

6 November 2017

Senators Bill Cassidy, John Kennedy
United States Senate

Senators, I know Kyle Duncan well, as a colleague at LSU Law School, as a scholar of constitutional law, as an advocate at the Bar of the Fifth Circuit, the Louisiana Supreme Court, and the U.S. Supreme Court. I know him as a family man, four boys, one girl. Kyle bragged on his son Thomas a moment ago when I called him to remind me of his early scholarship while at University of Mississippi. He joined the Ole Miss Law faculty after his LL.M. degree at Columbia Law School. My earliest contact with Kyle was reading his early law review articles. He asked me to read them and comment on them. Here was a young man of professorial talent. His rise thereafter is public record. The joy in Kyle's voice when he told me that his eleven-year-old son Thomas placed second in his school's declamation competition—reciting Lincoln's Second Inaugural Address no less—indicates a sensitive appreciation of vital moments in life. Kyle is a great father, husband, and friend.

I will mention two to other personal contact points: I teach a class at LSU Law Center entitled Appellate Practice and Procedure. We go on-line to the Oyez Project, bring up *Connick v. Thompson*, and watch Kyle argue successfully for District Attorney Harry Connick's office, reversing the Fifth Circuit and a jury verdict of some 20 millions of dollars in damages, interest, and fees. His success in that case launched a spectacular career. In his argument in *Connick v. Thompson*, Kyle pounded his theory of the case home to the Court; his oral argument is brilliant. It won the case. He is as sharp a lawyer as any of the leading Supreme Court advocates with whom I am familiar.

And then there is our clash as adversaries in the Louisiana Supreme Court in *Costanza v. Caldwell*, 167 So.3d 619 (July 7, 2015), the same-gender marriage case that followed *Obergefell v. Hodges*, declaring Louisiana's prohibition of same-sex marriages unconstitutional. Kyle represented the State; I represented the two women involved who petitioned for an intra-family adoption of a son they had jointly raised for ten years. Ultimately, we were successful against Kyle Duncan. But I can tell you that Kyle's commitment to limited judicial review as I observed his advocacy in our joint appearance is lineal to Antonin Scalia's. I suggest that you urge the Judiciary Committee to have a look at Kyle's brilliant oral argument on the internet. Google "Costanza/Caldwell oral argument" and you will see for yourself. Both of us strove mightily as adversaries. But we continue to eat and drink as friends.

One last reflection before I render judgment on Kyle's nomination to the Fifth Circuit: Kyle knows the difference between the advocate's role for his client, the State of Louisiana, and what he would be called upon to decide as a judge on the Fifth Circuit in adjudging the same case. This was Kyle's post-argument insight to me. Now, let me render my humble opinion as an observer of the Supreme Court and of the Fifth Circuit for over forty years: Kyle Duncan is a magnificent nominee. He will make a surpassing Fifth Circuit judge and jurist. Please support his confirmation with all your might.

Yours,

Paul R. Baier
Judge Henry A. Politz
Professor of Law

Cc: Senator Chuck Grassley
Senator Dianne Feinstein

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