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**Anti-Defamation League
Foundation**

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April 24, 2018

Dear Senator,

On behalf of the Anti-Defamation League (ADL), we write to urge you to oppose the confirmation of Stuart Kyle Duncan to be a Judge for the United States Court of Appeals for the 5th Circuit.

Founded over a century ago to stop the defamation of the Jewish people and secure fair and just treatment to all, ADL advocates for the civil rights of all people and combats discrimination and hate across the country. We rarely oppose judicial nominees, but we are deeply disturbed by the nomination of Stuart Kyle Duncan and believe he lacks the required temperament and demonstrated commitment to fair treatment for all to merit a lifetime appointment to the federal bench.

Mr. Duncan has spent virtually his entire professional career dedicated to pursuing positions that undermine civil rights and equality for women, immigrants, and those in the LGBT communities. His own statements call into question his respect for the rule of law, and his years of targeted advocacy raise serious doubts about his ability to serve as a fair and impartial jurist.

For example, on marriage equality, Mr. Duncan has reportedly not only criticized the Supreme Court's landmark decision in *Obergefell v. Hodges*, 576 U.S. ____ (2015), but also said, "I find Obergefell to be an abject failure." We find especially disturbing his assertion, in a July 2015 interview, disparaging the role of the Supreme Court by saying that the decision "raises an objection about the legitimacy of the court."

In his private legal career, Mr. Duncan has consistently sought to strip LGBT rights in areas of marriage, adoption and parenting rights. He famously represented the State of North Carolina legislators who drafted HB2, which was designed to restrict transgender people's ability to access public restrooms. During the litigation, Mr. Duncan filed "expert declarations" that described transgender people as "delusional." *Carcano v. McCrory* (2016). He also defended the Gloucester County School Board after they implemented a policy requiring transgender students use a separate bathroom. Throughout his argument, he relied on bigoted, demonizing language about transgender people, including advocating parents should discourage "transgender persistence." *Gloucester County Sch. Bd. V. GG No. 16-273* (2016). And Mr. Duncan has not limited his anti-LGBT advocacy to transgender people. In at least two cases, he worked to deny parental and/or adoption rights for LGBT couples. Both times, courts ruled against his discriminatory positions. *Adar v. Smith*, 597 F.3d 697 (5th Cir. 2010) *V.L. v. E.L.* 639 F.3d 146 (5th Cir. 2011).

ADL Community Support Center

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Mr. Duncan's filings on immigration and voting rights matters are also troubling. In an amicus brief he filed in 2016 challenging the legality of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) executive order, he reinforced troubling stereotypes about immigrants when he wrote: "... DAPA's implementation would greatly increase the risk of unauthorized immigrants committing serious crimes against American citizens and other lawful residents." On voting rights, along with Thomas Farr (another pending judicial nominee we oppose), Mr. Duncan has worked to marginalize African American voters through racist voter suppression measures. He defended a North Carolina redistricting plan which the Fourth Circuit described as "the most restrictive voting law North Carolina has seen since the era of Jim Crow" in that it targeted African Americans "with almost surgical precision."

In addition, in his own statements and in his legal advocacy, Duncan has demonstrated a lack of regard for women's equality, health, and economic security. He famously defended Hobby Lobby as lead counsel in the case before the Supreme Court related to the ACA contraceptive coverage mandate (*Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751 (2014)). He also authored and filed an amicus brief in *Stormans v. Wiesman*, 136 S.Ct. 1557 (2016) arguing that pharmacists should not have to fill contraception prescriptions, and an amicus brief in the case *Whole Woman's Health v. Hellerstedt*, 794 F.3d. 1064 (2015) arguing the constitutionality of a law that placed unreasonable hurdles for abortion services.

The fact that a nominee has been a zealous advocate for causes in which he/she believes is in no way disqualifying. However, where, as is the case here, the nominee's overall record is marked by consistent, ideologically-driven legal advocacy targeted at limiting equality and restricting rights and freedoms for women, minorities, immigrants, and LGBT communities, it gives rise to significant doubts about his ability to administer justice fairly and equally to litigants of diverse racial backgrounds, nationalities, and all genders and sexual orientations.

In ADL's view, the Senate's role in the nomination process is equally as important as the president's responsibility to nominate. For the above reasons, ADL urges you to reject the nomination of Stuart Kyle Duncan to be a U.S. Court of Appeals Judge for the Fifth Circuit.

Sincerely,



Jonathan A. Greenblatt
CEO and National Director