Congress of the United States
Washington, DC 20515

November 10, 2021

The Honorable John G. Roberts, Jr.
Chief Justice
Supreme Court of the United States
1 First Street NE
Washington, D.C. 20543

The Honorable Charles Wilson
Circuit Judge
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street NW
Atlanta, Georgia 30303

Dear Chief Justice Roberts and Judge Wilson:

We write with grave concern regarding the news[1] that Judge William Pryor, Chief Judge of the Eleventh Circuit Court of Appeals, and Judge Corey Maze of the Northern District of Alabama have hired an individual with a history of nakedly racist and hateful conduct as a future law clerk in their chambers.[2] Placing an individual with this history in such close proximity to judicial decision-making threatens to seriously undermine the public's faith in the federal judiciary. No litigant or lawyer who is part of a racial, national, or religious minority can trust that they will receive equal justice before these judges. No one bringing a case involving claims of discrimination or civil rights violations can assume that these judges' rulings will be free from invidious bias. This is simply unacceptable. We urge you, as the presiding member of the Judicial Conference of the United States and the most senior active member of the Eleventh

[1] *George Mason University Antonin Scalia Law School Judicial Clerkships*, GEORGE MASON UNIVERSITY, ANTONIN SCALIA SCHOOL OF LAW (Aug. 17, 2021), https://www.law.gmu.edu/assets/files/career/clerkship_list_by_judge_17August2021.pdf; *see* Kathryn Rubino, *Law School Student Famous for Saying 'I HATE BLACK PEOPLE' Now Has Prestigious Federal Clerkship*, ABOVE THE LAW (Oct. 5, 2021, 2:45 p.m.), https://abovethelaw.com/2021/10/law-school-student-famous-for-saying-i-hate-black-people-now-has-prestigious-federal-clerkship/?rf=1; *see also* Kathryn Rubino, *The Other Federal Judge Advancing The 'I HATE BLACK PEOPLE' Law Student's Career*, ABOVE THE LAW (Oct. 12, 2021, 11:15 a.m.), https://abovethelaw.com/2021/10/the-other-federal-judge-advancing-the-i-hate-black-people-law-students-career/?rf=1.

[2] She will clerk for Judge Maze in 2022 and for Chief Judge Pryor in 2023.

Circuit, to address and rectify the impacts of these recent hiring decisions and assure the public that racism and bigotry have no place in the federal judiciary.[3]

The facts surrounding this hire's past conduct are alarming. During the period that she worked as national field director for Turning Point USA[4]:

- She sent a text message to a colleague stating "I HATE BLACK PEOPLE. Like f[---] them all . . . I hate blacks. End of story."[5]

- She would "exchange racist remarks regularly" with her coworkers.[6]

- She sent a photo to at least two coworkers of a man with brown skin with the caption, "[j]ust thinking about ways to do another 9/11."[7]

- She and her coworkers "would often send similar anti-Muslim messages that included remarks like 'a bacon a day keeps the Islams away' and 'Ramadan bombathon,' as well as tak[e] pictures of their heads wrapped in towels to mock head coverings commonly worn by Arabs, according to sources who received the messages."[8]

- She fired her organization's only Black employee on Martin Luther King Day. That employee later stated that Turning Point USA was a "racist" workplace and that she felt "very uncomfortable working there because I was black."[9]

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[3] We write to Judge Wilson in his capacity to respond to complaints related to Chief Judge Pryor pursuant to the Judicial Conduct and Disability Act as the next most senior active judge on the Eleventh Circuit. 28 U.S.C. § 351(c); *see also Guide to Judiciary Policy*, Vol. 2E, Ch. 3, § 320 ("Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most senior active circuit judge.")

[4] Turning Point USA has a long history of close connections to far-right extremists and the various forms of virulent racism, antisemitism, xenophobia, religious intolerance, bigotry, and advocacy of violence (including sexual violence) those extremists promote. *See, e.g.,* Brendan Joel Kelley, *Turning Point USA's Blooming Romance with the Alt-Right*, S. POVERTY L. CTR. (Feb. 16, 2018), https://www.splcenter.org/hatewatch/2018/02/16/turning-point-usas-blooming-romance-alt-right. Turning Point USA staff have voiced support for Adolf Hitler; referred to Black people as "slaves" and "n[-----]s;" promoted anti-Mormon, antisemitic, and antimuslim stereotypes; and appeared at events with white supremacists and other extremists. *See e.g.*, *Turning Point USA*, ANTI-DEFAMATION LEAGUE, https://www.adl.org/resources/backgrounders/turning-point-usa (last visited Oct. 27, 2021).

[5] Jane Mayer, *A Conservative Nonprofit That Seeks To Transform College Campuses Faces Allegations Of Racial Bias And Illegal Campaign Activity*, NEW YORKER (Dec. 21, 2017), https://www.newyorker.com/news/news-desk/a-conservative-nonprofit-that-seeks-to-transform-college-campuses-faces-allegations-of-racial-bias-and-illegal-campaign-activity.

[6] *See* Caleb Ecarma, *EXCLUSIVE: Clarence Thomas's Wife Hired Ex-TPUSA Staffer Known For Saying 'I Hate Blacks'*, MEDIAITE (Sept. 6, 2018, 12:57 p.m.), https://www.mediaite.com/online/exclusive-clarence-thomas-wife-hired-ex-tpusa-staffer-known-for-saying-i-hate-blacks/.

[7] *Id.*

[8] *Id.*

[9] Jane Mayer, *supra* note 5.

When asked by a reporter about these statements and actions as they were first reported in 2017, this individual made no apology for her history of racist and bigoted conduct. Instead, she claimed that she "had no recollection" of what she had done.[10]

While the above actions are worrying in the extreme, we want to make clear that the focus of this letter is not the individual who was hired but, rather, the members of the federal judiciary who chose to hire her. This past conduct was clearly publicly available by the time of these judges' hiring decisions. If the judges were not aware of their law clerk's widely reported record, their negligent hiring practices present their own set of problems with the judiciary and the judges' abilities to discharge their administrative responsibilities competently. In any event, to our knowledge, these judges have taken no remedial action since these facts were widely reported yet again during recent weeks.

What makes Chief Judge Pryor's and Judge Maze's decisions so singularly problematic is the proximity law clerks have to judicial decision-making. Law clerks are unlike any other judicial employee due to the "confidential and close nature of the relationship between the clerk and the judge."[11] They are "privy to the judge's thoughts in a way that neither parties to the lawsuit nor his most intimate family members may be."[12] Law clerks are frequently responsible for writing the questions a judge will ask at oral argument and even "writing a first draft of the [judge's] opinion in a case."[13] As one court has explained:

> In contrast to *court clerks*, who frequently perform ministerial functions, a *law clerk* generally performs discretionary acts of a judicial nature. Indeed, a law clerk is probably the one participant in the judicial process whose duties and responsibilities are most intimately connected with the judge's own exercise of the judicial function.[14]

The relationship between a judge and a law clerk is so close that they are even treated "as one" for purposes of judicial immunity.[15]

Accordingly, as the facts now stand, these two federal judges hired an individual with a widely reported pattern of racist and bigoted conduct. In the eyes of the public, she will be one of these judges' closest advisors with special access to the judicial decision-making process. In the eyes of the law, her work will be treated "as one" with their own. That these judges hired her therefore creates both the appearance of and risk of actual bias in their chambers and their decisions as well as other potential problems, including:

- Whether these judges' hiring decisions warrant their recusal from specific matters likely to come before them. The specters of bias—both actual and apparent—are unmistakable. To put it mildly, it would be reasonable to question these judges' impartiality in cases

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[10] *Id.*
[11] *Guide to Judiciary Policy*, Vol. 2B, Ch. 2, § 220, Committee on Codes of Conduct Advisory Opinions, No. 51.
[12] Hall v. Small Bus. Admin., 695 F.2d 175, 179 (5th Cir. 1983).
[13] Mark Miller, *Law Clerks and Their Influence at the US Supreme Court: Comments on Recent Works by Peppers and Ward*, 39 L. & SOC. INQUIRY 741, 744 (2014).
[14] Oliva v. Heller, 839 F.2d 37, 40 (2d Cir. 1988) (emphasis added).
[15] *Id.*

where race, religion, or national origin plays a role, which is the statutory standard for disqualification.[16]

- Whether the judges' conduct also implicates the judicial misconduct statute as conduct that is prejudicial to the effective and expeditious administration of justice.[17] If Judges Pryor and Maze were aware of their law clerk's record when they hired her, their hiring decisions could be taken as "knowing approval of invidious discrimination," which violates the Code of Conduct for United States Judges because it "gives the appearance of impropriety" and "diminishes public confidence in the integrity and impartiality of the judiciary."[18] To the extent the judges were not aware of these statements and conduct, it calls into question their hiring practices, as discussed above.

- Whether the judges' hiring decisions could have a deleterious effect on the practice of law in the Northern District of Alabama and the Eleventh Circuit. The fear of invidious bias could motivate parties to accept less favorable settlements to avoid coming before these judges. Law firms might be reluctant to staff minority lawyers on cases before these judges and might be less receptive to taking cases with minority clients or claims involving, for example, racial or religious discrimination.

- Whether the judges' hiring decisions—and the judiciary's failure to address them—send a chilling message to judicial-branch employees as well as their fellow judges. We note that judicial-branch employees are not protected by the foundational civil rights statutes, such as the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, national origin, and religion, that apply to most Americans, including most federal employees. In light of this shameful incident, we hope that that the Judicial Conference will reconsider its decades-long opposition to extending these basic antidiscrimination laws to its own employees.

To date, the news of these judges' hiring decisions has been met with uniform silence by the judges themselves, the courts on which they sit, and the Judicial Conference.[19] The American public and the litigants and attorneys with cases before Chief Judge Pryor and Judge Maze are thus left wondering how the judiciary will address specific problems like those outlined above and are left with the impression that the judiciary is comfortable turning a blind eye to the hiring of an individual with a pattern of making racist and discriminatory remarks in precisely the forum—the federal courts—where there is supposed to be justice for the victims of such discrimination.

We ask that you promptly investigate this matter and take whatever action by the United States Judicial Conference or the Eleventh Circuit Judicial Council is necessary to preserve the

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[16] *See* 28 U.S.C. § 455(a) ("Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.").
[17] 28 U.S.C. § 351(a).
[18] *Guide to Judiciary Policy*, Vol. 2A, Ch. 2, Code of Conduct for United States Judges, Cannon 2C.
[19] Kyle Whitmire, *What have you done, Bill Pryor?*, AL.COM (Oct. 8, 2021, 10:47 a.m.), https://www.al.com/news/2021/10/whitmire-what-have-you-done-bill-pryor.html ("Pryor needs to explain . . . [f]or now, his silence will have to speak for him.").

public and litigants' trust in the integrity and impartiality of the federal judiciary, protect judicial branch employees, and prevent invidious bias from further tainting the business of the Eleventh Circuit and the Northern District of Alabama. We request a briefing on the results of your investigation no later than December 1, 2021.

Thank you for addressing this matter with the urgency and concern it demands.

Sincerely,

Henry C. "Hank" Johnson, Jr.
Chair
Subcommittee on Courts,
Intellectual Property, and the Internet
House Committee on the Judiciary

Jerrold Nadler
Chair
House Committee on the Judiciary

Steve Cohen
Chair
Subcommittee on the Constitution, Civil
Rights, and Civil Liberties
House Committee on the Judiciary

Sheila Jackson Lee
Chair
Subcommittee on Crime, Terrorism, and
Homeland Security
House Committee on the Judiciary

Gerald E. Connolly
Chair
Subcommittee on Government Operations
House Committee on Oversight and Reform

David N. Cicilline
Chair
Subcommittee on Antitrust, Commercial,
and Administrative Law
House Committee on the Judiciary

Zoe Lofgren
Chair
Subcommittee on Immigration and Citizenship
House Committee on the Judiciary