



February 22, 2018

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OPPOSE THE CONFIRMATION OF RYAN BOUNDS 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 strong opposition to the confirmation of Ryan Bounds to the U.S. Court of Appeals for the Ninth Circuit.

Mr. Bounds has made extreme and insensitive comments about people of color, the LGBTQ community, and sexual assault. While he has recently apologized for those comments, the timing of that apology suggests it is one of convenience rather than remorse, offered in a last-ditch effort to salvage his nomination and win the support of his home-state senators. He failed. Both of Mr. Bounds' home-state senators oppose his nomination, and the Senate should not confirm him to this powerful, lifetime appointment.

Racially Offensive Comments: When he was a student at Stanford University in the 1990s, Mr. Bounds wrote a series of op-eds in the *Stanford Review*, a conservative newspaper. He was highly critical of his classmates who joined racial affinity groups and of university efforts to make students of color feel welcome on the historically discriminatory and non-diverse campus. Mr. Bounds didn't just criticize such efforts, he did so with a mix of insensitivity and disdain that calls into question his temperament and ability to be impartial. On at least two occasions, he likened the university's multicultural efforts to Nazi Germany. As a result of the recent public disclosure of Mr. Bounds' articles, the board of a local bar association's diversity committee – of which Mr. Bounds was a member – asked him to resign, and he did so last week.¹ In an op-ed entitled "Race-Think: A Stanford Phenomenon?," Mr. Bounds made the following insensitive statements (emphasis added):²

- During my years in our Multicultural Garden of Eden, I have often marveled at the odd strategies that some of the more strident racial factions of the student body employ in their attempts to "heighten consciousness," "build tolerance," "promote diversity," and otherwise convince us to partake of that fruit which promises to open our eyes to a PC version of the knowledge of good and evil. **I am mystified because these tactics seem always to contribute more to restricting consciousness, aggravating intolerance, and pigeonholing cultural identities than many a Nazi bookburning. Strangely, the Multiculturalists don't seem to catch on to the inevitable non-efficacy of their**

¹ http://www.oregonlive.com/portland/index.ssf/2018/02/federal_prosecutor_ryan_bounds.html.

² <https://www.afj.org/wp-content/uploads/2018/01/Race-Think-A-Stanford-Phenomenon.pdf>.

rallies, protests, whinings, demands, and vitriolic brickbats towards all printed policies not incorporating the language of the 1964 Civil Rights Act in their preambles.

- **I submit that the Multiculturalists, when they divide up by race for their feel-good ethnic hoedowns, engage in nearly all of these [race-think] behaviors....** [M]embers do not tend to see themselves as invulnerable, but instead as universally and unbearably persecuted.
- When Cecilia Burciaga's high-ranking administrative position was terminated last spring, Chicano students decried the "institutional racism" at Stanford that allowed one of the few Chicano administrators here to be perfunctorily dismissed. The response, where it should have been a condemnation of the provost's clumsy personnel-management style, was an accusation that the president and provost were colluding to ignore, neglect, and oppress Chicano members of the community. **This is not to suggest by any means, however, that the Chicano faction has cornered the market on paranoia. All of the ethnic elites were out in force a year ago to forestall any hint of budget cuts to their student-enclaves, once again accusing the president and provost of conspiring, in their worship of the lily-white dollar, against minorities. As with all paranoia, this accusation had its obviously delusional underpinnings.** Black students were particularly fond of impugning Provost Rice with a severe lack of racial sensitivity, apparently because she, although black, refused [alas, only at first] to see things their way.
- The second behavior of race-think is believing that the moral superiority of the group is unquestionable. **Truly, the Stanford Multiculturalists are heavy hitters in the big-leagues of sanctimony; few would dispute that.** A letter to the editor of the *Daily* last week says it all. Deriding a fundraising scheme cooked up by the athletic department called the 'Sixth Man Club', two characters named Michael Jones and Joshua Groban complained that selling prime seats to students who could then show up and be seated right before each basketball game is 'contemptible' and an 'abomination.' Why is selling seats reprehensible all of a sudden? Because the people who have purchased these seats are 'practically all white, all male, and fraternity-dominated...' This is multicultural rectitude at its zenith. **Whenever a group of white males happens to be at the same place at the same time, you can be sure that the foul stench of oppression and exploitation lingers in the air. In contrast, ethnic centers, whose sole purpose is to bring together exclusive cliques of students to revel in racial purity, are so righteous that the mere mention of cutting their budgets incites turmoil on the grandest scale.**
- The fourth race-think symptom is stereotyping the opponent, and the Stanford Multiculturalists have this one down to a science. **The opponent is the white male and his coterie of meanspirited lackeys: "oreos," "twinkies," "coconuts," and the like.** The opponent is intrinsically incapable of understanding the enlightened viewpoint; any disagreement he offers is due to insensitivity, and any agreement he grants springs from well-chosen, but insincere, deference to the morally superior race-thinkers. **He enjoys making money and buying material things, just to make sure that people with darker skin don't have access to them.... Such is the opponent, and, if you are a white male, you are the opponent.**

- **If a black person is an individualist and a thoroughgoing capitalist who eschews victimhood status and its concomitant entitlements, race-thinkers are quick to brand him “oreo,” “Uncle Tom,” or “sell-out.”** This is a beloved tool for consensus-building at Stanford, land of multicultural toleration.
- I wanted to attend a publicly announced meeting of students, organized by bigwigs at the Black Student Union among others, who were concerned (don’t ask me why) about the loss of university support for a separate orientation weekend for prospective black students. Perhaps their barbecues are more scintillating than the run-of-the-mill barbecues in which the rest of the prospective freshmen are invited. Maybe the special black recruitment program ensures an opportunity to start early in the institution of race-think... **Anyway, I was promptly booted from the meeting because my fair complexion cued these race-think champions to view me as the opponent, unable and unwilling to understand their perspective. They ensured, of course, that I never will. But then, I am the opponent.**
- Race-focused groups foster race-think, and the only way to rid our multicultural community of race-think is to rid it of these invidious factions. We should be cheered, however, to know that our task is not impossible. **The existence of ethnic organizations is no inevitable prerequisite to maintaining a diverse university community – white students, after all, seem to be doing all right without an Aryan Student Union.**

In another offensive op-ed, entitled “Lo! A Pestilence Stalks Us,” Mr. Bounds criticized Asian, Chicano, and LGBTQ students whom he believed were overly sensitive to perceived slights on campus. He wrote (emphasis added):³

- Consider a recent example of Sensitivity casting its evil spell: a reactionary call by a [wisely] unidentified student for us to boycott Political Science Professor Stephen Krasner’s class in response to his allegedly “anti-Asian agenda.” ... **The problem is that this student, fancying himself more perspicacious than the rest of us, churned out his vacuous flyers, disrupted Krasner’s class, and tried to get all of us in a dither, merely because his head was hidden in the hoary mists of Sensitivity: he read of Krasner’s observation that Asians are overrepresented, connected this with the backlash against the stereotypically “nerdy” Asian (of which he is apparently acutely sensitive), and cried “foul” in the loudest shriek he could muster.** The result of his Sensitivity, finely tuned by years of multiculturalism and jealous racial identification? Embarrassment and wasted paper (white laser-printer bond – the ecologically worst kind), but Sensitivity prevails again.
- Another instance of Sensitivity working its divisive magic: a group of pathetically intoxicated athletes vandalize a statue celebrating “gay pride.” ... We hear of sensations of personal violation and outrage and of suspicions that male athletes and fraternity members are bigots

³ <https://www.afj.org/wp-content/uploads/2018/01/Lo-a-Pestilence-Stalks-U.s.pdf>.

where socialization patterns induce this sort of terrorism. **Perhaps all of this is true, but the castigation of athletes and frat boys for flagrantly anti-homosexual prejudices is predicated on a motivation for this vandalism that has not been articulated. Results? The vandals might face hate-crime charges, fraternity members – regardless of their individually demonstrated prejudices (or, for that matter, sexual orientation) – face mandatory Sensitivity training, the Lesbian, Gay, and Bisexual Community Center receives \$10,000 from funds the university ostensibly does not have, and Sensitivity insinuates itself a little further into the fissures of our community.**

- [Responding to complaints by Latino students about the termination of a senior Chicano administrator and about an audience that booed during a political documentary] **Results: rivers of tears, epithets, hunger strikes, negative press for the university, and the formation of presidential committees to examine the “systemic insensitivity” toward Chicanos at Stanford and the potential for a Stanford-East Palo Alto community outreach center. Oh, and once again, Sensitivity can claim responsibility for extortion, rampant dissatisfaction, and a nice week of hand-wringing.**
- These sweet victories of Sensitivity reveal one thing: if we fancy ourselves oppressed (regardless of how oppressed, ignored, or downtrodden we objectively are) we will see the world, however unrealistically, as overflowing with instances that support our perception.... **Turn your eyes from the enticing chimera of Sensitivity toward a less egotistical outlook of mutual acceptance and support and discover a community that Sensitivity conspires to destroy.**

And in another op-ed, Mr. Bounds criticized a Chicano student group that had rallied to support workers who were fired by a local hotel for attempting to unionize. In “Labor Unions and the Politics of Aztlan,” he wrote (emphasis added):⁴

- [N]o student group that is affiliated with an ethnic center or any other department of this university has any business holding political issues central to its mission.... **If MEChA [the Chicano student group] considers any sub-opulent living standard by a Latino or Chicano American to be grounds for it to make a bombastic organizational pronouncement, why hasn’t it circulated a policy memo against the minimum wage for which so many Latinos and Chicanos are forced to slave away?**
- Stanford students hardly voted for MEChA’s special fee request this spring because they felt that what Stanford really needed was its own local of the teamsters.

Insensitivity to Sexual Assault Victims: In yet another op-ed, Mr. Bounds was highly critical of Stanford’s consideration of lowering the university’s “beyond a reasonable doubt” standard in sexual assault cases in order to make it less burdensome to sanction students who committed such assaults. Mr. Bounds was deeply opposed to changing the standard. Here is what he wrote (emphasis added):⁵

⁴ <https://www.afj.org/wp-content/uploads/2018/01/Labor-Union-Politics-and-the-Aztlan.pdf>.

⁵ <https://www.afj.org/wp-content/uploads/2018/01/Reasonable-Doubts.pdf>.

- **The winds of freedom – freedom from common sense – are blowing again at Stanford University, the only novelty being that, this time, the University is not leading the academic world in its pursuit of P.C. frippery....** Emasculating our burden of proof in the interest of eradicating all hints of antisocial behavior in our community is presumptively invalid, not because students entertain some innate fidelity to “beyond a reasonable doubt” (a standard that is not used in most civil cases in the U.S.), but simply because **they did not come to Stanford University to be parented or morally reared. Although it is understandable, even advisable, in paternalistic situations to place a greater emphasis on punishing misbehavior than on respecting the integrity of its suspected perpetrator, such a strategy is wholly inappropriate, insulting, and dangerous in a community whose members are socially and morally competent and expected to assume lifelong responsibility for their actions. Unlike our parents’ sending us to bed without dinner because they are “fairly certain” we have committed some misdeed, there is no forgetting in the morning the University’s branding us for running afoul of our responsibility to the Stanford Community.**
- The judicial committee is not going to give a light punishment to a student who is taken for a rapist, the aim of which might be to instruct him of his moral obligation. No, the punishments that the administration reserves for persons believed to be of such wanton disregard for their fellow students are severe and indelibly stigmatizing; they range from freezing the student’s registration or transcript to outright expulsion. **Are these punishments that a reasonable Stanford student should be willing to suffer, whenever an accusation – however unfounded – bears the preponderance of available evidence? No. When the university plays sheriff, judge, and jury, it must act under the same constraints; it must be as certain of guilt as institutionally possible before meting out punishments that inevitably endure beyond the period of its guardianship.**
- **[T]here is really nothing inherently wrong with the University failing to punish an alleged rapist – regardless his guilt – in the absence of adequate certainty; there is nothing that the University can do to objectively ensure that the rapist does not strike again.** Only the legal system can do that, and if it lacks the certainty to do so, it is not necessarily up to the University to stick it to the suspect, anyway, just in case. **Expelling students is probably not going to contribute a great deal toward a rape victim’s recovery; there is no moral imperative to risk egregious error in doing so.**
- **Finally, our valiant combatants against sexual assault bemoan the likelihood that perpetrators of such horrifying conduct will go unproached, blissfully ignorant of the consequences that must accompany violence.** They seem to fear that the University’s failure to impose sanctions for lack of evidence in reasonably clear instances of assault will leave the student somehow unaware that assault is bad. **Aside from the fact that the University administration ought to restrain itself from usurping the role of omnipotent moral authority, it is an affront to every Stanford student, male and female, to presume that such a basic lesson has gone unapprehended out of a mere lack of exposure.**

- The University and its administration exist to allow an atmosphere in which students can work with and learn from experienced scholars and from each other, not to act as an invasive adjunct to the system of justice promulgated by the larger community in which we live. **It is an ominous and ill-advised step to afford the institution, itself, the prerogatives of paternalism, to allow it to punish us whenever there is a perceived utility in doing so. And in response to inadequately supported accusations of sexual assault, there is little utility, indeed.** The complexities and difficulties that arise in fighting rape and violence in our community do not stem from the administration's inability to prosecute us due to inadequate evidence, and the solution to these complexities and difficulties is hardly to make it easier to do just that.

The extensive views expressed by Mr. Bounds demonstrate little understanding of the realities of campus sexual assault or the courage it takes for victims to come forward. Our nation is slowly becoming aware of the prevalence and perniciousness of sexual assault and harassment, and confirming someone with the views of Mr. Bounds would certainly send the wrong message. It is difficult to fathom that victims of sexual assault, race discrimination, or a hate crime would have confidence that Mr. Bounds would be impartial in considering their cases.

Partisan Activities and Affiliations: In the wake of public attention to Mr. Bounds' offensive writings that came to light as part of the judicial nomination process in which nominees are required to turn over past writings to the Senate Judiciary Committee, Mr. Bounds has tried to distance himself from them. In a recent email he wrote to the Multnomah Bar Association's Equality & Diversity Committee, which has been made public, he stated that he wanted to "assure you the objectionable words and views recited from three or four of my college op-eds do not reflect the views I have hewn to as a lawyer and, frankly, as a grown-up."⁶

Mr. Bounds has not published his opinions on race or sexual assault since college, but the conservative views he embraced are hardly a distant relic. He has continued to champion conservative causes throughout his legal career. In law school he served as the editor-in-chief of the National Student Federalist Society Symposium on Law and Public Policy, "Reviving the Structural Constitution,"⁷ a conservative doctrine that embraces a restricted role for the judiciary, a unitary executive, and "the notion of a federal government limited by and confined to its enumerated powers."⁸ Mr. Bounds has been a member of the Federalist Society since 2000, serving as president of its Portland Lawyers' Chapter from 2002-2004 and currently as its vice president. This out-of-the-mainstream legal organization represents a sliver of America's legal profession – just 4 percent – yet 90 percent of Trump's circuit court nominees, and a significant number of his district court nominees, have been Federalist Society members. After law school, Mr. Bounds served as a law clerk to Judge Diarmuid O'Scannlain, one of the most conservative federal judges in America.⁹ Mr. Bounds worked in the Ashcroft Justice Department and in the Bush

⁶ http://media.oregonlive.com/portland_impact/other/Boundsemail.pdf.

⁷ <https://www.judiciary.senate.gov/imo/media/doc/Bounds%20SJQ2.pdf>.

⁸ http://digitalassets.lib.berkeley.edu/etd/ucb/text/HollisBrusky_berkeley_0028E_10385.pdf/.

⁹ http://www.bc.edu/content/dam/files/schools/law/bclawreview/pdf/51_4/05_yung.pdf.



White House. He was a member of the National Republican Lawyers' Association and has contributed over \$10,000 to Republican politicians, including President Trump.

Lack of Home-State Senator Support: On February 12, 2018, Oregon Senators Wyden and Merkley reaffirmed their opposition to Mr. Bounds. Although the senators' selection committee recently recommended Mr. Bounds among four finalists for the Ninth Circuit (Oregon) vacancy, the senators said in a joint statement: "After the committee finished its work, we learned that Ryan Bounds failed to disclose inflammatory writings that reveal archaic and alarming views about sexual assault, the rights of workers, people of color, and the LGBTQ community."¹⁰ The senators had expressed initial opposition to Mr. Bounds when he was nominated last September because they had told the White House they would not support anyone who had not applied to and been recommended by their local selection committee.

In light of this opposition from both home-state senators, Mr. Bounds should not be granted a committee hearing or vote. When he was chair of the Senate Judiciary Committee during the Obama presidency, Chairman Grassley did not grant a hearing or committee vote to a single nominee unless they had support (reflected by two positive blue slips) from both home-state senators. Here is what Chairman Grassley promised less than three years ago, during the presidency of Barack Obama:

For nearly a century, the chairman of the Senate Judiciary Committee has brought nominees up for committee consideration only after both home-state senators have signed and returned what's known as a "blue slip." This tradition is designed to encourage outstanding nominees and consensus between the White House and home-state senators. Over the years, Judiciary Committee chairs of both parties have upheld a blue-slip process, including Sen. Patrick Leahy of Vermont, my immediate predecessor in chairing the committee, who steadfastly honored the tradition even as some in his own party called for its demise. I appreciate the value of the blue-slip process and also intend to honor it.¹¹

During the Trump presidency, Chairman Grassley has made the hypocritical decision to give a hearing and vote to two circuit court nominees – David Stras and Michael Brennan – who lacked the support of a home-state senator. That abuse would be compounded if he were to grant a hearing and vote to a nominee like Mr. Bounds who lacks the support of both home-state senators. The Congressional Research Service has identified three known instances during the 101-year history of the blue slip in which a judicial nominee was confirmed over the objections of a home-state senator,¹² but there are no known instances in which a nominee has ever been confirmed over the objections of both home-state senators. The Senate must not let Mr. Bounds be the first, or it will strip senators of their constitutional role of providing advice and consent for judicial appointments in their states from this and all future administrations.

¹⁰ http://www.oregonlive.com/portland/index.ssf/2018/02/oregons_us_senators_say_federa.html.

¹¹ <https://www.desmoinesregister.com/story/opinion/columnists/iowa-view/2015/04/15/working-secure-iowas-judicial-legacy/25801515/>.

¹² <https://fas.org/sgp/crs/misc/R44975.pdf>.



Over the years, when the Senate majority placed partisan loyalty to the president over the Senate's institutional interest in independently carrying out its constitutional responsibilities, the blue slip served as a vital corrective. This institutional check has arguably never been more important than today, with a president who undermines the legitimacy of judges and their rulings, and who prioritizes loyalty to him over fealty to the law. As Senator Hatch astutely observed in 2014: "Weakening or eliminating the blue slip process would sweep aside the last remaining check on the president's judicial appointment power. Anyone serious about the Senate's 'advice and consent' role knows how disastrous such a move would be."¹³

For the foregoing reasons, The Leadership Conference urges you to reject the nomination of Ryan Bounds 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 and Legal Director, at (202) 466-3311.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta".

Vanita Gupta
President & CEO

¹³ <http://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.