

# STUART KYLE DUNCAN ON LGBTQ RIGHTS

## Highlights:

- Kyle Duncan has an extreme history of anti-LGBTQ actions and remarks.
  - Duncan denigrated same-sex marriage when he said it would “do incalculable damage to our civic life in this country,” and that if it were legalized it would “imperil civic peace.”
  - After the Supreme Court legalized same-sex marriage, Duncan called the court “an abject failure.”
  - Duncan has repeatedly challenged same-sex marriage in the judiciary.
    - Duncan wrote briefs for the Supreme Court in opposition to same-sex marriage.
    - Duncan represented Louisiana in their attempt to continue their ban on same-sex marriage.
    - Duncan represented a woman in Alabama that wanted to bar her former spouse from seeing their children due to the spouse’s sexual orientation.
  - From 2012 to 2014, Duncan served as the general counsel for the Becket Fund for Religious Liberty.
    - The Becket Fund for Religious Liberty was described by the Southern Poverty Law Center as one of “the hardline groups promoting ‘religious freedom restoration acts’ to justify anti-gay discrimination.”
  - As assistant attorney general for Louisiana, Duncan argued against allowing two fathers to change their adopted child’s birth certificate to include both of their names.
  - Duncan has an extreme history of intolerance and bigotry towards the transgender community.
    - Duncan was the lead litigator for North Carolina in their legislative attempt to bar transgender students from using the bathrooms that matched their identity.
    - Duncan represented Virginia in the state’s attempt to bar a transgender student from using the bathroom that matched their identity.
    - Duncan repeatedly mocked a transgender defendant in his courtroom and refused to use her preferred gender pronouns.
      - Duncan continued his attacks on the transgender defendant by purposefully “dead-naming” her.
      - Duncan theorized that using a defendant's preferred pronoun could “unintentionally convey its tacit approval of the litigants' underlying legal position.”
  - Duncan’s confirmation to the federal judiciary was praised by the Family Research Council and their president Tony Perkins.
    - Perkins has been an outspoken opponent of LGBTQ rights and has linked homosexuality to pedophilia.

## Duncan Committed Repeated Bigoted Actions Towards The LGBTQ Community

### DUNCAN ROUTINELY MADE BIGOTED REMARKS TOWARDS SAME-SEX MARRIAGE

**Duncan Wrote That Gay Marriage Would “Do Incalculable Damage To Our Civic Life In This Country.”** According to NBC News, “Prior to the Supreme Court’s 2015 landmark same-sex marriage ruling, Duncan wrote an amicus brief claiming such a ruling would ‘do incalculable damage to our civic life in this country.’ He argued gay marriage must be resolved ‘at the state level.’” [NBC News, [4/25/18](#)]

**Duncan Decried The Supreme Court’s Ruling In Favor Of Same-Sex Marriage Saying “It Imperils Civic Peace.”** According to the Washington Blade, “After the Supreme Court ruling in favor of same-sex marriage, Duncan said the decision was an ‘abject failure’ and ‘imperils civic peace.’ Later, Duncan suggested the ruling was invalid, saying it ‘raises a question about the legitimacy of the court.’” [Washington Blade, [4/24/18](#)]

**Duncan Said The Consequences For Same-Sex Marriage Were “Unforeseen.”**

**Duncan Argued That The Consequences For Same-Sex Marriage Were “Unforeseen.”** According to WDSU, “During the hearing, attorney Kyle Duncan, special counsel for the Louisiana attorney general's office, argued same-sex weddings represent a brand new perspective on marriage. He added that the consequences are ‘unforeseen’ because the country has only 10 years of experience with gay marriage, so states don’t have enough information about what will happen if they are allowed.” [WDSU, [1/12/15](#)]

### **Duncan Had A History Of Anti-Same-Sex Marriage Writings**

**Duncan Said Legalizing Same-Sex Marriage Would “Do Incalculable Damage To Our National Civic Life.”**

According to Duncan’s article in the Public Discourse, “The fact that Americans have reached different conclusions about same-sex marriage is not a sign of a constitutional crisis that requires the Supreme Court to step in. On the contrary, it’s a sign that our Constitution is working the way it should. In our federal system, this issue must be resolved at the state level. To resolve it through federal judicial decree would demean the democratic process, marginalize the views of millions of Americans, and do incalculable damage to our national civic life.” [Public Discourse-Kyle Stuart Duncan, [4/23/15](#)]

**Duncan On Legalized Same-Sex Marriage Impacting The Institution Of Marriage: “Moving The Man-Woman Definition From Marriage May Signify A Cultural Shift Towards A New Vision Of Marriage In Those States.”**

According to Duncan’s article in the Public Discourse, “One should not lightly conclude that these victories arose merely from savvy politics. To the contrary, removing the man-woman definition from marriage may signify a cultural shift towards a new vision of marriage in those states. Take New York, for example, which adopted same-sex marriage in 2011. Windsor viewed this as no mere alteration of a statute, but as an epochal event. What New Yorkers did, the Court explained, demanded ‘both the community’s considered perspective on the historical roots of the institution of marriage and its evolving understanding of the meaning of equality.’ A decision constitutionalizing same-sex marriage would obliterate the significance of that remarkable democratic victory.” [Public Discourse-Kyle Stuart Duncan, [4/23/15](#)]

### **Duncan Attacked The Supreme Court After Their Ruling On Same-Sex Marriage**

**Duncan Decried The Supreme Court’s Ruling On Same-Sex Marriage And Called It An “Abject Failure.”** According to the Washington Blade, “After the Supreme Court ruling in favor of same-sex marriage, Duncan said the decision was an ‘abject failure’ and ‘imperils civic peace.’ Later, Duncan suggested the ruling was invalid, saying it ‘raises a question about the legitimacy of the court.’” [Washington Blade, [4/24/18](#)]

**Duncan Called The Legitimacy Of The Supreme Court Into Question After They Ruled In Favor Of Same-Sex Marriage.** According to the Washington Blade, “After the Supreme Court ruling in favor of same-sex marriage, Duncan said the decision was an ‘abject failure’ and ‘imperils civic peace.’ Later, Duncan suggested the ruling was invalid, saying it ‘raises a question about the legitimacy of the court.’” [Washington Blade, [4/24/18](#)]

## **DUNCAN REPEATEDLY ATTACKED SAME-SEX MARRIAGE VIA THE JUDICIAL SYSTEM**

### **Duncan Authored A Brief In Opposition To The Supreme Court Taking Up Federalizing Same-Sex Marriage**

**2015: Duncan Filed A Brief With The Supreme Court On Behalf Of 15 Opposing Nationwide Legality Of Same-Sex Marriage.** According to the Washington Blade, “When same-sex marriage came before the Supreme Court in 2015, Duncan filed a brief on behalf of 15 states in opposition to nationwide marriage equality. Additionally, he led efforts to keep in place marriage bans in Louisiana and Virginia.” [Washington Blade, [4/24/18](#)]

### **Duncan Represented Louisiana At The Supreme Court In Their Fight Against Recognizing Federal Marriage Equality**

**January 2015: Duncan Argued In Favor Of Louisiana’s Same-Sex Marriage Ban At A Hearing To Determine If The Case Would Be Heard By The Supreme Court.** According to WDSU, “During the hearing, attorney Kyle Duncan, special counsel for the Louisiana attorney general's office, argued same-sex weddings represent a brand new perspective on marriage.

He added that the consequences are ‘unforeseen’ because the country has only 10 years of experience with gay marriage, so states don’t have enough information about what will happen if they are allowed.” [WDSU, [1/12/15](#)]

*January 2015: The Supreme Court Announced They Would Not Hear Louisiana’s Challenge To Same-Sex Marriage*

**January 2015: The U.S. Supreme Court Announced That They Would Not Hear Louisiana’s Challenge To Same-Sex Marriage.** According to WDSU, “The U.S. Supreme Court announced Monday that it will not consider Louisiana's same-sex marriage case during this current term.” [WDSU, [1/12/15](#)]

### **Duncan Represented A Woman Seeking To Bar Her Former Spouse Visitation Rights Due To Their Sexual Orientation**

**Duncan Represented A Women Seeking To Bar Her Former Spouse Visitation Rights Due To Their Sexual Orientation.** According to the Washington Blade, “Although the Supreme Court ruled contrary to his views, Duncan wasn’t done. In Alabama, he represented the birth mother of three children who refused visitation rights to her former same-sex spouse. Although the Alabama Supreme Court ruled in the birth mother’s favor, the U.S. Supreme Court reversed that decision in accordance with Obergefell.” [Washington Blade, [4/24/18](#)]

*The Alabama Supreme Court Ruled In Duncan’s Favor, With The U.S. Supreme Court Later Overturning It*

**The Alabama Supreme Court Ruled In Duncan’s Favor; However, It Was Later Overturned By The U.S. Supreme Court.** According to the Washington Blade, “Although the Alabama Supreme Court ruled in the birth mother’s favor, the U.S. Supreme Court reversed that decision in accordance with Obergefell.” [Washington Blade, [4/24/18](#)]

### **2012-2014: DUNCAN SERVED AS GENERAL COUNSEL FOR THE ANTI-LBBTQ GROUP THE BECKET FUND FOR RELIGIOUS LIBERTY**

**2012-2014: Duncan Served As General Counsel For The Becket Fund For Religious Liberty.** According to Becket Fund For Religious Liberty’s press release, “Kyle served as Louisiana’s first solicitor general from 2008-2012, and then as general counsel of Becket from 2012-2014.” [Becket Fund For Religious Liberty-Press Release, [4/24/18](#)]

### **The Becket Fund Was A Leading Proponent Of LGBTQ Rights**

**The Becket Fund For Religious Liberty Was Included In The Southern Poverty Law Center’s Website Describing Groups That Promote “Religious Liberty And The Anti-LGBT Right.”** According to the Southern Poverty Law Center, “The hardline groups promoting ‘religious freedom restoration acts’ to justify anti-gay discrimination. [...] The Becket Fund for Religious Liberty.” [Southern Poverty Law Center, [2/11/16](#)]

**The Becket Fund Worked To Restrict Adoptions To Same-Sex Couples.** According to the Southern Poverty Law Center, “Becket has also been active in adoption cases in Massachusetts and Illinois, where Catholic Charities abandoned its longstanding adoption work rather than place children with same-sex couples.” [Southern Poverty Law Center, [2/11/16](#)]

### **The Becket Fund Had Ties To The National Organization For Marriage (NOM), A National Group Against Same-Sex Marriage**

**Southern Poverty Law Center: The Becket Fund Was Associated With The National Organization For Marriage (NOM) An Anti-LGBT Group.** According to the Southern Poverty Law Center, “Becket also has ties to the National Organization for Marriage (NOM), an anti-LGBT group whose sole purpose has been to stop same-sex marriage.” [Southern Poverty Law Center, [2/11/16](#)]

- **NOM Was Formed To Oppose Same-Sex Marriage Across The Country.** According to the National Organization For Marriage’s Website, “Founded in 2007 in response to the growing need for an organized opposition

to same-sex marriage in state legislatures, NOM serves as a national resource for marriage-related initiatives at the state and local level.” [National Organization for Marriage, Accessed [6/24/24](#)]

## **DUNCAN ARGUED ON BEHALF OF LOUISIANA TO REFUSE A GAY COUPLE THEIR RIGHT TO CHANGE THEIR CHILD’S BIRTH CERTIFICATE TO INCLUDE BOTH OF THEIR NAMES**

### **Oren Adar and Mickey Ray Smith Wanted To Have Their Adopted Child’s Birth Certificate Changed To Include Their Names**

**Adar And His Husband Smith Wanted To Change Their Adopted Child’s Birth Certificates To Include Their Names.** According to Watermark, “The boy was born in Louisiana in 2005 and legally adopted in New York in 2006. The conflict began when Adar and Smith wanted the birth certificate changed, replacing the biological parents' names with both of the child's adopted parents.” [Watermark, [10/12/11](#)]

### **2010: A Federal Court Ruled In The Men’s Favor To Add Their Names To Their Adopted Child’s Birth Certificate**

**2010: The Fifth Circuit Ruled In Favor Of Adding Two Gay Menes Names To The Birth Certificate Of Their Adopted Child.** According to Courthouse News Service, “The Louisiana registrar must issue a birth certificate listing a gay couple as the parents of an adopted son born in Shreveport, the 5th Circuit ruled. The couple then applied for a new birth certificate listing them as the parents of their adopted son, who was born in Louisiana. Louisiana registrar Darlene W. Smith refused to issue the certificate, citing state laws barring unmarried couples from adopting children in Louisiana.[Courthouse News Service, [2/19/10](#)]

### **2011: Duncan And The State Of Louisiana Argued Against The Fathers**

**The State Argued That There Would Be No Harm Caused If The Father’s Names Were Not Listed On The Birth Certificate.** According to the San Diego Union-Tribune, “Among the state’s arguments is that the couple has no standing for a lawsuit because the failure to have both men’s names on the birth certificate hasn’t been proven to have caused any harm.” [San Diego Union-Tribune, [1/18/11](#)]

**Duncan Argued That Louisiana Could Not Recognize The Fathers As Parents On The Birth Certificate Because Louisiana Did Not Recognize Same-Sex Marriage.** According to SI Live, “They want both names on the certificate for ‘understandable symbolic purposes. But it does not create an injury ... unless it is linked to a real and immediate threat,’ Duncan said. [...] He said the question before the court is how state records ‘should deal with a relationship ... which the state cannot recognize -- for same-sex parents.’” [SI Live, [10/8/09](#)]

### **October 2011: The Men Lost Their Appeal To The Supreme Court To Hear Their Case**

**October 2011: The Men Lost Their Appeal To The Supreme Court.** According to Watermark, “An Orlando gay couple has lost an appeal requesting that the Supreme Court consider their case to have both parents' names placed on their adopted son's birth certificate.” [Watermark, [10/12/11](#)]

## **DUNCAN PARTICIPATED IN LAWSUITS ANTAGONIZING TRANSGENDER PEOPLE**

### **Duncan Was The Appellate Attorney For North Carolina In Their Legislative Attempt To Ban Transgender People From Using The Bathroom That Matched Their Identity**

**Duncan Was As The Appellate Attorney For North Carolina When They Argued For Banning Transgender People From Using The Bathroom Of Their Choice.** According to The Hill, “Duncan previously served as the appellate counsel

for North Carolina officials arguing in favor of a state law banning transgender people from using the bathroom of their choice.” [The Hill, [1/17/20](#)]

- **The North Carolina Bathroom Bill Prohibited Trans Teens From Using Bathrooms That Aligned With Their Gender Identity.** According to The Nation, “As a lawyer he has argued at the Supreme Court against same-sex marriage, supported same-sex marriage bans at the state level, and was the lead litigator defending North Carolina’s ‘bathroom bill,’ which prohibited trans teens from using bathrooms that align with their gender identity.” [The Nation, [3/15/23](#)]

*March 2017: North Carolina Rolled Back Portions Of The Bill That Included The Ban On Trans People Using The Bathroom Of Their Choice*

**March 2017: North Carolina Repealed Portions Of The Bill That Included The Requirement That Trans People Use The Bathroom That Matched Their Birth Certificate.** According to NPR, “North Carolina has repealed portions of the state’s controversial ‘bathroom bill,’ including the requirement that trans people use the bathroom that matches their birth certificate, member station WUNC reports.” [NPR, [3/30/17](#)]

### **Duncan Represented A Virginia School District’s Litigation Against A Transgender Student Using The Bathroom That Matched Their Identity**

**2017: Duncan Represented A Virginia School District In Their Litigation Against A Transgender Student Using The Bathroom That Aligned With Their Gender Identity.** According to NBC News, “Last year, for example, he represented Virginia’s Gloucester County School Board in their case against Gavin Grimm, a transgender high school student who was unable to use the restroom that aligned with his gender identity.” [NBC News, [4/25/18](#)]

*August 2020: The Case Was Decided In The Student’s Favor*

**August 2020: The Case Was Decided In The Student’s Favor.** According to the ACLU’s website, “Represented by the ACLU and ACLU of Virginia, Gavin sued his school board for discriminating against him in violation of the Equal Protection Clause and Title IX of the U.S. Education Amendments of 1972, a federal law prohibiting sex discrimination by schools. After four years of litigation—including a trip to the Supreme Court and back—the U.S. District Court for the Eastern District of Virginia ruled in favor of Gavin on all his claims. The U.S. Court of Appeals for the Fourth Circuit affirmed the ruling in favor of Gavin on August 26, 2020.” [ACLU, Accessed [6/24/24](#)]

### **Duncan Repeatedly Attacked The Transgender Community**

**Duncan Asserted That Calling Transgender Defendants By Their Chosen Pronouns “May Unintentionally Convey Its Tacit Approval Of The Litigants Underlying Legal Position.”** According to NBC News, “Duncan goes on to warn that respecting a transgender person’s gender in the same way courts respect a cisgender person’s gender ‘may unintentionally convey its tacit approval of the litigant’s underlying legal position.’ He warns that respecting transgender people’s gender identities ‘may well turn out to be more complex than at first it might appear’ because of a ‘galaxy’ of genders, citing what he says is a ‘widely circulated’ University of Wisconsin LGBTQ+ Resource Center guide to pronouns. (A Google reverse image search of the pronoun guide included in Duncan’s opinions returned no matches.)” [NBC News, [1/16/20](#)]

### **Duncan Refused To Use A Defendant’s Preferred Pronouns**

**A Defendant, Katherine Jett, Filed A Motion To Change Her Name And Gender To What Matched Her Identity.** According to the Advocate, “Katherine Nicole Jett, a federal prisoner since a 2012 conviction, filed a motion in court to change the name and gender marker on portions of her case file in order to accurately reflect her legally changed name and her gender identity.” [Advocate, [1/24/20](#)]

**Duncan Mocked Jett’s Chosen Pronouns.** According to NBC News, “Jett’s appeal appeared before the 5th Circuit, where Duncan sits. In his majority opinion, Duncan vacated the lower court ruling that denied Jett’s appeal, saying the court lacked

jurisdiction, but then he proceeded to mock Jett's court motion that she be referred to using female pronouns and her new name.” [NBC News, [1/16/20](#)]

- **Duncan Intentionally Misgendered Jett.** According to NBC News, “Duncan refers to Jett only using ‘he’ pronouns throughout and refers to her as a ‘gender-dysphoric’ person, instead of as a transgender person. ‘Federal courts sometimes choose to refer to gender-dysphoric parties by their preferred pronouns,’ Duncan wrote, and ‘our court has gone both ways.’” [NBC News, [1/16/20](#)]
- **Duncan Called Jett’s Request To Use Her Preferred Pronouns a “Quixotic Undertaking.”** According to The Hill, “The defendant had asked to change Norman Varner to Kathrine Nicole Jett on previous conviction records as well as require the use of female pronouns. Duncan called the latter request a ‘quixotic undertaking.’” [The Hill, [1/17/20](#)]

*Duncan Called Jett “Gender Dysphoric”*

**Duncan Referred To Jett As “Gender Dysphoric.”** According to The Hill, “Duncan went on to refer to Kathrine Nicole Jett, who was known as Norman Varner in previous court hearings, as ‘gender dysphoric.’” [The Hill, [1/17/20](#)]

### **Duncan Antagonized Transgender People Online**

**Duncan Issued An Advisory Opinion That Dismissed A Transgender Defendant's Chosen Pronouns.** According to NBC News, “Stuart Kyle Duncan, a judge on the 5th U.S. Circuit Court of Appeals, issued an advisory opinion Wednesday that dismissed a transgender defendant's chosen pronouns and the broader concept of gender identity, just less than two years after LGBTQ advocates warned that Duncan would not rule fairly if confirmed to the bench.” [NBC News, [1/16/20](#)]

**Duncan Wrote Respecting Transgender Pronouns Would Be More Complex Because There Was A “Galaxy” Of Genders.** According to NBC News, “Duncan goes on to warn that respecting a transgender person's gender in the same way courts respect a cisgender person's gender ‘may unintentionally convey its tacit approval of the litigant's underlying legal position.’ He warns that respecting transgender people's gender identities ‘may well turn out to be more complex than at first it might appear’ because of a ‘galaxy’ of genders, citing what he says is a ‘widely circulated’ University of Wisconsin LGBTQ+ Resource Center guide to pronouns. (A Google reverse image search of the pronoun guide included in Duncan's opinions returned no matches.)” [NBC News, [1/16/20](#)]

*Duncan Cited The University Of Wisconsin LGBTQ+ Resource Center To Justify His Opinion That Using Correct Pronouns Would Be “More Complex”*

**Duncan Said The University Of Wisconsin LGBTQ+ Resource Center Pronoun Guide Was The Basis For His Opinion That Using Correct Pronouns Would Be A Complex Undertaking Because There Were So Many.** According to NBC News, “Duncan goes on to warn that respecting a transgender person's gender in the same way courts respect a cisgender person's gender ‘may unintentionally convey its tacit approval of the litigant's underlying legal position.’ He warns that respecting transgender people's gender identities ‘may well turn out to be more complex than at first it might appear’ because of a ‘galaxy’ of genders, citing what he says is a ‘widely circulated’ University of Wisconsin LGBTQ+ Resource Center guide to pronouns. (A Google reverse image search of the pronoun guide included in Duncan's opinions returned no matches.)” [NBC News, [1/16/20](#)]

- **NBC News Was Unable To Find The University Of Wisconsin LGBTQ+ Resource Center Guide That Duncan Asserted He Copied The Language From.** According to NBC News, “Duncan goes on to warn that respecting a transgender person's gender in the same way courts respect a cisgender person's gender ‘may unintentionally convey its tacit approval of the litigant's underlying legal position.’ He warns that respecting transgender people's gender identities ‘may well turn out to be more complex than at first it might appear’ because of a ‘galaxy’ of genders, citing what he says is a ‘widely circulated’ University of Wisconsin LGBTQ+ Resource Center guide to pronouns. (A Google reverse image search of the pronoun guide included in Duncan's opinions returned no matches.)” [NBC News, [1/16/20](#)]

# DUNCAN'S CONFIRMATION TO THE FEDERAL JUDICIARY WAS PRAISED BY A LEADING ANTI-LGBTQ GROUP

## April 2018: Duncan Was Confirmed By The U.S. Senate To Serve As A Judge On The United States Court Of Appeals For The Fifth Circuit

**April 2018: Duncan Was Confirmed For A Federal Judgeship By The U.S. Senate.** According to Leadership Connect, "The U.S. Senate confirmed Stuart Kyle Duncan in a 50-47 vote to be Circuit Judge on the United States Court of Appeals for the Fifth Circuit, which covers Texas, Louisiana, and Mississippi." [Leadership Connect, [4/24/18](#)]

## Duncan's Confirmation To The Federal Judiciary Was Praised By The Family Research Council, A Leading Anti-LGBTQ Group,

**Duncan's Confirmation To The Federal Judiciary Was Praised By Tony Perkins, President Of The Anti-LGBTQ Family Research Council.** According to the Washington Blade, "Praising the Senate for confirming Duncan, however, was Tony Perkins, president of the anti-LGBT Family Research Council. Perkins also praised Trump for the nature of his judicial nominees." [Washington Blade, [4/24/18](#)]

- **The Family Research Council Described Homosexuality As "Harmful To The Persons Who Engage In It."** According to the Family Research Council's Website, "Homosexual conduct is harmful to the persons who engage in it as it is associated with negative physical and psychological health effects. Thus, it is also harmful to society at large." [Family Research Council, Accessed [6/21/24](#)]
- **Perkins Said That Pedophilia Was A "Homosexual Problem."** According to Tony Perkins via the Southern Poverty Law Center, "While activists like to claim that pedophilia is a completely distinct orientation from homosexuality, evidence shows a disproportionate overlap between the two. ... It is a homosexual problem." [Southern Poverty Law Center, Accessed [6/24/24](#)]