



## **Lawrence VanDyke**

President Trump nominated Lawrence VanDyke to serve on the U.S. Court of Appeals for the Ninth Circuit on September 20, 2019. VanDyke is anti-choice.

### **Career<sup>1</sup>**

- Bachelor of Science, Montana State University, 1997
- Master of Science, Montana State University, 2000
- Bachelor of Theology, Bear Valley Bible Institute, 2002
- Juris Doctorate, Harvard Law School, 2005
- Clerk, Judge Janice Rogers Brown, U.S. Court of Appeals for the D.C. Circuit, 2006-2007
- Associate, Gibson Dunn & Crutcher LLP, 2005-2006, 2007-2012
- Assistant Solicitor General, Office of the Texas Attorney General, 2012
- Solicitor General, Montana Department of Justice, 2013-2014
- Solicitor General, Office of the Nevada Attorney General, 2015-2019
- Deputy Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, 2019-present

### **Record on Reproductive Freedom**

#### **Court Cases**

- As Montana solicitor general, VanDyke co-wrote an amicus brief in support of Arizona's unconstitutional abortion ban.<sup>2</sup> The brief argued that *Roe v. Wade* and subsequent cases affirming the constitutional right to abortion should be "revisited."<sup>3</sup> Despite the fact that the law banned abortion after 20-weeks, the brief argued that the law "has neither the purpose nor the effect of imposing a substantial obstacle on the abortion right established by [the U.S. Supreme Court's] cases, and so cannot be considered an 'undue burden.'"<sup>4</sup>
- As Montana solicitor general, VanDyke defended a law that sought to place substantial obstacles in the way of young women's access to abortion.<sup>5</sup> In the briefs, VanDyke was dismissive of a federal district court's finding that young people who do not involve their parents in their decision to have an abortion "often have a legitimate reason for not doing so."<sup>6</sup> VanDyke's arguments also relied on misleading and discredited studies about the psychological risks of abortion.<sup>7</sup>

- As Montana solicitor general, VanDyke recommended that Montana join an amicus brief in the *Hobby Lobby* case that argued that certain for-profit corporations should be exempt from the Affordable Care Act’s contraceptive coverage requirement.<sup>8</sup>

### Notable Information

- A substantial majority of the American Bar Association Standing Committee on the Federal Judiciary determined that VanDyke is “Not Qualified” to serve on the United States Court of Appeals for the Ninth Circuit.<sup>9</sup> The Committee found that “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” and “[t]here 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.”<sup>10</sup> In addition, “[s]ome interviewees raised concerns about whether Mr. VanDyke would be fair to persons who are gay, lesbian, or otherwise part of the LGBTQ community” and “Mr. VanDyke would not say affirmatively that he would be fair to any litigant before him, notably members of the LGBTQ community.”<sup>11</sup> Finally, “[t]here were reports that his preparation and performance were lacking in some cases in which he did not have a particular personal or political interest.”<sup>12</sup>
- VanDyke has been involved with the Alliance Defending Freedom (ADF). ADF’s work includes funding cases and training attorneys about “religious freedom,” the “sanctity of life,” and “marriage and family.”<sup>13</sup> ADF has been designated as a hate group by the Southern Poverty Law Center.<sup>14</sup> As a law student, VanDyke completed a Blackstone fellowship, which was funded by ADF under its previous name (the Alliance Defense Fund).<sup>15</sup> VanDyke has been a frequent speaker at ADF’s conferences and events and worked on “constitutional and religious liberty” issues pro bono for ADF during his time in private practice.<sup>16</sup>
- VanDyke is active in the conservative, anti-choice Federalist Society.<sup>17</sup> VanDyke has been a speaker at Federalist Society events, as well as served on the Federalist Society’s Religious Liberty Practice Group Executive Committee from 2008 to 2019.<sup>18</sup> The Federalist Society is led by Leonard Leo, the anti-choice activist who is heavily involved in selecting Trump’s Supreme Court and lower court nominees. Leo has been outspoken in his anti-choice views, calling abortion “an act of force” and “a threat to human life,”<sup>19</sup> and serves as co-chairman of Students for Life,<sup>20</sup> a group whose mission is to “abolish abortion.”<sup>21</sup>
- The anti-choice activist group Susan B. Anthony List praised VanDyke’s nomination.<sup>22</sup>

- VanDyke signed on to letters supporting numerous anti-choice, Trump judicial nominees, including Lee Rudofsky, Eric Murphy, Andrew Brasher, Britt Grant, Robert Wyrick, J. Campbell Barker, Andrew Oldham, and Kyle Duncan.<sup>23</sup>
- VanDyke donated to anti-choice politicians Sen. Fred Thompson (R-TN) and Rep. Rick Hill (R-MT).

### **Record on Other Key Issues**

- VanDyke has a record of opposition to LGBTQ rights in his role as Montana solicitor general, in his law school writings, and in his work as an attorney in private practice.
  - As Montana solicitor general, VanDyke recommended that the state file a brief in a New Mexico court case involving a photographer who refused to provide services to a same-sex couple.<sup>24</sup> VanDyke stated: “I think this is an important case for the future of religious freedom in America...This is an important case because there is a fairly obvious collision course between religious freedom and gay rights, and this case (because it is an extreme case) could be very important in establishing that gay rights cannot always trump religious liberty.”<sup>25</sup> VanDyke also recommended Montana join a brief defending Nevada’s unconstitutional ban on same-sex marriage, as well as signed Montana on to amicus briefs in support of California’s Proposition 8 and Section 3 of the Defense of Marriage Act, which both unconstitutionally defined marriage as between one man and one woman.<sup>26</sup>
  - VanDyke expressed support for conversion therapy and those that believe “homosexuals can leave the homosexual lifestyle.”<sup>27</sup> VanDyke suggested that LGBTQ parents are harmful to their children and that “same-sex marriage will hurt families, and consequentially children and society.”<sup>28</sup>
  - VanDyke’s law review note argued that public universities should not be allowed to require religious student groups to comply with nondiscrimination policies.<sup>29</sup> Specifically, the note concluded “that religion and sexual orientation antidiscrimination requirements are unconstitutional as applied to religious student groups.”<sup>30</sup> VanDyke argued that requiring student groups not to discriminate against LGBTQ or non-religious students “may cause internal discord and prevent the group from speaking with one voice.”<sup>31</sup> VanDyke further stated that universities should not be allowed to privilege the “viewpoint of inclusion and tolerance over the organization’s viewpoint of exclusivity and moral disapproval.”<sup>32</sup> VanDyke stated that the application of nondiscrimination policies to religious student groups is unconstitutional “[g]iven the weakness of any legitimate compelling interest in coercing religious organizations to accept nonadherents who threaten the group’s core principle.”<sup>33</sup> As an attorney in private practice, VanDyke submitted an amicus brief in a case challenging the application of nondiscrimination policies to the Christian Legal Society at the University of California-Hastings College of Law that advanced many of these same arguments.<sup>34</sup>

November 4, 2019

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<sup>1</sup> *Questionnaire for Judicial Nominees: Lawrence James Christopher VanDyke*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.

<sup>2</sup> *Amicus Brief of the States of Ohio, Montana, and 14 Other States Supporting Petitioners, Horne v. Isaacson*, 134 S.Ct. 905 (2014) (No. 13-402), 2013 WL 5837683.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Brief of Appellants, Planned Parenthood of Montana v. State of Montana*, 342 P.3d 684 (Mont. 2015) (No. DA 14-0110), 2014 WL 2573512.

<sup>6</sup> *Id.* at \*15.

<sup>7</sup> *Id.* at \*7; see also *Response Brief of Appellees Planned Parenthood of Montana and Paul Fredrick Henke, M.D., Planned Parenthood of Montana v. State of Montana*, 342 P.3d 684 (Mont. 2015) (No. DA 14-0110), 2014 WL 3900779.

<sup>8</sup> E-mail from Lawrence VanDyke to Tim Fox & Mark Mattioli (Jan. 21, 2014), <https://s3.documentcloud.org/documents/1284252/foi-request-re-montana-solicitor-sept-2014.pdf>; *Brief of Amici Curiae States of Michigan, Ohio, and 18 Other States for Conestoga, Hobby Lobby, Mardel, Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (Nos. 13-354, 13-356).

<sup>9</sup> Letter from William C. Hubbard, Chair, Am. Bar Ass'n Standing Comm. on the Federal Judiciary, to Hon. Lindsey Graham, Chairman, & Hon. Dianne Feinstein, Ranking Member, United States Senate Comm. on the Judiciary (Oct. 29, 2019),

[https://www.americanbar.org/content/dam/aba/administrative/government\\_affairs\\_office/10-29-2019-vandyke-rating.pdf?logActivity=true](https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/10-29-2019-vandyke-rating.pdf?logActivity=true).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Who We Are*, ALLIANCE DEFENDING FREEDOM, <https://www.adflegal.org/about-us> (last visited Oct. 16, 2019).

<sup>14</sup> *Alliance Defending Freedom*, Southern Poverty Law Center, <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom> (last visited Oct. 16, 2019).

<sup>15</sup> *Questionnaire for Judicial Nominees: Lawrence James Christopher VanDyke*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.

<sup>16</sup> *Questionnaire for Judicial Nominees: Lawrence James Christopher VanDyke*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.

<sup>17</sup> *Questionnaire for Judicial Nominees: Lawrence James Christopher VanDyke*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.

<sup>18</sup> *Questionnaire for Judicial Nominees: Lawrence James Christopher VanDyke*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.

<sup>19</sup> Jeffrey Toobin, *The Conservative Pipeline to the Supreme Court*, THE NEW YORKER (April 17, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court>.

<sup>20</sup> *Board of Directors*, STUDENTS FOR LIFE, <https://studentsforlife.org/about/boardofdirectors/> (last visited July 25, 2019).

<sup>21</sup> *Mission Statement*, STUDENTS FOR LIFE, <http://studentsforlife.org/about/mission-statement/> (last visited July 25, 2019).

<sup>22</sup> *SBA List Praises President Trump's Nomination of Deputy Assistant AG Van Dyke to the Ninth Circuit*, SUSAN B. ANTHONY LIST (Sept. 20, 2019), <https://www.sba-list.org/newsroom/press-releases/sba-list-praises-president-trumps-nomination-of-deputy-assistant-ag-van-dyke-to-the-ninth-circuit>.

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<sup>23</sup> *Questionnaire for Judicial Nominees: Lawrence James Christopher VanDyke*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY.

<sup>24</sup> E-mail from Lawrence VanDyke to Tim Fox & Mark Mattioli (Dec. 5, 2013), <https://s3.documentcloud.org/documents/1284252/foi-request-re-montana-solicitor-sept-2014.pdf>.

<sup>25</sup> E-mail from Lawrence VanDyke to Tim Fox & Mark Mattioli (Dec. 5, 2013), <https://s3.documentcloud.org/documents/1284252/foi-request-re-montana-solicitor-sept-2014.pdf>.

<sup>26</sup> John S. Adams, *VanDyke 'Not a Politician By Nature'*, GREAT FALLS TRIBUNE (Sept. 18, 2014), <https://www.greatfallstribune.com/story/news/local/2014/09/17/vandyke-politician-nature/15812491/>;

E-mail from Lawrence VanDyke to Tom Fisher (Jan. 23, 2013), <https://s3.documentcloud.org/documents/1284252/foi-request-re-montana-solicitor-sept-2014.pdf>;

E-mail from Lawrence VanDyke to Tom Fisher (Jan. 28, 2013), <https://s3.documentcloud.org/documents/1284252/foi-request-re-montana-solicitor-sept-2014.pdf>.

<sup>27</sup> Lawrence VanDyke, *One Student's Response to 'A Response to Glendon'*, THE HARVARD LAW RECORD (Mar. 11, 2004), <https://web.archive.org/web/20180402060657/http://hlrecord.org/2004/03/one-students-response-to-a-response-to-glendon/>.

<sup>28</sup> *Id.*

<sup>29</sup> Note, *Leaving Religious Students Speechless: Public University Antidiscrimination Policies and Religious Student Organizations*, 118 HARV. L. REV. 2882 (2005).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Brief of Gays and Lesbians for Individual Liberty as Amicus Curiae in Support of Petitioner, Christian Legal Soc'y v. Martinez*, 561 U.S. 661 (2010) (No. 08-1371), 2010 WL 530513.