



**KYLE DUNCAN**  
**ACTION RESOURCES**



# WRONG FOR THE FEDERAL BENCH

## ABOUT STUART KYLE DUNCAN

President Donald Trump has nominated Stuart Kyle Duncan for a seat on the U.S. Court of Appeals for the Fifth Circuit. Duncan has a dangerous record of fighting to undermine critical legal rights and protections for women, people of color, lesbian, gay, bisexual, transgender and queer (LGBTQ) people, and immigrants. Duncan has no place on the federal bench.

## KEY POINTS

**Duncan fought against reproductive rights.** Duncan served as the lead counsel in *Burwell v. Hobby Lobby*, which allows corporations to claim religious grounds for denying employees insurance coverage for contraception, and provides a roadmap for businesses to claim religious grounds to deny critical protections to LGBTQ employees. Duncan also defended a Texas law that imposed major burdens on Texas abortion providers and forced a mass closing of abortion facilities. The Supreme Court overturned the law, calling the burdens “undue.”

**Duncan worked to undermine voting rights for people of color.** Duncan worked with fellow Trump judicial nominees Thomas Farr and Stephen Schwartz to defend a restrictive North Carolina voting law that the Fourth Circuit said targeted African Americans “with almost surgical precision.” Duncan also defended a Texas voter ID law that a district court found was “imposed with an unconstitutional discriminatory purpose.”

**Duncan attacked immigrants’ rights.** Duncan opposed President Obama’s Executive Order that established the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). He argued that “[m]any violent criminals would likely be eligible to receive deferred action under DAPA’s inadequate standards.”

**Duncan battled LGBTQ equality.** Duncan once wrote that if the Supreme Court recognized marriage equality as a fundamental right, the “harms” to our democracy “would be severe, unavoidable, and irreversible.” Duncan has also spoken multiple times before the Alliance Defending Freedom, which the Southern Poverty Law Center has classified as a hate group.

**Duncan opposed transgender rights.** Duncan argued that transgender people were mentally ill when he fought against equality for Gavin Grimm, a transgender high school boy whose was denied the right to use the bathroom that matches his gender.

# JUDGES MATTER

## WHY COURTS MATTER

## YOUR SENATOR MATTERS

## NIELSON: WRONG FOR THE BENCH

## THE JUDGES WE WANT

### DON'T LET TRUMP TAKE OVER A KEY LINE OF DEFENSE: OUR COURTS

- Lower federal courts are often the last bastions of protection for the rights of people without wealth, power, or privilege. And now, they are an important line of defense against Trump's radical agenda.
- Federal courts at all levels decide cases on issues vital to all of us. In 2017, federal courts blocked Trump's travel ban, protected our sanctuary cities, rejected the ban on transgender people serving in the military, stood up for Dreamers, and blocked the administration's attempts to stop teenage immigrants from obtaining abortions.
- Because the Supreme Court only hears around 80 cases a year, the lower courts play a major and often-overlooked role in helping to define and protect our constitutional rights for generations.
- Right now, Donald Trump has over 130 federal court seats to fill with lifetime appointments. That gives him the chance to put his stamp on our justice system for decades to come, unless we fight back against these ultraconservative nominees.

## WHY COURTS MATTER

## YOUR SENATOR MATTERS

## NIELSON: WRONG FOR THE BENCH

## THE JUDGES WE WANT

### EVERY VOTE MATTERS

- Senators have a responsibility to closely scrutinize the record of every individual nominated to the federal bench by the president, and reject those who are unqualified.
- Senators from nominees' home states play an even bigger role. Both senators indicate approval for a candidate's nomination moving forward procedurally by returning positive blue slips. Traditionally, nominees have not moved forward if both home state senators have not returned positive blue slips.
- In most cases, once a nominee has both blue slips, the next step is a hearing before the Senate Judiciary Committee. If the nominee is approved by the committee, then the nomination is sent to the full Senate for consideration. The bottom line? Every senator gets a voice on judicial nominees.

## WHY COURTS MATTER

## YOUR SENATOR MATTERS

## DUNCAN: WRONG FOR THE BENCH

## THE JUDGES WE WANT

### TRUMP'S JUDICIAL NOMINEES SO FAR FIT A DISTURBING PATTERN

- President Trump nominated Kyle Duncan because he believes that he, like other Trump nominees, will be a rubber stamp for his radical agenda, which threatens women, workers, LGBTQ people, immigrants, and people of color.
- Kyle Duncan has spent his career fighting reproductive rights for women, opposing civil rights for LGBTQ people, defending discriminatory voting laws, dismantling protections for immigrants, and fighting criminal justice reform. His record reflects a lack of respect for the rights and dignity of other people.
- Kyle Duncan's record raises questions about his ability to fairly administer justice and stand up for the constitutional rights of all. He has no place on the federal bench.

## WHY COURTS MATTER

## YOUR SENATOR MATTERS

## NIELSON: WRONG FOR THE BENCH

## THE JUDGES WE WANT

### WE NEED JUDGES WHO WILL PROTECT THE RIGHTS OF EVERYONE

- We want Supreme Court and lower court judges who will be an independent check on abuses of power, and who understand the Constitution protects all of us - not just the wealthy and powerful.
- We want judges who will not turn back the clock on rights for women, workers, LGBTQ people, and people of color, or roll back protections that keep our communities healthy and environment clean.
- We want judges who will defend core constitutional values of liberty, equality, and justice for all.

# TAKE ACTION

## CONTACT YOUR SENATOR

### ACTIONS YOU CAN TAKE

Contact your senators and call, write or set up a meeting with them.

**CONTACT  
YOUR SENATORS**

Start a call-in, petition, or letter drive, and ask others to join your meeting with your senator(s).

**MOBILIZE  
YOUR NETWORK**

Write a letter to the editor or an op-ed in your local paper. Use your personal network and build the movement online with social media. Tweet at your senators.

**AMPLIFY  
YOUR VOICE**

Hold a panel, an event or a visibility action to show others how the judicial branch affects them and what they can do to take action.

**EDUCATE  
YOUR COMMUNITY**

## GET CONNECTED TO YOUR SENATOR AT

# AFJAC.ORG

**TELL YOUR SENATOR:** My name is [name], and I'm a constituent from [city]. I'm calling because I'm deeply concerned about Kyle Duncan, Donald Trump's nominee to the 5th Circuit Court of Appeals. Duncan has spent his career fighting against LGBTQ equality, reproductive justice, and the rights of communities of color. I am urging Senator [X] to oppose Duncan's nomination. Thank you.

### STAY ON THEIR RADAR

Call your senators. Get 10 friends to call. Ask them to ask 10 friends to call. Then call again.

**CALL YOUR SENATORS**

Identify people in your network who are particularly influential - political donors, community and business leaders, state elected officials - and ask them to call.

**IDENTIFY  
INFLUENCERS**

Schedule appointments or drop in to district offices. Set up a phone call with your senators while they're in D.C.

**SCHEDULE  
APPOINTMENTS**

Attend town halls, public appearances, and events and voice your concerns about Duncan.

**SHOWING UP  
MATTERS**

# QUESTIONS FOR SENATORS ABOUT DUNCAN

**SENATORS WANT TO HEAR FROM YOU.** Throughout the year, senators hold events in their home states, hold town halls online and on the phone, and ask for constituent input on social media. Use these opportunities to ask your senators these questions:

1

**DUNCAN HAS FOUGHT CONTRACEPTIVE COVERAGE FOR WOMEN, AND ONCE EQUATED LOSING ACCESS TO BIRTH CONTROL TO LOSING FREE LAWN CARE.** He also supported Texas's restrictions on abortion that the Supreme Court found were an undue burden on the rights of women. Will you oppose his confirmation?

**DUNCAN HAS ACTIVELY FOUGHT AGAINST LGBTQ EQUALITY.** He questioned the Supreme Court's validity after its decision upholding marriage equality in *Obergefell v. Hodges*; argued that transgender people are mentally ill; and has spoken multiple times to Alliance Defending Freedom, a hate group that has defended the state-enforced sterilization of transgender people overseas. Will you give your support to someone who has viciously attacked the rights of LGBTQ people?

2

3

**DUNCAN CHALLENGED THE RETROACTIVE APPLICATION OF THE SUPREME COURT'S DECISION IN *MILLER V. ALABAMA*, WHICH HELD THAT MANDATORY LIFE SENTENCES WITHOUT THE POSSIBILITY OF PAROLE WERE UNCONSTITUTIONAL FOR JUVENILES.** He also argued that severe overcrowding in jails did not violate the Eighth Amendment. Will you support someone who does not respect basic human rights?

## BE SURE TO EDUCATE YOURSELF ABOUT YOUR SENATOR'S POSITION AND TAILOR YOUR QUESTIONS.

If your senator has not taken a position on Duncan's nomination, you might end your questions by asking, "Will you thoroughly review Duncan's record, and ensure that he will protect the rights of your constituents?"

# TAKE ACTION MOBILIZE YOUR NETWORK

## WHAT YOUR ORGANIZATION CAN DO

Send a letter to and call senators your organization is close to. Circulate a petition calling for senators to oppose Duncan's nomination and deliver the signatures to your senators.

**CONTACT  
SENATORS DIRECTLY**

Send an action alert to your list urging them to call, write, or otherwise contact their senators demanding that they oppose Duncan for the Fifth Circuit.

**MOBILIZE  
YOUR NETWORK**

Write a press release or letter to the editor in local, state, and national publications about the importance of judicial nominations. Amplify your organization's position on social media.

**AMPLIFY YOUR  
ORGANIZATION'S VOICE**

Host a panel discussion, a press event, or a visibility action on the importance of the judiciary in protecting our rights.

**EDUCATE AND  
MOBILIZE THE PUBLIC**

**SENATORS ARE ELECTED TO REPRESENT THEIR CONSTITUENTS**, and pay attention to the messages they're receiving on an issue. In recent months, mass mobilizations of phone calls, rallies, demonstrations and other events have had a major impact on the public's awareness of critical issues and nominations – and helped us defeat nominees who had no place on the federal bench. It takes all of us coming together, activating our networks and organizations, to make the difference.

Dear friends,

In nominating Kyle Duncan for a lifetime tenure on the U.S. Court of Appeals for the Fifth Circuit, President Trump continues to jeopardize the integrity of our courts. Duncan has spent his career targeting the rights of women, immigrants, LGBTQ communities, and people of color. When representing Virginia's Gloucester County School Board, which discriminated against transgender high school student Gavin Grimm, Duncan argued that transgender people are mentally ill. He has defended inhumane conditions in prisons, and has fought to make it more difficult for people of color to vote. Duncan's nomination is a danger to our civil rights.

**Call and tell your senators: Kyle Duncan does not belong on the federal bench.**

Our courts are our last line of defense. Don't let Donald Trump appoint judges who will rubber-stamp his extremist agenda and attack the rights and dignity of others.

**It is our job to protect our courts. Call your senators today and tell them: Vote no on Kyle Duncan.**

**SAMPLE ACTION ALERT**

# TAKE ACTION AMPLIFY YOUR VOICE

## SENATORS NEED TO HEAR FROM YOUR ORGANIZATION

Contacting senators directly is one of the most important ways to highlight the public movement to stop Kyle Duncan and to make a difference. In addition to mobilizing your network and having your organization's supporters call and write their senators, your organization should send a letter to the senators in your state detailing your organization's concerns with Duncan's record and potential impact on the issues your organization champions.

The Honorable YOUR SENATOR  
OFFICE ADDRESS  
Washington, D.C. 20510

As an organization representing [YOUR CONSTITUENCY, ISSUE, or NUMBER OF SUPPORTERS] we write to urge you to reject the nomination of Stuart Kyle Duncan for a seat on the United States Court of Appeals for the Fifth Circuit.

Throughout his career, Duncan has fought against reproductive rights for women, attacked LGBTQ rights, and defended discriminatory voting laws. Duncan's record raises serious concerns about whether he is capable of dispensing fair and impartial justice to everyone who may appear before him in federal court.

Duncan has repeatedly attacked reproductive rights. Duncan served as lead counsel in *Burwell v. Hobby Lobby*, which undermined vital healthcare for women across the nation by allowing companies to claim religious grounds for denying contraceptive coverage as part of their employer-sponsored health insurance plans. Additionally, Duncan has vigorously opposed a woman's right to choose to have an abortion, co-authoring an amicus brief in *Whole Woman's Health v. Hellerstedt* supporting Texas restrictions on abortion – restrictions the Supreme Court found posed an undue burden on women's rights.

Duncan has launched harsh attacks on the LGBTQ community. Duncan once wrote that if the Supreme Court recognized that same-sex marriage was a fundamental right, the "harms" to our democracy "would be severe, unavoidable, and irreversible," and questioned the legitimacy of the Supreme Court after the *Obergefell* decision. Duncan has even argued that transgender people are mentally ill, in defending a school board that prohibited a transgender boy from using the bathroom that corresponded to his gender identity.

An individual who so frequently attacks the rights and dignity of others is an unfit and frankly dangerous choice for the federal bench. A federal judge must inspire confidence that all who come before them will be treated with respect and that even-handed, unbiased justice will be dispensed. Kyle Duncan does not and cannot inspire that confidence.

We urge you to oppose Duncan's nomination.

Sincerely,  
Your Organization  
Contact Information

SAMPLE ORGANIZATIONAL LETTER

# WRITE A LETTER TO THE EDITOR

## TIPS FOR WRITING A LETTER TO THE EDITOR

Before submitting your piece, check your paper's guidelines on length. Use our talking points to get your point across concisely but remember to connect these issues to your local area. Find a way to explain how judicial nominations will affect your community for decades to come.

**BE CLEAR, TIMELY,  
AND CONCISE**

While it is important to center your piece around a specific nominee, it is also important to highlight the overall importance of the courts and why we need judges who will protect our rights and freedoms.

**ASKS AND  
CALLS TO ACTION**

Try your local or school paper first but also reach out to other publications. This is a very important issue and the media will be looking for local perspectives. You can also maximize your efforts by having others in your community write letters to the same papers. Even if they are not printed, this will let editors know that this issue matters.

**AMPLIFY  
YOUR IMPACT**

Check your local newspaper so you can respond to a recent article or a recent event in your area. When submitting your piece, make sure you refer to the article specifically by name and date. This will make it much more likely that your piece is published.

**BE  
CURRENT**

## **IF YOUR LETTER IS PRINTED, SEND A COPY TO YOUR SENATORS' OFFICES.**

Senators often search for the issues that their constituents care about in these local papers. Make sure that you bring your piece to your next meeting or send their local aides a copy. This will ensure that your message reaches them.

# TAKE ACTION WRITE YOUR LETTER

## SAMPLE LETTER TO THE EDITOR

To the Editor,

President Trump has nominated a deeply troubling candidate, Stuart Kyle Duncan, for a seat on the U.S. Court of Appeals for the Fifth Circuit. Senators must not allow this nomination to go forward.

Duncan's nomination represents yet another of President Trump's continued attacks on the rights of LGBTQ citizens. Duncan has actively fought marriage equality, questioned the legitimacy of the Supreme Court following its decision in *Obergefell v. Hodges*, argued that transgender people are mentally ill, and spoken multiple times to an anti-LGBTQ hate group.

Duncan has also attacked women's reproductive rights, fought to make it harder for people of color to vote, and worked to dismantle the rights of immigrants. His allegiance to an extreme far-right agenda raises serious doubts about his ability to even-handedly administer justice to all who might come before him in court. A seat on the federal bench would give him influence over the rights of millions, in the Fifth Circuit and beyond, for decades. [Your state's] senators must oppose this nominee so he can be replaced with one who can be trusted to uphold the rights of all.

Sincerely,  
Signature and contact information here

SAMPLE LETTER TO THE EDITOR

# TAKE ACTION

# WRITE AN OP-ED

## SENATORS NEED TO HEAR FROM YOUR ORGANIZATION

The op-ed below is designed as a sample you can use to create your own. Basic elements of this style of op-ed are labeled in bold, above the paragraphs they refer to.

### THESIS

If there ever was a zealous, uncompromising warrior against human and civil rights, it's got to be Stuart Kyle Duncan, the lawyer the Trump Administration has nominated to a lifetime seat on the U.S. Court of Appeals for the Fifth Circuit.

### SUPPORTING CLAUSES

Since obtaining his law degree from Louisiana University in 1997, Duncan's career has been one long effort, across several states, to undermine the rights of just about every group that has sought legal protection and redress— LGBTQ people, women, African-Americans, juveniles and immigrants.

### SPECIFIC EXAMPLES

The LGBTQ community, in particular, has felt the sting of Duncan's hostility. He criticized the U.S. Supreme Court's marriage-equality ruling, questioned the Court's legitimacy and predicted that the "harms" from this decision "would be severe, unavoidable and irreversible." He went further, raising the unimaginable and false specter of a "license to persecute churches... because of their now unconstitutional view on marriage."

Fear-mongering has been one of Duncan's favorite tactics, but there are others, including fake science. Suggesting that transgender Americans are mentally ill and dismissing the concept of gender identity as a "delusion," he argued on behalf of discriminatory bills in Virginia and North Carolina aimed at prohibiting transgender people from using bathrooms, while fighting against the right of gay couples to adopt in Alabama and Louisiana.

Duncan has spoken several times to the so-called Alliance Defending Freedom, a hate group according to the Southern Poverty Law Center, which has defended state-enforced sterilization of transgender people overseas. As the old saying goes, Tell me who your friends are and I'll tell you who you are."

Women's rights, including access to contraceptives and the right to choose whether to have an abortion, have also been favorite targets. Duncan was the lead counsel in the Supreme Court case *Burwell v. Hobby Lobby*, which made it legal for commercial businesses to deprive their employees of contraceptive health insurance coverage by claiming religious grounds. He opposed a Washington state law requiring pharmacies to stock some forms of birth control and supported Texas's restrictions on abortion, which the Supreme Court found placed an undue burden on the rights of women.

And it isn't just LGBTQ and women's rights that Duncan disrespects—he also is dismissive of our sacred voting rights. In 2016 he tried unsuccessfully to get the Supreme Court to reverse a ruling against a restrictive North Carolina voting law that the Fourth Circuit said was intended to discriminate against "African Americans with almost surgical precision." In this case, he was joined by two other Administration judicial nominees, Thomas Farr and Stephen Schwartz, raising the question of why it is that so many of these nominees share a disdain for fairness and equality.

**SAMPLE OP-ED (CONTINUED ON NEXT PAGE)**

# TAKE ACTION

## WRITE AN OP-ED

### ACKNOWLEDGE THE “OTHER SIDE”

Duncan’s supporters will say that in these and other cases, he was merely acting as a lawyer representing the views of his clients.

### REFUTE THE ARGUMENT OF THE “OTHER SIDE”

But Duncan’s own statements, given of his own free will, should disabuse anyone of this notion. In a speech he gave to a private group, he accused the government of treating “contraceptives as the sacrament of our modern life” and denounced the notion that they are necessary for “the good life” for women.

Moreover, there is a pattern in Duncan’s career. It would not be credible to argue that a person who respected and supported the progress that has been made through the courts on reproductive rights for women, the right to marriage equality, rights for transgender people, voting rights and more, would build the record that Duncan has built.

### CONCLUSION

That leads to an inescapable conclusion. The Trump Administration has nominated Duncan, among so many other judicial nominees with similarly- extreme records, because it is dedicated to turning back the clock on critical legal rights and protections for many vulnerable communities. It has identified Kyle Duncan as someone it can trust to carry out its agenda.

Through his words and his deeds, Stuart Kyle Duncan has shown us who he is. And the residents of Louisiana, Mississippi and Texas who come under the Fifth Circuit’s jurisdiction deserve better.

**(CONTINUED FROM PREVIOUS PAGE) SAMPLE OP-ED**

# TAKE ACTION USING SOCIAL MEDIA

## TIPS FOR SOCIAL MEDIA

Look up your senators' social media handles. Tag them in relevant posts, and tweet directly at them. Encourage your friends and followers to do the same.

### TAG YOUR SENATORS

Identify the key hashtags for your issue, like #CourtsMatter, #TrumpJudges, and #NixNielson. Tie into hashtags that trend weekly, and keep an eye out for opportunities to engage with new ones.

### KNOW YOUR HASHTAGS

Engage with other users talking about your issue by retweeting, liking, and sharing their content. Ask your followers to retweet and share your posts if they agree.

### RETWEET, LIKE, AND SHARE

Ask questions, make polls, and post other content that encourages your followers to engage with you and the issue. Send out new resources that will help people learn more about the courts.

### ENGAGE YOUR AUDIENCE

**SOCIAL MEDIA CAN BE A POWERFUL TOOL.** Social media can help you use your network to build the movement for fair courts. Adding your voice to the conversation, and using it to amplify the other actions you're taking, can help hold your senators accountable.

- Kyle Duncan, like fellow Trump court pick Thomas Farr, defended a North Carolina voter ID law that a court determined targeted black voters "with almost surgical precision." He has no place on the federal bench. #courtsmatter #TrumpJudges
- Kyle Duncan compared losing access to birth control to losing free lawn care...because those two things are \*totally\* equivalent. #courtsmatter #StopDuncan
- Kyle Duncan spoke to anti-LGBTQ hate groups, criticized marriage equality, and argued that transgender people are mentally ill. But we're supposed to trust that he can deliver fair and impartial justice. #courtsmatter #TrumpJudges

## SAMPLE SOCIAL MEDIA POSTS