



May 8, 2018

VIA EMAIL

The Honorable Charles Grassley
Chair
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C., 20510

Senator Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C., 20510

Dear Senators Grassley and Feinstein,

On behalf of the National Women's Law Center (the Center), an organization that has fought to promote women's legal rights for over 45 years, I write to express serious concerns regarding the nomination of Ryan Bounds to the United States Court of Appeals for the Ninth Circuit. Mr. Bounds has expressed contempt and hostility toward a number of historically disadvantaged groups, including women, sexual assault survivors, LGBTQ people, and people of color. His statements raise serious doubts about Mr. Bounds' ability, if confirmed to a lifetime position on the federal bench, to impartially decide questions involving civil rights and other legal protections for such groups.

Women and sexual assault survivors: In an article Mr. Bounds wrote for a student paper at Stanford University about campus sexual assault, he argued that universities should not address instances of sexual violence unless proven *beyond a reasonable doubt*¹—an incredibly stringent legal standard used only in criminal proceedings when incarceration is at stake.² Relying on regressive sex stereotypes about women, who comprise the vast majority of sexual assault survivors, Mr. Bounds argued for this stringent standard by trotting out the myth of “venge[ful]” women levying “spurious[.]” and “unfounded” accusations³ of sexual assault.⁴ The legal standard Mr. Bounds championed was out of step with the law even in 1994 as the Supreme Court rejected the application of criminal procedures in school disciplinary proceedings in 1975.⁵

¹ Ryan Bounds, *Reasonable Doubts?*, THE STANFORD REVIEW 7-8 (Oct. 17, 1994), available at <https://www.afj.org/wp-content/uploads/2018/01/Reasonable-Doubts.pdf>.

² In re Winship, 397 U.S. 358, 364 (1970).

³ Bounds, *supra* note 1, at 8, 9.

⁴ The prevalence of false accusations is a myth that has been repeatedly refuted by empirical studies showing that as few as 2% of rape reports are false, while nearly 90% of student survivors never report their assaults at all. David Lisak et al., *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16(12) VIOLENCE AGAINST WOMEN 1318, 1326, 1330-1331 (2010), available at

<https://icdv.idaho.gov/conference/handouts/False-Allegations.pdf>; *Poll: One in 5 women say they have been sexually assaulted in college*, The Washington Post (June 12, 2015) [*hereinafter* Washington Post-Kaiser Family Foundation Survey], available at <https://www.washingtonpost.com/graphics/local/sexual-assault-poll>.

⁵ See *Goss v. Lopez*, 419 U.S. 565, 583 (1975) (“We stop short of construing the Due Process Clause to require, countrywide, that hearings in connection with short suspensions must afford the student the opportunity to secure . . . even truncated trial-type procedures. . . . [F]ormalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool, but also destroy its effectiveness as part of the teaching process.”).

Mr. Bounds went on to claim, “[t]here [wa]s nothing that the University c[ould] do to objectively ensure that [a] rapist d[id] not strike again” and removing a rapist from campus was “probably not going to contribute a great deal toward a rape victim’s recovery.”⁶ Not only do these comments highlight Mr. Bounds’ inability to fathom why separating survivors from their rapists could help expedite their recovery and minimize their trauma, but they are also out of step with the law. Title IX of the Education Amendments (“Title IX”) does in fact require schools to take action to ensure that sexual assailants do not have an opportunity to strike again—including by changing their classroom and/or housing assignments, imposing no-contact orders, or even removing them from campus if necessary.⁷

Mr. Bounds’ statements about campus sexual assault thus raise serious concerns about whether he would be willing to enforce survivors’ civil rights and hold sexual harassers and rapists accountable for their actions.

LGBTQ people: After a group of athletes vandalized a gay pride statue on Stanford University’s campus and received mandatory LGBTQ sensitivity training, Mr. Bounds wrote an article claiming the school’s response—not the homophobic act of vandalism—“threaten[ed] to corrupt [the] scholastic experience and tear [the] student community asunder.”⁸ He decried the mandated sensitivity training as a “[p]estilence.”⁹ Mr. Bounds went on to explain that the possibility that LGBTQ students might offend their classmates with accusations of insensitivity was of greater concern than the possibility that homophobic actions on campus might go unaddressed. He questioned whether anti-LGBTQ animus motivated the vandalism and entreated his LGBTQ classmates to “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.*”¹⁰

Many of our most critical anti-discrimination laws specifically protect against behavior motivated by animus. As a result, Mr. Bounds’ skepticism about whether anti-LGBTQ actions were driven by animus and his suggestion that his LGBTQ classmates quietly accept violations of their rights to avoid “repelling” the offenders raise serious concerns about whether he would robustly apply these protections. This is especially concerning at a time when LGBTQ individuals are experiencing a resurgence of discrimination¹¹ and hate crimes¹² across the country.

⁶ Bounds, *supra* note 1, at 9.

⁷ U.S. Department of Education, Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties* 16 (Jan. 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

⁸ Ryan Bounds, *Lo! A Pestilence Stalks Us*, THE STANFORD REVIEW 8 (Oct. 10, 1994), available at <https://www.afj.org/wp-content/uploads/2018/01/Lo-a-Pestilence-Stalks-Us.pdf>.

⁹ *Id.*

¹⁰ *Id.* (emphasis added).

¹¹ *E.g.*, Department of Education & Department of Justice, Dear Colleague Letter on Transgender Students (Feb. 22, 2017), available at <https://www.justice.gov/opa/press-release/file/941551/download> (rescinding guidance on the Title IX rights of transgender students); Moriah Balingit, *Education Department no longer investigating transgender bathroom complaints*, THE WASHINGTON POST (Feb. 12, 2018), <https://www.washingtonpost.com/news/education/wp/2018/02/12/education-department-will-no-longer-investigate-transgender-bathroom-complaints>.

¹² *E.g.*, Jordan Dashow, *New FBI Data Shows Increased Reported Incidents of Anti-LGBTQ Hate Crimes in 2016*, HUMAN RIGHTS CAMPAIGN (Nov. 13, 2017), <https://www.hrc.org/blog/new-fbi-data-shows-increased-reported-incidents-of-anti-lgbtq-hate-crimes-i>.

People of color: In yet another article, Mr. Bounds opposed all efforts by Stanford University to promote racial diversity and inclusion, going so far as to claim that the school's "multicultural efforts" were worse than "a Nazi bookburning."¹³ He then proceeded to criticize students of color for their "feel-good ethnic hoedowns," painting their leaders as "demagogues," and accusing them of "whining," "victimhood," "paranoia," and "let[ting] loose with a high-minded stream of drivel."¹⁴ According to Mr. Bounds, "the only way to rid our multicultural community of race-think is to rid it of these invidious factions."¹⁵ After all, he remarked, "white students ... seem to be doing all right without an Aryan Student Union."¹⁶

Mr. Bounds' statements demonstrate an alarming lack of understanding of the history of racial oppression in the United States and the importance of multicultural student organizations in helping students of color feel welcome and safe in primarily white institutions. His attempts to villainize students of color as "Nazi"-like "demagogues" is not only a wildly inaccurate characterization of historical and present-day racism but also an attempt to invoke the myth of reverse racism against white students. As racist and xenophobic hate groups rise in visibility and influence today after several years of decline,¹⁷ Mr. Bounds' statements raise serious concerns about his ability to ensure equal justice under the law for all people of color, including immigrants and indigenous people.

While these statements raise concerns on their own, it is also deeply troubling that Mr. Bounds failed to disclose them to Oregon's independent selection committee for judicial nominees. After these statements were revealed, both of Mr. Bounds' home-state senators, Senators Ron Wyden and Jeff Merkley, opposed his nomination, citing his "fail[ure] to disclose inflammatory writings that reveal archaic and alarming views."¹⁸ In addition, Mr. Bounds was forced to resign from the Multnomah Bar Association Equity, Diversity & Inclusion Committee after his statements were revealed. The Bar Association denounced his statements as "insensitive, intolerant and disdainful views towards racial and ethnic minorities, campus sexual assault victims, and the LGBTQ community."¹⁹ While Mr. Bounds repudiated his extremist statements after their disclosure threatened to derail his nomination, the timing both raises questions about his motivation and concerns about his candor before this Committee.

Taken together, these statements and Mr. Bounds' failure to disclose them would give women, LGBTQ people, and people of color reason to doubt that they would receive a fair hearing before Mr. Bounds, if he were confirmed to a lifetime position on the federal bench. For the foregoing reasons, the Center

¹³ Ryan Bounds, *Race-Think: A Stanford Phenomenon?*, THE STANFORD REVIEW 5-6 (Feb. 27, 1995), available at <https://www.afj.org/wp-content/uploads/2018/01/Race-Think-A-Stanford-Phenomenon.pdf>.

¹⁴ *Id.* at 5, 6.

¹⁵ *Id.* at 6.

¹⁶ *Id.*

¹⁷ Richard Cohen, *Hate Crimes Rise for Second Straight Year; Anti-Muslim Violence Soars Amid President Trump's Xenophobic Rhetoric*, SOUTHERN POVERTY LAW CENTER (Nov. 13, 2017), <https://www.splcenter.org/news/2017/11/13/hate-crimes-rise-second-straight-year-anti-muslim-violence-soars-amid-president-trumps>.

¹⁸ Maxine Bernstein, *Oregon's U.S. senators say federal prosecutor Ryan Bounds unsuitable for 9th Circuit vacancy*, THE OREGONIAN (Feb. 12, 2018), http://www.oregonlive.com/portland/index.ssf/2018/02/oregons_us_senators_say_federa.html.

¹⁹ Press Release, MBA Board Statement on Ryan Bounds, Multnomah Bar Association (Feb. 14, 2018), available at <http://www.mbabar.org/assets/ryanboundspr021418.pdf>.

expresses its serious concerns regarding the nomination of Ryan Bounds to the U.S. Court of Appeals for the Ninth Circuit. Please feel free to contact me, Elizabeth Tang, or Rachel Easter at the Center, at (202) 588-5180, should you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Fatima Goss Graves". The signature is written in a cursive style with a large initial 'F'.

Fatima Goss Graves
President and CEO, National Women's Law Center