

November 19, 2019

The Honorable Lindsey Graham
Chairman, Senate Committee on the Judiciary
290 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Feinstein:

On behalf of Giffords Law Center, I write to urge you to reject the nomination of Lawrence VanDyke of Nevada to be United States Circuit Judge for the Ninth Circuit.

Giffords Law Center is compelled to warn this committee about VanDyke's nomination because of his uniquely troublesome record. VanDyke's dangerous commitment to gun lobby groups that oppose all firearm regulations and his advocacy for extreme, unconstitutional, and legally unsupported views on gun policy and the Second Amendment disqualify him for a life-tenured seat on the federal bench.

During his 2014 candidacy for Montana's Supreme Court, VanDyke pledged to align himself with the gun lobby on every firearms regulation that could conceivably come before him. In response to a candidate questionnaire from the National Rifle Association ("NRA"), VanDyke stated he believes all "gun control laws are misdirected," committed to oppose basic gun safety measures like background checks, and promised to sponsor or support dangerous policies like permitless concealed carry. He then inserted a note on his questionnaire stating that he renounced his NRA membership, but only so he would not "risk recusal if a lawsuit came before [him] where the NRA was involved." VanDyke's advance agreement to oppose laws that conflict with the NRA's agenda, and his withdrawal of membership just so he could inaccurately claim independence from the NRA, demonstrates a clear lack of impartiality, which makes him a poor choice for the Ninth Circuit or any federal judgeship.

Consistent with his complete allegiance to the gun lobby, VanDyke has throughout his career taken positions on gun safety that are far outside of the mainstream. The most troubling example is his unprecedented and unlawful position that states may disregard all federal gun safety laws. While serving as Solicitor General of Montana, VanDyke vigorously defended the Firearms Freedom Act,¹ a law that purported to exempt all firearms and ammunition manufactured and kept in Montana from federal law or federal regulation. As the Bureau of Alcohol, Tobacco, Firearms, and Explosives determined, Montana's law was unconstitutional.² The Supremacy Clause of the Constitution provides that federal laws "shall be the supreme Law of the Land" and bind "the Judges in every State" even if state laws conflict. U.S. Const., art. VI.

Federal courts agreed and struck down Montana's unconstitutional law. But despite the Firearms Freedom Act's lack of validity and enforceability, VanDyke continued to support the law's radical approach to firearm regulation. In Montana's petition³ for Supreme Court review, VanDyke argued that the Court should revisit precedents on

¹ Mont. Code Ann. § 30-20-101 et seq.

² Carson W. Carroll, "Open Letter to All Federal Firearms Licensees," Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, 2009, <http://firearmsfreedomact.com/071609-openletter-fil-montana-legislation.pdf>

³ Montana v. Holder, 571 U.S. 1203, 134 S. Ct. 1335 (2014), petition for cert. denied. <http://www.firearmsfreedomact.com/updates/Mont%20v%20Holder%20Cert%20Petition.pdf>

Congressional powers in order to invalidate the federal gun laws Montana had already chosen to disregard, including longstanding restrictions on machine guns, silencers, and short-barreled rifles. VanDyke's arguments, which lack support in the Constitution and Supreme Court precedent, suggest he is not fit to carry out the duties of a federal judge charged with upholding "the supreme Law of the Land."

After losing his bid for the Montana Supreme Court, VanDyke went on to serve as Solicitor General in Nevada and was instrumental in efforts⁴ to prevent the implementation of a voter-approved 2016 ballot initiative to expand gun purchase background checks in Nevada. VanDyke provided legal cover for former Governor Brian Sandoval and Attorney General Adam Laxalt after they disregarded the will of state voters by refusing to take any steps to implement the law's provisions specifying that the FBI conduct background checks. VanDyke argued⁵ that this critical public safety measure was "unenforceable by the governor" even though in fact the governor took no efforts to enforce it by updating Nevada's status with the FBI.

VanDyke's refusal to support the Nevada background checks law stands in stark contrast to his vigorous defense of the Montana Firearms Freedom Act. When asked about the Montana law during his nomination hearing in the Senate Judiciary Committee on October 30, Van Dyke claimed that he "defended laws whether I agreed with them or not." But his actions in Nevada contradict this, demonstrating only a blanket opposition to gun safety laws rather than any impartial desire to uphold the rule of law. VanDyke's approach is an affront to both public safety and legal precedent.

Indeed, significant concerns⁶ have been raised about VanDyke's commitment to and understanding of the proper role of an impartial judiciary in our constitutional system, as well as the constitutional value of equal protection in our society. VanDyke's record demonstrates a lack of independence, fairness, and impartiality essential for any jurist, particularly one who enjoys lifetime tenure. Moreover, VanDyke's dangerous positions on firearm policy and fealty to a gun-lobby agenda, alone, render him unfit to serve on the federal bench.

As an organization dedicated to reducing gun violence in America, Giffords Law Center must oppose Lawrence VanDyke's nomination. We urge you to vote against confirming him to be a federal circuit court judge.

Sincerely,

Robyn Thomas
Executive Director
Giffords Law Center to Prevent Gun Violence

⁴ Soni Brown and Riley Snyder, "Lawyers debate legality of background check initiative in court," *The Nevada Independent*, February 24, 2018, <https://thenevadaindependent.com/article/lawyers-debate-legality-of-background-check-initiative>.

⁵ Soni Brown and Riley Snyder, "The Indy Explains: The legal fight behind Nevada's stalled universal gun background check initiative," *The Nevada Independent*, March 13, 2018, <https://thenevadaindependent.com/article/the-indy-explains-the-legal-fight-behind-nevadas-stalled-universal-gun-background-check-initiative>.

⁶ "AFJ Nominee Report: Lawrence VanDyke," *Alliance for Justice*, accessed November 12, 2019, <https://afj.org/wp-content/uploads/2019/10/VanDyke-Final-Report.pdf>.