



July 12, 2023

The Honorable Dick Durbin  
Chairman, Senate Committee on  
the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Lindsey Graham  
Ranking Member, Senate Committee on  
the Judiciary  
308 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Graham and Members of the Committee:

We the undersigned organizations oppose the nomination of Loren L. AliKhan to the U.S. District Court of the District of Columbia. During her short eleven years as a litigator, she has developed a remarkably long record of advocacy against religious freedom. While we recognize all attorneys must represent the best interest of their clients, each attorney is at liberty to determine which arguments to use. The courts have continuously rejected her discriminative arguments against people of faith and their houses of worship, and faith-based organizations.

Specifically, we oppose AliKhan's nomination for anti-religious liberty arguments in the following:

- In a landmark Supreme Court religious freedom case, *Hosanna-Tabor v. Equal Employment Opportunity Commission*, AliKhan asked the Court to strike down the ministerial exemption, which ensures that houses of worship are free to run their internal affairs and select their own ministers without government interference. She argued that “Nothing...in any right under the Religion Clauses - grants religious organizations such a sweeping exception.”<sup>i</sup> The Supreme Court unanimously called her position “untenable” and “hard to square with the text of the First Amendment, which gives special solicitude to the rights of religious organizations.”<sup>ii</sup>
- AliKhan submitted an amicus brief supporting a nationwide injunction asking HHS to block regulations allowing religious and moral exemptions to the contraceptive mandate.<sup>iii</sup> The 9th Circuit found it would be an “abuse of discretion” and “overbroad” to apply the court order nationwide because D.C. and its fellow amici had not shown a “nationwide impact or sufficient similarity” to states like California that filed the lawsuit.<sup>iv</sup>
- AliKhan defended the D.C. Office of Tax and Revenue's denial of a property tax exemption for a Sikh temple, but the D.C. Court of Appeals rejected her arguments as violating the First Amendment. She argued that the trust did not qualify for the property tax exemption for houses of worship because the Trust must be the same legal entity under the U.S. tax code as the congregation. The D.C. Court of Appeals rejected AliKhan's arguments as violating the First Amendment's prohibition on the federal government's interference in the internal governance of religious organizations – such as whether they were registered as a house of worship or a 501(c)(3) charity. The Court also rejected AliKhan's argument because it would result in a house of worship losing its tax exemption if it engages in outside charitable work.<sup>v</sup>
- Perhaps the most egregious example of AliKhan's opposition to religious liberty – and her willingness to use questionable evidence to oppose it – was in the DC district court where she is currently nominated.<sup>vi</sup> She argued that houses of worship - meeting outdoors, masked and socially distanced -

pose a greater threat to the COVID-19 pandemic than the allowed city-wide protests. She chose not to bring in a medical expert to support her claims, instead she brought in a Ph.D. in Poli-Science. He asserted that the risk of spreading Covid- 19 is higher for events where people are standing (for a church service) than where they are moving (for a protest). The court concluded that “even if the Court credited this statement, which it does not, it would not by itself establish that fully-masked and socially distanced outdoor worship is particularly dangerous. In fact, the District's brief explains that the protests did not trigger any spike in COVID-19 ‘outbreaks,’ undermining the notion that large gatherings are always exceptionally dangerous.”<sup>vii</sup> Alikhan’s refusal to accommodate the church cost D.C. taxpayers \$220,000 to reimburse the church for legal fees.<sup>viii</sup>

For these reasons it is abundantly clear Ms. AliKhan is an unacceptable nominee who will be hostile towards religious liberty. We ask you to vote in opposition to Loren L. AliKhan’s nomination.

Sincerely,

Kelly Shackelford  
President, CEO and Chief Counsel  
First Liberty Institute

Penny Nance,  
President and CEO  
Concerned Women for America Legislative Action Committee

Troy A. Miller  
President & CEO  
National Religious Broadcasters

David Nammo  
Executive Director and CEO  
Christian Legal Society

Mat Staver  
Founder and Chairman  
Liberty Counsel

Dr. Kevin Roberts  
President  
The Heritage Foundation

Tony Perkins  
President  
Family Research Council

Kristen A. Ullman  
President  
Eagle Forum

Dr. Mike Rouse



President  
The American Association of Christian Schools

Terry Schilling  
President  
American Principles Project

Jenny Beth Martin  
Honorary Chairman  
Tea Party Patriots Action

Dr. Gregory P. Seltz, PhD  
Executive Director  
Lutheran Center for Religious Liberty

Patrick D. Purtill  
Director of Legislative Affairs  
Faith & Freedom Coalition

Association of Christian Schools International

CCCU – Council for Christian Colleges & Universities

Lutheran Center for Religious Liberty

cc: All members of the Senate Judiciary Committee

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<sup>i</sup> [Brief of Respondent in Hosanna-Tabor v. EEOC](#), 2011 WL 3380507 (Aug. 2, 2011).

<sup>ii</sup> [Hosanna-Tabor Evangelical v. EEOC](#), 565 U.S. 171, 706 (2012).

<sup>iii</sup> [Amicus Brief of D.C., et al. in State of California v. Azar](#), No. 18-15255 at 21 (9th Cir. May 29, 2018).

<sup>iv</sup> [California v. Azar](#), 911 F. 3d 558 (9th Cir. 2018).

<sup>v</sup> [Jaswant Sawhney Irrevocable Trust, Inc. v. District of Columbia](#), 236 A.3d 401 (D.C. Ct. App. 2020).

<sup>vi</sup> First Liberty, [FLI Reclaims Capitol Hill Baptist Church’s Right to Safely Gather for Worship](#) (Oct. 30, 2020).

<sup>vii</sup> [Capitol Hill Baptist Church v. Bowser](#), 496 F. Supp. 3d 284, 299 (D.D.C. 2020).

<sup>viii</sup> [Capitol Hill Baptist Church v. Bowser Settlement Agreement and Release](#) (July 8, 2021).