



June 4, 2018

Submitted Via Email:

Mike_davis@judiciary-rep.senate.gov

Phillip_Brest@judiciary-dem.senate.gov

The Honorable Chuck Grassley, Chair
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

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

Dear Chair Grassley and Ranking Member Feinstein:

On behalf of the National Employment Lawyers Association (NELA), and its 4,000 circuit, state, and local affiliate members across the country, I write to express our strong opposition to advancing the nomination of Ryan Bounds to serve as a judge on the U.S. Court of Appeals for the Ninth Circuit.

NELA is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. Our members litigate on behalf of employees in every circuit, affording NELA a unique perspective on how employment cases, courts, and the judges who are entrusted with decision-making affect the lives of thousands of working people.

NELA, our members, and their clients take very seriously the role of the judiciary, and accordingly, the process by which federal judicial nominees are considered, and ultimately confirmed or not. Upholding the processes and traditions that have been established to ensure fairness and protect against partisanship in judicial confirmations is a cornerstone of a fair, impartial, and independent judiciary. Both of Mr. Bounds' home state senators, Senators Ron Wyden (D-OR) and Jeffrey Merkley (D-OR), signaled their opposition to the nomination by withholding their blue slips, and with good reason.

Mr. Bounds' record reflects a profound and public disregard and disrespect for civil rights and minority communities. His extreme and insensitive written comments about workers, people of color, the LGBTQ community, survivors of sexual assault, and others undermine our confidence in his judgment, temperament, and independence. Indeed, his biases line up against the very

groups that many of our civil and workers' rights laws were enacted to protect. We believe that Mr. Bounds' record demonstrates an inability to preside over workplace legal disputes— often including as parties, individuals who are members of the same communities he has disparaged, in the fair-minded and independent manner essential to the role of a federal judge.

A. *Both Home-State Senators Rejected Bounds' Nomination*

Mr. Bounds is nominated to the Ninth Circuit for a seat based in Oregon. Both Oregon Senators Wyden and Merkley reaffirmed their opposition to Mr. Bounds' nomination on February 12, 2018, when they announced their respective decisions not to return the blue slip, thereby signaling their opposition to this nominee. Although Mr. Bounds was one of four candidates recommended for the vacant position by Oregon's bipartisan judicial selection committee, the Senators ultimately rejected his nomination due to his failure to disclose (and acknowledge) his inflammatory, highly biased, and disparaging remarks.¹ In a joint statement, the Senators explained their decision:

After the committee finished its work, we learned that Ryan Bounds failed to disclose inflammatory writings that reveal archaic and alarming views about sexual assault, the right of workers, people of color, and the LGBTQ community.²

Despite a long-standing Senate tradition respecting the blue slip, by advancing this nominee Chair Grassley (R-IA) underscores his partisan disregard for a Senate tradition that he previously insisted be adhered to.

Thus far, Chair Grassley has made the historic and troubling decision to schedule hearings and votes on two federal circuit court nominees, David Stras (Eighth Circuit) and Michael Brennan (Seventh Circuit) both of whom lacked the support of one home-state senator. Scheduling a hearing on Mr. Bounds' nomination marks the *first known time* in the 101 year history of the blue slip tradition in which a judicial nominee was confirmed over the objection of *both* home-state senators.³ Indeed, only twice before has a Senate Judiciary Committee (SJC) chairperson held a hearing for a judicial nominee with two negative blue slips; both times the nominee was rejected.⁴

¹ In fact, the selection committee informed Senators Wyden and Merkley that they would not have voted to recommend Mr. Bounds had they known about his writings. See Maxine Bernstein, *Senators Grill Oregon Federal Prosecutor During Judicial Confirmation Hearing*, The Oregonian, May 9, 2018, available at http://www.oregonlive.com/portland/index.ssf/2018/05/democratic_senators_grill_oreg.html.

² See *supra* note 4.

³ See Barry J. McMillion, *The Blue Slip Process for U.S. Circuit and District Court Nominations: Frequently Asked Questions*, at 8 (Congressional Research Service Oct. 2, 2017), available at <https://fas.org/sgp/crs/misc/R44975.pdf>.

⁴ Sollenberger, Mitchel A., "The History of the Blue Slip in the Senate Committee on the Judiciary, 1917-Present," at 22 (Congressional Research Service updated Oct. 22, 2003), available at <https://fas.org/sgp/crs/misc/RL32013.pdf>.

The Senate is entrusted with the responsibility of ensuring that the core democratic principles of fairness and bipartisanship are upheld in the process of judicial confirmations. Discarding the processes and traditions that allow each home-state senator a voice in the judicial nominations in his or her state diminishes the power of every United States senator, as well as that of the senator's constituents. The blue slip tradition is critical to ensuring that the federal judiciary remains an independent branch of government. It minimizes partisanship in the federal judiciary by ensuring that only well-qualified, consensus nominees are confirmed to these lifetime appointments.

B. *Bounds Demonstrates Disregard For The Civil Rights of Minority Communities*

Mr. Bounds' public writings reflect hostility toward workers, people of color, LGBTQ people, and survivors of sexual assault, as well as hostility toward efforts in support of multiculturalism and diversity. In his written attacks on different groups of people he used derogatory and divisive language. In several articles written for *The Stanford Review* Mr. Bounds expressed a shocking disdain and intolerance for minority groups, a bias that is inappropriate for a federal judge seeking a lifetime appointment to a position that requires one to rigorously apply the law and maintain even-handed justice.

Mr. Bounds criticized fellow students protesting a union-busting hotel.⁵ He mocked their support for working people as "pithy, bromidic rhymes about employer-employee relations" and minimized their "social injustice" concerns because only "[t]hree employees . . . were allegedly fired for attempting to form a union." He then criticized Stanford's Chicano/Latino student organization's support for these protests. His comments reflect a disdain for workers' rights and those who support working people. In light of Congress' well-established protections for concerted activity, Mr. Bounds' beliefs are in direct conflict with the judiciary's role of upholding the rights of working people and protecting employees and employers equally in the employer-employee relationship.

Mr. Bounds' insensitivity extends to survivors of campus sexual assault and rape, who he advocated should be required to satisfy the stringent "beyond reasonable doubt" standard reserved for criminal cases, as the basis for disciplinary action against a student accused of sexually assaulting another student.⁶ He dismissed Stanford "administrators and activists working against sexual assault" and in support of the application of a "preponderance of the evidence" standard, writing "there is really nothing inherently wrong with the University failing to punish an alleged rapist— regardless his guilt—in the absence of adequate certainty; there is nothing that the University can do to objectively ensure that the rapist does not strike again." Unlike criminal law, however, Title IX of the Education Amendments of 1972 – the federal statute prohibiting discrimination in education on the basis of sex – requires that all students have equal access to education, including protections against sexual assault and rape. The

⁵ Ryan Bounds, *Labor Unions and the Politics of Aztlan*, *The Stanford Review*, available at <https://www.afj.org/wp-content/uploads/2018/01/Labor-Union-Politics-and-the-Aztlan.pdf>.

⁶ Ryan Bounds, *Reasonable Doubts?*, *The Stanford Review*, Oct. 17, 1994, available at <https://www.afj.org/wp-content/uploads/2018/01/Reasonable-Doubts.pdf>.

Supreme Court, not “activists,” discouraged schools from adopting criminal standards and process in their Title IX disciplinary hearings, finding it would hinder their ability to ensure safe and equitable learning environments for all students. *See Goss v. Lopez*, 419 U.S. 565, 583 (1975).

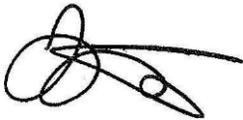
Mr. Bounds has made profoundly disdainful comments about the efforts of a wide array of minority groups seeking to address the bias and hatred that they have faced on a daily basis—groups that have long histories of experiencing harsh discrimination. African Americans, Asians, Latinos/as, the LGBTQ community, women, and others rely on federal anti-discrimination laws to address ongoing bias and mistreatment, and on judges to enforce those laws. Mr. Bounds has not demonstrated the commitment to upholding the laws that created such protections, which should be the standard for a federal judge.

At his Senate Judiciary Committee hearing, Mr. Bounds apologized for his comments calling them “ill-considered [and] tone-deaf.” Yet Mr. Bounds has offered no explicit statement, nor is there any publication or other evidence that his perspectives on any of the substantive issues invoked by his prior comments have changed.⁷

Working people deserve the consideration of a judge who will fairly and independently resolve disputes concerning wage and hour law, worker safety, anti-discrimination protections, and whistleblower rights. Mr. Bounds’ history does not suggest that he would meet such a standard.

For these reasons, NELA respectfully urges the Senate Judiciary Committee to oppose the nomination of Ryan Bounds to the U.S. Court of Appeals for the Ninth Circuit. Thank you for your consideration.

Sincerely,



James H. Kaster
NELA President



Terry O’Neill
Executive Director

⁷ See Maxine Bernstein, *Oregon’s U.S. Senators Say Federal Prosecutor Ryan Bounds Unsuitable for 9th Circuit Vacancy*, *The Oregonian*, Feb. 12, 2018, available at http://www.oregonlive.com/portland/index.ssf/2018/02/oregons_us_senators_say_federa.html.