



Written by [Bob Adelman](#) on October 31, 2019

## ABA Declares Trump's 9th Circuit Court Nominee "Not Qualified"

The American Bar Association (ABA) sent a letter to Democratic Senate leaders on Tuesday declaring President Donald Trump's nominee for the Ninth Circuit Court, Lawrence VanDyke, "not qualified" despite his evident qualifications for the position.

Said the letter:

Mr. VanDyke is a highly educated lawyer with nearly 14 years of experience in appellate law, including one year as a law clerk, an associate in a law firm, and as a Solicitor General for over five-plus years, first in Montana and then Nevada, two states in the Ninth Circuit where he would serve if confirmed...

Mr. VanDyke's accomplishments are offset by the assessments of interviewees that Mr. VanDyke is arrogant, lazy, an ideologue, and lacking in knowledge of the day-to-day practice including procedural rules. There was a theme that the nominee lacks humility, has an "entitlement" temperament, does not have an open mind, and does not always have a commitment to being candid and truthful.

Accordingly, "a substantial majority of the Committee [charged with vetting nominees for the Senate] has determined that Mr. VanDyke is 'not qualified' ... to serve on the United States Court of Appeals for the Ninth Circuit."

And just who are those "interviewees" on which the committee based its conclusion? The letter doesn't say. Instead it's "based on 60 interviews with a representative cross section of lawyers, judges and one other person who have worked with the nominee in four states where he has worked and who are in a position to assess his professional qualifications."

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One of only two individuals identified by name is the committee's lead interrogator, Marcia Davenport. It turns out that Ms. Davenport donated money to one of VanDyke's political opponents when he ran for the Montana Supreme Court a few years ago, and of the many other political donations she has made over the years — according to public records — not a dime went to a conservative or a Republican candidate.

The other individual named is Michael Black, the chief of the Civil Division Bureau of the Montana Department of Justice, who also publicly opposed VanDyke in the above-mentioned race with personal attacks against him.

And yet the ABA claims the Committee's "work is guided by [its rule book] which reflects that [its]





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judgment is a component of professional competence ... open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law.”

It didn't matter that Adam Laxalt, the former attorney general of Nevada, has high praise for VanDyke: “I can assure you there is no more qualified person for our Ninth Circuit seat than Lawrence VanDyke. I say this after daily personal interaction with him for many years. He has the experience, the integrity, and the judicial temperament to make him the most outstanding candidate put forward in a generation.”

It didn't matter that Montana's attorney general holds the same high opinion of VanDyke, saying, “He has the intelligence, experience, fairness and diligence to be a great addition to the 9th Circuit Court of Appeals.”

It didn't matter that VanDyke served as solicitor general for both Montana and Nevada. It didn't matter that he graduated *magna cum laude* from Harvard Law or that he served as an editor for the *Harvard Law Review*. It didn't matter that he argued over 20 appeals in the federal circuit courts, including the Ninth Circuit, and has been the counsel of record on 28 briefs before the U.S. Supreme Court. It didn't matter that he is, according to Carrie Severino (chief counsel and policy director to the Judicial Crisis Network and also a *cum laude* graduate of Harvard Law), “one of the standout appellate litigators of his generation.”

It didn't matter that, according to Hiram Sasser, General Counsel to the First Liberty Institute, VanDyke “is a compassionate man with a brilliant intellect.”

What did matter, apparently, to the “black box” of interviewees considering the fate of VanDyke, is an editorial he wrote while a law student back in 2004 in which he argued that same-sex marriage would “hurt families and consequentially children and society.” When Democrat Senator Patrick Leahy of Vermont asked VanDyke about that op-ed, VanDyke responded: “My personal views have definitely changed since 2004” and maintained that, in any case, his opinion would not intrude upon his decisions as judge on the Ninth Circuit.

This was duly noted in the letter from the ABA: “Some interviewees raised concerns about whether Mr. VanDyke would be fair to persons who are gay, lesbian, or otherwise part of the LGBTQ community. Mr. VanDyke would not say affirmatively that he would be fair to any litigant before him, notably members of the LGBTQ community.”

That was enough to earn VanDyke the sobriquet of “not qualified,” and the ire of other senators interviewing him on Wednesday. Addressing the chairman of the committee, Senator Mike Lee (R-Utah) said, “The time has come, Mr. Chairman, to suspend the unique access that the American Bar Association has, until such time as a thorough investigation and review is undertaken to inquire into how these [investigative] functions are performed.” Until then, said Senator Josh Hawley (R-Ind.), the committee in charge of confirming nominees should consider the ABA as nothing more than another liberal “special interest group.”

Happily, the Senate Judiciary Committee has already confirmed more than a dozen other judicial nominees who were rated “not qualified” by the ABA, increasingly ignoring the group's professed reliance upon principles of “professional competence,” “open-mindedness,” and “commitment to equal justice under the law” in its judgments.



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