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Alison Nathan, Nominee to the U.S. District Court for the Southern District of New York,
Was Held Over on June 23 in the Senate Judiciary Committee

Action Item: Please Ask the Senate Judiciary Committee to Vote against Nathan's Confirmation.

Nathan's Appointment Raises the Question: Is There Still An "Experience" Standard for Federal Judges, or are Appointments Based on Other Factors?

Alison Nathan Believes International Law Can be Made Binding When Determining the Meaning of the U.S. Constitution. Nathan has incorrectly written that: "[t]he *binding international law doctrinal arguments* ... could have been considered and potentially deployed effectively by the [Supreme] Court as a factor in [determining the meaning of the Eighth Amendment in *Roper v. Simmons*]." ¹ Further, Nathan is unduly critical of former Chief Justice Rehnquist and Justice Scalia and their proper opposition to the use of foreign law, even labeling Scalia's legitimate concerns as "illogic[al]." ²

Nathan Expresses Hope for the Increased Use of International Law in U.S. Constitutional Interpretation. Nathan claims that while the use of international law in *Roper* did not go as far as it could have, the story of the case holds promise for future advancement of the use of international law: "[*Roper*] is a story of cautious engagement, legal incrementalism, and the critical importance of human rights advocacy beyond the courtroom. And while the *Roper* Supreme Court strategy regarding international human rights law very much embodies caution and gradualism, *its effectiveness holds promise and lessons for future advancement.*" ³ Nathan concludes with praise for the lawyers who improperly argued for the inclusion of international law – calling them "savvy and successful," ⁴ and expresses hope that the Court will increasingly rely on international law in their decisions: "As these trends continue, surely the Court will increase its understanding and 'internalization' of international human rights law arguments." ⁵

Alison Nathan is Not Qualified for the Federal Bench. Alison Nathan has received an American Bar Association rating unusually low for Judicial Nominees: "Majority Qualified, Minority Not Qualified." ⁶ Her rating is one of the lowest rankings issued by the ABA, but even it is *surprisingly generous* considering her experience in comparison to the ABA's stated "Judicial Standards:"

ABA Minimal Standard of Experience ⁷	Alison Nathan's Experience
"at least <u>twelve years' experience in practice of the law</u> "	8 years total: 2 years as a law clerk; ⁸ 4 years in practice, ⁹ 1.5 years with the White House Counsel's Office, ¹⁰ and 9 months as Special Counsel to the New York Solicitor General ¹¹
"Substantial courtroom and trial experience as a lawyer or trial judge"	Her Senate Questionnaire indicates she has never acted as sole, or even chief counsel, in <i>any</i> court setting. ¹²

Alison Nathan Openly Opposes an Individual's Second Amendment Right to Bear Arms. In a Cornell Law Review article scrutinizing the Lautenberg Amendment, Nathan drew the incorrect conclusion that: "... nearly all federal and state courts agree *that the Second Amendment does not guarantee an individual private right to bear arms*, unrelated to a state's right to maintain a militia."¹³

Alison Nathan is an Aggressive LGBT Political Activist and Seeks to Impose the LGBT Agenda Through Litigation. Beginning in her college days, Alison Nathan has actively pushed the homosexual agenda. As a student, Ms. Nathan favored separatism on her college campus, advocated for an exclusive LGBT dormitory.¹⁴ Additionally, her leadership positions and awards during this time recognized her activism and aggressive political advocacy.¹⁵ Nathan continued her support for this agenda on the Obama-Biden 2008 campaign as a member of the LGBT issues policy committee.¹⁶ Most significantly, Nathan has allowed her own personal beliefs and practices¹⁷ on LGBT issues to influence the policies she would advocate and potentially impose on others through the judiciary. Her past efforts to impose a personal agenda include providing pro-bono representation of the "ACLU, Lambda Legal, Servicemembers Legal Defense Network, and individual service members in challenges to the military's criminal prohibition of consensual sodomy and the so-called "Don't Ask, Don't Tell" policy."¹⁸

¹ Alison Nathan, "Arresting Juxtapositions: *The Story of Roper v. Simmons*" in HUMAN RIGHTS ADVOCACY STORIES 344 (2009). Nathan's belief that foreign law should be used to interpret U.S. law is also stated in her less formal writings. On a legal blog entry titled, "What Does Foreign Law Teach Us About the Constitutionality of Methods of Execution," Nathan asserted her personal opinions about the applicability of foreign law / international law in the determining the meaning of the U.S. Constitutional text "cruel and unusual punishment" found in the Eighth Amendment. (In the case of *Baze v. Rees*, 553 U.S. 35 (2008), it was argued that execution by lethal injection would violate the 8th Amendment prohibition of cruel and unusual punishment.)

Nathan stated in her personal capacity (not her capacity representing a client): "You mention foreign law, but ... *international law may also be relevant to the [constitutional] analysis.*" See, Orin Kerr, *What Does Foreign Law Teach Us About the Constitutionality of Methods of Execution?*, January 2, 2008. Available at: <http://volokh.com/posts/1190749819.shtml> (emphasis added).

Nathan continues, "Petitioners in *Baze* argue that there is a national consensus regarding executions that involve anesthetized deaths And this appears to coincide with the international law consensus on this point ... international law requires that executions inflict the minimum possible pain and suffering." *Id.* Nathan's discussion of foreign and international law in the context of determining the meaning of the Eighth Amendment to U.S. Constitution is both inappropriate and dangerous.

² *Id.* at 341-42. Nathan wrote: "... Scalia who, like the Missouri Attorney General, concluded that, by accepting the principle that the United States should be influenced by international norms limiting the exercise of state power in inflicting certain punishments, it would necessarily follow that the United States would also be constrained in its ability to provide greater rights protections." In the previous paragraph, Nathan unduly attempted to ridicule these legitimate concerns, by claiming that they "suffer from illogic" *Id.* at 342.

³ *Id.* at 318. (Emphasis added.)

⁴ *Id.* at 318.

⁵ *Id.*

⁶ *Judicial Nomination Materials: 112th Congress*, <http://judiciary.senate.gov/nominations/Materials112thCongress.cfm>

⁷ "... a prospective nominee to the federal bench ordinarily should have at least twelve years' experience in the practice of law In evaluating the professional qualifications of a prospective nominee, the Committee recognizes that substantial courtroom and trial experience as a lawyer or trial judge is important." American Bar Association, *Standing Committee of the Federal Judiciary*, page 3. Available at: http://www.americanbar.org/content/dam/aba/migrated/scfedjud/federal_judiciary09.authcheckdam.pdf

⁸ Nathan received her J.D. in 2000 (Less than 12 years ago) and subsequently clerked for Judge Betty Fletcher of the 9th Circuit Court of Appeals, and for Justice John Paul Stevens of the U.S. Supreme Court.

⁹ Nathan worked as Associate with WilmerHale law firm from 2002-2006. See, Nathan Questionnaire, Senate Judiciary Committee; available at:

<http://judiciary.senate.gov/nominations/112thCongressJudicialNominations/upload/AlisonNathan-PublicQuestionnaireUpdate.pdf>

¹⁰ The White House, President Obama Names Alison J. Nathan as Nominee for the United States District Court, March 31, 2011, <http://www.whitehouse.gov/the-press-office/2011/03/31/president-obama-names-alison-j-nathan-nominee-united-states-district-cou>

¹¹ Nathan also spent a total of three (3) years teaching at a variety of law schools, which is not typically considered “practicing” law – and even if included, still falls short of a twelve (12) year minimum.

¹² *Judicial Nomination Materials: 112th Congress*,

<http://judiciary.senate.gov/nominations/Materials112thCongress.cfm>

¹³ Alison J. Nathan, *At the Intersection of Domestic Violence and Guns: The Public Interest Exception and the Lautenberg Amendment*, Cornell Law Review, 85 Cornell L. Rev. 848, 849 (1999-2000)

¹⁴ Michael Winerip, *New York Times*, April 20, 1994, quoted, “It’s why Alison Nathan, of the Lesbian Gay and Bisexual Alliance, will continue pushing for a gay dorm. Ms. Nathan said that in a regular dorm, she can’t be open about having a woman friend and feel comfortable.” <http://www.nytimes.com/1994/04/20/us/in-school.html?pagewanted=3&src=pm>

¹⁵ Nathan served as president of Cornell’s Lambda Law student group and was the recipient of the Uncommon Legacy Foundation Scholarship, which recognized her leadership in the lesbian community (Ty Cobb, April 1, 2011, <http://www.hrcbackstory.org/2011/04/former-associate-white-house-counsel-nominated-to-federal-bench/>).

¹⁶ Paul Schindler, *Gay City News*, April, 1, 2011,

http://www.chelseanow.com/articles/2011/04/01/gay_city_news/news_in_brief/today/doc4d962db2aa96b989935203.txt

¹⁷ “Former associate White House counsel Alison Nathan, an out lesbian...lives in New York with her partner, Meg Satterthwaite, and their twin sons Oliver and Nathan.”

Chris Geidner, *Poliglot*, March 31, 2011, <http://www.metroweekly.com/poliglot/2011/03/alison-nathan-former-obama-whi.html>

¹⁸ Nick Mattos, April 11, 2011, <http://blogout.justout.com/?tag=alison-j-nathan>