

United States Senate

WASHINGTON, DC 20510

Statement for the Record on the Nomination of Lawrence VanDyke to the Ninth Circuit Court of Appeals

October 30, 2019

Senator Cortez Masto and Senator Rosen

We write to the Committee regarding the nomination of Lawrence VanDyke to the Ninth Circuit Court of Appeals and to explain why we have not returned our blue slips for his nomination.

Like many of our colleagues, we believe that one of our most important responsibilities is to ensure that the federal judiciary remains a fair and neutral arbiter of the law. We take our constitutional duty to provide “advice and consent” on the President’s nominees seriously, especially when it comes to candidates for Nevada’s judicial vacancies.

When the White House began the process of finding a nominee to fill Nevada’s Ninth Circuit seat when it is vacated by Judge Jay Bybee at the end of this year, we were hopeful that we would be able to find a consensus candidate. Unfortunately, it quickly became clear that the White House had no intention of engaging in a meaningful consultation with us to find a consensus candidate from Nevada, nor were they willing to wait for our newly-formed bipartisan judicial nominating commission to review potential candidates. Instead they remained laser-focused on Mr. VanDyke.

Mr. VanDyke was not born in Nevada; he did not grow up in Nevada; he did not go to school in Nevada; he doesn’t appear to own property in the state; he has no family ties to Nevada that we are aware of; and he only became an active member of the Nevada State Bar in 2017. Instead of serving Nevadans, he has spent his career moving between Texas, Montana, Nevada, and Washington, D.C., using each role to advance an ideological agenda in federal courts around the country while look for his next career opportunity.

Mr. VanDyke worked in the Solicitor General’s office in Texas before becoming Solicitor General in Montana. He held that job for only one year before launching a challenge to a sitting justice on the Montana Supreme Court. After the people of Montana rejected his candidacy for judicial office, he moved to Nevada. He worked in Nevada for a total of four years. After his political appointment ended, he sold his home in Nevada and moved to Washington, D.C. to work in the Department of Justice. By his own admission, he has not been back to Nevada since. It deeply troubles us that someone with such a tenuous connection to Nevada is nominated to fill a seat on a court that will decide on issues that are central to our constituents’ lives.

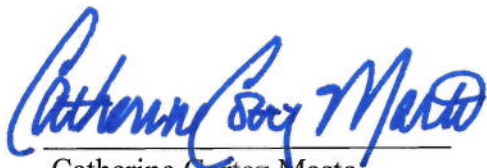
After reviewing Mr. VanDyke’s record and meeting with him privately, it has become clear that he is outcome driven, putting ideology above the law and the people he represented in his state government roles. For example, as Solicitor General in Nevada, he went to court to challenge a bipartisan agreement to protect native species in Nevada, even when Republican Governor Brian Sandoval opposed his efforts, stating that Mr. VanDyke did “not represent the state of Nevada,

the Governor, or any state agencies.”¹ Further, there are issues concerning Mr. VanDyke’s competence. For instance, emails from Mr. VanDyke’s time in the Montana Solicitor General’s office showed that in at least one case he was so eager to join a court battle that he advised his boss, the Attorney General of Montana, to sign a brief before he even read it.

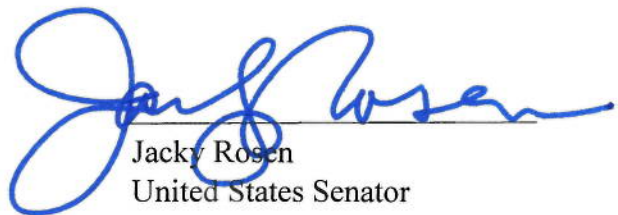
Selecting an outside political operative with limited ties to the state, whose colleagues challenged his work ethic and temperament, is a disservice to our constituents, and sets a dangerous precedent going forward. Nevada has one of the most diverse populations in the country. There is no shortage of qualified individuals in our state prepared to be fair and impartial judges. It is unfortunate that the White House refused to engage in any meaningful consultation with our offices to nominate one of these individuals.

Working with home-state Senators plays an important role in maintaining a trusted and independent judiciary. It reaffirms to the public that nominees are chosen for their talent, intellect, and judgment. Anything less threatens the credibility of the courts and weakens our democratic society. Nevadans – and all of your constituents – deserve better.

Sincerely,



Catherine Cortez Masto
United States Senator



Jacky Rosen
United States Senator

¹ Sandra Chereb, Sandoval, Laxalt Clash Over Sage grouse Lawsuit, Las Vegas Review-Journal, (Oct 22, 2015), <https://www.reviewjournal.com/news/sandoval-laxalt-clash-over-sage-grouse-lawsuit/>