

December 12, 2023

The Honorable Richard J. Durbin
Chairman
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

RE: Support of Nicole Berner's Nomination to the U.S. Court of Appeals for the Fourth Circuit

Dear Chairman Durbin and Ranking Member Graham:

On behalf of the undersigned unions representing millions of working people across the United States, we write in strong support of the nomination of Nicole Berner to the U.S. Court of Appeals for the Fourth Circuit.

We applaud this Administration's commitment to nominating judicial candidates from a variety of legal practice backgrounds, as we believe that a strong judiciary means one that includes judges whose experiences reflect the diverse range of Americans' within the justice system. Workers around the country are joining together to assert their rights in unprecedented numbers, and the federal courts are inundated with cases involving the rights of workers and the unions they form. Yet while many federal judges have a history of representing large corporate interests and have an in-depth understanding of corporate law, too few have a history of representing working people and their unions and have an intricate understanding of labor law. Having judges with a deep knowledge of that area of the law is long overdue. This is one of many reasons why we believe the Fourth Circuit will benefit from Ms. Berner's experience representing employees and unions.

Ms. Berner is also extraordinarily well-qualified. Having earned her J.D. degree in 1996 from the University of California, Berkeley, Ms. Berner clerked for two exceptional federal judges: the Honorable Betty Binns Fletcher on the U.S. Ninth Circuit Court of Appeals and the Honorable Thelton E. Henderson in the Northern District of California. Ms. Berner then practiced law at a national law firm, Jenner & Block, where she represented both corporations and individuals at the trial and appellate levels. After leaving Jenner & Block, Ms. Berner represented the Planned Parenthood Federation of America before joining the Service Employees International Union Legal Department in 2006. Ms. Berner began in the Legal Department as an Associate General Counsel, later served as the union's Deputy General Counsel, and in 2017 was appointed by the

union's International President to her present position as General Counsel. In the General Counsel role, Ms. Berner manages a staff of two dozen in-house attorneys, as well as several hundred outside counsel who together represent SEIU's nearly two million members working in numerous industries, including health care, property services, and the public sector. Ms. Berner is responsible for a docket of major cases throughout the country that raise a wide variety of both federal and state issues. In her many years of practice, Ms. Berner has earned a reputation for working well with opposing counsel and for her ability to resolve even contentious disputes. Her steady, thoughtful, and calm demeanor is well-suited for the role of appellate judge.

We emphasize that Ms. Berner's legal experience extends far beyond labor law. In the modern era, union lawyers regularly litigate and advise with respect to a broad range of issues including constitutional law, administrative law, environmental law, election law, tort law, and contract law, to name a few. Ms. Berner has supervised litigation in the United States Supreme Court and in the First, Second, Fourth, Fifth, Sixth, Eighth, Ninth, and D.C. Circuits. As a result, Ms. Berner will bring to the bench a solid foundation in appellate practice.

Finally, Ms. Berner would add important diversity to the federal bench in other ways as well. She would be the first openly LGBTQ judge on the United States Court of Appeals for the Fourth Circuit. In addition, as a Jewish woman of deep faith, Ms. Berner brings to all of her work a strong commitment to justice, to service, and to ensuring that all Americans have a fair opportunity to vindicate their rights.

For all these reasons, we strongly support Ms. Berner's nomination to the U.S. Fourth Circuit Court of Appeals, and we urge you to move swiftly to confirm her.

Sincerely,

Elizabeth H. Shuler, President, American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Becky Pringle, President, National Education Association (NEA)

Randi Weingarten, President, American Federation of Teachers (AFT)

Lee Saunders, President, American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO

Mary Kay Henry, International President, Service Employees International Union (SEIU)

Fran Drescher, President, SAG-AFTRA

Cecil Roberts, President, United Mine Workers of America

Kevin D. Sexton, President, Operative Plasterers; and Cement Masons' International Association (OPCMIA)

David McCall, President, United Steelworkers (USW)

Jennifer Dorning, President, Department for Professional Employees, AFL-CIO

Frank Christensen, General President, International Union of Elevator Constructors (IUEC)

Everett Kelley, National President, American Federation of Government Employees, AFL-CIO

Randy Erwin, National President, National Federation of Federal Employees (NFFE)

Greg Regan, President, Transportation Trades Department, AFL-CIO

Sean McGarvey, President, North America's Building Trades Unions

Claude Cummings Jr., President, Communications Workers of America (CWA)

Mark Dimondstein, President, American Postal Workers Union (APWU)

Jim Williams, Jr., General President, International Union of Painters & Allied Trades

D. R. Taylor, President, UNITE HERE

Kenneth W. Cooper, International President, International Brotherhood of Electrical Workers (IBEW)

Teresa Romero, President, United Farm Workers of America

Marc Perrone, President, UFCW

Matthew Biggs, President, International Federation of Professional and Technical Engineers (IFPTE)