



May 20, 2019

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## OPPOSE THE CONFIRMATION OF DANIEL BRESS 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 Daniel Bress to the U.S. Court of Appeals for the Ninth Circuit.

Mr. Bress, 39, is the third conservative ideologue nominated this year to a California seat on the Ninth Circuit over the objections of Ranking Member Feinstein and Senator Harris, the home-state senators. Their opposition is based, in part, on Mr. Bress's lack of California connections – he is a Washington, DC corporate lawyer who has not lived in California in over a decade. Mr. Bress's nomination is part of President Trump's effort to remake the Ninth Circuit, which has repeatedly – at least 29 times<sup>1</sup> – ruled against him and his extreme policies. The Senate must oppose Mr. Bress for a lifetime appointment to the federal judiciary.

**Ideological Affiliations and Career:** Mr. Bress has been a longtime member (since 2003) of the Federalist Society and served on the Federalist Society Executive Committee for Criminal Law and Procedure Practice Group. This out-of-the-mainstream legal organization represents a sliver of America's legal profession – just four percent – yet nearly 85 percent of President Trump's appellate court nominees and nearly 50 percent of his district court nominees have been Federalist Society members. In addition, Mr. Bress served as a law clerk for Justice Antonin Scalia, wrote letters of support to the Senate in support of three right-wing Trump nominees (Britt Grant, Kate O'Scannlain, and Beth Williams), and worked as a Republican political operative for Lawyers for Romney in 2012 and Republican Virginia Attorney General candidate John Adams in 2016.

As an attorney at the conservative Washington, DC law firm, Kirkland & Ellis LLP, Mr. Bress has devoted his legal career primarily to defending large corporations in class action cases in which several of his clients were accused of making harmful products. He has represented defendants in several lawsuits in which he opposed the efforts of consumers to

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<sup>1</sup> [https://www.washingtonpost.com/world/national-security/the-real-reason-president-trump-is-constantly-losing-in-court/2019/03/19/f5ffb056-33a8-11e9-af5b-b51b7ff322e9\\_story.html?utm\\_term=.a12886215573](https://www.washingtonpost.com/world/national-security/the-real-reason-president-trump-is-constantly-losing-in-court/2019/03/19/f5ffb056-33a8-11e9-af5b-b51b7ff322e9_story.html?utm_term=.a12886215573).



band together to hold corporations accountable for their adverse actions.<sup>2</sup> In a case he listed as one of his two most significant litigated matters, Mr. Bress defended a corporation that made defective bullet-proof vests that put law enforcement officers at risk of death or serious injury.<sup>3</sup> In the other case, he represented a corporation that was accused of conspiring to prevent thousands of asbestos-injury victims from obtaining fair tort recoveries for their injuries.

**Lack of Home-State Senator Support:** Nominating someone over the objection of home-state senators departs from past Senate tradition and subverts the Constitution’s advice and consent process. As former 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.”<sup>4</sup> 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.

Opposition from Ranking Member Feinstein and Senator Harris traditionally would have been a bar to Mr. Bress even receiving a Senate hearing for a California seat on the Ninth Circuit. But in their zeal to pack the federal courts with right-wing ideologues, Senate Republicans have been confirming Trump judicial nominees at a record pace and over the strong objection of the very senators elected to represent the state where the judge would preside. It is particularly alarming when one of those senators is the ranking member of the Senate Judiciary Committee, as is the case here with Senator Feinstein.

During the last two years of the Obama presidency, when he served as chair of the Senate Judiciary Committee, Senator Grassley did not grant a hearing or vote to a single nominee unless they had support from both home-state senators. During the Trump presidency, Chairmen Grassley and Graham have employed a double standard and hypocritically given a hearing to 12 circuit court nominees who lacked the support of a home-state senator: David Stras, Michael Brennan, Ryan Bounds, David Porter, Eric Murphy, Chad Readler, Eric Miller, Paul Matey, Michael Park, Joseph Bianco, Kenneth Lee, and Daniel Collins. Mr. Bress will be the thirteenth such nominee. Senate Republicans have destroyed the blue slip tradition for circuit court nominees, and future presidents and Senates are unlikely to revive it.

**Disturbing Lack of Diversity:** President Trump’s lack of commitment to diversity on the federal judiciary is deeply disturbing. Mr. Bress, like the vast majority of the president’s judicial nominees, is white and male. President Trump has appointed the least diverse group of nominees in decades.<sup>5</sup> Of his 46 appellate nominations, none are African-American. None are Latino. Only nine are women. His district court nominees are also predominately white and male. Our nation’s great diversity should be reflected in its government institutions, especially the federal judiciary, which serves as the guardian of our rights and liberties. At a time when the legal profession has more women and attorneys of color than ever before, President Trump’s record on judicial diversity is truly appalling.

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<sup>2</sup> <https://www.kirkland.com/lawyers/b/bress-daniel-aaron>.

<sup>3</sup> <https://www.judiciary.senate.gov/imo/media/doc/Daniel%20Bress%20SJQ%20-%20PUBLIC.pdf>.

<sup>4</sup> <https://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.

<sup>5</sup> <https://www.usatoday.com/story/news/politics/2018/02/13/trumps-87-picks-federal-judges-92-white-just-one-black-and-one-hispanic-nominee/333088002/>.

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For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Daniel Bress 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,

A handwritten signature in black ink, appearing to read "Vanita Gupta". The signature is fluid and cursive, with a prominent loop at the end.

Vanita Gupta  
President & CEO