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November 19, 2019

Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we strongly urge you to oppose Lawrence VanDyke's nomination to the U.S. Court of Appeals for the Ninth Circuit due to his career-long hostility to civil rights, public education, and workers' rights. Votes associated with this issue may be included in NEA's Report Card for the 116th Congress.

We are particularly concerned that, if confirmed, Mr. VanDyke would:

- **Funnel public money to sectarian schools and inject sectarian religious views into public schools.** As Solicitor General of Nevada, Mr. VanDyke defended a voucher program that diverted essential resources from public schools to private and religious education. Mr. VanDyke also argued it is constitutional to teach intelligent design in public schools<sup>1</sup> despite clear Supreme Court precedent holding otherwise.<sup>2</sup>
- **Threaten the civil rights of LGBTQ students and educators.** In addition to repeatedly defending bans on same-sex marriage, Mr. VanDyke wrote there is "ample reason for concern that same-sex marriage will hurt families, and consequentially children and society"<sup>3</sup> in a response to a Wall Street Journal op-ed published in the Harvard Law Record. His ties to multiple organizations the Southern Poverty Law Center considers LGBTQ-hate groups include a Blackstone Legal Fellowship for the Alliance Defending Freedom. He has never renounced the views espoused by these organizations.
- **Undermine immigrant students' constitutional right to education and legal right to exist.** Mr. VanDyke was part of the coalition that challenged Deferred Action for Childhood Arrivals (DACA), a program that has provided educational opportunities for tens of thousands of students including an estimated 20,000 educators and aspiring educators. He has also supported President Trump's effort to withhold federal funding from so-called "sanctuary cities," endangering both their ability to protect immigrant families and adequately fund public education.

<sup>1</sup> Lawrence VanDyke, *Not Your Daddy's Fundamentalism: Intelligent Design in the Classroom*, Harvard Law Review, vol. 117, no. 3, 2004, pp. 964–971, [www.jstor.org/stable/4093466](http://www.jstor.org/stable/4093466).


<sup>2</sup> *Edwards v. Aguillard*, 482 U.S. 578 (1987).

<sup>3</sup> Lawrence VanDyke, *One student's response to 'A Response to Glendon,'* The Harvard Law Record (Mar 11, 2004), <http://hlrecord.org/one-students-response-to-a-response-to-glendon/>.

- **Fail to protect workers' rights.** Mr. VanDyke was the lead lawyer for a 22-state coalition that challenged the Obama administration's overtime rule, which sought to expand overtime pay to 4 million workers. His success in this lawsuit reduced the paychecks of millions of American families.

For all these reasons, we believe Mr. VanDyke is unfit to serve as a federal judge. We strongly urge you to oppose his nomination to the U.S. Court of Appeals for the Ninth Circuit.

Sincerely,

A handwritten signature in black ink that reads "Marc Egan". The signature is written in a cursive, flowing style.

Marc Egan  
Director of Government Relations  
National Education Association