

**Written Statement for the Record**  
**Senator Lindsey O. Graham**  
**Chairman, United States Senate Committee on the Judiciary**  
**For the Nominations Hearing for Daniel A. Bress, Michael S. Bogren, Stephanie D. Davis,**  
**Jason K. Pulliam, Frank W. Volk, and David A. Tapp**  
**Wednesday, May 22, 2019**

Senators Feinstein and Harris have refused to return blue slips for Mr. Daniel Bress, President Trump’s nominee to one of the California-based seats on the Ninth Circuit. Their refusal is not because Mr. Bress is unqualified. To the contrary, his qualifications are impeccable. He graduated from Harvard University, earned his law degree from the University of Virginia, was Editor-in-Chief of the *Virginia Law Review*, clerked for Judge J. Harvie Wilkinson III on the Fourth Circuit and Justice Antonin Scalia on the Supreme Court, practiced at an elite San Francisco-based law firm, and is now a litigation partner at Kirkland & Ellis LLP, splitting his time between the firm’s D.C. and San Francisco offices. ABA rated him substantial majority “Qualified,” minority “Well Qualified.”

Rather, since the President announced his nomination on January 30, 2019, my California colleagues have objected to Mr. Bress’s nomination on the ground that he is not sufficiently Californian to be confirmed to one of the California-based seats on the Ninth Circuit. Other Members of the Committee have echoed this argument and have condemned my decision to hold today’s hearing. Some have not so subtly threatened to support future nominees to South Carolina-based vacancies who lack any connection to South Carolina whatsoever. Senator Harris has even gone so far as to call today’s hearing “unprecedented.”<sup>1</sup>

When Senator Feinstein first voiced her concerns to me at a Committee markup on March 7, I was troubled to hear that the President had nominated someone to be a judge in a state with which he allegedly had no connection. I took Senator Feinstein’s concerns very seriously, and had my staff investigate Mr. Bress’s connections to California and whether holding a hearing on a nominee with Mr. Bress’s connections would indeed be unprecedented. I also discussed Mr. Bress’s nomination with my colleagues, including Senator Lee and Senator Hawley, both of whom know Mr. Bress personally.

I would oppose proceeding on a nominee who did not live in the state in which the nominee would sit if that nominee lacked any other meaningful, substantial, and continuing ties to that state. But I would not object to a nominee who had not lived in the state in which the nominee would sit for the previous decade if the nominee were born and raised in the state, had been admitted to the bar of that state his entire career as a practicing lawyer, and had maintained a robust legal practice in the state and federal courts of that state even while living in another location. The nominees’ ties to the state and the nominee’s legal practice should show that the nominee is deeply familiar with the court to which he is nominated.

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<sup>1</sup> Senator Kamala Harris (@SenKamalaHarris), TWITTER (May 17, 2019, 1:25 PM (ET)), <https://twitter.com/senkamaharris/status/1129437718356877312> (“Daniel Bress has been nominated to the Ninth Circuit in California but doesn’t live in our state and is not a California lawyer. Yet Republicans are moving forward with his nomination despite opposition from both California Senators. This is unprecedented.”).

Having considered the matter thoroughly, I have comfortably reached two conclusions. First, after examining the facts rather than the rhetoric, it is clear to me that **Dan Bress is a Californian**. He was born there. He grew up there. He returned there every summer during college and law school to work. He interned for a distinguished United States Senator of that state. He was admitted to the bar of that state at the beginning of his career; it is where he first practiced law. He practices in California's state and federal courts more than he practices in the courts of any other state. His mother served as the president of the local school board for several years. His father continues to practice medicine there. He owns property and pays taxes there. From his birth to today, he has continually maintained meaningful ties with the state of California. I find it entirely unexceptional based on these facts that the President nominated Mr. Bress for a California-based judgeship.

Second, there is ample precedent in this Committee for proceeding on nominees who lacked Mr. Bress's longstanding, continuing, and substantial ties to the states in which they were nominated to serve. Contrary to the claims of my California colleagues, holding today's hearing on Mr. Bress is a perfectly ordinary act for this Committee.

I detail below Mr. Bress's longstanding, continuing, and substantial ties to California. I also discuss several examples of other circuit-judge nominees' connections to the states in which they were nominated to serve. Home-state senators voiced no objection to these nominees' lack of connection to their states. Most were confirmed with overwhelming Democrat support. A straightforward comparison of Mr. Bress's connections to those of other nominees reveals that his connections to California are more robust than the connections of other nominees to the states in which they were nominated to serve, and for whom Democrats happily returned blue slips and voted to confirm in the past.

## **I. Mr. Bress Has Enduring and Substantial Connections to California.**

Although Mr. Bress currently lives in Virginia, he has *extensive* California connections. First, as a native Californian whose family still lives in the state, he has strong personal ties to California. Second, he has substantial and continuing connections to California's legal community.

### *A. Mr. Bress's Strong Personal Connections to California*

Mr. Bress was born in Hollister, California, and he grew up in Gilroy, California. He proudly defends its title as "the garlic capital of the world." His mother served as president of the local school board, and his father practices medicine in the area, providing care to an underserved rural community. He graduated as the valedictorian of Gilroy High School. His family continues to be active in the Gilroy community. Indeed, his connection to Gilroy remains so strong that the Superintendent of the Gilroy Unified School District, the Executive Director of the Gilroy Foundation, and the Mayor of Gilroy all wrote to this Committee supporting Mr. Bress's nomination in unequivocal terms. I have attached those letters to this statement.

When it came time to go to college, Mr. Bress did what many teenagers do, and some parents lament: he moved to a new state. Mr. Bress excelled, compiling impressive academic credentials. He graduated *magna cum laude* from Harvard, and he earned his law degree from the University of Virginia, where he was Order of the Coif and Editor-in-Chief of the *Virginia Law Review*. Even while in school on the East Coast, however, he chose to return to California every summer to work,

including as an intern for Senator Feinstein when he was a rising junior at Harvard. During his first summer of law school, he externed for then-Justice Kathryn Werdegar of the California Supreme Court. The next summer, he worked as a summer associate for a firm in San Francisco.

After law school, Mr. Bress clerked for Judge J. Harvie Wilkinson III on the Fourth Circuit and Justice Antonin Scalia on the Supreme Court. After his clerkships, he had a choice to make about what bar he wanted to take and where to begin his career in the practice of law. He chose California.

Mr. Bress started his career in private practice at Munger, Tolles & Olson in San Francisco, and he worked there from 2007 to 2008. Munger Tolles is an elite firm that, until 2016, was well known for having offices only in California. Three of President Obama's four nominees to California-based seats on the Ninth Circuit are alumni of Munger Tolles, as are two of President Trump's three nominees.

When his wife's career took their family to Washington, D.C., Mr. Bress had to get a job at a new firm because Munger Tolles did not have a D.C. office. He joined Kirkland & Ellis as an associate in 2008, and he was promoted to partner in 2011. He now splits his time between the firm's San Francisco and D.C. offices.

He has won numerous awards:

- The National Law Journal, D.C. Rising Star, 2017;
- Law360, Rising Star for Class Actions, 2016;
- Benchmark Litigation, Under 40 Hot List (2016) and D.C. Future Star (2017–2019); and
- The Legal 500 recognized him for his litigation work in the areas of Trade Secrets (2016–2018), Product Liability Mass Tort and Class Action (2017), and Product Liability and Mass Tort Defense: Aerospace/Aviation (2012).

Although Mr. Bress's professional career has flourished while he and his family have lived in Northern Virginia, he has maintained his longstanding connections to his home state. He continues to spend his summers back home in Gilroy, California, with his extended family. He is a part-owner in his family's California-based business—a northern California real-estate company. Gilroy's mayor put it best: "Dan has maintained a lasting connection to our town and area and has never forgotten his Gilroy roots. . . . Dan can often be spotted around town, including at coffee shops working away on his laptop."

Unlike many people who no longer live in their home town—and many who still do—Mr. Bress has remained involved and connected to his home town of Gilroy, and to his home-town high school. For years, up until Justice Scalia's untimely death, Mr. Bress arranged and led tours of the Supreme Court for Gilroy students visiting Washington, D.C.

*B. Mr. Bress's Robust Practice in Courthouses across California, and his Connections to California's Legal Community*

In assessing whether Mr. Bress has sufficient connections to California, I looked to see whether his practice shows that he understands the Ninth Circuit and the federal courts of the state he would sit as a judge, and that he understands California's legal community.

Two significant facts convince me that he does. First, Mr. Bress joined the California Bar at the very beginning of his career as a practicing lawyer. Indeed, it was the first bar he joined. He has remained a member of the California Bar ever since.

Second, Mr. Bress maintains so significant a California-based litigation practice, both in state and federal court, that he divides his time between Kirkland's D.C. and San Francisco offices. Because of his significant California-based practice and his familiarity with the California legal market, his firm lists him as a partner in the San Francisco and Washington, D.C. offices.

He litigates more cases in California than in any other state. Mr. Bress has litigated nearly ten cases in the U.S. Court of Appeals for the Ninth Circuit (including an en banc sitting) and the U.S. District Courts for the Northern District of California, the Eastern District of California, and the Central District of California.

Additionally, Mr. Bress has also litigated more than twenty cases in California state courts, including in the California Supreme Court, California courts of appeal, and a half dozen California state trial courts.

A list of the cases in which Mr. Bress was listed on the briefs and pleadings in the last five years shows he maintains an extensive litigation practice in California:

1. *Romo v. Teva Pharmaceuticals USA, Inc.*, Case No. 13-56310 (9th Cir.) (related to and consolidated with *Corber v. Xanodyne Pharmaceuticals, Inc.*, No. 13-56306 (9th Cir.))
2. *Oddo v. Arcoaire Air Conditioning & Heating, et al.*, Case No. 15-cv-1985 (C.D. Cal.)
3. *Cormier v. Carrier Corp.*, Case No. 18-cv-7030 (C.D. Cal.)
4. *Sumer v. Carrier Corp.*, Case No. 14-cv-4271 (N.D. Cal.)
5. *Grassi v. International Comfort Products, LLC*, Case No. 15-cv-253 (E.D. Cal.)
6. *Uribes v. BASF Catalysts LLC*, Case No. 15-cv-2131 (N.D. Cal.)
7. *Ochoa v. Anaheim City School District*, Case No. S242410 (Cal. S. Ct. 2017)
8. *Depree v. BASF Catalysts LLC*, Case No. S233576 (Cal. S. Ct. 2016)
9. *Kaiser Gypsum Co. v. Superior Court (Steele)*, Case No. S222641 (Cal. S. Ct. 2015)
10. *Depree v. BASF Catalysts LLC*, Case No. A140681 (Cal. Ct. App. 1st App. Dist. 2016)
11. *Uribes v. BASF Catalysts LLC*, Case No. H043017 (Cal. Ct. App. 6th App. Dist. 2016)
12. *BASF Catalysts LLC v. Superior Court (Heisch)*, Case No. A139820 (Cal. Ct. App. 1st App. Dist. 2013)
13. *Ochoa v. Anaheim City School District*, Case No. G052409 (Cal. Ct. App. 4th App. Dist. 2017)
14. *Uribes v. BASF Catalysts LLC*, Case No. 112CV220636 (Cal. Super. Santa Clara Cty.)
15. *Manuel v. BASF Catalysts LLC*, Case No. BC 479452 (Cal. Super. L.A. Cty.)

16. *Heisch v. Allied Packing & Supply, Inc., et al.*, Case No. RG-12-622472 (Cal. Super. Alameda Cty.)
17. *Unterleitner v. BASF Catalysts LLC, et al.*, Case No. RG15778755 (Cal. Super. Alameda Cty.)
18. *Rubino v. BASF Corp., et al.*, Case No. CGC-08-274556 (Cal. Super. S.F. Cty.)
19. *Phillips v. Amcord, Inc., et al.*, Case No. 12CECG04055 (Cal. Super. Fresno Cty.); Case No. RG12631024 (Cal. Super. Alameda Cty.); Case No. 10250 (Cal. Super. Mariposa Cty.)
20. *Colgrave v. A.O. Smith Corp., et al.*, Case No. BC491011 (Cal. Super. L.A. Cty.); Case No. 158692 (Cal. Super. Butte Cty.)
21. *Sherman v. BASF Catalysts LLC, et al.*, Case No. BC481282 (Cal. Super. L.A. Cty.)
22. *DSM Dyneema LLC v. James Thagard, et al.*, No. 30-2014-00733113 (Cal. Super. Orange Cty.)
23. *Depree v. BASF Catalysts LLC, et al.*, Case No. RG12659674 (Cal. Super. Alameda Cty.)
24. *Chandler v. Air & Liquid Sys. Corp., et al.*, Case No. CIV520543 (Cal. Super. San Mateo Cty.)
25. *Uhr v. American Lafrance LLC, et al.*, Case No. CGC13-276173 (Cal. Super. San Francisco Cty.)
26. In addition to the foregoing, Mr. Bress has been involved in various other California cases in recent years. *See, e.g., Abante Rooter & Plumbing, Inc. et al. v. Alarm.com Inc.*, Case No. 15-cv-6314 (N.D. Cal.); *Fields v. Ford Motor Co., et al.*, Case No. RG15754936 (Cal. Super. Alameda Cty.). He is also currently involved in *Tesla, Inc. v. Zoot, Inc.*, Case No. 4:19-cv-1462 (N.D. Cal.); *VanCleave v. Abbott Labs.*, Case No. 19CV345045 (Cal. Super. Santa Clara Cty.); and a threatened putative class action concerning automobiles in the Northern District of California, among other matters.

Mr. Bress has also been active in the California legal community. He has written legal articles for *San Francisco Attorney Magazine*, including with now-Judge Michelle Friedland of the Ninth Circuit, who previously worked in Munger Tolles’s San Francisco office at the same time as Mr. Bress did. He also serves on the recruiting committee at his law firm and recruits students from California-based law schools.

Mr. Bress has also admirably chosen to develop a robust pro bono practice, including representing death-row inmates and criminal defendants. In his most significant pro bono matter—one to which he devoted hundreds of hours—he successfully represented a group of parents in California state court who invoked California’s Parent Empowerment Act,<sup>2</sup> Cal. Ed. Code §§ 53300–53303, to convert a public school into a charter school.<sup>3</sup>

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<sup>2</sup> Cal. Ed. Code §§ 53300–53303.

<sup>3</sup> *See Ochoa v. Anaheim City Sch. Dist.*, 11 Cal. App. 5th 209 (Cal. 4th Dist. 2017).

## II. Mr. Bress's Nomination Is Consistent with Longstanding Bipartisan Precedent for Circuit-Judge Nominees.

Mr. Bress's home-state connections are similar to, or more extensive than, those of other recent nominees for whom Democrats happily returned blue slips and voted to confirm. A few examples help make this clear.

### A. Judge Robert A. Katzmann's Nomination to the Second Circuit

Judge Robert Katzmann of the Second Circuit was born and raised in New York. But after he graduated from Columbia College in 1973, he moved to New England. He spent several years at Harvard earning a Ph.D., and a few more in Connecticut obtaining his J.D. from Yale Law School. Afterwards, he clerked for a judge on the First Circuit in New Hampshire.

Following his clerkship, Judge Katzmann moved to Washington, D.C., where he worked as a Brookings Fellow from 1981 to 1999. He joined the D.C. Bar in 1984. From 1986 to 1992, he was also a special assistant to the Director of the Federal Judicial Center, which has its headquarters in Washington, D.C. From 1984 to 1992, Judge Katzmann was an adjunct professor at Georgetown University and its Law Center in D.C. He also taught as a visiting professor at the University of California–Los Angeles's D.C. program from 1990 to 1992. Judge Katzmann did make it out of D.C. in 1992—to teach at the University of Oregon.

Judge Katzmann joined the New York Bar on July 21, 1998.<sup>4</sup> President Clinton nominated Judge Katzmann to a New York-based seat on the Second Circuit 230 days later, on March 8, 1999. The Senators representing New York at the time—Daniel Patrick Moynihan (D) and Chuck Schumer (D)—returned blue slips for Judge Katzmann. Both introduced Judge Katzmann at his hearing and neither even mentioned Judge Katzmann's nearly two-decade absence from the state, his having joined the New York Bar only months before, and his complete lack of professional ties to the state.<sup>5</sup> Judge Katzmann was confirmed by a voice vote on July 14, 1999.

Both Judge Katzmann and Mr. Bress clerked for federal circuit judges outside of their home states. But after clerking, Mr. Bress immediately joined his home-state bar and began his legal practice in his home state. Judge Katzmann, by contrast, took the D.C. Bar and became a D.C. lawyer. He joined the New York Bar only a few months before his nomination. And while Mr. Bress has maintained a robust legal practice in his home state, Judge Katzmann does not appear to have litigated a single case in New York (or anywhere else, as a career academic) before being nominated to the bench.

### B. Justice Neil M. Gorsuch's Nomination to the Tenth Circuit

Justice Gorsuch was born in Denver, Colorado. His family moved to Washington, D.C., in his early teenage years when his mother became Administrator of the EPA in 1981. Justice Gorsuch graduated from a D.C.-area high school and graduated from Columbia University in 1988 and

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<sup>4</sup> Judge Katzmann was admitted to the New York Bar by the Third Department in Albany. The Third Department handles admission of out-of-state applicants, indicating that he did not reside in New York when he applied.

<sup>5</sup> See *Nominations of Marsha S. Berzon and Robert E. Katzmann (U.S. Circuit Judges); Keith P. Ellison, Gary Allen Feess, William Allen Pepper, Jr., Karen E. Schreier, Stefan R. Underhill, and T. John Ward (U.S. District Judges): Hearing before the U.S. Sen. Comm. on the Judiciary*, 106 Cong. Pt. 1 1, 6–8 (1999).

Harvard Law School in 1991. Afterwards, he too became a D.C. lawyer. He clerked for Judge David Sentelle on the D.C. Circuit and for Justices Byron White and Anthony Kennedy on the Supreme Court. He had joined the New York Bar after law school, joined the Colorado Bar immediately after clerking, and he joined the D.C. Bar a few years later. Following his clerkships, he entered private practice and worked at a D.C. law firm for more than ten years. In 2005, he joined the Justice Department and served there until 2006.

When President Bush nominated Justice Gorsuch to a Colorado-based seat on the Tenth Circuit in May 2006, Senators Wayne Allard (R) and Ken Salazar (D) returned their blue slips. Both Senators introduced him at his hearing. Senator Allard introduced him as a “fourth-generation Coloradan” and who “no doubt look[ed] forward to returning to Colorado.”<sup>6</sup> Senator Salazar similarly said that “[w]hile Mr. Gorsuch has spent the majority of his professional life in Washington, D.C., his roots in Colorado are strong, going back four generations. If confirmed, he will return back to Colorado.”<sup>7</sup> The Senate confirmed him by voice vote a little over two months later, on July 20, 2006.

Mr. Bress has more substantial ties to California than Justice Gorsuch had to Colorado. Justice Gorsuch left Colorado at a younger age and did not live there again until he was confirmed. Both clerked for federal judges on the East Coast. Although Justice Gorsuch started his career in private practice by being admitted to his home-state bar, he never practiced in Colorado and was counsel in just one case in federal district court in Colorado. He practiced exclusively in D.C. for over a decade. Mr. Bress was admitted to his home-state bar and started practicing in California before he moved to Washington, D.C. And even while working in D.C., his practice focuses on California litigation.

### *C. Judge Jay S. Bybee’s Nomination to the Ninth Circuit*

Judge Jay Bybee was born in California. He grew up primarily in Clark County, Nevada, but his family later moved to Tennessee and Kentucky. Judge Bybee attended Brigham Young University (BYU) in Provo, Utah for both college and law school. After graduating, he clerked for Judge Donald Russell of South Carolina on Fourth Circuit from 1980 to 1981.

Following his clerkship, Judge Bybee moved to Washington, D.C. He worked in private practice in D.C. from 1981 to 1984, at the Justice Department from 1984 to 1989, and in the White House Counsel’s Office from 1989 to 1991. Judge Bybee then moved to Louisiana to become a professor at LSU Law School from 1991 to 1998. From 1999 to 2001, he was a professor at the University of Nevada–Las Vegas law school. He joined the Nevada Bar on May 31, 2001. He took a leave of absence to return to the Department of Justice and worked there from 2001 to 2003.

President Bush nominated Judge Bybee to a Nevada-based seat on the Ninth Circuit on May 22, 2002—less than a year after he joined the Nevada Bar. Notwithstanding his few professional connections to Nevada, Senators Harry Reid (D) and John Ensign (R) both returned blue slips and introduced him at his hearing. Neither mentioned that he spent fewer than three years of his

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<sup>6</sup> *Nomination of Neil M. Gorsuch, Nominee to be Circuit Judge for the Tenth Circuit: Hearing before the U.S. Comm. on the Judiciary*, 109 Cong. 1, 1–2 (2006) (Statement of Sen. Allard).

<sup>7</sup> *Id.* at 3 (Statement of Sen. Salazar).

professional career in Nevada and had joined the Nevada Bar less than a year before his nomination.<sup>8</sup> Judge Bybee was confirmed by a vote of 74 to 23 on March 13, 2003.

Again, Mr. Bress's ties to California compare favorably to Judge Bybee's ties to Nevada. First, Mr. Bress was born in California and spent more time there growing up than Judge Bybee spent in Nevada. The California Bar was the first bar to which Mr. Bress was admitted, and he has been a member in good standing his entire career as a lawyer. Judge Bybee did not join the Nevada Bar until briefly before his nomination. Mr. Bress began his career at a firm in San Francisco and his practice focuses primarily on litigation in California courts. Judge Bybee was never counsel of record in any case in Nevada court and spent only a few years teaching at UNLV Law School. Like Mr. Bress, Judge Bybee spent roughly a decade as a lawyer in D.C. But Judge Bybee also spent close to a decade as a law professor in Louisiana.

#### *D. Judge Allison Jones Rushing's Nomination to the Fourth Circuit*

Finally, Judge Allison Jones Rushing's nomination and confirmation are a recent example of Republicans proceeding without any objection to a similarly situated nominee. Judge Rushing was born and raised in North Carolina. She attended Wake Forest University for college and Duke University for law school. She clerked for then-Judge Gorsuch on the Tenth Circuit and for Judge Sentelle on the D.C. Circuit.

Judge Rushing remained in D.C. following her clerkship and entered private practice as an attorney at Williams & Connolly, a D.C. firm renowned for its litigation practice and known for its unusual choice of having only one office. She worked at the firm from 2009 to 2010. She then clerked for Justice Clarence Thomas from 2010 to 2011, and she rejoined her old firm at the end of her clerkship. President Trump nominated Judge Rushing to a North Carolina-based seat on the Fourth Circuit in 2018. Although she has never been a member of the North Carolina Bar, both Senator Burr and Senator Tillis returned blue slips for her nomination. The Senate confirmed Judge Rushing by a vote of 53-44.

Mr. Bress's ties to California are at least as strong as Judge Rushing's ties to North Carolina. Judge Rushing chose to stay in her home state for college and law school. But she never joined the state's bar after graduating law school and clerking, and spent her entire career as a D.C. lawyer. Both spent approximately ten years working in the D.C. area, but Mr. Bress litigated dozens of cases in the federal and state courts of his home state. Judge Rushing's practice focused on the litigation in the U.S. Supreme Court, and she did not litigate numerous cases in her home state.

#### *E. Senator Harris's Support for Justice Leandra Kruger's Nomination to the California Supreme Court and Her Inconsistent Standard for Judicial Nominees*

Senator Harris has strenuously objected to Mr. Bress's nomination. She has stated:

Daniel Bress has been nominated to the Ninth Circuit Court of Appeals in California, but he has lived and practiced law in the Washington, D.C. area for more

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<sup>8</sup> *Nominations of Jay S. Bybee, Nominee to be Circuit Judge for the Ninth Circuit; Ralph R. Erickson, Nominee to be District Judge for the District of North Dakota; William D. Quarles, Nominee to be District Judge for the District of Maryland; and Gregory L. Frost, Nominee to be District Judge for the Southern District of Ohio: Hearing before U.S. Sen. Comm. on the Judiciary*, 108 Cong. 1, 5-7 (2002).



than a decade. He clerked for two federal judges on the East Coast, and has voted in Virginia for roughly the last decade. Put plainly, Daniel Bress does not live in California and he is not a California lawyer. He lacks strong ties to the local legal community that, if confirmed, would appear in his courtroom every day. This nomination is yet another egregious violation of the norms under which the Senate once operated. I will continue to oppose Bress' nomination.<sup>9</sup>

I find the vehemence of her objections perplexing given her participation in the confirmation of Justice Leandra Kruger to the California Supreme Court in 2014. Near the end of 2014, then-Governor Jerry Brown (D) nominated Leandra Kruger, then serving as a high-ranking political appointee in President Obama's Justice Department, to a seat on the California Supreme Court. In her capacity as the Attorney General of California, Senator Harris sat on the Commission on Judicial Appointments, a three-member panel responsible for confirming judicial nominees.

When she was nominated, Justice Kruger had fewer connections to California than does Mr. Bress. Both were born and raised in California. Both then attended college and law school on the East Coast. Both worked in California during their law school summers. And both clerked for appellate courts on the East Coast (Justice Kruger clerked for Judge David Tatel on the D.C. Circuit) and for Supreme Court Justices (Justice Kruger clerked for Justice John Paul Stevens). And both joined the California Bar after their clerkships. But then their paths diverged. After her clerkships, Justice Kruger chose to start working at a law firm in Washington, D.C. Mr. Bress started his career working at a California law firm before moving to Washington, D.C., for his wife's job.

At the time of her nomination, Justice Kruger's appellate-litigation practice centered squarely on Washington, D.C. She is listed as having been involved with one appeal to the Ninth Circuit involving a decision by the Board of Immigration Appeals,<sup>10</sup> two cases in the Second Circuit (one from Vermont and one from New York), one case in the District Court for the District of Columbia, one case before the Court of International Trade, and fifteen cases before the Supreme Court.<sup>11</sup> Mr. Bress, by contrast, has litigated dozens of cases in California state and federal courts.

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<sup>9</sup> Senator Kamala Harris, *Harris on Trump's Ninth Circuit Nominee: Daniel Bress Is Not a California Lawyer*, Office of Senator Kamala D. Harris, U.S. Senator for California (May 17, 2019), <https://www.harris.senate.gov/newsroom/press-releases/harris-on-trumps-ninth-circuit-nominee-daniel-bress-is-not-a-california-lawyer>; *see also* Senator Kamala Harris (@SenKamalaHarris), TWITTER (May 17, 2019, 1:25 PM (ET)), <https://twitter.com/senkamalaharris/status/1129437718356877312> ("Daniel Bress has been nominated to the Ninth Circuit in California but doesn't live in our state and is not a California lawyer. Yet Republicans are moving forward with his nomination despite opposition from both California Senators. This is unprecedented."); Senator Kamala Harris (@SenKamalaHarris), TWITTER (May 17, 2019, 1:26 PM (ET)), <https://twitter.com/SenKamalaHarris/status/1129437937421246464> ("Presidents nominate judges—they don't appoint them. But senators have repeatedly been blocked from fulfilling our duty to advise and consent to judicial nominees in our home states. I will continue to oppose Bress' nomination."); *but see* U.S. Const. art. II, § 2, cl. 2 ("[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law . . .") (emphasis added).

<sup>10</sup> *See* Brief of Petitioner Everardo Hernandez-Ruiz, *Hernandez-Ruiz v. Gonzales*, No. 05-76659, 2006 WL 3901548 (9th Cir. Nov. 14, 2006); Reply Brief of Petitioner Everardo Hernandez-Ruiz, *Hernandez-Ruiz v. Gonzales*, No. 05-76659, 2007 WL 2910292 (9th Cir. Apr. 30, 2007).

<sup>11</sup> Although several news articles discussing Justice Kruger's nomination to the California Supreme Court state that she has never practiced law in California, it appears that she has been involved in one case in the Northern District of

Given her objections to Mr. Bress’s nomination, one would expect Senator Harris to have opposed Justice Kruger’s nomination with equal vehemence. Quite the contrary. After a thirty-five minute hearing, Senator Harris voted to confirm Justice Kruger.<sup>12</sup> The hearing consisted mostly of the witnesses and panelists praising Justice Kruger’s intelligence and accomplishments.<sup>13</sup> When it was her turn to ask questions of the nominee, then-Attorney General Harris said: “I don’t really have any questions about your skills. But, as a fellow native Californian, who also lived in D.C., what most excites you about coming home?”<sup>14</sup> Justice Kruger responded: “I’ve had the great fortune to serve the federal government for many years in Washington, D.C., but my heart has always been in California. This has always been my home. It’s where I was born and raised. It’s where I learned the values that make me the person that I am today. It’s where my family still lives.”<sup>15</sup>

Surely, the requirement that a nominee be a “California lawyer” would be even *stronger* for a nominee to the California Supreme Court than for a nominee to a federal court with jurisdiction over ten other states and territories. And by every measure I have seen, Mr. Bress’s ties to California—including his significantly more extensive practice in, and familiarity with, the state and federal courts of California—are more enduring and significant than were Justice Kruger’s. Nevertheless, Senator Harris has not explained how Justice Kruger’s connections made her a “California lawyer” while Mr. Bress’s do not. Having compared the connections of each, I can conclude only that Senator Harris applied a different standard to assess whether Justice Kruger—an Obama political appointee nominated by a Democrat governor—was a “California lawyer” than she has applied to Mr. Bress—a former Scalia clerk nominated by President Trump.

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Mr. Bress has longstanding, continuing, and substantial ties to California. He routinely practices in state and federal courts in California; in fact, his practice is focused more on California courts than on the courts of any other state. He has nurtured and maintained his ties to his hometown community. He owns property there. He pays taxes there. Given these ties, I believe giving Mr. Bress a hearing for a California-based seat on the Ninth Circuit is entirely consistent with this Committee’s precedent on circuit-judge nominees.

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California. See *In re Nat’l Sec. Agency Telecommunications Records Litig.*, 444 F. Supp. 2d 1332, 1335 (J.P.M.L. 2006). The docket for that case shows that she filed several *pro hac vice* motions in an MDL matter where cases from across the country were consolidated in the Northern District of California. See, e.g., Application for Admission *Pro Hac Vice* of Leondra R. Kruger, *In re Nat’l Sec. Agency Telecommunications Records Litig.*, MDL No. 06-1791, Doc. 18 (N.D. Cal. Sept. 1, 2006). Mr. Bress would not need to file a *pro hac vice* motion because he is admitted to practice in that court.

<sup>12</sup> Alexei Koseff, *Leondra Kruger confirmed to California Supreme Court*, THE SACRAMENTO BEE (Dec. 22, 2014), <https://www.sacbee.com/news/politics-government/capitol-alert/article4821201.html>.

<sup>13</sup> *Id.*

<sup>14</sup> CalChannel, *Commission on Judicial Appointments: Confirmation Hearing for Leondra R. Kruger*, YouTube (Jan. 20, 2015), <https://www.youtube.com/watch?v=qqbYXhuYi9A> (question at 25:55).

<sup>15</sup> *Id.* (response at 26:09).



**GILROY UNIFIED SCHOOL DISTRICT**  
**Superintendent**

7810 Arroyo Circle, Gilroy, California 95020  
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**SUPERINTENDENT**

Dr. Deborah A. Flores, Ph.D.

**BOARD OF EDUCATION**

Enrique Diaz ♦ B.C. Doyle ♦ Tuyen Fiack ♦ Mark Good  
Anisha Munshi ♦ James E. Pace ♦ Linda Piceno

March 7, 2019

Honorable Lindsey Graham  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

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

Dear Chairman Graham and Ranking Member Feinstein:

I am the Superintendent of the Gilroy Unified School District in Gilroy, California, and I would like to send a letter in support of the nomination of Daniel Bress—who was one of our brightest students—to be a federal judge.

All four of the Bress children attended schools in the Gilroy Unified School District, and each set an example of academic excellence by graduating first in their class. Dan's mother Rhoda Bress served on the seven-member Gilroy Unified School District Board of Education for eight years. In addition, the Bress family has generously donated money to Gilroy High School each year, which has gone to provide important supplies and support key programs.

For many years, Dan hosted a group of Gilroy middle school students and parents on their annual trip to our nation's capital, which was led by Dan's eighth grade teacher, Ron Ayala. Although I know Dan was very busy, he arranged for a tour of the U.S. Supreme Court and would then meet with the students afterwards to discuss being a lawyer and working at the Supreme Court. This trip was always a big hit, and I know that students and parents always enjoyed meeting someone from Gilroy. Dan has also maintained close contact with Mr. Ayala, and the two of them frequently meet up when Dan is in Gilroy.

In short, Dan has been a great role model for Gilroy students, and I think he would make an excellent judge. It would also be very nice to have him back closer to home.

Sincerely,

Deborah A. Flores, Ph.D.  
Superintendent



March 6, 2019

Honorable Lindsey Graham  
Chairman, Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

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

Dear Chairman Graham and Ranking Member Feinstein:

It is with great pleasure that I write this letter on behalf of Daniel Bress' nomination to the United States Court of Appeals for the Ninth Circuit.

Dan is a product of our small city between San Jose and Monterey, California. He attended our public schools from elementary through high school, graduating at the top of his class. He participated in many extracurricular activities and was active as a volunteer for various nonprofits in his home town.

Gilroy Foundation is proud to have "The Bress Family Fund" as part of our endowment. This donor-advised fund awards grants to Gilroy High School programs that promote excellence in education. Examples of grants that have been awarded: to purchase MBOTs Programmable Cars for an Engineering Class, Smart Tablets for the Men's and Women's choir music classes, and new microscopes and other equipment for the Biology Department. Dan and his family make the selections of the winning grant(s) each year.

With the encouragement of his parents and siblings, as well as his teachers and mentors, Dan was driven to seek educational and career success, which he has greatly accomplished.

As an intelligent, ethical and fair person, with great integrity, I highly recommend Dan for this position in our nation's judicial system.

Cordially,



Donna Pray  
Executive Director

Edwin Diaz  
President  
Joel Goldsmith  
Vice President  
Marie Blankley  
Treasurer  
Karen LaCorte  
Secretary  
Judy Lazarus  
Past President  
Jay Baksa  
Lori Kent  
Chris Ordaz  
Carlos Pineda  
Jennifer Speno  
Sal Tomasello



# City of Gilroy

## Mayor's Office

City Hall  
7351 Rosanna Street  
Gilroy, California  
95020-6197

Roland Velasco, Mayor  
[roland.velasco@cityofgilroy.org](mailto:roland.velasco@cityofgilroy.org)  
City Hall Office (408) 846-0227  
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[www.cityofgilroy.org](http://www.cityofgilroy.org)

February 25, 2019

Honorable Lindsey Graham  
Chairman, Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

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

Dear Chairman Graham and Ranking Member Feinstein:

I currently have the pleasure serving as Mayor for the City of Gilroy, California. On behalf of the Gilroy City Council, I write in support of the nomination of Daniel A. Bress to serve on the United States Court of Appeals for the Ninth Circuit.

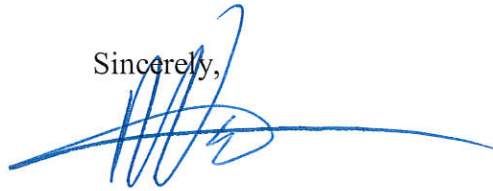
Dan grew up in Gilroy and we are proud that he is a product of our local public schools. He attended Rucker Elementary School, South Valley Junior High, and then Gilroy High School, where he graduated as valedictorian. Dan was always involved in the community growing up. As you may know, Gilroy is the "Garlic Capital of the World," and Dan often volunteered at our annual Gilroy Garlic Festival. He also worked as a counselor at a theater camp in Gilroy for many summers.

Dan has maintained a lasting connection to our town and area and has never forgotten his Gilroy roots. For many years, Dan has hosted a group of Gilroy middle school students at the U.S. Supreme Court during an annual school trip to Washington, D.C. I know that at many times of the year and especially over the summer, Dan and his family return to Gilroy to spend time here and to be with family and friends. Dan can often be spotted around town, including at local coffee shops working away on his laptop.

We have also known Dan's parents and brothers, who are engaged and valued members of our local community. Dan's mother, Rhoda Bress, was elected as a Board Member of the Gilroy Unified School District and later went on to serve as School Board President. Dan's father, Dr. Martin Bress, is a longtime physician in our area. Dan's brothers Josh, Joe, and Dave also attended Gilroy public schools, graduated as valedictorians of their classes at Gilroy High School, and have gone on to their own distinguished careers in medicine, finance, and education.

It would be an honor for Dan to be confirmed as a federal judge and to return home on a more permanent basis. We proudly support his nomination and confirmation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Roland Velasco', with a long horizontal flourish extending to the right.

Roland Velasco  
Mayor, City of Gilroy