



Standing Committee on  
the Federal Judiciary

Please reply to:  
**William C. Hubbard**  
Nelson Mullins Riley & Scarborough LLP  
1320 Main Street, 17th Floor  
Columbia, SC 29201  
william.hubbard@nelsonmullins.com

October 29, 2019

**CHAIR**

William C. Hubbard  
17th Floor  
1320 Main Street  
Columbia, SC 29201

**FIRST CIRCUIT**

Carlos A. Rodriguez-Vidal  
AIG Plaza, 15th Floor  
250 Munoz Rivera Avenue  
San Juan, PR 00918

**SECOND CIRCUIT**

Vincent Chang  
500 Fifth Avenue  
New York, NY 10110

**THIRD CIRCUIT**

Kenneth Allen Polite, Jr.  
1701 Market Street  
Philadelphia, PA 19103

**FOURTH CIRCUIT**

Pamela J. Roberts  
Suite 1200  
1441 Main Street  
Columbia, SC 29201

**FIFTH CIRCUIT**

J. Douglas Minor, Jr.  
Suite 1000  
188 E. Capitol Street  
Jackson, MS 39201

**SIXTH CIRCUIT**

John B. Pinney  
Suite 1800  
312 Walnut Street  
Cincinnati, OH 45202

**SEVENTH CIRCUIT**

John Skilton  
Suite 201  
33 East Main Street  
Madison, WI 53703

**EIGHTH CIRCUIT**

Sonia Miller-Van Oort  
Suite 100  
120 South Sixth Street  
Minneapolis, MN 55402

**NINTH CIRCUIT**

Marcia Davenport  
Suite 200  
900 North Last Chance Gulch  
Helena, MT 59601

Koji Fukumura

4401 Eastgate Mall  
San Diego, CA 92121

**TENTH CIRCUIT**

Jennifer H. Weddle  
Suite 3300  
1144 15th Street  
Denver, CO 80202

**ELEVENTH CIRCUIT**

Suzanne E. Gilbert  
Suite 2600  
200 South Orange Avenue  
Orlando, FL 32801

**D.C. CIRCUIT**

Matthew G. Kaiser  
8th Floor West  
1099 14th Street NW  
Washington, D.C. 20005

**FEDERAL CIRCUIT**

Gail Lione  
1900 K Street NW  
Washington, D.C. 20006

**STAFF COUNSEL**

Denise A. Cardman  
Suite 400  
1050 Connecticut Avenue, NW  
Washington, DC 20036

**Via Email**

The Honorable Lindsey Graham  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**Via Email**

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

*Re: Nomination of Lawrence J.C. VanDyke to the United States  
Court of Appeals for the Ninth Circuit*

Dear Chairman Graham and Ranking Member Feinstein:

The American Bar Association's Standing Committee on the Federal Judiciary has received a full report on Lawrence J.C. VanDyke and a supplemental review by a former chair of the Committee. The Committee's work is based solely on a review of integrity, professional competence, and judicial temperament. Based on these criteria, a substantial majority of the Committee has determined that Mr. VanDyke is "Not Qualified," and a minority determined that he is "Qualified" to serve on the United States Court of Appeals for the Ninth Circuit. The majority rating represents the Standing Committee's official rating. I write to offer a brief explanation of this rating.

The evaluator's Formal Report is based on 60 interviews with a representative cross section of lawyers (43), judges (16), and one other person who have worked with the nominee in the four states where he has worked and who are in a position to assess his professional qualifications. They include but are not limited to attorneys who worked with him and who opposed him in cases and judges before whom he has appeared at oral argument. The evaluator obtained detailed background materials such as more than 600 pages of publicly produced emails involving and/or written by Mr. VanDyke, news reports where Mr. VanDyke had been interviewed, and articles and opinions written about him.

Mr. VanDyke is a highly educated lawyer with nearly 14 years of experience in appellate law, including one year as a law clerk, an associate in a law firm, and as a Solicitor General for over five-plus years, first in Montana and then Nevada, two states in the Ninth Circuit where he would serve if confirmed. The Committee was tasked with balancing Mr. VanDyke's accomplishments with strong evidence that supports a "Not Qualified" rating.

Mr. VanDyke's accomplishments are offset by the assessments of interviewees that Mr. VanDyke is arrogant, lazy, an ideologue, and lacking in knowledge of the day-to-day practice including procedural rules. There was a theme that the nominee lacks

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humility, has an “entitlement” temperament, does not have an open mind, and does not always have a commitment to being candid and truthful.

Some interviewees raised concerns about whether Mr. VanDyke would be fair to persons who are gay, lesbian, or otherwise part of the LGBTQ community. Mr. VanDyke would not say affirmatively that he would be fair to any litigant before him, notably members of the LGBTQ community.

Even though Mr. VanDyke is clearly smart, comments were made that in some oral arguments he missed issues fundamental to the analysis of the case. There were reports that his preparation and performance were lacking in some cases in which he did not have a particular personal or political interest.

While the evaluator was careful in her interview with Mr. VanDyke not to name interviewees, the nature of the issues that gave rise to some of the negative comments had been publicly discussed and other adverse comments could be raised without identifying interviewees. The negative issues discussed in this letter were thoroughly discussed with interviewees and vetted with the nominee. Significantly, the interviewees’ views, negative or positive, appeared strongly held on this nominee.

The Committee’s work is guided by the *Backgrounder* which reflects that judgment is a component of professional competence, and that open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under law are components of judicial temperament. Based on these principles, a substantial majority of the Committee determined that the nominee is “Not Qualified” to be a Ninth Circuit judge.

Very truly yours,



William C. Hubbard

WCH:cks

cc: Pat A. Cipollone, White House Counsel (*via email*)  
Lola A. Kingo, Chief Nominations Counsel, Office of Legal Policy,  
U.S. Department of Justice (*via email*)  
Lawrence J.C. VanDyke (*via email*)  
ABA Standing Committee on the Federal Judiciary (*via email*)  
Denise A. Cardman, ABA Standing Committee on the Federal Judiciary,  
Staff Counsel (*via email*)