



April 21, 2014

Hon. Harry Reid
Majority Leader, United States Senate
522 Hart Senate Office Bldg
Washington, DC 20510

Hon. Mitch McConnell
Minority Leader, United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader Reid and Minority Leader McConnell:

We are writing on behalf of Constitutional Accountability Center, a public interest law firm, think tank and action center dedicated to fulfilling the progressive promise of the Constitution's text and history, to urge that Michelle Friedland be confirmed to the United States Court of Appeals for the Ninth Circuit.

Ms. Friedland is a graduate of Stanford University and Stanford Law School, and was a Fulbright Scholar at Oxford University. She is a smart, experienced and highly-regarded litigator who is extremely well-qualified to serve as a federal appellate judge. After law school, Ms. Friedland held two prestigious clerkships, first for Judge David Tatel of the United States Court of Appeals for the District of Columbia Circuit, and then for Justice Sandra Day O'Connor. After her clerkships, Ms. Friedland returned to Stanford Law School as a lecturer, and then in 2004 joined the law firm of Munger, Tolles & Olson, LLP, where she is a partner specializing in trial and appellate litigation. Justice O'Connor herself attended Ms. Friedland's confirmation hearing before the Judiciary Committee, as strong an endorsement of Ms. Friedland's nomination as one could want. The American Bar Association rated Ms. Friedland "unanimously well-qualified" to serve as a federal appellate judge, its highest rating. Ms. Friedland was reported out of Committee by a bipartisan vote of 14-3.

Ms. Friedland's confirmation has the strong, bipartisan support of colleagues in private practice and academia, as well as in corporate America. Those writing to the Senate in support of Ms. Friedland's confirmation include a group of her partners at Munger, Tolles who describe themselves as "long-time Republicans" and "members or supporters of the Federalist Society."¹ These attorneys state that Ms. Friedland "has distinguished herself as a brilliant and dedicated lawyer" with the "skills, judgment, temperament, and integrity to be an outstanding appellate judge," and are confident that she would be "an impartial and fair-minded Judge, who would approach cases with an open mind and who would faithfully apply binding precedent. . . Michelle is not a lawyer who tries to read cases to stand for what they do not hold, nor does she try to avoid or distort applicable precedent to support a desired result."² Similarly, a group of General Counsels of "a wide variety of American companies," including Google, Facebook, and Transocean Offshore Deepwater Drilling, have written in support of Ms.

¹ Letter from Robert B. Knauss, *et al.*, to Hon. Patrick Leahy and Hon. Charles Grassley.

² *Id.*

Friedland's confirmation, noting, among things, that she would bring a "careful, unbiased approach" to judging.³

Judiciary Committee Ranking Member Charles Grassley voted to report Ms. Friedland's nomination favorably out of Committee, but stated that he had some "concerns" about her "history of advocacy." Such "concerns" are not only belied by the recommendations of those who know Ms. Friedland best, but they are also misguided. Lawyers are ethically obligated to represent their clients zealously, and it would be improper to attribute to the lawyer herself positions taken as a lawyer on behalf of a client. Moreover, at her hearing, Ms. Friedland made it perfectly clear that she understands the very different roles and obligations of an advocate and a judge, testifying that:

The role of a judge is very different from that of an advocate. As a judge, the question is always what is the interpretation of text and precedent that is most faithful to both, and approaching the question from a neutral perspective. As an advocate, my role as a lawyer has always been to advocate for my clients, and that has meant arguing for the interpretation of text and precedent that best furthers my clients' positions. That's a very different perspective than the neutral perspective as a judge.

Ms. Friedland also explained that a judge's personal beliefs about an issue, if any, "should play no role whatsoever in judicial decision-making," and testified that, "If I have the honor to be confirmed, my decisions would be based on text and precedent as applied to the facts of every case at hand. Any views that I might have on an issue would not be a factor in my decision-making."

The seat to which Ms. Friedland has been nominated has been declared a "judicial emergency" by the U.S. Courts, making her prompt confirmation even more important. Ms. Friedland clearly has the qualifications, experience, intellect and temperament to serve with great distinction on the Ninth Circuit. We urge every Senator to support her confirmation.

Respectfully,



Douglas T. Kendall
President



Judith E. Schaeffer
Vice President

cc: All Senators

³ Letter of Laura J. Schumacher, *et al.*, to Hon. Patrick Leahy and Hon. Chuck Grassley (Sept. 23, 2013).