



## GEORGETOWN LAW

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The Honorable Richard J. Durbin, Chairman  
The Honorable Lindsay Graham, Ranking Member  
Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

Re: Appointment of Loren AliKahn to the United States  
District Court for the District of Columbia

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee

I write to urge the Committee to recommend that the Senate confirm Judge Loren AliKahn, presently a Judge on the District of Columbia Court of Appeals, to the United States District Court for the District of Columbia. By way of background, I have practiced law in the District of Columbia for forty-seven years, and have taught at Georgetown Law School in one capacity or another since the early 1980s, first as an adjunct and then, beginning in 2002, as a full-time faculty member. I routinely teach classes with one hundred or more students, including federal courts and civil procedure.

It is not hyperbole to say that I have never had a student better or smarter than Ms. AliKhan. My first encounter with Ms. AliKhan was in 2004, when she enrolled in my 120-student federal courts class. I discourage second year students from taking the course; students say it is the law school equivalent of “organic chemistry.” The course attracts the top students – law review editors and students who have secured federal court clerkships. I urge students to take the course in their third year, after taking Constitutional law.

Ms. AliKhan was undeterred and took the course as a second year student. Early in the semester, I led a discussion of *Martin v. Hunter’s Lessee*, a very difficult case, and I called on several students flummoxed by the questions. Ms. AliKhan was the only student to raise. I asked her to explain why the U.S. Supreme Court had jurisdiction to review the judgment of the Virginia Court of Appeals – then Virginia’s highest court. Answering the question required tackling the intricacies of the independent and adequate state ground doctrine. Ms. AliKhan’s answer was succinct, clear, and right on the law. I was impressed. Throughout the semester, if the class was stuck on a hard question, I looked to see whether Ms. AliKhan raised her hand because I knew she would have the right answer. Georgetown has a blind grading process and

teachers do not learn the identity of the students until we transmit the grades to the Registrar's office. Among over a hundred exams, only one stood out as extraordinary. I was not surprised to see that it was Ms. AliKhan's exam.

The following year Ms. AliKhan was a student in a litigation clinic I directed. We had recently won an important case under the Individuals with Disabilities Education Act ("IDEA") in the Second Circuit, holding that IDEA's fee-shifting provision authorized courts to reimburse prevailing parents the expert fees that they reasonable incurred in litigation. *Murphy v. Arlington Cent. Sch. Bd. Dist.*, 402 F.3d 322 (2d Cir. 2005). With the government's support, the School Board petitioned for a writ of certiorari, which the Court granted. Ms. AliKhan was a student in my clinic just as we started writing our merits brief. Ms. AliKhan's work on the case was superb; her section of the brief was exceptionally well researched and written. We lost the case, but Justice Breyer's dissent highlighted much of Ms. AliKhan's work. *Arlington Cent. Sch. Bd. Dist. v. Murphy*, 548 U.S. 291, 308 (2006) (Breyer, J. dissenting) (arguing that the majority's ruling was at odds with the statute's language and clear purpose).

I followed Ms. AliKhan's career after her graduation in 2006. She clerked for two remarkable judges – District Judge and twice law school Dean (Yale and the University of Pennsylvania), Lou Pollak, who sat in Philadelphia, and Circuit Judge Thomas Ambro, who sits on the Third Circuit. I recommended Ms. AliKhan for these clerkships, and both Judges were as impressed with Ms. AliKhan as I am. Unfortunately, Judge Pollak is now no longer with us, but I would not be surprised if you hear from Judge Ambro, who holds Ms. AliKhan in high esteem.

I have spent much of my career as a lawyer handling and supervising cases, mostly in federal state courts. To me, the most important attribute for a trial court judge is judicial temperament – the ability to hear out the lawyers, treat them with respect, and as best as is humanly possible, put aside one's emotions and inclinations. In the same way, Judges also have to treat the parties before the court, whether they are global corporations represented by top firms or individuals facing criminal trials represented by public defenders. I have no doubt that Ms. AliKhan, if confirmed, will exemplify those attributes. To be a successful advocate, one needs to be able to see and respect the other side of the argument, as well as one's adversary, and understand the humanity that often underlies litigation.

To be sure, as an appellate Judge, and formerly the Solicitor General of the District of Columbia, Ms. AliKhan's focus has been on appellate practice. That, in my view, is a factor in her favor. For one thing, district court judges must be excellent lawyers. On that score, I think that Ms. AliKhan has proven her worth many times over. Her briefs are, in a word, flawless. They are meticulously written and researched; they persuade, but with logic, not adjectives; and they are scrupulously fair. That is what I expect from a top-notch district judge. She also is a formidable advocate. Having participated in many moot courts for Ms. AliKhan and having watched or listened to several of her arguments in court, her skills as an advocate are first rate. Even under tough and at times skeptical questioning, she remains steadfast, unruffled, and ready to engage without an edge. To understand how skilled an oral advocate Ms. AliKhan is, I would urge you to listen to her argument before the Supreme Court in *Artis v. District of Columbia*, 138 S. Ct. 594 (2018). It was a challenging argument, but Ms. AliKhan rose to the challenge.

Nor would it be accurate to assume that Ms. AliKhan is not experienced in district court litigation. After all, she spent a year working with Judge Lou Pollak, perhaps the most respected trial judge in his time, and a great teacher. As Solicitor General for the District of Columbia, she provided strategic counseling on important matters in the District's trial courts, both civil and criminal, including motions practice, discovery, expert witnesses, settlement and mediation, opening statements and closing arguments, Rule 50, damages, jury instructions, post-trial motions, and whether to appeal adverse decisions.

Let me end with two brief, additional comments. One is that Ms. AliKhan is a born leader. There is a Tom Sawyer-like quality about her. Although fence painting is a chore, once Tom started painting the fence others wanted to join him. Ms. AliKhan has the same magnetic quality. While she was overseeing all of the appellate work for the District of Columbia, other highly talented lawyers, including former Supreme Court clerks, flocked to her office, making it a "go to" place for smart and ambitious lawyers. Her presence has transformed the office. The other point is that Ms. AliKhan has consistently put public service ahead of her pocketbook. She chose to go into public service instead of remaining at a top tier law firm. Her resume attests to her deep commitment to her community, and her work to better the lot of others. That is why Ms. AliKhan comes to work every day. That is one more reason why I think she would be a top-notch District Court judge.

Respectfully,



David C. Vladeck