



Feinstein on Duncan Nomination

April 24, 2018

Washington--Senate Judiciary Committee Ranking Member Dianne Feinstein(D-Calif.) today released the following statement in opposition to the nomination of Kyle Duncan to the Fifth Circuit:

"Mr. Duncan, a Washington D.C. based lawyer, has made a career advocating for ideological causes. He has a long record of arguing to undermine the rights of women, voters, LGBT Americans and immigrants.

Before I speak more in depth about Mr. Duncan's record, it's important to step back and look at the big picture on President Trump's judicial nominees.

Mr. Duncan's nomination is part of the Trump administration's larger effort to remake federal circuit courts with young, ideological nominees who are often far outside of the mainstream or, in some cases, who are unqualified.

In just the last 15 months: We've seen a nominee confirmed to the D.C. Circuit who worked in the White House Counsel's Office on issues likely to go to the court he was appointed to, including on the White House's responses to the Russia investigation. As one Republican senator said, this now-judge's 'conflict of interest' was something 'a first-year law student would see.'

We've seen a nominee confirmed to the Sixth Circuit who blogged under a pseudonym and expressed extreme views and relied on right-wing sources known for discredited conspiracy theories. For example, he wrote in a blog post that the 'two greatest tragedies in our country' are 'slavery and abortion.'

We've seen a nominee to the Eighth Circuit who was the first judicial nominee to receive a unanimous 'not qualified' from the American Bar Association because of concerns about the nominee's judicial temperament and ability to be impartial and still get confirmed on a party-line vote.

Unfortunately, Mr. Duncan is just the latest nominee with a controversial, partisan record that calls into question his ability to be an independent, neutral arbiter appointed to a lifetime position.

We must not allow our courts to be undermined by politics instead of rooted in independence. The courts are a constitutionally created coequal, independent branch designed to be an independent check on Congress and the Executive.

Unfortunately, that independence is under attack. The president has personally attacked judges who have ruled against him. He has also repeatedly declared that he has litmus tests for judicial nominees--pledging that he would only nominate individuals who pass ideological litmus tests.

Our system depends on federal judges who are independent arbiters and follow the facts and the law wherever they lead.

Given this, I've been deeply troubled by efforts to stack our federal courts by jamming controversial nominees through as quickly as possible. Federal judges serve for life and it's critically important that parties who come before them are confident that their case is given a fair shot--that it's being evaluated on the merits.

If you look at Mr. Duncan's record, he cannot demonstrate that women, LGBT Americans, and immigrants who appear before him in court would have an impartial arbiter.

That should trouble all senators. I fear Mr. Duncan's confirmation to the Fifth Circuit will further diminish confidence in our judicial system.

Specifically, Mr. Duncan has been at the center of efforts to roll back women's access to basic healthcare.

Mr. Duncan served as one of the lead lawyers for Hobby Lobby in a case challenging the Affordable Care Act's protections for women's access to contraception. Duncan advanced the argument that a corporation's religious beliefs trump a woman's right to contraceptive coverage in her health insurance plan.

More than 99 percent of American women have used contraception--it's more common than a flu shot.

Access to contraception contributes to improved health for women and babies, including reduced rates of prematurity. The expansion of contraception has also strengthened women's financial security by allowing them to plan when to start a family.

Mr. Duncan also argued in favor of a severely restrictive anti-choice law in Texas, which would have closed 75 percent of women's health clinics that offer comprehensive reproductive health services.

While medical experts, including the American College of Obstetricians and Gynecologists, unanimously agreed that these requirements were not needed to protect women's health, Mr. Duncan argued against the science.

Even the conservative Supreme Court rejected Texas' false pretense of protecting women, and ruled that this law forced doctors and health centers to meet medically-unnecessary requirements.

The Supreme Court held the law did not provide greater protection for women's health and that it was an unconstitutional undue burden on women's reproductive rights.

Mr. Duncan was also at the center of Republican efforts to disenfranchise African-American voters through discriminatory voter ID laws.

After the Fourth Circuit struck down North Carolina's voter ID law, noting that it 'targeted African Americans with almost surgical precision,' Duncan urged the Supreme Court to reverse that decision.

In his petition to the court, he wrote that, quote, 'The Constitution does not allow the sins of Civil Rights-era legislators to be visited on their grandchildren and great-grandchildren.'

Shockingly, this statement ignores the persisting racism in this country and argues that the challenges faced by disenfranchised voters are simply a thing of the past.

What's worse, this argument is made about the right to vote. The U.S. Constitution enshrines the right to vote as one of our most foundational rights.

Mr. Duncan has also repeatedly argued against recognizing same-sex couples' right to marry.

When the Supreme Court ruled in favor of marriage equality in Obergefell, Mr. Duncan declared the decision 'imperial[ed] civic peace.'

That is an extreme statement that is simply untrue. Far from imperiling peace, our country has evolved and embraced this ruling peacefully.

I asked Mr. Duncan whether he still believes that this important case has 'imperial[ed] civic peace' in the years since it was decided. Mr. Duncan did not disavow his statement and would not answer my question.

Lastly, we are a nation of immigrants. Since its founding, the United States has been built on the backs of people from all over the world coming here to build a better life for themselves and their families.

Yet, less than two years ago, in 2016, Duncan argued to the Supreme Court that allowing undocumented parents of U.S. citizen children to live and work would, quote, 'exacerbate the problem of violent crime by unauthorized immigrants.'

Again, Mr. Duncan makes an assertion with no basis in fact. Rather, research shows that immigrants commit fewer crimes than native born Americans. And, the conservative Cato Institute found that immigrants have a lower rate of incarceration than native born Americans.

While I do not expect to agree with the views of all the judicial nominees that come before the Senate, I do expect the nominees to be within the mainstream of legal thought. And I do expect the nominees to uphold basic facts, science, and constitutional principles. I fear that Mr. Duncan's record puts him outside these basic qualifications and I cannot support his nomination."