

**Congress of the United States**  
**Washington, DC 20515**

December 9, 2019

The Honorable Mitch McConnell  
Senate Majority Leader  
S-230, U.S. Capitol  
Washington, D.C. 20510

The Honorable Charles Schumer  
Senate Minority Leader  
S-221, U.S. Capitol  
Washington, D.C. 20510

Dear Leader McConnell and Leader Schumer,

We, the undersigned members of the House of Representatives committed to equality for members of the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community, urge you to oppose the confirmation of Lawrence VanDyke to serve on the United States Court of Appeals for the Ninth Circuit.

A fair and impartial judiciary is the cornerstone of our democracy. *Every* American should expect and receive equal justice under the law. Mr. VanDyke's record raises serious questions about his ability to fulfill that expectation. The American Bar Association's Standing Committee on the Federal Judiciary determined that Mr. VanDyke is "Not Qualified" to serve on the United States Court of Appeals for the Ninth Circuit based in part on serious concerns over whether Mr. VanDyke could be a neutral and unbiased arbiter of matters involving the LGBTQ community. The ABA report warned that, "Mr. VanDyke would not say affirmatively that he would be fair to any litigant before him, notably members of the LGBTQ community."<sup>1</sup>

The ABA report mirrors Mr. VanDyke's personal statements denigrating the LGBTQ community. Mr. VanDyke wrote an op-ed in 2004 that peddled the abhorrent and discredited myth that same-sex marriage will "hurt families, and consequentially children and society."<sup>2</sup> When asked whether he stands by those statements, Mr. VanDyke refused to disavow them in both his hearing and in his responses to the questions for the record.<sup>3</sup>

The fact that there are Members of Congress who may still believe, despite well-established evidence to the contrary, that LGBTQ people are less capable of providing loving homes for

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<sup>1</sup> 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](https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/10-29-2019-vandyke-rating.pdf?logActivity=true).

<sup>2</sup> 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/>.

<sup>3</sup> Senate Judiciary Committee Hearing (Oct. 30, 2019): <https://www.judiciary.senate.gov/meetings/10/30/2019/nominations>. See question 10 from Senator Feinstein, of Questions for the Record <https://www.judiciary.senate.gov/imo/media/doc/VanDyke%20Responses%20to%20QFRs.pdf>.

children is beside the point.<sup>4</sup> When it comes to our federal courts, the American people are entitled to judges who will rule based on the law and the facts before them. There is no place for extreme political ideologues on the federal bench. It strains credulity to suggest that Mr. Van Dyke “can turn on a dime” and administer impartial justice to LGBTQ litigants after a lifetime of working against their equal dignity and peddling hateful and bigoted myths about LGBTQ families and relationships.<sup>5</sup>

Mr. VanDyke has spent much of his professional life focused on dismantling protections for LGBTQ people. As Montana Solicitor General, Mr. VanDyke worked to persuade Montana’s Attorney General to sign on to at least six amicus briefs in support of same-sex marriage bans and one amicus brief in support of the Defense of Marriage Act.<sup>6</sup> Mr. VanDyke helped to revise and, in his words, “make [] stronger” an amicus brief in support of a business that refused to serve a same-sex couple because of the couple’s sexual orientation, and later, he recommended that Montana sign on to the brief.<sup>7</sup> Mr. VanDyke tried to encourage interest among his colleagues by writing, “[t]his is an important case because there is a fairly obvious collision course between religious freedom and gay rights” and that the case is important to establish that “gay rights cannot always trump religious liberty.”<sup>8</sup>

Mr. VanDyke’s record raises serious concerns about his ability to be a neutral and unbiased arbiter of the law. While Members of the House of Representatives play no official role in the confirmation process of federal judges, his choices and statements have demonstrated that he is unfit for a lifetime appointment to the U.S. Court of Appeals for the Ninth Circuit. Accordingly, we urge you to reject his nomination.

Sincerely,



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<sup>4</sup> Senate Judiciary Executive Business Meeting (Nov. 21, 2019) (Senator Graham, “...I think he’s definitely a social conservative. I think many people on our side of the aisle would say that the best outcome for a child is to be raised in a traditional home...”), *available at* <https://www.judiciary.senate.gov/meetings/11/21/2019/executive-business-meeting>.

<sup>5</sup> Senator McConnell, Senate floor statements with regard to the nomination of John McConnell, “[a]fter a long record of hostilities towards one segment of American society, it’s difficult to believe that Mr. McConnell can now turn on a dime and administer justice without respect to persons, as the judicial oath requires.”) Congressional Record—Senate, Vol. 157, Pt. 5 (6573) (May 4, 2011).

<sup>6</sup> Amici briefs in support of state statutory bans in *Hollingsworth v. Perry* (California); *Sevcik v. Sandoval* (Nevada); *Herbert v. Kitchen* (Utah); *Bishop v. Smith* (Oklahoma); *Bostic v. Schaefer* (Virginia); *Deboer v. Snyder* (Michigan). Emails from Lawrence VanDyke, Solic. Gen., MONT. DEP’T OF JUST. to Atty. Gen. Tim Fox at page 124, 138, 145, and 162.

<sup>7</sup> E-mail from Lawrence VanDyke, Solic. Gen., MONT. DEP’T OF JUST. to Atty. Gen. Tim Fox, MONT. DEP’T OF JUST. (Dec. 5, 2013, 09:52 MDT) (*available here* p. 196) (*Elane Photography v. Willock*).

<sup>8</sup> *Id.*

  
STEVEN HORSFORD

  
DAVID N. CICILLINE

  
MARK TAKANO

  
SEAN PATRICK MALONEY

  
CHRIS PAPPAS

  
SHARICE L. DAVIDS

  
ANGIE CRAIG

  
DEBBIE WASSERMAN SCHULTZ

  
PRAMILA JAYAPAL

  
JAMIE RASKIN

  
CHELLIE PINGREE

  
JUDY CHU

  
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RO KHANNA

  
SUSAN WILD

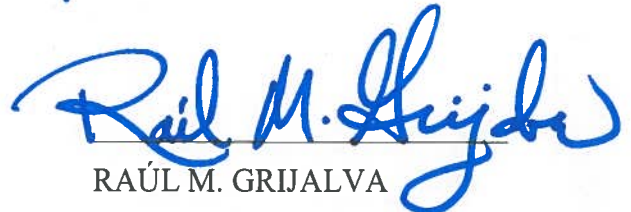
  
TOM MALINOWSKI

  
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RASHIDA TLAIB

  
JOHN GARAMENDI

  
RAÚL M. GRIJALVA

  
JACKIE SPEIER

  
VERONICA ESCOBAR

S.O.C.H.

SALUD O. CARBAJAL

Julia Brownley

JULIA BROWNLEY

Lori Trahan

LORI TRAHAN

A. Donald McEachin

A. DONALD MCEACHIN

Mark Desaulnier

MARK DESAULNIER

Halley Stevens

HALEY STEVENS

Gilbert R. Cisneros, Jr.

GILBERT R. CISNEROS, JR.

Jennifer Wexton

JENNIFER WEXTON

Bobby Scott

BOBBY SCOTT

Kathy Castor

KATHY CASTOR

Jan Schakowsky

JAN SCHAKOWSKY

Ayanna Pressley

AYANNA PRESSLEY

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EARL BLUMENAUER

Ann Kirkpatrick

ANN KIRKPATRICK

Norma J. Torres

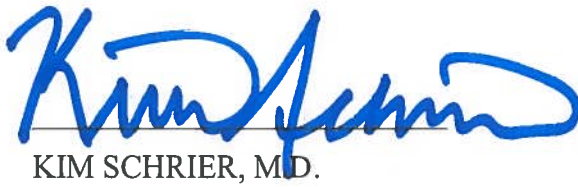
NORMA J. TORRES

Anna G. Eshoo

ANNA G. ESHOO

  
COLIN ALLRED

  
TJ COX

  
KIM SCHRIER, M.D.

  
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LOIS FRANKEL

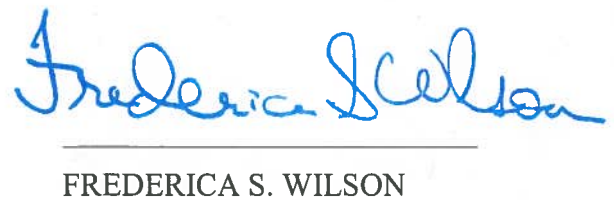
  
ANTHONY BROWN

  
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DORIS MATSUI

  
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DWIGHT EVANS

  
ROSA DELAURO

  
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DEREK KILMER



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SUZAN K. DELBENE



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JOE NEGUSE



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NANETTE DIAZ BARRAGÁN



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DONNA E. SHALALA



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ZOE LOFGREN