



NAACP

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April 26, 2022

The Honorable Richard Durbin
Chairman, Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles Grassley
Ranking Member, Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

RE: NOMINATION OF NANCY ABUDU TO ELEVENTH CIRCUIT

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the NAACP, our nation's oldest, largest, and most widely recognized grassroots-based civil rights organization, I strongly urge you to support the nomination of Nancy Abudu to the U.S. Court of Appeals for the Eleventh Circuit.

Ms. Abudu is an extraordinary candidate for the Eleventh Circuit. Born and raised in Virginia, she is the daughter of immigrants from Ghana. She has spent most of her career as a civil rights lawyer, with a primary focus on voting rights. Her academic and legal credentials are impeccable. She received a B.A. from Columbia University and a J.D. from Tulane University Law School. Early in her career, she worked as a staff attorney for the appellate court where she would now serve. She conducted legal research and prepared memoranda in over 120 cases before the Eleventh Circuit, advising the court on how to resolve a host of issues involving constitutional and statutory matters relating to criminal procedure, jury discrimination, employment discrimination, and prison conditions.

Notably, Ms. Abudu has remarkable ties to each of the states within the Eleventh Circuit. For six years, Ms. Abudu worked for the prestigious Voting Rights Project of the ACLU, located in Atlanta, Georgia. She then served for five years as Legal Director for the ACLU of Florida. For the past four years, she has served in litigation leadership positions with the Southern Poverty Law Center, founded and headquartered in Alabama. She is a member of the bar in both Georgia and Florida. Importantly, she has represented communities of color in each of the three states within the Eleventh Circuit, on a range of civil rights issues. It is difficult to think of another appellate nominee at any point in time with such strong connections to each of the states within the jurisdiction of the court on which she will now serve.

I. NANCY ABUDU WILL HELP BRING RACIAL AND GENDER DIVERSITY TO THE ELEVENTH CIRCUIT

Nancy Abudu's nomination to the Eleventh Circuit addresses a breathtaking gap in representation. The Eleventh Circuit is the federal appellate court for Georgia, Florida and Alabama. With the Supreme Court considering very few cases, it is the court of last resort for over 8.5 million Black Americans residing within its jurisdiction. This court is in desperate need of racial diversity. Only one of its twelve judges is Black, Judge Charles Wilson, and he is eligible to retire or take senior status. If that were to happen, this circuit court located in the Deep South would have no African American representation whatsoever. This court is one retirement away from re-segregating.

Moreover, Ms. Abudu would be the first Black woman ever to serve on the Eleventh Circuit. Only two Black judges have sat on this court, both male. Judge Wilson was appointed by President Clinton in 1999. Judge Joseph Hatchett was appointed by President Carter in 1979 to the Fifth Circuit and, when the Fifth Circuit was divided into two circuits in 1981, he moved to the Eleventh Circuit. Significantly, Nancy Abudu would become the only Black woman sitting on a federal appellate bench in the South. President George W. Bush appointed Judge Allyson Duncan to the Fourth Circuit in 2003 but she retired in 2019. The Fifth Circuit has never had a Black woman judge.

Finally, Ms. Abudu will be the first Black judge to represent Georgia on the Eleventh Circuit. The two Black judges to serve on this court, Judges Wilson and Hatchett, were both from Florida. President Obama attempted to appoint a Black judge from Alabama to serve on the Eleventh Circuit, U.S. District Judge Abdul Kallon, but Alabama senators refused to move his nomination. Almost one-third of Georgia residents are African American. It is long past time that Georgia is represented by a Black judge on its federal appellate court.

II. NANCY ABUDU HAS DEVOTED HER CAREER TO DEFENDING DEMOCRACY

Nancy Abudu is President Biden's first and only nomination of a voting rights lawyer to a Southern court. Federal courts in the South have a particularly vital role in safeguarding our democracy. Given their responsibility in ensuring that our democracy is open and accessible to all citizens, it is imperative that federal judges have a deep understanding of the history and modern-day struggle facing communities of color in achieving full political participation. Lawyers like Ms. Abudu who have represented the disenfranchised throughout their careers know how precious our democracy is. They understand that the right to vote is fundamental and essential to protecting all other rights. She will bring that important perspective to the job of ensuring equal justice under law for all Americans.

The case for nominating voting rights lawyers to the federal bench has never been stronger. Many of Donald Trump's 234 judicial appointees were ardent defenders of voter suppression. As the NAACP recounted in our report detailing their records, *Weaponizing the Bench to Suppress the Vote*, many nominees had sought to undermine the Voting Rights Act, defended restrictive voter laws, supported voter purging, and advocated for a citizenship question on the Census.

With her extensive background in protecting our democracy, Nancy Abudu is exactly the nominee needed for the Eleventh Circuit at this moment in time. She is one of the most experienced voting rights lawyers in the nation. She has represented Black, Brown, and Native voters to protect their rights to fully participate in the political process. She has argued in the Fifth, Ninth and Eleventh Circuits, and handled or supervised dozens of voting rights cases in federal appellate courts, federal district courts and state courts around the country. She has filed numerous briefs before the U.S. Supreme Court.

Notably, Ms. Abudu has been successful in ensuring voters of color are afforded rights to participate in our democracy. She won a significant victory invalidating a Florida county's redistricting plan as an unconstitutional gerrymander. The county had improperly counted incarcerated persons as residents of a district in which a state prison was located, thereby diluting the voting strength of those living outside the district. The court ordered the

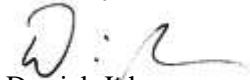
county to redraw the districts.¹ This represented the first federal court decision to ever rule that a redistricting plan was an unconstitutional prison-based gerrymander.

Ms. Abudu has experience representing Native voters in the exercise of their rights in Western states. In South Dakota, Ms. Abudu challenged the refusal by local election officials to allow Native voters to vote based on felony convictions, although South Dakota law allowed them to vote. The case was successfully settled and included an agreement that the county would provide training for election officials to ensure compliance with the state's election laws.² Nancy Abudu was also a contributing author to an important publication, *Voting Rights in Indian Country*, which highlighted litigation brought by the ACLU Voting Rights Project on behalf of Native voters in Colorado, Montana, Nebraska, South Dakota, and Wyoming.³

Additionally, Ms. Abudu has represented the NAACP in significant voting rights litigation. In *Shelby County v. Holder*, which involved a constitutional challenge to the Voting Rights Act, Ms. Abudu represented respondent-intervenors Alabama State Conference of the NAACP and individual voters.⁴ She also represented the Florida State Conference of NAACP Branches in a challenge to a Congressional redistricting plan in violation of the Florida Constitution.⁵

In conclusion, the NAACP believes that our federal courts—and especially our Southern courts—need judges with Nancy Abudu's voting rights background. We strongly urge confirmation of this well-qualified, exceptional litigator and defender of democracy who will bring needed representation to this critical appellate court in the Deep South. Thank you for your attention to this important matter.

Sincerely,



Derrick Johnson
President and CEO

cc: Members of the Senate Judiciary Committee

¹ *Calvin v Jefferson Co. Bd. of Comm'rs*, 172 F. Supp. 3d 1292 (N.D. Fla. 2016).

² *Janis v. Nelson*, No. 09-5019 (D.S.D. 2010) (Schreier, J.).

³ *Voting Rights in Indian Country: A Special Report of the Voting Rights Project of the American Civil Liberties Union* (Sept. 2009), available at www.aclu.org/votingrights/minority/41203pub20090930.html.

⁴ Brief for Respondent-Intervenors Bobby Pierson, Willie Goldsmith, Sr., Mary Paxton-Lee, Kenneth Dukes, and Alabama State Conference of the National Association for the Advancement of Colored People in Opposition to Petition for Certiorari, *Shelby County, Ala. v. Holder*, No. 12-96, available at <https://www.aclu.org/legal-document/shelby-county-v-holder-brief-respondent-intervenors>.

⁵ *League of Women Voters of Florida v. Detzner*, 172 So. 3d 363 (Fla. 2015).