

August 19, 2025

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dick Durbin
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Durbin:

We are pleased to support the nomination of Professor Jennifer Mascott to serve as a judge on the United States Court of Appeals for the Third Circuit.

We do so on the basis of her service as a public member and later as a senior fellow of the Administrative Conference of the United States (ACUS). One of us (Fois) served as the chair of ACUS from 2022 to 2025, by appointment of President Biden, and the other (Wiener) as its acting chair and vice chair from 2017 to 2022, first by appointment of President Obama and then by President Biden. Both of us remain affiliated with ACUS—one of us as a senior fellow (Fois), the other as a special counsel (Wiener). This letter reflects only our own views, not those of ACUS (or its Council, committees, or members) or the federal government.

ACUS is small agency within the executive branch that makes recommendations to Congress, the President, federal agencies, and Judicial Conference of the United States to improve administrative procedures and processes and judicial review of administrative action. Recommendations are issued by ACUS's assembly, which comprises approximately one hundred members—roughly sixty of them agency officials and forty of them “public members.”

Public members are selected by the chair, with the consent of the ACUS Council, “in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.” (5 U.S.C. § 593(b)(6).)

Professor Mascott was appointed for and served three terms as a public member—the maximum number allowed under ACUS's by-laws—and then was appointed as a senior fellow of ACUS. Like all public members, Professor Mascott served ACUS without compensation, and she did so while working as a full-time professor (first at Antonin Scalia Law School of George Mason University and then at Columbus School of Law of Catholic University).

During her distinguished service to ACUS, Professor Mascott consistently demonstrated her first-rate legal mind and impressive command of constitutional and administrative law. ACUS benefitted enormously from her incisive analysis of the

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complex legal and policy issues that came before ACUS during its committee meetings and plenary sessions. She always comported herself in a collegial and professional way in her dealings with other ACUS members, including members who held different perspectives, and with the utmost integrity.

In addition to serving as a public member, Professor Mascott served as research consultant to ACUS for the project that resulted in Recommendation 2019-2, *Agency Recruitment and Selection of Administrative Law Judges*, 84 Fed. Reg. 38,930 (Aug. 8, 2109). What is most notable about her work as a consultant is that she teamed up with Professor Beermann, the Philip S. Beck Professor of Law of Boston University School of Law, to write the extensive research report that underlay Recommendation 2019-2.

Professors Mascott and Beermann hold some very different views on the administrative state, including the proper constitutional domain of administrative adjudication and presidential powers. Yet they bracketed their differences and worked collaboratively to write a thoroughly fact- and consensus-based report that would become the blueprint for Recommendation 2019-2's "guidelines and procedures to ensure the hiring of [administrative law judges] who will carry out the functions of the office with impartiality and maintain the appearance of impartiality." Professor Mascott, along with Professor Beermann, then worked collaboratively, collegially, and skillfully with ACUS members of many different perspectives to draft Recommendation 2019-2.

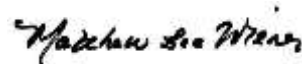
We are confident that, if confirmed, Professor Mascott will bring the same admirable qualities to the Third Circuit that she brought to ACUS and that she will serve the court and the country with great distinction.

Thank you for considering our views.

Sincerely yours,



Andrew Fois



Matthew Lee Wiener