honorable Charles Grassley
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: LGBT Groups Oppose Confirmation of Allison Rushing

Dear Chairman Grassley and Ranking Member Feinstein:

Lambda Legal, Equality North Carolina and Free State Legal representing the interests of lesbian, gay, bisexual and transgender (LGBT) people and everyone living with HIV, urge you to oppose the nomination of Allison Rushing to the U.S. Court of Appeals for the Fourth Circuit.

Almost one million LGBT people live in Maryland, North Carolina, South Carolina, Virginia and West Virginia.¹ Consequently, the views of this nominee on the equal dignity under law of LGBT people and their families are highly relevant to whether LGBT people living in these states will receive fair and impartial justice if Ms. Rushing is confirmed to the Fourth Circuit. The record of this nominee reflects a deep hostility to the principles of equality, liberty, justice and dignity under the law for LGBT Americans, among others. Accordingly, we do not believe this nominee will provide impartial justice to LGBT people and their families, and therefore urge you to oppose her nomination.

For example, Ms. Rushing publicly demonstrated her view that same-sex couples are not entitled to equal constitutional liberty in a presentation she gave addressing the Supreme Court ruling striking down the federal Defense of Marriage Act (“DOMA”).² In the presentation, Ms. Rushing criticized the *Windsor* majority for holding that DOMA’s codification of moral disapproval of marriage for same-sex couples is constitutionally impermissible and for relying on its prior holdings in *Lawrence v. Texas* and *Romer v. Evans*. Ms. Rushing criticized the *Windsor* majority’s constitutional reasoning for rejecting the Court’s prior stance of criminalizing same-sex relationships and forcing same-sex couples to live as vulnerable second-class citizens. Ms. Rushing made clear that she favored the *Windsor* dissenters’ endorsement of discrimination against same-sex couples based on our country’s odious history of moral disapproval written into law. She thus demonstrated that she simply does not see LGBT people as

¹ The Williams Institute, LGBT Data & Demographics, available at <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#density>.

² Henry Forum: “Enemies of Mankind: Religion and Morality in the Supreme Court’s Same-Sex Marriage Jurisprudence” (Oct. 30, 2013) (discussing *United States v. Windsor*, 570 U.S. 744 (2013)).

deserving of equal freedom and protection under the Constitution and our laws, and would not be able to administer impartial justice to LGBT litigants.

This anti-LGBT perspective is fully consistent with Ms. Rushing’s career-long association with the Alliance Defending Freedom (“ADF”), an organization with a dedicated focus on eliminating or rolling back protections for LGBT people.³ ADF has been defined by the Southern Poverty Law Center as a “hate group” based on their vilification of LGBT people,⁴ and ADF has crusaded for years to legislate and litigate away the basic legal protections of the LGBT community.⁵ Ms. Rushing began her career as a legal intern at ADF. Since then, she has continued and expanded her relationship with that organization, presenting to ADF audiences on at least eight different occasions in both their Virginia and Arizona offices.⁶ Ms. Rushing and her supporters will undoubtedly assert that her affiliations do not necessarily reflect her ideology. But, given her own public presentations, it is obvious that Ms. Rushing has returned year after year to donate her time and capacity to advancing ADF’s mission because she sincerely supports at least its dedication to undermining the rights and protections of LGBT people.

* * *

During her confirmation hearings, we expect Ms. Rushing to invite you to entertain the idea that once she puts on the black robe, she would relinquish her anti-LGBT perspectives and become an impartial evaluator of the law. Our concern is not just about this nominee’s discriminatory views and her disagreement with landmark decisions that form the basis of core protection for LGBT people. Rather, Ms. Rushing’s apparent commitment to working to gut those decisions shows that she is not the kind of judge that this country wants, needs and deserves. We strongly urge you to reject her nomination.

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 Sharon McGowan, Chief Strategy Officer and Legal Director for Lambda Legal at smcgowan@lambdalegal.org.

Very truly yours,

Lambda Legal
Equality North Carolina
Free State Legal, Maryland’s LGBTQ Advocates

³ See <https://www.adflegal.org/issues/marriage>.

⁴ See, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom> (the SPLC defines hate groups as groups that vilify others because of their race, religion, ethnicity, sexual orientation or gender identity – prejudices that strike at the heart of our democratic values and fracture society along its most fragile fault lines.

⁵ <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.

⁶ See Senate Judiciary Questionnaire, Allison Rushing, July 7, 2017; July 8, 2016; October 17, 2014; January 30, 2014; February 1, 2013; March 23, 2012: Speaker, “Overview of a Clerk’s Role in the Judicial Process. ADF Arlington, VA; August 3, 2017: Panelist, “Blackstone and Beyond: A View from Some Fellows,” Alliance Defending Freedom, Pentagon City, Virginia; August 4, 2015: Speaker, “The Boutique Practice: The Art and Craft of Advocacy,” Alliance Defending Freedom, Tucson, Arizona available at <https://www.judiciary.senate.gov/imo/media/doc/Rushing%20SJQ.pdf>.