



December 14, 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 Judge Alison Nathan to the Second Circuit Court of Appeals. When confirmed, she will become only the second openly LGBTQ+ woman in history to serve as a federal appellate judge. She has worked in private practice at a major law firm, taught constitutional law, served in the United States executive branch, and, since 2011, has been a federal district court judge. Uniting her varied range of experience has been her dedication to ensuring that no one is deprived of the protections guaranteed by the law.

After graduating with honors from Cornell Law School in 2000, Nathan clerked on the Ninth Circuit for Judge Betty Fletcher, and then on the Supreme Court for Justice John Paul Stevens. She then spent four years as an associate at Wilmer Cutler Pickering Hale and Dorr, representing corporations and media organizations as paid clients, while also devoting substantial time to pro bono representation of national civil rights organizations and indigent criminal defendants. Moving into academics, she became a professor at Fordham University School of Law, where she specialized in civil procedure and constitutional law, especially issues relating to capital punishment.

Her career turned to public service in 2009 when she became associate White House Counsel under President Obama. She then returned to New York to become special counsel to the state's solicitor general. In these two positions, she continued to specialize in federal civil procedure, complex federal litigation, appellate litigation, and constitutional law. In 2011, President Obama nominated her to her current position in the Southern District of New York, making her one of the first openly LGBTQ+ individuals to serve as an Article III judge.

Her career both before and after becoming a judge show Nathan's dedication to the principle that all are equal before the law. While at WilmerHale, she won awards for her pro bono service three years in a row. In one case, she was a key part of the appellate litigation team representing Darick Walker challenging the constitutionality of his sentence of capital punishment. Among other things, they successfully argued before the Fourth Circuit that the district court had unlawfully failed to examine the evidence he presented that he was intellectually disabled, such that his execution would violate Supreme Court precedent.<sup>1</sup> She also provided pro bono representation to several civil rights organizations in a military prosecution, arguing that the

Supreme Court’s landmark ruling in *Lawrence v. Texas* striking down state “sodomy” laws applies to the armed forces.<sup>ii</sup>

As a judge, she has protected the legal rights of all who come before her, recognizing that it is her responsibility to ensure that all people who enter her courtroom get a fair trial, regardless of who they are. For instance, during the COVID-19 pandemic, she ruled that homeless children had a right under the law to a hearing on their argument that New York’s transition to remote learning without giving them reliable means to access the Internet created exactly the kind of barriers prohibited by statute.<sup>iii</sup> After she rejected the city’s motion to deny a hearing, the parties reached a settlement.

The public saw her commitment to justice after the trial of Ali Sadr Hashemi Nejad. In early 2020, Sadr was convicted of a series of financial crimes including violating U.S. sanctions against Iran. However, prosecutors had violated the Supreme Court’s *Brady* ruling that prosecutors must disclose all exculpatory evidence in its possession to the defendant. Even the prosecutors eventually agreed with Sadr that Judge Nathan should vacate the guilty verdict and dismiss the charges against him, which she did.

But she did not let the underlying problem go unaddressed: She also pressed government officials for more information about their disclosure failures. Their submissions revealed severe systemic problems. For instance, emails revealed that when prosecutors discovered they had failed to disclose an important exculpatory document, they spent 20 hours strategizing on how to “bury” it with material they had already disclosed. The record also showed government misrepresentations to the court, designed to hide that they were examining seized records for information beyond the restrictions of the search warrant, in violation of the Fourth Amendment. She wrote:

The cost of such Government misconduct is high. With each misstep, the public faith in the criminal-justice system further erodes. With each document wrongfully withheld, an innocent person faces the chance of wrongful conviction. And with each unforced Government error, the likelihood grows that a reviewing court will be forced to reverse a conviction or even dismiss an indictment, resulting in wasted resources, delayed justice, and individuals guilty of crimes potentially going unpunished.<sup>iv</sup>

Recognizing that the problem was systemic, she ordered the Acting U.S. Attorney in the Southern District of New York to ensure that all current assistant and special assistant U.S. Attorneys read her order within a week of its issuance. Her approach to this case reflected her recognition of the unique and critical role judges play in protecting the public:

Government lawyers wield enormous prosecutorial power. They must exercise it in a way that is fully consistent with their constitutional and ethical obligations. And it is the obligation of the courts to ensure that they do and hold them accountable if they do not.

Alison Nathan has a sterling record of excellence both on and off the bench, and we urge her rapid confirmation to the Second Circuit Court of Appeals.

Sincerely,

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

Marge Baker  
Executive Vice President

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<sup>i</sup> *Walker v. True*, 399 F.3d 315 (4th Cir. 2005).

<sup>ii</sup> *United States v. Marcum*, 60 M.J. 198 (C.A.A.F. 2004).

<sup>iii</sup> *E.G. v. City of New York*, No. 20-cv-9879 (AJN), 2020 U.S. Dist. LEXIS 244745 (S.D.N.Y. Dec. 30, 2020).

<sup>iv</sup> *United States v. Ali Sadr Hashemi Nejad*, 487 F. Supp. 3d 206 (S.D. NY, 2020).