



September 12, 2018

**OPPOSE THE CONFIRMATION OF RYAN NELSON TO THE
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in opposition to the confirmation of Ryan Nelson to the U.S. Court of Appeals for the Ninth Circuit.

Mr. Nelson is a conservative ideologue who has advanced a right-wing policy and litigation agenda throughout his career. His anti-environmental record is of particular concern. He should not be confirmed to a lifetime appointment on the Ninth Circuit, which covers nearly three-quarters of U.S. public lands and which is charged with resolving many significant environmental matters arising in the American West.

Worked to Undermine Environmental Protection: Mr. Nelson served in a key leadership position in the Bush Justice Department from 2006 to 2008. According to a letter of opposition to Mr. Nelson submitted by the League of Conservation Voters, Mr. Nelson “oversaw legal defense of the George W. Bush administration’s efforts to benefit polluters and roll back critical environmental protections. This included advising on the government’s arguments in *Massachusetts v. EPA*, where the administration unsuccessfully sought to avoid regulating greenhouse gases.”¹ In another case, *Earth Island Institute v. Hogarth*, Mr. Nelson represented the United States and argued that yellowfin tuna should be labeled as “dolphin-safe” even if caught using nets that had killed millions of dolphins. The Ninth Circuit ruled against the government and rejected its argument that the nets did not have an adverse impact against the dolphin population.²

Mr. Nelson has also expressed an unwillingness to fully acknowledge the reality of climate change. Last year, following his nomination (later withdrawn) by President Trump to serve as Solicitor for the Department of the Interior, Mr. Nelson was asked in a written question from Senator Sanders whether he agreed with President Trump that climate change is a “hoax” and whether it was caused by human activity. Mr. Nelson responded: “I believe that the climate is changing and many factors influence that change.”³ At his July 11, 2018 judicial nomination hearing, Senator Harris followed up and asked him if he agreed that

¹ <https://www.lcv.org/article/re-oppose-judicial-nomination-ryan-nelson-united-states-court-appeals-ninth-circuit/>.

² 494 F.3d 757 (9th Cir. 2007).

³ <https://www.judiciary.senate.gov/imo/media/doc/Nelson%20Responses%20to%20QFRs1.pdf>.

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human activity is one of the primary factors contributing to climate change. Mr. Nelson responded: “I know climate change is a very important topic. It's one that our environmental acts are designed – some have been designed to protect against. I am not a scientist in that area, but I do agree, based on the knowledge that I have, that human activity has contributed. To what degree, I don't think I'm prepared to address.”⁴ It is troubling that Mr. Nelson seems reluctant to fully embrace scientific evidence demonstrating that human activity is the primary cause of climate change. He cannot be trusted to be an impartial fact-finder, especially in environmental disputes.

Attempted to Weaken Disability Rights: In 2003, as a lawyer in private practice, Mr. Nelson filed an amicus brief in an effort to weaken the Americans with Disabilities Act (“ADA”) in a landmark Supreme Court disability rights case, *Tennessee v. Lane*. This case involved whether disabled plaintiffs were barred from seeking money damages against states under Title II of the ADA, which bars the denial of public services to people with disabilities. In this case, the paraplegic plaintiffs sought money damages in lawsuits against county courthouses that were not accessible. One of the plaintiffs, George Lane, had to crawl up two flights of stairs to access the courtroom because the courthouse did not have an elevator. Mr. Nelson filed an amicus brief on behalf of seven states, and he argued that the plaintiffs’ claims should be dismissed. Mr. Nelson wrote: “A government’s failure to make a public building satisfy modern standards of accessibility does not violate the Fourteenth Amendment’s Equal Protection Clause as long as that failure had a rational basis – which cost considerations alone will almost always provide.”⁵ The Supreme Court rejected that argument and ruled for the plaintiffs, noting that “ordinary considerations of cost and convenience alone cannot justify a State’s failure to provide individuals with a meaningful right of access to the courts.”⁶ The fact that Mr. Nelson was willing to work on this amicus brief suggests an insensitivity to civil and human rights.

Sought to Diminish Civil Liberties: In 2004, Mr. Nelson joined a group of two dozen pro-executive power extremists, including Robert Bork, Steven Bradbury, Kris Kobach, and John Yoo, to file a brief in order to diminish civil liberties protections in a pair of important Supreme Court cases: *Rasul v. Bush* and *Al Odah v. United States*. Calling themselves “Citizens for the Common Defence [sic],” Mr. Nelson and his colleagues argued that U.S. Article III courts lacked the jurisdiction to hear a habeas petition from those imprisoned at the Guantánamo Bay Naval Base. Most of the detainees had been held incommunicado since being taken into U.S. custody, had not been charged with any offense, and had not been provided counsel. Mr. Nelson argued that “alien enemies captured and held abroad have no right of access to domestic courts” and that “the current global war against radical Islamist terrorist networks unquestionably qualifies as an armed conflict and triggers the full range of powers the President is authorized to employ when confronting threats to national survival.”⁷ The Supreme Court rejected Mr. Nelson’s arguments in a 6-3 decision and ruled that Guantánamo detainees did have a right to challenge their detention in federal courts.

⁴ <https://www.judiciary.senate.gov/meetings/07/11/2018/nominations>.

⁵ <https://www.clearinghouse.net/chDocs/public/DR-TN-0001-0035.pdf>.

⁶ 541 U.S. 509, 512 (2004).

⁷ https://ccrjustice.org/sites/default/files/attach/2015/05/2004-03_SCOTUS_RasulAmicus_CitizensforCommonDefence2.pdf.



Ideological and Partisan Affiliations: Mr. Nelson is a longtime member of the Federalist Society, having joined in 1997 when he was in law school. This out-of-the-mainstream legal organization represents a sliver of America’s legal profession – just four percent – yet more than 80 percent of President Trump’s circuit court nominees, and a significant number of his district court nominees, have been Federalist Society members. Mr. Nelson is also a member of the right-wing Republican National Lawyers Association (“RNLA”), which he joined in 2005. The RNLA opposed the Sonia Sotomayor and Elena Kagan nominations to the Supreme Court, supported voter suppression efforts such as photo ID laws, and waged an ideological attack on the Obama Justice Department’s Civil Rights Division.⁸ In 2009, after working as a political appointee in the Bush administration, Mr. Nelson served as special counsel to then-Senator Jeff Sessions and advised him on the Sotomayor nomination; Senator Sessions led the Republican opposition to her nomination. Mr. Nelson has been a Republican activist for decades, contributing thousands of dollars to Republican candidates and working on the 2004 and 2012 presidential campaigns of the Republican nominees. Mr. Nelson has a clear ideological bent, and he would not serve as a neutral and fair-minded jurist.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Ryan Nelson to the U.S. Court of Appeals for the Ninth Circuit. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel, at (202) 466-3311.

Sincerely,

Vanita Gupta
President & CEO

⁸ <http://www.rnla.org/Documents/Jud.Comm.Ltr.pdf>; http://www.rnla.org/Documents/Kagan_RNLA_Ltr.pdf; <http://www.rnla.org/news/mediaarchive.asp>; <https://www.rnla.org/Newsletter/ViewArticle.asp?ArticleID=391>.