

November 6, 2017

The Honorable Charles E. Grassley, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Mitch McConnell
Majority Leader
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein, Ranking Member
Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Schumer
Minority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Feinstein:

As former colleagues of Kyle Duncan during his time as a professor at the University of Mississippi School of Law, we write in strong support of his nomination to the U.S. Court of Appeals for the Fifth Circuit. While on the faculty here, Kyle taught courses on the Uniform Commercial Code (Sales and Contracts); Professional Responsibility and Ethics; Admiralty; Constitutional Structures; The First Amendment (Speech and Religion); Law and Economics; and European Union Law. In all of his classes, he was known to be well prepared, thoughtful, engaging, and respectful to others. Kyle was very engaged with the students, and he was a popular instructor. In addition to being willing to take on a wide variety of classes that needed to be filled, he was able to do this because of his intelligence, his work ethic, and his wide experience in so many areas of law. Kyle served on committees related to scholarship, curriculum, and student discipline, advised the Catholic Student Association, and twice coached the team for the ABA's National Appellate Advocacy Competition.

While he taught across a broad spectrum of courses, Kyle was always most interested in Constitutional Law, especially the First Amendment and the religion clauses. His scholarship in several areas—the history of state Blaine Amendments, the relevance of Madison's Memorial and Remonstrance for the law of standing, the relationship of the religion clauses to subsidiarity, and the law of public displays related to religion—consistently reflects his concern that too many cases have been result-oriented instead of being driven by neutral principles of law. Kyle believes fervently that a judge (or justice) might not always get his or her way on a given topic, but cases should be decided by the application of neutral principles, not by a desire to see a certain outcome. One does not have to agree with Kyle's perspectives on law and politics, however, to appreciate his many virtues as a law professor, lawyer, and potential judge.

Kyle's great success as a litigator since leaving Ole Miss—as Louisiana's first Solicitor General, working for religious freedom at the Becket Fund, and with his own law firm—displays the same talents he exhibited as our colleague. His ability to persuade courts testifies to his skill in framing his clients' positions in terms of the sorts of principles that courts find appealing. We are confident that his work on the Fifth Circuit will display the same virtues.

Respectfully,

Guthrie T. Abbott
Professor Emeritus
University of Mississippi School of Law

William W. Berry III
Associate Professor of Law and Frank
Montague, Jr. Professor of Legal Studies
and Professionalism
University of Mississippi School of Law

Thomas K. Clancy
Professor Emeritus
University of Mississippi School of Law

John M. Czarnetzky
Professor of Law and Mitchell, McNutt and
Sams Lecturer
University of Mississippi School of Law

Samuel M. Davis
Dean Emeritus and Jamie L. Whitten Professor
of Law and Government Emeritus
University of Mississippi School of Law

Christopher R. Green
Associate Professor of Law and H.L.A. Hart
Scholar in Law and Philosophy
University of Mississippi School of Law

Karen O. Green
Professor of Law and Mississippi Defense
Lawyers Association Distinguished Lecturer

Kali Murray
Associate Professor of Law
Marquette University Law School

Gary Myers
Earl F. Nelson Professor of Law
Director, Center for Intellectual Property &
Entrepreneurship
University of Missouri School of Law

Jack Wade Nowlin
Dean and W. Frank Newton Professor of Law,
Texas Tech University School of Law

Lisa Shaw Roy
Professor of Law and Jessie D. Puckett, Jr.,
Lecturer
University of Mississippi School of Law

Ronald J. Rychlak
Professor of Law and Jamie L. Whitten Chair of
Law and Government
University of Mississippi School of Law

Robert A. Weems
Professor Emeritus
University of Mississippi School of Law