



OAPABA
OREGON ASIAN PACIFIC
AMERICAN BAR ASSOCIATION



April 2, 2018

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
331 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein,

We Oregon Asian Pacific American Bar Association and Oregon Women Lawyers Association, OWLS write to oppose the nomination of Ryan Bounds to the Ninth Circuit Court of Appeals.

While we appreciate the efforts of our Senators' bipartisan screening panel and Mr. Bounds' participation in it, we are disturbed that he was not entirely forthcoming about past writings that demonstrate a deep-seated disdain for the principles of diversity, equity and inclusion that our organizations hold dear. The Senators' screening committee directly asked Ryan Bounds about embarrassing statements that could come to light and about perspectives on diversity. In responding to the news about his discriminatory statements, Mr. Bounds expressed "embarrassment" and apologized for his "obnoxious tone" and "misguided sentiments" but he neither offered an explanation for his failure to disclose the information to the screening committee nor offered an apology.¹

The breadth of his discriminatory statements show the depth of his contempt. These were not comments from the Twittersphere or errant social media posts. These were well thought-out, carefully constructed, published articles in which he repeatedly diminished, mocked, and advocated wholeheartedly against the principles of inclusion for which our organizations have fought. Each column inch of his writings was packed with hateful diatribe, but the following passages are some of the most offensive.

¹ See http://www.oregonlive.com/portland/index.ssf/2018/02/oregons_us_senators_say_federa.html.

Misogynist comments

Mr. Bounds stridently opposed lowering the burden of proof for prosecuting violations of Stanford University's Fundamental Standard "especially in the cases of sexual assault." He complained about the "discontented" who argued that "'beyond a reasonable doubt' is an unbearable onus in attempting to prosecute rape cases, notorious for their lack of disinterested witnesses and physical evidence," asserting that, "Indeed, the burden is great when they have not the evidence to meet it!" He further argued that "[T]here is nothing really inherently wrong with the University failing to punish an alleged rapist – regardless his guilt – in the absence of adequate certainty; there is nothing that the University can do to objectively ensure that the rapist does not strike again."

Rather, Mr. Bounds argued, "Those who concern themselves with all of the unreported rape on campus would do far better to convince potential victims that coming forward with truthful and balanced accounts of violation would cost them little but could contribute to recovery as well as justice."

Only recently have women's voices begun to be heard that minimization of sexual harassment – much less outright sexual assault – cannot be tolerated. Mr. Bounds' comments call into question his ability to fairly weigh the rights of survivors who may only now be feeling free enough to come forward.

Racist comments re diversity

Mr. Bounds went so far as to compare efforts to promote diversity to racist oppression, including likening them to Nazi book burnings. He wrote, "the Multiculturalistas, when they divide up by race for their feel-good ethnic hoedowns, engage in nearly all of these behaviors," which he titled "race-think."

He then dismissed and denigrated the exercise of First Amendment rights for promotion of respect and inclusion, commenting, "Strangely, the Multiculturalistas don't seem to catch on to the inevitable nonefficacy of their rallies, protests, whinings, demands, and vitriolic brickbats towards all printed policies not incorporating the language of the 1964 Civil Rights Act in their preambles."

He also made vitriolic, unfounded, and conclusory accusations of stereotyping opponents of diversity:

"The opponent is the white male and his coterie of meanspirited lackeys: 'oreos,' 'twinkies,' 'coconuts,' and the like. The opponent is intrinsically incapable of understanding the enlightened viewpoint; any disagreement he offers is due to insensitivity, and any agreement he grants springs from well-chosen, but insincere, deference to the morally superior race-thinkers. He enjoys making money and buying material things, just to make sure people with darker skin don't have access to them. He enjoys killing children and revels in the death of

minorities (if you are white, male, and pro-choice, for instance, it is often ascribed to your desire for poor black and Hispanic women to abort their children as frequently as possible). He exploits foreign nationals through capitalistic imperialism by paying them for their services. He is hopelessly unable to understand the cultural and political conditions that exist among persons who are not white. And he is incapable of seeing another person as an individual of equal status unless that person is white (any tan confuses him). Such is the opponent, and, if you are a white male, you are the opponent."

Mr. Bounds' sarcasm about white men illustrates his contempt of people of color.

His disdain for inclusion, disrespect of the First Amendment, and his attitude toward persons of color who perceives to see him as an "opponent" would all loom ominous to any person of color, supporter of civil rights, or any attorney with a client of color, appearing before him. His attitudes do not bode well for upholding the Constitution, judicial objectivity, or fairness.

Homophobic comments

Mr. Bounds called "Sensitivity" a "pestilence," and specifically decried the reaction of the "gay community" expressing its "Sensitivity to the vandalism of an artwork that represents some of their closely held values (thank goodness we still have such a community)." Mr. Bounds mocked their "sensations of personal violation and outrage and of suspicions that male athletes and fraternity members are bigots whose socialization patterns induce this sort of terrorism," but then noted that even if true, "the castigation of athletes and frat boys for flagrantly anti-homosexual prejudices is predicated on a motivation for this vandalism that has not been articulated." He bemoaned the results that the vandals might face hate-crime charges and that fraternity members could face "mandatory Sensitivity training" noting that thus "Sensitivity insinuates itself a little further into the fissures of our community."

Mr. Bounds continued, "Sensitivity can claim responsibility for extortion, rampant dissatisfaction, and a nice week of hand-wringing." But, he suggested:

"if we fancy ourselves oppressed (regardless of how oppressed, ignored, or downtrodden we objectively are) we will see the world, however unrealistically, as overflowing with instances that support our perception. ***[W]e can place a premium on catching every instance of our interests being undervalued only at the cost of increasing the risk that we will call 'foul' when, indeed, no foul has occurred (the golden path of Sensitivity), or alternatively, we can put an emphasis on being certain (which is really an emphasis on not repelling those whom we wrongly accuse of insensitivity to our plight) by being willing to turn the other cheek in instances in which we reasonably suspect we were violated."

Upon learning that the local bar association would seek his resignation as chair of its diversity and inclusion committee, Mr. Bounds' response echoed his writing above. Rather than taking responsibility for the mistrust sown by his failure to disclose his statements and his failure to recognize their degrading and callous nature, Mr. Bounds instead attacked the board, saying it "dangerously undermines the proposition" of lawyers learning new perspectives on issues relating to diversity, equity and inclusion.² In other words, he berated the board for refusing to tolerate misogyny, racism, and homophobia by threatening more misogyny, racism, and homophobia.

Mr. Bounds' response reinforces why statements – from his college years and now – make him unfit for a lifetime appointment to the Ninth Circuit Court of Appeals. Although Mr. Bounds may have recently made efforts to participate in diversity activities, the sincerity of those efforts rings hollow. The apology for his writings appeared only after his own personal ambitions were being hindered by them. And more telling, even now he demands that he be given a "pass" for wading into the shallow end of the inclusion pool, rather than accept responsibility for the harm that his words have done to our communities. Without having done the work to acquire an understanding of why his comments were so offensive and hurtful to understand what he missed in the past about the perspectives of sexual assault survivors, people of color, and the LGBTQ community, Mr. Bounds has not demonstrated that he is a person different from the young man who wrote those comments.

As lawyers, we see every day the effect our courts and our justice system have on the public. They may come in as jurors. They may come in seeking the court's assistance to prevent domestic violence. They may come in hoping to build a family through adoption. All of them come in expecting and hoping for justice. Every day, the public, and we as lawyers, come to court hoping that judges will treat us fairly, look beyond prejudice whether it be ethnic or economic. Judges put their names on judicial opinions, but when a judge has also put his name behind such flagrant, reprehensible opinions, how can we or our clients ever truly walk away satisfied that the judicial determination was rightfully rendered?

We reached out to Mr. Bounds to inform him of our concerns. He declined to offer much explanation saying, he could not, because of the process. It is unfortunate that he did not think enough of his comments, nor our bar associations, to reach out before this was the situation. We challenged him to demonstrate his growth in understanding diversity, equity and inclusion efforts by withdrawing his name from consideration and instead supporting a diverse candidate whose name had been forwarded to the White House by our Senators.

We respectfully request that the committee refuse to hear the nomination of Mr. Bounds and urge the White House to consider a candidate who has not demonstrated such contempt for our communities. In particular, we understand that our Senators sought consideration for U.S. District Court Judge Marco Hernández, who was nominated by President George W. Bush and confirmed by President Barack Obama, and that the bipartisan committee forwarded the names of two women, one of whom is ethnically diverse and Mr. Bounds' colleague, Assistant US

² See "Federal prosecutor Ryan Bounds resigns as chair of bar association's equity committee," *The Oregonian*, Feb. 13, 2018, http://www.oregonlive.com/portland/index.ssf/2018/02/federal_prosecutor_ryan_bounds.html (last accessed March 14, 2018).

Attorney Renata Gowie. We urge your committee and the White House to give these candidates due consideration.

Thank you for your consideration.



Derily Bechthold
President, Oregon Asian Pacific American Bar
Association



Angela Franco Lucero
President, Oregon Women Lawyers