

AFJ NOMINEE SNAPSHOT

RYAN BOUNDS

U.S. Court of Appeals for the Ninth Circuit

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INTRODUCTION

On September 7, 2017, President Trump [nominated](#) Ryan Bounds to a seat on the U.S. Court of Appeals for the Ninth Circuit. Bounds was nominated to replace Judge Diarmuid O'Scannlain, who assumed senior status on December 31, 2016.

Alliance for Justice has prepared this snapshot to highlight areas of Bounds's record, based on our review thus far, in which we believe greater scrutiny by the Senate is warranted. AFJ has not reviewed his entire record. For example, [materials](#) from his work in the George W. Bush Administration, contained at the George W. Bush Library, including folders of material on such issues as the rights of persons with disabilities, crack/powder cocaine disparity, and firearm safety, are not available to the public and therefore could not be reviewed.

There are serious questions about Bounds's independence. Republican Congressman Greg Walden, whose chief of staff is Bounds's sister, [called](#) Bounds "the rare Oregonian with a sincere commitment to conservative jurisprudence." As one Oregonian journalist [wrote](#), "President Donald Trump's nominee for the Ninth Circuit [Ryan Bounds] could act as an advocate for Trump's immigration agenda, according to lawyers who know him."

Like the vast majority of Trump's nominees, Bounds is a member of the [Federalist Society](#), an outside group to which Trump has indicated he has [delegated](#) the identification of candidates for judicial nominations.

Also similar to many of Trump's nominations, the nomination of Ryan Bounds was made without the advice and consent of his home-state senators.

Neither Sen. Wyden nor Sen. Merkley was given any role in the selection process.

As Bounds [described](#) the process:

After President Trump's inauguration, Congressman Walden submitted a letter recommending my nomination to Donald McGahn, Counsel to the President. On March 9, 2017 a member of the White House Counsel's Office emailed me to schedule an interview. I was interviewed in person on March 15, 2017, by members of the White House Counsel's Office of Legal Policy. On May 24, 2017, the White House Counsel's Office informed me that it was sending my name to the Department of Justice to begin a vetting process. On September 7, 2017, the President submitted my nomination to the Senate.

Immediately after the White House announced Bounds's nomination, Wyden and Merkley sent a [joint letter](#) to White House Counsel Don McGahn, stating that "we cannot return a blue slip on any judicial nominee that has not been approved by our bipartisan judicial selection committee."

In the letter, the Senators said that as early as May 2017 they had informed the White House Counsel of Oregon's long standing bipartisan tradition, encouraging the White House to direct all potential nominees to the State's selection committee. Since 1997, Oregon Senators have used an independent bipartisan selection committee for judicial nominees. The [committee](#) was started by Wyden and Gordon Smith, a Republican. Currently, the committee is comprised of members appointed by Democrats Wyden and Merkley, and Republican Rep. Greg Walden.

As of January 8, 2018, the bipartisan selection committee was [reviewing](#) Bounds' application, as well other applicants.

However, as [noted](#) by the Senators, "it is now apparent that you never intended to allow our longstanding process to play out. Instead, you have demonstrated that you were only interested in our input if we were willing to preapprove your preferred nominee."

Finally, while Bounds has few public writings, those he does have are deeply disturbing. Particularly noteworthy are several articles Bounds wrote for The Stanford Review while a college student. He expressed hostility toward multiculturalism and diversity, often using derogatory language. Throughout these writings, Bounds displayed a strong intolerance for issues or positions he deemed liberal or progressive. Indeed, Bounds's writings reveal strong biases that call into question his ability to fairly apply the law and to maintain confidence in the justice system's ability to dispense even-handed justice to all.

BIOGRAPHY

Bounds was born in Umatilla, Oregon in 1973. He earned his B.A. from Stanford University and his J.D. from Yale Law School. After law school, Bounds clerked for Judge Diarmuid O'Scannlain on the U.S. Court of Appeals for the Ninth Circuit. Bounds then practiced commercial law at Stoel Rives LLP in Portland, Oregon.

From 2004 to 2010, Bounds worked in the Office of Legal Policy at the United States Department of Justice. Bounds

served as Deputy Assistant Attorney General and [Chief of Staff](#) of the Office of Legal Policy. From 2008-2009,

Bounds was the Special Assistant to President George W. Bush for Justice and Immigration Policy.

In his capacity as a domestic advisor to President Bush, Bounds testified before the House Committee on the Judiciary: Subcommittee on Crime, Terrorism, and Homeland Security, in a hearing entitled "Private Prison Information Act Of 2007, and Review of the Prison Litigation Reform Act: A Decade of Reform or an Increase in Prison and Abuses?." In 2006, while working for the Justice Department, Bounds testified before the House Committee on the Judiciary: Subcommittee on Courts, the Internet, and Intellectual Property, with regard to H.R. 435, the Equal Access to Justice Reform Act of 2005.

After the Bush Administration, Bounds worked as a Special Assistant United States Attorney for the District of Columbia, and since 2010, has been an Assistant United States Attorney for the District of Oregon.

WRITINGS

Under President Obama, Republican members of the Senate Judiciary Committee made clear that a nominee's writings, including those dating back to the nominee's time in college, were grounds to oppose confirmation.

For example, Republicans on the Senate Judiciary Committee, including Senators Mike Lee and Jon Kyle, [pressed](#) Jesse Furman, a former Assistant United States Attorney in New York, about an

article he wrote as an undergraduate critical of the National Rifle Association. As Senator Chuck Grassley [said](#) in opposing Furman, “When we considered his nomination last year, a few items of concern were raised. These issues included writings he made while in college on gun control[.]”

With respect to Ryan Bounds, as a student at Stanford University, he served as the opinion editor and assistant news editor for The Stanford Review, an independent student newspaper with conservative and libertarian leanings.

The following summaries offer highlights of Bounds’s troubling writings.

I. MULTICULTURALISM AND DIVERSITY

Bounds frequently [expressed](#) his disdain for multicultural values and organizations in articles for The Stanford Review.

- > “During my years in our Multicultural Garden of Eden, I have often marveled at the odd strategies that some of the more strident racial factions of the student body employ in their attempts to ‘heighten consciousness,’ ‘build tolerance,’ ‘promote diversity,’ and otherwise convince us to partake of that fruit which promises to open our eyes to a PC version of the knowledge of good and evil. I am mystified because these tactics seem always to contribute more to restricting consciousness, aggravating intolerance, and pigeonholing cultural identities than many a Nazi bookburning.”
- > “Strangely, the Multiculturalistas don’t seem to catch on to the inevitable non-
efficacy of their rallies, protests, whinings, demands, and vitriolic brickbats towards all printed policies not incorporating the language of the 1964 Civil Rights Act in their preambles.”
- > “I submit that the Multiculturalistas, when they divide up by race for their feel-good ethnic hoedowns, engage in nearly all of [the fundamental behaviors of group think].”
- > “Multiculturalists band together not into tight cliques of mutual interests and complementary powers, but rather into social clubs of ostensibly common racial heritage.”
- > “The second behavior of race-think is believing that the moral superiority of the group is unquestionable. Truly, the Stanford Multiculturalists are heavy hitters in the big-leagues of sanctimony; few would dispute that.”
- > “Whenever a group of white males happens to be at the same place at the same time, you can be sure that the foul stench of oppression and exploitation lingers in the air. In contrast, ethnic centers, whose sole purpose is to bring together exclusive cliques of students to revel in racial purity, are so righteous that the mere mention of cutting budgets incites turmoil on the grandest scale.”
- > “The opponent is the white male and his coterie of meanspirited lackeys: ‘oreos,’ ‘twinkies,’ ‘coconuts,’ and the like . . . He enjoys making money and buying material things, just to make sure people with darker skin don’t have access to them. He enjoys killing children and revels in the death of minorities (if you are white, male, and pro-choice, for instance, it is often ascribed to your desire for poor black and Hispanic women to abort their children as frequently as possible).”

- > “If a black person is an individualist and a thoroughgoing capitalist who eschews victimhood status and its concomitant entitlements, race-thinkers are quick to brand him ‘oreo,’ ‘Uncle Tom,’ or ‘sell-out.’”
- > “Race-focused groups foster race-think, and the only way to rid our multicultural community of race-think is to rid it of these invidious factions. We should be cheered, however, to know that our task is not impossible. The existence of ethnic organizations is no inevitable prerequisite to maintaining a diverse community—white students, after all, seem to be doing all right without an Aryan Student Union.”

Even in non-opinion pieces, Bounds’ anti-diversity biases are apparent. For instance, in an article discussing campus budget cuts, Bounds goes out of his way to [mention](#) how “[d]espite rampant student protests and a rash of campus media attention concerning the specter of budget cuts at Stanford’s ethnic student centers, the centers will fare much better than other student affairs programs.”

In another article, Bounds [writes](#) about Stanford’s foreign language departments, noting how “faculty members in the foreign language departments have, in the past, expressed dismay that their programs have been allowed to dwindle even while university agencies such as the Office for Multicultural Development (OMD) have been promulgated and sufficiently funded.” Bounds criticized how “resources were dedicated to the OMD to expand multicultural programming while simultaneously restricted in the very departments that support the study of other cultures.”

Bounds wrote that “[a]ll the ethnic élites were out in force a year ago to forestall any hint of budget cuts to their student-enclaves, once again accusing the president and provost of conspiring, in their worship of the lily-white dollar, against minorities”

II. “SENSITIVITY” TOWARDS RACIAL MINORITIES AND THE LGBTQ COMMUNITY

Bounds [declared](#) “Sensitivity” and activism by racial minorities and LGBTQ communities a “Pestilence” that “[s]talks [u]s” and “threatens to corrupt our scholastic experience and tear our student community asunder.” Bounds focused on several incidents on campus to explain his opposition to the “idol of Sensitivity”:

- > Bounds discussed an incident in which intoxicated athletes vandalized a statue that celebrated “gay pride.” In Bounds’s view:

[T]he gay members of our community feel safe here (and well they should) and thus liberated to discuss their Sensitivity to the vandalism of an artwork that represents some of their closely held values (thank goodness we still have such a community). We hear of sensations of personal violation and outrage and of suspicion that male athletes and fraternity members are bigots whose socialization patterns induce this sort of terrorism. Perhaps all of this is true, but the castigation of athletes and frat boys for flagrantly anti-homosexual prejudices is predicated on a motivation for this vandalism that has not been articulated. Results? The vandals might face hate-crime charges, fraternity members—regardless of their individually

demonstrated prejudices (or, for that matter, sexual orientation)—face mandatory Sensitivity training, the Lesbian, Gay and Bisexual Community Center receives \$10,000 from funds the university ostensibly does not have, and Sensitivity insinuates itself a little further into the fissures of our community.”

- > Bounds also discussed the firing of university administrator Cecilia Burciaga:

Students, most of them Chicano, decry . . . the administrator’s move to terminate Burciaga’s position as indicative of a systemic insensitivity in our community toward Chicano faculty, staff, and students (she was the only high-ranking Chicano administrator). Results: rivers of tears, epithets, hunger strikes, negative press for the university, and the formation of presidential committees to examine the ‘systemic insensitivity’ toward Chicanos at Stanford and the potential for a Stanford-East Palo Alto community outreach center. Oh, and once again, Sensitivity can claim responsibility for extortion, rampant dissatisfaction, and a nice week of hand-wringing.”

Bounds even [wrote](#) an article visualizing a multicultural dystopia in a future time, warning of the dangers of a society that embraces multiculturalism.

III. SEXUAL ASSAULT

Bounds [wrote](#) an article arguing that campus sexual assault and rape victims should have to satisfy the stringent “beyond reasonable doubt” standard that is typically reserved for criminal cases. Bounds wrote:

The winds of freedom – freedom from common sense – are blowing again at Stanford University, the only novelty being that, this time, the University is not leading the academic world in its pursuit of P.C. frippery . . . concerned student-leaders and administrators are uniting in a plaintive demand for a relaxation of the burden of proof required in prosecuting alleged violations of the University’s Fundamental Standard, especially in cases of sexual assault.

Bounds added, “[t]he current burden of proof in University judicial proceedings, the traditional criminal standard of ‘beyond a reasonable doubt,’ is apparently the strictest of its kind in American higher education and just too onerous to be countenanced by a community dedicated to eradicating sexual assault.”

Bounds went on to dismiss the “panoply of arguments” put forward by “administrators and activists working against sexual assault” in support of a preponderance of the evidence standard, claiming that “none of [the arguments] are powerful enough to convince any battle-scarred P.C. warrior that relinquishing a shred of protection from inappropriate and potentially damaging University sanctions would prove a remedy to sexual assault on campus. But the discontented contend that a strict burden of proof is inapposite in a community situation in which there is no potential loss of liberty or fundamental rights.”

He added:

Emasculating our burden of proof in the interest of eradicating all hints of antisocial behavior in our community is presumptively invalid, not because students entertain some innate fidelity to ‘beyond a reasonable doubt’ (a standard that is not used in most civil cases in the U.S.), but simply because they did not come to Stanford

University to be parented or morally reared.

Ultimately, Bound concludes: “But there is nothing really inherently wrong with the University failing to punish an alleged rapist—regardless his guilt—in the absence of adequate certainty; there is nothing that the University can do to objectively ensure that the rapist does not strike again.” And, “[e]xpelling students is probably not going to contribute a great deal toward a rape victim’s recovery; there is no moral imperative to risk egregious error in doing so.”

It bears noting, that contrary to what Bounds’ wrote, the Supreme Court itself has made clear that unlike criminal law, which is designed to punish and incapacitate, the purpose of [Title IX](#) is to ensure that all students have access to equal education. The Supreme Court, not just “activists,” has discouraged schools from adopting criminal procedures in their disciplinary hearings; such requirements would hinder their ability to ensure safe and equitable learning environments for students. See *Goss v. Lopez*, 419 U.S. 565, 583 (1975) (“To impose in each such case even truncated trial-type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness. Moreover, further formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process.”); see also *Nash v. Auburn Univ.*, 812 F.2d 655, 664 (11th Cir. 1987) (holding that accused students’ rights in a disciplinary hearing “are not co-extensive with the rights of litigants in a civil trial or with those of defendants in a criminal trial”); *Brewer by Dreyfus v. Austin Indep.*

Sch. Dist., 779 F.2d 260, 263 (5th Cir. 1985) (urging parties not to “confuse[] two quite distinct processes: school disciplinary actions and criminal sentencing proceedings”).

IV. LABOR UNIONS

Bounds criticized Stanford students who protested a “union-busting” hotel. He [wrote](#):

Last week, around twenty Stanford students resolved to fight for justice, equality, fairness, and everything likewise exalted by red-blooded Americans. We beam with pride when we think of these students, products of the finest education available, lifting the lantern of social rectitude high and bright . . . the leaders of tomorrow. We envision them writing progressive policy memos, making calls to local leaders, or raising funds for the oppressed, the downtrodden, the disenfranchised.

Well, not quite, but they **did** band together in front of a Menlo Park hotel and yell pithy, bromidic rhymes about employer-employee relations. Through their heroic efforts, they impeded the business of an establishment whose anti-humanitarian offenses included belonging to the same holding company as a union-busting hotel across the bay.

Bounds minimized the concerns of the protestors: “What, exactly, was the social injustice against which these students inveighed so valiantly? Three employees of this hotel’s sister establishment in Lafayette were allegedly fired for attempting to form a union.”

He further took issue with the fact that MEChA, “Stanford’s Chicano/Latino student organization – which constitutes anything but a public policy institute, as near as I can tell” was “avowedly concerned with issues pertaining to the Chicano and Latino communities beyond Stanford’s campus.” He added, “we can presume that it felt perfectly justified throwing its hefty institutional influence behind last week’s protest on purely political and economic grounds. MEChA’s apparatchiks must see a link between Stanford’s Chicano and Latino students and the parties to this labor dispute in a hotel in some other county.”

But, he felt, “[t]hat link, however, is far too dubious” for a university-supported group. “What political purposes of Stanford’s Chicano and Latino communities are advanced by assaulting a local business that is only tangentially involved with some remote labor dispute? For that matter, what does a small-scale labor dispute have to do with these communities in the first place?” He added:

I would hardly suggest that no student group should be able to take up a political matter, if it is of direct relevance to its purported mission. I would contend, however, that no student group that is affiliated with an ethnic center or any other department of this university has any business holding political issues central to its mission.

Moreover, according to Bounds:

The point is that MEChA should stick to doing what it does best, which is educating members of the Stanford community about Chicano and Latino cultures as well as Chicanos and Latinos everywhere about health and literacy. Stanford students hardly voted for MEChA’s special fee request this spring because they felt what Stanford really

needed was its own local of the teamsters.

V. NATIVE AMERICANS

In addition to writing the articles that have his byline, Bounds also served as the opinion editor and assistant news editor for The Stanford Review from the fall of 1993 to the spring of 1995. In his [questionnaire](#), Bounds claims that he does not recall which articles he personally edited.

However, in his capacity as opinion editor, it can be assumed that he signed off on the material published during his tenure.

Notably, during that time period, The Stanford Review’s editorial page began a repeated segment called “Smoke Signals” which featured a crude caricature of a Native American. From 1930-1972, Stanford’s unofficial mascot was the “[Indians.](#)” However, in 1972, after meetings between Stanford University President Richard Lyman and Native American students, the “Indian” was dropped as a mascot because it was insulting to Native American culture and heritage.

Thus, when The Stanford Review began using the Native American caricature over twenty years later, in October 1994, there was extreme [backlash](#). Stanford University President Gerhard Casper and Provost Condoleezza Rice criticized The Stanford Review’s use of the image and approximately a dozen Native American students wrote letters of complaint.



Nevertheless, The Stanford Review continued to use the caricature, [stating](#) that “their intent is not to offend, and that the assumption that the caricature is insulting to American Indians is no more plausible than the assertion that the Minnesota Viking symbol is offensive to Americans of Scandinavian descent.” Moreover, the editor-in-chief of The Stanford Review sent a private letter to the dean of students, arguing that “certain aspects of Native American culture were ‘not particularly civilized.’”

allegations of campus sexual assault and rape and supports making it more difficult to hold perpetrators of campus sexual assault accountable; derides multiculturalism on campus; mocks student affinity organizations, calling their gatherings “feel-good ethnic hoedowns”; and uses derogatory language, such as “oreos” and “Uncle Toms,” to describe how he believes others view some members of the student body.

CONCLUSION

The nomination of Ryan Bounds to the Ninth Circuit undermines the essential role of home state senators to advise and consent in the judicial nomination process. Neither Senator Wyden nor Senator Merkley was consulted, and the White House Counsel blatantly disregarded Oregon’s long standing independent bipartisan judicial selection committee.

Even if Bounds had been properly vetted and selected by the Oregon committee, based on our initial review, there are troubling aspects of his record for which he must answer. Most importantly, Bounds must be held accountable for his articles in The Stanford Review, in which he belittles