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November 30, 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

Re: The Nomination of Mr. Dale Ho to the district court for the Southern District of New York

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 Dale Ho, to serve as a judge on the district court for the Southern District of New York.

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 examined and reviewed the record of judicial nominees for decades. Our examination of the record of judicial nominees is focused on an assessment of the capacity of judicial nominees 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 a 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 rule of law.

The Southern District of New York carries special significance for the LDF. One of our most illustrious alumna, the Hon. Constance Baker Motley, was appointed to the S.D.N.Y. in 1966, and served as the Chief Judge from 1982-1986, before taking



Senior Status. Her judicial service was the capstone on a career as one of the most influential, trailblazing and successful civil rights lawyers in the 20th century. Although she passed away in 2005, Judge Motley remained an inspiration and mentor as both a civil rights attorney and as a judge for generations of LDF attorneys.

Judge Motley’s tenure on the Southern District was marked by excellence, impartiality, and professionalism. These are the very qualities possessed by nominee Dale Ho.

Mr. Ho’s record demonstrates a deep and overarching commitment to the preservation of our constitutional democracy. He is an expert litigator, with an unimpeachable record of professionalism, integrity, and commitment to justice. His extensive experience and professional training demonstrate an ability to adjudicate claims involving complex issues of law with substantial consequences for the lives of those who appear before courts seeking justice. Furthermore, his contemporaneous career in academia underscores his qualification, as well as his rigorous intellect and expertise in voting and elections law and civil rights law more broadly.

Mr. Ho has dedicated his career to ensuring that all Americans can participate in our democracy and that all are treated equally in the electoral process, regardless of race or political affiliation. Our experience with Mr. Ho affirms the judgment of the non-partisan American Bar Association, which has concluded that Mr. Ho is “well-qualified” to serve as a judge on the Southern District of New York.¹

Early Career and Tenure at LDF

After graduating from Yale Law School in 2005, Mr. Ho clerked for the U.S. District Court for the Southern District of New York—the court to which he is nominated—and the New York State Court of Appeals.² For two years (2007-2009) he served as the NAACP LDF Fellow at Fried, Frank, Harris, Shriver & Jacobson LLP. During his time at Fried Frank, Mr. Ho litigated complex commercial matters including issues related to contracts, securities, real estate, and antitrust. He also maintained a significant portfolio of pro bono and public interest cases, including

¹ American Bar Association Standing Committee on the Federal Judiciary, *Ratings of Article III and Article IV Judicial Nominees* (last accessed Nov. 30, 2021), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/webratingchart-117.pdf.

² Mr. Ho served as a law clerk, to the Hon. Barbara S. Jones, on the U.S. District Court for the Southern District of New York, and to the Hon. Robert S. Smith, on the New York Court of Appeals. Dale Ho, *Questionnaire for Judicial Nominees*, United States Senate, Committee on the Judiciary at 2 (last accessed Nov. 17, 2021) <https://www.judiciary.senate.gov/imo/media/doc/Ho%20SJQ%20Public%20Final.pdf>.



cases involving civil rights issues, criminal defense and labor matters. His practice included matters at the trial and appellate levels, in both federal and state court.³

In September 2009, Mr. Ho joined LDF as a full-time assistant counsel. At LDF, his work focused on Voting Rights, election administration, redistricting, barriers to voter registration, and ballot access. Mr. Ho was integral to LDF's efforts to promote full, equal, and active participation in democracy. He was actively involved in a broad range of litigation and advocacy matters ranging from challenging the use of at-large elections as a violation of Section 2 of the Voting Rights Act of 1965,⁴ to violations of Section 7 National Voter Registration Act,⁵ and the denial of the right to vote for people with felony convictions.⁶ He also co-authored a number of amicus briefs in before federal and state courts, including the U.S. Supreme Court.⁷

In 2011, Mr. Ho was a critical member of the LDF team which filed a lawsuit challenging Fayette County, Georgia's discriminatory at-large method of electing members to the County Board of Commissioners and Board of Education on behalf of civil rights organizations and individual Black voters.⁸ Until this lawsuit was filed, no Black person had ever been elected to either body, even though Black residents comprised 20% of Fayette County's population.⁹ As a result of this four-year case, Black voters finally had the equal opportunity to elect their preferred candidates in one of five single-member districts in 2014 and 2015, when they elected the first and second Black County Commissioners in the history of the County.¹⁰

Mr. Ho also played an invaluable role in LDF's work in *Shelby County v. Holder*.¹¹ In April 2010, Shelby County, Alabama filed a lawsuit seeking to invalidate a key provision of the Voting Rights Act of 1965. LDF intervened in the case on behalf of Black residents of Shelby County whose voting rights were directly impacted by

³ Dale Ho, Questionnaire for Judicial Nominees, at 29

<https://www.judiciary.senate.gov/imo/media/doc/Ho%20SJQ%20Public%20Final.pdf>.

⁴ Ga. State Conference of NAACP v. Fayette Cnty. Bd. of Comm'rs, 952 F. Supp. 2d 1360 (N.D. Ga. 2013).

⁵ *Ferrand v. Schedler*, CIVIL ACTION NO. 11-926 (E.D. La. Mar. 7, 2012).

⁶ *Farrakhan v. Gregoire*, 623 F.3d 990 (9th Cir. 2010).

⁷ Amicus Brief of the NAACP Legal Defense & Educational Fund, Inc. in Support of Neither Party, *McDonald v. City of Chicago*, 561 U.S. 742 (2010); Amicus Brief of Religious Organizations in Support of Petitioners, *Graham v. Florida*, 560 U.S. 48 (2010); Amicus Brief of Political Scientists in Support of Neither Party, *Bartlett v. Strickland*, 556 U.S. 1 (2009).

⁸ *Supra* note 5.

⁹ Errin Haines, *Georgia NAACP: At large elections disenfranchise Blacks*, The Final Call (Aug. 22, 2011), http://www.finalcall.com/artman/publish/National_News_2/harlem_8105.shtml.

¹⁰ Ben Nelms, *Fayette milestones in Election 2014*, TheCitizen.com (Nov. 14, 2014), <https://thecitizen.com/2014/11/12/fayette-milestones-election-2014/>.

¹¹ 570 U.S. 529 (2013).



the county’s challenge. LDF vigorously defended the constitutionality of the VRA in the lower courts and argued in defense of the VRA, five Black ministers and a councilman from Shelby County before the Supreme Court. Mr. Ho was heavily involved in all aspects of LDF’s work in the *Shelby County* case, including in writing LDF’s Brief in Opposition for Respondents-Intervenors¹² and LDF’s Brief for Respondent-Intervenor Bobby Lee Harris.¹³

Recent Professional Experience and Qualifications

In 2013, Mr. Ho left LDF and joined the American Civil Liberties Union (“ACLU”) as Director of the Voting Rights Project while also serving as an adjunct professor at both Brooklyn Law School and New York Law School.¹⁴ As Director of the Voting Rights Project, Mr. Ho led the ACLU’s voting rights litigation throughout the country, maintaining a portfolio of cases in federal and state courts. In that capacity, he served as lead counsel on multiple occasions at trial and on appeal and argued before the Supreme Court of the United States twice.¹⁵ While at the ACLU, Mr. Ho, tried five cases to judgment in U.S. District Courts, argued numerous motions including several preliminary injunction motions involving live evidentiary proceedings, and motions for summary judgment, and argued six appeals.¹⁶ His experience as a litigator is extraordinary and unimpeachable.

At the ACLU, Mr. Ho continued to work in service of our democracy. In 2018, the ACLU, New York Civil Liberties Union, and Arnold & Porter, LLC filed a federal lawsuit on behalf of immigrants’ rights groups challenging the Trump administration’s plan to include a citizenship question—for the first time in 70 years—to the 2020 census as an unconstitutional hindrance to the constitutional mandate to accurately count the U.S. population. The significance of this case cannot be overstated. Census data is crucial for allocating billions of dollars in federal funding annually, as well as apportioning congressional seats, determining states’ Electoral College votes, developing electoral lines at all levels of government, and addressing barriers to equal opportunity in voting rights, education, housing, and

¹² Brief in Opposition for Respondents-Intervenors, *Shelby County v. Holder* 570 U.S. 529 (2013) <https://www.brennancenter.org/sites/default/files/legal-work/2013.1.25%20Brief%20of%20Respondent-Intervenors%20Earl%20Cunningham.pdf>.

¹³ Brief for Respondent-Intervenor Bobby Lee Harris, *Shelby County v. Holder* 570 U.S. 529 (2013) <http://blackfreedom.proquest.com/wp-content/uploads/2020/09/shelby13.pdf>.

¹⁴ Dale Ho, Questionnaire for Judicial Nominees, at 2.

¹⁵ Dale Ho, Questionnaire for Judicial Nominees, at 31.

¹⁶ Mr. Ho has tried cases to verdict in the Southern District of New York, the District of Kansas, the Eastern District of Missouri, the Middle District of North Carolina, and Eastern District of Wisconsin. Dale Ho, *Questionnaire for Judicial Nominees*, at 29-30.

criminal justice. As such, an accurate census is essential to the maintenance of our democracy. Mr. Ho’s well-reasoned and powerful advocacy before the Supreme Court in *Department of Commerce v. New York*¹⁷ was critical in demonstrating to the Court that the Trump administration’s stated reason for adding a citizenship question was contrived and thus the potential for incredible damage to our democracy was averted.

During his time at the ACLU, Mr. Ho remained a critical partner of LDF in the efforts to secure equality and full participation in democracy. The ACLU and Mr. Ho—along with the ACLU of Florida, and the Brennan Center for Justice—served as co-counsel with LDF in the consolidated cases *Jones v. DeSantis*,¹⁸ concerning Senate Bill 7066 (S.B. 7066) which was signed into law by Florida Governor Ron DeSantis in 2019. This law made voting rights for hundreds of thousands of people with past felony convictions contingent on payment of all legal financial obligations.¹⁹ It directly undermined Florida voters’ overwhelming passage of the Voting Restoration Amendment 4 in 2018,²⁰ which restored voting rights to over a million people with past felony convictions. In May 2020, a district court struck down the S.B. 7066 as unconstitutional.²¹ That decision was appealed to the full Eleventh Circuit Court of Appeals which subsequently overruled the district court’s findings blocking hundreds of thousands of Floridians from registering to vote in time for the November election.

Conclusion

Mr. Ho has dedicated the entirety of his career to the protection of our democracy. He has been involved in some of the most significant litigation in the last decade to protect voting rights and democracy, working to ensure that secure and accessible elections are a reality for citizens of this country, regardless of race, location, or political affiliation. He is a respected legal advocate, academic, and expert committed to the rule of law. The breadth of his litigation and academic experience demonstrates an ability to understand and fairly adjudicate the various complex

¹⁷ No. 18–966, 588 U.S. ____ (2019).

¹⁸ *Jones v. Governor of Florida*, No. 20-12003 (11th Cir. 2020).

¹⁹ NAACP Legal Defense Fund, *Federal Appeals Court Affirms Wealth-Based Barriers to Voting*, (Sep. 11, 2020) <https://www.naacpldf.org/press-release/federal-appeals-court-affirms-wealth-based-barriers-to-voting/>.

²⁰ Patricia Mazzei and Michael Wines, *How Republicans Undermined Ex-Felon Voting Rights in Florida*, New York Times (Published Sept. 17, 2020; Updated April 30, 2021). <https://www.nytimes.com/2020/09/17/us/florida-felons-voting.html>.

²¹ NAACP Legal Defense Fund, *Overview of the Jones v. DeSantis May 24, 2020 District Court Post-Trial Decision*, (May 29, 2020) https://www.naacpldf.org/wp-content/uploads/2020-05-29_Jones-v-DeSantis-Decision-Overview-final.pdf.



issues which will come before him. This is precisely the expertise needed to serve as a judge on a federal District Court.

Throughout his career, Mr. Ho has conducted himself with the utmost professionalism and integrity. His work is exemplary of the importance of impartial, unwavering commitment to justice, fairness, and the rule of law. We are confident that he will bring the same profound commitment to democracy to the district court that we witnessed during his time at LDF and throughout his esteemed career.

Dale Ho is extremely qualified to serve on the district court for the Southern District of New York, and we urge the Senate Judiciary Committee to advance his nomination without delay.

Sincerely,

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