



May 2, 2019

United States Senate
Washington, DC 20510

Re: Grave concerns on nomination of Kenneth K. Lee to the Ninth Circuit Court of Appeals

Dear Senator:

On behalf of the Lawyers' Committee for Civil Rights Under Law (hereinafter Lawyers' Committee), we write to express our grave concern on the nomination of Kenneth Kjuyl Lee to the Ninth Circuit. The Lawyers' Committee is a nonprofit civil rights organization founded in 1963 by the leaders of the American bar, at the request of President John F. Kennedy, to help defend the civil rights of racial minorities and the poor. For over fifty years, the Lawyers' Committee has been at the forefront of many of the most significant cases involving race and national origin discrimination to secure equal justice. Mr. Lee's repeated violations of Senate Judiciary Committee rules and his deeply troubling views on equal opportunity, multiculturalism, and voting rights give us grave concerns over his integrity and ability to serve as a fair, impartial judge on the Ninth Circuit.

Mr. Lee's repeated failures to fully disclose offensive writings during his nomination process is unbecoming of a federal judge and shows a lack of regard and respect for the Senate's constitutionally mandated advice and consent role. Mr. Lee has supplemented his record five times and produced an additional 75 documents originally not disclosed to the Senate Judiciary Committee following the discovery of the inflammatory writings by the press and Senate Judiciary Committee staff.¹ These nondisclosures lead us to question his integrity and respect for the Senate's role in the judicial nomination process. Our Constitution entrusts the Senate with vetting judicial nominees to ensure only fair and impartial judges are granted lifetime appointments to our federal courts and the Senate's role must be respected.

Mr. Lee's actions appear to have been an attempt to conceal some of his most inflammatory writings from the Senate Judiciary Committee. His writings evince deeply troubling views on voting rights, race and multiculturalism, and equal opportunity that give us deep concerns about his ability to serve as an impartial judge on the federal bench and fairly decide cases brought before him on some of our country's most important laws to Africans Americans and people of color.

¹ <https://www.harris.senate.gov/news/press-releases/harris-feinstein-call-for-withdrawal-of-kenneth-lee-nomination-to-the-ninth-circuit->

Voting Rights. Most Americans would agree that our democracy is stronger when more citizens are engaged in the electoral process and vote in elections. However, Mr. Lee derided his alma mater Cornell University for sending voter registration forms to students, stating: “Cornell spent thousands of dollars last year to send voter registration ballots to all its students. Some people may view this as an attempt to encourage civil responsibility. That would be too naïve. Considering that young people tend to be liberal and that professors and administrators routinely bash Republicans, Cornell knows that most students will vote Democratic.”² Mr. Lee is also a vocal proponent of felon disenfranchisement laws, which deny the right to vote for millions of formerly incarcerated Americans, a disproportionate number of whom are African American, who have already paid their debt to society. Mr. Lee wrote, “[c]ritics of felon disenfranchisement laws note that these laws have a disproportionate impact on certain racial minority groups. While society can be sensitive to such concerns, it is not a sufficient reason to abolish longstanding and justifiable laws in the attempt to achieve some racial balance.”³

Race and Multiculturalism. Mr. Lee’s writings are racially insensitive and express a complete lack of regard for historically marginalized groups’ fight for equality as though communities of color are seeking victimhood status in our society. He wrongly asserts, “whenever minorities do not succeed they cry racism.”⁴ Mr. Lee wrote, “[i]t is a sad day when students at an elite Eastern university feel a need to portray themselves as oppressed to participate in a pernicious ethnic spoils system,”⁵ and “in addition to black students, Latino students have also employed the victimization culture as well.”⁶ Mr. Lee asserted, “[c]ries of racism stem from isolated incidents or from unreliable studies based on statistical chicanery.”⁷ America’s diversity makes us a stronger nation, but Mr. Lee has referred to multiculturalism, as a “malodorous sickness,”⁸ and criticized his alma mater for allowing students of color to have their own dormitories, stating, “universities that enact affirmative action programs to foster diversity and mutual understanding also encourage self-segregation along ethnic lines. Their motivations arise partly in response to intimidation, and partly from well-intentioned but misguided liberal paternalism.”⁹

Equal Opportunity. Mr. Lee has been a vocal opponent of equal opportunity and race-conscious college affirmative action programs. Mr. Lee has argued that conservatives in academia experience more discrimination than racial minorities, stating: “The simple legal logic underlying much of contemporary civil rights laws applies equally to conservative Republicans, who appear to face clear practices of discrimination in American academia that are statistically

² <https://afj.org/wp-content/uploads/2019/02/Cornell-More-Ethically-Challenged-Than-Newt.pdf>.

³ <https://afj.org/wp-content/uploads/2019/02/The-Bullet-and-The-Ballot.pdf>.

⁴ <https://afj.org/wp-content/uploads/2019/02/Self-Hating-Asian.pdf>.

⁵ <https://afj.org/wp-content/uploads/2019/02/Asian-Leftism.pdf>

⁶ <https://afj.org/wp-content/uploads/2019/02/End-Racist-Policies.pdf>.

⁷ <https://afj.org/wp-content/uploads/2019/02/Is-America-Evil.pdf>

⁸ <https://afj.org/wp-content/uploads/2019/02/Kulture-Klash.pdf>

⁹ <https://afj.org/wp-content/uploads/2019/02/Separate-and-Unequal.pdf>.

even starker than previous blackballings by race.”¹⁰ Mr. Lee also asserted, “[f]or years, liberals have argued that the underrepresentation of minority professors is *ipso facto* proof of racism, and they have usually implemented programs to reach the quixotic goal of proportional representation. Since Republicans represent roughly a third of the electorate, and even higher proportion of the college-educated population, perhaps universities like Cornell should recruit intellectually conservative professors with the same zeal and exigency they display for balancing flesh tones.”¹¹ Mr. Lee’s writings make his stance on affirmative action clear as he alleges that [t]he main problem with affirmative action is not that it hurts a white or Asian student, the real problem is that it hinders progress for black Americans.”¹² He also wrote, “Asian Americans are caught between policies that limit their admission to select colleges and opportunistic conservatives who see in them a way to further a larger social agenda. Is there a way out? One Asian student at Berkeley has a suggestion: ‘Maybe we should be opportunistic and use Republicans to get what we want – get rid of affirmative action.’”¹³ Mr. Lee chastised the use of race-based tuition waivers, stating, “[t]hese goodies are granted regardless of financial situation – Congresswomen’s children and dentists’ sons of the right skin color automatically qualify for full subsidy – making it clear that the university’s goal is not boosting the disadvantaged but rather building a publishable box score of enrollment by race that conforms to liberal decorum and the demands of the gene-counters.”¹⁴

During the course of Mr. Lee’s testimony before the Senate Judiciary Committee, he failed to convince us that his views on any of the aforementioned issues have evolved. Of his assertion that “whenever minorities do not succeed they cry racism,” Mr. Lee offered no apology in his responses to the Questions for the Record, stating: “Looking back at what I wrote 25 years later, I believe the language I used was hyperbolic and the tone off-putting.”¹⁵ Mr. Lee’s responses to other questions about his inflammatory writings seem to indicate he still holds those views but would simply rephrase “[his] points differently and more clearly, and in a more measured tone.”¹⁶ With respect to affirmative action and voting rights, Mr. Lee only indicated he would faithfully follow precedent if he were confirmed, but he repeatedly avoided responding as to whether the seminal Supreme Court decisions were rightly decided. These responses raise doubts about Mr. Lee’s ability to fairly review district court opinions on cases impacting the civil rights of African Americans and other marginalized communities.

As an organization committed to racial justice, we have grave concerns over the content of Mr. Lee’s writings and his actions to mislead the Senate Judiciary Committee. His actions mirror that of former nominee Ryan Bounds whose nomination was withdrawn for misleading

¹⁰ <https://afj.org/wp-content/uploads/2019/02/Time-to-Fight-Back.pdf>

¹¹ <http://civilrightsdocs.info/pdf/policy/Lee-Doc-2.pdf>.

¹² <https://afj.org/wp-content/uploads/2019/02/The-Review-vs-MBSA.pdf>

¹³ <https://afj.org/wp-content/uploads/2019/02/Angry-Yellow-Men.pdf>.

¹⁴ <https://afj.org/wp-content/uploads/2019/02/Affirmative-Action-at-Bursars-Window.pdf>.

¹⁵ <https://www.judiciary.senate.gov/imo/media/doc/Lee%20Responses%20to%20QFRs.pdf>.

¹⁶ *Id.*

the Senate Judiciary Committee and for inflammatory writings.¹⁷ The American public expects and deserves federal judges of the utmost integrity who will ensure equal justice under the law. Mr. Lee's strong views about marginalized communities and his actions raise serious questions about his character and ability to serve as an impartial judge. Whether Mr. Lee's actions were intentional or not, the Senate must fully consider what the impact to the integrity of the federal bench and the Senate would be if Mr. Lee is rewarded with a lifetime appointment to the Ninth Circuit.

Thank you for your consideration of our grave concerns on the nomination of Mr. Lee to a lifetime appointment on the Ninth Circuit Court of Appeals. We welcome the opportunity to discuss his nomination with your office further, if you have any questions or concerns please contact, Erinn Martin, Policy Counsel, at 202-662-8322 or emartin@lawyerscommittee.org.

Respectfully submitted,

A handwritten signature in purple ink that reads "Kristen Clarke".

Kristen Clarke
President & Executive Director

Lawyers' Committee for Civil Rights Under Law
Washington, D.C.

¹⁷ <https://www.politico.com/story/2018/07/19/bounds-senate-withdrawn-733414>