



October 4, 2021

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

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

On behalf of our 1.5 million supporters nationwide, People For the American Way enthusiastically supports the nomination of Lucy Koh to the Ninth Circuit Court of Appeals. She is a highly respected and principled federal district judge with an extremely diverse range of professional experiences. Her confirmation will benefit the entire Ninth circuit.

Judge Koh earned both her undergraduate and her law degrees from Harvard. She moved to Washington, DC in 1993 for an internship with the Senate Judiciary Committee and then a position at the Justice Department, where she worked on federal legislation and the implementation and enforcement of various federal laws. In 1997, she moved to Los Angeles to become an assistant U.S. Attorney, gaining experience as a federal criminal prosecutor. In 2000, Koh transitioned to private practice, gaining expertise in intellectual property and business litigation while at law firms in Palo Alto and Menlo Park. She represented individuals, technology companies, and biotech companies, both as plaintiffs and as defendants.

She shifted from advocacy to the bench in 2008, when Gov. Arnold Schwarzenegger appointed her to the Superior Court of California. With a docket that included criminal, civil, juvenile delinquency, juvenile dependency, and family law matters, Judge Koh presided over more than 200 trials that went to verdict or judgment.

Since 2010, she has been a federal judge in the Northern District of California, a position she was confirmed to unanimously by the U.S. Senate. Since then, she has issued more than 3,000 written opinions. Among her high-profile cases, she presided over Apple's lawsuit against Samsung for allegedly violating the former's smart phone patent, a case that allowed her to use and expand her expertise in the increasingly important and complex nexus of intellectual property and technology.ⁱ In another important case, Judge Koh ruled in 2015 that the Fourth Amendment applies to location data often automatically generated by a person's cell phone, so that law enforcement agencies need a warrant in order to search the data.ⁱⁱ This issue was new to the judiciary, and two years later the Supreme Court adopted the same position in an unrelated case.ⁱⁱⁱ

Judge Koh recognizes the importance of the federal judiciary in protecting the rule of law and our nation's democracy. She was also part of a unanimous three-judge panel ruling that the Trump administration's plan to exclude non-citizens from apportionment data after the 2020 U.S.

Census violated the Constitution and federal statutes.^{iv} She also issued an injunction against the Trump administration's plans to unlawfully end counting for the 2020 Census prematurely.^v

When confirmed, Judge Koh will become the first Korean-American woman to serve as a federal appellate judge. Breaking barriers is nothing new to her: When she became a federal district judge in 2010, she was the Bay Area's first Asian-American judge and first Korean-American woman in the nation to be a federal judge.

As a Harvard Law student, Koh wrote about how her life experience has shaped her understanding of racial inequality:

Having grown up as the only Asian-American in all-African-American communities, all-White communities, and integrated African-American-White communities in Mississippi and Oklahoma, I have always been intensely conscious of race and racial inequality. My international experience has heightened my understanding of cultural, religious, racial and socioeconomic barriers to equality.^{vi}

Judge Koh would bring the benefits of her personal experience to the Ninth Circuit, along with years of legal expertise gained during her career at the Justice Department, private practice, and on the California and federal judiciary. When she was first nominated to the Ninth Circuit by President Obama in 2016, she won bipartisan approval from the Judiciary Committee, but the full Senate did not have an opportunity to vote on her confirmation.

Five years later, the Senate is fortunate to have a second opportunity to confirm this unquestionably qualified nominee to the appellate bench. We urge her prompt confirmation.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker
Executive Vice President

ⁱ *Apple, Inc. v. Samsung Electronics Co. Ltd.*, described in Lucy Koh's Response to Senate Judiciary Committee Questionnaire for Judicial Nominees, Question 13c, pp. 45-46.

ⁱⁱ *In re Telephone Information Needed for a Criminal Investigation*, 119 F. Supp. 3d 1011 (N.D. Cal. 2015).

ⁱⁱⁱ *Carpenter v. United States*, 138 S. Ct. 2206 (2018).

^{iv} *City of San Jose v. Trump*, 497 F. Supp. 3d 680 (N.D. Cal. 2020). The Supreme Court subsequently ordered the decision vacated for lack of jurisdiction but did not express a view on the merits, with Justices Breyer, Sotomayor, and Kagan dissenting. 141 S. Ct. 1231 (2020).

^v *National Urban League v. Ross*, 489 F. Supp. 3d 939 (N.D. Cal. 2020). The injunction was subsequently stayed by the Supreme Court without explanation over Justice Sotomayor's dissent. 141 S. Ct. 18 (2020).

^{vi} Harvard Law School's 1995-1996 Public Interest Job Search Guide, p. 27.