

April 20, 2018

Re: **Reproductive Justice Organizations Oppose the Confirmation of Kyle Duncan**

Dear Senator:

We, the National Asian Pacific American Women's Forum, In Our Own Voice: National Black Women's Reproductive Justice Agenda, and the National Latina Institute for Reproductive Health, write to express our strong opposition to the confirmation of Kyle Duncan to the U.S. Court of Appeals for the Fifth Circuit.

As national organizations that work towards reproductive justice, we recognize that each person's reproductive choices are uniquely affected or limited by the various racial, sexual, physical, economic, social, institutional, and religious factors that surround them. Our central aim is to ensure that all women can choose for themselves whether, when, and how to parent, and that they can make those choices in supportive and safe environments free from violence and oppression. Because we recognize that many factors beyond reproductive rights impact accessibility to reproductive health, such as discrimination against transgender and gender non-conforming people, immigration policies, housing and education access, and voter suppression laws (which disenfranchise the same people who are disproportionately impacted by abortion restrictions and restrictions on funding of abortion care), our work is integrally connected to other movements for social justice and civil and human rights.

Given our commitment to reproductive justice and social justice, we are deeply troubled by Duncan's nomination. **Duncan's record and own public statements demonstrate a bias against women, LGBTQ people and immigrants, and a disregard for fundamental constitutional and civil rights. In light of this record, we believe he lacks the qualifications to serve with the fairness and impartiality required of a judge.**

**Reproductive Rights:** Duncan has a long record of undermining reproductive rights. As lead counsel for Hobby Lobby in the Supreme Court case, *Burwell v. Hobby Lobby*, and the author of an amicus brief in *Zubik v. Burwell*, Duncan has strongly opposed the Affordable Care Act's contraceptive coverage policy. In *Stormans v. Wiesman*, Duncan filed an amicus brief arguing that Catholic pharmacists should not have to follow Washington state law that required pharmacists to fill contraception prescriptions.

As reproductive justice organizations, we believe that women of color have the right to make informed decisions about family planning and to prevent unintended pregnancy. Fundamental to ensuring that right is our commitment to expanding access to safe, effective, and affordable contraception so that women can make their own reproductive decisions. The ACA's contraceptive coverage policy was a critical step forward in expanding access to affordable, safe and effective contraception to millions of women, including many women of color. Duncan's opposition to the ACA policy reflects a disregard for the reality that without legal protections to

ensure contraceptive coverage, many women are left without the means to access safe and effective contraception.

Duncan has also defended state laws imposing significant restrictions that impede access to abortion care. As the co-author of an amicus brief in *Whole Woman's Health v. Hellerstadt*, Duncan supported restrictions imposed by the state of Texas on abortion providers that severely impaired their ability to provide care to women. These laws were struck down as unconstitutional by the Supreme Court. He has also defended similar restrictions on abortion providers passed by the state of Louisiana. These restrictions are clearly intended to undermine women's reproductive rights. Duncan has argued that these laws are intended to protect women when, in fact, they endanger women's health.

**Immigrants' Rights:** Duncan also has a troubling history regarding immigrants' rights. Duncan authored an amicus brief in opposition to President Obama's Deferred Action for Childhood Arrivals (DACA). He also filed an amicus brief against President Obama's Executive Order that established the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program. In his brief, Duncan challenged the naturalization of undocumented immigrants on the basis that it threatens public safety by arguing that "[m]any violent criminals would likely be eligible to receive deferred action under DAPA's inadequate standards." His arguments evince his own racist stereotypes and misconceptions about immigrants.

**LGBTQ Rights:** Duncan also has a long record of attacking the rights of LGBTQ people. Duncan authored briefs opposing marriage equality in *Obergefell v. Hodges*, 135 S.Ct. 2071 (2015). He has also represented clients in the courts against custody and adoption rights for same-sex couples and against transgender students' ability to use the bathroom that conforms with their gender identity.

**Voting Rights:** Duncan's record on civil rights is also deeply concerning, particularly his defense of discriminatory voting laws. When the Fourth Circuit struck down a voter suppression law passed by the state of North Carolina, finding that the provisions "target[ed] African Americans with almost surgical precision" and describing the law as "the most restrictive voting law North Carolina has seen since the era of Jim Crow," Duncan unsuccessfully represented North Carolina in attempting to get the Supreme Court to reverse that decision. He also represented Texas in defending a restrictive voter ID law that the trial court judge found had been adopted with the intent to discriminate.

For the foregoing reasons, we urge you to strongly oppose Kyle Duncan's confirmation to serve on the Fifth Circuit Court of Appeals.

Sincerely,

National Asian Pacific American Women's Forum

In Our Own Voice: National Black Women's Reproductive Justice Agenda

National Latina Institute for Reproductive Health