



1201 16th St., N.W. | Washington, DC 20036 | Phone: (202) 833-4000

Lily Eskelsen García
President

Rebecca S. Pringle
Vice President

Princess R. Moss
Secretary-Treasurer

John C. Stocks
Executive Director

March 6, 2018

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our three million members and the 50 million students they serve, we strongly urge you to oppose the nomination of Stuart Kyle Duncan to the U.S. Court of Appeals for the Fifth Circuit. Throughout his career, Mr. Duncan has undermined America’s promise of equal justice under law by taking cases that seek to deprive vulnerable student populations of their dignity, future, and political voice. Votes on this issue may be included in NEA’s Report Card for the 115th Congress.

Mr. Duncan is a vocal opponent of LGBTQ equality. In a 2016 speech to the Heritage Foundation, he denounced the determination by the U.S. Departments of Justice and Education that federal law protects the rights of transgender students, saying, “Our federal government is telling us — not merely what it thinks the law is — but what ‘is a man’ and what ‘is a woman.’” In *Carcaño v. McCrory*, Mr. Duncan represented the sponsors of North Carolina’s notorious “bathroom bill” and argued that transgender people are mentally ill. As lead counsel for the school board in *Gloucester County School Board v. G.G.*, he filed a brief before the U.S. Fourth Circuit Court of Appeals that claimed protecting transgender students from discrimination would “creat[e] a new world where biological males can occupy the same restrooms, locker rooms, showers, and athletic teams as biological females,” and “14-year old girls shar[e] facilities with 18-year old physiological males.”

Mr. Duncan has also fought against Deferred Action for Childhood Arrivals (DACA). In an amicus brief before the U.S. Supreme Court in *Brewer v. Arizona Dream Act Coalition*, he argued that DACA is not legally valid and, therefore, not binding on the states. In a case challenging Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA), he filed an amicus brief that says many immigrant parents of United States-citizen or lawful-resident students are “violent criminals.”

On behalf of state and federal legislators, Mr. Duncan pushed to suppress the political voice of people of color, including black and Latino students. In *North Carolina State Conference of the NAACP v. McCrory*, the U.S. Court of Appeals for the Fourth Circuit struck down a North Carolina law that restricted or eliminated certain voting practices disproportionately used by people of color and student-aged voters; Mr. Duncan represented North Carolina in an unsuccessful attempt to get the U.S. Supreme Court to reverse the decision. He also coauthored an amicus brief supporting a Texas voter identification law that the district court found “creates

an unconstitutional burden on the right to vote, has an impermissible discriminatory effect on Hispanics and African Americans, and was imposed with an unconstitutional discriminatory purpose.”

Mr. Duncan is unfit to serve as a U.S. Court of Appeals judge. We strongly urge you to oppose the nomination of Mr. Duncan to the U.S. Court of Appeals for the Fifth Circuit.

Sincerely,

Marc Egan
Director of Government Relations
National Education Association