

New York Office
40 Rector Street,
5th Floor
New York, NY
10006-1738



Washington, D.C.
Office
700 14th Street,
NW, Suite 600
Washington, D.C.
20005

T 202.682.1300

F 202.682.1312

October 19, 2021

Senator Dick Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

Senator Chuck Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I write to express the support of LDF for the nomination of Judge Holly Thomas, to serve as a judge on the Court of Appeals for the Ninth Circuit.

Founded in 1940 by Thurgood Marshall, LDF is the country’s first and foremost civil rights law firm. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF has always been a pioneering force in our nation’s quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained. LDF has examined and reviewed the record of countless judicial nominees over decades. Our examination of the record of judicial nominees is focused on an assessment of the capacity of a judicial nominee to undertake their work with fairness and impartiality, and with respect for the rights of those who are often most marginalized in our society.

The role of the federal judge is among the most central to maintaining the rule of law and the preservation of our constitutional democracy. Article III judges enjoy lifetime tenure and are subject to the rigorous process of Senate confirmation to ensure their independence and integrity, and to equip them to hold a position of the highest public trust. As such, it is important that individuals who serve as judges



have a demonstrated commitment to fairness and to upholding the law, as well as the professional training and experience to adjudicate claims involving complex issues of law with powerful consequences for the lives of those who will appear before courts seeking justice. Since 2018, Judge Thomas has served on the Los Angeles Superior Court presiding over a trial docket involving criminal, civil and family/domestic matters.¹ Prior to becoming a judge she held positions in government and with LDF. Her service throughout her career has been exemplary. She is eminently qualified to serve with distinction on the Ninth Circuit Court of Appeals.

Commitment to Robust and Fair Legal Representation for All

After graduating from Yale Law School and clerking for the Honorable Kim McLane Wardlaw on the Court of Appeals for the Ninth Circuit, Ms. Thomas joined LDF in 2005 as an Arthur Liman Fellow and then served as an Assistant Counsel until 2010. During her time at LDF, Ms. Thomas demonstrated a commitment to equal justice and equal access to all and was involved in several cases regarding the right to adequate and competent counsel. For example, she was part of a team of LDF attorneys that investigated Harris County, Mississippi’s public defender’s office after several people in Forrest County Jail reported concerns with their representation.² Her investigation found that the county's public defenders exceeded the recommended caseload of 150 felony cases per year per attorney, according to the guidelines of the American Bar Association.

Additionally, while at LDF Ms. Thomas also provided testimony before the Nevada Supreme Court regarding quality representation for all defendants, regardless of income or social status.³ Her testimony highlighted the need to provide constitutionally effective representation to low-income defendants and the disproportionate number of African Americans who require public defense or assigned counsel.

¹ Holly A. Thomas, *Questionnaire for Judicial Nominees, United States Senate*, Committee on the Judiciary (last accessed Oct. 18, 2021); Arin Mikailian, *Calm and Collected: LA Judge Holly Thomas Keeps Her Court Under Control and Encourages Good Behavior*, L.A. Daily Journal (May 29, 2020).

² *Public Defenders Overworked*, Hattiesburg AM. (July 16, 2008); Holly A. Thomas, *Questionnaire for Judicial Nominees* at 476.

³ Testimony of Holly A. Thomas, Assistant Counsel, NAACP Legal Defense and Educational Fund, Inc., before the Nevada Supreme Court Indigent Defense Commission (Dec. 14, 2007).



Advocating for Equal Access to Education

During her tenure at LDF, Ms. Thomas also engaged in efforts related to equality in education. She was part of the LDF team that successfully defended the admissions policy of the University of Texas in *Fisher v. University of Texas*,⁴ and was also a member of the team that worked to implement a 2008 settlement agreement in *Sheff v. O'Neill*,⁵ a case in which LDF secured a favorable ruling from the Connecticut Supreme Court indicating that the state was obligated to provide all Connecticut students with equal opportunities and ordered the State to immediately remedy the racial isolation endemic to schools in the area around the state capital.

Governmental Experience

In addition to her experience at LDF, Judge Thomas has a wealth of experience working in governmental agencies to defend and advance civil rights. From 2010 to 2015, Judge Thomas worked in the Appellate Section of the Civil Rights Division of the United States Department of Justice (“DOJ”) as a Senior Attorney. In that role, she litigated civil rights cases in state and federal appellate courts and contributed to amicus briefs presented before the United States Supreme Court. From 2015 -2016, she served as Special Counsel to the Solicitor General of New York in the Office of the New York State Attorney General where she handled a wide range of cases involving government interests, including the state's decisions regarding the civil confinement of sex offenders; threshold issues of whether an inmate was barred from bringing a 42 U.S.C. § 1983 claim for failure to exhaust his administrative remedies; the limits of a state court's jurisdiction over international adoption orders; the New York equal protection and due process clauses; and the Fair Housing Act.

From 2016 to 2018, Judge Thomas served as Deputy Director for the California Department of Fair Employment and Housing (“DFEH”), the nation's largest state

⁴ 136 S. Ct. 2198 (2016); LDF represented the Black Student Alliance at University of Texas, Austin (BSA) and Black Ex-Students of Texas (BEST) in the *Fisher* litigation.

⁵ The *Sheff* case began in 1989, when a group of parents from Hartford and surrounding towns came together to demand that the State of Connecticut correct the extreme segregation and inequity in the region’s schools. At that time, Black, Latinx, and white students in Hartford, Connecticut public schools were denied an education equal to that of their counterparts in suburban school districts due to the racial segregation and the economic disparities between Hartford schools and those in the nearby suburbs.



civil rights agency. Ms. Thomas led the Department's Executive Programs Division, where she assisted in drafting regulations under the statutes that the DFEH enforces and conducted case-by-case reviews to determine whether a legal or procedural error had been made by the DFEH.

Conclusion

Judge Thomas' record demonstrates a deep and unwavering commitment to the belief that every person is deserving of robust legal representation and access to the courts. The breadth of her judicial, litigation and administrative experience demonstrates a deep understanding of the various complex issues which will come before her. This is precisely the expertise needed to serve as a judge on a federal Court of Appeals. She is eminently qualified to serve on the Court of Appeals for the Ninth Circuit.

Furthermore, if confirmed, Ms. Thomas would bring significant diversity to the Ninth Circuit. She would be the first Black woman confirmed to the Ninth Circuit from the State of California, and only the second Black woman to ever sit on the Court.

For the foregoing reasons, we urge the Senate Judiciary Committee to confirm Holly Thomas to the Court of Appeals for the Ninth Circuit.

Sincerely,

Sherrilyn Ifill
President-Director Counsel
NAACP Legal Defense & Educational Fund
40 Rector Street, 5th Floor
New York, NY 10006
sifill@naacpldf.org

cc: Members of the Senate Judiciary Committee