

The nomination was confirmed.

EXECUTIVE CALENDAR—Continued

Mr. MCCONNELL. Mr. President, I ask unanimous consent that notwithstanding rule XXII, the postcloture time on the Duncan nomination expire at 3 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The Senator from Utah.

NOMINATION OF MIKE POMPEO

Mr. HATCH. Mr. President, as President pro tempore of the U.S. Senate, I ask my colleagues to join us in voting swiftly and unanimously in support of Mike Pompeo's nomination to serve as the next Secretary of State.

Frankly, I am embarrassed by the naked partisanship that was on display during Director Pompeo's confirmation hearing. The Director deserves better than this. That his nomination was nearly sent to the floor without recommendation is an utter disgrace.

This is a graduate of West Point and a man who served our Nation honorably as a cavalry officer in the U.S. Army. This is a talented litigator who graduated from Harvard Law School, where he served as editor of the Harvard Law Review. This is an accomplished businessman, a former Member of Congress, and the current Director of the Central Intelligence Agency. This is a man who is qualified to serve in every respect. Yet some of my colleagues wanted to block Director Pompeo's nomination on the grounds that he supports our President. Give me a break.

To these colleagues, I say: Enough. Enough of the partisan games. Enough of the political grandstanding and self-serving sanctimony.

Delaying this nomination undermines not only the reputation of this esteemed body but the very safety of our Nation. Obstructing Director Pompeo's confirmation would be a significant break from the bipartisan process that has characterized these kinds of nominations in the past and over my past 42 years.

For example, when President Obama nominated Hillary Clinton to serve as Secretary of State, Republicans and Democrats set aside their differences without delay, confirming her nomination almost unanimously with a vote of 94 to 2. Just 4 years later, the Senate did so again when we confirmed John Kerry with a vote of 94 to 3.

As Republicans, did we disagree with Secretary Clinton's and Secretary Kerry's views on a wide range of issues? Absolutely. But did those disagreements prevent us from confirming two preeminently qualified nominees? Absolutely not.

As a case in point, when Secretary Kerry was confirmed in January 2013, the Syrian civil war was raging, and many of us strongly disagreed with the Obama administration's policies in the Middle East. To my frustration and

that of all my Republican colleagues, it seemed that Secretary Kerry's Syria policy differed little from his predecessor's, but rather than turn our dissenting votes into destructive votes, we voted almost unanimously for his confirmation.

There was an understanding at the time that you paid deference to the President's nominees, even if you disagreed with them on certain policies. Today, that custom is under siege. It is under threat. If we are not careful, in the future, then partisanship will surely get the best of all of us.

The partisan abandon with which some approached Director Pompeo's nomination is something that I fear the Founding Fathers would never have imagined, much less condoned. If we continue down this perilous path, a dangerous precedent will take root, making any nomination under any President at any time all but impossible.

Our role as legislators is to challenge the views of our nominees and to hold them accountable. It is not, however, to discredit, defame, and destroy the reputation of a sitting Cabinet official. Nor is it to prevent from serving a man who is so manifestly qualified to serve. To engage in such political games at a time when our Nation faces growing threats abroad is not only irresponsible, but it is dangerous.

So I say to my colleagues one last time: Confirm Director Pompeo.

He has proven himself as Director of the CIA—one of the most demanding, high-pressure jobs in government. He knows the world and its secrets better than virtually anyone. Moreover, he understands the scale of the threats facing the United States. I know that. I think I am still the longest serving member of the Senate Intelligence Committee. Perhaps most importantly, he has earned the love and trust of the people he serves, boosting the morale of the Agency and reinvigorating its sense of purpose and mission. We are in desperate need of someone who can do the same at the State Department.

Already, Director Pompeo has demonstrated he has the diplomatic skill to lead the State Department, setting the stage for negotiations between President Trump and Mr. Kim by establishing a back-channel line of communication with North Korea. He has also helped foster good relations with our foreign partners—a necessary skill for someone serving as our Nation's top diplomat.

Simply put, there is no reason under the Sun that Director Pompeo should not receive every last vote in this Chamber.

The way we treated Director Pompeo by nearly sending him to this floor without a recommendation was shameful. Indeed, the reputation of the Senate would have been tarnished were it not for the last-minute intervention of a few of my colleagues—in particular, Senator CHRIS COONS, for whom I have great admiration. He thinks for himself.

I wanted to recognize Senator COONS today and thank him for his leadership. In a display of both compassion and bipartisanship, Senator COONS switched his "no" vote to "present," ultimately allowing Director Pompeo to secure a favorable recommendation. Senator COONS did so as a gesture to Senator ISAKSON, who could not be present for the vote because he was delivering a eulogy at his best friend's funeral.

This simple act of bipartisanship reminds me of the Senate I used to know—the institution that lived worthy of its name and reputation as the world's greatest deliberative body. Senator COONS' vote brought us back from the precipice overlooking a partisan abyss. It was a timely reminder that this body is at its best when we put comity and respect ahead of partisanship. Senator COONS' gesture was characteristic of the person I know him to be—a class act, a loyal friend, and a true gentleman of the Senate.

May we all take a cue from yesterday's bipartisan display. Our treatment of Director Pompeo in committee was embarrassing, to say the least, but now we have a second chance. Now we have the opportunity to set things right by voting unanimously for his confirmation. I urge all my colleagues to do what is best for the Senate and the Nation by voting in favor of Director Pompeo's nomination.

Let's get rid of this total partisanship around here. I think both sides are to blame, in some respects. I don't mean to just be picking on Democrats here today, but when somebody with the quality of Director Pompeo is seeing this type of treatment on the floor of the U.S. Senate, my gosh, what are we becoming? All I can say is, it is not right.

This is a chance to reform and make it right. I hope we will do that. If we don't, we have to find a way of getting together. We have to find a way of supporting whoever is President, who nominates people who are qualified and who are good people, regardless of whether we agree with them ideologically.

The fact is, this Senate has become a very partisan body. There are times to be partisan. There is no question about that, and all of us have felt those times from time to time. My gosh, should we be this partisan on somebody like Secretary Pompeo, who clearly is one of the finest nominees I have seen in the whole time I have been in the U.S. Senate?

I hope my colleagues on both sides will vote for him and give him the respect, the support, and the help he is going to need in this position. We all know he is going to be confirmed. The question is, Will he be confirmed with the support of all of us Senators who really think of these things and who really care for our country, who really believe in bipartisanship, who really believe that regardless of differences of politics and opinion, class acts like Mr. Pompeo should be supported?

I yield the floor.

The PRESIDING OFFICER (Mr. CRUZ). The Senator from Michigan.

Mr. PETERS. Mr. President, today the Senate is considering a divisive nominee to sit on the Fifth Circuit Court. It completely baffles me that this administration continues to put forth nominees who are either clearly unqualified or intensely partisan and controversial. This body has historically worked together to confirm consensus nominees to serve on the appellate bench. Unfortunately, that has not been the case over this past year. We have seen contentious nominee after contentious nominee. Unfortunately, the Republican majority has abdicated its responsibility to instead choose a judicial person of integrity who is willing to find common ground.

This afternoon's vote to confirm Stuart Kyle Duncan to the Fifth Circuit Court is a perfect example of a divisive candidate. Mr. Duncan is an extreme nominee. His nomination is a senseless attack on access to healthcare for women, especially women in rural and underserved areas. His nomination is an attack on LGBT civil rights and an attack on free and open access to the ballot for all Americans.

One only needs to look at his record. Mr. Duncan served as lead counsel in *Hobby Lobby v. Burwell*, in which the Supreme Court ruled that a for-profit corporation can have religious beliefs and, therefore, can deny contraceptive coverage as part of their employer-sponsored health insurance plans.

I have said this before, and I will say it again, I have never sat next to a corporation in church. Corporations do not have religious beliefs, and a woman should have access to reproductive health services and the freedom to make her own decisions about her own healthcare.

In addition to his record of hostility to the self-determination of women, Mr. Duncan has an abysmal civil rights record. Mr. Duncan coauthored an amicus brief in opposition to marriage equality when this important issue was before the Supreme Court. In that same vein of discrimination, Mr. Duncan has repeatedly engaged in efforts to suppress the votes of minority voters. He has defended North Carolina voter suppression measures that were ultimately struck down by the Fourth Circuit. The court determined the discriminatory measures "targeted African-Americans with almost surgical precision."

Mr. Duncan's nomination is, frankly, unconscionable. Our court system should be a level playing field, where no matter who you are or where you live, you will receive fair and equal treatment. In contrast to that spirit, this nominee has spent a significant part of the past decade advocating for the denial of rights for women, minorities, and the LGBT community.

I have absolutely no confidence that this nominee will stay true not only to the letter of the law but to the spirit of

the law as well. Our constituents sent us to Washington to look out for the best interests of all Americans. That is why we need to move away from divisive nominees and instead focus on the confirmation of qualified consensus nominees. It is clear Mr. Duncan is out of step with mainstream American values, and I urge my colleagues to join me in opposing his nomination.

I yield the floor.

Mr. DURBIN. Mr. President, I rise in opposition to the nomination of Kyle Duncan to serve on the Fifth Circuit Court of Appeals.

Mr. Duncan's record shows that he is far outside the judicial mainstream. He has a history of ideological opposition to important civil and constitutional rights. There are many examples of Mr. Duncan's extreme views. I will discuss several of them.

First, Mr. Duncan has a track record of outright hostility toward the Supreme Court's Obergefell decision and the rights of the LGBTQ community.

When the Obergefell case was pending before the Supreme Court, Mr. Duncan wrote an article where he described the plaintiffs in the case as, "profoundly mistaken." He went on to write: "It is often asked by proponents of same sex marriage what harms would flow from judicial recognition of their claims. From the perspective of democratic self-government, those harms would be severe, unavoidable, and irreversible."

After the Obergefell plaintiffs won and the Supreme Court recognized the right to same-sex marriage, Mr. Duncan wrote another article where he described the Obergefell decision as "an abject failure" and said the case "imperils civic peace."

When he was before the Judiciary Committee, I asked Mr. Duncan in writing if he agreed that same-sex marriage is now settled law. He ducked the question.

This surprised me. Even President Trump conceded in November 2016 that same-sex marriage is "already settled. It's law. It was settled in the Supreme Court," but Mr. Duncan would not acknowledge that point.

I also asked Mr. Duncan in writing if he would pledge not to take steps to undermine the Supreme Court's Obergefell decision if he were confirmed. He did not respond to that question either.

Make no mistake, Mr. Duncan's advocacy against LGBTQ rights goes beyond arguments that he advanced on behalf of clients. He has repeatedly advocated against LGBTQ rights when writing in his own personal capacity about his own views.

Mr. Duncan also has a troubling record of hostility to voting rights.

He joined with another extreme Trump judicial nominee, Thomas Farr, to represent the North Carolina Legislature in seeking Supreme Court review of the Fourth Circuit's decision to strike down North Carolina's 2013 voter suppression law.

This is the notorious law that the Fourth Circuit said targeted African-

American voters with "almost surgical precision." The Fourth Circuit decried this law as "the most restrictive voting law North Carolina has seen since the era of Jim Crow."

Mr. Duncan's brief argued that the Fourth Circuit's decision was "an affront to North Carolina's citizens and their elected representatives." Fortunately, the Supreme Court denied Mr. Duncan's cert petition.

Mr. Duncan also wrote a brief defending a Texas voter ID law that the Fifth Circuit ruled had violated the Voting Rights Act. Mr. Duncan's brief cited the specter of voter fraud to support his argument that this law was necessary.

I decided to ask Mr. Duncan a simple question about voter fraud. I asked him in writing what he thought of President Trump's wholly unsubstantiated claim that 3 to 5 million people voted illegally in the 2016 election.

His response? He said "I am constrained by the canons of judicial ethics from commenting on political matters."

Why would we put someone on the Federal bench who thinks a false claim about millions of illegal voters in the 2016 election is a "political matter"? Why couldn't Mr. Duncan bring himself to say that President Trump's statement was blatantly false?

Mr. Duncan's views on voting rights are troubling, so much so that Derrick Johnson, president of the NAACP, sent a letter saying that "President Trump's nomination of Mr. Duncan to the Fifth Circuit is a brazen insult to the civil rights legacy of this court."

There are many other issues where Mr. Duncan has advocated for positions that are far to the right of the center stripe.

In 2014, he gave a speech where he discussed the Supreme Court's right-to-marry cases, including the landmark decision *Loving v. Virginia*, and said to the audience, "Ask yourselves this: do they add up to a right to marry your first cousin? A thirteen year old?"

Mr. Duncan also filed briefs in opposition to the DACA program and the proposed DAPA program, which he claimed "would greatly increase the risk of unauthorized immigrants committing serious crimes." His arguments perpetuated a stereotype of immigrants as criminals that is simply not borne out by evidence.

Mr. Duncan represented Hobby Lobby in its Supreme Court case, where he argued that for-profit corporations have religious rights that permit them to circumvent the law and refuse to provide contraceptive coverage to their employees.

The NAACP has described Mr. Duncan's record on criminal justice issues as "abysmal." They noted his efforts to overturn a wrongful conviction verdict based on prosecutor misconduct, as well as his defense of inhumane conditions in severely overcrowded prisons.

What kind of message does it send when the Republican Party goes out of

its way to nominate people like Mr. Duncan who have expressed such hostile views on issues of fundamental civil rights such as the right to marry and LGBTQ rights?

There are plenty of well-qualified Republican judicial candidates who do not have a track record of taking extreme ideological views. Why choose someone like Mr. Duncan? What kind of signal does that send to litigants who might argue before the Fifth Circuit?

It is possible to find highly qualified, nonideological candidates for the Federal bench, nominees whom both parties can be proud of. We have done that with the two pending Illinois nominees to the Seventh Circuit. I wish that had happened with this Fifth Circuit vacancy, but unfortunately, that is not the case.

I cannot support Mr. Duncan's nomination, and I will vote no.

Mrs. FEINSTEIN. Mr. President, I rise today in opposition to the nomination of Kyle Duncan to a Louisiana seat on the Fifth Circuit.

Mr. Duncan, a Washington, DC, based lawyer, has made a career advocating for ideological causes. He has a long record of arguing to undermine the rights of women, voters, LGBT Americans, and immigrants.

Before I speak more in depth about Mr. Duncan's record, it is important to step back and look at the big picture on President Trump's judicial nominees.

Mr. Duncan's nomination is part of the Trump administration's larger effort to remake Federal circuit courts with young, ideological nominees who are often far outside of the mainstream or, in some cases, who are unqualified.

In just the last 15 months, we have seen a nominee confirmed to the D.C. Circuit who worked in the White House counsel's office on issues likely to go to the court he was appointed to, including on the White House's responses to the Russia investigation.

As one Republican Senator said, this now-judge's "conflict of interest" was something "a first-year law student would see."

We have seen a nominee confirmed to the Sixth Circuit who blogged under a pseudonym and expressed extreme views and relied on rightwing sources known for discredited conspiracy theories. For example, he wrote in a blog post that the "two greatest tragedies in our country are 'slavery and abortion.'"

We have seen a nominee to the Eighth Circuit who was the first judicial nominee to receive a unanimous "not qualified" from the American Bar Association because of concerns about the nominee's judicial temperament and ability to be impartial and still get confirmed on a party-line vote.

Unfortunately, Mr. Duncan is just the latest nominee with a controversial, partisan record that calls into question his ability to be an independent, neutral arbiter appointed to a lifetime position.

We must not allow our courts to be undermined by politics instead of rooted in independence. The courts are a constitutionally created coequal, independent branch designed to be an independent check on Congress and the Executive.

Unfortunately, that independence is under attack.

The President has personally attacked judges who have ruled against him.

He has also repeatedly declared that he has litmus tests for judicial nominees, pledging that he would only nominate individuals who pass ideological litmus tests.

Our system depends on Federal judges who are independent arbiters and follow the facts and the law wherever they lead.

Given this, I have been deeply troubled by efforts to stack our Federal courts by jamming controversial nominees through as quickly as possible. Federal judges serve for life, and it is critically important that parties who come before them are confident that their case is given a fair shot, that it is being evaluated on the merits.

If you look at Mr. Duncan's record, he cannot demonstrate that women, LGBT Americans, and immigrants who appear before him in court would have an impartial arbiter.

That should trouble all senators. I fear Mr. Duncan's confirmation to the Fifth Circuit will further diminish confidence in our judicial system.

Specifically, Mr. Duncan has been at the center of efforts to roll back women's access to basic healthcare.

Mr. Duncan served as one of the lead lawyers for Hobby Lobby in a case challenging the Affordable Care Act's protections for women's access to contraception. Duncan advanced the argument that a corporation's religious beliefs trump a woman's right to contraceptive coverage in her health insurance plan.

More than 99 percent of American women have used contraception; it is more common than a flu shot.

Access to contraception contributes to improved health for women and babies, including reduced rates of prematurity. The expansion of contraception has also strengthened women's financial security by allowing them to plan when to start a family.

Mr. Duncan also argued in favor of a severely restrictive anti-choice law in Texas, which would have closed 75 percent of women's health clinics that offer comprehensive reproductive health services.

While medical experts, including the American College of Obstetricians and Gynecologists, unanimously agreed that these requirements were not needed to protect women's health, Mr. Duncan argued against the science.

Even the conservative Supreme Court rejected Texas's false pretense of protecting women and ruled that this law forced doctors and health centers to meet medically unnecessary requirements.

The Supreme Court held the law did not provide greater protection for women's health and that it was an unconstitutional undue burden on women's reproductive rights.

Mr. Duncan was also at the center of Republican efforts to disenfranchise African-American voters through discriminatory voter ID laws.

After the Fourth Circuit struck down North Carolina's voter ID law, noting that it "targeted African Americans with almost surgical precision," Duncan urged the Supreme Court to reverse that decision.

In his petition to the court, he wrote that, "The Constitution does not allow the sins of Civil Rights-era legislators to be visited on their grandchildren and great-grandchildren."

Shockingly, this statement ignores the persisting racism in this country and argues that the challenges faced by disenfranchised voters are simply a thing of the past.

What is worse, this argument is made about the right to vote. The U.S. Constitution enshrines the right to vote as one of our most foundational rights.

Mr. Duncan has also repeatedly argued against recognizing same-sex couples' right to marry.

When the Supreme Court ruled in favor of marriage equality in *Obergefell*, Mr. Duncan declared the decision "imperial[ed] civic peace."

That is an extreme statement that is simply untrue. Far from imperiling peace, our country has evolved and embraced this ruling peacefully.

I asked Mr. Duncan whether he still believes that this important case has "imperial[ed] civic peace" in the years since it was decided. Mr. Duncan did not disavow his statement and would not answer my question.

Lastly, we are a nation of immigrants. Since its founding, the United States has been built on the backs of people from all over the world coming here to build a better life for themselves and their families.

Less than 2 years ago, in 2016, Duncan argued to the Supreme Court that allowing undocumented parents of U.S. citizen children to live and work would, "exacerbate the problem of violent crime by unauthorized immigrants."

Again, Mr. Duncan makes an assertion with no basis in fact. Rather, research shows that immigrants commit fewer crimes than native born Americans. The conservative Cato Institute found that immigrants have a lower rate of incarceration than native-born Americans.

While I do not expect to agree with the views of all the judicial nominees that come before the Senate, I do expect the nominees to be within the mainstream of legal thought. I do expect the nominees to uphold basic facts, science, and constitutional principles.

I fear that Mr. Duncan's record puts him outside these basic qualifications, and I cannot support his nomination.

Mr. PETERS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. WARREN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. WARREN. Mr. President, it is no secret that powerful interests are working to undermine our government. Giant companies and rightwing billionaires have been pouring unlimited sums of money into making sure our government works for those at the top and leaves everyone else behind, and a key part of their strategy is to capture our courts.

During the Obama administration, those powerful interests and their Republican allies in Congress executed an unprecedented campaign to stop fair-minded, impartial nominees from filling judicial vacancies. Nominees weren't blocked because they were unqualified. They weren't blocked because they were inexperienced. They weren't blocked because they were out of the mainstream. They were blocked for one reason and one reason alone: because they didn't demonstrate a sufficient willingness to bend the law in favor of the rich and the powerful.

With Donald Trump as President, these same interests sense a once-in-a-lifetime opportunity to reshape our courts for years to come, and they are working to stack our courts with narrow-minded elitists and rightwing radicals. Stuart Kyle Duncan—President Trump's nominee to sit on the Fifth Circuit Court of Appeals—is one of those nominees.

Mr. Duncan has spent his career working to restrict—not to expand, but to restrict—civil rights in the United States. Over and over again, he has sought to tilt the scales of justice against women, against LGBTQ Americans, against people of color, and others. Mr. Duncan's record of supporting discrimination and injustice is quite lengthy, so I will focus on just a few of the most disturbing examples. Let's start with his record on women's rights.

Mr. Duncan has worked to make it harder for women to access contraceptive coverage and abortion services. He was the lead attorney for the arts and crafts company Hobby Lobby in the Supreme Court case of *Burwell v. Hobby Lobby*. In that case, he argued that business owners should be allowed to refuse to provide female employees access to contraceptive care based on those employers' religious views.

Mr. Duncan also filed briefs in many other Supreme Court cases, petitioning the Court to restrict women's access to birth control and abortion services, ignoring the fact that access to contraceptive care can help women lead better, healthier, or more financially secure lives. He is the man who is seeking a Federal judgeship.

Let's take a look at his record on LGBTQ rights. Mr. Duncan has complained about what he calls the "general acceptance of homosexuality and homosexual practices" in America, and he has worked very hard to convince courts to adopt his narrow-minded view of the world.

In the landmark Supreme Court case that legalized same-sex marriage nationwide, Mr. Duncan filed briefs, asking the Court to reach the opposite result. After the Supreme Court handed down those historic decisions, Mr. Duncan, who, today, expects to be confirmed as a Federal appellate judge, claimed that the decision would jeopardize civic peace and openly questioned the Supreme Court's legitimacy.

Mr. Duncan also represented the Gloucester County School Board in its effort to deny Gavin Grimm, who is a transgender high school boy, the ability to use the boys' bathroom. He represented North Carolina's General Assembly in a lawsuit that challenged the assembly's bathroom bill banning transgender and gender-nonconforming individuals from using restrooms that are consistent with their gender identities.

In his asking courts to allow government-sanctioned discrimination in these cases, Mr. Duncan has completely ignored scientific evidence and medical expertise. Instead, he has asserted that transgender individuals are mentally ill. In one case, he argued that there was no sound scientific evidence proving that individuals who identify as transgender are not delusional.

In case after case, Mr. Duncan has defended discrimination and injustice.

On voting rights, he defended North Carolina's discriminatory voter ID law that a Federal court concluded targeted African-American voters with almost "surgical precision."

On immigration, he filed briefs that opposed the Deferred Action for Childhood Arrivals Program, DACA Program, which allowed Dreamers to contribute to our schools, our communities, and our economy without their having the constant fear of deportation.

On criminal justice, he fought to block the retroactive application of the Supreme Court's decision that ruled it is unconstitutional to sentence kids to life without parole.

Time and again, Mr. Duncan has been on the wrong side of justice and has worked to undermine the civil rights of groups that have historically faced discrimination.

Federal judges have one job and one job only—to dispense equal justice under law. That means everyone—man or woman, gay or straight, Black or Brown or White—should have confidence that the judges we hand lifetime appointments to will put fairness and fidelity to the law over their personal feelings or political ideologies.

Stuart Kyle Duncan has made it perfectly clear that he cannot and will not

meet that standard. That is why I will be voting to reject Mr. Duncan's nomination, and I urge every Senator who believes in the principle of equal justice under law to do the same.

Thank you.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I come to the floor to oppose Kyle Duncan's nomination to serve on the Fifth Circuit Court of Appeals.

A review of Mr. Duncan's record—his cases and chosen causes—shows he is a dangerous, ideological nominee who has consistently been on the wrong side of women's rights, LGBTQ rights, and civil rights. Let's start with Mr. Duncan's record that argues against women's rights and reproductive freedom.

When he served as the lead counsel in the infamous Hobby Lobby case, he argued that an employer can interfere with a woman's personal healthcare choices.

In Texas, he filed a brief that was in favor of abortion restrictions that would have shut down the vast majority of clinics in that State—restrictions the Supreme Court, ultimately, ruled an "undue burden" on a woman's constitutional right to a safe, legal abortion.

In my home State of Washington, he filed a brief that argued pharmacies should be allowed to refuse to fill birth control prescriptions for ideological reasons. Fortunately, his views did not prevail.

Then there is Mr. Duncan's long record of opposing LGBTQ rights.

When it comes to the rights of same-sex couples, he argued against two loving parents who wanted to change their baby's birth certificate so they could add him to their insurance plan. He argued for denying a same-sex spouse her parental visiting rights to the children she had raised for 8 years. He also defended bans on same-sex marriages in Louisiana and Virginia.

When the Supreme Court was considering whether to strike down bans on same-sex marriage nationwide, he said the harm of doing this would be "severe, unavoidable, and irreversible," and he filed an amicus brief against it. When the Court then made its historic decision to recognize same-sex marriage as a fundamental right, Mr. Duncan said it "raises questions about the legitimacy of the Court." He said it might "imperil civic peace."

When it comes to the rights of transgender people, he fought for the intolerant, harmful bathroom ban in North Carolina and against Gavin, a young boy in Virginia who simply wanted his school to allow him to use the men's restroom. He did it by using bigoted remarks that were nothing short of appalling.

In defending the outrageous ban in North Carolina, he relied on bogus testimony from a self-proclaimed expert who suggested that transgender people

are delusional. In his opposing Gavin in Virginia, Mr. Duncan advanced the offensive and discredited conspiracy theory that schools need to fear athletes who pretend to be transgender in order to gain a competitive advantage.

Outside of the court, outside of his client work, he has repeatedly addressed an organization that has been designated as a hate group by the Southern Poverty Law Center—an organization that calls marriage equality an “oxymoronic institution if ever there was one.”

There are other red flags about his commitment to defending civil rights.

For example, when the Supreme Court ruled that mandatory life sentences for minors were unconstitutional, he argued the ruling shouldn’t apply retroactively.

He argued that prisons that are packed to double their capacity were not in violation of the Eighth Amendment’s ban on cruel and unusual punishment. The Supreme Court disagreed, noting the problem caused “needless suffering and death.”

In a case involving an innocent man who had spent 14 years on death row—an innocent man—Mr. Duncan argued that the district attorney’s office was not at fault for failing to train a staff member who had withheld evidence.

When it comes to one of the fundamental rights in a democracy—the right to vote, the right of the people to choose their government officials—Mr. Duncan defended a racially tailored voter ID law in North Carolina, which the courts ultimately struck down for targeting African Americans with “almost surgical precision.”

Any one of these cases Mr. Duncan has chosen to take should raise alarm, and any one of the ideological arguments he has made should cause concern. Yet all of them together paint an unmistakable picture of a nominee who would not uphold women’s rights, LGBTQ rights, or civil rights.

To paraphrase one of his own statements, if confirmed, I believe the damage Mr. Duncan will do to people by putting his ideology over their rights will be severe, unavoidable, and irreversible. I oppose his nomination. I urge all of my colleagues to join me.

Thank you.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. LANKFORD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

Mr. LANKFORD. Mr. President, I ask unanimous consent that the Senate stand in recess until 2:15 p.m.

There being no objection, the Senate, at 12:27 p.m., recessed until 2:15 p.m.

and reassembled when called to order by the Presiding Officer (Mr. PORTMAN).

EXECUTIVE CALENDAR—Continued

The PRESIDING OFFICER. The Senator from New Hampshire.

Ms. HASSAN. Mr. President, I rise today to oppose the nomination of Stuart Kyle Duncan to serve on the Fifth Circuit Court of Appeals.

Our Founders established our court system as an independent arbiter that would protect the rights of every American and ensure equal justice under the law. For us to move forward, our democracy requires an independent and impartial judiciary.

Unfortunately, the Trump administration has focused on nominating individuals to our courts who have extreme partisan agendas that would move us backward. This latest nomination is no different. Mr. Duncan has spent his career working to undermine the progress we have made toward building a more inclusive, more equal United States. Rather than working to include more people in our democracy, Mr. Duncan’s law practice has seemingly been devoted to restricting people’s rights and making life more challenging for some of the most marginalized among us. His dangerous record raises serious doubts about his ability to act impartially on the bench with regard to a number of key issues.

In recent years, our Nation has made significant progress in advancing the rights of our LGBTQ family and friends, built on the principle that all people deserve the right to fully participate in the social, civic, and economic life of our community. At every turn, Mr. Duncan has been on the wrong side of history, working at the forefront in the fight against LGBTQ equality. He has been vehemently opposed to marriage equality, filing a legal brief to the Supreme Court arguing against the decision that was reached in the 2015 *Obergefell v. Hodges* case, later claiming that the decision “raises a question about the legitimacy of the Court.” He has even gone so far as to repeatedly claim that nationwide marriage equality, “imperils civic peace,” a statement that is both ridiculous and offensive.

Mr. Duncan has fought against adoption rights for same-sex parents and has dismissed the real necessity for LGBTQ antidiscrimination laws.

He has been unyielding in his attempts to undermine the rights of transgender individuals. In two major cases involving transgender rights, including the now infamous so-called “bathroom bill” in North Carolina, Mr. Duncan has been the go-to attorney, demeaning transgender people and even describing them as “delusional.” Given his history, I am deeply concerned that Mr. Duncan would be unable to act impartially if a case involving LGBTQ Americans were to come before the Fifth Circuit.

I also have real concerns of Mr. Duncan’s record when it comes to women’s healthcare and their constitutionally protected rights because his record shows that he has been a consistent opponent of reproductive freedom.

Mr. Duncan was the lead counsel in the backward Supreme Court Hobby Lobby decision, which allows employers to deny contraceptive coverage to women. He has long supported efforts to diminish women’s access to their constitutionally protected right to an abortion, arguing in favor of a Texas law in *Whole Woman’s Health v. Hellerstedt* that shut down abortion providers and was eventually rejected by the Court. He even contested the fact that contraceptives can be necessary to protect a woman’s health and has challenged the importance of contraception to a woman’s capacity to compete economically.

Medical professionals prescribe contraceptives to women for a variety of health conditions, including conditions such as ovarian cysts, which can be debilitating and could threaten a woman’s fertility. Moreover, women who use contraceptives to engage in family planning often have better health outcomes, as do their children.

To compete economically on a level playing field, women must be able to make their own decisions about if or when to start a family. Studies have shown that women who have greater access to contraceptive coverage are better able to support themselves and their families and to be full participants not just in our economy but also in our democracy.

Women must be recognized for their capacity to make their own healthcare decisions, just as men are. They must also have the full independence to do so. But it is clear that Mr. Duncan has a fundamental misunderstanding of the importance of reproductive freedom and ensuring that women are treated equally.

On these key issues, Mr. Duncan lacks the impartiality and commitment to equal justice for every American that is needed to serve in a lifetime judicial appointment. This is particularly critical on the Fifth Circuit Court of Appeals, which covers States that lack critical protections for LGBTQ Americans and have a history of passing dangerous laws that have blocked women’s access to healthcare. Marginalized individuals in the States in the Fifth Circuit and all Americans deserve judges who will always use sound judgment and objectivity and not operate with extreme ideological agendas.

I will oppose Mr. Duncan’s nomination to the Fifth Circuit Court of Appeals, and I urge my colleagues to do the same.

Thank you.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.