



Lawrence VanDyke

Potential SCOTUS Nominee

COURT

U.S. Court of Appeals for the Ninth Circuit

Introduction

Trump-appointee Lawrence VanDyke has served as a judge on the U.S. Court of Appeals for the Ninth Circuit since January 2020. He was born in Midland, Texas on December 12, 1972, and attended Oklahoma Christian University from 1992 to 1995 without receiving a degree. VanDyke eventually received a bachelor of science in 1997 and a master's degree in 2000 from Montana State University. He then earned a theology degree from Bear Valley Bible Institute in 2002. Bear Valley's doctrinal statement says that women should "assum[e] a submissive position."

He went on to receive his J.D. from Harvard Law School in 2005, where he was a member of the Federalist Society (and has been a member since). After his first year of law school, he spent his summer working at the Alliance Defense Fund, now called the Alliance Defending Freedom (ADF). ADF is virulently anti-LGBTQ+ and has been labeled a hate group by the Southern Poverty Law Center (SPLC). VanDyke participated in ADF's controversial Blackstone Legal Fellowship, which promotes the criminalization of abortion, advocates against the rights of LGBTQ+ people, and favors organized prayer in government and public-school settings. ADF promoted VanDyke as an allied attorney as recently as 2011. VanDyke has used his platform as a conservative movement lawyer to mentor others through ADF's Blackstone Legal Fellowship program, including enlisting them to help with research while he was solicitor general of Montana. VanDyke spoke to lawyers and law students at least twice at Alliance Defending Freedom events.

While at Harvard, VanDyke published a book review titled "Not Your Daddy's Fundamentalism, Intelligent Design in the Classroom," arguing that it was constitutional to teach creationism in public schools. The note attracted widespread criticism and accusations of intellectual dishonesty.

After graduating law school, he clerked for Judge Janice Rogers Brown on the D.C. Circuit Court of Appeals. He then moved to private practice at Gibson, Dunn, & Crutcher. During this time, VanDyke did pro bono work for ADF and the far-right Free Market Foundation.

In 2012, VanDyke became an assistant solicitor general of Texas before returning to Montana in 2013 when he was appointed solicitor general. In that role, he “placed a special emphasis on writing amicus briefs supporting gun rights and anti-abortion laws.” One such brief asked the Supreme Court to reconsider *Roe v. Wade*.

In 2014, VanDyke resigned from his position as solicitor general and ran for the Montana Supreme Court. VanDyke received a substantial portion of his campaign funding from out-of-state political allies, like Carrie Severino of the Judicial Crisis Network and Trump’s future Secretary of Labor Eugene Scalia, son of the late Justice Antonin Scalia. The Koch brothers funneled \$170,000 to support him. VanDyke also enjoyed the support of the Family Research Council, another SPLC designated hate group. Montana Gas & Oil PAC maxed out their contributions to him, and a third party distributed mailers with VanDyke’s face beside an oil pumpjack and pipeline, asserting, “Lawrence VanDyke will protect Montana jobs from environmental extremists.” In response to a call for public financing of judicial races, VanDyke argued there was a benefit to “dark money” spending.

Throughout the campaign, VanDyke strongly criticized plaintiff-side attorneys in Montana. In a stump speech to the Chamber of Commerce, he complained that the Ninth Circuit had a pro-plaintiff and anti-business bias. He accused the “trial lawyer money machine” of “dumping hundreds of thousands of dollars” into the race to “make sure their favorite guy gets elected.” Going even further, he suggested that trial lawyers contributed to his opponent in exchange for more favorable treatment when their cases would later come before him as a judge, “spending huge sums of money to get justices on the court who will make sure they get big attorney fee awards, whether they deserve it or not.” VanDyke ultimately lost the Montana Supreme Court race 59.1%-40.9%.

In 2015, the Republican attorney general of Nevada hired VanDyke, and he worked there until 2019. He then joined the Trump Justice Department’s Environment and Natural Resources Division, where he served as deputy assistant attorney general under Jeffrey Clark, one of the key figures indicted with Trump for alleged efforts to overturn the 2020 presidential election. Clark is also an outspoken denier of climate change, in addition to having a well-documented history of opposing public health and environmental protections.

President Trump sent VanDyke’s nomination to the Senate on October 15, 2019. The Senate Judiciary Committee held a confirmation hearing on his nomination on October 30, 2019. On November 21, 2019, his nomination was reported out of committee by a 12–10 vote. The Senate confirmed VanDyke on December 11, 2019 by a 51–44 vote. He received his judicial commission on January 2, 2020.

In October 2019, ahead of VanDyke’s Senate Judiciary hearing on his Ninth Circuit nomination, the American Bar Association (ABA) released a letter opposing his nomination. After 60 interviews, the ABA rated VanDyke “not qualified” for the position. They noted, “Mr. VanDyke’s accomplishments are offset by the assessments of interviewees that Mr. VanDyke is arrogant, lazy, an ideologue, and lacking in knowledge of the day-to-day practice including procedural rules.” The letter also noted: “There was a theme that the nominee lacks humility, has an ‘entitlement’ temperament, does not have an open mind, and does not always have a commitment to being candid and truthful.” The letter continued: “Even though Mr. VanDyke is clearly smart, comments were made that in some

cases in which he did not have a particular personal or political interest.” The ABA also alleged that VanDyke would unfairly judge LGBTQ+ litigants.

Extremely Biased Ideologue

Illustrative of VanDyke’s approach to the law — advancing his own personal ideology over neutral application of law — is his work as solicitor general in Montana and Nevada, where VanDyke was far more interested in joining amicus briefs regarding controversial partisan issues than doing the day-to-day work of defending state laws. Public emails from his time in Montana indicate that VanDyke spent much of his time poring through briefs from other states, including those concerning gun safety measures (like those attacking bans on semiautomatic weapons), defending abortion bans, bans on same-sex marriage, and attacking access to contraceptives under the Affordable Care Act.

His record, moreover, clearly shows that his decisions were based on political considerations, not legal arguments. In an email regarding an Establishment Clause case, he wrote that he did not even read a brief that another state drafted before signing his name in support. On challenging age limits for firearms, he wrote, “I’m not sure I agree with the strategy of bringing this case to the SCOTUS, but I think we want to be on the record as on the side of gun rights (and the NRA).” On challenging the federal prohibition on strawman purchases where a person with a clean background check purchases a firearm for a person who would otherwise be prohibited from purchasing a gun, he wrote “I haven’t really given the case much thought. Since it involves guns, I would think there is a good chance we might join it if someone writes a brief.” He also advocated for defending a law that took the position that the federal government could not regulate guns that were manufactured and sold in Montana despite admitting that he had “trouble coming up with any plausible (much less good) arguments of how to get around [existing Supreme Court precedent].” In an email soliciting potential arguments, he expressed concern that his legal reasoning would not “pass[] the straight-face test.”

VanDyke, too, consistently put his ideology above the law and the people he represented. In Montana, VanDyke advocated for signing on to an Alabama comment letter that challenged the Affordable Care Act’s contraception mandate, even though taking that position went squarely against Montana law, as the state supreme court had previously ruled that insurance plans must cover contraception. In another instance, although Montana had a buffer zone law to protect women entering abortion clinics (and VanDyke’s job was to defend the laws of Montana), VanDyke supported a challenge to a similar Massachusetts law. Moreover, while in Montana, he signed onto a brief to support a Nevada law banning same-sex marriage even though then-Nevada Attorney General Catherine Cortez Masto and the state’s then-Republican Governor Brian Sandoval decided not to defend the law in court.

In contrast, in other cases VanDyke was often disinterested or claimed to be too busy. For example, he refused to work on one case (dealing with same-sex couples suing for domestic partner benefits) and revealed that he had little to no experience dealing with discovery and expert testimony: “[T]he immediate tasks in that case are something I have little experience with . . . (discovery wrangling, experts, stipulations, and a meet and confer with opposing counsel).” As his colleague wrote in response, “You’re the First Amendment expert and Solicitor. Are you saying you

won't work on this in any capacity even if [the case] were reassigned? If so, there is nothing for us to talk about." VanDyke complained about having to defend another Montana statute, calling it a "misallocation of resources" for him to work on the case, which he characterized as a "slam dunk loser."

Perhaps this is why his former colleague referred to VanDyke as a "charlatan," who "quit his job, in a tantrum, because he didn't want to work." One review provides a stark perspective on his abilities: "Ever since he has arrived, Mr. VanDyke has been arrogant and disrespectful to others, both in and outside of this office. He avoids work. He does not have the skills to perform, nor desire to learn how to perform, the work of a lawyer. Now that he has resigned and refuses to work on cases assigned to him, while remaining on the payroll for the next several months . . ." The office's chief of staff seemed to agree with the colleague's scathing review, writing that "your frustration does not exceed ours," making clear that VanDyke's reputation was widely acknowledged in the office.

VanDyke's short time as solicitor general in Montana and Nevada, coupled with several outlandish decisions during his time on the federal bench, demonstrate his inadequacy to be elevated to the Supreme Court. His record shows that he has no interest in serving as a neutral and independent arbiter of the law. Instead, he continues to find ways to inappropriately bend the law to fit his extremist ideologies.

Opponent of Climate Justice

While serving as solicitor general of Montana and Nevada, VanDyke regularly attacked clean air and water initiatives. While he was at the Trump Justice Department, he defended the administration's rollback of environmental protections. VanDyke ran his failed Montana Supreme Court race on an anti-environment stance with the funding of fossil fuel companies seeking access to public lands for drilling and mining. He criticized the incumbent justice for having a pro-environment perspective, attacking Justice Wheat for stating on his website that he is a "defender of Montana's constitutional right to a clean and healthful environment."

Clean Air

In West Virginia v. EPA, VanDyke filed an amicus brief challenging the Clean Power Plan (CPP). As environmental advocates explained, the CPP was projected to "cut the electric sector's carbon pollution by 32 percent nationally," and in addition, "Economists believe[d] that in 2030, the Clean Power Plan could save the country \$20 billion in climate related costs and deliver \$14 billion to \$34 billion in health benefits." This included preventing over 90,000 asthma attacks in children. VanDyke accused the EPA of construing its authority in a "breathtakingly expansive fashion." In 2019, Trump's EPA killed the CPP and replaced it with a much weaker plan. Even still, in 2022, the conservative majority on the Supreme Court employed the "major questions doctrine" for the first time and held that Congress did not grant the EPA proper authority under the CPP to implement emissions caps.

Clean Water

As solicitor general of Nevada, VanDyke worked with several states to roll back environmental protections aimed at

curtailing pollution from mining into streams and waterways. In *North Dakota v. EPA*, VanDyke joined a lawsuit that sought to invalidate the Obama administration's expansion of the Clean Water Act (CWA). The EPA announced in 2015 that it was broadening the definition of "Waters of the United States" so that more bodies of water were protected by the CWA. The expansion only affected around 3% of the nation's waterways, however, the lawsuit claimed that the new regulation was a gross overreach of government power that would cause states "unrecoverable monetary harm." The purpose of the rule was to protect vital streams and wetlands that provide drinking water for over 117 million Americans, filter pollution, and reduce the impacts of flooding and erosion.

VanDyke also authored an article arguing that the expansion of the scope of the CWA was an egregious agency power grab that imposed "financial and regulatory burdens on states." He concluded: "Subscribing to the delusions of King Midas, the agencies would chill federalism in the belief that they can perfect any water they touch." In addition, during a panel hosted by the Claremont Institute, an organization whose then-president stated that "multiculturalism and its politics of identity pose an existential threat to the American political order," VanDyke complained that "the EPA and the Army Corps have been trying to expand the meaning of the 'Waters of the US' . . . in order to expand their authority." In *Sackett v. EPA*, the Supreme Court largely agreed with VanDyke's deregulatory reasoning and limited the definition of "waters" under the CWA to "geographical features that are described in ordinary parlance as streams, oceans, rivers, and lakes."

Threats to Animals and Public Lands

As solicitor general of Nevada, VanDyke joined with three mining companies to oppose land use restrictions issued by the Department of the Interior that were intended to protect the habitat of the greater sage-grouse, a bird that is facing serious decline. VanDyke complained that it was a "top-down policy" and argued that there was "a lack of scientific data to support new restrictions" despite widespread evidence that land use and human development are threatening their habitat. Many Nevadans did not support the lawsuit, including then-Republican Governor Brian Sandoval who said the lawsuit "does not represent the state of Nevada, the governor or any state agencies."

VanDyke's position in the lawsuit would have opened ten million acres of public land for potential drilling and mining, threatening countless species and the long-term enjoyment of the land by all Nevadans.

In *Murr v. Wisconsin*, VanDyke led eight other states in filing an amicus brief that challenged an obscure Wisconsin zoning law. The case was brought by property owners who argued that the government had reduced the value of their land by imposing a regulation that required housing lots to be bigger, and therefore, that the government should compensate them for their loss. The Supreme Court sided with the government.

Defending Trump's Attacks on the Environment

His opposition to environmental regulations earned him his most recent job as deputy assistant attorney general for the Environmental and Natural Resources Division (ENRD) of the Department of Justice. Among other responsibilities, ENRD is in charge of representing federal agencies in litigation over environmental policy, natural resources, public lands, and Native American tribes. VanDyke joined ENRD shortly after Trump-appointee and outspoken climate

change denier, Jeffrey Clark, was confirmed to head the division. VanDyke and Clark had worked together before, including on the lawsuit challenging the Obama Clean Air Act regulations.

As Bloomberg noted at the time, “VanDyke joined the Justice Department in April and has helped defend against several high-profile lawsuits involving the Trump administration’s efforts to bolster energy development on public lands, including litigation over oil and gas development near New Mexico’s Chaco Canyon; federal royalty rates for production of federal fossil fuels; and the Bureau of Safety and Environmental Enforcement’s rollback of some safety rules for offshore drilling.”

He also defended a lawsuit brought by the Sierra Club and the state of California against the Bureau of Land Management for its decision to revoke hydraulic fracturing (“fracking”) regulations on federal and tribal lands that the Obama administration put in place. Further, he defended the Trump administration against multiple lawsuits brought by environmental groups who sued the government for its decision to reopen the Keystone Pipeline project. More specifically, the groups claimed that the U.S. Army Corps. of Engineers failed to review the potential for oil spills and other environmental damage before signing off on plans submitted by the pipeline developer.

In response to these claims, VanDyke told the judge that Trump enjoys “broad authority to revisit, reverse and undo prior decisions.”

Based on his record, VanDyke would certainly continue to advance his agenda to weaken public protections for clean air and clean water if appointed to the Supreme Court.

Opponent of Reproductive Rights

As solicitor general of Montana, VanDyke prioritized litigation that advanced his extreme anti-woman agenda. He submitted an amicus brief to the Supreme Court in support of Arizona’s 20-week abortion ban, arguing that “an unborn child can feel pain by twenty weeks’ gestation.” In this brief, VanDyke even asked the justices to reconsider *Roe v. Wade*. He cited “laws criminalizing the cruel infliction of pain on animals” as support for his argument that states should be able to restrict abortion beyond the parameters of *Roe*.

He also supported challenging the legality of “buffer zones,” which create a small zone outside of clinics through which patients and providers can enter without facing harassment from protesters. Although Montana had a similar buffer zone law to protect clinic entrances, VanDyke supported a challenge to Massachusetts’ buffer zone law, demonstrating his tendency to prioritize his conservative ideology over his actual job, which was to defend the laws of Montana.

Opponent of LGBTQ+ Rights

VanDyke worked as an allied attorney and a Blackstone Fellow for Alliance Defending Freedom (ADF), which “has supported the recriminalization of homosexuality in the U.S. and criminalization abroad; has defended state-

sanctioned sterilization of trans people abroad; has linked homosexuality to pedophilia and claims that a ‘homosexual agenda’ will destroy Christianity and society.” The Southern Poverty Law Center notes that “ADF has become one of the most influential groups informing the [Trump] administration’s attack on LGBTQ rights.”

In an article for the Harvard Law Record, VanDyke promoted the myth that same-sex marriage and families will harm children and society and that LGBTQ+ people are deviant and dangerous. He argued that “antidiscrimination laws are currently being used as effective weapons” against those who were free to discriminate before the protections were in place. In the same article, he writes favorably about conversion therapy, claiming that “police investigated a bishop for his advocacy of the view that homosexuals can leave the homosexual lifestyle (substantiated, incidentally, in a recent study by Robert Spitzner, the man who led the charge in the 1970s to delist homosexuality as a mental disorder).” Notably, Spitzner himself has apologized for his previous research on conversion therapy and recanted his study.

While in Montana, VanDyke regularly supported bans on same-sex marriage in other states (including contrary to the wishes of those other states’ elected officials). He joined a brief in support of the Defense of Marriage Act. He also joined an amicus brief in a case over whether a photography company violated a New Mexico antidiscrimination law by refusing to photograph a same-sex wedding. The brief argued that the photographer should be able to refuse to provide her services to a same-sex couple based on her personal opposition to same-sex marriage.

He also filed an amicus brief in a case challenging the constitutionality of a Hastings College of Law policy that prohibited student groups from discriminating against LGBTQ+ people in membership.

Opponent of Civil Rights

As solicitor general of Nevada, VanDyke joined prison payphone providers in challenging a Federal Communications Commission (“FCC”) rule capping rates on phone calls from prisons, which could reach as high as \$10 per minute. This rule was overturned during the first Trump administration and Trump’s new FCC chair refused to defend the rule.

VanDyke co-wrote an article in opposition to fair hiring policies that prohibit employers from asking applicants to disclose their criminal history on applications. According to the National Employment Law Project (“NELP”), about one-third of Americans have arrest or conviction records. This has “devastating effects” on the employment prospects of people of color in light of “decades of excessive policing and over-criminalization.” NELP asserts, “Ban-the-box is working, both by increasing employment opportunities for people with records and by changing employer attitudes toward hiring people with records.”

VanDyke and his co-authors apparently disagree, writing, “The so-called ‘ban the box’ movement is another example of burdensome, if well-meaning, regulations. To help individuals with a criminal background reenter the workforce, these rules prohibit employers from inquiring about criminal history until after extending an offer. While employers are allowed to rescind an offer upon learning about a past conviction that may call into question an applicant’s capacity to do the job in question, these jurisdictions often make it procedurally difficult to withdraw an offer — even where

there is good reason.”

Opponent of Consumer Rights

During VanDyke’s time as solicitor general of Montana, he sued to invalidate the Dodd-Frank Act. His brief asserted that the Consumer Financial Protection Bureau unconstitutionally vested power in a single director rather than a board, that its mandate violated the nondelegation doctrine by lacking an intelligible principle, and that the circumstances of the director’s recess appointment violated the Appointments Clause.

The Dodd-Frank Act has served a vital role in protecting consumers since the 2008 financial crisis. VanDyke’s hostility towards this important legislation demonstrates his disdain for regulations designed to protect the lives of everyday people.

Opponent of Worker Rights

During his time as solicitor general of Nevada, VanDyke led a 22-state coalition in a lawsuit to stop the Obama administration’s overtime rule. He listed his work on this case in his Senate Judiciary Committee questionnaire among his “most significant legal activities.” The rule, issued by the Department of Labor, raised the salary cut-off for overtime eligibility, which would have meant that about 4 million workers would be entitled to overtime pay. In his brief, VanDyke wrote that the Obama administration was attempting “to wield its rule as a battering-ram to force a species of minimum wage through the backdoor, without congressional approval.”

Opponent of Native American Rights

VanDyke filed an amicus brief in Coachella Water Valley Dist. v. Agua Caliente Band of Cahuilla Indians, a case that asked whether a tribe had a federally reserved right to the groundwater under their reservation. The Agua Caliente Reservation was formally established by the federal government in the late 19th century. Due to the arid desert climate, water is scarce in the region, and the tribe sued a state water distributor to enforce their right to groundwater beneath the reservation. In finding for the Agua Caliente tribe, the Ninth Circuit held that the government intended to reserve water rights when it established the reservation and that this included a right to groundwater. In support of the water district’s appeal before the Supreme Court, VanDyke argued in his brief that Agua Caliente’s lawsuit was a “nebulous claim that the federal reservation’s purpose included the need for water.”

Opponent of Immigrant Rights

VanDyke opposed expansion of Deferred Action for Childhood Arrivals (DACA); while he was solicitor general of Nevada, the state joined a lawsuit blocking the program. He also supported Trump’s efforts to withhold federal funding from jurisdictions that limit cooperation with federal immigration detainer requests (sanctuary cities).

Opponent of Public Education

As solicitor general of Nevada, VanDyke defended the state's school voucher program, which allowed parents to use taxpayer money to pay for their children's private school tuition. While in private practice, he also joined an amicus brief in support of an Arizona state law, which provided a tax credit for individuals who made donations to religious schools.

While at Harvard, VanDyke published an [article](#) arguing that it was constitutional to teach intelligent design in public schools. Intelligent design is a variation of "[creationism](#)," which the Supreme Court ruled in 1987 could not be taught in public schools. Holding that the teaching of creationism violated the Establishment Clause, a 7–2 Supreme Court majority [rejected](#) the practice as "impermissibly endor[s] religion." Despite this clear ruling, VanDyke argued that intelligent design is supported by enough evidence to be taught in schools, a strained conclusion that scholars have labeled "[incompetent nonsense](#)," "[insipid and error-filled](#)," and "[scientifically baseless](#)."

In addition to his promotion of a pseudoscientific school curriculum and a rejected theory of constitutional law, VanDyke's article misquoted Harvard biology professor Richard Lewontin. VanDyke portrayed Lewontin as supporting his advancement of intelligent design — when in fact, Lewontin had explicitly [denounced](#) it — by adding an erroneous word to his quote which changed the meaning entirely. A year after VanDyke's article was published, a federal judge in Pennsylvania [found](#) that intelligent design was not science, that it "cannot uncouple itself from its creationist, and thus religious, antecedents," and that it was unconstitutional to teach in a public-school science classroom.

As one person [wrote](#) about VanDyke:

"Mr. VanDyke may yet have a fine career as a lawyer, but I trust he has no intention of entering law teaching: scholarly fraud is, I fear, an inauspicious beginning for an aspiring law teacher. And let none of the many law professors who are readers of this site be mistaken: Mr. VanDyke has perpetrated (intentionally or otherwise) a scholarly fraud, one that may have political and pedagogical consequences."

Concerning Tenure on the Ninth Circuit

As previously feared, VanDyke's tenure on the Ninth Circuit exemplifies ideologically driven decisions that prioritize extreme policy shifts over established precedents. He's also used harmful and inappropriate language in his decisions, which has sparked a backlash even among his judicial colleagues.

Olympus Spa v. Armstrong | Judicial Temperance and LGBTQ+ rights

In *Olympus Spa v. Armstrong*, VanDyke sparked backlash when he used vulgar language to attack the Ninth Circuit's refusal to rehear a decision upholding Washington's public accommodations law. The law bars businesses from discriminating against transgender individuals, and the plaintiff spa owners in this case tried to ban transgender women from their facilities. In his dissent, VanDyke agreed and called the controversy "a case about swinging dicks."

He wrote: “You may think that swinging dicks shouldn’t appear in a judicial opinion . . . You’re not wrong. But as much as you might understandably be shocked and displeased to merely encounter that phrase in this opinion, I hope we all can agree that it is far more jarring for the unsuspecting and exposed women at Olympus Spa — some as young as thirteen — to be visually assaulted by the real thing.” He further wrote that it “feels like the supposed adults in the room have collectively lost their minds” and dubbed his colleagues’ decision as “woke judges’ willingness” to sacrifice constitutional rights “on the altar of ‘social progress.’”

In response to this inappropriate and offensive language, Judge McKeown, who authored the majority opinion in the case, also authored a separate statement joined by 26 fellow judges, including the chief judge. This statement noted that “[t]he American legal system has long been regarded as a place to resolve disputes in a dignified and civil manner or, as Justice O’Connor put it, to ‘disagree without being disagreeable.’ It is not a place for vulgar barroom talk.” VanDyke’s language “makes us sound like juveniles, not judges” and “undermines public trust in the courts.” Two additional judges filed a separate statement that simply states: “Regarding the dissenting opinion of Judge VanDyke: We are better than this.”

In addition to using provocative language, Judge Van Dyke’s dissent made assertions that had no support in the record, such as claiming that Washington’s law “will be used by sexual deviants to prey on women in female-only spaces.”

***Green v. Miss United States of America* | LGBTQ+ rights**

In *Green v. Miss United States of America*, Anita Green, a trans woman, sued the pageant under the Oregon Public Accommodations Act (OPAA) after being denied entry based on its “natural born female” rule. The pageant argued that applying the OPAA would violate its First Amendment rights. Writing for the panel, Judge VanDyke affirmed summary judgment for the pageant, holding that beauty pageants are expressive productions and that forcing the pageant to include Green would unconstitutionally compel speech.

VanDyke contended that the pageant expresses a message about “the celebration of biological women,” and that its ability to choose contestants is inseparable from that message. He further claimed that “there is no daylight between speech and speaker” in a pageant, where “who competes . . . is how the pageant speaks.” Requiring inclusion of a contestant who does not meet its definition of womanhood would “fundamentally alter the Pageant’s expressive message,” he wrote.

***United States v. Idaho* | Access to Reproductive Care**

In *United States v. Idaho*, VanDyke authored an order granting the Idaho legislature’s request to stay a district court injunction blocking enforcement of Idaho Code §18-622, a statute that prohibits physicians from performing abortions unless, among a few narrow exceptions, “the physician determine[s], in his good faith medical judgment and based on the facts known to the physician at the time, that the abortion was necessary to prevent the death of the pregnant woman.”

The federal government argued that the Idaho law is preempted by the Emergency Medical Treatment and Labor Act (EMTALA), which requires hospitals to provide stabilizing emergency medical care regardless of a patient's ability to pay, which has become a major point of conflict in the post-Dobbs environment. Although EMTALA theoretically preempts directly conflicting state laws, clinicians nonetheless face acute uncertainty. When a complication clearly threatens the patient's life, doctors may feel confident that an emergency abortion fits within state-law exceptions. Some conditions evolve unpredictably, and the risk of license revocation or criminal penalties may push physicians to delay necessary interventions until the threat is unmistakably grave — often too late to prevent catastrophic harm. The result, VanDyke's critics warn, is that patients' lives and health may be jeopardized by medical hesitation driven by legal ambiguity rather than clinical judgment.

Though the Supreme Court initially agreed to temporarily block Idaho's law, it was never able to issue a final ruling because the Trump Department of Justice stopped pursuing the case shortly after he took office in 2025.

***Duncan v. Bonta* | Second Amendment**

In *Duncan v. Bonta*, the Ninth Circuit upheld California's ban on magazines holding more than 10 rounds. In response, VanDyke released an 18-minute video dissent that accused the court of systematically undermining the Second Amendment. The video features VanDyke loading and unloading his own handguns in his chambers. He argued that "the majority of our court distrusts gun owners and thinks the Second Amendment is a vestigial organ of their living constitution," criticizing the court's "laughably 'heightened' Second Amendment scrutiny." He characterized his colleagues' approach to Second Amendment interpretation as akin to rational-basis review, which ensures that "no government regulation ever fails" under the circuit's test.

***E. Bay Sanctuary Covenant v. Biden* | Immigration**

In *East Bay Sanctuary Covenant v. Biden*, several nonprofit legal services organizations challenged a 2018 regulation (interim final rule) that rendered migrants ineligible for asylum if they crossed the southern border between ports of entry. The Ninth Circuit affirmed a temporary restraining order and a subsequent preliminary injunction blocking the rule, holding that it "irreconcilably conflicts with the INA and the expressed intent of Congress." The panel concluded that the Immigration and Nationality Act expressly allows migrants to apply for asylum "whether or not at a designated port of arrival," and that the rule was therefore "effectively a categorical ban" on a method of entry Congress permitted.

VanDyke dissented from the denial of rehearing en banc. He argued that the court improperly expanded organizational standing "beyond Article III's reach," contending that the majority's theory allowed organizations to sue whenever a policy produces even "one less client," which he warned "will lead to significant unintended consequences."

***McDougall v. County of Ventura* | Second Amendment**

In *McDougall v. County of Ventura*, VanDyke sat on a three-judge panel that reviewed a district court decision upholding Ventura County's COVID-19 restrictions. When the pandemic began in March 2020, the county issued stay-at-home orders instructing residents not to leave their homes except for essential work or to obtain essential goods. Two residents and several gun-rights organizations filed suit against Ventura County, arguing that the restrictions violated their Second Amendment rights by preventing them from purchasing firearms and ammunition that could not be bought online lawfully.

A federal district court dismissed the case, citing the Supreme Court's 1905 ruling in *Jacobson v. Massachusetts*, which affirmed broad governmental authority to curb epidemics, as well as the Ninth Circuit's existing Second Amendment jurisprudence. In his opinion, VanDyke wrote that "the acute need for Second Amendment rights during temporary crises was well-understood by our Founders," asserting that emergencies heighten, rather than diminish, the importance of constitutional protections.

Conclusion

Throughout his career, Lawrence VanDyke has shown his dedication to serving partisan interests at the expense of clean air, clean water, reproductive rights, LGBTQ+ equality, criminal justice, and education. He has consistently advocated for ideologically extreme positions. His record suggests that he will be far more interested in advancing his agenda than in doing the day-to-day work of a Supreme Court justice.