



December 11, 2023

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

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

On behalf of our 1.5 million supporters nationwide, People For the American Way enthusiastically supports the nomination of SEIU General Counsel Nicole Berner to the U.S. Court of Appeals for the Fourth Circuit. She would bring more than 20 years of litigation experience to the bench, and her commitment to the rights of all people is unquestioned. She will also be the first openly LGBTQ+ person ever on the Fourth Circuit. Her brilliance, her experience, and her commitment to justice will make her an excellent judge.

Nicole Berner got her undergraduate degree in women's studies at Berkeley in 1988. She then moved to Israel, where she worked for nonprofit organizations. She helped establish Bat Adam, an organization to advocate for women in Israel who are victims of violence. She also led workshops on democracy for both Arab and Jewish children in public schools.

Berner returned to Berkeley and earned both a JD and a Master in Public Policy in 1996. In her first positions after graduating, she clerked for Northern District of California Judge Thelton Henderson and Ninth Circuit Judge Betty Binns Fletcher. She then spent two years in Israel, where she worked as a visiting foreign attorney at the firm of Yigal Arnon & Co. Based in Jerusalem, she represented Israeli technology companies in international transactions.

In 2000, Berner returned to the U.S. and settled in Maryland, where she has lived for the past two decades. As an associate litigation attorney at Jenner & Block, she represented large corporations and national advocacy organizations in complex civil litigation and constitutional law. She also maintained a pro bono practice, representing children as guardian ad litem in abuse and neglect cases.

In 2004, Berner shifted her career to focus full-time on public interest law. For two years, she litigated cases at Planned Parenthood Federation of America to protect and expand access to reproductive healthcare.

Since 2006, Berner has been with the Service Employees International Union (SEIU), where she has focused on labor and employment law. She has worked as SEIU's general counsel since 2017. SEIU represents two million working people in the healthcare industry, the public sector, and property services. Its diverse members include both individuals born in the United States and those who are immigrants. Because of the nature of its members' jobs and backgrounds, Berner's expertise goes well beyond state and federal employment law. She has also worked on a wide

array of other issues including immigration law, healthcare, voting rights, antitrust, bankruptcy, and criminal law.

Examples from Berner's years at SEIU abound. She represented low-wage janitors in San Francisco who had been fired after picketing outside their workplace.<sup>i</sup> She represented Spanish-speaking citizens who challenged English-only elections in Florida.<sup>ii</sup> She defended SEIU from a complaint that the union and Kaiser Health had unlawfully restrained trade in violation of the Sherman Act.<sup>iii</sup> She supervised amicus briefs by SEIU and other labor unions challenging then-President Trump's orders barring people from certain mostly Muslim countries from entering the country.<sup>iv</sup>

As a civil rights and labor lawyer, Berner would add critically important professional and experiential diversity to the Fourth Circuit. She will also bring important personal diversity to the court. As an open lesbian, she will be the first openly LGBTQ+ judge in the history of the Fourth Circuit. She will also be the first Jewish judge on that court in many decades.

Nicole Berner is extraordinarily qualified, experienced, and devoted to the rule of law and the Constitution. We urge her prompt confirmation.

Sincerely,



Marge Baker  
Executive Vice President

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<sup>i</sup> *SEIU Local 87 v. NLRB*, 995 F.3d 1032 (9th Cir. 2021).

<sup>ii</sup> *Madera v. Detzner*, 325 F. Supp. 3d 1269 (N.D. Fla. 2018), *order enforced*, No. 1:18-CV-152-MW/GRJ, 2018 WL 7506109 (N.D. Fla. Nov. 5, 2018)

<sup>iii</sup> *Prime Healthcare Services, Inc. v. SEIU*, No. 11-CV-2652-GPC-RBB, 2013 WL 3873074 (S.D. Cal. July 25, 2013), *aff'd*, 642 F. App'x 665 (9th Cir. 2016), *cert. denied*, 579 U.S. 930 (2016).

<sup>iv</sup> *International Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017), *vacated and remanded sub nom. Trump v. International Refugee Assistance Project*, 138 S. Ct. 353 (2017).