

National Hispanic Leadership Agenda

March 19, 2018

United States Senate
Washington, DC 20515

RE: Oppose Confirmation of Stuart Kyle Duncan

Dear Senator:

We write on behalf of the National Hispanic Leadership Agenda (NHLA), a coalition of the 45 leading national Latino nonpartisan civil rights and advocacy organizations, to strongly urge you to oppose the confirmation of Stuart Kyle Duncan to the U.S. Court of Appeals for the Fifth Circuit. Mr. Duncan's legal career has been dedicated to undermining the protections of vulnerable communities, particularly the civil rights of LGBTQ Americans. His record shows that he cannot be an impartial arbiter of justice because he does not demonstrate a belief in constitutional rights for all Americans. **Mr. Duncan is not suited for a lifetime appointment to the federal bench and NHLA therefore urges you to vote "no" on his confirmation. NHLA will closely monitor any votes on this nomination for inclusion in future NHLA scorecards evaluating Senators' support for the Latino community.**

Mr. Duncan has repeatedly articulated his belief that marriage equality will "imperil civic peace"¹ in media interviews, public speeches, and in his writings. He has also questioned the legitimacy of the Supreme Court for "inventing rights" following its decision to make same-sex marriage the law of the land.² In a televised interview on EWTN,³ Mr. Duncan lamented that proponents of LGBTQ rights want "full equality" for gays and lesbians, and want the rights of LGBTQ people "to be equated to race" in order to obtain full protection under the laws.⁴

In another interview on EWTN, Mr. Duncan expressed concern over the possible consequences of legalizing same-sex marriage: "When you take an age-old definition of marriage, an age-old bedrock social institution, and you just change

¹ Kyle Duncan, *Obergefell Fallout*, in DAVID E. NEWTON, SAME-SEX MARRIAGE: A REFERENCE HANDBOOK 131, 132 (2d ed. 2016); see also Kyle Duncan, *Marriage, Self-Government and Civility*, THE WITHERSPOON INST. (Apr. 23, 2015), <http://www.thepublicdiscourse.com/2015/04/14894/>.

² See EWTN Global Catholic Network, *World Over - 2015-07-02 - Impact of recent Supreme Court rulings, Kyle Duncan with Raymond Arroyo*, YOUTUBE (Jul. 2, 2015), <https://www.youtube.com/watch?v=bgo8U9KKv24>.

³ EWTN is the largest religious media network in the world and a staunch opponent of marriage equality. See more at <http://www.ewtn.com/general/index.asp>.

⁴ See *supra* note 6.

MEMBER ORGANIZATIONS

Alianza Americas
American G.I. Forum
ASPIRA Association
Avance Inc.
Casa de Esperanza: National Latin@ Network
Congressional Hispanic Caucus Institute
Farmworker Justice
Green Latinos
Hispanic Association of Colleges & Universities
Hispanic Federation
Hispanic National Bar Association
Inter-University Program for Latino Research
Labor Council for Latin American Advancement
LatinoJustice PRLDEF
League of United Latin American Citizens
MANA, A National Latina Organization
Mexican American Legal Defense and Educational Fund
Mi Familia Vota
National Association of Latino Arts and Cultures
National Association of Hispanic Federal Executives
National Association of Hispanic Publications
National Day Laborer Organizing Network
NALEO Educational Fund
National Association of Latino Independent Producers
National Conference of Puerto Rican Women, Inc.
National Hispanic Caucus of State Legislators
National Hispanic Council on Aging
National Hispanic Environmental Council
National Hispanic Foundation for the Arts
National Hispanic Media Coalition
National Hispanic Medical Association
National Institute for Latino Policy
National Latina/o Psychological Association
National Latina Institute for Reproductive Health
Presente.org
SER Jobs for Progress National
Southwest Voter Registration Education Project
UnidosUS
United States Hispanic Chamber of Commerce
United States Hispanic Leadership Institute
United States-Mexico Chamber of Commerce
U.S.- Mexico Foundation
Voto Latino

it, no one can possibly predict with any degree of confidence what are all the ramifications for our society that are going to take place. No one, for instance, could have predicted all of the social pathologies that resulted from no-fault divorce.... [Same-sex marriage] is a far more radical change than no-fault divorce and no one can possibly say, 'I know what's going to happen'.”⁵ He also expressed concern that a Supreme Court decision legalizing same-sex marriage would lead to private entities being subjected to anti-discrimination laws.⁶

It is also notable, and concerning, that Mr. Duncan has significant ties to Alliance Defending Freedom (ADF), a legal advocacy and Christian lawyer training organization that the Southern Poverty Law Center has labeled a hate group for its extreme anti-LGBTQ views.⁷ Among other things, this group has called for criminalizing homosexuality in the U.S., defended state-sanctioned sterilization of transgender people, linked homosexuality to pedophilia, and perpetuated the despicable idea that the ‘homosexual agenda’ will destroy Christianity and society.⁸ Mr. Duncan has given at least four separate speeches to ADF.⁹

In fact, ADF proudly calls Mr. Duncan an “allied attorney.”¹⁰ The purpose of the ADF allied attorney program is to train, support, and provide resources to attorneys worldwide to fight for ADF values, such as preserving “marriage and family in an increasingly hostile legal culture.”¹¹ To join the ADF ranks, allied attorneys must formally apply to the program and affirm ADF’s Statement of Faith.¹² ADF’s Statement of Faith contends that “[r]ejecting one’s biological sex rejects the created image of God.”¹³ It also repudiates “homosexual behavior” and “acting upon any disagreement with one’s biological sex” as sinful and offensive to God.¹⁴

⁵ See EWTN Global Catholic Network, *World Over - 2015-04-30 - US Supreme Court arguments on marriage, Kyle Duncan with Raymond Arroyo*, YOUTUBE (Apr. 30, 2015), <https://www.youtube.com/watch?v=INdSJq3OZpE>.

⁶ The Federalist Society, *How Could the Supreme Court Affect Marriage?*, YOUTUBE (Jun. 25, 2015) <https://www.youtube.com/watch?v=K1Wr-s15Dlo>. “You can’t make me participate in same-sex marriage. You can’t make me cater a same-sex wedding. You can’t make me photograph a same-sex wedding. Why? Because I have a conscience based objection to participate in something that I don’t think is a real marriage.” *Id.*

⁷ *Alliance Defending Freedom*, SOUTHERN POVERTY L. CTR., <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.

⁸ *Id.*

⁹ United States Senate Committee on the Judiciary, *supra* note 1, at 10, 14–15.

¹⁰ *ADF Allied Attorney Success Stories: September 2011*, ALLIANCE DEFENDING FREEDOM, <http://www.adflegal.org/detailspages/alliance-alert-details/adf-allied-attorney-success-stories--september-2011>, (last visited March 13, 2018).

¹¹ *Allied Attorney Network*, ALLIANCE DEFENDING FREEDOM, <https://www.adflegal.org/for-attorneys/attorney-network>, (last visited March 13, 2018).

¹² Erin Fitzgerald, *Alumni of this anti-LGBTQ hate group are serving in federal, state, and local governments*, MEDIA MATTERS FOR AMERICA (May 24, 2017, 11:36 AM), <https://www.mediamatters.org/blog/2017/05/24/Alumni-of-this-anti-LGBTQ-hate-group-are-serving-in-federal-state-and-local-governments/216622>.

¹³ *Statement of Faith*, ALLIANCE DEFENDING FREEDOM, <http://www.adflegal.org/about-us/careers/statement-of-faith>, (last visited March 13, 2018).

¹⁴ *Id.* “We believe God immutably creates each person as male or female, which reflect the image and nature of God. Rejecting one’s biological sex rejects the created image of God. We believe God designed marriage as a unique conjugal relationship joining one man and one woman in a single, exclusive, life-long union. God intends sexual intimacy to only occur between a man and a woman joined in marriage. We believe all forms of sexual immorality (including adultery, fornication, homosexual behavior, polygamy, polyandry, bestiality, incest, pornography, and acting upon any disagreement with one’s biological sex) are sinful and offensive to God.”

Allied attorneys of ADF take on ADF cases pro bono¹⁵ and are also eligible to participate in the ADF Grants and Funding program, which enables them to advocate for clients who otherwise cannot afford legal representation.¹⁶ Mr. Duncan has received grant money from the organization.¹⁷ Furthermore, in Mr. Duncan's questionnaire to the Senate Judiciary Committee, he lists ADF as co-counsel in one of the ten "most significant litigated matters" in which he presided over.¹⁸ He also lists another prominent ADF allied attorney, Noel Francisco, as co-counsel in another one of his ten "most significant litigated matters."¹⁹ Indeed, Mr. Duncan and ADF have worked on several cases together throughout his legal career.²⁰ Mr. Duncan's strong ties to ADF are of grave concern given his record of openly opposing civil rights for LGBTQ people.

Judges must fundamentally believe in the civil rights of all Americans in order to fairly distribute justice, but Mr. Duncan's career has been dedicated to limiting the rights of LGBTQ individuals. His record indicates that he cannot administer the rights of LGBTQ Americans equally. **We ask that you vote "no" on the confirmation of Mr. Duncan to a lifetime appointment on the bench.**

Please contact NHLA through Maritza Perez, of MALDEF, at maritza.perez@maldef.org, or Andrea Senteno, at asenteno@maldef.org, with any questions regarding this letter. Thank you for your time and consideration.

Sincerely,



Thomas A. Saenz
Co-Chair, NHLA Civil Rights Committee
President and General Counsel, MALDEF



Juan Cartagena
Co-Chair, NHLA Civil Rights Committee
President & General Counsel,
LatinoJustice PRLDEF

¹⁵ *Allied Attorney Network*, *supra* note 20.

¹⁶ *Attorney Network FAQ*, ALLIANCE DEFENDING FREEDOM, <https://www.adflegal.org/for-attorneys/attorney-network/faq>, (last visited March 13, 2018); *Grants and Funding*, ALLIANCE DEFENDING FREEDOM, <https://www.adflegal.org/for-attorneys/grants-funding>, (last visited March 13, 2018).

¹⁷ Sarah Posner, *The Christian Legal Army Behind 'Masterpiece Cakeshop'*, THE NATION (Nov. 28, 2017), <https://www.thenation.com/article/the-christian-legal-army-behind-masterpiece-cakeshop/>.

¹⁸ United States Senate Committee on the Judiciary, *supra* note 1, at 45.

¹⁹ United States Senate Committee on the Judiciary, *supra* note 1, at 41.

²⁰ See *Steven-Glenn v. McCrory*, No. 16-2120, 2016 WL 9782185 (4th Cir. Dec. 20, 2016); *Gloucester Cty. Sch. Bd. v. G. G. ex rel. Grimm*, 137 S. Ct. 1239, 197 L. Ed. 2d 460 (2017); *June Med. Servs. LLC v. Kliebert*, No. CV31400525JWDRLB, 2016 WL 617444 (M.D. La. Feb. 16, 2016); *Robicheaux v. Caldwell*, 791 F.3d 616 (5th Cir. 2015); *Adar v. Smith*, 597 F.3d 697 (5th Cir. 2010), on reh'g en banc, 639 F.3d 146 (5th Cir. 2011); *Bostic v. Rainey*, No. 2:13CV395, 2014 WL 10022686 (E.D. Va. Feb. 14, 2014), aff'd sub nom. *Bostic v. Schaefer*, 760 F.3d 352 (4th Cir. 2014); *Connick v. Thompson*, 563 U.S. 51, 131 S. Ct. 1350, 179 L. Ed. 2d 417 (2011); *Wheaton Coll. v. Sebelius*, 887 F. Supp. 2d 102, 104 (D.D.C. 2012), vacated, No. CV 12-1169 (ESH), 2013 WL 5994617 (D.D.C. Aug. 19, 2013); *Hobby Lobby Stores, Inc. v. Sebelius*, 870 F. Supp. 2d 1278 (W.D. Okla. 2012), rev'd and remanded, 723 F.3d 1114 (10th Cir. 2013), aff'd sub nom. *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 189 L. Ed. 2d 675 (2014); *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 189 L. Ed. 2d 675 (2014).