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Nominees - Supporting Materials [1]

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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Letter	Nomination of William Gerry Myers, III - To: Orrin Hatch - From: Dick Thornburgh	1	06/16/2003	P6/b6;
002	Letter	Nomination of William Gerry Myers, III - To: Orrin Hatch - From: William Barr	1	07/14/2003	P6/b6;

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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MYERS

JUDGE WILLIAM G. MYERS, III
NOMINEE FOR THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Biographical Information

- Served as Solicitor of the Interior, the chief legal officer and third-ranking official at the Department of the Interior.
- Served in the Department of Energy as the Deputy General Counsel for Programs, Assistant to the Attorney General of the United States, and as Legislative Counsel for Senator Alan Simpson of Wyoming.
- Served as Vice-Chairman of the Public Lands and Land Use Committee of the American Bar Association.
- Chaired the Idaho State Board of Land Commissioner's Federal Lands Task Force Working Group and the Boise Metro Chamber of Commerce's State Affairs and Natural Resources Subcommittee.
- Supported by the Governors of Alaska, Hawaii, Idaho, Montana, and Nevada, five states in the Ninth Circuit.

Allegations

- Accused of not adequately protecting the environment as Solicitor of the Interior
- Accused of clearing the way for a previously rejected gold mine in Imperial County, California that would pollute the environment and destroy the Quechan Tribe's sacred sites.
- Accused of not adequately defending the interests of Native Americans
- Violated federal ethics laws as well as an ethics agreement he signed before taking office, in which he promised not to deal with his former clients or employers
- Accused of giving preferential treatment to Harvey Robbins, a rancher, who frequently disregarded public land grazing laws.

Responses

- Judge Myers protected the environment by taking action to stop trespassers from illegally using a bulldozer to damage resources in Alaska, by supporting a settlement agreement whereby private owners of mining right relinquished their rights to min, and helped prevent the continued destruction of an important natural stream in California.
- Judge Myers did nothing to foreclose the Secretary from taking action against the mining proposals on the grounds that they would unduly impair the public lands; and merely found that the reasoning provided by the Department of the Interior for denying the proposal was inconsistent with federal law.
- Judge Myers supported legislation to vindicate the rights of the Pueblo of Sandia; he sided with a coalition of Indian tribes claiming the right to custody of the skeletal remains of an approximately 9,000-year-old man; and has been a strong defender of tribal interests under the Indian Gaming Act.
- A thorough investigation by the Department of Interior's Inspector General, found that Judge Myers complied with applicable federal ethics laws and his ethics agreement.

- Judge Myers was cleared of any wrongdoing during the investigation; it was found that she was not involved in the negotiations over the Robbins agreements, did not know the details of the allegations against Robbins, and did not sign the settlement agreement.



WILLIAM G. MYERS, III
NOMINEE TO THE NINTH CIRCUIT

PROVIDED BY THE WHITE HOUSE
OFFICE OF LEGISLATIVE AFFAIRS

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WILLIAM G. MYERS III
Nominee to the U.S. Court of Appeals for the Ninth Circuit

- Former Solicitor of the Interior—William G. Myers III of Idaho is a highly respected attorney who has extensive experience in the fields of natural resources, public lands, and environmental law. His nomination enjoys widespread support from across the ideological and political spectrum.
 - Mr. Myers has been nominated to the Ninth Circuit, which covers the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington, as well as Guam and the Northern Mariana Islands.
- Mr. Myers has had a distinguished career as a public servant and practicing attorney.
 - From July 2001 to October 2003, Mr. Myers served as Solicitor of the Interior, the chief legal officer and third-ranking official at the Department of the Interior. In that capacity, he supervised over 300 attorneys in 19 offices located across the country, managed a \$47 million annual budget, and provided advice and counsel to the Secretary of the Interior as well as departmental offices and bureaus. He was confirmed by the United States Senate to serve as Solicitor of the Interior by unanimous consent.
 - Before coming to the Department of the Interior, Mr. Myers practiced at one of the most respected law firms in the Rocky Mountain region, where he participated in an extensive array of federal litigation involving public lands and natural resources issues.
 - From 1992 to 1993, Mr. Myers served in the Department of Energy as the Deputy General Counsel for Programs, where he was the Department's principal legal adviser on matters pertaining to international energy, government contracting, civilian nuclear programs, power marketing, and intervention in state regulatory proceedings.
 - Mr. Myers served as an Assistant to the Attorney General of the United States from 1989 to 1992. In this capacity, he prepared the Attorney General for his responsibilities as chairman of the President's Domestic Policy Council.
 - Before entering the Justice Department, Mr. Myers served for over four years as Legislative Counsel for Senator Alan Simpson of Wyoming, where he was Senator Simpson's principal adviser on public land issues.

- Mr. Myers is a nationally recognized expert in natural resources and public lands law.
 - Mr. Myers served as Vice-Chairman of the Public Lands and Land Use Committee of the American Bar Association Section on Environment, Energy, and Resources.
 - In his home state, Mr. Myers has chaired the Idaho State Board of Land Commissioner's Federal Lands Task Force Working Group and the Boise Metro Chamber of Commerce's State Affairs and Natural Resources Subcommittee.
- Mr. Myers is an avid outdoorsman and a committed conservationist.
 - For the last fifteen years, Mr. Myers has served as a volunteer for the National Park Service. Over that span, he has logged at least 180 days of volunteer service in numerous national parks, performing trail work, campsite cleaning, visitor assistance, and park patrols. Mr. Myers volunteered 7 days in the Bridger-Teton National Forest, where he worked on trail rehabilitation, tore down and packed out an illegal hunting camp, and conducted backcountry patrol.
 - Mr. Myers began camping and fishing as a child and became an Eagle Scout at age 15.
- Mr. Myers has widespread support from across the ideological and political spectrum.
 - Former Democratic Idaho Governor Cecil Andrus, who also served as Secretary of the Interior in the Carter Administration, supports Mr. Myers; he says that Mr. Myers possesses "the necessary personal integrity, judicial temperament, and legal experience" as well as "the ability to act fairly on matters of law that will come before him on the court."
 - Former Democratic Wyoming Governor Mike Sullivan, who also served as United States Ambassador to Ireland in the Clinton Administration, endorses Mr. Myers. He calls Mr. Myers "a thoughtful, well-grounded attorney who has reflected by his career achievements a commitment to excellence" and says that Mr. Myers "would provide serious, responsible, and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedents or the merits of a given matter."
 - Mr. Myers is backed by every member of Idaho's congressional delegation. In particular, Congressman Mike Simpson and Congressman C.L. "Butch" Otter write: "Without a doubt, Bill would make an outstanding Judge on the Ninth Circuit."
 - In 2004, Mr. Myers was endorsed by fifteen state Attorneys General, including current United States Senator Ken Salazar of Colorado as well as the Democratic Attorneys General of Oklahoma and Wyoming. These chief law enforcement officers stated that Mr. Myers "would bring to the Ninth Circuit strong intellectual skills, combined with a strong sense of civility, decency, and respect for all."

- Two former Attorneys General of the United States support Mr. Myers. Former Attorney General William P. Barr states that Mr. Myers “represents the epitome of judicial temperament” and “would make a great judge,” while former Attorney General Dick Thornburgh calls Mr. Myers “exceptionally well qualified to serve as a member of the Federal Judiciary.”
- In 2004, the Governors of Alaska, Hawaii, Idaho, Montana, and Nevada, five states in the Ninth Circuit, strongly backed Mr. Myers, writing that he had the “temperament and the judicial instincts to serve well on the Ninth Circuit.”
- Mr. Myers is supported by numerous Native American leaders, including the Chairman of the Board of Directors of the Tulalip Tribes, the Governor of the Chickasaw Nation, and the Chairman of the Quapaw Tribe. In its endorsement of Mr. Myers, the Board of Directors of the Tulalip Tribes specifically noted that Mr. Myers “has a balanced record” and was “experienced and knowledgeable in Federal Indian law.”

STATEMENTS BY SELECT SUPPORTERS OF WILLIAM G. MYERS III
Nominee to U.S. Court of Appeals for the Ninth Circuit

The Honorable Alan K. Simpson, Former United States Senator from Wyoming

"I have observed Bill closely for nearly 20 years. I can wholeheartedly vouch for his legal competence and his integrity. He has not yet had an opportunity to serve as a member of the judiciary. However, based on my observations of him as an attorney, counselor, and close friend I firmly believe that he would demonstrate superb judicial temperament in the role of a federal judge."

The Honorable Mike Simpson and C.L. "Butch" Otter, United States Representatives from Idaho

"Bill possesses a strong moral character and can be trusted with decisions of both individual and national importance. His extensive legal background gives him the qualifications he needs for this position. Bill has consistently brought a balanced approach to solving the many and varied issues we have discussed with him over the years."

The Honorable Henry J. Hyde, United States Representative from Illinois

"I fully support his nomination, as do many other people whose opinions I hold in high regard. These would include Mr. Myers' home state Senators, former Attorney Generals, and especially Alan Simpson, who is his former supervisor and my good friend. Many other people who I know have known Mr. Myers for many years and share my belief that that he will be an excellent appellate judge"

The Honorable Governors of Alaska, Hawaii, Idaho, Montana, and Nevada (in 2004)

"As representatives of states within the largest Circuit Court of Appeals in the nation, we are well aware of the need for quality judges who will provide a balanced perspective to the Ninth Circuit's extraordinary caseload. Mr. Myers will bring his background and experience in western issues to his fellow colleagues on the bench. These matters are significant to western Governors, and we believe Mr. Myers has the temperament and the judicial instincts to serve well on the Ninth Circuit."

The Honorable Attorneys General of Alaska, Colorado, Delaware, Guam, Hawaii, Idaho, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Utah, Virginia, and Wyoming (in 2004)

"In our view, his thorough understanding of relevant legal precedents, decisions, and key policy interests and his outstanding legal reasoning as Solicitor demonstrate his keen intellect, sound judgment and the skills suitable for the bench. It is also our experience that Mr. Myers has acted with the highest standard of integrity, competence, and good judgment. His ability to objectively evaluate cases with calm deliberation and thoughtful analysis is precisely what we, as government officials, lawyers and citizens, expect from our appellate judges."

The Honorable Lawrence G. Wasden, Attorney General for the State of Idaho

"Mr. Myers has gained my respect because he has always been willing to listen to the State of Idaho's concerns and provide a timely and reasoned response. His professional competence as a lawyer, his integrity, as demonstrated through his advocacy for his client and his respect for the law, and his temperament in dealing with issues that stir deep feelings throughout Idaho and the West, are traits that Mr. Myers will bring to the Ninth Circuit."

The Honorable Bill Anoatubby, Governor of The Chickasaw Nation

"Based upon Mr. Myers' work as solicitor in the U.S. Department of the Interior, we know him to be fair and impartial. He listened to our concerns and acted upon them. He is extremely well-qualified to fill the post in the 9th Circuit, and has demonstrated his ability to listen and to reason. We believe Mr. Myers will be an asset to the Court."

The Honorable Dick Thornburgh, Former Governor of Pennsylvania and Attorney General of the United States

"I believe Bill is exceptionally well qualified to serve as a member of the Federal Judiciary. During the time I worked with Bill, he demonstrated not only an outstanding legal intellect, but also good judgment and exemplary integrity. I have no doubt that these skills, along with his sound temperament and work ethic, would serve him well on the bench, should he be confirmed."

The Honorable William P. Barr, Former Attorney General of the United States

"Apart from his outstanding legal ability and intellect, Bill represents the epitome of judicial temperament. He is fair-minded, careful, and balanced. He has good judgment and the highest integrity. He would make a great judge."

The Honorable Marilyn S. Kite, Supreme Court of Wyoming

"Bill is extremely knowledgeable on the legal issues related to natural resources and public lands. His practical experience in that area provides him with a sound pragmatic base from which to analyze those issues. He often found workable solutions to clients' problems without the need for litigation. I have no doubt about his legal ability and integrity. His successful record before federal and state courts as well as regulatory agencies confirms those attributes."

The Honorable Cecil D. Andrus, Former Governor of Idaho and Secretary of the Interior

"It is my judgment that Mr. Myers possesses the necessary personal integrity, judicial temperament, and legal experience appropriate to a nominee to the federal bench, and particularly the federal Court of Appeals. Further, it is my judgment that, while Mr. Myers has been an effective advocate in the past for specific policy positions with which I may have personally disagreed, he also possesses the ability to act fairly on matters of law that will come before him on the court."

The Honorable Michael J. Sullivan, Former Democratic Governor of Wyoming

"Mr. Myers has a wealth of legal experience in the private practice, in Washington, and in the areas of public lands and the environment. These are areas of extreme importance to the country and those of us in the West, and it is my view that Bill's experience would serve the Court and the Circuit well He is, in my view, an individual who would provide serious, responsible, and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedent or the merits of a given matter."

The Honorable Charles D. Cuddy, Democratic State Representative from Idaho

"Since becoming an Idaho State Legislator 13 years ago, I have had the opportunity to work with Mr. Myers on federal land management issues. This committee attempted and succeeded at facilitating management policies and procedures, providing efficiency, product production, and healthy forests in an environmentally sound manner As chairperson of this committee, Mr. Myers held the discussions on a very professional level with high quality and standard, while maintaining congressional order and produced workable conclusions. Mr. Myers' capability to conduct these meetings in a positive and forward-moving manner without indicating bias convinced me that he is a very disciplined person and would work to gain conclusion based on factual evidence."

WILLIAM G. MYERS III
Responses to False Allegations

ISSUE:

Some groups claim Mr. Myers did not adequately protect the environment as Solicitor of the Interior.

RESPONSES:

As Solicitor of the Interior, Mr. Myers vigorously fought to safeguard the environment and conserve natural resources.

- Mr. Myers sought to protect this country's lands, national parks and monuments.
 - Mr. Myers took action to stop trespassers from illegally using a bulldozer to damage resources in Alaska's Wrangell-St. Elias National Park/Preserve and recover damages for injuries from past activities.
 - Mr. Myers supported a settlement agreement whereby private owners of mining rights in Alaska's Denali National Park and Preserve relinquished their right to mine in exchange for compensation by the government. By reaching an agreement rather than litigating the miners' claims, the government avoided having to reexamine the validity of the mining rights, which would have required sampling and ground disturbance within the park, thus damaging park resources.
 - Mr. Myers helped expand and secure the status of Governors Island National Monument (in New York Harbor) through use of Presidential proclamation authority under the Antiquities Act. See Presidential Proclamation 7647 of February 7, 2003.
 - Mr. Myers authorized the regional solicitor of Nevada to take numerous cases, such as *Colvin v. Snow*, to the U.S. Attorney to require ranchers to pay applicable grazing fees.
 - Mr. Myers helped prevent the continued destruction of an important natural stream in California's White Mountains. As Solicitor, Mr. Myers supported the government's successful pursuit of a preliminary injunction against a farmer who was entering onto public lands and replacing a segment of Marble Creek, one of the last natural streams flowing out of National Forest System lands in California's White Mountains, with a pipeline. Without the preliminary injunction, the government would not have been able to restore the Creek before winter, thus endangering fish, wildlife, and vegetation.

- Mr. Myers recognized the importance of protecting indigenous animals, as well as the environment.
 - Mr. Myers supported an agreement removing two dams from the Penobscot River, in what conservationists called "the biggest restoration project north of the Everglades." Misty Edgecomb, *A River Reborn*, BANGOR DAILY NEWS, Oct. 7, 2003. The agreement, devised by a coalition including the Penobscot Nation, environmental groups, and state and federal officials, will allow the Atlantic salmon and ten other species of native sea-run fish in the Penobscot River to reach their spawning habitat, thus dramatically raising the population of these fish in the Penobscot River.
 - Mr. Myers participated in deliberations that resulted in the Fish and Wildlife Service rejecting a Wyoming wolf management plan because the plan designated wolves as predators, allowing the wolves to be killed virtually at will and hunted as trophy game in parts of the state.
 - Mr. Myers supported protecting information detailing the nesting sites of endangered birds to avoid exposing the birds to harassment from birdwatchers and physical harm from landowners.
- Mr. Myers fought to protect our nation's waters and ensure the nation was adequately compensated for the private use of any natural resources.
 - Mr. Myers defended a reasonable interpretation of the Outer Continental Shelf Deep Water Royalty Relief Act to ensure that oil and gas companies did not enjoy an unjustified windfall through royalty-free activity for at least two decades.
 - Mr. Myers supported record royalty recoupment and penalties against the Shell Oil Company for its illegal flaring and venting of natural gas in the Gulf of Mexico. The company reached a \$49 million settlement with the Department of the Interior's Minerals Management Service in 2003.

ISSUE:

As Solicitor of the Interior, Mr. Myers repudiated a predecessor's legal opinion, thus clearing the way for a previously rejected gold mine in Imperial County, California that would pollute the environment and destroy the Quechan Tribe's sacred sites.

RESPONSES:

- Mr. Myers did not approve Glamis Gold, Ltd.'s proposal to build a gold mine in Imperial County, California. Rather, he only found that the reasoning previously provided by the Department of the Interior for denying Glamis's proposal was inconsistent with federal law.
 - Upon arriving at the Department of the Interior, Mr. Myers was confronted by a host of pending lawsuits against the Department resulting from a 1999 opinion issued by his predecessor interpreting the Federal Land Policy and Management Act and the changes instituted to hard-rock mining regulations.
 - After reviewing his predecessor's opinion, Mr. Myers found that it would be difficult to defend in court because it was inconsistent with the plain language of the Federal Land Policy and Management Act.
- Mr. Myers's opinion did nothing to foreclose the Secretary from promulgating regulations defining the term "undue impairment" and thus allowing the Department to deny mining proposals on the grounds that they would unduly impair the scenic, scientific, and environmental values of public lands.
 - His predecessor concluded that the Secretary of the Interior possessed the authority to deny Glamis's proposal pursuant to section 601(f) of the Federal Land Policy and Management Act if it would result in "undue impairment" of cultural, historical, and archaeological resources.
 - Section 601(f) of the Federal Land Policy and Management Act preserves the applicability of federal mining laws within the California Desert Conservation Act with the following exception: "all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section." The provision further directs that "[s]uch regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation area against undue impairment."
 - In the years following the enactment of the FLPMA, however, the Department of the Interior did not exercise its statutory discretion to prescribe regulations pursuant to section 601(f) defining the meaning of the phrase "undue impairment."

- As a result, Mr. Myers appropriately concluded that the Department could not reject Glamis's proposal pursuant to section 601(f). Because the Department had failed to adopt the necessary regulations defining the meaning of "undue impairment," it would have been difficult to defend in court a decision rejecting Glamis's proposal on the grounds that it would cause undue impair of the scenic, scientific, and environmental values of public lands.
- Senior officials from the Department of the Interior consulted with representatives of the Quechan Tribe concerning the Glamis Imperial gold mine.
 - Deputy Secretary J. Steven Griles, Assistant Secretary for Indian Affairs Neal McCaleb, and Deputy Assistant Secretary for Indian Affairs Wayne Smith met with the President of the Quechan Tribe and other Tribal members in Arizona to discuss the Glamis gold mine.
 - Deputy Assistant Secretary for Indian Affairs Wayne Smith visited with Tribal officials in California to discuss the proposed gold mine.
- Mr. Myers fully considered the views of the Quechan Tribe before issuing his opinion concerning the Glamis Imperial gold mine.
 - Mr. Myers learned about the Quechan Tribe's concerns from an August 31, 2001 letter authored by the Tribe's attorney as well as from discussions with the attorneys in his office handling the matter.
 - While Mr. Myers accepted the invitation of Glamis representatives to meet in Washington, DC to discuss the mine, these representatives were disappointed in the meeting because Mr. Myers refused to engage them in a discussion of their ideas or views since he had already considered all of the relevant arguments and had begun drafting his opinion.
 - Had the Quechan Tribal leaders asked Mr. Myers for a meeting in Washington, DC to discuss the mine, he would have gladly accepted. The Tribal leaders, however, invited Mr. Myers to meet them in California, and Mr. Myers received this letter shortly before the terrorist attacks of September 11, 2001, and did not schedule the trip.
 - The issue under consideration by Mr. Myers was a pure question of statutory interpretation that did not involve any material factual disputes. In those cases, however, where the facts were important, such as the creation of a trust area for the Pueblo of Sandia Tribe, Mr. Myers traveled and consulted with tribes before reaching a conclusion.

- After Mr. Myers issued his opinion, he met with the Quechan Tribal leaders in Washington, DC to discuss the mine proposal and the possibility of a federal buy-out of the Glamis mine.
- The Department of the Interior's Inspector General found that Mr. Myers conducted himself appropriately and ethically in connection with the Glamis decision. He concluded that the conduct of Department of Interior officials involved in the Glamis matter "was appropriate, that their decisions were supported by objective documentation, and that no undue influence or conflict of interest affected the decision-making process related to the Imperial Project."

ISSUE:

Some groups claim Mr. Myers did not adequately defend the interests of Native Americans as Solicitor of the Interior.

RESPONSES:

Mr. Myers worked vigorously as Solicitor of the Interior to protect the interests of Native Americans.

- Mr. Myers supported legislation to vindicate the rights of the Pueblo of Sandia, a federally recognized Indian Tribe in central New Mexico, by creating the T'uf Shur Bien Preservation Trust Area within New Mexico's Cibola National Forest.
 - This legislation recognized and protected for the first time the Pueblo of Sandia's rights and interests in approximately 10,000 acres of land mistakenly omitted from the Pueblo's land grant due to an incorrect survey.
 - This legislation was backed by a broad bipartisan coalition as well as the Pueblo of Sandia.
- Mr. Myers sided with a coalition of Indian tribes claiming the right to custody of the skeletal remains of an approximately 9,000-year-old man (the "Kennewick Man") under the Native American Graves Protection and Repatriation Act. A group of forensic scientists and anthropologists had sought to study and conduct invasive tests on the remains.
- Mr. Myers has been a strong defender of tribal interests under the Indian Gaming Regulatory Act.
 - Mr. Myers worked to defend the constitutionality of a provision of the California Constitution giving Indian tribes the exclusive right to conduct casino gaming in California as well as 62 Tribal-State gaming compacts negotiated by California Indian Tribes and the State of California. The Ninth Circuit recently sided with Mr. Myers by upholding the constitutionality of the provision and the contested gaming compacts. *See Artichoke Joe's California Grand Casino, v. Norton*, 353 F.3d 712 (2003).
 - Mr. Myers fought to uphold the Secretary of the Interior's decision to take into trust for the United Auburn Indian Community a parcel of land located in Placer County, California, thus enabling the Auburn Tribe to develop a casino on that property. The D.C. Circuit recently upheld the legality of the Secretary's decision taking the land into trust. *See City of Roseville v. Norton*, 348 F.3d 1020 (D.C. Cir. 2003).

- Mr. Myers helped negotiate an agreement removing two dams from the Penobscot River and paving the way for the Penobscot Indian Nation to exercise its tribal fishing rights.
 - This agreement was supported by the State of Maine, conservation groups, the Penobscot Indian Nation, and the power company that owned the dams.
 - It will allow for the Atlantic salmon and ten other species of native sea-run fish in the Penobscot River to reach their spawning habitat, thus dramatically raising the population of these fish in the Penobscot River.
 - Barry Dana, Chief of the Penobscot Indian Nation, praised the agreement, stating "Maine's Penobscot River watershed has been the homeland for the Penobscot Indian Nation for more than 10,000 years. This agreement will restore our ability to obtain our sustenance, culture, and identity from the river that bears our name."
- Mr. Myers worked to implement President Bush's Indian Education Initiative.
 - The Indian Education Initiative includes greater financial support to Bureau of Indian Affairs schools, including over \$200 million annually for school construction.
 - The Indian Education Initiative placed renewed emphasis on improving reading, math, and science education, as well as the teaching of tribal languages and cultures, and expanding the use of educational technology.

ISSUE:

While serving as Solicitor of the Interior, Mr. Myers violated federal ethics laws as well as an ethics agreement he signed before taking office, in which he promised not to deal with his former clients or employers.

RESPONSES:

Following a thorough investigation of these allegations by the Department of the Interior's Office of Inspector General, the Office of Government Ethics found that Mr. Myers complied with applicable federal ethics laws and his ethics agreement.

- On August 5, 2003, Public Employees for Environmental Responsibility and Friends of the Earth suggested that Mr. Myers may have violated federal ethics law as well as the ethics agreement that he signed before taking office by participating in 27 meetings. They alleged that these meetings included former clients of Mr. Myers' law firm, attorneys at his former firm, or involved potential changes to federal grazing regulations. The two environmental groups asked the Office of Government Ethics to launch an investigation into their allegations.
- After learning of these allegations, Mr. Myers asked the Secretary of the Interior to assign appropriate personnel to investigate these charges.
- The Department of the Interior's Office of Inspector General then conducted a thorough investigation of these charges. In this investigation, personnel from the Office of the Inspector General interviewed over 40 individuals and reviewed hundreds of documents, including documents stored on Mr. Myers' Department of the Interior computer.
- The results of the Inspector General's investigation were referred to the Office of Government Ethics.
- The Office of Government Ethics concluded that Mr. Myers did not violate federal ethics laws or his ethics agreement with regard to any of the meetings raised in the complaints filed by environmental groups, and "Mr. Myers actively sought to comply with both his ethics agreement specifically and the rules and laws governing the conduct of federal Executive branch employees generally."

ISSUE:

While Mr. Myers was Solicitor of the Interior, his office negotiated, over the U.S. Attorney's objections, a sweetheart deal that rewarded, rather than punished, Harvey Robbins, a rancher who frequently disregarded public land grazing laws. The Inspector General of the Department of the Interior has since harshly criticized this settlement agreement for giving Robbins preferential treatment and compromising the interests of the Department of the Interior.

RESPONSES:

In his recent investigation, the Inspector General cleared Mr. Myers of any allegations of wrongdoing in connection with the Robbins settlement agreement.

- The Inspector General "ascribed no fault whatsoever to Mr. Myers" for any errors made by the Department in concluding a settlement agreement with Robbins.
- Indeed, the Inspector General made clear his belief that Mr. Myers was "victimized when he was given a distorted explanation by one of his senior Associate Solicitors" of how the settlement agreement had been reached.

Mr. Myers was not involved in the negotiations over the Robbins settlement agreement. He did not know the details of the allegations against Robbins. Additionally, he did not sign the settlement agreement.

- According to the Inspector General's report, BLM Director Kathleen Clarke instructed that a settlement agreement between BLM and Robbins be pursued.
- According to that same report, this agreement was then negotiated by Robert Comer, an Associate Solicitor in Mr. Myers's office.
- The Inspector General's report contains no evidence whatsoever that Mr. Myers had any involvement in the negotiation of the settlement agreement or had any awareness of the details of that agreement before it was signed.

Once Mr. Myers became aware of potential problems with the Robbins settlement, he swiftly took appropriate action to ensure that the matter would be thoroughly investigated.

- It was not until 6 months after the final settlement agreement was signed that Mr. Myers became aware of complaints from environmental groups regarding the settlement agreement, and specific complaints regarding the fact that the rancher had not been required, as a condition of the settlement, to drop RICO charges he had pending against BLM employees.
- When he became aware of the complaints, the Inspector General's report verifies that Mr. Myers looked into the matter, and inquired why the RICO charges were not dropped as a condition of the agreement. In response to his inquiry, Mr. Myers was

informed by Mr. Comer that the U.S. Attorney's Office handling the matter on behalf of the employees did not want those charges dropped because it believed that its position was correct and the case would be won outright. The Inspector General concluded that Mr. Myers had been misled by Mr. Comer

- Mr. Myers, along with the Assistant Secretary for Lands and Mineral Management, also appointed senior officials within the Department, who had not been involved in the settlement negotiations, to investigate the matter.

N K. SIMPSON



United States Senator (Ret.)

WYOMING

July 8, 2003

Chairman Orrin Hatch
U.S. Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510

Dear Orrin:

Hello old friend! I am so very pleased that one fine attorney who worked for me in the Senate has been nominated to serve on the U.S. Court of Appeals for the 9th Circuit. I am referring to Bill Myers who was my Legislative Counsel from 1985 to 1989.

You may remember him...for Bill was my key staff attorney on Senate Judiciary Committee issues pertaining to the Constitution, courts, antitrust, and criminal law matters. His portfolio also included advising me on important public land issues.

From 1989 to 1993, Bill worked at the Department of Justice and also at the Department of Energy. From 1993 until 2001 he was a private sector attorney. Since 2001, he has been the Solicitor at the Department of Interior, and I understand he has done a most outstanding job there.

I have observed Bill closely for nearly 20 years. I can wholeheartedly vouch for his legal competence and his integrity. He has not yet had an opportunity to serve as a member of the judiciary. However, based on my observations of him as an attorney, counselor, and close friend I firmly believe that he would demonstrate superb judicial temperament in the role of a federal judge.

I deeply believe that he would be a "mainstream," and a very balanced Justice and that he would be a great asset to the 9th Circuit Court of Appeals.

Please feel free to contact me if I can furnish any further information regarding this fine person.

Respectfully and sincerely...
and with warm personal regards,

Alan K. Simpson

Cc: Office of Legal Policy
Department of Justice

Not Printed at Government expense

MIKE SIMPSON
SECOND DISTRICT, IDAHO
1308 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20518
(202) 225-5531

CO-CHAIRMAN
COMMERCE, WTO TRADE AND
TECHNOLOGY AND INNOVATION
CO-CHAIRMAN
HOUSE GOVERNMENT OPERATIONS



COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE
ENERGY AND WATER DEVELOPMENT
LAW, HEALTH AND HUMAN SERVICES
AND EDUCATION
VA, HUD AND HOUSING AFFAIRS

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

January 6, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
Senate Dirksen- 224
Washington, D.C. 20510

Dear Chairman Hatch:

We are writing today, as Idaho's Representatives to the U.S. House of Representatives, in support of the nomination of William "Bill" Myers to a position on the United States Court of Appeals for the Ninth Circuit. As we both personally know Bill, we know he would make a fine member of the Ninth Circuit.

Having followed Bill's career for several years, we know he would make decisions in a thoughtful and expeditious manner. Bill possesses a strong moral character and can be trusted with decisions of both individual and national importance. His extensive legal background gives him the qualifications he needs for this position. Bill has consistently brought a balanced approach to solving the many and varied issues we have discussed with him over the years. We are confident that his opinions will be well within the mainstream of judicial thought.

Without a doubt, Bill would make an outstanding Judge on the Ninth Circuit. Please feel free to contact either of us if you have any questions regarding Bill's capabilities.

Sincerely,

Mike Simpson
Member of Congress

C.L. "Burch" Otter
Member of Congress

Cc: The Honorable Patrick J. Leahy

HENRY J. HYDE, Illinois
Chairman

JAMES A. LEACH, Iowa
NORMAN B. MACDONALD, Nebraska
CHRISTOPHER H. SMITH, Rhode Island, Vice Chairman
JIM BURTON, Indiana
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WILLIAM J. MARLOWE, South Dakota
KATHLEEN HANSEN, Florida

THOMAS S. HOOPER
Staff Director/Deputy Chief of Staff
JOHN WALKER ROBERTS
Deputy Staff Director

One Hundred Eighth Congress

Congress of the United States
Committee on International Relations
House of Representatives
Washington, DC 20515

(202) 225-5021

http://www.house.gov/international_relations/

September 15, 2003

TONI LANTOS, California
Ranking Member

HOWARD L. Berman, California
CARTY L. JOHNSON, New York
DONALD M. PAYNE, New Jersey
ROBERT W. GOODENOW, American Samoa
SHELDON WHITEHOUSE, Rhode Island
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BARBARA LEE, California
JOSEPH R. CROWLEY, New York
JOSEPH P. HODDY, Pennsylvania
EARL B. BLUMHART, Ohio
WELLY W. HENLEY, Nevada
GREGG P. HOPKINS, California
ADAM S. SCHIFF, California
DIANE E. WATSON, California
ADAM SMITH, Washington
BETTY McCOLLUM, Mississippi
CHRIS BELL, Texas

ROBERT R. GIBBS
Deputy Staff Director
PETER W. VEC
Deputy Staff Director
DAVID S. ABRAHAMSON
Deputy Chief Counsel

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

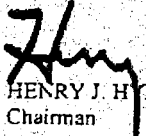
Dear Mr. Chairman:

As you know, William Myers has been nominated by President Bush to be a judge on the Ninth Circuit Court of Appeals. I fully support his nomination, as do many other people whose opinions I hold in high regard. These would include Mr. Myers' home state Senators, former Attorneys General, and especially Alan Simpson, who is his former supervisor and my good friend. Many other people who I know have known Mr. Myers for many years and share my belief that he will be an excellent appellate judge.

I appreciate the many demands on your Committee's calendar as this year comes to a close. But, given the extraordinary importance of a full-staffed and competent judiciary, I hope that you will be able to schedule a hearing on the nomination of Mr. Myers at an early date so that he might receive Senate consideration and a vote before this First Session of the 108th Congress concludes.

With best wishes, I remain

Sincerely,


HENRY J. HYDE
Chairman

OFFICES OF THE GOVERNORS



March 8, 2004

VIA FACSIMILE and U.S. MAIL

The Honorable Orrin Hatch
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington D.C. 20510

Re: Nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit

Dear Senator Hatch:

We, the undersigned Governors, are writing to express support for the nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit.

As representatives of States within the largest Circuit Court of Appeals in the nation, we are well aware of the need for quality judges who will provide a balanced perspective to the Ninth Circuit's extraordinary caseload.

Mr. Myers will bring his background and experience in western issues to his fellow colleagues on the bench. These matters are significant to western Governors, and we

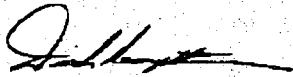
The Honorable Orrin Hatch

March 8, 2004

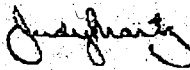
Page 2

believe Mr. Myers has the temperament and the judicial instincts to serve well on the Ninth Circuit.

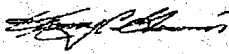
We ask that the Committee closely examine the record of Mr. Myers. We know he is well qualified to serve on the United States Court of Appeals for the Ninth Circuit and we ask that the Committee act favorably on his nomination.



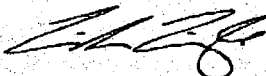
DIRK KEMPTHORNE
Governor



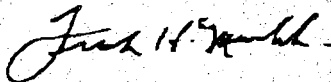
JUDY MARTZ
Governor



KENNY GUINN
Governor



LINDA LINGLE
Governor



FRANK MURKOWSKI
Governor

**A Communication from the
Attorneys General of
Alaska • Colorado • Delaware • Guam • Hawaii
Idaho • Nevada • North Dakota • Ohio • Oklahoma
Pennsylvania • South Dakota • Utah • Virginia • Wyoming**

BY TELEFAX: 202-228-1698

January 30, 2004

**The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510**

Dear Chairman Hatch:

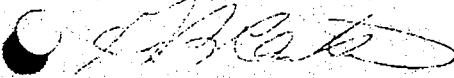
We, the undersigned state Attorneys General and chief legal officers of our states, strongly support the confirmation by the United States Senate of the President's nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit.

Mr. Myers most recently has served with distinction as Solicitor for the United States Department of Interior, handling with great care and attention legal matters that necessarily involve and impact the States of the Union. These matters concern numerous federal interests such as endangered species, Indian affairs, federal lands, water allocation and distribution, timber, fish and wildlife, and minerals. These interests often exist in a delicate balance with state and local interests that we are charged with protecting. As Attorneys General, we observed that Mr. Myers, while dutifully representing his client, the federal government, always maintained an objectivity and practical understanding of the conflicting demands relating to those interests. In our view, his thorough understanding of relevant legal precedents, decisions and key policy interests and his outstanding legal reasoning as Solicitor demonstrate his keen intellect, sound judgment and the skills suitable for the bench.

It is also our experience that Mr. Myers has acted with the highest standards of integrity, competence and good judgment. His ability to objectively evaluate cases with calm deliberation and thoughtful analysis is precisely what we, as government officials, lawyers and citizens, expect from our appellate judges. As Attorneys General, we appear before the Circuit Courts of Appeal with considerable frequency. Clearly, we value judges who display a temperament that is even-handed, respectful and thoughtful - the temperament displayed by Mr. Myers. Mr. Myers would bring to the Ninth Circuit strong intellectual skills, combined with a strong sense of civility, decency and respect for all.

We therefore urge the United States Senate to favorably consider and confirm Mr. Myers as a judge on the United States Court of Appeal for the Ninth Circuit. Please do not hesitate to contact us for further views or information, or contact Tom Gede, Executive Director, Conference of Western Attorneys General (CWAG) at 916-323-1939.

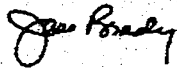
Sincerely,



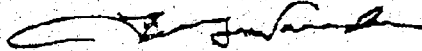
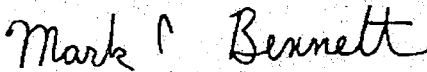
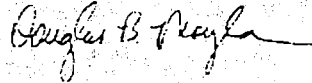
GREGG RENKES
Attorney General of Alaska



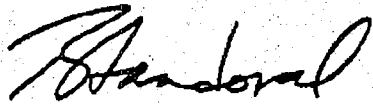
KEN SALAZAR
Attorney General of Colorado



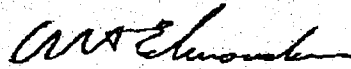
M. JANE BRADY
Attorney General of Delaware



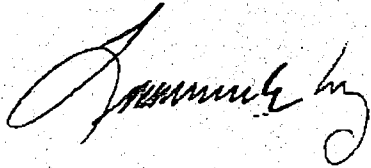
LAWRENCE WASDEN
Attorney General of Idaho



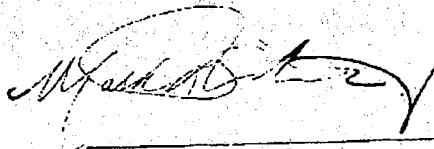
BRIAN SANDOVAL
Attorney General of Nevada



W.A. DREW EDMONDSON
Attorney General of Oklahoma



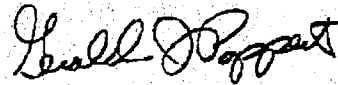
LARRY LONG
Attorney General of South Dakota



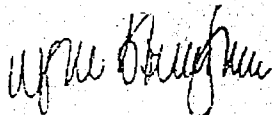
MARK SHURTLEFF
Attorney General of Utah



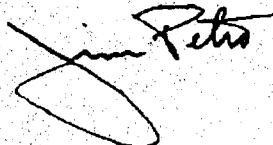
PATRICK CRANK
Attorney General of Wyoming



GERALD J. PAPPERT
Attorney General of Pennsylvania



WAYNE STENEJEM
Attorney General of North Dakota



JIM PETRO
Attorney General of Ohio

Jerry W. Kilgore

JERRY KILGORE
Attorney General of Virginia

cc: The Honorable Patrick Leahy, Ranking Minority Member,
Committee on the Judiciary



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WARDEN

July 9, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch:

I write to you in support of the United States Senates' favorable consideration and confirmation of the President's nomination of William G. Myers III to the United States Court of Appeals for the Ninth Circuit.

As you know, Mr. Myers has served as the Solicitor for the United States Department of the Interior (DOI). In my capacity as Attorney General of the State of Idaho, I have represented the State of Idaho's interests in matters before the DOI. The State of Idaho is frequently involved in legal matters with the DOI due to the large swaths of land managed by the DOI and other federal agencies. I have worked with Mr. Myers in his capacity as Solicitor of the DOI on many of these matters. My unqualified endorsement of Mr. Myers is based upon these personal experiences.

One only needs to read the newspaper to see how polemic natural resource and environmental issues have become. The DOI is often at the center of these multi-issue and multi-party controversies. In Idaho, we have had to deal with the DOI on the Endangered Species Act, federal reserved water rights and Indian law issues. In each of these contexts, I have observed Mr. Myers' ability to set aside the rhetoric and to objectively evaluate the respective interests of the parties. He has been a strong advocate for the interests of his clients, just as a lawyer must be, and he has also been able to find ways to achieve his clients' interests by providing a reasoned means of resolving the conflict.

A mark of an outstanding attorney is one who has gained the respect of his peers by what he does, not what he says. Mr. Myers has gained my respect because he has always been willing to listen to the State of Idaho's concerns and provide

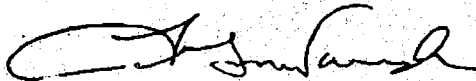
P.O. Box 83720, Boise, Idaho 83720-0010
Telephone: (208) 334-2400, FAX: (208) 334-2530
Located at 700 W. Jefferson Street, Suite 210

The Honorable Orrin G. Hatch
July 9, 2003
Page 2

a timely and reasoned response. His professional competence as a lawyer, his integrity, as demonstrated through his advocacy for his client and his respect for the law, and his temperament in dealing with issues that stir deep feelings throughout Idaho and the West, are traits that Mr. Myers will bring to the Ninth Circuit. These attributes are essential in candidates seeking to serve as a judge on the federal bench.

I urge the United States Senate to favorably consider and confirm Mr. Myers' nomination to serve as a judge on the United States Court of Appeals for the Ninth Circuit.

Sincerely,



LAWRENCE G. WASDEN
Attorney General

LGW:cs:tpo:jc

Cc: The Honorable Patrick J. Leahy
Office of Legal Policy



OFFICE OF THE GOVERNOR
The Chickasaw Nation
Post Office Box 1548 • Ada, Oklahoma 74621
(580) 436-2603 • Fax (580) 436-4287
<http://www.chickasaw.net/~cnation>

BILL ANOATUBBY
GOVERNOR

January 30, 2004

Honorable Orrin G. Hatch, Chairman
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510-6275

Via Facsimile: 202-224-9102

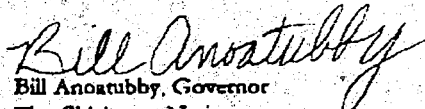
Dear Mr. Chairman:

Please allow me this opportunity to highly recommend your consideration of Mr. Bill Myers, whom we understand is being considered for appointment to the U.S. 9th Circuit Court of Appeals.

Based upon Mr. Myers' work as solicitor in the U.S. Department of the Interior, we know him to be fair and impartial. He listened to our concerns and acted upon them. He is extremely well-qualified to fill the post in the 9th Circuit, and has demonstrated his ability to listen and to reason. We believe Mr. Myers will be an asset to the Court.

Your consideration of Mr. Bill Myers will be appreciated.

Sincerely,


Bill Anoatubby, Governor
The Chickasaw Nation

cc: Senator Patrick J. Leahy



QUAPAW TRIBE OF OKLAHOMA

P.O. Box 745
Quapaw, OK 74363-0745

(918) 542-1853
FAX (918) 542-4694

Via Facsimile 202/228-1698

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member,
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of William Gerry Myers III


Dear Chairman Hatch and Ranking Member Leahy:

I am writing this letter to express my support for William Myers nomination as United States Circuit Judge for the Ninth Circuit.

Mr. Myers has a long history as a public servant; he was a former aide to Senator Alan Simpson, and practiced law in Boise, Idaho for twenty years before joining the Interior Department in 2001 as Solicitor.

His writings, public statements and legal work also reveal his sharp legal mind. Mr. Myers appears to be a qualified choice for this court. I support this nomination.

Sincerely,


John L. Berry
Chairman, Quapaw Tribe



THE TULALIP TRIBES

Board of Directors:

Herman Williams Jr. Lois St Teed - Chairman
Stency G. Jones Sr. Schn Hallem - Vics Chairman
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Mel Sheldon - Treasurer
Don Hatch Jr. Spalub-Aud - Board Member
Martin Frueberg Jr. Sewilus - Board Member
Les Paros - Board Member
Linda L. Jones - General Manager

8700 TOTEM BEACH ROAD
TULALIP, WA 98271-9694
(360) 651-4000
FAX (360) 651-4032

The Tulalip Tribes are the successors
in interest to the Snohomish,
Snoqualmie and Skykomish Tribes
and other tribes and band signatory
to the Treaty of Point Elliot

March 9, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Vic Facsimile: 202-224-9102

Dear Honorable Chairman Hatch:
Dear Honorable Ranking Member Leahy:

The Tulalip Tribes is writing to support the nomination of William G. Myers, III to the 9th Circuit Court of Appeals.

Mr. William G. Myers, III served as a solicitor in the U.S. Department of the Interior. We find that he has a balanced record to defend the interest of Native Americans. The 9th Circuit Court of Appeals is in need of an appointment by an individual experienced and knowledgeable in Federal Indian Law.

The appointment of Mr. William G. Myers, III would receive the support of The Tulalip Tribes.

Respectfully submitted,

Herman A. Williams, Jr.
Chairman
Board of Directors

HAW/pcp

DICK THORNBURGH

(b)(6)

June 16, 2003

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of William Gerry Myers, III

Dear Orrin:

It is my understanding that Bill Myers, currently serving as Solicitor of the United States Department of Interior, has been nominated by President Bush to serve on the United States Court of Appeals for the Ninth Circuit.

I have known Bill for a number of years, dating back to 1989 when Bill served on my staff while I was Attorney General. I believe Bill is exceptionally well qualified to serve as a member of the Federal Judiciary. During the time I worked with Bill, he demonstrated not only an outstanding legal intellect, but also good judgment and exemplary integrity. I have no doubt that these skills, along with his sound temperament and work ethic, would serve him well on the bench, should he be confirmed.

If you would like to discuss this further, please do not hesitate to contact me.

Sincerely,

Dick Thornburgh,

cc: The Honorable Patrick J. Leahy

WILLIAM P. BARR

July 14, 2003

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of William Gerry Myers, III

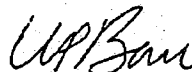
Dear Orrin:

It is my understanding that Bill Myers, currently serving as Solicitor of the United States Department of Interior, has been nominated by President Bush to serve on the United States Court of Appeals for the Ninth Circuit.

I have known Bill since 1989 when Bill served on Attorney General Dick Thornburgh's staff. I believe Bill is exceptionally well qualified to serve as a member of the Federal Judiciary. Apart from his outstanding legal ability and intellect, Bill represents the epitome of judicial temperament. He is fair-minded, careful and balanced. He has good judgment and the highest integrity. He would make a great judge.

If you would like to discuss this further, please do not hesitate to contact me.

Sincerely yours,



William P. Barr

cc: The Honorable Patrick J. Leahy

(b)(6)

Supreme Court of Wyoming
Cheyenne, Wyoming 82002



MARILYN S. KIFE, JUSTICE

TELEPHONE (307) 777-3422

July 15, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: William G. Myers III

Dear Mr. Chairman:

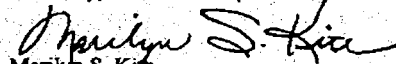
I understand that William G. Myers III is under consideration for an appointment to serve on the United States Court of Appeals for the 9th Circuit. I have known Bill for over a decade and am pleased to recommend him for your favorable consideration.

I was a partner with Holland & Hart when Bill joined the firm in 1997 and had many opportunities to work with him until May of 2000 when I left the firm to begin my service on the Wyoming Supreme Court. Bill is extremely knowledgeable on the legal issues related to natural resources and public lands. His practical experience in that area provides him with a sound pragmatic base from which to analyze those issues. He often found workable solutions to clients' problems without the need for litigation. I have no doubt about his legal ability and integrity. His successful record before federal and state courts as well as regulatory agencies confirms those attributes.

As far as judicial temperament is concerned, Bill's easygoing, pleasant personality will lend itself well to the proper exercise of judicial duties, if he is confirmed. He has demonstrated his ability to work constructively with people who hold widely divergent views on the issues. As a result, I expect he would demonstrate an appropriate judicial temperament.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,


Marilyn S. Kife
Justice

MSK:gp

cc: The Honorable Patrick J. Leahy

CECIL D. ANDRUS

August 19, 2003

The Honorable Orrin G. Hatch
Chairman
Senate Judiciary Committee
104 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick J. Leahy
Ranking Member
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

Dear Senators Hatch and Leahy:

I write in support of the President's nomination of William Myers of Boise, Idaho to a position on the United States Court of Appeals for the Ninth Circuit.

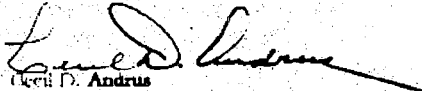
It is my judgment that Mr. Myers possesses the necessary personal integrity, judicial temperament, and legal experience appropriate to a nominee to the federal bench, and particularly the federal Court of Appeals. Further, it is my judgment that, while Mr. Myers has been an effective advocate in the past for specific public policy positions with which I may have personally disagreed, he also possesses the ability to act fairly on matters of law that will come before him on the court.

My old friend, and occasional political adversary, and your old colleague, Senator Al Simpson of Wyoming, speaks very highly of Bill Myers and has known him for years. I know Senator Simpson to be a good judge of character and his endorsement carries great weight with me, as well.

I hope you will look with favor on Bill Meyer's nomination to the Ninth Circuit Court of Appeals.

With best regards,

Sincerely,


Cecil D. Andrus

cc: Department of Justice - Office of Legal Policy



Governor Michael J. Sullivan
Attorney at Law
msullivan@rothgerber.com

123 West First Street, Suite 200
Casper, Wyoming 82401-3480
Telephone 307.233.0222
Fax 307.233.0077
www.rothgerber.com

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January 10, 2004

The Honorable Senator Orrin G. Hatch
Chairman, Senate Judiciary Committee
104 Hart Office Building
Washington, DC 20510

Re: William G. Meyers

Dear Senator Hatch:

I am writing to support the nomination of William G. Meyers for appointment to the Ninth Circuit Court of Appeals. I have known Mr. Meyers since he first practiced law with the firm of Davis & Cannon in Sheridan, Wyoming, and worked with him during his service with Al Simpson as Legislative Counsel, which overlapped with my first term as Governor of Wyoming.

Mr. Meyers has a wealth of legal experience in the private practice, in Washington, and in the areas of public lands and the environment. These are areas of extreme importance to the country and those of us in the West, and it is my view that Bill's experience would serve the Court and the Circuit well. While I don't profess intimate knowledge with the nature of all the issues before the Ninth Circuit, I am confident those areas in which Bill has developed an expertise would figure prominently. I believe him to be a thoughtful, well-grounded attorney who has reflected by his career achievements a commitment to excellence. He is, in my view, an individual who would provide serious, responsible and intellectual consideration to each matter before him as an appellate judge and would not be prone to extreme or ideological positions unattached to legal precedent or the merits of a given matter.

I urge your favorable consideration of the nomination.

With best regards, I am

Very truly yours,

Rothgerber Johnson & Lyons LLP

A handwritten signature in black ink, appearing to read "Michael J. Sullivan".

Michael J. Sullivan

MJS:mi
H:\MS\p\corresp\04\Scholar Hatch-W.O. Meyers.doc

CHARLES D. CUDDY
DISTRICT 8
CLEARWATER, IDAHO, LEWIS
& VALLEY COUNTIES

HOME ADDRESS
P.O. BOX 84
DROPPED, IDAHO 83844
PHONE (208) 476-0842
HOME (208) 476-3799



COMMITTEES
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LEGISLATIVE COUNCIL

House of Representatives State of Idaho

January 23, 2004

Honorable Orrin G Hatch
Chairman, U.S. Senate Judiciary Committee
U.S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510
(F) 202-278-1698

RE: Mr. William Myers, Senate Confirmation to the U.S. 9th Circuit Court of Appeals

Dear Honorable Orrin G Hatch:

I believe Mr. William Myers would full fill the office and duties of a U.S. Court of Appeals Judge located in the 9th Circuit Court, with the utmost honesty and integrity.

Since becoming an Idaho State Legislator 13 years ago, I have had the opportunity to work with Mr. Myers on federal land management issues. This committee attempted and succeeded at facilitating management policies and procedures, providing efficiency, product production, and healthy forests in an environmentally sound manner.

This project involved discussions regarding endangered species, old growth timber, water quality, local economics and implementing land management processes and procedures. Mr. Myers was the chairperson of this committee which consisted of environmental advocates, recreationist, industry and labor, as well as national, state and local Representative.

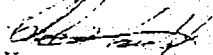
As expected, this committee had to deal with controversial issues that required thoughtful deliberation in order to compile acceptable resolutions. As chairperson of this committee, Mr. Myers held the discussions on a very professional level with high quality and standard, while maintaining congressional order and produced workable conclusions.

Mr. Myers' capability to conduct these meetings in a positive and forward-moving manner without indicating bias convinced me that he is a very disciplined person and would work to gain conclusions based on factual evidence.

Orrin Hatch
Page 2
January 23, 2004

It is my pleasure to endorse the confirmation and appointment of Mr. William Myers to the U.S. 9th Circuit Court of Appeals. I also believe that it is very important to Idaho's citizens and the West as a whole to maintain integrity within the 9th Circuit.

Sincerely,



Honorable Charles Cuddy, Idaho State Representative

CC: Honorable Pat Leahy, Ranking Member, U.S. Senate,
U.S. Senate Judiciary Committee (F) 202-224-9516

BC: Legal Policy (F) 202-353-6192
B.C. Bob Maynard (F) 208-343-3434



Worldwide Office
4245 N. Fairfax Drive, Suite 100
Arlington, VA 22203-1606

tel: (703) 841.5900
fax: (703) 841.1283

January 15, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Honorable Hatch:

It has been brought to my attention that my friend and professional colleague Bill Myers has been nominated to the United States Court of Appeals for the Ninth Circuit. I strongly support this nomination.

I have known Bill for several years during his service to both the public and private sectors. My closest working experience with Bill involved a conservation project in the Southwest known as the Malpai Borderlands Group (MBG) where Bill participated as an advisor. His involvement in this project was significant for two reasons. First it was an opportunity for the MBG to get the benefit of Bill's expertise. More importantly, Bill's balanced approach to the protection of our nation's natural resources further enhanced MBG's ability to work collaboratively with a diverse representation of public and private agencies and individuals.

You have much background material which demonstrates Bill's intelligence, legal acumen and responsible work ethic. However it is Bill's willingness and ability to understand and accept the importance of a fair, evenhanded and inclusive approach to problem solving that will guarantee great performance as a member of the Court of Appeals.

Thank you for this opportunity to support my friend and colleague.

Sincerely

Michael Dennis
Director, Conservation Real Estate and Private Lands



351 East Front Street, Suite 400
Boise, ID 83702-7310
PHONE: 208.343.3434
FAX: 208.343.3232
www.perkinscoie.com

Robert A. Maynard
PHONE: 208.433.7308
FAX: 208.343.3232
EMAIL: RMaynard@perkinscoie.com

February 2, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Bldg.
Washington, DD 20510

Re: Mr. William G. Myers, Senate Confirmation to the U.S. Court of
Appeals for the Ninth Circuit

Dear Mr. Chairman:

I wholeheartedly support and urge the United States Senate to confirm the nomination of Mr. William G. Myers to a seat on the United States Court of Appeals for the Ninth Circuit.

I have practiced before the Ninth Circuit and in numerous other federal courts for many years, on behalf of federal agency and other public as well as private sector clients. I have worked with Mr. Myers during his private law practice years in Boise and also during his public service as Solicitor for the Department of the Interior. I know that Mr. Myers has the intellect, experience, integrity, work ethic, and dedication to justice and citizenship that will make him an outstanding, impartial federal appellate judge. I enthusiastically endorse Mr. Myers for appointment to the Ninth Circuit seat for which he has been nominated.

Sincerely,

Robert A. Maynard, Partner

RAM:razm

cc: Honorable Patrick J. Leahy, Ranking Member (by fax & U.S. Mail)

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PICKERING

JUDGE CHARLES W. PICKERING

NOMINEE FOR THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

Biographical Information

- Unanimously confirmed to be a federal district judge in 1990.
- Rated well-qualified by the American Bar Association.
- Investigated and prosecuted the KKK in the 1960's.
- Hired the first African-American staffer for the Mississippi Republican Party in 1976.
- Chaired the Jones County Committee on Racial Progress.
- Member of the Board of Directors of the Mississippi Institute for Racial Reconciliation
- Strongly supported by African-Americans and Democrats, including Democrat Governor Musgrove, Attorney General Moore, and former Clinton Administration Assistant Attorney General Frank Hunger, as well as Sixth Circuit Judge Damon Keith and U.S. District Judge Henry Wingate.

Allegations

- Accused of going the "whole nine yards" in *United States v. Swan* to ensure that a defendant who burned a cross in an interracial couple's yard received a more lenient sentence than that recommended by the prosecutors in the case.
- Accused of advocating expanding the law to provide for criminal penalties for interracial marriages, and of "advising" the Mississippi Legislature how to amend their laws to continue to penalize interracial marriages.
- Accused of being hostile to the fundamental protections offered by the Voting Rights Act and the Constitution.
- Accused of being a staunch opponent of *Roe v. Wade* and a woman's right to choose.

Responses

- Judge Pickering's actions in the *Swan* case were consistent with his general practice of striving to maintain proportionality in sentencing defendants involved in the same criminal activity. In the end, Judge Pickering sentenced Swan, the adult defendant who went to trial, to 27 months in prison, even though the other two defendants who pled guilty received no prison time at all, and the facts of the trial suggested that one of the other defendants (the juvenile) was the ringleader of the crime.
- As a district court judge, Judge Pickering has demonstrated no bias towards interracial couples. Indeed, in one case (*Adams v. Walmart*), Judge Pickering set aside a jury verdict – one of only two verdicts he has ever set aside – because he believed that the interracial marriage and race had biased the jury. Boyce Holleman, the couple's attorney in the case, has written a letter of support for Judge Pickering.
- Judge Pickering has never been reversed in a voting rights case.
- Judge Pickering has testified that he is committed to following the Supreme Court precedent, including *Roe v. Wade* and *Planned Parenthood v. Casey*.

Nominees who have been deemed "controversial" by interest groups include the following:

- **Judge Charles Pickering**, nominee to the 5th Circuit (Mississippi), was unanimously confirmed to be a federal district judge in 1990. He was rated well-qualified by the ABA. He has a long record of advancing race relations in Mississippi: investigating and prosecuting the KKK in the 1960's, sending his daughters to newly integrated public schools, hiring the first African-American staffer for the state party in 1976, chairing a Jones County committee on racial progress, and serving on the board of the Mississippi Institute for Racial Reconciliation. He is strongly supported by local African-Americans and Democrats, including Democrat Governor Musgrove, Attorney General Moore, and former Clinton Administration Assistant Attorney General Frank Hunger, as well as Sixth Circuit Judge Damon Keith and U.S. District Judge Henry Wingate.
- **Justice Priscilla Owen**, nominee to the 5th Circuit (Texas), has served on the Texas Supreme Court since 1994. In her successful reelection bid in 2000, every major newspaper in Texas endorsed her. She is supported by a bipartisan group of 15 past Presidents of the state bar, 3 former Democrat Justices of the Texas Supreme Court, and the former head of Legal Aid of Central Texas. She received a *unanimous* well-qualified ABA rating.
- **Judge Carolyn Kuhl**, nominee to the 9th Circuit (California), currently serves as a state trial judge on the Superior Court in California. She clerked for then-Judge Anthony Kennedy on the 9th Circuit, worked as a special adviser to Attorney General Smith and served as Deputy Solicitor General of the United States. She then became a partner at a leading Los Angeles law firm. She is supported by prominent Democrats such as Vilma Martinez, former President of the Mexican-American Legal Defense and Educational Fund, and Ron Olson, as well as a bipartisan group of nearly 100 judges on the Los Angeles Superior Court. She received a well-qualified ABA rating.
- **Bill Pryor**, nominee to the 11th Circuit (Alabama), currently serves as Alabama Attorney General. He has earned great respect for his integrity and fairness as Alabama Attorney General. He is supported by prominent Democrats and African-American in Alabama, including former Democrat Governor Siegelman and Dr. Joe Reed, chair of the state's African-American caucus. He began his career as a law clerk for civil rights legend, Judge John Minor Wisdom. He received a qualified ABA rating. Some interest groups are opposing him because he is pro-life.
- **Judge Terrence Boyle**, nominee to the 4th Circuit (North Carolina), was unanimously confirmed to be a federal district judge in 1984 and has served with distinction since, now as Chief Judge. Judge Boyle has been appointed twice by Chief Justice Rehnquist to serve on Judicial Conference committees and has sat by designation on the Fourth Circuit. The former chairman of the state Democratic Party supports Judge Boyle's nomination, stating that he gives everyone "a fair trial."
- **Judge David McKeague**, nominee to the 6th Circuit (Michigan), was unanimously confirmed by the Senate to be a federal district judge in 1992. He served in private

practice for 25 years before that and is widely respected for his intellect and integrity. He received a well-qualified ABA rating.

- **Judge Susan Neilson**, nominee to the 6th Circuit (Michigan), has been a judge on the Michigan 3rd Judicial Circuit Court since 1991. She has more than 10 years of experience in private practice and was co-editor and author of Michigan Civil Procedure, a two-volume treatise on all areas of Michigan civil practice that received an award from the State Bar of Michigan. Judge Neilson is also active in numerous community service organizations. She received a *unanimous* well-qualified ABA rating.
- **Judge Henry Saad**, nominee to the 6th Circuit (Michigan), has served since 1994 on the Michigan Court of Appeals. In his re-election, he received broad bipartisan support, including endorsements from the Michigan Chamber of Commerce and the UAW. Since 1996, Judge Saad has taught legal ethics at Wayne State University Law School. He received the Arab-American and Chaldean Council Civic and Humanitarian Award for Outstanding Dedication to Serving the Community with Compassion and Understanding in 1995. He received a qualified ABA rating.
- **Claude A. Allen**, nominee to the 4th Circuit (Virginia), was confirmed by the Senate in 2001 as Deputy Secretary for the Department of Health and Human Services and is currently serving in that position. Before joining HHS, Allen served as Secretary of Health and Human Resources for the Commonwealth of Virginia and led Governor Gilmore's initiative to pass a Patients Bill of Rights in 1999. Allen has also served with distinction as Virginia's Deputy Attorney General for the Civil Litigation Division and as Counsel to the Attorney General. Before joining the Virginia state government, Allen practiced law at Baker & Botts in Washington, D.C., where he specialized in government contracts, litigation, and legislative affairs. He has received a qualified ABA rating.
- **Miguel Estrada** (nomination to the D.C. Circuit was withdrawn at Estrada's request). Estrada has argued 15 cases before the U.S. Supreme Court and has worked as a federal prosecutor, Assistant U.S. Solicitor General, and Supreme Court law clerk for Justice Kennedy. Estrada came to America as a teenager who spoke virtually no English, and had he been confirmed would have been the first Hispanic to serve on the D.C. Circuit. He represented a capital defendant pro bono before the Supreme Court. He was supported by prominent Democrat lawyers such as Seth Waxman and Ron Klain and received a *unanimous* well-qualified ABA rating.

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Charles W. Pickering
Nominee to U.S. Court of Appeals for the Fifth Circuit (Mississippi)
(Nominated May 25, 2001)

- Judge Charles Pickering has served on the federal district court since the United States Senate unanimously confirmed him to that position on October 2, 1990. Prior to his appointment, he practiced law for almost thirty years, gaining extensive trial experience.
- The American Bar Association's Standing Committee on the Judiciary has rated Pickering "Well Qualified" to serve on the Fifth Circuit, and the seat to which he has been nominated has been designated as a "Judicial Emergency" by the Administrative Office of the United States Courts.
- Judge Pickering graduated at the top of his law school class at the University of Mississippi in 1961. While in law school, he was on the Law Journal and served as Chairman of the Moot Court Board.
- After graduating from law school, Judge Pickering became a partner in a Mississippi law firm. In 1962, he was appointed to serve as Prosecuting Attorney for the City of Laurel, and in 1964, he was elected and served four years as Prosecuting Attorney for Jones County. In 1969, Judge Pickering became a Municipal Court Judge for the City of Laurel.
- In 1972, Judge Pickering was elected to the Mississippi State Senate and served two terms, from 1972 to 1980. He was the Republican nominee for Attorney General in 1979, and he served as Chairman of the Mississippi Republican Party from 1976 to 1978.
- Throughout his career, Judge Pickering has shown a commitment to his community in a professional and personal capacity. His numerous civic contributions include serving as the head of the March of Dimes campaign in Jones County, as the Chairman of the Jones County Chapter of the American National Red Cross and as the Chairman of the Jones County Heart Fund. In 1963, he was recognized as one of the three Outstanding Young Men in Mississippi.
- Judge Pickering is active in his church and has served many years as a Sunday School teacher, as Sunday School Superintendent and as Church Treasurer.
- Judge Pickering's record demonstrates his strong commitment to improving racial relations and enforcing laws protecting civil rights:
 - In 1967, in a criminal trial, he testified at great risk to both himself and his family against the Imperial Wizard of the KKK for fire bombing a civil rights activist in Mississippi;
 - In 1976, he hired the first African-American Republican political worker in Mississippi;

- In 1988, he chaired a race relations committee for Jones County, Mississippi;
 - In 1999, he served on the board of the Institute for Racial Reconciliation at the University of Mississippi;
 - In 2000, he worked with at-risk African-American youth in Laurel, Mississippi.
- There has been a broad outpouring of support for Judge Pickering's nomination to the Fifth Circuit from the African-Americans who know him best:
 - James Charles Evers, civil rights activist and brother of slain civil rights leader Medgar Evers;
 - Judge Damon Keith of the U.S. Court of Appeals for the Sixth Circuit;
 - Judge Henry Wingate of the U.S. District Court, Jackson, Mississippi;
 - Melvin Mack, a member of the Board of Supervisors for Jones County, Mississippi;
 - Judge Johnny L. Williams of the Tenth District Chancery Court of Mississippi;
 - Johnny DuPree, Mayor of Hattiesburg, Mississippi;
 - Reuben Anderson, partner in the law firm of Phelps Dunbar and former Justice of the Mississippi Supreme Court;
 - Phillip West, Representative from Natchez, Mississippi, and Chairman of Mississippi Legislative Black Caucus;
 - James King, the first African-American employee of the Mississippi Republican Party;
 - Henry Naylor, Hattiesburg City Councilman and board member of the Forrest County NAACP;
 - Charles Bolton, the first African-American Deputy Sheriff of Forrest County;
 - Deborah Gambrell, a civil rights attorney who has practiced before Judge Pickering;
 - Reverend George Barnes, Pastor of New Homer Baptist Church, Laurel, Mississippi;
 - Reverend Kenneth E. Fairley, state coordinator for the Rainbow Coalition and former President of the Forrest County NAACP;
 - Reverend Nathan Jordan, Pastor, St. John United Methodist Church, Hattiesburg, Mississippi, and past President of the Forrest County NAACP;
 - Reverend Arthur L. Siggers, Pastor, Mount Olive Baptist Church, Hattiesburg, Mississippi.

STATEMENTS BY SELECT SUPPORTERS OF JUDGE CHARLES W. PICKERING

James Charles Evers, brother of slain civil rights leader Medgar Evers

“As someone who has spent all my adult life fighting for equal treatment of African-Americans, I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues. He has taken tough stands at tough times in the past, and the treatment he and his record are receiving at the hands of certain interest groups is shameful.” (*Op-ed, Wall Street Journal, February 7, 2002 at A16*).

Governor Ronnie Musgrove and other Democratic Mississippi elected officials

“We are the Democratic statewide officials of Mississippi. We know Charles Pickering personally and have known him for many years. We believe Judge Pickering should be confirmed for this appointment and serve on that court. Judge Pickering chose to take stands during his career that were difficult and courageous Mississippi has made tremendous progress in race relations since the 1960s and Charles Pickering has been part of that progress. We ask the United States Senate to stand up to those who malign the character of Charles Pickering, and give him an[] up or down vote on the Senate floor.” (*Letter to Sen. Frist and Sen. Daschle, September 24, 2003*).

William F. Winter, former Democratic Governor of Mississippi

“As a former Democratic Governor of Mississippi and as a long-time colleague of Judge Pickering in the legal profession and in the public service, I can vouch for him as one of our state’s most respected leaders.” (*Letter to Sen. Leahy, October 25, 2001*).

Judge Damon J. Keith, United States Court of Appeals for the Sixth Circuit

“I am absolutely convinced that Judge Pickering’s entire life has been dedicated to the principle spelled out in the Declaration of Independence that says ‘. . . all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.’ I recommend Judge Charles W. Pickering, Sr. to you without reservation.” (*Letter to Sen. Leahy, November 8, 2001*).

Judge Henry T. Wingate, United States District Court Judge, Southern District of Mississippi

“More than just colleagues, we [have] spent quality time together discussing not only our judicial concerns, but also the plight of our country relative to the race issue. I have found Judge Pickering genuinely committed to making a difference on this matter Since I am highly visible in the Southern District of Mississippi, I should like to think that attorneys aggrieved over Judge Pickering’s rulings on racial grounds would have mentioned that allegation to me. I have not heard any such criticisms I am

convinced that he will be a fair judge on the United States Court of Appeals for the Fifth Circuit." (*Letter to Sen. Leahy, October 25, 2001*).

Judge Johnny L. Williams, Tenth Chancery Court District of Mississippi

"As an African American I understand the importance of having leaders like Judge Pickering take a stand for equal justice and racial harmony in our state. I traveled to Washington, D.C. twice in early 2002 to advocate Judge Pickering's elevation to the Fifth Circuit Court of Appeals. One of the things I was most disheartened about was how the mis-characterization of Judge Pickering's reputation on an issue so sensitive as race might undermine efforts to continue the progress we have made on race relations in Mississippi." (*Letter to Pres. Bush, January 7, 2002*).

Ruben V. Anderson, first African American Supreme Court Justice in Mississippi and former associate counsel for the NAACP

"I have known Judge Pickering for at least a quarter of a century. At all times I have found him to be an honorable man. I have had the opportunity to appear before Judge Pickering as an attorney and he was extremely fair and impartial to all parties. I likewise had the occasion to serve with Judge Pickering on the Racial Reconciliation Committee at the University of Mississippi and through that fully understand his commitment to racial justice. Judge Pickering would be an asset to the Fifth Circuit Court of Appeals and I recommend him without reservation." (*Letter to Sen. Leahy, January 8, 2002*).

I.A. Rosenbaum, civil rights activist, past mayor of Meridian, Mississippi and past President of Congregation Beth Israel

"Injustice and character assassination galls me. Charles Pickering is no racist. He stood tall when our Temple was bombed and made every effort to prosecute Sam Bowers who planned the bombing." (*Letter to Sen. Feinstein, September 25, 2003*).

Jorge C. Rangel, prior member of the American Bar Association's Standing Committee on the Federal Judiciary

"I first met Judge Pickering in 1990 in my capacity as a member of the ABA's Standing Committee on the Federal Judiciary. As the Fifth Circuit's representative on the Committee, I conducted the primary investigation into his professional qualifications when he was nominated to a federal district judgeship in Mississippi. I spent many hours discussing his qualifications with judges, lawyers and lay people throughout the state. I also interviewed Judge Pickering, during which we touched on matters relevant to his qualifications to serve as a federal judge. The Charles W. Pickering that I have read about in press reports during the pendency of his current nomination does not comport with the Charles W. Pickering that I have come to know in the last thirteen years. Competent, compassionate, sensitive and free from bias are terms that aptly describe him. Throughout his professional career as a lawyer and as a judge, Judge Pickering has tried to do what he thought was right, consistent with his oaths as an officer of the court and as

a judge. Attempts to demonize him are both unfair and out of place in a judicial confirmation proceeding.” (*Letter to Sen. Hatch, April 1, 2003*).

Dávid Z. Chesnoff, criminal defense attorney

“...[Judge Pickering] kept an open mind, listened to our position and gave me as fair a trial as I have received in any United States District Court, anytime. Judge Pickering had a grasp of the difficult legal issues and addressed the case with objectivity and fairness. At no time during my experience before Judge Pickering, including the jury selection process, did I ever note even a scintilla of evidence that Judge Pickering did not treat every citizen of our great country with equal fairness and consideration. Based on my experience with Judge Pickering, I am offended that people are attacking his sterling character.” (*Letter to Sen. Hatch, January 16, 2003*).

Johnny Magee, City of Laurel Councilman

“The state of Mississippi has and continues to have its share of challenges as it relates to racial, gender, economic, moral and other issues, but Charles Pickering is in the forefront of bringing together needed changes in all of these and other areas. I have found Mr. Pickering to be open, fair-minded, progressive and one whom I would have every confidence in his assuming the post on the 5th Circuit Court of Appeals.” (*Letter to Sen. Leahy, October 25, 2001*).

Reverend George L. Barnes, Pastor, New Homer Missionary Baptist Church, Laurel, Mississippi

“I have known Charles Pickering all my life. . . . I have always known Judge Pickering to be a fair man that offered help to many individuals regardless of their beliefs or race. He is an open-minded person and has a reputation of being accessible to all individuals. He has started a local program to try to positively influence the young people of the African-American community in Jones County.” (*Letter to Sen. Leahy, October 25, 2001*).

Deborah Jones Gambrell, Attorney-at-Law

“As an African American attorney who practices in the federal courts of the Southern District of Mississippi I have appeared before Judge Pickering on numerous occasions during the past eleven (11) years, mo[re] often than not, in cases involving violations of civil rights and employment discrimination matters. I have found Judge Pickering not only to be a fair jurist, but one who is concerned with the integrity of the entire judicial process and assures every participant of a “level playing field” and a judge who will apply the law without regard for the sensitive nature of cases of this sort.” (*Letter to Sen. Leahy, October 25, 2001*).

Early M. Gray, Taylorsville, Mississippi

"[Pickering] represented my son David Gray in 1981 in an armed robbery trial. My son was accused of robbing a white teenage girl at knifepoint. Judge Pickering believed that my son was entitled to a good defense even though it was not a popular move for him politically. The first trial ended in a mistrial, and the second trial ended with a not-guilty verdict. I knew that Judge Pickering is a strong believer in the constitutional rights of all people. He should be approved for the judiciary position for which President Bush nominated him." (*Letter to Sen. Leahy, October 25, 2001*).

Melanie Rube, Deputy U.S. Marshal

"I am overwhelmed at the compassion that Judge Pickering shows each and every defendant. He truly cares for the welfare of these defendants and their families. I believe it grieves him to see mothers and fathers separated from their loved ones. As a man of great conviction, I know that Judge Pickering would make a positive impact on the Fifth Circuit." (*Letter to Sen. Leahy, October 25, 2001*).

Reverend Nathan Jordan, Pastor, St. John United Methodist Church, former President of the Forrest County NAACP

"Without hesitation, I can truthfully say that Judge Pickering is an extremely fair judge who serves all our citizens It seemed to me that he pushed very hard to insure the fair treatment of minorities." (*Letter to Sen. Leahy, October 26, 2001*).

Johnny L. DuPree, Mayor, City of Hattiesburg

"Judge Pickering has consistently advocated racial reconciliation for as long as I have known him and has testified against such men as convicted Ku Klux Klan member Sam Bowers in 1967, for the firebombing and murder of civil rights leader Mr. Vernon Dahmer." (*Letter to Sen. Leahy, October 29, 2001*).

Henry E. Naylor, City of Hattiesburg Councilman

"As an executive board member for 12 years with the Forrest County Branch of the NAACP and now serving on the Hattiesburg City Council, I have witnessed Judge Pickering demonstrate fairness, honesty, and certainly integrity through out the court. Also, while it should not matter, Judge Pickering has received much praise from local and state African American leaders who can attest to his commitment to being fair toward all citizens." (*Letter to Sen. Leahy, October 29, 2001*).

Reverend Kenneth E. Fairley, Pastor, Mount Carmel Ministries, former President of Forrest County Branch of the NAACP

"I served as president of the Forrest County Branch of the NAACP, a county adjacent to Jones County, where Judge Pickering has lived. I currently serve as a State Coordinator

for the Rainbow Coalition under the leadership of Reverend Jesse Jackson. While serving in these positions, I have watched Judge Pickering become a major bridge builder in the State of Mississippi. He has developed platforms that have eased racial tensions. I am aware that he serves as a member of the Board of Directors for the Institute of Racial Reconciliation at the University of Mississippi. This institute has helped all Americans of different races to understand and respect each other." (*Letter to Sen. Leahy, October 30, 2001*).

Shane Langston, President, Mississippi Trial Lawyers Association

"Judge Pickering is held in the highest esteem among the members of the Mississippi Bar. His reputation for fairness is shared across the legal spectrum; from the criminal defense lawyer to the prosecutor; from the civil defense lawyer to the plaintiff's lawyer. We practice before him daily. We know that he applies the law fairly and equally without regard to economic status, party affiliation, race, sex or religion." (*Letter to Sen. Leahy, October 30, 2001*).

Charles Bolton, Deputy Sheriff, Forrest County, Mississippi

"I have been involved in law enforcement for approximately 23 years and have had the privilege of holding the highest office that an African American has held in law enforcement for the Forrest County Sheriff's Office I have had the opportunity to observe Judge Pickering during his administration of the United States District Court . . . and have also had the opportunity to testify on numerous occasions in his Court. He has always demonstrated a policy of not only 'fairness' and one of 'upholding the law' as it applies to all persons, but he has been particularly careful in preserving the rights of all prisoners, including African Americans who sought to pursue remedies in [his] court." (*Letter to Sen. Leahy, October 30, 2001*).

James R. King, first African-American hired by the Mississippi Republican Party

"I find it ironic that there are Civil Rights groups that oppose [Judge Pickering] as being someone they believe will try to suppress their civil rights. I find it ironic because over the many years that I have known Judge Pickering, I can earnestly say that I have never known or met anyone that has said that they knew of any such dealings in which he was involved in that denied or suppressed the civil rights of others. Therefore it is in my opinion that those [who] say such things about Judge Pickering, really do not know him." (*Letter to Sen. Leahy, January 26, 2002*).

JUDGE CHARLES W. PICKERING

Responses to False Allegations

ALLEGATION: In *United States v. Swan*, Judge Pickering went the “whole nine yards” to ensure that a defendant who burned a cross in an interracial couple’s yard received a more lenient sentence than that recommended by the prosecutors in the case.

RESPONSES:

- Efforts to paint Judge Pickering as racially insensitive because of his actions in the *Swan* case are grossly unfair. While Judge Pickering expressed concerns about the disparity in the sentences the government recommended for the three defendants in the *Swan* case, he repeatedly condemned the cross burning crime as “heinous”, “reprehensible”, “despicable” and “dastardly”.
- Judge Pickering’s actions in the *Swan* case were consistent with his general practice of striving to maintain proportionality in sentencing defendants involved in the same criminal activity.
- In the end, Judge Pickering sentenced Swan, the adult defendant who went to trial, to 27 months in prison, even though the other two defendants who pled guilty received no prison time at all, and the facts at trial suggested that one of the other defendants (the juvenile) was the ringleader of the crime.
- Judge Pickering has departed downward in other criminal cases (including those involving African-American defendants) where justice and fairness have supported a departure:
 - In the case of Clinton Myers, a 20-year-old African-American who was convicted of a drug offense, Judge Pickering departed downward from a five-year mandatory minimum sentence and sentenced the defendant to 30 months in prison. He also recommended that the defendant be permitted to participate in an intensive confinement program which further reduced his sentence.
 - In the case of Michael King, a young African-American defendant who was convicted of a drug offense and had no prior felony convictions, Judge Pickering continued the case for a year, placed the defendant under supervised home release, and later cited his good conduct while on supervision as grounds for a downward departure. Although the defendant faced a 40-month prison sentence under the Sentencing Guidelines, Judge Pickering ultimately sentenced him to 18 months of home confinement and 5 years of probation.

- Zachary Barnes, a 20-year-old African-American who was convicted of a drug offense, faced 70-87 months in prison under the Sentencing Guidelines. Judge Pickering departed downward twice as far as the government recommended and sentenced him to 48 months in prison. Judge Pickering also recommended that the defendant participate in an intensive confinement program which further reduced his sentence. Barnes' defense lawyer called Judge Pickering's compassionate sentence a "life changing experience" for Barnes.
- Tammy Carney, an African-American female, faced a minimum sentence of 188 months in prison for her drug conviction. Based on her cooperation, the government filed a motion to depart downward under the Sentencing Guidelines. Over a two and one half year period, Judge Pickering continued Ms. Carney's sentencing six times to enable the government to develop additional grounds for a downward departure. In the end, Judge Pickering departed downward and sentenced Ms. Carney to 63 months imprisonment.

ALLEGATION: Judge Pickering engaged in improper *ex parte* communications in the *Swan* case.

RESPONSES:

- Michael Krauss, Professor of Legal Ethics at George Mason University Law School, reviewed two "*ex parte*" communications Judge Pickering allegedly made during the *Swan* case and concluded that neither violated the *Model Code of Judicial Conduct*.
- While it is true that Judge Pickering called an Assistant United States Attorney without defense counsel present to remind him of the Court's request that he consult with his superiors in Washington, according to Professor Krauss, such communications are permitted under the *Model Code of Judicial Conduct*.
- Professor Krauss expressed similar views about conversations Judge Pickering had with Frank Hunger, an old friend who was then serving as the Assistant Attorney for the Civil Division at the Department of Justice, regarding the Department's mishandling of the case. Professor Krauss stated, "one is hard-pressed to see any violation of Judge Pickering's ethical duties here [T]he communication was not really an *ex parte* communication at all -- it was not a discussion with one party in an effort to alter the trajectory of the trial to the detriment of the other party."
- It is important to note that Frank Hunger, a top Department of Justice official during the Clinton Administration and the person with whom Judge Pickering allegedly had unethical communications, strongly supports Judge Pickering's recollection of the facts surrounding this case. Hunger also supports Judge Pickering's nomination.

ALLEGATION: In a 1959 law review article, Judge Pickering advocated expanding the law to provide for criminal penalties for interracial marriages, and he “advised” the Mississippi legislature how to amend their laws to continue to penalize interracial marriages.

RESPONSES:

- Judge Pickering wrote the law review article more than 40 years ago as a law student at the University of Mississippi.
- In the article, Pickering did not advocate in favor of maintaining the ban on interracial marriages. He merely pointed out an inconsistency in Mississippi’s miscegenation statute, as compared to similar statutes in other states, and explained what would be required to eliminate the inconsistency.
- In his 1990 confirmation hearing to be a U.S. District Judge, Judge Pickering testified that the 1967 Supreme Court case of *Loving v. Virginia*, which held that state law bans on interracial marriages are unconstitutional, is the law of the land. He also testified, “. . . marriages between people of different races is a matter of personal choice. It is not appropriate for a State to make that decision, and it is my belief, under the present law today, that miscegenation statutes are unconstitutional.”
- After Judge Pickering’s 1990 confirmation hearing, the Senate Judiciary Committee - including Senators Leahy, Kennedy and Kohl - voted unanimously to approve his nomination to the U.S. District Court.
- In his October 2001 confirmation hearing, Judge Pickering reiterated his belief that “. . . who one marries is a personal choice and that there should not be legislation on that.”
- As a district court judge, Judge Pickering has demonstrated no bias towards interracial couples. Indeed, in one case (*Adams v. Walmart*), Judge Pickering set aside a jury verdict – one of only two verdicts he has ever set aside – because he believed that the interracial marriage and race had biased the jury. Boyce Holleman, the couple’s attorney in the case, has written a letter in support of Judge Pickering.

ALLEGATION: New evidence suggests Judge Pickering testified falsely at his 1990 confirmation hearing when he stated he never had any contact with the Sovereignty Commission.

RESPONSES:

- When Judge Pickering testified before Congress in 1990 that he never had any contact with the Sovereignty Commission, he did not intend to lie or mislead Congress. He simply failed to remember a conversation that had occurred years earlier.
- A single document in the Sovereignty Commission files suggests that in 1971, eighteen years before he testified before Congress, Judge Pickering spoke to an employee of the Commission about a local labor union that had been infiltrated by the KKK.
- Judge Pickering had no reason to deny or cover up this conversation. Indeed, as a State Senator, he voted against destroying the Sovereignty Commission's records because he felt that they should be preserved.

ALLEGATION: Pickering's opinions evince a hostility to the fundamental protections offered by the Voting Rights Act and the Constitution. In *Fairley v. Forrest County*, 814 F. Supp. 1327 (S.D. Miss. 1993), he called the one person, one vote principle "obtrusive" and "something that legislatures have learned they must live with."

RESPONSES:

- Judge Pickering has never been reversed in a voting rights case.
- Judge Pickering never called the one person, one vote principle "obtrusive." In *Fairley*, he simply noted that the law often requires federal courts to step in, "be obtrusive", and resolve matters that are the province of the legislative branch. He also noted that it is the responsibility of the courts to resolve such matters in cases making constitutional challenges to reapportionment plans. Judge Pickering's quote reads in full:

"When courts perform their responsibility and determine that constitutional criteria are not satisfied and that an apportionment plan is unconstitutional, and order new elections, the courts are being obtrusive into matters that under our Constitution should be discharged by others -- elected officials in legislative bodies." 814 F. Supp. at 1330.
- In *Fairley*, Judge Pickering recognized the important, but limited role courts should play in voting rights cases: "The federal judiciary . . . is freed from having to justify its actions to the voters, the citizens or the taxpayers. It is free to correct abuses without fear of political reprisal." 814 F. Supp. at 1336.

- Long ago the Supreme Court recognized that federal courts play a role in reapportionment cases “only when a legislature fails to reapportion in a timely fashion after having had an adequate opportunity to do so.” *Reynolds v. Sims*, 377 U.S. 533, 586 (1964).
- Donnie Ray Fairley, one of the plaintiffs in *Fairley v. Forrest County*, has written a letter in support of Judge Pickering’s nomination, in which he stated, “because of Judge Pickering’s fairness in my case, and my personal observation of Judge Pickering’s rulings while on the bench in other cases, I feel that he has a commitment to fairness, justice and equal protection for all people who come before him.”
- The Reverend Ken Fairley, brother of one of the plaintiffs in *Fairley v. Forrest County* and President of the Forrest County NAACP at the time of the lawsuit, also has written a letter in support of Judge Pickering. In his letter, Reverend Fairley stated that he “felt the decision [in *Fairley*] was in accordance with law, was fair, and we did not appeal it.”

ALLEGATION: Judge Pickering is a staunch opponent of *Roe v. Wade* and a woman’s right to choose. He was a prime architect of the 1976 Republican Party platform plank that protested the *Roe* decision and called for a constitutional amendment banning abortion.

RESPONSES:

- Despite Judge Pickering’s personal views on abortion, he has testified that he is committed to following Supreme Court precedent, including *Roe v. Wade* and *Planned Parenthood v. Casey*. Judge Pickering’s record as a jurist demonstrates his commitment to the rule of law.

ALLEGATION: Judge Pickering’s personal comments in his opinions demonstrate that he is hostile to plaintiffs in employment discrimination cases.

RESPONSES:

- Judge Pickering’s record makes clear that he is not hostile to employees’ rights. He has been reversed only twice in employee discrimination cases.
- Judge Pickering’s reputation among employment discrimination lawyers belies this allegation.
 - Roger Doolittle, an attorney who represented an employee union in a discrimination suit before Judge Pickering, wrote in a letter of support, “. . . we have always found his decisions to be well-founded in law, fairly and impartially considered, and sensitive to the needs of working men and women.”

- Jim Waide, a prominent employee discrimination attorney in Mississippi, wrote an op-ed in which he stated, "Contrary to the information they have apparently received, Judge Pickering is no enemy of civil rights."
- Mary Balter, who filed a sex discrimination suit against her employer and opted to not have a jury trial, stated in a letter to Senator Leahy, "Knowing that Judge Pickering was an honest and fair man, I felt blessed and quite comfortable when he was chosen to be the Judge hearing the complaint."
- Judge Pickering's comments regarding the side effects of anti-discrimination laws evince nothing more than his belief that frivolous claims of discrimination prevent the timely adjudication of meritorious claims.

GRIFIN

JUDGE RICHARD ALLEN GRIFFIN
NOMINEE FOR THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

Biographical Information

- Rated "well qualified" to sit on the US Court of Appeals for the Sixth Circuit by the American Bar Association
- Elected to the Michigan Court of Appeals (Third District) and reelected to the Court of Appeals (Fourth District)
- Has authored over 280 published opinions and several hundred unpublished opinions.
- Served as Chief Judge of the YMCA Youth-in-Government Mock Trial program, past Chairman of the Yellow Ribbon Committee welcoming troops home from Desert Storm, past Chairman of the Long Lake Township Building Authority, and former Ambassador to the National Cherry Festival

Allegations

Responses

Judge Richard Allen Griffin
Nominee to the U.S. Court of Appeals for the Sixth Circuit

- **Judge Richard Griffin is eminently qualified to be a judge on the Sixth Circuit, having served with distinction as a state court judge for well over a decade.**
 - ✓ Judge Griffin was elected to the Michigan Court of Appeals (Third District) in 1988 and reelected to the Court of Appeals in 1996 (Fourth District).
 - ✓ As an appellate judge, he has heard civil and criminal matters from across the State of Michigan and has authored over 280 published opinions and several hundred unpublished opinions.
 - ✓ The American Bar Association rated Judge Griffin "Well Qualified" to sit on the U.S. Court of Appeals for the Sixth Circuit.

- **Judge Griffin had a distinguished career as a practicing attorney before serving on the state bench.**
 - ✓ Judge Griffin was a founding partner of Read & Griffin, a firm established in 1985. As a private lawyer, Griffin practiced in the federal district courts in Michigan and before the Sixth Circuit. Prior to founding his own firm, Griffin was a partner with the Traverse City firm of Coulter, Cunningham, Davison & Read, which he had joined as an associate in 1977.
 - ✓ Judge Griffin received his J.D. from the University of Michigan Law School in 1977 and his bachelor's degree, *magna cum laude*, from the Western Michigan University Honors College in 1973.

- **Judge Griffin was born in Traverse City and is a life-long resident of Michigan. He would be the first appointee to the Sixth Circuit from the Traverse City area of Michigan.**

- **Judge Griffin has served his state and local community in many voluntary capacities.**
 - ✓ Judge Griffin has served as Chief Judge of the YMCA Youth-in-Government Mock Trial program.
 - ✓ Judge Griffin is a past chairman of the Yellow Ribbon committee welcoming troops home from Desert Storm, past chairman of the Long Lake Township Building Authority, and a former ambassador to the National Cherry Festival.

Statements by Select Supporters of Judge Griffin

President Gerald R. Ford

"I write to strongly support the nomination of Richard Allen Griffin to the United States Court of Appeals for the Sixth Circuit. He is a highly qualified nominee by President Bush for this important federal judicial post. His approval by the Senate will alleviate the current judicial emergency in the 6th Circuit . . . I can say with conviction that Judge Griffin is a person of highest quality character. As the record shows, he has been a very excellent Judge with unquestioned integrity." *Excerpt from letter to Senator Patrick Leahy, Chairman, Senate Judiciary Committee, Senator Carl Levin and Senator Debbie Stabenow from the Honorable Gerald R. Ford, 38th President of the United States, August 13, 2002.*

Justice Maura D. Corrigan, Michigan Supreme Court

"Richard Allen Griffin is a man of integrity and probity who is fully capable of discharging the duty of protecting our Constitution and laws. He is deserving of the public trust as he has already proven himself worthy of that trust during his years of service to the State of Michigan. I have every confidence that he will serve our country with honor and distinction." *Excerpt from letter to Senator Carl Levin and Senator Debbie Stabenow, July 5, 2002.*

The Honorable Roman S. Gribbs, Former Mayor City of Detroit and Retired Judge, Michigan Court of Appeals

"I have known Judge Griffin for many years and have worked with him as a colleague on the Michigan Court of Appeals for 14 years. . . . Working together on hundreds of opinions has given me the opportunity to observe and know Rick very well. He is in many respects a 'judge's judge': integrity personified, intelligent, hardworking, fair, sensitive with level temperament and good judgment plus the uncanny ability to decide and write in a clear and understandable manner that resolves complex and obscure issues. He is a dedicated public servant. . . . It has been a pleasure and honor to work with Judge Griffin these many years. I know he will serve with honor and distinction as a Judge of the United States Court of Appeals." *Excerpt from letter to Senator Carl Levin and Senator Debbie Stabenow, August 16, 2002.*

Chief Judge William C. Whitbeck, Michigan Court of Appeals.

"Judge Griffin has served with great distinction on the Michigan Court of Appeals for fourteen years. He is a decisive scholarly judge with an instinct for the core issues and with a flair for authoring crisp understandable opinions. He has written over 280 published opinions, has written hundreds of unpublished opinions, and has decided thousands of cases. . . . Judge Griffin is a good man and a good judge. Considered on the merits, there is no question in my mind that he is fully qualified to serve on the Sixth Circuit; the operative word here is 'serve' as that is precisely what Judge Griffin will do, serve the people and the public interest to the full extent of his considerable abilities." *Excerpt from letter to Senator Carl Levin and Senator Debbie Stabenow, July 19, 2002.*

Judge Stephen L. Borrello, Michigan Court of Appeals.

“Judge Griffin is one of the finest jurists in the State. While we may differ on a particular legal issue, I find that our differences are rooted in honest disagreements about the application of legal standards to a particular set of facts, rather than a difference of judicial or political philosophy. Judge Griffin does not belong to that class of jurists, on either the right or the left, that seek in every case to impose their political will rather than the rule of law.” *Excerpt from letter to Chairman Orrin G. Hatch, July 11, 2004.*

KOHL

JUDGE CAROLYN KUHL

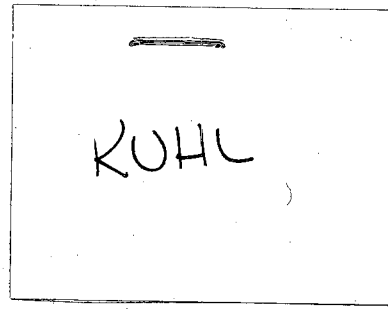
NOMINEE FOR THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

Biographical Information

- Rated well-qualified by the American Bar Association
- Clerked for the Judge Anthony Kennedy on the 9th Circuit.
- Worked as a Special Advisor to Attorney General William French Smith.
- Served as Deputy Solicitor General and Deputy Assistant Attorney General in the Civil Division at the United States Department of Justice.
- Supported by prominent Democrats such as Vilma Martinez, former President of the Mexican American Legal Defense and Educational, and Ron Olson, as well as a bipartisan group of nearly 100 judges on the Los Angeles Superior Court.

Allegations

Responses



Nominees who have been deemed "controversial" by interest groups include the following:

- **Judge Charles Pickering**, nominee to the 5th Circuit (Mississippi), was unanimously confirmed to be a federal district judge in 1990. He was rated well-qualified by the ABA. He has a long record of advancing race relations in Mississippi: investigating and prosecuting the KKK in the 1960's, sending his daughters to newly integrated public schools, hiring the first African-American staffer for the state party in 1976, chairing a Jones County committee on racial progress, and serving on the board of the Mississippi Institute for Racial Reconciliation. He is strongly supported by local African-Americans and Democrats, including Democrat Governor Musgrove, Attorney General Moore, and former Clinton Administration Assistant Attorney General Frank Hunger, as well as Sixth Circuit Judge Damon Keith and U.S. District Judge Henry Wingate.
- **Justice Priscilla Owen**, nominee to the 5th Circuit (Texas), has served on the Texas Supreme Court since 1994. In her successful reelection bid in 2000, every major newspaper in Texas endorsed her. She is supported by a bipartisan group of 15 past Presidents of the state bar, 3 former Democrat Justices of the Texas Supreme Court, and the former head of Legal Aid of Central Texas. She received a *unanimous* well-qualified ABA rating.
- **Judge Carolyn Kuhl**, nominee to the 9th Circuit (California), currently serves as a state trial judge on the Superior Court in California. She clerked for then-Judge Anthony Kennedy on the 9th Circuit, worked as a special adviser to Attorney General Smith and served as Deputy Solicitor General of the United States. She then became a partner at a leading Los Angeles law firm. She is supported by prominent Democrats such as Vilma Martinez, former President of the Mexican American Legal Defense and Educational Fund, and Ron Olson, as well as a bipartisan group of nearly 100 judges on the Los Angeles Superior Court. She received a well-qualified ABA rating.
- **Bill Pryor**, nominee to the 11th Circuit (Alabama), currently serves as Alabama Attorney General. He has earned great respect for his integrity and fairness as Alabama Attorney General. He is supported by prominent Democrats and African-American in Alabama, including former Democrat Governor Siegelman and Dr. Joe Reed, chair of the state's African-American caucus. He began his career as a law clerk for civil rights legend, Judge John Minor Wisdom. He received a qualified ABA rating. Some interest groups are opposing him because he is pro-life.
- **Judge Terrence Boyle**, nominee to the 4th Circuit (North Carolina), was unanimously confirmed to be a federal district judge in 1984 and has served with distinction since, now as Chief Judge. Judge Boyle has been appointed twice by Chief Justice Rehnquist to serve on Judicial Conference committees and has sat by designation on the Fourth Circuit. The former chairman of the state Democratic Party supports Judge Boyle's nomination, stating that he gives everyone "a fair trial."
- **Judge David McKeague**, nominee to the 6th Circuit (Michigan), was unanimously confirmed by the Senate to be a federal district judge in 1992. He served in private

practice for 25 years before that and is widely respected for his intellect and integrity. He received a well-qualified ABA rating.

- **Judge Susan Neilson**, nominee to the 6th Circuit (Michigan), has been a judge on the Michigan 3rd Judicial Circuit Court since 1991. She has more than 10 years of experience in private practice and was co-editor and author of Michigan Civil Procedure, a two-volume treatise on all areas of Michigan civil practice that received an award from the State Bar of Michigan. Judge Neilson is also active in numerous community service organizations. She received a *unanimous* well-qualified ABA rating.
- **Judge Henry Saad**, nominee to the 6th Circuit (Michigan), has served since 1994 on the Michigan Court of Appeals. In his re-election, he received broad bipartisan support, including endorsements from the Michigan Chamber of Commerce and the UAW. Since 1996, Judge Saad has taught legal ethics at Wayne State University Law School. He received the Arab-American and Chaldean Council Civic and Humanitarian Award for Outstanding Dedication to Serving the Community with Compassion and Understanding in 1995. He received a qualified ABA rating.
- **Claude A. Allen**, nominee to the 4th Circuit (Virginia), was confirmed by the Senate in 2001 as Deputy Secretary for the Department of Health and Human Services and is currently serving in that position. Before joining HHS, Allen served as Secretary of Health and Human Resources for the Commonwealth of Virginia and led Governor Gilmore's initiative to pass a Patients Bill of Rights in 1999. Allen has also served with distinction as Virginia's Deputy Attorney General for the Civil Litigation Division and as Counsel to the Attorney General. Before joining the Virginia state government, Allen practiced law at Baker & Botts in Washington, D.C., where he specialized in government contracts, litigation, and legislative affairs. He has received a qualified ABA rating.
- **Miguel Estrada** (nomination to the D.C. Circuit was withdrawn at Estrada's request). Estrada has argued 15 cases before the U.S. Supreme Court and has worked as a federal prosecutor, Assistant U.S. Solicitor General, and Supreme Court law clerk for Justice Kennedy. Estrada came to America as a teenager who spoke virtually no English, and had he been confirmed would have been the first Hispanic to serve on the D.C. Circuit. He represented a capital defendant pro bono before the Supreme Court. He was supported by prominent Democrat lawyers such as Seth Waxman and Ron Klain and received a *unanimous* well-qualified ABA rating.

decide and write in a clear and understandable manner that resolves complex and obscure issues. He is a dedicated public servant I know he will serve with honor and distinction as a Judge of the United States Court of Appeals.”

(Excerpt of letter from The Honorable Roman S. Gribbs, Former Mayor City of Detroit and Retired Judge, Michigan Court of Appeals to Senator Carl Levin and Senator Debbie Stabenow, Aug. 16, 2002.)

- ✓ “Judge Griffin has served with great distinction on the Michigan Court of Appeals for fourteen years. He is a decisive scholarly judge with an instinct for the core issues and with a flair for authoring crisp understandable opinions.... Judge Griffin is a good man and a good judge. Considered on the merits, there is no question in my mind that he is fully qualified to serve on the Sixth Circuit; the operative word here is ‘serve’ as that is precisely what Judge Griffin will do, serve the people and the public interest to the full extent of his considerable abilities.” *(Excerpt of letter from Chief Judge William C. Whitbeck, Michigan Court of Appeals, to Senator Carl Levin and Senator Debbie Stabenow, July 19, 2002.)*

CAROLYN KUHL

Nominee for the U.S. Court of Appeals for the Ninth Circuit

Carolyn Kuhl, a sitting judge in California, has a wide range of experience in public service and private practice. She is highly qualified for the U.S. Court of Appeals for the Ninth Circuit.

- ✓ Having served as a civil and criminal judge on the Los Angeles County Superior Court since 1995, Judge Kuhl is now the Supervising Judge of the Civil Division, the first woman to hold that position.
- ✓ The American Bar Association has rated Judge Kuhl “Well Qualified” to sit on the U.S. Court of Appeals for the Ninth Circuit.
- ✓ Prior to becoming a state judge, Judge Kuhl was a partner in the prestigious Los Angeles law firm of Munger Tolles & Olson from 1986 to 1995.
- ✓ From 1981 to 1986, Judge Kuhl served in the United States Department of Justice as Deputy Solicitor General, Deputy Assistant Attorney General in the Civil Division, and as Special Assistant to Attorney General William French Smith. While in the Department of Justice, Judge Kuhl argued cases before the United States Supreme Court and supervised all civil appellate litigation handled by the Justice Department nationwide.
- ✓ In 1977-78, Carolyn Kuhl clerked for the Honorable Anthony Kennedy, then a Judge on the Ninth Circuit.

- ✓ In 1977, Judge Kuhl graduated with honors from the Duke Law School where she was an editor of the Duke Law Journal. In 1974, she received a B.A. in Chemistry with honors from Princeton University.

Judge Kuhl has extraordinary bipartisan support:

- ✓ “Kuhl is what I think of as an old fashioned judge. She cares about due process for everyone. In her seven years on the Superior Court bench, she has shown that she is careful to hear both sides. She does not try to influence the outcome of a case to favor one side or the other. She is serious about her oath to follow the law, whatever the result. . . . Both the plaintiff and defense bars in Los Angeles actively support Kuhl.” (*Vilma Martinez, former Director of the Mexican American Legal Defense and Educational Fund, quoted in Los Angeles Daily Journal, April 30, 2003.*)
- ✓ “As sitting judges, we more than anyone appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.” (*Letter from a bipartisan group of 23 women judges on the Superior Court who serve with Judge Kuhl, to Senators Orrin G. Hatch, Patrick J. Leahy, Dianne Feinstein, and Barbara Boxer, Feb. 22, 2002.*)
- ✓ “We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and to the Senate that confirms her. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.” (*Letter from a bipartisan group of nearly 100 judges who serve with Judge Kuhl, to Senators Orrin G. Hatch and Patrick J. Leahy, (Feb. 28, 2003.)*)
- ✓ “I had the pleasure of serving on the Los Angeles Superior Court with Judge Kuhl. She was widely respected among her fellow colleagues and lawyers for her dedication, scholarship, fairness, and adherence to the law. . . . her reputation and practice is to decide matters with an open mind as to all issues. Judge Kuhl is a warm, intelligent, and decent person who should be fairly considered for this distinguished appointment. I can think of no one more qualified or deserving for this office.” (*Justice Carlos Moreno, California Supreme Court, letter to Senator Dianne Feinstein, March 19, 2003.*)

DAVID MCKEAGUE

Nominee for the U.S. Court of Appeals for the Sixth Circuit

Judge David W. McKeague is a distinguished federal district court judge with over a decade of experience on the bench.

✓ “Judge Griffin has served with great distinction on the Michigan Court of Appeals for fourteen years. He is a decisive scholarly judge with an instinct for the core issues and with a flair for authoring crisp understandable opinions.... Judge Griffin is a good man and a good judge. Considered on the merits, there is no question in my mind that he is fully qualified to serve on the Sixth Circuit; the operative word here is ‘serve’ as that is precisely what Judge Griffin will do, serve the people and the public interest to the full extent of his considerable abilities.” (*Excerpt of letter from Chief Judge William C. Whitbeck, Michigan Court of Appeals, to Senator Carl Levin and Senator Debbie Stabenow, July 19, 2002.*)

CAROLYN KUHL

Nominee for the U.S. Court of Appeals for the Ninth Circuit

Carolyn Kuhl, a sitting judge in California, has a wide range of experience in public service and private practice. She is highly qualified for the U.S. Court of Appeals for the Ninth Circuit.

- ✓ Judge Kuhl, who has served as a civil and criminal judge on the Los Angeles County Superior Court since 1995, is the first woman to hold her current position as Supervising Judge of the Civil Division.
- ✓ The American Bar Association has rated Judge Kuhl “Well Qualified” to sit on the U.S. Court of Appeals for the Ninth Circuit.
- ✓ Prior to becoming a state judge, Judge Kuhl was a partner in the prestigious Los Angeles law firm of Munger Tolles & Olson from 1986 to 1995.
- ✓ From 1981 to 1986, Judge Kuhl served in the United States Department of Justice as Deputy Solicitor General, Deputy Assistant Attorney General in the Civil Division, and as Special Assistant to Attorney General William French Smith. While in the Department of Justice, Judge Kuhl argued cases before the United States Supreme Court and supervised all civil appellate litigation handled by the Justice Department nationwide.
- ✓ In 1977-78, Carolyn Kuhl clerked for the Honorable Anthony Kennedy, then a Judge on the Ninth Circuit.
- ✓ “We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and to the Senate that confirms her. As an appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.” (*Letter from a bipartisan group of nearly 100 judges who serve with Judge Kuhl, to Senators Orrin G. Hatch and Patrick J. Leahy, (Feb. 28, 2003.)*)

BOYLE

JUDGE TERRENCE BOYLE
NOMINEE FOR THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

Biographical Information

- Unanimously confirmed to be a federal district judge in 1984 and has served with distinction since, now as Chief Judge.
- Appointed twice by Chief Justice Rehnquist to serve on Judicial Conference committees and has sat by designation on the Fourth Circuit.
- Former Chairman of the North Carolina Democratic Party supports Judge Boyle's nomination, stating that he gives everyone "a fair trial."

Allegations

Responses

BOYLE

Nominees who have been deemed "controversial" by interest groups include the following:

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- **Bill Pryor**, nominee to the 11th Circuit (Alabama), currently serves as Alabama Attorney General. He has earned great respect for his integrity and fairness as Alabama Attorney General. He is supported by prominent Democrats and African-American in Alabama, including former Democrat Governor Siegelman and Dr. Joe Reed, chair of the state's African-American caucus. He began his career as a law clerk for civil rights legend, Judge John Minor Wisdom. He received a qualified ABA rating. Some interest groups are opposing him because he is pro-life.
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practice for 25 years before that and is widely respected for his intellect and integrity. He received a well-qualified ABA rating.

- **Judge Susan Neilson**, nominee to the 6th Circuit (Michigan), has been a judge on the Michigan 3rd Judicial Circuit Court since 1991. She has more than 10 years of experience in private practice and was co-editor and author of Michigan Civil Procedure, a two-volume treatise on all areas of Michigan civil practice that received an award from the State Bar of Michigan. Judge Neilson is also active in numerous community service organizations. She received a *unanimous* well-qualified ABA rating.
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- **Miguel Estrada** (nomination to the D.C. Circuit was withdrawn at Estrada's request). Estrada has argued 15 cases before the U.S. Supreme Court and has worked as a federal prosecutor, Assistant U.S. Solicitor General, and Supreme Court law clerk for Justice Kennedy. Estrada came to America as a teenager who spoke virtually no English, and had he been confirmed would have been the first Hispanic to serve on the D.C. Circuit. He represented a capital defendant pro bono before the Supreme Court. He was supported by prominent Democrat lawyers such as Seth Waxman and Ron Klain and received a *unanimous* well-qualified ABA rating.

NEILSON

JUDGE SUSAN NEILSON

NOMINEE FOR THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

Biographical Information

- Unanimously rated well-qualified by the American Bar Association
- Has been a Judge on the Michigan 3rd Judicial Circuit court since 1991.
- Has more than 10 years of experience in private practice
- Received an award from the State Bar of Michigan for her work as co-editor and author of Michigan Civil Procedure, a two-volume treatise on all areas of Michigan civil practice

Allegations

Responses

—
NEILSON

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JUDGE SUSAN BIEKE NEILSON
Nominee to the U.S. Court of Appeals for the Sixth Circuit

- **Judge Susan Neilson is a distinguished judge on the State of Michigan's largest trial court with well over a decade of experience on the bench.**
 - ✓ Judge Neilson was appointed to the 3rd Judicial Circuit Court of Michigan in 1991, and has been reelected three times.
 - ✓ Judge Neilson has significant experience on Michigan's largest state trial court bench, serving in both the civil and criminal divisions.
 - ✓ The American Bar Association unanimously rated Judge Neilson "Well Qualified" to sit on the U.S. Court of Appeals for the Sixth Circuit.

- **Judge Neilson had a distinguished career as a practicing attorney before ever serving on the state bench.**
 - ✓ From 1980 until 1991, Judge Neilson practiced law, first as an associate and later as a partner, with the prestigious Detroit firm of Dickinson, Wright. She specialized in products liability claims, medical malpractice claims, and commercial litigation.
 - ✓ Judge Neilson received her bachelor's degree in 1977 from the honors college at the University of Michigan (Phi Beta Kappa), and her J.D. (*cum laude*) in 1980 from Wayne State University, where she was a member of the law review.

- **Judge Neilson was born in Ann Arbor and she is a life-long resident of Michigan. If confirmed, she would be the only active female judge from Michigan on the Sixth Circuit.**

- **Judge Neilson is dedicated to the improvement of the law.**
 - ✓ She has written numerous articles and was co-editor and author of Michigan Civil Procedure, a two-volume treatise on all areas of Michigan civil practice. The Michigan Judicial Institute selected the treatise to purchase for every trial court judge in the state. The State Bar of Michigan awarded the treatise its prestigious "Plain English Award," due to its remarkable clarity.

Statements by Select Supporters of Judge Neilson

Justice Maura Corrigan, Michigan Supreme Court

“Judge Susan Bieke Neilson has earned the reputation of being one of the most dedicated and knowledgeable trial court jurists in the State of Michigan. I believe her experience as a trial court judge coupled with her legal writing abilities will make her an outstanding addition to the U.S. Court of Appeals for the 6th Circuit.”

John Engler, former Governor of Michigan

“Judge Susan Bieke Neilson is an experienced jurist with a well established reputation for intellect, diligence and temperament. She is personally and professionally committed to the highest ethical standards and is genuinely esteemed by lawyers for her preparation, knowledge of the laws and decisiveness. Judge Neilson brings comprehensive, in-the-trenches experience to the federal appellate bench.”

Thomas G. Kienbaum, Past President of the State Bar of Michigan

“[Judge Neilson brings] unique qualities to the bench—a quick, perceptive mind and a tremendous work ethic which she applies evenly to all matters that come before her—when appropriate, with a degree of good humor. She has an unbridled enthusiasm for the law—even with respect to the most tedious aspects of the work required of judicial officers. She deserves to be quickly confirmed.”

Roger Winkelman, former Treasurer of the Michigan Democratic Party

“I have known Judge Neilson for many years. She is well deserved of her reputation as a fair-minded judge who treats all parties who appear before her with a high degree of respect and dignity. Her knowledge of the law and dedication to rendering rulings in conformity with controlling legal authority will make her an excellent addition to the Court of Appeals.”

Jules Olsman, Past President of the Michigan Trial Lawyers Association and member of the Board of Governors of the American Trial Lawyers Association

“I have known Judge Neilson for sixteen years. As a lawyer she was both reasonable and honorable. Since she became a judge, she has distinguished herself as a fair minded individual who treats both sides with respect and who truly cares about the rights of people to have access to the courts. Many members of the Michigan Trial Lawyers Association regard her as an excellent trial judge who lets lawyers try their case without unsolicited intervention by the court.”

Edward Kronk, President of the Michigan Defense Trial Counsel

“I have known Judge Neilson since she took the bench as a Wayne County, Michigan trial judge. She quickly developed a reputation as hard-working, thoroughly knowledgeable and prepared, appropriately respectful of the law, courteous to all who appear before her, decisive and fair. She is held in high esteem by both sides of the civil trial bar and will be a worthy addition to the distinguished bench of the Sixth Circuit.”

ALLEN

JUDGE CLAUDE A. ALLEN

NOMINEE FOR THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

Biographical Information

- Clerked for Judge David B. Sentelle on the U.S. Court of Appeals for the D.C. Circuit
- Rated qualified by the American Bar Association.
- Confirmed by the Senate as Deputy Secretary for the Department of Health and Human Services.
- Served as Secretary of Health and Human Resources for the Commonwealth of Virginia.
- Led Governor Gilmore's initiative to pass a Patients Bill of Rights.
- Served as Virginia's Deputy Attorney General for the Civil Litigation Division and as Counsel to the Attorney General.
- Served as Deputy Staff Director on the Senate Foreign Relations Committee.

Allegations

Responses

- While working in the Virginia Office of the Attorney General, Secretary Allen organized Southern Attorneys General to work together to prevent and investigate the church burnings that were taking place in the summer of 1996.
- Worked on innovative programs to prevent crime and protect consumers.
- Secretary Allen has been a leading voice in the effort to put an end to trafficking in persons – a modern form slavery.
- Secretary Allen led Virginia's welfare reform initiative, which decreased the number of citizens receiving welfare and enabled former recipients to find quality jobs.

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ALLEN

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Claude Allen
Nominee to the U.S. Court of Appeals for the Fourth Circuit

- **Claude Allen is well qualified to serve as a judge on the 4th Circuit. He has extensive legal experience in state and federal government and in private practice.**
 - ✓ Claude Allen presently serves as Deputy Secretary of the Department of Health and Human Services.
 - ✓ Before joining HHS, Allen was Virginia's Secretary of Health and Human Resources, where he oversaw 13 agencies and 15,000 employees.
 - ✓ He was also Virginia's Deputy Attorney General for the Civil Litigation Division, which required managing a team of 75 lawyers and staff. The Commonwealth's civil litigation activities included consumer protection, labor/employment, real estate, elections, insurance, and other related areas. Prior to that, Secretary Allen served as Counsel to Virginia's Attorney General.
 - ✓ Before joining Virginia state government, Mr. Allen practiced law in Washington, D.C. at the prestigious law firm of Baker & Botts. He had a general litigation practice, focusing on appellate work and government contracts.
- Claude Allen came from humble beginnings. He was born in Philadelphia, Pennsylvania, and grew up in the inner city of Washington, D.C. and later Raleigh, North Carolina.
 - ✓ Claude Allen was greatly influenced by his grandfather, who died at the age of 114. Mr. Allen's Grandpa Wray was the first in his family who was not born a slave.
- Secretary Allen received both his law degree and a Masters of Law in International and Comparative Law from Duke University Law School, one of the nation's best law schools. He earned undergraduate degrees in Political Science and Linguistics at the University of North Carolina at Chapel Hill.
- He also brings unique experience to the federal bench having served with distinction in all three branches of the federal government.
 - ✓ Secretary Allen served as a law clerk for the Honorable David B. Sentelle on the U.S. Court of Appeals for the D.C. Circuit, which is regarded as second in importance only to the Supreme Court.
 - ✓ Prior to attending law school, Secretary Allen worked on the Senate Foreign Relations Committee, ultimately becoming the Deputy Staff Director.
 - ✓ Secretary Allen would bring to the 4th Circuit an understanding of the workings of an executive agency and the U.S. Congress.

- Claude Allen is deeply committed to civil rights. While working in the Virginia Office of Attorney General, Claude Allen organized Southern Attorneys General to work together to prevent and investigate the church burnings that were taking place in the summer of 1996.
 - ✓ Claude Allen organized a National Summit at Howard University School of Divinity where 9 Attorneys General, faith community representatives, civil rights leaders, and other corporate and community leaders gathered to discuss and develop strategies to combat church burning and other crimes against the faith community.
 - ✓ As part of his efforts to assist the victims of the church burnings, Claude Allen worked with insurance companies to urge them to cover the losses incurred by houses of worship that were the targets of arson. Consequently, church arson victims received payment for their losses.
- During his tenure in the Virginia Attorney General's Office, Claude Allen worked on innovative programs to prevent crime and protect consumers.
 - ✓ Claude Allen worked with the Virginia Secretaries of Public Safety and Health and Human Resources to launch Virginia's Weed-and-Seed Program.
 - ✓ Claude Allen helped to launch public safety programs to protect senior citizens from consumer fraud and crimes against their persons and property.
- Secretary Allen has devoted countless hours to improving the lives of the mentally disabled, including persons with autism.
 - ✓ In 2002, HHS spent over \$80 million to support basic research on autism. And the NIH allocated \$60 million to support nine Collaborative Programs on Excellence in Autism, which links 129 researchers in 23 universities.
 - ✓ Thanks to HHS assistance, states are providing programs and services that enable autistic children to remain in their own schools, homes, and communities, rather than being placed in institutional settings.
 - ✓ In July of 2003, Secretary Allen announced a new HHS initiative that will educate parents about the benefits of early autism screening. Early diagnosis and intervention is extremely successful in helping autistic children reach their full potential.
- Secretary Allen has been a leading voice in the effort to put an end to trafficking in persons – a modern form of slavery.
 - ✓ An increasing number of South American women and girls have been lured into sex slavery due to economic hardship. They are smuggled into the U.S. with the promise of employment, but then are handed over to pimps who beat and rape them before coercing them into prostitution and enslavement.

- ✓ Under Secretary Allen's leadership, HHS provides trafficking victims with the benefits and services they need to get their lives back on track. HHS's matching grant program helps trafficking victims attain self-sufficiency within four months, emphasizing employment and English language training. HHS also provides women with mental health counseling, food stamps, medical assistance, and cash assistance.
- Secretary Allen spearheaded Virginia's initiative for a Patients Bill of Rights passed in 1999, which allows patients to appeal adverse coverage decisions made by health plans, and gives direct access to physician specialists.
- Secretary Allen led Virginia's welfare reform initiative, which decreased the number of citizens receiving welfare and enabled former recipients to find quality jobs.
 - ✓ Under Secretary Allen's leadership, the number of Virginians on welfare declined more than 30%. And about 70% of participants in the welfare-to-work program are employed when they leave the welfare rolls.
 - ✓ From 1998 through 1999, the welfare reform initiative saved Virginia taxpayers more than \$126 million.
- Secretary Allen is working to implement Project BioShield, an HHS initiative to develop and make available modern, effective drugs and vaccines to protect against attack by biological and chemical weapons or other dangerous pathogens.
 - ✓ This 10-year, \$6 billion effort will ensure that resources are available to pay for "next-generation" medical countermeasures, strengthen NIH development capabilities, and give FDA the ability to make promising treatments quickly available in emergency situations.

BROWN

JUDGE JANICE ROGERS BROWN
U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT

Biographical Information

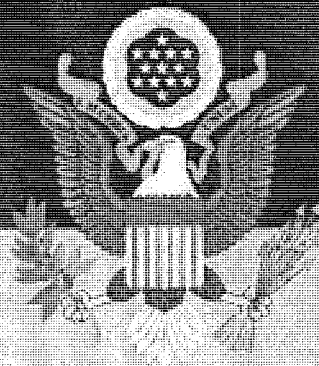
- Served as an Associate Justice for the California Supreme Court and was returned to the Court with the approval of 76% of California voters.
- Served as an Associate Justice on the Third District Court of Appeals of California.
- First African-American woman to serve on the California Supreme Court.
- Justice Brown has dedicated all but two years of her twenty-seven year legal career to public service in California's legislative, executive, and judicial branches.
- Served as a Member of the California Commission on the State of African-American Males.
- Served on the Governor's Child Support Task Force.

Allegations

- Accused of being ideologically extreme in her opposition to government.
- Accused of being unduly harsh towards criminal defendants
- In her First Amendment cases, she was accused of providing broad protections for corporate speech but fails to protect the First Amendment rights of average citizens.
- By striking down a minority program as unconstitutional, she was accused of being hostile to civil rights.
- Accused of being opposed to abortion rights and to the Supreme Court's decision in *Roe v. Wade*.

Responses

- Justice Brown has been a public servant in California for 25 years. In her own words: "I don't hate government, I am part of government." She also noted that "there are some things that only government should do."
- Justice Brown has been a staunch defendant of the constitutional rights of criminal defendants. She has issued several opinions arguing for reversals of criminal convictions, including death sentences, when she believed that the Constitution warranted it.
- Justice Brown firmly defends the First Amendment free speech rights of all citizens, but recognizes that these rights must on occasion be balanced against other important considerations.
- Justice Brown struck down the minority contracting program because it violated the Proposition 209 of the California Constitution that prohibits preferential treatment to any individual or group on the bases of race, sex, color, ethnicity, or national origin. In her opinion she stated that "discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society."
- Justice Brown has never publicly stated her views on abortion. At her hearing, she testified that she would follow *Roe* and *Planned Parenthood v. Casey*, and that she would follow those precedents.



JANICE ROGERS BROWN
NOMINEE TO THE D.C. CIRCUIT

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THE HONORABLE JANICE ROGERS BROWN
Nominee to the U.S. Court of Appeals for the District of Columbia Circuit

- In her nine years on the California Supreme Court, Justice Janice Rogers Brown has earned the reputation of being a brilliant and fair jurist who is committed to the rule of law. Her nomination has received support from across the political spectrum.
- She was recently returned to the Court with the approval of 76% of California voters, belying the contention that she could possibly be out of the mainstream.
- Justice Brown has dedicated over 25 years of her legal career to public service.
 - Justice Brown has served on the California Supreme Court since May 1996, when her historic appointment made her the first African-American woman to sit on that court. From 1994 to 1996, Justice Brown served on an intermediate California appellate court.
 - Prior to her judicial appointments, Justice Brown worked as Legal Affairs Secretary to California Governor Pete Wilson and served as the Deputy Secretary and General Counsel for the California Business, Transportation and Housing Agency. She also was a Deputy Attorney General in the Office of the California Attorney General for eight years.
- In addition to her commitment to public service, Justice Brown has participated in a variety of statewide and community organizations dedicated to improving the quality of life for all California citizens. These are just a few of her activities:
 - Justice Brown served as a Member of the California Commission on the Status of African-American Males. The Commission made recommendations on how to address inequities in the treatment of African-American males in employment, business development, and the criminal justice and health care systems.
 - Justice Brown served on the Governor's Child Support Task Force, which reviewed and made recommendations on how to improve California's child support enforcement system.
 - While serving as a Member of the Community Learning Advisory Board of the Rio Americano High School, Justice Brown developed a program to provide government service internships to high school kids in Sacramento.
 - Justice Brown also consistently volunteers for moot court programs. The head of the Center for Youth Citizenship wrote of Justice Brown's volunteer activities that she "has set both high academic and ethical standards for students. It is in our judgment that Justice Brown not only 'talks the talk,' but she 'walks the walk.'"

- Justice Brown's personal story is an inspiring example of the American dream.
 - Born to sharecroppers in Greenville, Alabama, Justice Brown attended segregated schools and came of age in the midst of Jim Crow laws.
 - She grew up listening to her grandmother's stories about NAACP lawyer Fred Gray, who defended Dr. Martin Luther King, Jr., and Rosa Parks. Her experience as a child of the South motivated her to become a lawyer and to devote her life to public service.
 - When she was in her teens, Justice Brown's family moved to Sacramento, California. Justice Brown received her B.A. in economics from California State University in Sacramento and her law degree from the University of California Los Angeles School of Law.
 - Her distinguished career serving the California public earned her an appointment to the California Supreme Court, where she was retained with 76 percent of the vote in the last election.
- Justice Brown's impressive judicial record demonstrates her commitment to judicial restraint and the rule of law.
 - Justice Brown consistently defers to legislative decision making where moral and philosophical issues are involved. She firmly expresses the view that judges must not create policy, but must simply decide specific cases before them.
 - Justice Brown has repeatedly expressed the view that judicial lawmaking is inappropriate and that a careful balance must be maintained between the legislature and the courts.
 - Justice Brown has also championed civil rights. In one decision she wrote that "discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society."
 - Her criminal law decisions evidence her impartiality and evenhandedness. In following the law, she often has authored opinions reversing verdicts or sentences for capital defendants. Justice Brown has also been sensitive to claims of racial profiling where the facts strongly supported such an inference.

- Justice Brown's nomination has garnered support from across the political and ideological spectrum.
 - A bipartisan group of former judicial colleagues have written: "We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of *majority* opinions on the California Supreme Court."
 - A group of professors from Pepperdine University School of Law said, "Since we are of differing political beliefs and perspectives, Democratic, Republican and Independent, we wish especially to emphasize what we believe is Justice Brown's strongest credential for appointment to this most important seat on the D.C. Circuit: her open-minded and thorough appraisal of legal argumentation — even when her personal views may conflict with those arguments."
 - Judge Eddie Keller of the Superior Court in California, wrote, "Most people tell me that the qualities they expect most from a judge are: intelligence, good judgment, an open mind, compassion, a sense of fairness, and integrity. Janice Brown has all of these qualities and more. ... Janice Brown is one of those rare individuals who come along in life and set a standard for all of us to admire. She is in the same category as our greatest jurists."
 - Jon B. Eisenberg, a lawyer and law professor, wrote. "In every case where I appeared before [Justice Brown] as practicing attorney, as well as in her decisions generally, which I have closely studied in my roles as law professor and author, I have found her to be a talented, sincere, and thoroughly dedicated appellate judge of the highest integrity — and, by the way, a marvelous writer. I respectfully disagree with those of my political soulmates who view our disapproval of her political philosophy as grounds for opposing her confirmation, for I believe that an appointee's judicial qualifications, not political philosophy, should be the focus of the confirmation process."

**STATEMENTS BY SELECT SUPPORTERS OF
JUSTICE JANICE BROWN**

Group of Justices on the California Court of Appeal, Second Appellate District

"We, the undersigned, are justices of the California Court of Appeal. As intermediate appellate court justices, we are thoroughly familiar with Justice Brown's opinions. In her role as a justice of the California Supreme Court, Justice Brown has served California well. She has written many important decisions establishing and reaffirming important points of law. Her opinions reflect her belief in the doctrine of stare decisis and are noteworthy for their clarity and conciseness. She sets forth her views logically and intelligently. We are each personally acquainted with Justice Brown. We know her to be intelligent, thoughtful, well-read, well-rounded, insightful, and personable. We believe she will be an excellent judge of the United States Court of Appeals." (*Letter to Sen. Hatch*, October 21, 2003)

Group of Professors from the Pepperdine University School of Law

"As members of law faculties here in California, we know Justice Brown to be a person of high intelligence, unquestioned integrity, and even-handedness. Since we are of differing political beliefs and perspectives, Democratic, Republican and Independent, we wish especially to emphasize what we believe is Justice Brown's strongest credential for appointment to this most important seat on the D.C. Circuit: her open-minded and thorough appraisal of legal argumentation — even when her personal views may conflict with those arguments." (*Letter to Sen. Hatch*, October 15, 2003)

Bipartisan group of present and former judicial colleagues of Justice Brown

"We are members of and present and former colleagues of Justice Janice Rogers Brown on the California Supreme Court and California Court of Appeal for the Third Appellate District. Although we span the spectrum of ideologies, we endorse her for appointment to the U.S. Court of Appeals for the D.C. Circuit.

Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of *majority* opinions on the California Supreme Court." (*Letter to Sen. Hatch*, October 16, 2003)

Justice Robert H. Edmunds, Jr., Supreme Court of North Carolina

"I have gotten to know Justice Brown during the last two summers as we both participated in a masters degree program sponsored by the University of Virginia School of Law for appellate judges. Speaking as a former United States Attorney who has appeared before the Fourth Circuit numerous times, I believe she is unusually qualified for a position on the federal judiciary. She is as smart as they come and has an ideal judicial temperament. When she would ask a question in class, everyone else would quiet down to hear what she had to say.

She does not force her own views on others. I went through the first summer in the U. Va. program with her without realizing that she was a Republican. As far as I could tell both from her class participation and from chatting with her in social settings, her interest is in the fair and intellectually honest application of the law." (*Letter to Sen. Hatch*, October 17, 2003)

Judge Daniel A. Barker, Arizona Court of Appeal

"Without hesitation, and unequivocally, I can tell you that Janice Brown is a judge of the highest order. She is eloquent and clear spoken; she is balanced and compassionate; and, she has the ability to cut to the core of a legal issue and resolve it squarely on constitutional and legal principles. She is not swayed by the passions or emotions present in hotly contested issues, but is able to remain well grounded and firm in applying the applicable law... She will be someone that both the lay person on the street, and the legal scholar at the university, can look to with assurance in knowing that she will faithfully and impartially apply the law and uphold the highest legal standards." (*Letter to Sen. Hatch*, October 17, 2003)

Judge John M. Tyson, North Carolina Court of Appeal

"By any measure, Justice Janice Brown is highly and uniquely qualified to be confirmed to serve on the United States Court of Appeals. Janice is a very approachable, humble, and seasoned jurist who will render impartial and dedicated service to our nation for many years." (*Letters to Senators Hatch, Leahy, Dole, and Edwards*, October 17, 2003)

Judge David De Alba, Sacramento County Superior Court, California

"Since our days as deputy attorneys general, I have always admired Justice Brown's dedication to the law and her work ethic... She has grown immensely as a jurist and today is one of the most productive members of our state Supreme Court. No one can criticize her fidelity to the law and her work. She is a tireless worker and cares deeply about her convictions." (*Letter to Sen. Feinstein*, October 20, 2003)

Judge Talmadge R. Jones, Sacramento County Superior Court, California

"Justice Brown is nothing less than a truly exceptional attorney, judge, and public servant. She is in my personal book of great Americans... Justice Brown will encourage collaboration and unanimity with her fellow judges by her answers of persuasion and reason. She will honor the rule of law and precedent of the United States Supreme Court and other Circuit Court decisions.

Justice Brown is about the smartest (and wisest) judge I know, but would be the last person to tout her intellect or use it to her personal advantage. She is a quick study, with the ability to research and write about the law in a way that all will understand." (*Letter to Sen. Hatch*, October 17, 2003)

Ward A. Campbell, Supervising Deputy Attorney General, California Department of Justice

"[Justice Brown] is a thoughtful, reflective, and compassionate person. She reaches her own conclusions independently only after great deliberation." (*Letter to Sen. Hatch*, October 20, 2003)

Judge Patricia C. Esgro, Sacramento County Superior Court, California

"I have known Justice Brown for over twenty years. She is a good friend and a former colleague in the California Attorney General's Office. I also served as her Chief Deputy in the Legal Affairs Unit of Governor Pete Wilson's office. I have personally observed her deep integrity and passion for justice. She has devoted her life to public service and the public good. She is a woman of humility who yet possesses a fierce sense of history and patriotism." (*Letter to Sen. Hatch*, October 20, 2003)

Judge Eddie T. Keller, El Dorado County Superior Court, California

"Most people tell me that the qualities they expect most from a judge are: intelligence, good judgment, an open mind, compassion, a sense of fairness, and integrity. Janice Brown has all of these qualities and more.

In tracking her legal opinions as an appellate court justice, I note that they are distinguished by the same scholarship, thoroughness, intelligence, and unique literary style that makes her stand out from most others. She has a brilliant legal mind. She cares intensely about the legal and social values that each case presents. She is open to being persuaded on any legal point. She is an independent thinker. No one could ask more from any judge.

Having been in a position to have read and evaluated the legal opinions of a countless number of judges over my legal career, I can truly say that Janice Brown is one of those rare individuals who come along in life and set a standard for all of us to admire. She is in

the same category as our greatest jurists. She would be an invaluable addition to the federal judiciary." (*Letter to Sen. Hatch*, October 20, 2003)

Jon B. Eisenberg, Horvitz & Levy LLP

"In every case where I appeared before [Justice Brown] as practicing attorney, as well as in her decisions generally, which I have closely studied in my roles as law professor and author, I have found her to be a talented, sincere, and thoroughly dedicated appellate judge of the highest integrity – and, by the way, a marvelous writer. I respectfully disagree with those of my political soulmates who view our disapproval of her political philosophy as grounds for opposing her confirmation, for I believe that an appointee's judicial qualifications, not political philosophy, should be the focus of the confirmation process." (*Letter to Sen. Hatch*, October 21, 2003)

Roy Innis, Chairman, Congress of Racial Equality

"Judge Janice Rogers Brown (the President's nominee for the DC Circuit Court of Appeals) is an outstanding candidate for the position. Her judicial temperament is fair, but focused. This is why her colleagues on the bench often depended on Justice Brown to write the majority opinion for the Court last year. She did this more times than any other Justice. In 1998, the people of California, who knew her best, re-elected her with the highest winning majority of any judge in the state with 76% of the vote." (*Letter to Sen. Hatch*, October 21, 2003)

Regis Lane, Executive Director, Minorities in Law Enforcement

"We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community and dedication to public service... Justice Brown is a fair and just person with impeccable honesty, which is the standard by which justice is carried out." (*Letter to Sen. Hatch*, undated)

Joseph P. Maloney, Ph.D., Center for Youth Citizenship

"Justice Brown has been a consistent volunteer for the Center's Gordon D. Schaber Mock Trial and Moot Court program. In a speech delivered to these high school students in 2000, she spoke to them about the importance of character development and the law. Specifically, she shared the virtues of honor, courage, responsibility, generosity, and respect.

Justice Brown has set both high academic and ethical standards for students. It is in our judgment, that Justice Brown not only 'talks the talk,' but she 'walks the walk.'" (*Letter to Sen. Hatch*, October 21, 2003)

Thomas J. Trimble, Chairman, Board of Regents, Pepperdine University

“Justice Brown has proven herself to be a fair-minded judge who considers all sides of an issue before deciding a case. She has a keen interest in the workings of our government and would make a valuable addition to the D.C. Circuit Court.” (*Letter to Sen. Hatch, October 17, 2003*)

JUSTICE JANICE ROGERS BROWN RESPONSES TO FALSE ALLEGATIONS

ALLEGATION: Justice Brown is ideologically extreme in her opposition to government.

RESPONSES:

- Justice Brown has been a public servant in California for 25 years. In her own words: "I don't hate government, I am part of government." She also noted that "there are some things that only government should do."
- A review of Justice Brown's opinions demonstrates that she understands that government can and does play an important role in her state and in America. For instance:
 - Justice Brown voted to uphold stringent state standards for identifying and labeling milk and milk products, thereby protecting the health and safety of California consumers.
 - Justice Brown agreed that the phrase "source of drinking water" in the government's Safe Drinking Water program includes faucets allegedly containing lead, allowing the Attorney General to sue faucet manufacturers to protect California consumers.
 - Justice Brown agreed that state regulations regarding overtime pay were validly enacted and should be liberally interpreted to provide greater protection for Californians than is provided under federal law.
- Although Justice Brown has delivered speeches that are critical of expansive government, she has repeatedly expressed the view that government has a legitimate, albeit limited, role to play.
 - As she said in one speech: "Government is not here to save us. Government was created to allow us to save ourselves."
 - In another speech she stated, "A little government is necessary, but a little government goes a long way."
- Justice Brown's skepticism of expansive government is a personally held view, expressed in speeches and writing, but not reflected in her judicial opinions, which seek to apply the law as it exists and which consistently defer to legislative judgments on how best to address social and economic problems.

ALLEGATION: Justice Brown is unduly harsh towards criminal defendants.

RESPONSES:

- Justice Brown has been a staunch defender of the constitutional rights of criminal defendants. She has issued several opinions arguing for reversals of criminal convictions, including death sentences, when she believed that the Constitution warranted it. The following are just a few examples of cases in which she has defended criminal rights:
 - Justice Brown argued for the exclusion of evidence of drug possession that was discovered after the defendant was arrested for riding his bicycle the wrong way on a residential street, which she believed suggested the possibility of racial profiling.
 - In a dissent, Justice Brown argued for the exclusion of evidence obtained during a warrantless search of a person's home based on consent given by the person's roommate.
 - Justice Brown authored an opinion reversing a verdict and death sentence in a case where the prosecutor deprived the defendant of a fair trial by failing to both discover and disclose an arguably exculpatory blood test.
 - In another case, Justice Brown dissented from the majority opinion, arguing that a defendant's death sentence should be set aside on grounds of ineffective assistance of counsel.
- Justice Brown's critics have unfairly focused on her dissent in *People v. Mar*, the so-called "stun belt" case. In that case, Justice Brown argued that because a defendant had not demonstrated that he was in any way prejudiced because he was required to wear a stun belt during his trial – a showing he was required to make – the Court should not overturn his conviction for assaulting a police officer.
 - The use of the stun belt in this case was reasonable, given that the defendant's own attorney argued that the defendant was incompetent, that he was incapable of having rational conversations with counsel, that his behavior was "explosive," and that he was psychotic.
 - Numerous federal and state courts have upheld the use of stun belts at trial, including the United States Courts of Appeals for the Fifth, Seventh, Ninth and Tenth Circuits, and state appeals courts in Colorado, Delaware, Minnesota and Washington.
- Justice Brown's overall record in criminal cases demonstrates her fair and evenhanded treatment of criminal defendants.

ALLEGATION: In First Amendment cases, Justice Brown provides broad protections for corporate speech but fails to protect the First Amendment rights of average citizens.

RESPONSES:

- Justice Brown firmly defends the First Amendment free speech rights of all citizens, but recognizes that these rights must on occasion be balanced against other important considerations.
- In the commercial speech context, Justice Brown's sharp dissent in the *Nike v. Kasky* case has drawn criticism from some of her detractors because of her defense of Nike's speech rights. Justice Brown expressed the view that proper application of the First Amendment should seek to "maximize the ability of businesses to participate in the public debate while minimizing consumer fraud."
- Many notable liberal professors and advocates supported Justice Brown's position and were also critical of the majority opinion.
 - Ann Brick of the ACLU stated of the California Supreme Court's decision that it "essentially shuts business speakers out of the public debate on any issue that affects them. That kind of analysis is antithetical to the basic First Amendment principle that we let the people, not the government, decide who's right and who's wrong on an issue of public dispute."
 - Harvard law professor Laurence H. Tribe represented Nike in this case and noted that "if companies can be sued for alleged misstatement in their press releases, they will be reluctant to speak at all."
 - The AFL-CIO filed an amicus brief on behalf of Nike, noting that although the union agrees with plaintiff's view of Nike's labor practices; "Where we part company with the plaintiff, however, is that we are certain that this debate is, and in the interest of the disputants and the public should be, an open free speech debate under the First Amendment and not one subject to legal regulation under the commercial speech doctrine."
 - Justice Breyer, in a dissent to the dismissal of certiorari in *Nike*, concluded that the California law at issue likely "disproportionately burdens speech; and that the First Amendment consequently forbids it." In effect, Justice Breyer indicated that Justice Brown had the better constitutional argument.
 - The editorial boards of *USA Today*, the *Los Angeles Times*, the *Washington Post*, and the *Chicago Tribune* all supported Justice Brown's position in the case.
- Some critics have alleged that in a decision to uphold an injunction denying the rights of gang members to congregate near one another, Justice Brown denied the First Amendment right of Latino youths to peaceful assembly.

- The undisputed facts in the case indicate that gang members were not peacefully assembling, but rather openly drank, smoked marijuana, snorted cocaine from the hoods of cars, sold drugs, engaged in gunfights, and intimidated and retaliated against neighbors who dared complain to the police.
- Justice Brown wrote for the majority to uphold the City of San Jose's injunction that prohibited gang members from intimidating, harassing, threatening or assaulting other individuals. Only one member of the California Supreme Court dissented from the decision.
- The injunction apparently greatly reduced crime in the city and was lauded by editorials in both the *Los Angeles Times* and the *San Francisco Examiner*.

ALLEGATION: By striking down a minority contracting program as unconstitutional, Justice Janice Rogers Brown has demonstrated hostility to civil rights.

RESPONSES:

- As a child of Alabama sharecroppers who grew up in the midst of Jim Crow laws, Justice Brown has a personal appreciation for the importance of civil rights and equal opportunity.
- Justice Brown wrote for a unanimous court in *Hi-Voltage Wire Works*, which struck down a San Jose minority contracting program because it violated Proposition 209, a provision of the California Constitution that prohibits discrimination against, or preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.
- Justice Brown stated in her opinion in *Hi-Voltage* that "discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society."
- Justice Brown's opinion noted that the Constitution permits race-conscious programs and she favorably cited U.S. Supreme Court decisions establishing an affirmative duty to desegregate where there has been a showing of prior discrimination.
- Justice Brown's decision was fully in accordance with the law -- every other judge in California who reviewed the program also found it unconstitutional.
- Moreover, a significant bi-partisan group of California law professors have written to express their agreement with this result: "The holding in *Hi-Voltage* -- disallowing race and gender-based contracting preferences by the State -- is a faithful application of California's constitutional instruction... The nation may disagree on the nuances of policy in this area, but in this instance, the California constitution is unequivocal." (*Letter to Sen. Hatch*, October 15, 2003).
- Justice Brown's commitment to civil rights has been recognized by numerous groups, including Minorities in Law Enforcement, whose executive director wrote, "In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the south. Justice Brown's views that all individuals who desire the American dream, regardless of their race or creed, can and should succeed in this country are consistent with MILE's mission to ensure brighter futures for disadvantaged youth of color." (*Letter to Sen. Hatch*, undated)

ALLEGATION: Justice Brown is opposed to abortion rights and to the Supreme Court's decision in *Roe v. Wade*.

RESPONSES:

- Justice Brown has never publicly stated her views on abortion. At her hearing, she acknowledged that the Supreme Court has found a right to privacy in the Constitution, and that such right extends to a woman's right to have an abortion. She testified that she accepted *Roe* and *Planned Parenthood v. Casey* as the law of the land, and that as a member of the D.C. Circuit Court of Appeals she would follow those precedents.
- Justice Brown voted to uphold a California law requiring minors to get the consent of their parents or a court order before receiving an abortion. Her dissenting opinion in *American Academy of Pediatrics v. Lungren* argued that the parental consent law should be upheld in accordance with settled Supreme Court precedents, which have upheld the constitutionality of statutes similar to the one at issue in the *Lungren*.
- In *Lungren*, Justice Brown refused to substitute her own views for that of the legislature, because of her firm belief that issues surrounding abortion should be left to the political process. She explained that "abortion 'is a subject upon which reasonable people can, and do, adhere to vastly divergent convictions and principles.'" She also took issue with the majority's analysis for its "utter lack of deference to the ordinary constraints of judicial decisionmaking – deference to state precedent, to federal precedent, to the collective judgment of our Legislature, and, ultimately to the people we serve."
- Justice Brown's arguments regarding parental consent are well within the mainstream of American law. Parental consent laws have been upheld in several decisions of the U.S. Supreme Court, including *Planned Parenthood v. Casey*, the decision that reaffirmed the central holding of *Roe v. Wade*. Similar laws have also passed constitutional muster in other states.
- Moreover, parental notice or consent laws do not prevent minor girls from having abortions. They simply require abortion providers to obtain the consent of a parent before performing an abortion on a minor girl or to obtain a judicial bypass.

ALLEGATION: Justice Brown's decisions demonstrate lack of concern for ordinary consumers.

RESPONSES:

- Justice Brown faithfully follows the requirements of the law, which means that she has authored numerous opinions in favor of ordinary consumers and worker's rights. For example, Justice Brown has held that:
 - a settlement agreement between an injured passenger and the driver which released the driver, his insurer, and "all other persons, firms, corporations, and associations or partnerships" did not bar the plaintiff's action against the vehicle manufacturer;
 - even when a mother was not a direct victim of a physician's negligence, the mother could recover for emotional distress absent a showing of outrageous conduct on the part of the physician;
 - medical monitoring claims are susceptible to class action treatment.
- Justice Brown has been criticized for dissenting from two decisions relating to California's unfair competition law. In these dissents, however, she demonstrated her willingness to protect small businesses and consumers who ultimately bear the expense of the abusive use of California's unfair competition law.
- Her dissents in these cases originated from the California Law Revision Commission, which noted, "No statute of which we are aware in this state or nation confers the kind of unbridled standing to so many without definition, standards, notice requirements, or independent review."
 - Justice Brown's dissents were motivated by important constitutional considerations relating to the separation of powers between the legislature and the executive. Furthermore, they were consistent with the plain meaning of the statute and the legislative intent motivating its enactment.
 - Under the view taken by Justice Brown's dissents, the public would have ample remedies for unfair business practices, but the prosecution and enforcement of such problems would be left to public officials charged with that task.
- Justice Brown's decisions in this, as in other, areas reflect a fair-minded application of the appropriate laws – she follows the law wherever it leads her. A group of her former colleagues who span the ideological spectrum have written, "We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of *majority* opinions on the California Supreme Court." (*Letter to Sen. Hatch*, October 16, 2003)

ALLEGATION: Justice Janice Rogers Brown believes that property rights trump individual rights and would turn back the clock to the *Lochner*-era invalidation of important social legislation.

RESPONSES:

- Although Justice Brown has publicly criticized specific portions of Justice Holmes' dissent in *Lochner*, she has not advocated support of the majority opinion in that case.
- Justice Brown testified and has acknowledged in her opinions that the *Lochner* court has been justly criticized for using the due process clause in the Constitution as "a blank check to alter the meaning of the Constitution as written."
- She also noted in her testimony that *Lochner* has been discredited, and that it has come to be known as one of the worst judicial opinions in history.
- The *Lochner* majority invalidated a state's minimum hour law on the grounds that such legislation violated the individual's Fourteenth Amendment due process right to contract with employers. Justice Holmes had argued in his dissent that the Framers did not consider any particular economic theory when drafting the Constitution, and that the Constitution did not protect the contract rights articulated by the majority opinion.
- In a speech at the University of Chicago, Justice Brown argued that the collectivist impulse that inspired the end of the *Lochner* era was contrary to the thinking of the Framers, who had a specific political philosophy and conception of humanity in mind when they drafted the Constitution.
- In a speech before the Institute for Justice, Justice Brown explained that the founders "reversed private property" and that their philosophy "relied heavily on the indissoluble connection between rationality, property, freedom, and justice." Indeed, the U.S. Supreme Court has in three recent decisions scrutinized government action under the Takings Clause of the Fifth Amendment. Justice Brown has argued that in these decisions the U.S. Supreme Court has held out the "possibility of a revival of what might be called *Lochnerism-lite*."
- The legacy of *Lochner* continues to be a much debated issue amongst legal academics and Justice Brown's reconsideration of *Lochner* and its relevance to the contemporary consideration of property rights is hardly unusual.
- Whatever Justice Brown's personal views regarding the scope of government, she has repeatedly demonstrated her ability to follow relevant precedent. For instance, in *Kasler v. Lockyer*, Justice Brown wrote the majority opinion upholding an assault weapon ban against constitutional attack. She also wrote a separate concurring opinion in *Kasler* to register her concern over the Supreme Court's disparate treatment of social and economic rights as opposed to "fundamental" rights. Despite her apparent disagreement with long-settled precedent, Justice Brown adhered to stare decisis and wrote the opinion for the Court.



Court of Appeal
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
200 SOUTH SPRING STREET
LOS ANGELES, CA 90013

October 21, 2003

Honorable Olin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

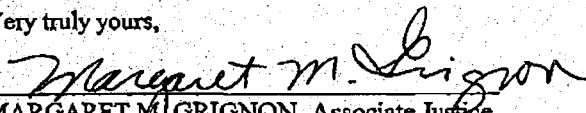
Dear Chairman Hatch:


This letter is written in support of the confirmation of California Supreme Court Associate Justice Janice Rogers Brown as a judge of the United States Court of Appeals for the District of Columbia Circuit. We, the undersigned, are justices of the California Court of Appeal. As intermediate appellate court justices, we are thoroughly familiar with Justice Brown's opinions.

In her role as a justice of the California Supreme Court, Justice Brown has served California well. She has written many important decisions establishing and reaffirming important points of law. Her opinions reflect her belief in the doctrine of stare decisis and are noteworthy for their clarity and conciseness. She sets forth her views logically and intelligently. We are each personally acquainted with Justice Brown. We know her to be intelligent, thoughtful, well-read, well-rounded, insightful, and personable.

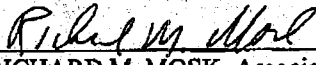
We believe she will be an excellent judge of the United States Court of Appeals. We request that you take our views into consideration during the confirmation proceedings. If you desire any further information, any of us would be pleased to provide it.

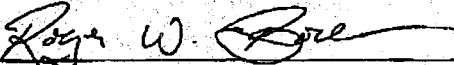
Very truly yours,

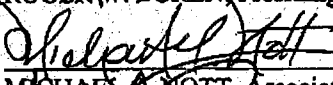

MARGARET M. GRIGNON, Associate Justice

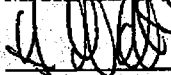

ORVILLE A. ARMSTRONG, Associate Justice

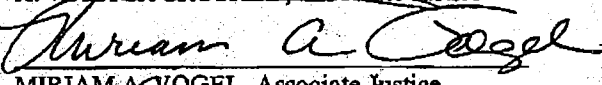

PATTI S. KITCHING, Associate Justice

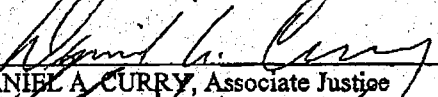

RICHARD M. MOSK, Associate Justice

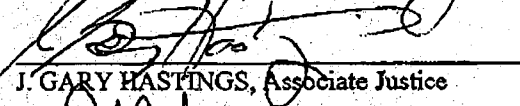

ROGER W. BOREN, Presiding Justice



MICHAEL A. NOTT, Associate Justice

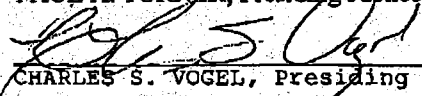

H. WALTER CROSKY, Associate Justice


MIRIAM A. VOGEL, Associate Justice


DANIEL A. CURRY, Associate Justice


J. GARY HASTINGS, Associate Justice


PAUL A. TURNER, Presiding Justice


CHARLES S. VOGEL, Presiding Justice

yd

cc: Honorable Patrick J. Leahy, United States Senate
Office of Legal Policy

PEPPERDINE UNIVERSITY

School of Law

Douglas W. Kmiec
Caruso Chair & Professor of Constitutional Law
(310) 506-4255

DKmiec@pepperdine.edu
Fax (310) 506-4063

October 15, 2003

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Justice Janice Rogers Brown

Dear Senator Hatch:

We are writing to express our support for President Bush's nomination of Justice Janice Rogers Brown to the United States Court of Appeals for the District of Columbia Circuit. As members of law faculties here in California, we know Justice Brown to be a person of high intelligence, unquestioned integrity, and even-handedness. Since we are of differing political beliefs and perspectives, Democratic, Republican and Independent, we wish especially to emphasize what we believe is Justice Brown's strongest credential for appointment to this most important seat on the D.C. Circuit: her open-minded and thorough appraisal of legal argumentation – even when her personal views may conflict with those arguments.

Justice Brown has served with distinction for more than seven years on our State's highest court. The first African-American woman serving on this bench, she was elevated to the California Supreme Court following several years on this State's appellate court. She has carried out these judicial assignments with diligence and effectiveness. Known for her comprehensive, rigorous, and direct (and yes, sometimes analytically critical) writing, Justice Brown's clarity of thought has often captured the mainstream of California jurisprudence. Perhaps nothing is more revealing of her mainstream views than the fact that in 2002, Justice Brown was relied upon by her colleagues to write the majority opinion more often than any other member of the Court.

A fair examination of her work reveals that Justice Brown resolves matters as individual cases, not generalized or abstract causes. As the *Los Angeles Daily Journal* concluded, it is often said among those who have followed her decisions closely that "she also defies ideological labeling, having shown [for example] libertarian leanings on free speech and search-and-seizure issues . . ."

Justice Brown received considerable attention, of course, for her majority opinion in *Hi-Voltage Wire Works v. City of San Jose*, 24 Cal. 4th 537 (2000). The holding in *Hi-Voltage* – disallowing race and gender-based contracting preferences by the State – is a faithful application of California's constitutional instruction that neither race nor sex, among other criteria, shall be a basis to either discriminate against, nor give preference to, any individual or group. Cal. Const. Art. I, section 31. It is only natural that a decision in this sensitive context would attract

The Honorable Orrin G. Hatch
October 15, 2003
Page 2

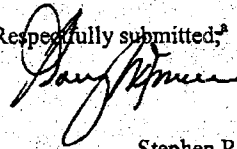
headlines and be assailed by some as politically mistaken. The nation may disagree on the nuances of policy in this area, but in this instance, the California constitution is unequivocal. In any event, what is deserving of special commendation is that Justice Brown wrote as a jurist, not a politician, and she wrote for a court that was unanimous in judgment and in agreement with the two lower courts that addressed the issue.

As scholars of the bill of rights, we most certainly differ among ourselves, and with Justice Brown, on particular outcomes. Nevertheless, it is certainly hard to contest Justice Brown's commitment to individual freedom, even when rights are asserted by unpopular litigants. For instance, in *People v. Woods*, 21 Cal. 4th 668 (1999), a felony probationer obtained her freedom by consenting to probationary searches. A majority of the Court in *Woods* casually extended this consent to include the liberty interests of two non-consenting third parties, but who months later came to share a dwelling with the probationer. Justice Brown, for herself and two other members of the Supreme Court, vigorously dissented, articulating the view that a law enforcement officer may not conduct a general investigatory search of a non-probationer based upon the probation search condition of another individual.

In her judicial and professional writing, Justice Brown has often reminded us of the historical aspirations of our constitutional system. As the daughter of sharecroppers in rural and segregated Alabama, these lessons and reminders have special poignancy. Soft-spoken and humble in nature, Justice Brown does not, without considerable prompting, elaborate upon her success in overcoming adverse economic circumstances and irrational societal discrimination. She simply lets her hard work and excellence of character speak for themselves.

For the reasons briefly articulated here, we believe that Justice Janice Rogers Brown possesses the intelligence, learning, judicial experience and demeanor to fulfill the weighty and important responsibilities of the U.S. Court of Appeals. We urge the Senate Judiciary Committee and the full Senate to act promptly and favorably upon her nomination.

Respectfully submitted,*



Douglas W. Kmiec
Caruso Chair & Professor
of Constitutional Law
Pepperdine University

Stephen R. Barnett
Elizabeth J. Boalt Professor of Law,
Emeritus
University of California, Berkeley

Stephen Bainbridge
Professor of Law
University of California, Los Angeles

Thomas Bost
Professor of Law
Pepperdine University

* All school references are for identification only. Confirmations of signature on file with Professor Kmiec.

The Honorable Orrin G. Hatch
October 15, 2003
Page 3

Robert Cochran
Brandeis Professor of Law
Pepperdine University

John Coons
Professor of Law, Emeritus
University of California, Berkeley

John C. Eastman
Professor of Law
Chapman University School of Law

David Davenport
Distinguished Professor of Public Policy and
Law, Pepperdine University
and Research Fellow, Stanford University,
Hoover Institution

Gail Heriot
Professor of Law
University of San Diego School of Law

J. Clark Kelso
Professor of Law
University of the Pacific
McGeorge School of Law

Celestine McConville
Professor of Law
Chapman University School of Law

Grant S. Nelson
Professor of Law
University of California, Los Angeles

Ralph A. Rossum
Director, Rose Institute of State and Local
Government
Salvatori Professor of American
Constitutionalism
Claremont McKenna College

Maimon Schwarzschild
Professor of Law
University of San Diego School of Law

Nhan Vu
Professor of Law
Chapman University School of Law

James R. Wilburn
Dean, School of Public Policy
Pepperdine University

cc: The Honorable Patrick J. Leahy
Ranking Member, Committee
on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

United States Department of Justice ✓
Office of Legal Policy



McDonough Holland & Allan PC
Attorneys at Law

Robert K. Puglia
Retired Presiding Justice
Court of Appeals, Third District
ALTERNATIVE DISPUTE
RESOLUTION/MEDIATION

Sacramento Office
916.444.3900 tel
916.444.3249 fax
rpuglia@mhalaw.com

October 16, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Justice Janice Rogers Brown to the U.S. Court of
Appeals for the D.C. Circuit

Dear Mr. Chairman:

We are members of and present and former colleagues of Justice Janice Rogers Brown on the California Supreme Court and California Court of Appeal for the Third Appellate District. Although we span the spectrum of ideologies, we endorse her for appointment to the U.S. Court of Appeals for the D.C. Circuit.

Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the federal bench. We believe that Justice Brown is qualified because she is a superb judge. We who have worked with her on a daily basis know her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias, and with an even hand. Because of these qualities, she has quickly become one of the most prolific authors of majority opinions on the California Supreme Court.

Although losing Justice Brown would remove an important voice from the Supreme Court of California, she would be a tremendous addition to the D.C. Circuit. Justice Brown would bring to the court a rare blend of collegiality, modesty, and intellectual stimulation. Her judicial opinions are consistently thoughtful and eloquent. She interacts collegially with her colleagues and maintains appropriate judicial temperament in dealing with colleagues, court personnel and counsel.

Sacramento
556 Capitol Mall
9th Floor
Sacramento CA
95814-4662
tel 916.444.3900
fax 916.444.3334

Oakland
Farrison Street
Suite 1300
Oakland CA
94612-3562
tel 510.273.8760
fax 510.839.9104

Yuba City
422 Century Park Drive
Suite A
Yuba City CA
95991-5729
tel 530.674.9761
fax 530.671.0990

www.mhalaw.com



McDonough Holland & Allen PC
Attorneys at Law

The Honorable Orrin G. Hatch
October 16, 2003
Page 2

If Justice Brown is placed on the D.C. Circuit, she will serve with distinction and will bring credit to the United States Senate that confirms her. We strongly urge that the Senate take all necessary steps to approve her appointment as expeditiously as possible.

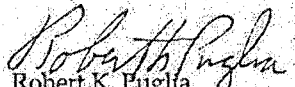
Joining me in this letter are Justices Marvin R. Baxter, Ming W. Chin and Carlos R. Moreno of the California Supreme Court and Presiding Justice Arthur G. Scotland and Justices Rodney Davis, Harry E. Hull, Jr., Daniel M. Kolkey, Fred K. Morrison, George W. Nicholson, Vance W. Ray and Ronald B. Robie of the California Court of Appeal, Third Appellate District.

I am informed that Justice Joyce L. Kennard of the California Supreme Court has already written a letter in support of Justice Brown's nomination.

Chief Justice Ronald M. George and Justice Kathryn M. Werdegar of the California Supreme Court are not opposed to Justice Brown's appointment but it is their long standing policy not to write or join in letters of support for judicial nominees.

Thank you for your consideration of this letter.

Very truly yours,


Robert K. Puglia
Retired Presiding Justice
Court of Appeal, Third Appellate District

RKP/aep

cc: The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

SUPREME COURT
STATE OF NORTH CAROLINA
RALEIGH, N.C. 27602

CHAMBERS OF
JUSTICE ROBERT H. EDMUNDS, JR.

P. O. BOX 104
TEL. (919) 333-3788

17 October 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, DC 20510

Re: Nomination of Honorable Janice R. Brown

Dear Senator Hatch:

I understand that Justice Janice R. Brown's confirmation hearing as a Judge of the District of Columbia circuit is pending. I hope that she will receive favorable consideration.

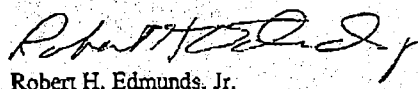
I have gotten to know Justice Brown during the last two summers as we both participated in a masters degree program sponsored by the University of Virginia School of Law for appellate judges. Speaking as a former United States Attorney who has appeared before the Fourth Circuit numerous times, I believe she is unusually qualified for a position on the federal judiciary. She is as smart as they come and has an ideal judicial temperament. When she would ask a question in class, everyone else would quiet down to hear what she had to say.

She does not force her own views on others. I went through the first summer in the U. Va. program with her without realizing that she was a Republican. As far as I could tell both from her class participation and from chatting with her in social settings, her interest is in the fair and intellectually honest application of the law.

She also has a very pleasing personality. People just like Janice and are happy to be around her. That's one reason a diverse bunch of cranky old state judges and justices could agree on at least one thing--to elect her class president. She will do a splendid job if confirmed.

Please do not hesitate to contact me if I can provide any further information.

Sincerely,



Robert H. Edmunds, Jr.

NOT PRINTED OR MAILED AT GOVERNMENT EXPENSE

The Honorable Orrin G. Hatch
17 October 2003
Page Two

cc: The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, DC 20510

cc: Office of Legal Policy



CHAMBERS OF
DANIEL A. BARKER
JUDGE

Court of Appeals

(602) 842-3402
FAX (602) 842-7501
dbarker@azbar.org

STATE OF ARIZONA
DIVISION ONE
STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007

October 17, 2003

Via Facsimile: (202) 228-1698

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Justice Janice R. Brown to the United States Court of Appeals
for the District of Columbia Circuit

Dear Senator Hatch:

I write with pleasure to wholeheartedly and enthusiastically endorse the nomination of Justice Janice R. Brown to the United States Court of Appeals for the District of Columbia Circuit.

It has been my privilege to be associated with Justice Brown for the past two years. I have literally spent hours in the classroom with Justice Brown on topics as diverse as environmental federalism to constitutional law and international human rights. For the past two summers, we have been fellow participants in a graduate program for judges at the University of Virginia that includes twelve weeks of classroom discussion and work. I have had the opportunity to see her analytical skills, her reasoning, her understanding of complex factual and legal issues and her ability to fairly and evenhandedly apply facts to law in a myriad of circumstances.

Without hesitation, and unequivocally, I can tell you that Janice Brown is a judge of the highest order. She is eloquent and clear spoken; she is balanced and compassionate; and, she has the ability to cut to the core of a legal issue and resolve it squarely on constitutional and legal principles. She is not swayed by the passions or emotions present in hotly contested issues, but is able to remain well grounded and firm in applying the applicable law.

Letter to the Honorable Orrin G. Hatch
October 17, 2003
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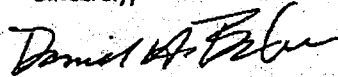
I can appreciate that my comments may seem uncommonly high. But Janice Brown is an uncommon woman. She has that rare gift of extraordinary life experiences that are combined with intellectual training and rigor to make her uniquely qualified to sit on one of our nation's highest courts. Just as she has been a strengthening asset to the state of California on its supreme court, so she will be on the Court of Appeals. She will be someone that both the lay person on the street, and the legal scholar at the university, can look to with assurance in knowing that she will faithfully and impartially apply the law and uphold the highest legal standards.

It is my present privilege to serve on the same court that Justice Sandra Day O'Connor served on before her appointment to the United States Supreme Court. I do not know Justice O'Connor, but I know the court from whence she came. I can tell you from one who serves on that court that Janice Brown possesses all of the attributes and talents that any fair-minded individual would look for in a judge for the United States Court of Appeals.

I urge you, and each member of the Senate Committee on the Judiciary, to confirm the nomination of Janice R. Brown. I recommend her unhesitatingly.

My thanks to you and all the senators for your service on behalf of our country.

Sincerely,



Daniel A. Barker

cc: The Honorable Patrick J. Leahy (via facsimile-202-224-9516)
The Office of Legal Policy (via facsimile-202-514-5715)



State of North Carolina
Court of Appeals
P.O. BOX 888

Raleigh, NC 27602-0888

17 October 2003

CHANGES OF
JUDGE JOHN M. TYSON

TELEPHONE: 919-733-4294
TELECOPE: 919-733-8003
tyson@copa.state.nc.us

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination and Confirmation of Justice Janice R. Brown for
Judge of the United States Court of Appeals for the District of
Columbia Circuit

Dear Senator Hatch,

Please accept this letter in support and my unqualified
recommendation of the Honorable Janice R. Brown, currently Justice
of the California Supreme Court, for confirmation as Judge on the
United States Court of Appeals for the District of Columbia Circuit.
Justice Brown will be an outstanding Federal jurist.

The confirmation process by the United States Senate presents
an opportunity to examine the qualifications of our President's
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and uniquely qualified to be confirmed to serve on the United States
Court of Appeals. Janice is a very approachable, humble, and
seasoned jurist who will render impartial and dedicated service to
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Her life experiences are diverse, being born in Alabama, while
her father served our Country on active military duty. She has
personally witnessed, experienced, and excelled during great changes
that occurred as America matured over the past 50 years. Justice
Brown has overcome formidable challenges to rise to the pinnacle of
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My personal knowledge of Justice Brown is derived from daily
contact with her over the past two summers. Janice and I recently
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The Honorable Orrin G. Hatch
17 October 2003
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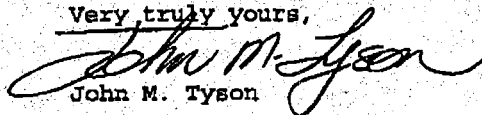
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I am certain that all members of our class, who currently serve as State and Federal judges, will heartily concur that Justice Janice R. Brown is highly and unconditionally qualified to serve, and will serve with distinction, as a Judge of the United States Court of Appeals for the District of Columbia Circuit.

Her confirmation by the Senate to the United States Court of Appeals for the District of Columbia Circuit will certify to the American People that distinguished jurists are recruited, nominated, confirmed, and seated on our Federal Bench.

Please do not hesitate to call upon me for any further information that you or the Judiciary Committee desire regarding her confirmation.

Very truly yours,



John M. Tyson

JMT/dww
Enclosure
cc: Office of Legal Policy



State of North Carolina

Court of Appeals

P.O. BOX 888

Raleigh, NC 27602-0888

17 October 2003

CHAMBERS OF
JUDGE JOHN M. TYSON

TELEPHONE: 919-752-4294
TELECOPY: 919-723-6003
jtyson@ccs.state.nc.us

The Honorable Senator John Edwards
United States Senate
225 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination and Confirmation of Justice Janice R. Brown for
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Her life experiences are diverse, being born in Alabama, while her father served our Country on active military duty. She has personally witnessed, experienced, and excelled during great changes that occurred as America matured over the past 50 years. Justice Brown has overcome formidable challenges to rise to the pinnacle of the legal and judicial profession. These experiences produced a jurist who is uniformly fair, works hard, and acts with calm dignity.

My personal knowledge of Justice Brown is derived from daily contact with her over the past two summers. Janice and I recently completed all course work to be awarded LL.M. degree (Masters of Law) in Judicial Process from the University of Virginia School of Law. She immediately distinguished herself among the thirty-one State and Federal Judges and Justices by being elected President of

The Honorable Senator John Edwards
17 October 2003
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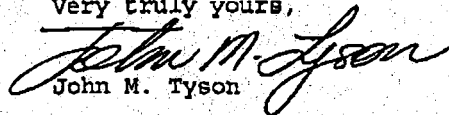
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John M. Tyson

JMT/dww
Enclosure
cc: Office of Legal Policy



State of North Carolina
Court of Appeals

P.O. BOX 888

Raleigh, NC 27602-0888

17 October 2003

CHAMBERS OF
JUDGE JOHN M. TYSON

TELEPHONE: 919-733-4294
TELECOPY: 919-732-8003
tyson@cour.apnc.nc.us

The Honorable Senator Elizabeth Dole
United States Senate
Senate Russell Building
Room 120
Washington, D.C. 20510

Re: Nomination and Confirmation of Justice Janice R. Brown for
Judge of the United States Court of Appeals for the District of
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The Honorable Senator Elizabeth Dole
17 October 2003
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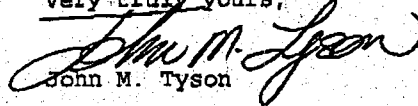
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John M. Tyson

JMT/dww
Enclosure
cc: Office of Legal Policy



State of North Carolina
Court of Appeals

P.O. BOX 884

Raleigh, NC 27602-0884

17 October 2003

CHAMBER OF
JUDGE JOHN M. TYSON

TELEPHONE: 919-733-4294
TELECOPY: 919-733-8503
jtyson@courts.state.nc.us

The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate
152 Dirksen Senate Office Building
Washington, D.C. 20510

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The Honorable Patrick J. Leahy
17 October 2003
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Very truly yours,


John M. Tyson

JMT/dww
Enclosure
cc: Office of Legal Policy



**Superior Court of California,
County of Sacramento**

David De Alba,
Judge

October 20, 2003

****SERVED BY FACSIMILE AND MAILED****

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D. C. 20510

RE: Janice R. Brown's
Nomination to the United States Court of Appeal
District of Columbia

Dear Senator Feinstein,

It is with great pleasure that I write in support of Janice Brown's nomination to serve as a member of the United States Court of Appeal for the District of Columbia. I have known Justice Brown for approximately twenty-four years. We were colleagues as young lawyers in the Office of the Attorney General for the State of California. Indeed, we worked closely together as members of the same team in the Criminal Division of that office for several years. Since our days as deputy attorneys general, I have always admired Justice Brown's dedication to the law and her work ethic.

Since our days as young prosecutors, I have observed and admired Justice Brown's development as a lawyer and as a judge. I have appeared before her during her tenure as a member of the Court of Appeal and as a member of the California Supreme Court. Of course, like many others, I have read many of her published opinions. Even though I may not always agree with her opinions, I have always found them to be scholarly, thorough in their analysis and well reasoned. She has grown immensely as a jurist and today is one of the most productive members of our state Supreme Court. No one can criticize her fidelity to the law and her work. She is a tireless worker and cares deeply about her convictions.

The most impressive qualities about Justice Brown are her honesty and humility. She is never boastful or arrogant despite her success and position. She is a kind and humble person who is always gracious to people irrespective of their title or position in life.

I am aware that many will be critical of philosophical positions she has espoused in her various opinions. However, I believe that she deserves confirmation and would serve with distinction. She is imminently qualified to sit as a judge of the Court of Appeals for the District of Columbia. Thank you for considering my views.

Sincerely yours,



David De Alba
Judge of the Superior Court
Sacramento County, California

cc: Justice Janice R. Brown



Sacramento Superior Court

TALMADGE R. JONES
Superior Court Judge
Department 31

Friday, October 17, 2003

Honorable Orrin Hatch
United States Senate
Chair, Senate Judiciary Committee

Attention: Ms. Rena Cornisac
(via FAX)

Re: Hon. Janice Rogers Brown
Associate Justice, California Supreme Court
(Full Hearing, October 22, 2003, 10 am, Dirksen Rm. 226)

Dear Senator Hatch:

I urge the Senate Judiciary Committee to approve the appointment of the Honorable Janice R. Brown, currently Associate Justice of the California Supreme Court, to the position of United States Circuit Judge for the District of Columbia.

The Committee's approval will bring great distinction to the Circuit Court for the District of Columbia and will most certainly add a judge of great intellectual depth, compassion, intellect, and integrity to that bench.

More importantly, the exceptional judicial performance of Justice Brown as a Circuit Judge will be quickly apparent to everyone, and a worthy tribute to the confidence placed in her by both the President and the United States Senate.

I have known Justice Brown for twenty years, worked side by side with her as a practicing attorney, traveled with her, know her son and husband, eaten in her home, and have closely followed her political and judicial career with both interest and admiration.

Justice Brown is nothing less than a truly exceptional attorney, judge, and public servant. She is in my personal book of great Americans.

I have been a Judge of the Sacramento Superior Court for 14 years, 4 of those years as a judge of the juvenile court, including its presiding judge for 3 years. I have received numerous community service awards, local and national, for working with youth as well as adults in order to break the cycles of violence and crime.

I am presently chair of the Intermediate Punishments Committee of our Sacramento Criminal Justice Cabinet, whose members constitute all of the major public law enforcement officials in Sacramento County, our State Capitol.

Prior to my judicial appointment in 1989, I served for over 2 years as Director of California's Department of Fair Employment and housing, which enforces our state civil rights laws.

Justice Brown and I have had a close acquaintanceship over our mutual careers, and share many of the same values and visions for our future.

I always enjoy her good company because she is light-hearted, is enthusiastic about any task assigned to her, has a wonderful sense of humor (filled with life's anecdotes), and is easy to laugh at the world and the world's problems. We share the same love of theater, especially Shakespeare. We both love music as well.

Justice Brown is an optimist, and expects (and receives) the best of those around her.

She is a patriot in the best sense of that term, and loves her country. She has an abiding respect for the family members, teachers, professors, and colleagues who have encouraged her along life's path. She is deeply grateful for the opportunities afforded to her by others.

Justice Brown always puts others at ease around her, makes them comfortable, makes them laugh, makes them feel like family.

She is open and approachable, never at a distance. She is a fantastic listener, mindful of others needs and wishes. She enjoys a good legal debate but is always amiable, never contentious or strident. She is patient even in the midst of difficulties.

In one particular federal case, heard over 15 years ago in the United States District Court for the Northern District (San Francisco), Justice Brown revealed the true depth of her character to me (and her co-counsel). She always remained calm and confident in the face of an irrational opponent and a somewhat hostile and mercurial U.S. District Judge.

Those who worked with her during this protracted and tenacious federal litigation were so impressed not only with her work ethic, but her attention to detail, her commitment to the case, her professionalism, and by her caring and encouraging attitude towards the legal secretaries, assistants, and investigators who helped her.

Looking back, it was perhaps one of the most stressful cases of my legal career, and I feel so fortunate to have had Justice Brown as the lead attorney in that difficult case.

Justice Brown will bring these same qualities to the D.C. Circuit, and will be a valued and trusted colleague to the other members of that court. She will bring immeasurable intellect and wisdom to a bench already respected for those fine traits, and will reflect the values of truth, honesty, and integrity that are so much a part of her persona.

Justice Brown will encourage collaboration and unanimity with her fellow judges by her powers of persuasion and reason. She will honor the rule of law and precedent of the United States Supreme Court and other Circuit Court decisions.

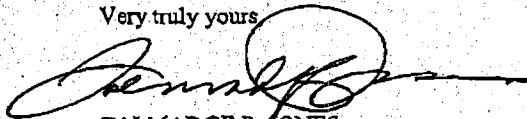
Justice Brown is about the smartest (and wisest) judge I know, but would be the last person to tout her intellect or use it to her personal advantage. She is a quick study, with the ability to research and write about the law in a way that all will understand.

Justice Brown is a Christian, but never allows her personal walk with God to interfere with her duties as a jurist. Her faith has sustained her in some of life's struggles (she lost her first husband to cancer) and has given her a larger family of believers that have consoled and comforted her in the valleys of life.

For these reasons, I encourage you and the other Honorable Senators of the Senate Judiciary Committee to approve Associate Justice Janice Rogers Brown to the position of Circuit Judge for the District of Columbia Circuit.

The Committee's approval will be not only a great honor to Justice Brown, but also an admirable action of the Senate that will enrich the federal appellate bench for years to come.

Very truly yours



TALMADGE R. JONES
Judge of the Superior Court

WARD A. CAMPBELL

October 20, 2003

The Honorable Orrin Hatch
United States Senator
Chairman, Senate Judiciary Committee
104 Hart Office Building
Washington, D.C. 20510

Dear Senator Hatch:

I am a former colleague of Justice Janice Rogers Brown in the California Attorney General's office. I also dealt with her during her tenure as legal affairs secretary to Governor Pete Wilson. I am honored that she is listed as my sponsor as a member of the Bar of the United States Supreme Court. I enthusiastically support her nomination as a judge to the DC Circuit.

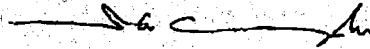
Janice Brown is affectionately remembered by her fellow deputies who worked with her at the Department of Justice. I had the opportunity to work with her on a co-defendant appeal in which we both filed petitions for writ of certiorari to the United States Supreme Court. Her excellent written work ultimately prevented the retrials of two confessed murderers. It was a pleasure to work with her. She was highly respected in the very collegial atmosphere of our appellate division.

Later in 1992, I again had the pleasure of working with Janice in a very different capacity during her tenure as legal affairs secretary to Governor Pete Wilson in 1992. She successfully navigated the first death penalty clemency proceeding in California since 1967. At all times, she was open to suggestion and advice in devising an unique review process that fairly fit the needs of the Governor, the prosecutor, and the prisoner.

As a friend, I was moved personally to write this letter because of the unfair criticisms levelled at Janice in the time leading to her confirmation hearing. Needless to say I was shocked by depictions of her which are completely inconsistent with the person I have known and worked with here in California. The critical "analyses" of Janice's work strike me as as more visceral, than objective. There is something incongruous about asserting that Janice Brown, a true American success story, is not sufficiently committed to constitutional and civil rights.

Janice is a thoughtful, reflective, and compassionate person. She reaches her own conclusions independently only after great deliberation. Not surprisingly, she has diverse interests and she has shown the ability to handle varied work assignments throughout her career. Her background and experience have superbly prepared her for the federal bench. She will be greatly missed here in California. The President has shown great wisdom in his selection and I urge the Senate to ratify his nomination of Janice Rogers Brown to the DC Circuit.

Sincerely,



WARD A. CAMPBELL
Supervising Deputy Attorney General
California Department of Justice

cc: The Honorable Dianne Feinstein
United States Senator



Superior Court of California,
County of Sacramento

Patricia C. Esgro
Superior Court Judge
Department 13

October 20, 2003

Honorable Orrin Hatch
United States Senate
Chair, Senate Judiciary Committee
Attention: Ms. Rena Comisac (via FAX)

Re: Hon. Janice Rogers Brown
Circuit Justice for the District of Columbia - Nomination
(Full Hearing, October 22, 2003, 10:00 a.m., Dirksen Rm. 226)

Dear Senator Hatch:

I urge the Senate Judiciary Committee to approve the appointment of the Honorable Janice Rogers Brown, currently Associate Justice of the California Supreme Court, to the position of United States Circuit Justice for the District of Columbia.

Justice Brown's brilliant legal scholarship and powerful intellect are, I believe, established by the written record before your committee. I would like to address her outstanding personal characteristics, evidencing her excellent judicial temperament.

I have known Justice Brown for over twenty years. She is a good friend and a former colleague in the California Attorney General's Office. I also served as her Chief Deputy in the Legal Affairs Unit of Governor Pete Wilson's office. I have personally observed her deep integrity and passion for justice. She has devoted her life to public service and the public good. She is a woman of humility who yet possesses a fierce sense of history and patriotism.

Justice Brown is a woman of calm deliberation with a self-deprecating sense of humor. Raised in a strict home in the segregated South she is unfailingly courteous and thoughtful of others. Her experience of segregation and her admiration for the lawyers who fought against it formed her early love and respect for the law. It is that background that informs her carefully worded and expressed opinions.

I commend to you a woman who has lived the struggles of her race and emerged a compassionate and strong individual. She will serve as a bastion of justice in an uncertain world. I urge your approval, and that of the Committee, for this outstanding nominee of the President of the United States to the federal bench.

Sincerely,
Patricia C. Esgro
Patricia C. Esgro
Judge of the Superior Court

The Superior Court

STATE OF CALIFORNIA
COUNTY OF EL DORADO
495 MAIN STREET
PLACERVILLE, CALIFORNIA 95667
(530) 621-6459

October 20, 2003

Senator Orrin Hatch
U.S. Senate Judiciary Committee
104 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch,

I have been informed that the Senate Judiciary Committee will soon hold hearings on the President's nomination of the Honorable Janice Rogers Brown to a seat on the Court of Appeals for the District of Columbia Circuit. I write to you to offer my input on her qualifications.

First, my background, so that you will know how I can speak to her qualifications. I have been a Superior Court Judge of El Dorado County in California for over fourteen years. Prior to that, I was a Deputy Attorney General in the Sacramento office of the California Attorney General for over twenty-one years. It was during my time as a lawyer that I first met Janice Brown.

I was a supervising attorney and was on the selection committee when Janice Brown interviewed for a job. I was impressed by her from the start. When she was selected, I requested that she be placed on my team in the criminal division. Over the course of the next several years, I supervised all of her legal work, which usually meant reviewing the legal briefs she prepared in criminal cases for presentation to state and federal courts.

Ms. Brown did exceptional legal work. Her briefs were well-researched and persuasively argued. More importantly, she had a unique and special writing style, which made her briefs a special attraction and model for other deputies in the criminal division. In fact, I can recall that at least one court of appeal quoted some of her memorable prose in the final legal opinion in one case.

During this time, I also had the opportunity to get to know Janice Brown as a person. I learned that she was a person from humble beginnings who had the intelligence and fortitude to rise above all obstacles and excel in life. I also learned that she was a person of sound judgment, common sense, compassion, and the highest level of integrity. She also had a work ethic second to none.

I have followed her later legal career in the civil division of the Attorney General's Office, legal counsel to Governor Wilson, court of appeal justice, and as a jurist on the California Supreme Court. I am not surprised that she has excelled in all that she has done.

Most people tell me that the qualities they expect most from a judge are: intelligence, good judgment, an open mind, compassion, a sense of fairness, and integrity. Janice Brown has all of these qualities and more.

Senator Orrin Hatch

Page 2

10-20-03

In tracking her legal opinions as an appellate court justice, I note that they are distinguished by the same scholarship, thoroughness, intelligence, and unique literary style that makes her stand out from most others. She has a brilliant legal mind. She cares intensely about the legal and social values that each case presents. She is open to being persuaded on any legal point. She is an independent thinker. No one could ask more from any judge.

Having been in a position to have read and evaluated the legal opinions of a countless number of judges over my legal career, I can truly say that Janice Brown is one of those rare individuals who come along in life and set a standard for all of us to admire. She is in the same category as our greatest jurists. She would be an invaluable addition to the federal judiciary.

If I can supply any other information or be of assistance, you can contact me at (530) 621-6464.

Sincerely,



EDDIE T. KELLER

Judge of the Superior Court



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October 21, 2003

VIA FACSIMILE

The Honorable Orrin G. Hatch
 Chairman, Committee on the Judiciary
 United States Senate
 224 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Chairman Hatch:

I write in support of President Bush's nomination of Justice Janice Rodgers Brown to the United States Court of Appeals for the District of Columbia Circuit.

I am a practicing attorney in California, specializing in civil appeals. I teach appellate procedure as an adjunct professor at the University of California, Hastings College of the Law, and am principal co-author of a treatise on California appellate practice. I have filed briefs and presented oral argument before the California Supreme Court in numerous cases during Justice Brown's tenure at that court, as both counsel of record and counsel for amici curiae.

Among those cases is *High-Voltage Wire Works v. City of San Jose*, 24 Cal.4th 537 (2000), where I submitted an amicus curiae brief urging the court to uphold the "affirmative action" program at issue in that case.

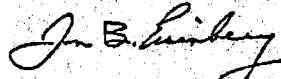
I was deeply disappointed with Justice Brown's *High-Voltage* decision, which rejected my position. That does not, however, change my opinion of her qualifications for appointment to the United States Court of Appeals. In every case where I appeared before her as a practicing attorney, as well as in her decisions generally, which I have closely studied in my roles as law professor and author, I have found her to be a talented, sincere, and thoroughly dedicated appellate judge of the highest integrity – and, by the way, a marvelous writer. I respectfully disagree with those of my political soulmates who view our

The Honorable Orrin G. Hatch
October 21, 2003
Page 2

disapproval of her political philosophy as grounds for opposing her confirmation, for I believe that an appointee's judicial qualifications, not political philosophy, should be the focus of the confirmation process.

I therefore urge the Senate Judiciary Committee and the full Senate to approve Justice Brown's nomination.

Very truly yours,



Jon B. Eisenberg

JBE:mmg

cc: The Honorable Patrick J. Leahy
Office of Legal Policy



Congress of Racial Equality

817 BROADWAY • 3RD FLOOR • NEW YORK, NY 10003
(212) 598-4000 • FAX: (212) 598-4141/982-0184

Hon. Orin Hatch
U.S. Senator
Chairman of the Judiciary Committee
Hart Office Building
Suite 104
Washington, D.C. 20510

October 21, 2003

Dear Senator Hatch:

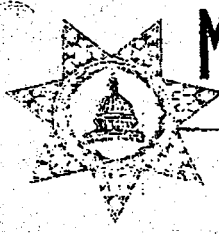
Judge Janice Rogers Brown (the President's nominee for the DC Circuit Court of Appeals) is an outstanding candidate for the position. Her judicial temperament is fair, but focused. This is why her colleagues on the bench often depended on Justice Brown to write the majority opinion for the Court last year. She did this more times than any other Justice. In 1998, the people of California, who knew her best, re-elected her with the highest winning majority of any judge in the state with 76% of the vote.

The daughter of sharecroppers, Justice Brown is a native of Greenville, Alabama. Born in 1949, she came of age in the midst of Jim Crow policies in the south and attended segregated schools. She has truly pulled herself up by her own bootstraps. After her family moved to Sacramento, California, she attended school there, receiving her J.D. from the UCLA School of Law in 1977. After her scholastic achievements, Justice Rodgers Brown dedicated most of her professional career to public service and is the first African-American woman to serve on the state of California's highest court. Justice Brown has also served as a Member of the California Commission on the Status of African-American Males: a commission that addresses inequities in the treatment of African-American males in employment, business development and in the criminal justice and health care systems.

Justice Brown is an ideal candidate for this office. She does not bow down to the altar of "political correctness", as demanded by the *civil rights aristocracy*. Predictably, she is being opposed by left wing liberal extremists. I have spent several decades fighting discrimination so that women of color, like Janice Rogers Brown, could rise to the top of their profession. I now fight ideological discrimination, so that Justice Brown can receive a fair hearing and be elevated to the DC Circuit Court of Appeals. We did not fight the Civil Rights Revolution for an elite few in the black community, but for all.

Sincerely,

Roy Innis
Chairman



MILE

Minorities In Law Enforcement

Honorable Senator Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
President of the United States
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

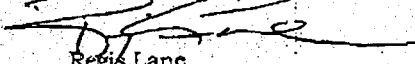
On behalf of the Executive Board and members of the Minorities In Law Enforcement organization (MILE), we recommend that you confirm President George W. Bush's nomination of California Supreme Court Associate Justice Janice Rogers Brown to the United States Circuit Court of Appeals for the District of Columbia. MILE is a coalition of ethnic minority law enforcement officers in California dedicated to ensuring brighter futures for disadvantaged youth and ensuring that no child is left behind.

We recommend the confirmation of Justice Brown based on her broad range of experience, personal integrity, good standing in the community and dedication to public service. Justice Brown's powerful and exhilarating display of jurisprudence exhibited in the written legal opinions she has issued as a California Supreme Court justice, is respected by all, regardless of race, political affiliation, or religious background. Justice Brown is a fair and just person with impeccable honesty, which is the standard by which justice is carried out.

In many conversations with Justice Brown, I have discovered that she is very passionate about the plight of racial minorities in America, based on her upbringing in the south. Justice Brown's views that all individuals who desire the American dream, regardless of their race or creed, can and should succeed in this country are consistent with MILE's mission to ensure brighter futures for disadvantaged youth of color.

It is with great honor and pleasure that MILE and our members urge you to confirm President Bush's nomination of California Supreme Court Associate Justice Janice Rogers Brown to the United States Circuit Court of Appeals for the District of Columbia.

Respectfully Submitted,


Regis Lane
Executive Director

En H. Mondo
MILE President

Laura Lorenzana

Jose Vasquez
MILE Secretary

Glenn Humphries
MILE Executive Board Member
Southern California Representative

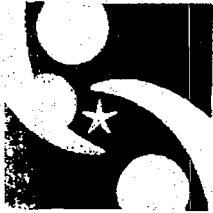
Regis Lane
MILE Executive Director

Maria Zavala
MILE Publications Editor

Demetri Burtis
Membership/MILE Outreach Coordinator

cc: The Honorable Patrick J. Leahy
Via Facsimile 202-224-9516

Office of Legal Policy
Via Facsimile 202-514-5715



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CITIZENSHIP**

*Preparing Youth for Today's World
and Tomorrow's Responsibilities*

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October 21, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch:

Please accept this letter as a statement of support for Justice Janice Brown. As your committee considers her qualifications, our Center wishes to bring to your attention her service and commitment to youth. As a longtime volunteer and supporter of the Center's programs, she has modeled the character and citizenship needed by our elected and appointed officials.

Justice Brown has been a consistent volunteer for the Center's Gordon D. Schaber Mock Trial and Moot Court program. In a speech delivered to these high school students in 2000, she spoke to them about the importance of character development and the law. Specifically, she shared the virtues of honor, courage, responsibility, generosity, and respect.

Justice Brown has set both high academic and ethical standards for students. It is in our judgment, that Justice Brown not only "talks the talk", but she "walks the walk".

Her long career in public service and commitment to quality youth education programs has shown her to be a distinguished guardian of the law. On behalf of the Center for Youth Citizenship's youth participants and those who have benefited from her service, I would endorse Justice Janice Brown for the United States Court of Appeals and appreciate the opportunity to highlight her good character and citizenship.

Sincerely,

Joseph P. Maloney, Ph.D.

cc: The Honorable Patrick J. Leahy,
Ranking Member, Committee on the Judiciary
Office of Legal Policy, Department of Justice
CYC Executive Committee

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PEPPERDINE UNIVERSITY

BOARD OF REGENTS

October 17, 2003

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Justice Janice R. Brown,
California Supreme Court

Dear Senator Hatch:

I am writing in support of the nomination of Justice Janice R. Brown, of the California Supreme Court, to be a judge on the D.C. Circuit Court of Appeals.

I serve as Chairman of the Board of Regents of Pepperdine University and Justice Brown is a very valuable and productive member of that board. This has given me a firsthand opportunity to become well acquainted with her and to develop a great admiration for her. Hers is a great American success story and she is much admired by all who know her.

Justice Brown has proven herself to be a fair-minded judge who considers all sides of an issue before deciding a case. She has a keen interest in the workings of our government and would make a valuable addition to the D.C. Circuit Court. I request that you give her your wholehearted support.

Sincerely,



Thomas J. Trimble
Chairman

cc: The Honorable Patrick J. Leahy
Ranking Member, Committee on the Judiciary
United States Senate

cc: Office of Legal Policy