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April 23, 2018

VIA MAIL

The Honorable Charles Grassley
Chairman
Judiciary Committee of the United States Senate
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Judiciary Committee of the United States Senate
United States Senate
335 Hart Senate Office Building
Washington, DC 20510

Subject: Letter in opposition to the appointment of Ryan Bounds

Dear Chairman Grassley and Ranking Member Feinstein:

The Oregon Hispanic Bar Association (the "OHBA") writes to oppose the nomination of Mr. Ryan Bounds to the Ninth Circuit Court of Appeals and to support one of the candidates selected by the bipartisan Oregon selection committee, Renata Ann Gowie.

Recently, editorials Mr. Bounds wrote as the Opinion Editor of *The Stanford Review* have come to light. These writings unearthed alarming views about sexual assault, workers' rights, people of color, and the LGBTQ+ community. Mr. Bounds failed to disclose these writings during his nomination process, despite requests made by the selection committee for Mr. Bounds to disclose any materials which might affect his nomination. These writings only came to light because the Alliance for Justice, a judicial advocacy group, disclosed them.

While the content of these editorials would itself cause us to question his nomination, we believe Mr. Bounds's failure to disclose these writings—and his conduct related to their disclosure—demonstrates that Mr. Bounds does not show the appropriate judgment and discernment to faithfully uphold and apply the laws of the United States of America. To echo U.S. Senators Jeff Merkley and Ron Wyden: "We do not believe Mr. Bounds is a suitable nominee for a lifetime appointment to the bench."

Below is a more thorough analysis of these three points.

A. A judge must demonstrate good judgment and candor.

During his nomination process, Mr. Bounds was asked if he had any disclosures which might color his candidacy for this position. Despite this request, Mr. Bounds did not mention his prior editorials. For whatever reason he did not, his failure to disclose the writings—and the writings themselves—demonstrate a lack of judgment. And we are disappointed that after the writings came to light, he did not respond in a way we expect a good judge to respond.

In a statement written after these writings came to the attention of the public, Mr. Bounds merely mentioned regret at their "obnoxious tone" and "misguided sentiments," and claimed that he has changed his mind in the intervening years. However, the truth of that assertion is not obvious simply from the lack of further published writings by Mr. Bounds to the same effect in the intervening years, or from his recent involvement in the Equity, Diversity, and Inclusion Committee of the local bar association. We would expect a true change of heart to involve some real engagement with the concerns of the marginalized communities and concerns that he disparaged with such vehemence, and the lack of even clear disavowal of his past writings when they came to light strikes us as very telling.

Mr. Bounds's failure to disclose the writings and to demonstrate that he has abandoned his former views (while apparently assuming that a change of heart is somehow obvious) constitutes conduct below the standard the public has a right to expect from a federal judge with a lifetime appointment.

B. A judge must communicate with precision and clarity.

While it may well be unfair to hold a person accountable twenty-five years later for words written while an undergraduate student, we expect an attorney—especially one seeking a lifetime appointment as a federal judge—to write with precision and care. In his written statement, Mr. Bounds dismisses his prior written opinions as "misguided." That is not enough. Given the content of the writing at issue, we would expect Mr. Bounds to grapple more honestly with the effect of his words on the communities he denounced from his position of relative privilege and, if his views have indeed changed, to demonstrate some recognition of what was objectionable about his prior written viewpoint.

A judge must be fully cognizant of the power of words and their lasting effects. Judges rarely get a second chance to explain themselves or to correct any unintended miscommunication. Mr. Bounds received this rare opportunity, but chose instead to quibble about tone and wording, avoiding the crux of the issue. We find his apology unclear, incomplete, and, frankly, unconvincing.

Furthermore, we distrust the explanation Mr. Bounds offered in his letter of resignation to the MBA Equity, Diversity, and Inclusion Committee. In particular:

> Our ambitions for educational programming merit special note, because they rest on the bedrock conviction that lawyers can--and should--learn from new perspectives and insights on issues relating to diversity and inclusion throughout their careers. The Board dangerously undermines this proposition by insisting that I resign my chair because of regrettable words I used as a college student a quarter-century ago but have since repudiated.

Where were these "regrettable words" repudiated? Were the sentiments expressed also "regrettable?" Were those sentiments in fact repudiated publicly in the past twenty-five years? A full disclosure and explanation to the selection committee would have answered these questions long ago. Instead, Senators Merkley and Wyden "learned that Ryan Bounds failed to disclose inflammatory writings" "[a]fter the committee finished its work." Or as explained by Mr. Bounds, the senators were notified of these writings after "a DC-based organization" produced "an unflattering news report."

Mr. Bounds appears to be suggesting that he is being targeted unfairly, as if a third party highlighting the words he himself wrote and chose to conceal were somehow an affront to the vetting process of a judicial nominee. The suggestion that he is being targeted for using "regrettable words," not the content of the writings themselves, is selective and self-serving.

The Multnomah Bar Association's ("MBA") statement provides an ideal example of the type of response one would expect from a future jurist in this situation:

> The MBA strongly disavows the views expressed in those articles as racist, misogynistic, homophobic and disparaging of survivors of sexual assault and abuse.

We underscore that the MBA disavows the views expressed in the articles, and not merely "regrettable words." If Mr. Bounds wished to disavow his words and views with the kind of clarity we expect from judicial nominees and judges, he could have done so in his apology. He chose not to do so.

C. A judge must adjudicate with unquestionable discernment.

Before the law, all persons are entitled to due process, and the law recognizes a need for protection when a group or individual has experienced systemic harm.

Mr. Bounds's prior writing challenges the idea that particular groups have suffered systemic harm exists at all. For example, he states:

> The existence of ethnic organizations is no inevitable prerequisite to maintaining a diverse community—white students, after all, seem to be doing all right without an Aryan Student Union.

Such a statement seems to equate the interests of African-Americans still dealing with the lingering effects of hundreds of years of slavery, segregation, Jim Crow laws, and lynchings with those of an organization promoting white separatism or supremacy? Is an "ethnic organization" representing Latinos whose parents were "repatriated" out of the United States in the 1930s, or Chinese students whose families were targeted by the Chinese Exclusion Act, or Japanese Americans who were interned in camps during World War II substantively similar to a Klu Klux Klan gathering?

Returning again to his letter resigning from the MBA Equity, Diversity, and Inclusion Committee, Mr. Bounds expresses regret that:

> . . . the Board would judge me not on decades-old words, but by the work we have done together.

A college student may be forgiven for unclear and unfocused writing, but if Mr. Bounds were confirmed as an appellate judge, his words themselves could stand for decades, even centuries. Without clarification as to how his views have changed, any person in his courtroom may wonder if their grievances were dismissed solely on superficial identification with a diverse group. This is a risk we cannot afford in a judge with a lifetime appointment.

For these reasons, we respectfully write to oppose Mr. Ryan Bounds's nomination and to ask that the Judiciary Committee strongly consider one of the candidates selected by the bipartisan Oregon selection committee, Assistant U.S. Attorney Renata Ann Gowie, for appointment to the Ninth Circuit Court of Appeals. Ms. Gowie is eminently qualified for the position because she exemplifies the characteristics required to be an effective and industrious Ninth Circuit Judge. Without a doubt, she has the skill, intellectual capacity, work ethic, demeanor, and discernment that are demanded by one of the busiest circuit courts. We hope that the Judiciary Committee strongly considers Ms. Gowie as a candidate for the Ninth Circuit vacancy.

Respectfully,

Iván Resendiz Gutierrez
President
Oregon Hispanic Bar Association

Kamron Graham
Co-Chair
OGALLA: The LGBT Bar Association of Oregon