



United States Senate  
Washington, DC 20510

**Re: Oppose the judicial nomination of Lawrence VanDyke to the United States Court of Appeals for the Ninth Circuit.**

Dear Senator,

The League of Conservation Voters (LCV) believes our earth is worth fighting for because everyone has a right to clean air, water, lands, and a safe, healthy community. Each year, LCV publishes the National Environmental Scorecard, which details the voting records of members of Congress on environmental legislation. The Scorecard is distributed to LCV members, concerned voters nationwide, and the media.

We urge you to oppose the judicial nomination of Lawrence VanDyke to the United States Court of Appeals for the Ninth Circuit. VanDyke lacks meaningful connections to Nevada, his personal and legal stances are at odds with the values of Nevadans, and his extreme and offensive positions raise serious concerns about his ability to fairly judge issues on the court. Finally, VanDyke's professional record calls into question whether he has the requisite temperament and competence to serve as a federal judge. We will consider including this confirmation vote in the 2019 Scorecard.

**Lack of Significant Connections to Nevada**

Lawrence VanDyke is nominated to one of two Nevada seats on the Ninth Circuit, and only the seventh vacancy for a Nevada seat in the history of the court. While this administration has disregarded the longstanding practice of consulting home-state senators during the nominations process, it is still critical that nominees display meaningful connection to the state where they will be serving a lifetime appointment.

However, VanDyke does not live in Nevada, did not grow up in the state, does not own property in the state and does not have family connections with the state. He was selected for a political position in the Nevada state government after a failed campaign for a seat on the Montana Supreme Court, despite never having lived in or practiced in Nevada at the time. VanDyke was granted temporary limited practice status since he was not licensed to practice in the state, and received an unprecedented extension after refusing to take the state bar examination within his first two years in office, indicating he lacked any sincere interest in developing a legal career in Nevada.<sup>1</sup> As a result, VanDyke has been an active member of the State Bar of Nevada for only two years.<sup>2</sup>

Nevadans deserve qualified, fair-minded federal judges who understand their communities, and can reflect those experiences on the court. Nevada Senators Catherine Cortez Masto and Jacky Rosen offered to work with the administration through a bipartisan judicial commission process, as they have for District Court vacancies, but the administration refused.<sup>3</sup> The decision to move forward with this nomination without attempting to work with the Senators or the Nevada legal community is damaging to the integrity of the court and is an insult to the wide number of well-respected and qualified Nevada attorneys who were overlooked in the White House's purely political selection process.

**Positions in Conflict with Nevadans' Respect for Public Land**

Access to clean public lands is indispensable to the identity of Nevada, as the state with the largest proportion of public land in the nation. However, VanDyke has built his political career advocating for opening public lands to mining and fossil fuel drilling, and eliminating environmental and public health



protections. This position was the foundation of his failed campaign for the Montana Supreme Court, supported by big corporate interests that funneled more than \$600,000 into the nonpartisan state campaign, including \$170,000 of Koch Brothers money.<sup>4</sup> VanDyke directly criticized the incumbent Justice for committing to Montana’s constitutional right to a “clean and healthful environment,” and leaflets during the campaign promised “Lawrence VanDyke will protect Montana jobs from environmental extremists.”<sup>5</sup>

During his brief stint as Montana Solicitor General, VanDyke opposed permit guidance for surface mining, which sought to prevent dangerous mining pollution from entering waterways.<sup>6</sup> His brief countered that Montana and other states have sufficient rules in place and the federal government didn’t have the authority to act, arguments which were rejected by the D.C. Circuit.<sup>7</sup>

VanDyke was selected as Nevada Solicitor General for the purpose of leading highly polarized and publicized legal actions opposing the Obama Administration. He joined with three mining companies opposing bipartisan efforts to protect sage-grouse habitats, which importantly prevented the need to list the sage-grouse as an endangered species.<sup>8</sup> The lawsuit was opposed by many in Nevada, including then-Republican Governor Brian Sandoval who said the lawsuit “does not represent the state of Nevada, the governor or any state agencies.”<sup>9</sup>

In particular, he aggressively opposed efforts to protect water and air quality; VanDyke challenged the proposed Clean Water Rule, despite it being an important step forward for restoring the true scope of the Clean Water Act and protecting our nation’s waterways.<sup>10</sup> He also sided with a major coal mine operator in a lawsuit to slow implementation of the Clean Air Act,<sup>11</sup> opposed the EPA’s Clean Power Plan to address climate change,<sup>12</sup> and opposed the protection of one million acres of Grand Canyon watershed from the harms of uranium mining.<sup>13</sup>

As one of the lead attorneys for the Justice Department’s Environment and Natural Resources Division, VanDyke defended the dirty and dangerous Keystone XL pipeline,<sup>14</sup> and argued for the repeal of a 2015 rule designed to protect water, wildlife and public health from the harmful effects of hydraulic fracturing on federal and tribal lands.<sup>15</sup> He repeatedly defended the federal government’s failure to consider the impact of drilling before issuing permits, including near Chaco Culture National Historical Park in New Mexico,<sup>16</sup> and in Alaska’s National Petroleum Reserve where the drilling threatens the Native Village of Nuiqsut’s subsistence way of life.<sup>17</sup>

VanDyke’s unbroken record of supporting fossil fuel expansion and rejecting environmental concerns displays a clear and incontrovertible bias that calls into question his ability to serve as an impartial judge in any environmental case. This is of particular concern given the importance of the Ninth Circuit Court of Appeals, which covers nearly three-quarters of the United States’ public lands and serves a critical role in deciding some of our nation’s most important environmental cases.

### **Positions in Conflict with Nevadans’ Respect for Immigrants and Indigenous Communities**

VanDyke has also taken extreme positions against the immigrant and indigenous communities that conflict with the League of Conservation Voters’ commitment to racial justice and equity. He supported President Trump’s efforts to withhold federal funding from so called “sanctuary cities,” a policy that puts immigrant communities at risk of exploitation by discouraging trust of and cooperation with local law enforcement,<sup>18</sup> and his office opposed President Obama’s expansion of Deferred Action for Childhood Arrivals (DACA).<sup>19</sup>

VanDyke went on to lead a brief calling on the Supreme Court to overturn a decision that granted critical water rights to the Agua Caliente Band of Cahuilla Indians, arguing that it was a “nebulous claim that the federal reservation’s purpose included the need for water,” despite the fact that the region is extremely arid



and was intended be a “permanent homeland” for the Agua Caliente Tribe.<sup>20</sup> Instead, he argued that the demands of water agencies should trump the needs of indigenous people, whose rights to the water had been ignored for generations.

### **Offensive Writings and Association with Hate Groups**

**LGBTQ Equality:** VanDyke has been a lifelong ideologue, and his most repeated and vociferous attacks have been against the LGBTQ community. In addition to repeatedly opposing marriage equality as a legal matter, VanDyke has questioned the ability of same-sex partners to properly raise children, arguing there is “ample reason for concern that same-sex marriage will hurt families, and consequentially children and society.” In the same article, he asserted that controversial anti-gay conversion therapies are “substantiated,”<sup>21</sup> despite the overwhelming rejection by the medical community of these ineffective and dangerous practices. VanDyke also has ties to extreme anti-LGBTQ organizations, including two designated as “Hate Groups” by the Southern Poverty Law Center: The Family Research Council, which hosted a fundraiser for and donated to VanDyke’s failed Montana Supreme Court race,<sup>22</sup> and Alliance Defending Freedom, where VanDyke served as a Blackstone Fellow, and who also contributed to his campaign.<sup>23</sup>

**Access to Abortion:** VanDyke coauthored an amicus brief defending Arizona’s 20 week abortion ban, in which he argued that the Supreme Court should take up the case in order to review and overturn the precedents established by *Roe v. Wade*.<sup>24</sup> While working on the brief, he suggested comparing pregnant women and fetuses to animals, arguing that animal cruelty statutes should in principle apply to pregnancies and justify criminalizing abortion.<sup>25</sup>

**Intelligent Design in Schools:** In the Harvard Law Review, VanDyke gave a glowing review of a book arguing for the teaching of intelligent design (ID) in classrooms, providing misleading arguments to suggest evolution faces any meaningful scientific debate, and that the concepts of creationism and intelligent design are intellectually distinct. VanDyke laid bare his ideological motivations in the article, musing “the ideological defeat of naturalistic evolution at the hands of the ID movement would nicely illustrate ‘survival of the fittest’ – it could be Darwinism’s last vindication.”<sup>26</sup> The article was responded to with dismay from the broader legal,<sup>27</sup> scientific,<sup>28</sup> and political community,<sup>29</sup> who quickly discredited the piece.

VanDyke’s disregard for science as thoroughly researched as evolution raises serious concerns about his ability to rule fairly in cases involving complex scientific facts. And his writings not only provide an insight into his extreme personal viewpoints, but the way in which they consistently reflect his professional legal stances starkly displays the partisan and political way in which he approaches the law.

### **Questions of Temperament and Competence**

In addition to his extreme ideological positions, serious concerns have been raised about VanDyke’s professional competence, and willingness to perform the duties of an impartial judge. Vandyke spent just over a year as Montana Solicitor General before resigning, though he remained on the payroll for an additional six months as he prepared and launched his failed campaign for a seat on the Montana Supreme Court. His argument for leaving was based on lack of autonomy within the office, but coworker statements and internal documents from his time in the Montana Attorney General office show a genuine disinterest in legal cases before the state, instead focusing his time on participation in high-profile amicus briefs with other states.<sup>30</sup>

Specifically, shortly after his resignation one colleague offered an unfiltered view of VanDyke’s performance, stating:



*“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. . . .”<sup>31</sup>*

The attorney’s views were not an aberration; the Attorney General’s Chief of Staff agreed with the scathing critique, saying “your frustration does not exceed ours,” and the Chief Deputy Attorney General was cited as agreeing with the comments, and had previously complained about VanDyke’s unwillingness to work on relevant cases.<sup>32</sup>

As Montana Solicitor General, VanDyke vocally opposed the Montana Attorney General’s decision to defend a Montana law banning independent expenditures by political parties to support or oppose judicial candidates, making his arguments internally for multiple months.<sup>33</sup> He did so less than three months before resigning and planning his run for one of those judicial seats at issue in the case, which resulted in the largest outpouring of political party and outside money in a Montana judicial race.<sup>34</sup> Six retired Montana Supreme Court Justices joined a letter opposing his nomination, calling Vandyke an “unqualified corporate lawyer” and raising serious concerns about the flood of outside corporate money his campaign was bringing to the state.<sup>35</sup>

VanDyke’s nomination is part of a disturbing pattern by the Trump Administration to nominate federal judges with extreme ideological backgrounds and a lack of experience, for the deliberate purpose of perpetuating conservative policies. The administration should do better to respect the State of Nevada, and work with Senators Cortez Masto and Rosen to find a consensus candidate to serve fairly and impartially on the court.

For these reasons, LCV strongly urges you to oppose the judicial nomination of Lawrence VanDyke to the United States Court of Appeals for the Ninth Circuit. We will consider including this confirmation vote in the 2019 Scorecard. If you need more information, please call my office at (202) 785-8683 and ask to speak with a member of our government relations team.

Sincerely,

A handwritten signature in black ink that reads "Gene Karpinski".

Gene Karpinski  
President

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<sup>1</sup> Jon Ralston, *Nevada Solicitor General's Ability to Practice Law in Doubt*, The Nevada Independent (Jan 28, 2017), <https://thenevadaindependent.com/article/nevada-solicitor-generals-ability-practice-law-doubt>.

<sup>2</sup> VanDyke, *Lawrence J C (Active as of October 10, 2017)*, State Bar of Nevada, <https://www.nvbar.org/find-a-lawyer/?usearch=13643>.

<sup>3</sup> *Cortez Masto, Rosen Announce Bipartisan Nevada Judicial Appointment Commissions*, Office of Senator Catherine Cortez Masto (Sep 18, 2019), <https://www.cortezmasto.senate.gov/news/press-releases/cortez-masto-rosen-announce-bipartisan-nevada-judicial-appointment-commissions>.



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- <sup>4</sup> Shaila Dewan, *Montana Judicial Race Joins Big-Money Fray*, The New York Times (Nov 2, 2014), <https://www.nytimes.com/2014/11/03/us/montana-judicial-race-joins-big-money-fray.html>.
- <sup>5</sup> David Katz, *Outside corporate interests are trying to shift the balance of the Montana Supreme Court. What it means for oil drilling along the Beartooth Front*, Preserve the Beartooth Front (Oct 20, 2014), <https://preservethebeartoothfront.com/2014/10/20/outside-corporate-interests-are-trying-to-shift-the-balance-of-the-montana-supreme-court-what-it-means-for-oil-drilling-along-the-beartooth-front/#jp-carousel-6290>
- <sup>6</sup> Brief of the states of Alabama, Alaska, Florida, Kansas, Michigan, Montana, Nebraska, Ohio, Oklahoma, South Carolina, and Virginia as Amicus Curiae, *National Mining Assoc., et al. v. Jackson, et al.*, No. 12-5310 (D.C. Cir. 2014), <https://media.dojmt.gov/wp-content/uploads/2013/07/NMA-Amicus-Brief-FILED.pdf>.
- <sup>7</sup> *National Mining Assoc., et al. v. Jackson, et al.*, No. 12-5310 (D.C. Cir. 2014).
- <sup>8</sup> *Western Exploration LLC v. U.S. Dep't of the Interior*, Case No. 3:15-cv-00491-MMD-VPC, (D. Nev.), first amended complaint for declaratory and injunctive relief (Oct 22, 2015), [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR\\_Docs/2015/2015-10-22\\_NVvsDeptOfInterior\\_AM\\_Complaint.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2015/2015-10-22_NVvsDeptOfInterior_AM_Complaint.pdf)
- <sup>9</sup> Sandra Chereb, *Sandoval, Laxalt Clash Over Sage grouse Lawsuit*, Las Vegas Review-Journal, (Oct 22, 2015), <https://www.reviewjournal.com/news/sandoval-laxalt-clash-over-sage-grouse-lawsuit/>
- <sup>10</sup> *North Dakota v. EPA*, No. 3:15-cv-59 (D. N.D. 2015), [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR\\_Docs/2015/2015-06-29\\_EPA\\_USACE.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2015/2015-06-29_EPA_USACE.pdf).
- <sup>11</sup> Brief of the state of West Virginia and 15 other states as Amicus Curiae, *Murray Energy Corp. v. McCarthy*, No. 5:14-CV-39 (N.D. W.V. 2014), [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170407\\_docket-16-2432\\_amicus-brief-2.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170407_docket-16-2432_amicus-brief-2.pdf).
- <sup>12</sup> Brief of the state of Nevada and Consumers' Research as Amicus Curiae, *State of West Virginia v. EPA*, No. 15-1363 (Feb 23, 2016), [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR\\_Docs/2016/2016-02-24\\_StateOfWV\\_v\\_EPA.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2016/2016-02-24_StateOfWV_v_EPA.pdf).
- <sup>13</sup> Brief of the states of Arizona, Montana, Nevada, and Utah as Amicus Curiae, *National Mining Association v. S.M.R. Jewell, et al*, 877 F.3d 845 (Apr 17, 2015), [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR\\_Docs/2015/2015-04-20\\_Lawrence\\_Amicus\\_Brief.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2015/2015-04-20_Lawrence_Amicus_Brief.pdf).
- <sup>14</sup> *Northern Plains Resource Council et al v. U.S. Army Corps of Engineers et al*, No. CV-19-44-GF-BMM, (D. Mon.), see <http://www.startribune.com/lawsuit-challenges-us-approvals-of-keystone-xl-pipeline/512064942/>
- <sup>15</sup> *California v. Bureau of Land Mgmt.*, No. 18-CV-00521-HSG, (N.D. Cal.), federal defendants' cross motion for summary judgment (Aug 2, 2019), <https://www.law360.com/articles/1185329/attachments/0>.
- <sup>16</sup> *Dine Citizens Against Ruining Our Env't v. Bernhardt*, 923 F.3d 831 (10th Cir. 2019), federal defendants' response in opposition to plaintiffs' motion (Aug 14, 2019) [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2019/20190814\\_docket-119-cv-00703\\_response.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2019/20190814_docket-119-cv-00703_response.pdf).
- <sup>17</sup> *Native Village of Nuiqsut et al v. Bureau of Land Management et al*, No. 3:19-CV-00056, (D.Ala.), federal defendants' brief in opposition to plaintiffs (July 17, 2019), <https://www.law360.com/articles/1179629/attachments/0>.
- <sup>18</sup> Brief of the states of West Virginia, Louisiana, Alabama, Arkansas, Michigan, Nevada, Ohio, Oklahoma, South Carolina, and Texas as Amicus Curiae, *City & Cty. of San Francisco v. Trump*, 897 F. 3d 1225 (9th Cir 2018), <http://ago.wv.gov/Documents/2017.06.16%20Sanctuary%20Brief.PDF>.
- <sup>19</sup> *Texas v. United States*, 809 F.3d 134 (Nov 9, 2015).
- <sup>20</sup> Brief of the States of Nevada, Arizona, Arkansas, Idaho, Nebraska, North Dakota, South Dakota, Texas, Wisconsin, And Wyoming as Amicus Curiae, *Coachella Valley Water District v. Agua Caliente Band of Cahuilla Indians*, 849 F.3d 1262 (9th Cir. 2017), <https://www.scotusblog.com/wp-content/uploads/2017/08/17-40-17-42-cert-tsac-states-of-nevada.pdf>.



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- <sup>21</sup> Lawrence VanDyke, *One Student's Response to 'A Response to Glendon'*, The Record (Mar 11, 2004), <https://web.archive.org/web/20050325085956/http://www.hlrecord.org/news/2004/03/11/Opinion/One-Students.Response.To.a.Response.To.Glendon-632127.shtml>.
- <sup>22</sup> Miranda Blue, Family Research Council, Anti-Gay and Anti-Choice Activists, Pitch In For Montana Supreme Court Race (Oct 21, 2014), <https://www.rightwingwatch.org/post/family-research-council-anti-gay-and-anti-choice-activists-pitch-in-for-montana-supreme-court-race/>.
- <sup>23</sup> *The Fellowship Review newsletter: November 2003*, Alliance Defending Freedom (Nov 2003) [http://web.archive.org/web/20040217031105/http://www.alliancedefensefund.org:80/blackstone/Formatted\\_Newsletters/Nov\\_2003/personal\\_milestones.html](http://web.archive.org/web/20040217031105/http://www.alliancedefensefund.org:80/blackstone/Formatted_Newsletters/Nov_2003/personal_milestones.html)
- <sup>24</sup> Brief of the states of Ohio, Montana and 14 other states as Amicus Curiae, *Isaacson v. Horne*, 716 F.3d 1213 (9th Cir. 2013), <https://www.ohioattorneygeneral.gov/OhioAttorneyGeneral/files/e5/e5fa00ee-6a4b-45aa-b1db-0fc2549d08c9.pdf>.
- <sup>25</sup> *Montana Supreme Court Candidate Compares Pregnant Women To Animals In Emails About Abortion Ban*, Montana Cowgirl Blog (Oct 16, 2014), <https://web.archive.org/web/20160122191235/www.mtcowgirl.com/2014/10/16/montana-supreme-court-candidate-compares-women-to-animals-in-emails-about-abortion-ban/>.
- <sup>26</sup> Lawrence VanDyke, *Not Your Daddy's Fundamentalism: Intelligent Design in the Classroom*, Harvard Law Review, vol. 117, no. 3, 2004, pp. 964–971, [www.jstor.org/stable/4093466](http://www.jstor.org/stable/4093466).
- <sup>27</sup> Don Pogreba, A Creationist for the Montana Supreme Court? A Review of Lawrence VanDyke, The Montana Post (Mar 17, 2014), <https://themontanapost.com/blog/2014/03/17/a-creationist-for-the-montana-supreme-court-a-review-of-lawrence-vandyke/>. See also [https://leiterreports.typepad.com/blog/2004/04/on\\_methodologic.html](https://leiterreports.typepad.com/blog/2004/04/on_methodologic.html)
- <sup>28</sup> Paul Zachary Myers, VanDyke Exposes Himself, Pharyngula (Mar 16, 2004), <https://web.archive.org/web/20040403164845/http://pharyngula.org/index/P495/>.
- <sup>29</sup> See Ed Brayton, *Brian Leiter vs the National Review Online*, Dispatches from the Culture Wars (Mar 15, 2004), [https://web.archive.org/web/20040401140524/http://www.mblog.com/dispatches\\_from\\_the\\_culture\\_wars/013524.html](https://web.archive.org/web/20040401140524/http://www.mblog.com/dispatches_from_the_culture_wars/013524.html); Kevin Drum, *Intelligent Design*, Washington Monthly (Mar 24, 2004), <https://washingtonmonthly.com/2004/03/24/intelligent-design-2/>.
- <sup>30</sup> See, e.g. “[to VanDyke] You’re the First Amendment expert and Solicitor. Are you saying you won’t work on this in any capacity. . . ?” Mark Mattiolo, Montana Department of Justice. [Re: *Monforton*]. E-mail to Lawrence VanDyke, Montana Department of Justice (Jan 15, 2014) (Obtained under the Freedom of Information), p. 309-10, <https://s3.documentcloud.org/documents/1284252/foi-request-re-montana-solicitor-sept-2014.pdf>.
- <sup>31</sup> Michael Black, Montana Department of Justice. [Subject: *Donaldson, et al. v. State*]. E-mail to Scott Darkenwald, Montana Department of Justice, Jan 28, 2014 (Obtained under the Freedom of Information), p. 664-7, <https://s3.documentcloud.org/documents/1284252/foi-request-re-montana-solicitor-sept-2014.pdf>.
- <sup>32</sup> Sanjay Talwani, *Former colleague criticizes VanDyke qualifications for Montana Supreme Court*, KXLH Helena (Oct 15, 2014), <https://web.archive.org/web/20150103021849/http://www.kxlh.com/news/former-colleague-criticizes-vandyke-qualifications-for-montana-supreme-court/>
- <sup>33</sup> Lawrence VanDyke, Montana Department of Justice. [*Sanders County Republican case (partisan judicial endorsements)*]. E-mail to Tim Fox, et. al., Montana Department of Justice (Jun 21, 2013) (Obtained under the Freedom of Information), p. 286-93, <https://s3.documentcloud.org/documents/1284252/foi-request-re-montana-solicitor-sept-2014.pdf>.
- <sup>34</sup> Shaila Dewan, *Montana Judicial Race Joins Big-Money Fray*, The New York Times (Nov 2, 2014), <https://www.nytimes.com/2014/11/03/us/montana-judicial-race-joins-big-money-fray.html>.
- <sup>35</sup> Troy Carter, *Ex justices say candidate for Supreme Court a corporate puppet*, Bozeman Daily Chronicle (Oct 17, 2014), [https://www.bozemandailychronicle.com/news/politics/ex-justices-say-candidate-for-supreme-court-a-corporate-puppet/article\\_0e4fc104-558d-11e4-8401-636fb002328c.html](https://www.bozemandailychronicle.com/news/politics/ex-justices-say-candidate-for-supreme-court-a-corporate-puppet/article_0e4fc104-558d-11e4-8401-636fb002328c.html).