

December 11, 2023

The Honorable Richard Durbin
Chairman
Senate Committee on the Judiciary
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Senate Committee on the Judiciary
Washington, DC 20510

Dear Chairman Durbin and Ranking Member Graham:

We write to urge you to confirm Nicole Berner to the United States Court of Appeals for the Fourth Circuit. We share a special bond with Nicole – all of us had the honor of clerking for Judge Betty B. Fletcher on the Ninth Circuit. We are diverse in our viewpoints and backgrounds, and our careers span the breadth of the legal profession. We include current and former federal and state appellate litigators, government attorneys and investigators, non-profit directors and practitioners, professors, prosecutors, public defenders, congressional staffers, corporate executives, and attorneys practicing in a wide variety of areas of law (commercial litigation, civil rights, Indian law, immigration, whistleblower protection, real estate, entertainment, labor, administrative law, and more). Judge Fletcher instilled in each of us a commitment to justice for all along with a deep respect for the law and a passion for hard work. Despite our differences, we all firmly believe that Nicole epitomizes those values. She is an extraordinarily well-qualified candidate who deserves expedient and bipartisan confirmation to the Fourth Circuit.

Nicole has devoted her legal career to protecting the rights of women and working people and strengthening our democracy. As a litigator at Jenner & Block, as a lawyer for Planned Parenthood, and for the past fifteen years as a union-side labor lawyer for SEIU, Nicole has fought to give a voice to those who are often unheard. And because Nicole is herself a mother of three who has worked full-time throughout her sons' lives and was the primary breadwinner in her family, she has personal perspective on the battles she has waged in court.

When she clerked for Judge Fletcher, Nicole eagerly sought out the kinds of cases many clerks try to avoid – those involving ERISA and bankruptcy. She recognized that what might seem dreary and regulation-heavy was really about the lives and livelihoods of everyday people, and that getting it right mattered. Nicole has maintained this clarity and compassion throughout her career.

We have no doubt that Nicole will bring her exceptional talents to bear as a Fourth Circuit judge. Certainly she will bring her brilliant mind and tremendous work ethic, but also her commitment to ensuring that ordinary people receive the same fair hearing and equal treatment as anyone else arguing before her. Nicole also would bring a breadth of professional and life experience to the court that can only strengthen it: she would be the first LGBTQ member of the court, one of just four women out of the court's fifteen judges in active service, and the only Fourth Circuit judge with a background as a lawyer for either a non-profit or a labor union. Moreover, through both the quality of her work and the kindness and good humor she brings to all her endeavors, Nicole is sure to inspire the best in the lawyers lucky enough to practice before her.

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Perhaps the most important question to ask about a judicial nominee coming straight from the practice of law is whether they have the ability and temperament to successfully transition from advocate to neutral arbiter. And though some of us may disagree with some decisions that Nicole will one day take part in as a judge, we have no doubt that she will faithfully and fairly apply the law to the parties appearing before her. That's precisely what we should demand of judges, and precisely what we think Nicole will do if confirmed.

Nicole Berner will be an outstanding Fourth Circuit judge. We urge you to confirm her to that position without delay.

Respectfully,

Jorge L. Barón, 2003-2004
Alafair Burke, 1994-1995
Erin Lindsay Calkins, 2012-2013
Samantha L. Chaifetz, 2006-2007
Blythe Chandler, 2011-2012
Jacqueline C. Charlesworth, 1992-1993
Robert Choo, 2000-2001
Madeline Cohen, 1996-1997
Leon Dayan, 1989-1990
Greg Diamond, 2002-2003
Mitra Ebadolahi, 2010-2011
Maxine Eichner, 1990-1991
Patty Ferguson Bohnee, 2002-2003
Louise Franklin, 1993-1994
Benjamin Gould, 2009-2010
James Grant, 1984-1985
Jennifer Haverkamp, 1987-1988
Vanessa Torres Hernandez, 2010-2011
Barry L. Johnson, 1988-1989
Chris Kemmitt, 2006-2007
Josef M. Klazen, 2007-2008
Arthur Liou, 2008-2009
Jessica Litman, 1983-1984
Julie Loughran, 2001-2002
Daniel G. McBride, 1997-1998
Trevor W. Morrison, 1998-1999
Lisa Powell, 2003-2004
Claire Prestel, 2003-2004
Laura Rosenwald, 1994-1995
Joe Shaeffer, 2004-2005
Floyd G. Short, 1990-1991

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Carmen Smarandoiu, 2010-2011
Elizabeth Theran, 2002-2003
Naomi Tsu, 2006-2007
Fred von Lohmann, 1998-1999
Margaret L. Satterthwaite, 1999-2000
David S. Schwartz, 1987-1988
Genevieve Vose, 2005-2006
Nancy Vettorello, 1997-1998
Elizabeth Wang, 2006-2007
Lewis Yelin, 2000-2001
R. Anthony Reese, 1995-1996