



June 6, 2018

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Feinstein, and Committee Members:

On behalf of the hundreds of thousands of members of People For the American Way throughout the nation, we write in strong opposition to Ninth Circuit nominee Ryan Bounds of Oregon. While the opposition of both home state senators should prevent consideration of Bounds at all, his record standing alone warrants opposition.

Bounds has failed to meet his burden of demonstrating his qualifications for being given a lifetime position on a powerful circuit court. In particular, he has offered unsatisfactory answers to questions about the extremely inflammatory articles he wrote when he was in college at Stanford.ⁱ These writings evidenced a fundamental misunderstanding of—or even hostility toward—his fellow students who were members of communities that have long been subjected to systemic discrimination.

At his confirmation hearing, Bounds apologized for their “high-handed and overheated tone,” then added:

But I want to make sure that there’s no misconstruction about the intentions behind those columns, which was always to seek greater tolerance and mutual understanding on campus and a way of celebrating diversity that everyone could participate in.

This explanation does not comport with reality. The central problem with the articles is their substance, not simply their tone. They indicate an inability or unwillingness to understand that members of marginalized communities have lived their entire lives being treated differently (and worse) than him due to discrimination embedded deep in our society. This discrimination is not as visible as a lynching or a segregated water fountain, but its very invisibility to many who don’t experience it makes it hard to eradicate. When judges are blind to it, the consequences can be devastating. In the criminal justice context, those consequences can be fatal.

It is hard if not impossible to read his columns and understand them as efforts “to seek greater tolerance and mutual understanding on campus and a way of celebrating diversity that everyone could participate in.” For instance, he wrote:

The existence of ethnic organizations is no inevitable prerequisite to maintaining a diverse university community – white students, after all, seem to be doing all right without an Aryan Student Union.ⁱⁱ

and

I am mystified because these tactics [of those promoting multiculturalism] seem always to contribute more to restricting consciousness, aggravating intolerance, and pigeonholing cultural identities than many a Nazi bookburning.ⁱⁱⁱ

His writings on sexual assault are equally disturbing. The campus was debating whether the university should change its “beyond a reasonable doubt” standard in disciplinary hearings against accused assaulters. He argued that the high standard is needed to protect students who are innocent, but his arguments were completely dismissive of those who disagree, labeling them “battle-scarred P.C. warrior[s].” He added:

Emasculating our burden of proof in the interest of eradicating all hints of antisocial behavior in our community is presumptively invalid, not because students entertain some innate fidelity to ‘beyond a reasonable doubt’ (a standard that is not used in most civil cases in the U.S.), but simply because they did not come to Stanford University to be parented or morally reared.

...Expelling students is probably not going to contribute a great deal toward a rape victim’s recovery; there is no moral imperative to risk egregious error in doing so.^{iv}

Bounds is wrong to dismiss this as a matter of “political correctness.” Regardless of one’s position on the burden of proof, sexual assault is not merely “antisocial behavior.” And it is hard to believe that a man in his early 20s at Stanford University did not realize that the ongoing presence of one’s rapist just might have an emotional effect on the survivor. Women do not now and did not then go to Stanford University to be sexually assaulted.

Even if this nominee’s words were motivated “only” by ignorance and arrogance rather than animus, they undermine his ability to be a fair judge with no appearance of bias.

It is also deeply disturbing that Bounds chose not to share his articles with the bipartisan Federal Judicial Selection Advisory Committee established by Oregon Sens. Ron Wyden and Jeff Merkley to recommend potential nominees. The advisory commission was unlikely to have wanted to overlook material that it knew the Senate Judiciary Committee would find relevant. Making that clear, the advisory commission requested past writings using the exact same language as the Judiciary Committee’s questionnaire. And—as Ranking Member Feinstein pointed out in her Questions for the Record—Bounds met with the state commission *after* he had submitted the controversial material to the Senate, so he knew it was relevant.

Bounds was among the three people the commission recommended to the senators (this was long after the president had already nominated him). But after his college writings became public, the chair of the commission wrote directly to the Oregon senators, stating that Bounds had misled them, and that five of the seven members no longer recommended him.^v

Bounds defends his nondisclosure decision by claiming he spoke with a Wyden staffer, asked how far back he should go in providing items he had written, and was told to go back as far as law school. But that call was unnecessary, since the college writings were clearly relevant. In

addition, when he was being interviewed, he cited experiences from secondary school as relevant to his views on diversity (which he presented positively) while still not disclosing the subsequent college writings.

Commission members were not alone in their reaction to the material that had been kept from them. Bounds has been a member of the Multnomah Bar Association for 12 years, and he held leadership positions from 2011-2018, including working as the chair of the association's Equity, Diversity and Inclusion Committee. The MBA and its leadership know Bounds well and are very familiar with his record in the years since he wrote the articles. Tellingly, when the MBA learned about them, it immediately condemned his "insensitive, intolerant and disdainful views towards racial and ethnic minorities, campus sexual assault victims, and the LGBTQ community" and asked him to resign as chair of the committee.^{vi}

There is no blanket answer as to how much weight to give to objectionable or disturbing articles written for a college newspaper. Their relevance depends on a number of factors, unique to each nomination. In this case, Bounds wrote not one but several highly charged articles, and they directly indicate an approach to issues of equality, justice, and discrimination that are central to evaluating a circuit judge nominee.

Notably, when the Judiciary Committee was considering nominees of President Obama, Republican senators including now-Chairman Grassley factored college writings into their voting decisions. For instance, during a confirmation hearing in 2012, Grassley asked Nevada district court nominee Andrew P. Gordon about his senior thesis analyzing laws on prostitution.^{vii} Apparently unsatisfied with the response, Grassley asked him several follow-up questions in writing.^{viii} That same year, Grassley specifically cited an article about the Second Amendment written during college by Obama nominee Jesse Furman as a reason for voting against his confirmation.^{ix}

Bounds' nomination comes from a White House that has been open about its agenda: fill the courts with ideological judges who believe the Constitution prohibits federal agencies from exercising much of their authority. They are part of a reactionary legal movement arguing that many of the federal programs springing from the New Deal and Great Society are unconstitutional.^x Bounds himself acknowledges that he discussed the general topic of deference to administrative agencies with Trump administration officials.^{xi}

So it is no surprise that Bounds has been affiliated with the Federalist Society for nearly two decades. Since 2000, he has been a member of the conservative organization's Portland Lawyers' Chapter, serving as its president and its vice president. There has been more than enough time for him to become a known quantity to the movement conservatives helping the White House choose judicial nominees in order to transform the Constitution and our nation.

Also, this nomination must be considered in its greater context. We are at a pivotal point in American history, when the courts may be called upon like never before to provide constitutional checks on dangerous presidential overreach.^{xii} In this environment, it is especially important to select and confirm fair-minded judicial nominees who demonstrate an ability to exercise

independence from the executive, not narrow-minded, ideological extremists, selected because of their extremism.

For all these reasons, we urge you to oppose the nomination of Ryan Bounds to the Ninth Circuit.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

ⁱ “A Trump judicial nominee apologizes for controversial articles mocking multiculturalism,” *Washington Post*, May 10, 2018, <https://www.washingtonpost.com/news/morning-mix/wp/2018/05/10/a-trump-judicial-nominee-apologizes-for-controversial-articles-mocking-multiculturalism>.

ⁱⁱ “Race-think: A Stanford Phenomenon?” available at <https://www.afj.org/wp-content/uploads/2018/01/Race-Think-A-Stanford-Phenomenon.pdf>.

ⁱⁱⁱ Id.

^{iv} “Reasonable Doubts?” available at <https://www.afj.org/wp-content/uploads/2018/01/Reasonable-Doubts.pdf>.

^v <https://www.congress.gov/crec/2018/05/08/CREC-2018-05-08-senate.pdf>.

^{vi} MBA Board Statement on Ryan Bounds, Multnomah Bar Association, Feb. 14, 2018, <https://mbabar.org/Resources/News/225/Details>.

^{vii} S. Hrg. 112-4, Part 9 - Confirmation Hearings on Federal Appointments, <https://www.govinfo.gov/content/pkg/CHRG-112shrg93596/pdf/CHRG-112shrg93596.pdf>, p. 691.

^{viii} <https://www.judiciary.senate.gov/imo/media/doc/121212QFR-Gordon.pdf>.

^{ix} Prepared floor statement of Sen. Chuck Grassley, <https://www.grassley.senate.gov/news/news-releases/furman-nomination-senate>.

^x “Trump’s New Judicial Litmus Test: Shrinking ‘the Administrative State,’” *New York Times*, March 26, 2018, <https://www.nytimes.com/2018/03/26/us/politics/trump-judges-courts-administrative-state.html>.

^{xi} Bounds’ Responses to Questions for the Record (QFRs), p. 8, <https://www.judiciary.senate.gov/download/bounds-responses-to-questions-for-the-record>.

^{xii} See, e.g., “Trump and His Lawyers Embrace a Vision of Vast Executive Power,” *New York Times*, June 4, 2018, <https://www.nytimes.com/2018/06/04/us/politics/trump-executive-power-russia-investigation.html>.