



February 7, 2018

Dear Senator,

We write to urge you to vote against the confirmation of Stuart Kyle Duncan to a seat on the United States Court of Appeals for the Fifth Circuit.

Mr. Duncan's views on LGBT civil rights are well known. He has worked assiduously in opposition to marriage equality, the parental rights of lesbian and gay people, and the basic rights of transgender people to use public facilities. He has also worked to further voter suppression, to end the Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) programs, to allow the denial of reproductive health care by employers, and to restrict the rights of criminal defendants. In several cases he doggedly pursued matters and legal arguments that were rejected at every level of the legal system.¹

As a private citizen and attorney, Mr. Duncan is entitled to his views, and to pursue litigation and public policy to further those views. That is inherent in our free and democratic society. But the fact that he has spent his career seeking to restrict the civil rights of large swaths of our citizenry, has utilized legal arguments so resoundingly rejected by our courts, and has more than once questioned the very legitimacy of courts whose decisions he dislikes,² make him an unacceptable choice to serve as a federal judge.

While it is the prerogative of the president to nominate individuals to the federal bench, it is also the duty of the president to ensure that our judiciary does not lose its fundamental character of being open to all and of dispensing justice on a fair and impartial basis. Mr. Duncan's extreme positions opposing basic legal protections for LGBT people, minority voting rights, fair treatment for immigrants, and reproductive rights, will raise serious concerns in any members of those communities who might find themselves before him in an important legal matter involving affecting their lives. What possible assurance can we have that he can in fact be fair and unbiased?

It is particularly concerning that Senate leadership is advancing this nomination in light of their past opposition to nominees they deemed to be overly ideological. Senator Chuck Grassley, chairman of the Senate Judiciary Committee, once stated that "[t]he President's nominee can't be so committed to

¹ See, for example, *Bostic v. Schaefer*, 760 F.3d 353 (4th circ. 2014), *certiorari denied*, 135 S. Ct. 308 (2014) (seeking to allow clerk to deny marriage license to same-sex couple); *V.L. v. E.L.*, 136 S. Ct. 1017 (2016) (parental rights of lesbian mother); Brief for Respondent State of Louisiana, *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), Brief for Louisiana, et al. as Amici Curiae in Support of Appellants, *Schwarzenegger v. Plata*, 563 U.S. 493 (2010), Brief for Louisiana, et al. as Amici Curiae in Support of Respondent, *Padilla v. Kentucky*, 559 U.S. 356 (2010) (rights of criminal defendants).

² Interview with Raymond Arroyo, World Over, EWTN Global Catholic Network (July 2, 2015) (Supreme Court after marriage equality decision); "Legal Issues in a Culture of Life Practice," Annual Meeting of American Academy of Fertility Care Professionals (Aug. 10, 2013) (Ninth Circuit after decision requiring pharmacies to dispense contraception).

political causes, and so devoted to political ideology, that it clouds his or her judgment.”³ Similarly, Senate Majority Leader Mitch McConnell disqualified a nominee whose litigation record was, in McConnell’s words, “marked by ideologically-driven positions[.]”⁴ Surely, any reasonably even-handed application of this caution would counsel against advancing Mr. Duncan’s nomination.

This concern is amplified by the Senate’s additional departures from prior rules and traditions – from hearings stacked with too many nominees to the shredding of the blue slip. The mechanisms of advice and consent that have for years helped to ensure that judges hewed to the political center are being abandoned in pursuit of confirming as many radical nominees as possible in record time, with no regard for Senate tradition and comity, let alone the make-up of the judiciary. Trampling on process to install highly ideological, and sometimes flat-out unqualified, individuals to seats on the bench will only ensure that the courts will no longer be viewed as institutions serving justice, but only as another political branch.

In a pluralistic nation the existence of a wide array of views on important issues is to be expected and encouraged. But in selecting individuals to sit as neutral arbiters on our nation’s federal courts, we should expect that a president will seek those with a demonstrated commitment to fairness and impartiality, rather than those who have zealously opposed civil rights and equal treatment for so many. We urge you to vote no on the confirmation of Stuart Kyle Duncan to a seat on the United States Court of Appeals for the Fifth Circuit.

Sincerely,

A handwritten signature in blue ink that reads "Julianna S. Gonen". The signature is fluid and cursive, with a long horizontal flourish at the end.

Julianna S. Gonen, JD, PhD
Policy Director

³ Press Release, Senator Chuck Grassley, Grassley statement on the Nomination of Debo Adegbile to be Assistant U.S. Attorney (Mar. 5, 2014), <https://www.grassley.senate.gov/news/news-releases/grassley-statement-nomination-debo-adebile-be-assistant-us-attorney>.

⁴ Press Release, Senator Mitch McConnell, McConnell to Oppose Justice Nominee Over Advocacy on Behalf of Philadelphia Cop-Killer (Mar. 5, 2014), <https://www.mcconnell.senate.gov/public/index.cfm/pressreleases?ID=AEDCCD4C-73B9-4D8C-A511-243AFD40C898>.