

December 11, 2023

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Re: The Nomination of Ms. Nicole Berner to the United States Court of Appeals for the Fourth Circuit

Dear Chairman Durbin, Ranking Member Graham, and Committee Members:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I write to express LDF’s enthusiastic support for the nomination of Nicole Berner to serve as a judge on the U.S. Court of Appeals for the Fourth Circuit.

Founded in 1940 by Thurgood Marshall, LDF is the country’s first and foremost civil rights law organization. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans.

LDF has examined and reviewed the record of judicial nominees for decades. Our examination of the record of judicial nominees is focused on an assessment of the capacity of judicial nominees to undertake their work with fairness and impartiality, and with respect for the rights of those who are often most marginalized in our society. The role of a federal judge is among the most central to maintaining the rule of law and the preservation of our constitutional democracy. Article III judges enjoy lifetime tenure and are subject to the rigorous process of Senate confirmation to ensure their independence and integrity, and to equip them to hold a position of the highest public trust. It is important, therefore, that individuals who serve as judges have a demonstrated commitment to fairness and to upholding the rule of law.

Ms. Berner’s impressive legal career, which includes an overarching commitment to protecting civil rights, especially the rights of working people, makes her extremely qualified to serve on the Fourth Circuit. She has served our country in advancing the rights of working people through her important work on behalf of the Service Employees International Union (SEIU), both in her role as associate general counsel and deputy general counsel at SEIU and at James & Hoffman, P.C., where she is on full-time retainer as the general counsel to SEIU.

Ms. Berner is a graduate of Berkeley Law School, as well as the Goldman School of Public Policy at the University of California and the University of California, Berkeley. She clerked on the U.S. Court of Appeals for the Ninth Circuit, with Judge Betty Binns Fletcher, and the U.S. District Court for the Northern District of California, with Judge Thelton Henderson.

LDF strongly believes that our country is strengthened by a judiciary that reflects the full professional and demographic diversity of the people our courts are called upon to serve. Ms. Berner's confirmation will greatly further that important goal.

Ms. Berner has garnered respect for her work litigating complex cases on behalf of SEIU at both the state and federal levels, as well as in front of administrative courts and the National Labor Relations Board – cases that have addressed many issues critical to the rights of workers. She has also frequently engaged on behalf of SEIU in other areas such as education, health care, immigration, and voting rights, which extensively overlap with issues important to marginalized communities that often do not have a voice in our legal system.¹ This level of experience representing working people and their needs remains significantly underrepresented in our federal judiciary, whose decisions deeply affect all of us.

Ms. Berner's confirmation will also contribute another important dimension to the federal judiciary because of her representation of the rights of LGBTQ people, and her own lived experience as a member of the LGBTQ community. Prior to her work for SEIU, Ms. Berner was an associate with Jenner & Block, and served on the team that litigated *Lawrence v. Texas*, the landmark case in which the Supreme Court first found unconstitutional a state law prohibiting same-sex couples from engaging in consensual, adult sexual activities.² Her work at SEIU has also included participating in amicus briefs for other major LGBTQ rights cases that the Supreme Court has heard, leading to significant advances in respect for the dignity and equal rights of LGBTQ persons.

LDF has long supported “firsts” on the federal bench, and Ms. Berner's confirmation would mark yet another one. She would be the first openly LGBTQ judge on the U.S. Court of Appeals for the Fourth Circuit. Indeed, it was only in 2021 that

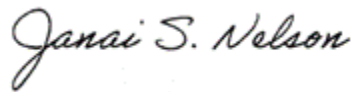
¹ James & Hoffman, P.C., Attorney Profiles, [Nicole G. Berner](#).

² Jenner & Block, [Jenner Alumna Nominated for 4th Circuit Seat](#), November 15, 2023.

an openly LGBT woman first served on one of the U.S. circuit courts. Ms. Berner would also become the only judge with a background in labor-side representation serving on the Fourth Circuit.³ Ms. Berner's confirmation would thus greatly further the goal of a federal judiciary that reflects the full diversity and breadth of experience of the legal profession.

Ms. Berner's career has demonstrated a deep and personal commitment to justice, fairness, and the rule of law. LDF is confident that she will bring to the Fourth Circuit the same strong commitment to these values that she has displayed throughout her impressive career. We urge the Committee to swiftly advance Ms. Berner's nomination.

Sincerely,



Janai Nelson
President and Director-Counsel
NAACP Legal Defense & Educational Fund
40 Rector Street
5th Floor
New York, NY 10006
jnelson@naacpldf.org

³ Rachel Weiner, [Biden nominates labor lawyer Nicole Berner to Fourth Circuit](#), November 15, 2023.