

June 2, 2025

The Honorable Charles Grassley, Chairman
Committee on the Judiciary, United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Richard Durbin, Ranking Member
Committee on the Judiciary, United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley and Ranking Member Durbin,

We, the undersigned administrative-law practitioners, write to express our strong support for the confirmation of Whitney Hermandorfer to serve as a Judge on the United States Court of Appeals for the Sixth Circuit.

In addition to her stellar credentials, temperament, and judgment, Ms. Hermandorfer's extensive experience in the realm of administrative law will suit her well for the position of federal appellate judge.

Even when litigated in district court, cases involving challenges to agency actions and regulations turn almost exclusively on the interpretation of legal texts (*e.g.*, relevant statutes and regulations) and a limited administrative record reviewed deferentially. Trials and evidentiary hearings are extraordinarily rare. That mimics the task of an appellate judge: determine difficult questions of law *de novo* and deferentially review a limited, pre-existing record.

Courts have long recognized that administrative-law cases are, at heart, appellate in nature. "[W]hen a party seeks review of agency action under the [Administrative Procedure Act], the district judge sits as an appellate tribunal. The 'entire case' on review is a question of law." *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1083 (D.C. Cir. 2001).

Ms. Hermandorfer has deep experience in this field, working on cutting-edge issues of administrative law that involve not just technical and complex statutes but also novel uses of agency authority. Taking just a few examples from her years of work: she led teams that secured injunctions against a Department of Education rule that was inconsistent with Title IX and against a Department of Health and Human Services rule that was contrary to the Affordable Care Act. She has also spearheaded

litigation challenging the Department of Health and Human Services' discontinuation of grants to Tennessee under Title X.

These sorts of cases provide an excellent background for a federal appellate judge, and expertise in this area is especially pertinent because executive agencies now “wield[] vast power and touch[] almost every aspect of daily life.” *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010). The Supreme Court’s docket in recent years reveals numerous matters of intense public interest that arose through administrative-law challenges, ranging from mass loan forgiveness in *Biden v. Nebraska*, to OSHA’s vaccine mandate in *NFIB v. Department of Labor*.

If confirmed, Ms. Hermandorfer will bring her valuable administrative-law experience to the Sixth Circuit, where she will be a thought leader for years to come. We respectfully urge the Senate Judiciary Committee and the full Senate to move expeditiously to process and confirm her nomination.

Sincerely,

R. Trent McCotter

Eileen J. O’Connor

William R. Levi

John V. Coghlan

Jeffrey S. Beelaert

Daniel Z. Epstein

Aram Gavoort

Douglas Rathbun

James Burnham

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