

AFJ NOMINEE REPORT

DANIEL BRESS



U.S. Court of Appeals for the Ninth Circuit

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INTRODUCTION

On February 6, 2019, President [Trump nominated](#) Daniel A. Bress to the Ninth Circuit Court of Appeals seat previously held by [Judge Alex Kozinski](#) in California.

Bress's nomination to the Ninth Circuit comes in the wake of President Trump's [repeated attacks](#) on the independence of the circuit and his stated desire to obtain different rulings (see our report on fellow Ninth Circuit Trump nominee Kenneth [Lee](#) for more information). Bress is being nominated to advance the President's far-right agenda and act as a reliable ideologue on the bench.

The White House did not meaningfully consult with Bress's home-state senators, Dianne Feinstein and Kamala Harris – and neither senator has returned her blue slip on his nomination. Importantly, Bress is nominated to fill a California seat on the circuit, and both senators have highlighted his lack of connection to the state. As Senator Feinstein [wrote](#), “[W]e raised concerns about Daniel Bress since he lives in Washington, D.C., not California, is quite young and has no judicial experience.”

Bress is a resident of Alexandria, Virginia, a suburb of Washington, D.C. He has practiced law at the law firm of Kirkland & Ellis LLP *in Washington* for 11 years. In fact, the firm highlighted Bress as [one](#) of “D.C.’s rising stars” (not “California’s rising stars”)

in 2017. Bress's professional connection to California is minimal¹, as he worked as an attorney in San Francisco for only one year, from 2007-2008.²

At a Judiciary Committee [hearing](#) on March 7, 2019, Senator Feinstein said, “I don’t understand why the White House would choose someone with such a limited connection to the state.”

Chairman Lindsey Graham appeared to agree: “[h]aving a nominee to the circuit court with very little connection to California bothers me.”³

Perhaps recognizing a potential hiccup with his nomination, Bress has sought to embellish his California ties. In his Senate Judiciary Committee questionnaire, Bress listed his current office address as Kirkland & Ellis LLP in Washington. And, at least as of November 2018 – one month after it was publicly [reported](#) he was being considered for the Ninth Circuit – his law firm's profile [provided only](#) a Washington phone number.

Yet if one goes to his law firm's website today, while his nomination is being considered by the Senate, it appears that Bress has [obtained](#) a San Francisco phone number. Given that he did not have a California number at least as of November 2018, this raises the question of whether he added a San Francisco phone number in an effort to fool the committee.

In 2011, Senator Ron Johnson of Wisconsin blocked the nomination of Victoria Nourse,

President Obama's nominee to the Seventh Circuit, [because](#) she "really has very little connection to the state of Wisconsin, and nobody in the legal community in Wisconsin knows anything about her." In fact, Nourse, whom the Wisconsin Federal Nominating Commission had recommended (unlike Bress, who was not recommended by his home-state commissions), had been a professor of law at the University of Wisconsin-Madison since 1994 – 16 years at the time of her nomination. By comparison, Bress has spent one year, over a decade ago, practicing law in California.

There are tens of thousands of lawyers who live in California. The fact that President Trump bypassed these lawyers and instead chose a Washington D.C. attorney with minimal professional ties to the state suggests that Bress was not selected because of his legal ability or his ability to neutrally apply facts to law. It suggests he was nominated because President Trump knows Bress will be a reliable ideologue on a court Trump has been fixated on, has vilified, and has sought to reshape. Alliance for Justice opposes Bress's nomination.

BIOGRAPHY

[Bress](#), who is 39 years old,⁴ is a partner at Kirkland & Ellis LLP in Washington, D.C.⁵ He briefly worked at Munger, Tolles & Olson LLP in San Francisco, California,

from 2007-2008. He has taught classes as an adjunct professor at the Columbus School of Law and the University of Virginia School of Law.

Bress clerked for Justice Antonin Scalia on the U.S. Supreme Court and for Judge J. Harvie Wilkinson III on the Fourth Circuit. He received his J.D. from the University of Virginia School of Law in 2005 and his A.B. from Harvard University in 2001.

Bress is on the advisory council of Tzedek D.C., a nonprofit organization. He has also represented death row inmates and criminal defendants on a pro bono basis.⁶

Bress has been a member of the conservative Federalist Society since 2003.⁷ In keeping with President's Trump pattern of selecting judicial nominees based on their membership in the Federalist Society, Bress's nomination comes as no surprise. Bress's views are also reflected in his decision to co-sign letters of support for other recent Trump nominees to the federal judiciary, including [Britt C. Grant](#) for the Eleventh Circuit.

EDUCATION

Bress litigated pro bono to convert a public elementary school to a charter school in Anaheim County, California. In [Ochoa v. Anaheim City School Dist.](#), 11 Cal. App. 5th 209 (2017), Bress advocated under a [controversial](#) California parent-trigger

law for the enforcement of a petition for conversion to a charter school.

The law, California's Parent Empowerment Act of 2010, purports to empower parents in low-performing school districts to force educational reform, yet the powerful and wealthy forces behind the law seek increasing privatization of public education. In behind-the-scenes action that is a far cry from grassroots advocacy, the American Legislative Exchange Council (ALEC) [utilized](#) this law as a template for [later](#) state parent-trigger [bills](#). ALEC has also drafted multiple controversial [bills](#), including Florida's [Stand Your Ground law](#).

The specific parent-signed petition that Bress defended was also backed by powerful corporate interests. The petition's campaign leader, Alfonso Flores,⁸ was paid \$60,000 by a New York-based organization called Ed Reform Now.⁹ Ed Reform Now's [PAC](#) has spent [millions](#) of dollars advocating on behalf of school privatization, working alongside the Koch brothers, corporate hedge funds, and ALEC to attack teachers' unions along the way. Among Ed Reform Now's many wealthy donors is Rupert [Murdoch](#).

In *Ochoa*, the court [held](#) that the plaintiffs [met](#) all the requirements of California's parent-trigger law. Despite holding for the petitioners, the Court of Appeals of California noted, "we are not opining on whether public schools or charter schools

are better for the education of our children."

ACCESS TO JUSTICE

Bress has [repeatedly](#) opposed the right of people to band together in class action lawsuits and hold corporations accountable.

In a Law360 [article](#), Bress offered advice for other attorneys to "beat back the case on the merits, and secondly to block class certification." In defending class action suits, he said, "the key is to be presenting your case to the court from day one with the goal not just to respond to the allegations but also to show the court from the beginning that the case is unwieldy and can't properly be certified."

In *Williams v. BASF Catalysts LLC*, 765 F.3d 306 (3d Cir. 2014), Bress defended BASF Catalysts when thousands of asbestos-injury victims sued because, among other claims, the corporation allegedly deceived and misled plaintiffs into settlements by lying about the facts.¹⁰ The plaintiffs alleged that BASF "used the absence of inculpatory evidence and the existence of false exonerating evidence to frustrate asbestos injury suits."¹¹ Further, the court found that BASF concealed incriminating documents in a secret storage facility.¹²

In his brief, Bress [argued](#) that “[t]he plaintiffs’ failure to plead necessary facts relating to their decedents’ underlying litigations is only confirmed by the attenuated nature of any claim they could attempt to present.”¹³ The Third Circuit did not agree. In reversing the district court’s [dismissal](#) of the claim of fraudulent concealment, Judge Julio Fuentes [rebutted](#), “[c]ommonsense and judicial experience underscore the plausibility of [the plaintiffs’] claims.”¹⁴

Bress has defended many other corporations (see [Corber v. Xanodyne Pharmaceuticals, Inc.](#), 771 F. 3d 1218 (2014), [Sumer v. Carrier Corp.](#), 2015 U.S. Dist. LEXIS 20731, [Amar Shakti Enters., LLC v. Wyndham Worldwide, Inc.](#), 2011 U.S. Dist. LEXIS 93676) to prevent consumers from joining together to hold them accountable.

CONCLUSION

Daniel Bress was nominated without meaningful consultation with his two home-state senators, who have expressed [concerns](#) about his youth and lack of connection to the state of California. Further, President Trump has a clear goal to reshape the Ninth Circuit with conservative ideologues. Based on these factors, we believe Bress’s nomination represents yet another agenda-driven bypass of the normal nomination process.

For these reasons, Alliance for Justice opposes his nomination.

ENDNOTES

1. Sen. Comm. on the Judiciary, 116th Cong., Daniel Aaron Bress Questionnaire for Judicial Nominees, at 1-2, available at <https://afj.org/wp-content/uploads/2019/03/Daniel-Bress-Senate-Judiciary-Questionnaire.pdf>.
2. *Id.* at 2.
3. Sen. Comm. on the Judiciary, Executive Business Meeting, March 7, 2019, at 00:32:55, available at <https://www.judiciary.senate.gov/meetings/03/07/2019/executive-business-meeting>.
4. In a Law360 article published on March 31, 2016, Bress was reported as being 36 years old.
5. Sen. Comm. on the Judiciary, 116th Cong., Daniel Aaron Bress Questionnaire for Judicial Nominees, at 1-2, available at <https://afj.org/wp-content/uploads/2019/03/Daniel-Bress-Senate-Judiciary-Questionnaire.pdf>.
6. *Id.* at 31-32.
7. *Id.* at 5.
8. Paid by Ed Reform Now, Alfonso Flores spearheaded the petition campaign. According to the factual holdings of the court, Flores trained parents on how to describe the petition in their door-to-door signature collection efforts, often accompanied parents to gather signatures, identified the five parents who would serve as the lead petitioners, and prepared the trigger petition submission.
9. *Ochoa v. Anaheim City School Dist.*, 11 Cal. App. 5th 209, 216 (2017), available at https://scholar.google.com/scholar_case?case=8147264324529454264&q=ochoa+v.+anaheim&hl=en&as_sdt=20006.
10. *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 313 (3d Cir. 2014), available at [https://scholar.google.com/scholar_case?case=2848906084816929688&q=765+F.3d+306+\(3d+Cir.+2014\)+basf+catalysts&hl=en&as_sdt=20006](https://scholar.google.com/scholar_case?case=2848906084816929688&q=765+F.3d+306+(3d+Cir.+2014)+basf+catalysts&hl=en&as_sdt=20006).
11. *Id.*
12. *Id.* at 314.
13. Defendant-Appellee BASF Catalysts LLC Brief at 20, *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 313 (3d Cir. 2014), available at https://afj.org/wp-content/uploads/2019/03/WILLIAMS-v.-BASF-CATALYSTS-LLC_-2013-3rd-Cir.-Brief.pdf.
14. *Id.* at 322.