



CONGRESSIONAL
LGBT
EQUALITY CAUCUS

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

March 7, 2018

Dear Leader McConnell and Leader Schumer:

We, the undersigned members of the House of Representatives committed to equality for members of the lesbian, gay, bisexual, and transgender (LGBT) community, urge you to oppose the nomination of Stuart Kyle Duncan to the U.S. Court of Appeals for the Fifth Circuit.

Our judiciary is foundational to the stability and success of our democracy. For our system to retain the confidence of the people, judges must be impartial, both in substance and appearance, and maintain a commitment to the dignity of *all* Americans. Far from evincing a belief in the dignity of LGBT people, Mr. Duncan has made a career of challenging their rights. His consistent record of working to deny equality to LGBT people in court raises extremely serious questions about his ability to impartially administer justice.

Mr. Duncan has spent a significant portion of his recent career working with clients who seek to deny transgender people fair and equal treatment. Notably, he chose to represent defenders of North Carolina's House Bill 2, which aimed to prevent transgender North Carolinians from using the public restrooms of their gender identities. In the course of that work, Mr. Duncan has helped perpetuate baseless theories that demean transgender individuals, submitting "expert" testimony that rejected decades of scientific research and modern medical consensus by claiming gender dysphoria is the product of a "false belief"; implying that transgender individuals are delusional; and advocating for parents to encourage "sex-typical behavior."¹

Mr. Duncan continued his work in North Carolina by challenging the rights of transgender children in Virginia, representing the Gloucester County School Board after it banned transgender students from using the school restrooms of their gender identities. In a brief to the Supreme Court,

¹ Supplemental Brief of State Defendants and Intervenor-Defendants in Opposition to Plaintiff's Due Process Claim, *Carcaño v. McCrory*, No. 1:16-cv-00236-TDS-JEP (M.D.N.C. May 25, 2016)

Mr. Duncan utilized unsupported “gender fraud” arguments, suggesting—without meaningful evidence—that requiring schools to respect students’ gender identities could result in students misrepresenting those identities to obtain competitive advantages in school athletics.²

In addition, Mr. Duncan has repeatedly sought out opportunities to oppose marriage and family rights for LGBT people.³ For example, he defended Louisiana against a challenge to the state’s same-sex marriage ban in *Constanza v. Caldwell*.⁴ He also represented the state in *Adar v. Smith*, defending its refusal to issue a new birth certificate to a New York same-sex couple after they adopted a child.⁵ And he has written that the Supreme Court’s decision in *Obergefell v. Hodges*, the landmark civil rights case that established nationwide marriage equality, threatens “civic peace.”⁶

Judges must administer justice equally to litigants of all backgrounds and orientations. Over the course of his career, Mr. Duncan’s work has gone far beyond a litigator or academic expressing or evaluating a range of ideas. His fervent and personal crusade to keep LGBT people under the oppression of systemic discrimination renders him unfit for confirmation. Accordingly, we urge you to reject his nomination.

Sincerely,



A. Donald McEachin
Member of Congress

² https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/final_lgbt_letter_opposing_willett_duncan_and_kacsmark_002.pdf

³ See, e.g., *Constanza v. Caldwell*, 2014-2090 (La. Jul. 7 2015) (seeking to prevent same-sex marriage); *Robicheaux v. Caldwell*, 791 F.3d 616 (5th Cir. 2015) (seeking to prevent same-sex marriage); *V.L. v. E.L.*, 136 S. Ct. 1017 (2016) (seeking to remove a child from the care of their lesbian mother); *Adar v. Smith*, 639 F.3d 146 (5th Cir. 2011) (seeking to deny a birth certificate listing both legal parents, a same-sex couple); Brief of the Amicus Curiae Louisiana, et al., *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (seeking to deny the right to same-sex marriage).

⁴ *Constanza*, 2014-2090.

⁵ *Adar v. Smith*, 639 F.3d 146 (5th Cir. 2011).

⁶ Kyle Duncan, *Marriage, Self-Government, and Civility*, Public Discourse (Apr. 23, 2015), available at <http://www.thepublicdiscourse.com/2015/04/14894>.



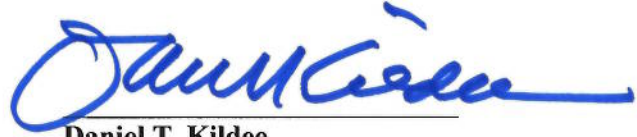
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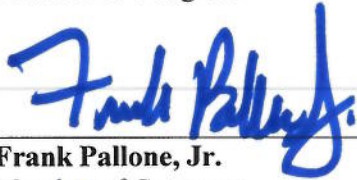
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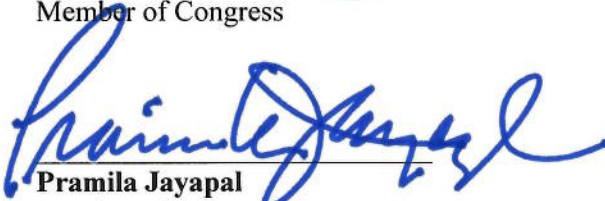
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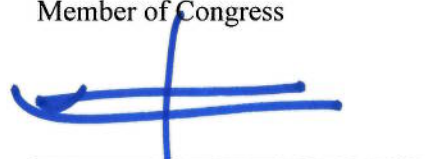
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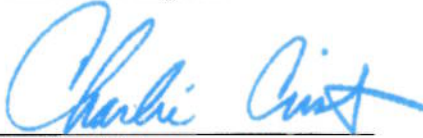
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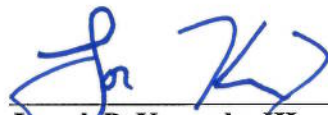
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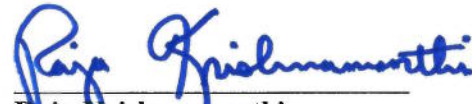
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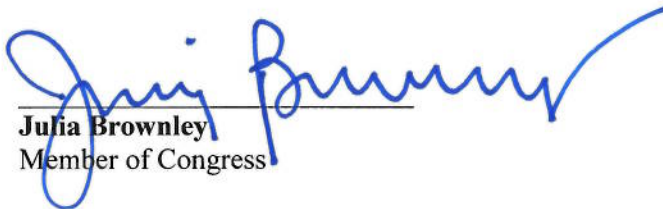
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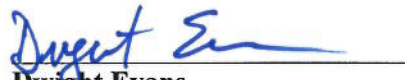
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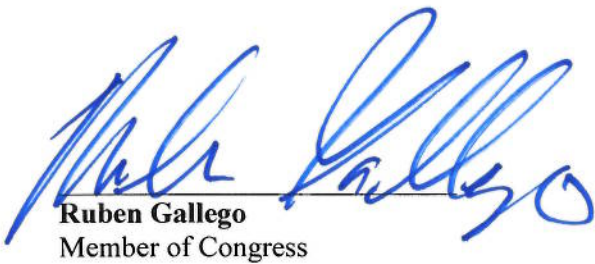
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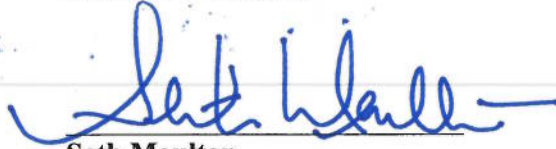
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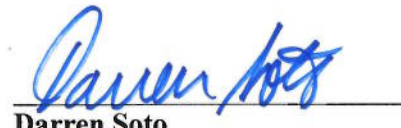

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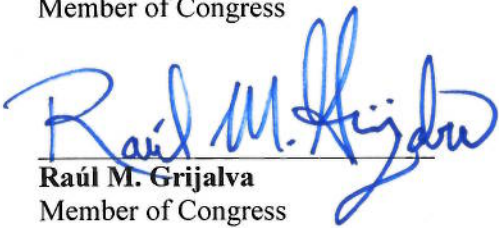

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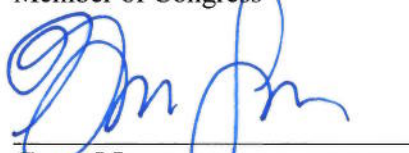
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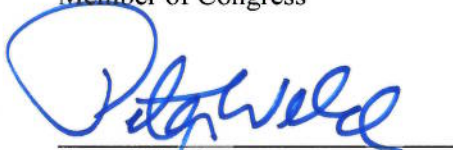
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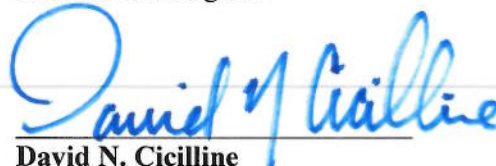
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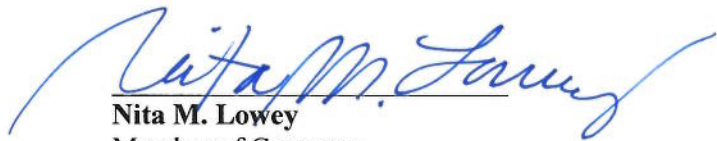
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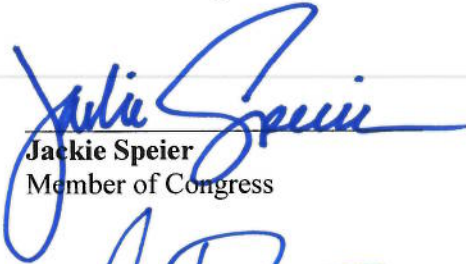
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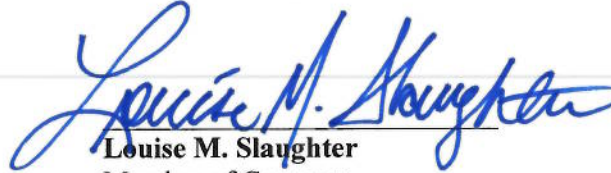
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