



March 1, 2019

**OPPOSE THE CONFIRMATION OF KENNETH LEE 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 Kenneth Lee to the U.S. Court of Appeals for the Ninth Circuit.

Mr. Lee has written incendiary commentaries demeaning sexual assault and harassment survivors, ridiculing universities that promote diversity through student affinity organizations, and advocating restrictions to the right to vote. He concealed some of his most offensive writings when considered by the California senators' selection committees<sup>1</sup> and only days ago disclosed them to the Senate Judiciary Committee. Senators Feinstein and Harris, his home-state senators, strongly oppose his nomination – opposition that traditionally would have been a bar to Mr. Lee even receiving a Senate hearing. But in their zeal to pack the federal courts with far-right extremists, Senate Republicans have been advancing and confirming Trump judicial nominees like Mr. Lee at a record pace and over the strong objection of the very senators elected to represent the state where the judges would preside. The Senate must demand that its constitutionally mandated role in the judicial selection process be respected and must oppose the confirmation of nominees like Mr. Lee for lifetime appointments on the federal judiciary.

**Sought to Restrict Voting Rights:** Mr. Lee is a staunch proponent of felon disenfranchisement laws, which deny the right to vote for millions of Americans who have paid their debt to society. Restoring voting rights for individuals with felony convictions is a necessary repudiation of our nation's discriminatory and racially violent past. Yet in a 2006 law review article, Mr. Lee asserted: "Critics of felon disenfranchisement laws note that these laws have a disproportionate impact on certain racial minority groups. While society can be sensitive to such concerns, it is not a sufficient reason to abolish longstanding and justifiable laws in the attempt to achieve some form of racial balance."<sup>2</sup> Mr. Lee argued that these disenfranchisement laws are justified "on the basis of the Lockean notion of a social contract" and that "society considers convicts, even those who have completed their prison

<sup>1</sup> <https://www.feinstein.senate.gov/public/index.cfm/press-releases?id=BA3CCC82-B45A-44AF-8A86-121B3A0D0780>.

<sup>2</sup> <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1274&context=jgspl>.

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terms, to be less trustworthy than non-convicted citizens.”<sup>3</sup> Those notions have been rejected by more and more states, most recently by 65 percent of Florida voters in the November 2016 mid-term election.

Mr. Lee’s views on voting rights were also highlighted when he derided his alma mater Cornell University for sending voter registration forms to students. In a 1997 op-ed entitled “Cornell: More Ethically Challenged Than Newt,” Mr. Lee cynically contended that “Cornell spent thousands of dollars last year to send voter registration ballots to all its students. Some people may view this as an attempt to encourage civic responsibility. That would be too naïve. Considering that young people tend to be liberal and that professors and administrators routinely bash Republicans, Cornell knows that most students will vote Democratic.”<sup>4</sup>

**Insensitivity to Sexual Assault/Harassment Survivors and Gender Equality:** Mr. Lee has questioned the legitimacy of statistics regarding women who report being a survivor of rape or attempted rape. In a 1999 op-ed entitled “Untruth in Academe,” Mr. Lee wrote: “From Afrocentric claims of Cleopatra’s being black to phony feminist statistics on rape, anorexia, and discriminatory treatment of girls, academia has in recent years been beset by revelations of fraudulent facts and spurious studies.... On most college campuses, professors repeat the mantra, ‘one in four girls is a victim of rape or attempted rape.’ Yet as Christina Hoff Sommers has shown, this claim is deeply flawed.”<sup>5</sup> This troubling comment is similar to those made by other two other extreme Trump judicial nominees: Neomi Rao and Ryan Bounds.

In a 1993 op-ed, “Is America Evil?,” Mr. Lee challenged basic norms of gender equality and intentionally misspelled “women” as a point of ridicule. He wrote: “Some egalitarians have charged that women should be treated equally in all cases; this would include putting women into the front-line battlefield. Unfortunately, no matter how many times they cry that both genders are equal, the reality is that men and women are biologically different, e.g. men are usually innately physically stronger than women.... Any one who disputes that fact disputes nature. Some tasks are better suited for men, and others for women. This is not sexism; it is reality.”<sup>6</sup>

In a 1995 op-ed entitled “In Defense of Playboy,” Mr. Lee defended a Playboy edition with nude photos of Ivy League students, by asserting:

- “Feminists plastered the campus with chalkings and signs accusing the infamous men’s magazine of propagating sexism. One delightful chalking said, ‘Our education is not your jerk-off fantasy.’ Another one said, ‘We are more than tits and ass.’ All of these accusations and bromides, unfortunately, are misguided and plain wrong.”<sup>7</sup>
- “[I]t is hypocritical and sanctimonious for feminists – the vast majority of whom are fervent pro-choicers – to restrict the free will of other women. Ironically, it is an anti-feminist notion that

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<sup>3</sup> *Id.*

<sup>4</sup> <https://afj.org/wp-content/uploads/2019/02/Cornell-More-Ethically-Challenged-Than-Newt.pdf>

<sup>5</sup> <https://afj.org/wp-content/uploads/2019/02/Untruth-in-Academe.pdf>

<sup>6</sup> <https://afj.org/wp-content/uploads/2019/02/Is-America-Evil.pdf>.

<sup>7</sup> <https://afj.org/wp-content/uploads/2019/02/In-Defense-of-Playboy.pdf>

women should not have the choice to pose in Playboy.... In fact, most feminists support unfettered abortion-on-demand. They want the government to subsidize abortions for 16 year olds without parental consent, and they have no moral qualms about it. Why? Because they see abortion in terms of purely 'rights' and not morality. They only have scorn for anyone who questions the morality of using taxpayers' money to subsidize teen abortions. Yet somehow on the matter of Playboy, they refuse to see the issue in terms of rights, and instead talk of morality."<sup>8</sup>

- “This Playboy debate also elucidates some of the schizophrenic contradictions in feminist shibboleths. Feminists have argued that women are just as strong and competent as men – they deserve to serve in the front-lines of the military; they should be fire-fighters; they should attend the Citadel. But feminists suddenly complete a 180 degree turn and claim that women are meek and helpless victims of men: they need to be protected from things like Playboy. So which is it?”<sup>9</sup>

In an op-ed entitled “Why Maas Is Innocent,” Mr. Lee demeaned four sexual harassment survivors and defended a professor accused of harassing or assaulting them. Some of Mr. Lee’s most troubling comments are as follows:

- “The most egregious accusation involved Maas supposedly grabbing one of the complainant’s breast [sic] during a film trip to Japan in 1988. Yet all the facts clearly undercut the veracity of the complainant’s story. After this alleged incident occurred in 1988, the complainant continued to accompany Maas as his film crew assistant on four more trips. If a lecherous professor grabs a student’s breast, the last thing she would do is continue to accompany him on another trip – let alone four more trips – just so she can hold on to a part-time job.”<sup>10</sup>
- “If Maas did not harass them, why would the complainants accuse Maas of harassment? The two main instigators of this witch hunt were twin sisters who served as members of Maas’ film crew. They had described their working relationship with Maas as ‘fun’ until they took a human sexuality course.... The class propagated the pernicious view that all women are victims of the inexorable sexism inherent in our patriarchal society.... After being exposed to these feminist ideas, the twins joined a date rape and a Violence Against Women organization. They then suddenly construed Maas’ kindly acts – the same actions that they had previously welcomed – as sexual harassment. Maas’ gift-giving and hugging could not be motivated by kindness; some lascivious intent to assert male dominance had to be involved.”<sup>11</sup>
- “As a part of its punishment, the committee recommended stripping Maas of his Stephen H. Weiss Presidential Fellowship. Ironically, the University had awarded him the fellowship for creating an ‘atmosphere of intimacy’ in the classroom and making Cornell a ‘warmer and more

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> <https://afj.org/wp-content/uploads/2019/02/Why-Maas-is-Innocent.pdf>

<sup>11</sup> *Id.*

caring place.’ In essence, Cornell has rebuked Maas for the same behavior that the school had previously awarded him for. Paradoxical? Surely. Hypocritical? Yep. Surprising? Not really. That’s the sobering reality of political correctness run amok at Cornell.”<sup>12</sup>

**Troubling Views on Race:** Mr. Lee has made numerous insensitive comments about race and campus affinity groups. He scolded universities for allowing students to join organizations and live in dorms that allowed them to interact with students from similar racial backgrounds and experiences.

- In a 1994 op-ed with the inflammatory headline “Politically Correct Jim Crow at Cornell University,” Mr. Lee wrote: “Under the guise of fostering an environment that is more multicultural and therefore theoretically more comfortable for minority students, the university has created several racial and ethnic living centers where these students can self-segregate.”<sup>13</sup>
- In a 1994 op-ed, Mr. Lee declared: “The phenomena of multiculturalism is not exclusive to Cornell. This malodorous sickness has seeped into the hallowed halls of other universities.”<sup>14</sup>
- In a 1993 piece, “Is America Evil?,” Mr. Lee opined: “Cries of racism stem from isolated incidents or from unreliable studies based on statistical chicanery. Homosexual groups hurl epithets whenever one refused to swallow their hook, line and sinker. And charges of sexism often amount to nothing but irrelevant pouting. Regardless of what the special interest groups may say, America remains the most tolerant society in the world.”<sup>15</sup>
- In a 1996 op-ed entitled “Separate & Unequal,” Mr. Lee criticized Cornell’s ethnic dormitories, writing that “universities that enact affirmative action programs to foster diversity and mutual understanding also encourage self-segregation along ethnic lines. Their motivations arise partly in response to intimidation, and partly from well-intentioned but misguided liberal paternalism.”<sup>16</sup>
- In the same piece, Mr. Lee wrote that “by isolating minority students they foster racial consciousness and a victimization mentality, encouraging minority students to view everything through the lens of ethnicity and blame white racism for all ills. Those minority students who come to Cornell uninitiated to racial group-think are introduced to it by the school itself.... Unfortunately, racial separatism is the rule, not the exception, at most colleges.”<sup>17</sup>
- In a 1994 op-ed entitled “End Racist Policies!,” Mr. Lee wrote that “In addition to black students, Latino students have also employed the victimization culture as well. During last year’s takeover of Day Hall, Latino students claimed in overwrought speeches that any graffiti (despite not having any reference to ethnicity) on the artwork was tantamount to racism.”<sup>18</sup> He went on to

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<sup>12</sup> *Id.*

<sup>13</sup> <https://afj.org/wp-content/uploads/2019/02/Politically-Correct-Jim-Crow-at-Cornell-University.pdf>

<sup>14</sup> <https://afj.org/wp-content/uploads/2019/02/Kulture-Klash.pdf>.

<sup>15</sup> <https://afj.org/wp-content/uploads/2019/02/Is-America-Evil.pdf>.

<sup>16</sup> <https://afj.org/wp-content/uploads/2019/02/Separate-and-Unequal.pdf>

<sup>17</sup> *Id.*

<sup>18</sup> <https://afj.org/wp-content/uploads/2019/02/End-Racist-Policies.pdf>

write that “too many falsely view racism in every problem” and [w]e can see this victimization culture in effect as virtually every group on the Cornell campus purports itself to be ‘oppressed.’”<sup>19</sup>

- In a 1996 op-ed, “The Dilemma of Modern Liberalism,” Mr. Lee wrote: “The way that liberals exclusively bash the Founding Fathers, you’d think that everyone else in the world were multicultural egalitarians who celebrated Kwanzaa, while those evil American founders beat their slaves in their spare time.”<sup>20</sup>
- In an op-ed entitled “The Native Americans vs. the Indigenous People?,” Mr. Lee wrote that the 1995 World Series between the Cleveland Indians and the Atlanta Braves “was a nightmare for the politically correct clique because some of them found the team names to be offensive towards Native Americans.”<sup>21</sup> He went on to propose that the Cleveland Indians change their name to the “Cleveland Indigenous People” in order to “display our sincere contrition and our commitment to our PC brethren.”<sup>22</sup>
- In a 1995 op-ed entitled “Senator D’Amato vs. Asians?,” Mr. Lee asserted that the media had a double standard because it criticized then-Senator Alfonse D’Amato, a Republican, for imitating a Japanese accent but, according to Mr. Lee, the media failed to criticize anti-Asian comments by liberals. Mr. Lee asserted that “somehow the critics cast a blind eye to the unmitigated racism of the Left, while they harp on conservatives over the most innocuous statements. Such double-standards cannot be tolerated.”<sup>23</sup>

**Opposed Equal Opportunity Policies:** In the context of college admissions, Mr. Lee has promoted the false narrative that merit is defined solely by grades and test scores, and he has railed against equal opportunity and race-conscious affirmative action programs. But when it comes to faculty diversity, he has essentially been a supporter of affirmative action – for conservative professors.

- In “GOP Need Not Apply,” Mr. Lee wrote in 1996 that “universities are dominated by left-wing ideologues” and that there is a “pervasive left-wing bias in the faculty.”<sup>24</sup> He also asserted: “For years, liberals have argued that the underrepresentation of minority professors is *ipso facto* proof of racism, and they have usually implemented programs to reach the quixotic goal of proportional representation. Since Republicans represent roughly a third of the electorate, and even higher proportion of the college-educated population, perhaps universities like Cornell should recruit intellectually conservative professors with the same zeal and exigency they display for balancing flesh tones.”<sup>25</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> <https://afj.org/wp-content/uploads/2019/02/Dilemma-of-Modern-Liberalism.pdf>

<sup>21</sup> <https://afj.org/wp-content/uploads/2019/02/The-Native-Americans.pdf>

<sup>22</sup> *Id.*

<sup>23</sup> <http://civilrightsdocs.info/pdf/policy/Lee-Doc-1.pdf>.

<sup>24</sup> <http://civilrightsdocs.info/pdf/policy/Lee-Doc-2.pdf>.

<sup>25</sup> *Id.*

- In another 1996 op-ed, entitled “Angry Yellow Men,” Mr. Lee wrote: “Asian Americans are caught between policies that limit their admission to select colleges and opportunistic conservatives who see in them a way to further a larger social agenda. Is there a way out? One Asian student at Berkeley has a suggestion: ‘Maybe we should be opportunistic and use Republicans to get what we want – get rid of affirmative action.’”<sup>26</sup>
- In a 1995 piece entitled ‘Affirmative Action at the Bursar’s Window,’ Mr. Lee wrote: “Race-based tuition waivers like those offered at Cornell have become ubiquitous at competitive business schools.... These goodies are granted regardless of financial situation – Congresswomen’s children and dentists’ sons of the right skin color automatically qualify for full subsidy – making it clear that the university’s goal is not boosting the disadvantaged but rather building a publishable box score of enrollment by race that conforms to liberal decorum and the demands of the gene-counters.”<sup>27</sup>
- In a 2001 op-ed, “Where Legal Activists Come From,” Mr. Lee declared: “From freeing the mentally ill in New York City to defending racial preferences in California to contesting the presidential election in Florida, left-leaning lawyers have successfully waged a ‘rights revolution’ over the last three decades. Trial lawyers increasingly litigate new entitlements for favored groups, establish exotic new individual rights, and overturn well-established legal and legislative prerogatives.”<sup>28</sup>

**Insensitivity to LGBTQ Rights:** Mr. Lee complained that LGBTQ students at Cornell were given too many resources. In an op-ed entitled “Gay Office Opens,” he upbraided the university for opening a Gay, Lesbian and Bisexual Resource Office and complained that it was unnecessary in light of the fact that a few LGBTQ organizations already existed on campus. Mr. Lee wrote: “Although the administrators vehemently deny it, the Gay Resource Office is more political in nature than anything. Contrary to the University’s open assertions, the Gay Resource Office is a token to appease the more militant gay activists on campus.”<sup>29</sup>

Mr. Lee has also made callous remarks about individuals with AIDS. In a 1994 op-ed, “AIDS at RPU,” he asserted: “The media and Hollywood spokespersons have worked assiduously to dispel the notion that AIDS is a ‘gay-disease.’ They reiterate the mantra that AIDS is everybody’s disease. But the fact remains that 9 out of 10 people with AIDS in America are either gay or drug-users.... Homosexuals are generally more promiscuous than heterosexuals, and thus their risk factor increases exponentially.”<sup>30</sup>

**Ideological Affiliations:** Mr. Lee has been a member of the Federalist Society for over two decades, since his first year of 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

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<sup>26</sup> <https://afj.org/wp-content/uploads/2019/02/Angry-Yellow-Men.pdf>

<sup>27</sup> <https://afj.org/wp-content/uploads/2019/02/Affirmative-Action-at-Bursars-Window.pdf>

<sup>28</sup> <https://afj.org/wp-content/uploads/2019/02/Where-Legal-Activists-Come-From.pdf>

<sup>29</sup> <https://afj.org/wp-content/uploads/2019/02/Gay-Office-Opens.pdf>

<sup>30</sup> <https://afj.org/wp-content/uploads/2019/02/AIDS-at-RPU.pdf>

court nominees and nearly 50 percent of his district court nominees have been Federalist Society members. Never before has a president attempted to pack the courts with such a high percent of ideological extremists.

Mr. Lee's partisan ideology runs deep. In addition to his ideological invectives noted above, he has made hostile and narrow-minded comments about people who disagree with his extreme views. In a 1997 op-ed ("Goodbye, Adios, Sayanora"), he asserted that "campus leftists – despite their putative open-mindedness – never had any tolerance for views contrary to their politically correct views.... All of these actions only demonstrate how intellectually fraudulent and morally bankrupt much of the Left is at Cornell."<sup>31</sup> In his 1996 op-ed, "The Dilemma of Modern Liberalism," Mr. Lee proclaimed that liberals "see themselves as open-minded and enlightened, while conservatives are insensitive neanderthals who revel in bigotry and ignorance" and "these open-minded liberals accept all behaviors and cultures as equal (the one exception is for dead white males – anything they did was irredeemably racist)."<sup>32</sup>

**Lack of Home-State Senator Support:** Due to his extreme record and failure to turn over controversial writings, Mr. Lee is strongly opposed by Senators Feinstein and Harris, his home-state senators. Nominating someone over the objection of their home-state senators departs from past Senate tradition and subverts the Constitution's advice and consent process. 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. The Congressional Research Service has identified only three known instances during the 102-year history of the blue slip – prior to the Trump presidency – in which a judicial nominee was confirmed over the objections of a home-state senator.<sup>33</sup> In light of this opposition, Mr. Lee should not be granted a committee hearing or a vote. 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, Republican Senate Judiciary Committee chairs have adopted a double standard and hypocritically given a hearing to ten 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, and Joseph Bianco. Mr. Lee will be the eleventh.

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 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>34</sup> Republican elimination of the blue slip for circuit court nominees has led to the

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<sup>31</sup> <https://afj.org/wp-content/uploads/2019/02/Goodbye-Adios-Sayanora.pdf>

<sup>32</sup> <https://afj.org/wp-content/uploads/2019/02/Dilemma-of-Modern-Liberalism.pdf>

<sup>33</sup> <https://fas.org/sgp/crs/misc/R44975.pdf>.

<sup>34</sup> <https://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.

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confirmation over the past two years of numerous extreme nominees, diminishing the power of the Senate and threatening the reputation of the federal judiciary as a fair and independent tribunal.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Kenneth Lee 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