



May 23, 2022

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way enthusiastically supports the nomination of Judge Sarah Merriam to the Second Circuit Court of Appeals. She has a broad range of experience – in private practice, as a public defender, as a federal magistrate judge, and as a federal district court judge – and a demonstrated commitment to ensuring that no one is deprived of the protections guaranteed by the law. That experience will greatly enrich the Second Circuit.

Merriam graduated with honors from Georgetown University in 1993 and from Yale Law School in 2000. She earned two prestigious clerkships: first in Connecticut for federal district court Judge Alvin Thompson, and then in New York for Second Circuit Judge Thomas Meskill. Returning to Connecticut, she worked as an associate at Cowdery, Ecker & Murphy, a small firm where she handled a variety of federal civil and criminal matters.

During the early years of her career, she told her colleagues that she wanted to be a federal public defender. A position finally became available in 2007, and she transitioned to public service for indigent people accused of crimes. She spent eight years as an assistant federal defender in New Haven.

Public defenders play a vital and underappreciated role in protecting freedom, not only of poor people accused of crime but also of all people in the United States. We have given our government the power to take people away from their homes, imprison them, and even execute them. That power is a weighty one and potentially subject to abuse. So, if our government is going to use that power against someone, it must do so in a way that complies with the safeguards set forth in the Bill of Rights. Those safeguards include the right to counsel in criminal cases even when the accused cannot afford a lawyer. That basic tenet of the United States Constitution is vital to protecting all of us. Merriam's work has given her insight into how the system works in real life and can fail to serve justice. That insight is of critical importance to a federal circuit considering appeals of criminal convictions.

Merriam's work as a defender – her tenacity, her brilliance, her principles – earned her the respect of her peers throughout the Connecticut legal community. In 2015, the state's district court judges invited her to become a federal magistrate judge, selecting her from more than 75 applicants. Her selection was praised by a major courtroom adversary, Assistant U.S. Attorney Christopher Mattei:

[W]hen a criminal defendant comes before her, who has just been arrested, whose family doesn't know what's going to happen, his assets have been seized, his liberty is at risk, he will be able to look up at a bench and see a judge who will communicate in every way that she cares about what's happening to him. She cares about his case. Whether it goes well for him or badly for him, he will know that somebody took it as seriously as he's taking it because she will see the humanity in him.ⁱ

In 2021, after six years as a federal magistrate judge, Merriam was nominated to become a federal district judge by President Biden. A group of 26 former prosecutors wrote to the Judiciary Committee to support her nomination, recalling the respect she earned from them during her time as a federal defender:

Those of us who prosecuted Judge Merriam's clients found her to be a capable and collegial adversary. Always protective of her clients' interests, Judge Merriam also demonstrated a respect for the Government's prerogatives and an appreciation for the challenges faced by law enforcement. She was a practical and credible colleague.ⁱⁱ

The district court judges she had already spent years working with as a magistrate welcomed her elevation to their ranks. Chief Judge Stefan Underhill released a statement after swearing her into office:

Sarah Merriam is a remarkably talented judge. The district judges have worked closely with Judge Merriam over the last six-plus years and are delighted to welcome her to the district court bench. Her commitment to the administration of justice and the citizens of Connecticut is unwavering. We highly respect the experience, intellect, and work ethic she brings to the bench every day.ⁱⁱⁱ

In her years as a magistrate and district court judge, Merriam has overseen criminal and civil cases addressing the span of legal issues that come before the Second Circuit. For instance, she heard Wayne World's lawsuit against the Connecticut Department of Corrections for deliberate indifference to his health needs in violation of the Eighth Amendment. World alleged that prison officials had denied him a needed dermatological consultation for two years and denied him a needed biopsy, resulting in his aggressive lymphoma being misdiagnosed as psoriasis. After several in-person conferences, including one where Judge Merriam visited World in the hospital, the parties reached a \$1.3 million settlement, and officials granted World compassionate release.^{iv}

One case that proceeded to bench trial stemmed from state trooper Joshua Chivers' arrest of driver Shirley Goff and her passenger Gregory Gibson. After Goff failed several sobriety tests, she resisted the officer's efforts to place her under arrest. Based on the video recording of the arrest as well as the parties' testimony, Judge Merriam ruled that Goff had not been subjected to excessive force during the arrest. In contrast, she ruled that the state trooper had lacked probable cause to arrest the passenger at all, since his only "crime" was protesting how the trooper was

treating the driver and therefore distracting the officer. She ruled further that the officer did not have qualified immunity in the case, because a reasonable law enforcement official would not think they had probable cause to arrest someone just for distracting them during an arrest.^v

Judge Sarah Merriam is a highly qualified jurist with a demonstrated commitment to civil rights. She has earned the respect and support of the Connecticut legal community. She will make an excellent addition to the Second Circuit.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker
Executive Vice President

ⁱ "Investiture of Honorable Magistrate Judge Sarah A. L. Merriam," U.S. District Court for the District of Connecticut, June 26, 2015, pp. 19-20 (reproduced in Senate Judiciary Committee Questionnaire Attachments pp. 227-28).

ⁱⁱ Letter of support for Sarah Merriam from 26 former federal prosecutors to Senate Judiciary Committee, July 7, 2021, <https://www.judiciary.senate.gov/meetings/07/07/2021/nominations>.

ⁱⁱⁱ "District of Connecticut Welcomes New District Judge," Press Release, U.S. District Court for the District of Connecticut, Oct. 13, 2021, <https://www.ctd.uscourts.gov/news/press-release-%E2%80%93-district-judge-sarah-l-merriam>.

^{iv} *World v. Semple*, No. 3:16CV00519(JCH).

^v *Goff v. Chivers*, No. 3:15CV00722(SALM), 2017 U.S. Dist. LEXIS 75349 (D. Conn. May 17, 2017).