

United States Senate

Mr./Madam President, I rise today to join my friend and colleague, Senator Cortez Masto, in opposing the nomination of Lawrence VanDyke to the Ninth Circuit Court of Appeals in Nevada.

Our federal courts make decisions every day that affect consumers, immigrants, small businesses, not to mention our right to equal treatment, education, and health care. As such, our federal judges must be serious, fair-minded, and nonpartisan.

We want women and men on the federal bench who will look at the facts of a case, apply the law, and work hard to reach a just result, regardless of who the parties are in front of them.

The federal bench must reflect our country in all its diversity of experience and background.

Even though the Constitution gives the President the power to nominate federal judges, it also requires the advice and consent of the Senate, and historically the President consults with home state senators whenever there's a vacancy.

As the representatives of our states, we are better equipped to identify qualified lawyers and judges to serve on the federal bench, that have done good work, and who have good reputations in our communities.

And we have numerous qualified, non-partisan individuals working in the Nevada legal community who would make excellent additions to the Ninth Circuit.

There are a number of amazing Nevada lawyers whom Senator Cortez Masto and I would have gladly considered supporting for a seat on this prestigious court. We have litigators, magistrate judges, law professors, prosecutors, public defenders, and existing district court judges with stellar reputations in the state – lawyers and judges from Nevada, who know the state and have respected, nonpartisan records.

But the White House didn't nominate any of these individuals for the Ninth Circuit...

Instead, the President nominated Lawrence VanDyke, a Washington, DC lawyer. He wasn't born in Nevada. He didn't grow up in Nevada. He didn't go to school in Nevada. And he doesn't live in Nevada now.

Mr. VanDyke – a Montana native who ran for office there and also worked in Texas – came to Nevada for a job a few years ago in 2015, and when the person he worked for lost a political race in 2018, Mr. VanDyke quickly sold the house he briefly owned in Nevada and moved to Virginia to work in Washington, DC.

And as of last week -- by his own admission -- he hasn't even been back to Nevada since then.

He is a DC lawyer and failed political candidate from Montana who shares this White House's extreme political views.

And they're imposing him on Nevada, despite the fact that we have so many qualified people in our own state who enjoy broad support across the political spectrum.

Nevada has a vibrant community, and we take pride in knowing each other, respecting each other, and most importantly, putting partisan politics aside when it comes to working together for the betterment of our great state.

So if someone is a good judge or lawyer, if they're honest and have a good reputation professionally, if they're civil in court and have a respectful demeanor, you'll usually hear the same things about that person from everyone.

Those are the types of people who should be federal judges, people who treat everyone fairly and with respect, who are smart and fair, and who follow the facts to get to the just result.

After reviewing Mr. VanDyke's record, meeting with him privately, and watching his testimony before the Judiciary Committee yesterday, I have arrived at the determination that Mr. VanDyke does not fit that mold.

Mr. VanDyke spent a lot of time in our meeting talking about how the role of a federal judge is to simply apply the law, not to try and change it. But his record clearly shows otherwise...

How do we know this?

Before coming to Nevada, Mr. Van Dyke worked for the Montana Attorney General, and many of his emails from that time are public. They show that he used that government office – where his job was to DEFEND the laws of Montana – Instead, he chose to advance his personal ideological agenda, even when it went against the state's interests.

In at least one instance, he signed the state of Montana onto a brief without even bothering to read it.

And among the briefs Mr. VanDyke signed his home state of Montana onto during his tenure as Solicitor General, was one asking the Supreme Court to strike down *Roe v. Wade*, and all of the reproductive rights cases that followed *Roe*.

When it comes to a woman's right to make her own decisions about her body, Mr. VanDyke's views and actions are far outside the mainstream. And they are far out of step with the views of the people of Nevada.

I'm also concerned about comments Mr. VanDyke has made about LGBTQ Americans. In 2004, Mr. VanDyke wrote that there is quote: "ample reason for concern that same-sex marriage will hurt families, and consequentially children and society."

The LGBTQ community is at a critical point in the fight for equality. This term, the Supreme Court is considering whether employers in the U.S. can fire an individual merely for being gay or transgender. And when the next case on LGBTQ rights comes up for judicial consideration, it could come before Lawrence VanDyke.

If all that isn't enough, here's one more thing to consider – the American Bar Association has, by a *substantial* majority, rated Mr. VanDyke as unqualified. For a lifetime appointment we should always strive for a candidate that is very qualified.

No – Lawrence VanDyke was rated as not qualified.

And why did the ABA make this determination? Well, I'll let the ABA's words speak for themselves. Based on interviews with sixty individuals who have worked with Mr. VanDyke over the years, including more than forty lawyers and over a dozen judges, this is what the ABA said --

Mr. VanDyke's past work is offset by, and I quote: "the assessments of interviewees that Mr. VanDyke is: lazy, an ideologue, and lacking in knowledge of day-to-day practice, including procedural rules. There was a theme that the nominee: lacks humility, has an "entitlement" temperament, does not have an open mind, and does not always have a commitment to being candid and truthful."

Mr./Madam President, surely you agree -- No matter who is in the White House or who controls the Senate, you would want the federal judges in your states to come from and reflect your communities. You would want to trust those judges to be fair to your constituents and not use cases to advance their ideological agenda. And you would want your judges to be – at a minimum – qualified to serve on the bench.

I oppose the nomination of Mr. VanDyke, and if it is withdrawn or voted down, I will be ready that day to work with this White House on finding nominees from Nevada that are qualified and fair and nonpartisan.

The people of my home state of Nevada – particularly today, on Nevada Day, deserve nothing less.

Thank you.