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The Honorable Patrick J. Bumatay
Judge, U.S. Court of Appeals for the Ninth Circuit
Comprehensive Research

Red List Note: This prospect is designated as a red list candidate. The purpose of the “red list” designation is not to denigrate a prospect but rather to explain that serious concerns make them untenable given the availability of “green list” prospects that do meet the exceedingly high standard necessary for Supreme Court prospects. This is a research summary and, therefore, may not include all information located, and is subject to periodic updates and revisions. Content may not always reflect the latest developments.

Age: 48 (born Feb. 14, 1978)

2019 – Present: Judge, U.S. Court of Appeals for the Ninth Circuit

2018 – 2019: Counselor to the Attorney General, Office of Attorney General, U.S. Dep’t of Justice

2012 – 2019: Assistant U.S. Attorney, U.S. Attorney’s Office for the Southern District of California, San Diego

2017 – 2018: Counsel & Senior Counsel to the Deputy Attorney General, Office of the Deputy Attorney General, U.S. Dep’t of Justice

2017; 2007 – 2008; 2005 – 2006: Various Positions, Office of Legal Policy, U.S. Dep’t of Justice

2010 – 2012: Private Practice, Morvillo Abramowitz, NY

2009 – 2010: Law Clerk, The Hon. Sandra Townes, U.S. District Court for the Eastern District of New York

2008 – 2009: Counsel to the Associate Attorney General, U.S. Dep’t of Justice

2006 – 2007: Law Clerk, The Hon. Timothy Tymkovich, U.S. Court of Appeals for the Tenth Circuit

Education: Harvard University (J.D.) 2006; Yale University (B.A.) 2000.

CONCERNS

Bumatay belonged to the Tom Homann LGBT Law Association, a group that promoted judicial activism to accomplish its leftist political agenda.¹

¹ S. Questionnaire, [https://www.judiciary.senate.gov/imo/media/doc/Patrick%20Bumatay%20Senate%20Questionnaire%20\(PUBLIC\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Patrick%20Bumatay%20Senate%20Questionnaire%20(PUBLIC).pdf), at PDF p. 5.

- Although Bumatay stated that he would leave the Tom Homann LGBT Law Association (hereafter “THLA”) when he became a judge² and may have actually done so, his membership and association with the group during a time when they held quite problematic positions is deeply concerning. Some of these positions include:
- The THLA celebrated the judicially-activist Supreme Court opinion in *U.S. v. Windsor* which, while citing no support in the text of the constitution, purported to strike down the congressional “Defense of Marriage Act.”³ The THLA said: “In a historic day for LGBT rights and equality, the United States Supreme Court struck down the federal Defense of Marriage Act.”⁴
- Also, following the Supreme Court’s ruling in *Masterpiece Cakeshop*,⁵ in which the Court protected a cake shop owner’s right to refuse to bake cakes for same sex “weddings” under the First Amendment’s Free Exercise Clause, the THLA stated:

“Ultimately, the case provides yet another example that ***our work for full LGBTQ+Q equality is not done***. On this Election Day, we hope that THLA members vote for candidates who support LGBTQ+Q equality and continue to engage and be visible within our LGBTQ+Q ***legal community***.”⁶
- Moreover, the THLA co-authored a report explaining that the federal courts are “the gateway” to achieving THLA’s political agenda: “Federal courts issue decisions that affect nearly every aspect of life for LGBT people . . . [and] provide ***the gateway*** for achieving ***broader civil rights victories by issuing findings of fact that frame the cases and legal issues going forward***.”⁷
- Furthermore, the THLA “signed on as a co-author of an article focusing on the lack of LGBT representation in the California state and federal judiciary entitled, ‘The New Frontier of LGBT Equality: The California State and Federal Judiciary’. . . . The article focuses on the historical lack of LGBT judges, the current state of LGBT representation on the bench, and the need for greater LGBT judicial appointments so the bench more

² Questions from Senator Mike Lee Question #5, S. Questions for Answer,

<https://www.judiciary.senate.gov/imo/media/doc/Bumatay%20Responses%20to%20QFRs.pdf>, at PDF p. 55.

³ *United States v. Windsor*, 570 U.S. 744 (2013), <https://supreme.justia.com/cases/federal/us/570/12-307/case.pdf>.

⁴ Michael Brant, *U.S. Supreme Court Strikes Down DOMA, Dismisses Prop 8 Appeal*, THLA (June 27, 2013), <https://www.thla.org/u-s-supreme-court-strikes-doma-dismisses-prop-8-appeal/>. The group also filed an amicus brief promoting an activist theory to use the courts to create LGBT social legislation and applauded the Obama administration for taking the same judicial activist legal position. See also Michael Brant, *THLA Joins BALIF Amicus Brief in Hollingsworth v. Perry*, THLA (Mar. 19, 2013), <https://www.thla.org/thla-joins-balif-amicus-brief-hollingsworth-v-perry/>, Michael Brant, *Obama Administration Files Prop 8 Amicus Brief (Full Brief)*, THLA (Mar. 1, 2013), <https://www.thla.org/obama-administration-files-prop-8-amicus-brief-full-brief/>.

⁵ *Masterpiece Cakeshop v. Colorado C.R. Comm’n*, 584 U.S. 617 (2018), <https://supreme.justia.com/cases/federal/us/584/16-111/case.pdf>.

⁶ Alicia Aquino, *THLA’s Response To The Decision In Masterpiece Cakeshop*, THLA (June 6, 2018), <https://www.thla.org/thlas-response-to-the-decision-in-masterpiece-cakeshop/> (emphasis added).

⁷ Nicholas Fox, *THLA Co-Authors Article on LGBT Judges in California Judiciary*, THLA (July 14, 2015), <https://www.thla.org/thla-co-authors-article-on-lgbt-judges-in-california-judiciary/> (emphasis added).

accurately reflects the LGBT population of the state.”⁸ On LGBT representation on the bench, THLA stated:

“The LGBT community as a whole can make a difference by advocating for qualified LGBT judicial candidates during the judicial vetting process. *‘Many in the LGBT community feel that we simply need to do more. More political pressure, more lobbying, more identifying and mentoring our LGBT lawyers to become candidates for judges,* and being more vocal about these issues. . . . When federal judge openings in our district come up, there has not been adequate pressure from our community to consider LGBT candidates. *How can we expect the decision makers in the vetting and appointment process to listen if we as a community are not being loud and clear?’*”⁹

- Bumatay was questioned about his membership in the THLA in his Senate Questions-for-Answer during the Senate confirmation process.
 - Senator Mike Lee asked: “How long have you been an active member of the Tom Homann Association? This association has *publicly criticized recent Supreme Court decisions and takes active positions on questions currently unsettled in the courts*. Were you aware of these public positions when you joined the association? If you are confirmed, will you faithfully and fully apply all binding Supreme Court precedent?”¹⁰
 - Bumatay’s answer is concerning: “When I joined the Tom Homann Law Association in late 2017, I understood the group to be a *community building and social networking* organization for LGBT lawyers in the San Diego area. Since joining, the extent of my involvement has been attending two or three of their social functions. *Last month*, I became aware of the group’s **public positions** on recent Supreme Court cases and *other legal matters*, especially in cases involving religious liberty. Religious liberty is a foundational right. Indeed, it is the first freedom of our Bill of Rights. If liberty means anything, it means that individuals should be able to live their lives and act according to their religious principles. The Supreme Court has vigorously protected religious liberty in recent terms, in cases such as *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014), *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012 (2017), and *Masterpiece Cakeshop*,

⁸ Nicholas Fox, *THLA Co-Authors Article on LGBT Judges in California Judiciary*, THLA (July 14, 2015), <https://www.thla.org/thla-co-authors-article-on-lgbt-judges-in-california-judiciary/> (emphasis added).

⁹ Nicholas Fox, *THLA Co-Authors Article on LGBT Judges in California Judiciary*, THLA (July 14, 2015), <https://www.thla.org/thla-co-authors-article-on-lgbt-judges-in-california-judiciary/> (emphasis added).

¹⁰ Questions from Senator Mike Lee Question #5, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Bumatay%20Responses%20to%20QFRs.pdf>, at PDF p. 55. (emphasis added).

Ltd. v. Colorado Civil Rights Commission, 138 S. Ct. 1719 (2018). If confirmed, I will faithfully and fully apply these and all precedents of the Supreme Court.”¹¹

- Although Bumatay claims that he was not aware of the THLA’s public positions when he joined in 2017, the organization’s embrace of judicial activism is apparent upon a cursory glance at the THLA’s publicly available website. This professed lack of judgment in Bumatay’s associations is concerning. Moreover, Bumatay does not explain why he continued to be a member even after learning of THLA’s positions. Finally, Bumatay refused to state any disagreement with THLA’s radical positions.¹²
- Bumatay also should have been aware, at the time of his joining of THLA in “late 2017” of THLA’s June 2017 public announcement on its website demanding that the U.S. armed forces allow biological men who claim to be women to function as such in the military. The THLA “unequivocally denounce[ed] President Donald J. Trump’s decision to ban those in our *transgender community* from *serving our nation in our armed forces*. . . .” Also, the THLA condemned President Trump’s Justice Department for defending the textual fact that “LGBTQ individuals are not protected from discrimination under Title VII of the Civil Rights Act.”¹³

As a judge, Bumatay has a mixed record which makes him an untenable prospect for the United States Supreme Court, given the availability of excellent prospects.

- Bumatay dissented from a denial of rehearing *en banc* of a challenge to a Washington state ban on “conversion therapy,” but expressed sympathy for concerns about the practice and seemed to limit his dissent to the particular fact pattern presented.
 - Bumatay wrote: “*Many Americans and the State of Washington find conversion therapy – the practice of seeking to change a person’s sexual orientation or gender identity – deeply troubling, offensive, and harmful. They point to studies that show such therapy ineffective. Even worse, they claim that conversion therapy correlates with high rates of severe emotional and psychological trauma, including suicidal ideation. Under the appropriate level of judicial review, these concerns should not be ignored.*”¹⁴
 - He continued: “*But we also cannot ignore that conversion therapy is often grounded in religious faith.*” According to plaintiff Brian Tingley, a therapist

¹¹ Questions from Senator Mike Lee Question #5, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Bumatay%20Responses%20to%20QFRs.pdf>, at PDF p. 54–55 (emphasis added).

¹² Questions from Senator Mike Lee Question #5, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Bumatay%20Responses%20to%20QFRs.pdf>, at PDF p. 54–55.

¹³ Nicholas Fox, *THLA Issues Statement on President’s Ban on Transgender Individuals in the Military*, THLA (July 27, 2017), <https://www.thla.org/issues-statement-presidents-ban-transgender-individuals-military/> (emphasis added).

¹⁴ *Tingley v. Ferguson*, 57 F.4th 1072 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/01/23/21-35815.pdf>, at PDF p. 25 (emphasis added).

licensed by the State of Washington, his practice of conversion therapy is an outgrowth of his religious beliefs and his understanding of Christian teachings. ***Tingley treats his clients from the perspective of a shared faith, which he says is conducive to establishing trust.*** And as part of his therapeutic treatment, Tingley counsels his clients to live their lives in alignment with their religious beliefs and teachings ***Indeed, Tingley only works with clients who freely accept his faith-based approach.***¹⁵

- There are several concerns with Bumatay’s writings in *Tingley*. First, while Bumatay recognizes that the opposition of mental health professionals to the left’s “gender identity” propaganda is “often ***grounded in religious faith***,” he fails to acknowledge that such perspective is also grounded in fact and science. Additionally, Bumatay’s opinion seems to limit a Christian counselor’s exercise of religious liberty only to situations in which the client shares the same faith as the counselor.¹⁶ Lastly, Bumatay failed to join the strongest opinion in the case, which was written by Judge O’Scannlain and joined by Judges Ikuta, R. Nelson, and VanDyke. They contended that the court “should have granted rehearing *en banc* also to clarify that the ***regulation of the medical profession is not a First-Amendment-free zone***.”¹⁷ Bumatay did not join their opinion, which espoused a broad protection of “conversion therapy” from a free speech perspective, but instead wrote his own weaker opinion, which limited itself to the religious liberty concerns present in this particular factual scenario of a therapist and a client who shared the same faith.
- However, in Bumatay’s defense, there are problems with the “strongest opinion” as well. While Judge O’Scannlain’s opinion is stronger in the sense that it better acknowledges that conversion therapy is a lawful practice, the opinion takes a stance that weakens the state’s police power over the medical profession, which could also have negative consequences. If the state had little to no power to regulate speech in the medical profession, for example, perfectly constitutional regulations by even conservative legislatures, such as requiring doctors to tell patients about alternatives to abortion or forbidding so-called gender transition procedures for minors, could be deemed unconstitutional.

Bumatay used female pronouns to refer to a biological man.

- In *Edmo v. Corizon*, Bumatay properly ruled in favor of a prison that denied so called “sex-reassignment surgery” to an inmate. However, in the process, he unnecessarily conceded core facts by unscientifically referring to a biological man with female pronouns. Bumatay

¹⁵ *Tingley v. Ferguson*, 57 F.4th 1072 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/01/23/21-35815.pdf>, at PDF p. 26 (emphasis added).

¹⁶ *Tingley v. Ferguson*, 57 F.4th 1072 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/01/23/21-35815.pdf>, at PDF p. 25–27 (emphasis added).

wrote: “Adree Edmo *is a transgender woman* suffering from gender dysphoria—a *serious medical condition*. While incarcerated in Idaho's correctional facilities, *she* asked that *her* gender dysphoria be treated with sex-reassignment surgery (“SRS”). After consultation with a prison doctor, *her* request was denied. *She* then sued under the Eighth Amendment.”¹⁸

Along with his problematic membership in the THLA, Judge Bumatay is or was a member of other pro-LGBT groups that employ judicial activism to accomplish their agenda.

- **Log Cabin Republicans:** Bumatay was a member of the Log Cabin Republicans (“LCR”), joining its San Diego branch in 2012.¹⁹ LCR has held many problematic positions:
 - LCR has called the Defense of Marriage Act (“DOMA”) “an unconstitutional intrusion on states’ rights and a violation of individual liberty”²⁰ while declaring the Supreme Court’s 2013 decision in *United States v. Windsor*,²¹ which struck down DOMA, “a victory of conservative principles.”²²
 - LCR has mischaracterized Christian counseling of people struggling with homosexuality, stating that, “the widely outdated and profoundly harmful idea of ‘reparative therapy,’ alleging that one can ‘pray the gay away,’ [is] not only demeaning to gays and lesbians, but [is] offensive to all people of faith.”²³
 - LCR has also stated that by legalizing homosexual marriage in *Obergefell*,²⁴ “[T]he Supreme Court of the United States finally recognized what Log Cabin Republicans has long advocated for: the constitutional right of committed same-sex couples to engage in civil marriage partnerships.”²⁵

¹⁸ *Edmo v. Corizon, Inc.*, 949 F.3d 489, 505 (9th Cir. 2020), <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/02/10/19-35017.pdf>, at PDF p. 35–36 (emphasis added).

¹⁹ See S. Questionnaire, [https://www.judiciary.senate.gov/imo/media/doc/Patrick%20Bumatay%20Senate%20Questionnaire%20\(PUBLIC\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Patrick%20Bumatay%20Senate%20Questionnaire%20(PUBLIC).pdf), at PDF p. 10.

²⁰ *Log Cabin Republicans to GOP: Maintain Focus on the Budget, Don’t Take the Bait on DOMA*, LOG CABIN REPUBLICANS (Mar. 4, 2011), <http://www.logcabin.org/pressrelease/log-cabin-republicans-to-gop-maintain-focus-on-the-budget-dont-take-the-bait-on-doma/>.

²¹ *United States v. Windsor*, 570 U.S. 744 (2013), <https://supreme.justia.com/cases/federal/us/570/12-307/case.pdf>.

²² The full quote is: “Today’s ruling is a victory of conservative principles and admonishment of government overreach. ... History is on our side, and the wind is at our backs. We’re not done yet — not by a long shot.” See *Log Cabin Republicans Responds to Supreme Court Marriage Rulings: “We’re Not Done Yet,”* LOG CABIN REPUBLICANS (June 26, 2013), <http://www.logcabin.org/pressrelease/log-cabin-republicans-responds-to-supreme-court-marriage-rulings-were-not-done-yet/>.

²³ *Ann Coulter’s Endorsement of ‘Reparative Therapy’ is a Bad Joke*, LOG CABIN REPUBLICANS (July 28, 2011), <http://www.logcabin.org/pressrelease/ann-coulters-endorsement-of-reparative-therapy-is-a-bad-joke/>.

²⁴ *Obergefell v. Hodges*, 576 U.S. 644 (2015), <https://supreme.justia.com/cases/federal/us/576/14-556/case.pdf>.

²⁵ *Log Cabin Republicans Response to Supreme Court Marriage Decision*, LOG CABIN REPUBLICANS (June 26, 2015), <http://www.logcabin.org/pressrelease/log-cabin-republicans-response-to-supreme-court-marriage-decision/>.

- Lastly, LCR supported Bumatay’s judicial nomination, declaring, “Bumatay’s nomination is historic; as an openly gay man . . . his confirmation would be a triumph for the LGBT community”²⁶
- **DOJ Pride:** Bumatay was a member of DOJ Pride from 2008 to 2009.²⁷
 - DOJ Pride promotes a compelled-speech agenda that requires verbal affirmation of LGBT lifestyles in the workplace. DOJ Pride published a guide for managers mandating affirmative approval in the case of an employee coming out as gay, stating that “[s]ilence will be interpreted as disapproval.”²⁸

Concerningly, Judge Bumatay adopted two girls with his male partner.

- Judge Bumatay is openly gay²⁹ and civilly married to a man.³⁰
- He adopted two girls with his partner.³¹
 - While Judge Bumatay’s decision to adopt children may have been well-intended, his choices result in daily mother deprivation for two children who already suffered a maternal wound. Evidence demonstrates, for example, that children in same-sex households present twice as much prevalence of emotional problems than do children with a mother and father.³²

OTHER FINDINGS

Judicial Philosophy & Separation of Powers:

- In 2020, Bumatay authored a dissent that prioritized constitutional originalism over legal precedent.
 - Judge Bumatay explained that “inferior court judges . . . are bound to follow Supreme Court precedent [b]ut [their] fidelity is not blind. *[They] always have a ‘duty to interpret the Constitution in light of its text, structure, and original*

²⁶ @LogCabinGOP, Twitter (Oct. 19, 2018, 8:32 AM), <https://twitter.com/logcabinGOP/status/1053277720849846272?lang=en>. See also David Nolan, *Trump Nominates Openly Gay Man to Court of Appeals*, GA. VOICE (Oct. 24, 2018), <https://thegavoice.com/news/trump-nominates-openly-gay-man-to-court-of-appeals/>.

²⁷ Senate Questionnaire, [https://www.judiciary.senate.gov/imo/media/doc/Patrick%20Bumatay%20Senate%20Questionnaire%20\(PUBLIC\).pdf](https://www.judiciary.senate.gov/imo/media/doc/Patrick%20Bumatay%20Senate%20Questionnaire%20(PUBLIC).pdf), at PDF p. 5.

²⁸ *LGBT Inclusion at Work: The 7 Habits of Highly Effective Managers*, https://concernedwomen.org/images/content/DOJ_LGBT_Brochure.pdf, at PDF p. 2.

²⁹ William Cummings, *Trump Makes His Second Nomination of Openly Gay Person to be Federal Judge*, USA TODAY (Oct. 17, 2018), <https://www.usatoday.com/story/news/politics/onpolitics/2018/10/17/patrick-bumatay-trump-judicial-nominee/1668092002/>.

³⁰ Anthony Maddela, *Judge Bumatay, a Fil-Am Benchmark*, POSITIVELY FILIPINO (Jan. 26, 2022), <https://www.positivelyfilipino.com/magazine/judge-bumatay-a-fil-am-benchmark>.

³¹ Anthony Maddela, *Judge Bumatay, a Fil-Am Benchmark*, POSITIVELY FILIPINO (Jan. 26, 2022), <https://www.positivelyfilipino.com/magazine/judge-bumatay-a-fil-am-benchmark>.

³² Donald Sullins, *Emotional Problems among Children with Same-Sex Parents: Difference by Definition*, 7 BRITISH J. EDUC., SOCIETY BEHAVIOURAL SCI. 99 (2015), <https://ssrn.com/abstract=2500537>.

understanding.”³³ Bumatay did, however, qualify this support for originalist decision-making in lower courts, clarifying that “[t]his doesn’t mean that lower court judges can refuse to follow precedent—even if subsequent caselaw or the original meaning cast it into doubt.”³⁴ Rather, he continues, inferior court judges “can take care not to unduly expand precedents by reading them ‘in light of and in the direction of the constitutional text and constitutional history. . . . [a]nd if a faithful reading of precedent shows it is not directly controlling, the rule of law may dictate confining the precedent, rather than extending it further.’”³⁵

- Judge Bumatay warned about the danger of judicially creating rights.
 - In a dissent from denial of rehearing en banc, Bumatay wrote to his fellow judges, “*we should be reluctant to recognize rights not mentioned in the Constitution* to ‘guard against the natural human tendency to confuse what [the Fourteenth] Amendment protects with our own ardent views about the liberty that Americans should enjoy.’”³⁶
- Bumatay has prioritized following the constitutional judicial role, even when circumstances may tempt judges to sidestep it.
 - In a car crash case before Judge Bumatay, police officers “witnessed the crash but did not stop or summon medical aid” and “were overheard commenting that *they hoped the suspect had died in the crash.*”³⁷ Though Bumatay admits these details are “shocking,” he stresses that *judges “must always adhere to [their] constitutional role.”*³⁸ Doing so means “following established law and *not grasping at rulings to reach certain outcomes.*”³⁹
- In 2025, Judge Bumatay authored a concurrence that would have struck down a judge-made rule.
 - Bumatay wrote, “For many years, our court has imposed a judge-made rule on administrative law judges (‘ALJs’) in Social Security proceedings *This rule*

³³ *Nat’l Lab. Rels. Bd. v. Int’l Ass’n of Bridge, Structural, Ornamental, & Reinforcing Iron Workers*, Loc. 229, AFL-CIO, 974 F.3d 1106 (9th Cir. 2020), <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/09/11/17-73210.pdf>, at PDF p. 25 (emphasis added) (citations omitted).

³⁴ *Nat’l Lab. Rels. Bd. v. Int’l Ass’n of Bridge, Structural, Ornamental, & Reinforcing Iron Workers*, Loc. 229, AFL-CIO, 974 F.3d 1106 (9th Cir. 2020), <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/09/11/17-73210.pdf> at PDF p. 25 (emphasis added).

³⁵ *Nat’l Lab. Rels. Bd. v. Int’l Ass’n of Bridge, Structural, Ornamental, & Reinforcing Iron Workers*, Loc. 229, AFL-CIO, 974 F.3d 1106 (9th Cir. 2020), <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/09/11/17-73210.pdf>, at PDF p. 25–26 (citations omitted).

³⁶ *Murguia v. Langdon*, 73 F.4th 1103 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/07/18/21-16709.pdf>, at PDF p. 4 (emphasis added) (citation omitted).

³⁷ *Est. of Soakai v. Abdelaziz*, No. 23-4466 (9th Cir. 2025), <https://cases.justia.com/federal/appellate-courts/ca9/23-4466/23-4466-2025-05-16.pdf?ts=1747413032>, at PDF p. 30 (emphasis added).

³⁸ *Est. of Soakai v. Abdelaziz*, No. 23-4466 (9th Cir. 2025), <https://cases.justia.com/federal/appellate-courts/ca9/23-4466/23-4466-2025-05-16.pdf?ts=1747413032>, at PDF p. 30 (emphasis added).

³⁹ *Est. of Soakai v. Abdelaziz*, No. 23-4466 (9th Cir. 2025), <https://cases.justia.com/federal/appellate-courts/ca9/23-4466/23-4466-2025-05-16.pdf?ts=1747413032>, at PDF p. 30–31 (emphasis added).

was not based on any statutory or regulatory requirement—in other words, we made it up.”⁴⁰ Bumatay would have abandoned the rule for subsequent cases.⁴¹

- Judge Bumatay has emphasized the non-partisan constitutional role of judges.
 - In a case in which the majority held that an Arizona statute intended to target voter fraud was unconstitutional, Bumatay dissented. Bumatay seemed to accuse the majority of partisan conduct, writing, “When courts are forced to enter the political realm—as challenges to voting laws require—we must be our most deliberate, careful, and thoughtful. ***Our robes are not blue or red but black.*** Sweeping rulings setting aside a State’s laws don’t help.”⁴²
- In 2024, Bumatay authored a dissent from denial of rehearing en banc, stressing the separation of powers and the authority of Congress in authorizing judicial jurisdiction.
 - Respecting the authority of Congress to determine jurisdiction, Bumatay wrote, “Federal courts . . . have a ‘virtually unflagging’ obligation to ‘hear and decide cases within [their] jurisdiction.’ When reading jurisdictional statutes, ***our task is to simply ‘apply traditional principles of statutory interpretation’ and ask whether Congress authorized suit.***”⁴³ Bumatay further stressed, “It should go without saying that we do not ‘ask whether in our judgment Congress ***should*** have authorized . . . suit.”⁴⁴
 - Respecting the determination of jurisdiction within the case, Judge Bumatay emphasizes textualism, writing, “This case presents a straightforward question. Despite the [relevant statute]’s text, does the Act require plaintiffs to *also* prove [additional qualifications] to assert personal jurisdiction over a foreign state?”⁴⁵ After pointing out that the Ninth Circuit’s anti-textualism on this issue is unique, Judge Bumatay stresses that the anti-textualist expansion of the statute regarding jurisdiction means that “Congress swung the doors open and [the Ninth Circuit court] slammed them shut” and further that “***[the court’s] failure to correct this***

⁴⁰ *Hudnall v. Dudek*, No. 23-3727 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/memoranda/2025/05/13/23-3727.pdf>, at PDF p. 12 (emphasis added).

⁴¹ *Hudnall v. Dudek*, No. 23-3727 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/memoranda/2025/05/13/23-3727.pdf>, at PDF p. 20.

⁴² *Mi Familia Vota v. Fontes*, 129 F.4th 691 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/02/25/24-3559.pdf>, at PDF p. 82 (emphasis added) (emphasis supplied on “black” in original).

⁴³ *Devas Multimedia Priv. Ltd. v. Antrix Corp.*, 91 F.4th 1340 (9th Cir. 2024), <https://cdn.ca9.uscourts.gov/datastore/opinions/2024/02/06/20-36024.pdf>, at PDF p. 5 (emphasis added) (citations omitted).

⁴⁴ *Devas Multimedia Priv. Ltd. v. Antrix Corp.*, 91 F.4th 1340 (9th Cir. 2024), <https://cdn.ca9.uscourts.gov/datastore/opinions/2024/02/06/20-36024.pdf>, at PDF p. 6 (emphasis in original) (citations omitted).

⁴⁵ *Devas Multimedia Priv. Ltd. v. Antrix Corp.*, 91 F.4th 1340 (9th Cir. 2024), <https://cdn.ca9.uscourts.gov/datastore/opinions/2024/02/06/20-36024.pdf>, at PDF p. 6 (emphasis added) (emphasis in original on the word “also”).

error violates the separation of powers and anoints [them]selves gatekeepers in a way not contemplated by Congress or the Constitution.”⁴⁶

- In 2024,umatay joined a concurrence which emphasized the non-binding nature of *dicta*, the parts of judicial opinions that do not directly relate to the case or form the basis of the decision.
 - The concurrence by Judge Forrest that Judgeumatay joined argued that the court’s “dicta-is-binding rule is burdensome,” “misguided,” “lacks legal foundation,” “should [be] discard[ed],” “causes unnecessary inefficiency,” “wastes resources,” and “*is contrary to the common-law tradition of judging, the jurisprudence of the Supreme Court and every other circuit court in the nation, and the Constitution.*”⁴⁷

Faith & the Public Square:

- In January 2025,umatay wrote a concurrence which cited the church autonomy doctrine, a constitutional doctrine barring government from deciding “matters of faith, doctrine, and church governance.”⁴⁸
 - In the case, a former Mormon church member sued the church over its use of tithing funds, claiming fraud. The majority sided with the church, but Judgeumatay concurred *in judgment only*.umatay held that the church autonomy doctrine governed, whereas the majority believed that “nothing in [their] analysis of [plaintiff]’s fraud claims delves into matters of Church doctrine or policy”⁴⁹
 - Responding to the majority’s claim that it could decide on the merits,umatay wrote, “*The Constitution gives us no such choice. In deciding religious matters, the Constitution strictly limits our authority.*” Simply put, the church autonomy doctrine bars federal courts from resolving matters of faith, doctrine, and church governance.”⁵⁰
 - umatay also correctly identified the origin of the church autonomy doctrine in ancient and medieval Christianity, rather than in modern liberal or Enlightenment concerns about the separation of church and state.umatay wrote, “Thus, in both ancient and medieval times, the church’s basis for autonomy rested on structural grounds. *Because God committed authority over spiritual matters (like the*

⁴⁶ *Devas Multimedia Priv. Ltd. v. Antrix Corp.*, 91 F.4th 1340 (9th Cir. 2024), <https://cdn.ca9.uscourts.gov/datastore/opinions/2024/02/06/20-36024.pdf>, at PDF p. 7 (emphasis added).

⁴⁷ *Stein v. Kaiser Found. Health Plan, Inc.*, 115 F.4th 1244 (9th Cir. 2024), <https://cdn.ca9.uscourts.gov/datastore/opinions/2024/09/24/22-15862.pdf>, at PDF p. 9 (emphasis added).

⁴⁸ *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/01/31/21-56056.pdf>, at PDF p. 34.

⁴⁹ *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/01/31/21-56056.pdf>, at PDF p. 18.

⁵⁰ *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/01/31/21-56056.pdf>, at PDF p. 34 (emphasis added).

burning of incense or appointment of clergy) exclusively to the church, the state lacked authority over such matters.”⁵¹

- Bumatay seems to have joined a majority opinion which upheld the right of a student Christian association to operate and require its student leaders to affirm biblical beliefs. *However, the opinion’s author Judge Callahan also strongly defends anti-discrimination statutes and the values which drive them.*
 - Judge Callahan, in the majority opinion it appears Bumatay joined, began, “*Anti-discrimination laws undeniably serve valuable interests rooted in equality, justice, and fairness. And in a pluralistic society, these laws foster worthy goals such as inclusion and belonging.*”⁵²
 - Judge Callahan continued, “While it cannot be overstated that anti-discrimination policies certainly serve worthy causes . . . those policies may not themselves be utilized in a manner that transgresses or supersedes *the government’s constitutional commitment to be steadfastly neutral to religion.*”⁵³

Religious Liberty:

- Bumatay has implicitly supported religious exemptions from COVID-19 vaccine mandates.
 - In January 2025, Bumatay signed a memorandum order which reversed and remanded a decision to the district court. Prior to the memorandum order, the district court had twice refused appellants relief for their religious liberty concerns regarding mandatory vaccination.
 - The memorandum order Bumatay signed stated that “Appellants possessed genuine religious beliefs which conflicted with taking the COVID-19 vaccine, requested religious exemptions, and were constructively fired for their noncompliance.”⁵⁴
 - Bumatay’s order rejected the district court’s claim that appellants failed to demonstrate irreparable harm, noting that “[i]n the analogous First Amendment context, the Supreme Court has recognized that *the loss of protected religious freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’*”⁵⁵

Second Amendment:

⁵¹ *Huntsman v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, 127 F.4th 784 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/01/31/21-56056.pdf>, at PDF p. 43 (emphasis added).

⁵² *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/09/13/22-15827.pdf>, at PDF p. 9 (emphasis added).

⁵³ *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664 (9th Cir. 2023), <https://cdn.ca9.uscourts.gov/datastore/opinions/2023/09/13/22-15827.pdf>, at PDF p. 10 (emphasis added).

⁵⁴ *Keene v. City & Cnty. of San Francisco*, No. 24-1574 (9th Cir. 2025), <https://cases.justia.com/federal/appellate-courts/ca9/24-1574/24-1574-2025-01-30.pdf?ts=1738256592>, at PDF p. 7.

⁵⁵ *Keene v. City & Cnty. of San Francisco*, No. 24-1574 (9th Cir. 2025), <https://cases.justia.com/federal/appellate-courts/ca9/24-1574/24-1574-2025-01-30.pdf?ts=1738256592>, at PDF p. 10 (emphasis added).

- Bumatay authored a dissent that boldly protected Second Amendment rights from California’s unconstitutional gun control measures.
 - Judge Bumatay wrote, “We cannot ignore that *California’s actions continually whittle away the Second Amendment guarantee*. While California may pass laws to address gun violence, California’s choices must give way to the Constitution.”⁵⁶
- Bumatay joined a dissent from denial of rehearing en banc authored by Judge Lawrence VanDyke that defended the right to publicly bear arms.
 - In the dissent joined by Bumatay, Judge VanDyke writes, “Just a few years ago in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 10, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022), *the Supreme Court made clear that the Second Amendment includes the right to bear firearms in public*.”⁵⁷ VanDyke continued, “With its decision in these cases our court *allows governments in our circuit to practically eliminate most of that right. . . . I don’t think that’s right*.”⁵⁸

Administrative State:

- Bumatay limited the scope of administrative environmental regulations.
 - Judge Bumatay limited the right to citizen suit under the Clean Water Act to certain types of violations, citing U.S. Supreme Court precedent. Bumatay wrote, “to authorize a citizen suit, *the plaintiff must allege that the defendant is in ‘a state of either continuous or intermittent violation’ so that ‘a reasonable likelihood [exists] that [the defendant] will continue to pollute in the future.*”⁵⁹

History of Commitment to Causes:

- Bumatay is a contributor to the Federalist Society.⁶⁰
- Bumatay previously clerked for Judge Timothy Tymkovich of the U.S. Court of Appeals for the Tenth Circuit.⁶¹
 - Judge Tymkovich wrote the opinion in *Hobby Lobby Stores, Inc. v. Sebelius*, holding that the corporation had personal freedom under the Religious Freedom Restoration Act not to provide certain objectionable forms of birth control to employees.⁶²

⁵⁶ *Duncan v. Bonta*, 133 F.4th 852 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/03/20/23-55805.pdf>, at PDF p. 75 (emphasis added).

⁵⁷ *Wolford v. Lopez*, 125 F.4th 1230 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/01/15/23-16164.pdf>, at PDF p. 4 (emphasis added).

⁵⁸ *Wolford v. Lopez*, 125 F.4th 1230 (9th Cir. 2025), <https://cdn.ca9.uscourts.gov/datastore/opinions/2025/01/15/23-16164.pdf>, at PDF p. 4 (emphasis added).

⁵⁹ *Coastal Env’t Rts. Found. v. Naples Rest. Grp., LLC*, 115 F.4th 1217 (9th Cir. 2024), <https://cdn.ca9.uscourts.gov/datastore/opinions/2024/09/18/23-55469.pdf>, at PDF p. 9 (emphasis added).

⁶⁰ Hon. Patrick J. Bumatay, FEDERALIST SOC’Y, <https://fedsoc.org/contributors/patrick-bumatay>.

⁶¹ Hon. Patrick J. Bumatay, FEDERALIST SOC’Y, <https://fedsoc.org/contributors/patrick-bumatay>.

⁶² *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013), <https://cases.justia.com/federal/appellate-courts/ca10/12-6294/12-6294-2013-06-27.pdf?ts=1411095096>.

Government Overreach:

- Judgeumatay dissented in a case in which the majority held that a police officer was within his rights to arrest a restaurant owner for violating a COVID executive order prohibiting on-site dining.
 - Bumatay wrote, “When faced with threats to the public wellbeing, States may rightfully respond to the emergency. *Even so, the Constitution does not simply lay dormant during those times.*”⁶³

⁶³ *Miller v. City of Scottsdale*, 88 F.4th 800 (9th Cir. 2023), <https://cases.justia.com/federal/appellate-courts/ca9/22-16004/22-16004-2023-12-08.pdf?ts=1702054927>, at PDF p. 19 (emphasis added).