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March 22, 2023

The Honorable Chuck Schumer
Majority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

Dear Majority Leader Schumer and Minority Leader McConnell:

On behalf of the State of Alabama and other concerned States, we write to warn you of the dishonest and divisive track record of Nancy Abudu, who President Biden has nominated to be a United States Circuit Judge for the Eleventh Circuit Court of Appeals. We are familiar with Ms. Abudu's work and her willingness to demonize those with whom she disagrees, and we know well the importance of the seat on the Eleventh Circuit that she would fill. Ms. Abudu has proven herself unfit for that role. She has compared her fellow Americans to Jim-Crow-era racists. She has aligned herself with self-proclaimed "radical movement legal activists" who view "policing" as "the true threat to our collective safety." And she has proclaimed that our criminal justice system is "practically the same system as during slavery." These spurious and outrageous statements vividly demonstrate that she lacks the judgment, fair-mindedness, and integrity required of a federal judge. Her nomination should be rejected.

As you know, Ms. Abudu has been the Director of Strategic Litigation for the Alabama-based Southern Poverty Law Center since 2019. The SPLC is infamous for leveling unfounded charges of "hate" against political opponents.¹

¹ See, e.g., Greg Price, Southern Poverty Law Center Settles Lawsuit After Falsely Labeling 'Extremist' Organization, *Newsweek* (June 18, 2018), <https://www.newsweek.com/splc-nawaz-million-apologizes-981879>; SPLC, *Hate Goes to Washington*, (Feb. 20, 2019), <https://www.splcenter.org/fighting-hate/intelligence-report/2019/hate-goes-washington> (SPLC branding Senators Kevin Kramer, Marsha Blackburn, Josh Hawley, and Ted Cruz as people "who traffic in hate and extremism").

Since becoming a leader in that organization, Ms. Abudu has engaged in those same deplorable tactics by disparaging those in her way, including each of the three States within the jurisdiction of the Eleventh Circuit Court of Appeals. For example, she and her team submitted² a “Report” to Congress about Alabama’s supposed “unyielding record of racial discrimination in voting.”³ The Alabama Attorney General’s Office set the record straight in a follow-up report that went claim-by-claim, documenting the SPLC’s many misrepresentations.⁴ Each misrepresentation served the overarching theme of Ms. Abudu’s report—that any disagreement over policy is proof that her political opponents are evil. Indeed, according to Ms. Abudu, things in Alabama are the same or worse today than they were in 1965. As she tells it, Alabama’s goal—*today*—is to “establish white supremacy in this State.”⁵ While some might see room for good faith debate, for example, about the merits of Alabama’s voter identification law (which was upheld by the Eleventh Circuit), Ms. Abudu sees only a “relentless commitment to finding new ways to keep Black Alabamians from making their voices heard,”⁶ all as part of a desperate attempt “to perpetuate majority white control.”⁷

These assertions are as offensive as they are baseless, and they are disqualifying for an aspiring federal judge. For decades, black and white voter registration and turnout in Alabama has been at or near parity.⁸ In 2018, Alabama had the second highest black voter registration rate in the entire country.⁹ Though Ms. Abudu is surely aware of these facts, she prefers to use her powerful position

² Nancy Abudu, *Defending Democracy: SPLC Calls on Senate to Swiftly Pass John R. Lewis Voting Rights Advancement Act*, Southern Poverty Law Center (Aug. 27, 2021); *see also* Nancy Abudu, *Responses to Written Questions from Sen. Dick Durbin 1* (May 4, 2022) (Ms. Abudu stating that she “supervised the publication of reports related to the experiences that voters in the South faced prior to, during, and soon after the 2020 elections.”); Nancy Abudu, *Questionnaire for Judicial Nominees* at 8 <https://www.judiciary.senate.gov/imo/media/doc/Abudu%20SJQ%20Public%20Final.pdf> (listing *Selma, Shelby County & Beyond*, So. Poverty L. Ctr. (Aug. 16, 2021) as a report Ms. Abudu prepared or contributed in the preparation of).

³ Southern Poverty Law Center, *Selma, Shelby County, & Beyond: Alabama’s Unyielding Record of Racial Discrimination in Voting, the Unwavering Alabamians Who Fight Back, & the Critical Need to Restore the Voting Rights Act*, Report to the H. Comm. on the Judiciary (Aug. 16, 2021) (“SPLC Report”).

⁴ Office of the Alabama Attorney General, *“Things Have Changed in the South”: Alabama’s Response to the Misleading and Misguided Attempt to Reimpose Preclearance Over State Election Laws*, Report to S. Comm. On the Judiciary (Sep. 22, 2021) (“AGO Report”), <https://bit.ly/3TqhvKf>.

⁵ SPLC Report at 1.

⁶ *Id.* at 8.

⁷ *Id.* at 1.

⁸ *See* AGO Report at 7-8; *see also* Brief of *Amici Curiae* Professors at 3, *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254 (2015) (No. 13-1138), available at 2014 WL 4180917 (Census Bureau “data demonstrate that, over the course of the last three decades, African-American voter registration and turnout in [Alabama] has not only increased, it has surpassed white voter participation.”).

⁹ *See* U.S. Census Bureau, Voting and Registration in the Election of November 2018, Table 4b: Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2018, <https://www.census.gov/topics/public-sector/voting/data/tables.html>. The comparisons are drawn from looking at the “percent registered” of total population for the “black alone” number for each State.

at SPLC to sow division and erode trust among Americans—declaring that “Jim Crow is still alive and well.”¹⁰ But as the Supreme Court has recognized (and as any fair-minded person knows): “Things have changed in the South.”¹¹ Ms. Abudu’s contrary contention doesn’t show simple professional disagreement. It shows, at best, insuperable bias. It more likely shows dishonesty. And it certainly shows unfitness for judicial office.

Ms. Abudu has a similar track record of misstatements when it comes to Florida. She baselessly accused Governor DeSantis of “digging in his heels to ensure poor people in his state are blocked from voting” and suggested that Florida is engaged in a “war to strip poor and low-income people of all political power.”¹²

She has also demonstrated marked hostility to the State of Georgia and especially its law enforcement officers. Without evidence, she has asserted that Georgia has a “culture of law enforcement that still targets Black and Brown people.”¹³ She has derided the entire State, claiming that “Georgia continues to be a bad actor,” and that the state legislature “is committed to keeping us in the past and that is scary.”¹⁴ How could Ms. Abudu impartially adjudicate the many Eleventh Circuit cases involving Georgia, its statutes, its citizens, and especially its law enforcement officers, when she already believes that the State is a “bad actor” with a “culture of law enforcement” that “targets Black and Brown people”?

It’s also important to recognize that Ms. Abudu attempted to leverage misrepresentations and invective to affect this Chamber’s vote on legislation. She derided the supposed “anti-voter legislatures ... in the Deep South” as justification for a federal overhaul of State elections.¹⁵ She even insisted on “abolishing the filibuster” to accomplish her goal, referring to it as “a legislative tool popular with pro-Jim Crow senators of the past.”¹⁶ Fortunately, the Senate saw through this divisive narrative. But if the Senate confirms Ms. Abudu to a seat on the Eleventh Circuit Court of Appeals, she will be empowered to press her radical agenda from a position of power checked only by the occasional review of the United States Supreme Court. This Chamber must not reward her behavior with a lifetime appointment to a seat where she would decide appeals in important cases involving the very States she says are irredeemably trapped in 1965.

The SPLC’s unethical conduct goes beyond Ms. Abudu’s misrepresentations to this body. Several SPLC attorneys are currently being investigated by a three-judge federal district court for attempts to circumvent court rules by filing and then re-filing litigation against the State of Alabama.¹⁷ Ms. Abudu protests that

¹⁰ Brad Bennett, *55 Years After ‘Bloody Sunday,’ Voting Rights Are Still Under Attack*, SPLC (Feb. 29, 2020), <https://www.splcenter.org/news/2020/02/29/weekend-read-55-years-after-bloody-sunday-voting-rights-are-still-under-attack> (quoting Nancy Abudu).

¹¹ *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 202 (2009).

¹² *Responses to Written Questions from Sen. Ted Cruz* 17, <https://bit.ly/40svX6y>.

¹³ *Responses to Written Questions from Sen. Chuck Grassley* 5, <https://bit.ly/40svX6y>

¹⁴ *Id.*

¹⁵ Abudu, *Defending Democracy*, *supra* n.2.

¹⁶ *Id.*

¹⁷ *In re Vague*, No. 2:22-mc-3977-WKW (M.D. Ala. May 10, 2022).

she “was not involved” in the conduct under investigation,¹⁸ but that’s hard to square with her job *directing* the SPLC’s strategic litigation, including her self-described role of “the review and approval of litigation requests.”¹⁹ Even if it’s true that Ms. Abudu wasn’t involved in the decision to try to circumvent federal court rules, this conduct occurred on her watch, which raises further questions about her judgment.

More recently, another SPLC attorney—presumably someone under Ms. Abudu’s supervision in her role as Director of Strategic Litigation—was arrested and charged with domestic terrorism in relation to violent “protests” related to police facilities in Atlanta.²⁰ The arrested attorney worked in the same office that Ms. Abudu lists as her work address.²¹ In response to the arrest, the SPLC tacitly approved its employee’s alleged terrorism, choosing instead to put out a joint statement with the radical National Lawyers Guild criticizing the supposed “heavy-handed law enforcement intervention against protesters.”²² It’s not clear whether Ms. Abudu was involved with that attorney or the SPLC’s response to his arrest, but the SPLC’s response shows the culture of its office and its attitude toward the rule of law and law enforcement.

Ms. Abudu’s status as a current member and past leader of the National Lawyers Guild is similarly troubling.²³ The NLG is a self-described group of “radical movement legal activists.”²⁴ And in response to violent protests against the Atlanta police facilities mentioned above, NLG declared that “policing is the true threat to our collective safety.”²⁵ Ms. Abudu’s longstanding and ongoing association with this radical, anti-police group is yet another ground for rejecting her nomination.

It would be hard to overstate the importance of federal circuit courts of appeals. Nearly every federal appeal ends at the circuit court. Attorneys in our offices regularly practice before these courts, and we have great respect for these judges who dedicate their lives to the rule of law and to ensuring that all litigants before them are fairly heard.

Ms. Abudu’s dishonest and divisive record shows that she would not be such a judge. She is an activist. She has repeatedly used misrepresentations and

¹⁸ *Responses to Written Questions from Sen. Mike Lee* 8.

¹⁹ *Responses to Written Questions from Sen. Dick Durbin* 2.

²⁰ Emma Colton, *Southern Poverty Law Center lawyer arrested, charged with domestic terrorism amid Atlanta ‘Cop City’ attack*, Fox News (Mar. 6, 2023) <https://www.foxnews.com/politics/southern-poverty-law-center-lawyer-reportedly-arrested-domestic-terrorism-atlanta-cop-city-attack>.

²¹ *Id.*; Nancy Abudu, *Questionnaire for Judicial Nominees* <https://www.judiciary.senate.gov/imo/media/doc/Abudu%20SJQ%20Public%20Final.pdf>.

²² *NLG and SPLC Statements on Arrest of Legal Observer*, Southern Poverty Law Center (March 6, 2023) <https://www.splcenter.org/presscenter/nlg-and-splc-statements-arrest-legal-observer>.

²³ Nancy Abudu, *Questionnaire for Judicial Nominees* at 5, <https://www.judiciary.senate.gov/imo/media/doc/Abudu%20SJQ%20Public%20Final.pdf>

²⁴ National Lawyers Guild, *NLG Statement in Solidarity with Atlanta Forest Defenders* (Jan. 25, 2023) <https://www.nlg.org/nlg-statement-in-solidarity-with-atlanta-forest-defenders/>.

²⁵ *Id.*

hateful rhetoric to advance her political goals. And she has thus shown herself unfit for this lifetime appointment. Because our judiciary needs jurists who will uphold the rule of law, not “radical movement legal activists” in robes, the Senate should reject Ms. Abudu’s nomination.

Sincerely,



Steve Marshall
Alabama Attorney General



Ashley Moody
Florida Attorney General



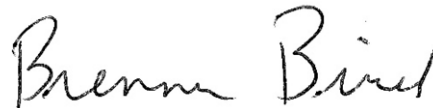
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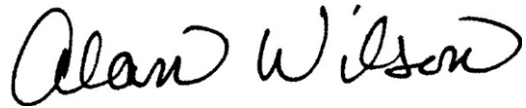
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