



October 4, 2023

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

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

On behalf of our 1.5 million supporters nationwide, People For the American Way enthusiastically supports the nomination of U.S. Magistrate Judge Mustafa Kasubhai to be a federal district court judge in the District of Oregon. He has a demonstrated record of commitment to the legal rights and dignity of all people, not just the wealthy and powerful. He will also help diversify the federal bench by becoming the nation's third Muslim Article III judge.

Judge Kasubhai dedicated the first phase of his career to representing injured workers. Soon after graduating from the University of Oregon School of Law in 1996, he began his years of practice before the Oregon Workers' Compensation Board (WCB). Both as a solo practitioner and at law firms, he litigated before the WCB and state courts on behalf of individuals who had experienced work-related injuries. His practice also included employment discrimination cases involving retaliation against employees for filing compensation claims. In addition, he represented plaintiffs in personal injury cases.

Judge Kasubhai shifted his practice in 2003, becoming a member of the Workers' Compensation Board. In this capacity, he reviewed workers' compensation appeals of administrative law judges' final orders for all work-related claims in the state (except for those involving federal jurisdiction).

In 2007, Gov. Theodore Kulongoski appointed Judge Kasubhai to serve as an Oregon State Circuit Court judge in Lane County. Over the course of the next decade, Kasubhai presided over more than 500 trials in a wide variety of state civil, criminal, family, and juvenile cases.

In 2018, the federal district court judges in Oregon selected him to be a federal magistrate judge. Judge Michael McShane noted that there were "over 54 applicants for the position, but ... Judge Kasubhai's experience, his demeanor, his respect in the community, and his intellect ... were unparalleled."ⁱ This was a vote of confidence in Kasubhai by judges in the same court he has been nominated to join.

In his five years as a magistrate judge, Judge Kasubhai has handled more than 250 cases involving a wide variety of federal issues. For instance, he ruled that a small church whose permit to build a residence for its pastor was revoked when neighbors complained had a cause of action under the Religious Land Use and Institutionalized Persons Act. The case involved

complex questions of whether the case's history in state court divested the federal court of jurisdiction.ⁱⁱ He also heard the case of Larissa White, a police officer who was fired after the chief of police discovered she had been keeping a written log of department policy violations. Kasubhai ruled that this raised First Amendment concerns such that the case should not be dismissed, and the parties eventually reached a settlement.ⁱⁱⁱ

When Judge Kasubhai became a magistrate judge in 2018, he was the first Muslim judge of any type within the federal judiciary. He has written about his experience of Islamophobia and the societal importance of having a Muslim federal magistrate: “[I]f I’m here long enough and you get to see me on the bench often enough, my presence might help to disassemble images that serve to demonize millions of people.”^{iv}

Judge Kasubhai's background has informed his work as a lawyer. When he moved to Oregon for law school in the early 1990s, he found himself a person of color in a state with little racial diversity and with few other Muslims. He committed himself to a lifetime of conversations with his fellow Oregonians to bridge the gaps between people with different backgrounds, especially in the legal community.

Judge Kasubhai understands that two people might have different perceptions of the same events based on their different life experiences. He encourages people in the legal community to have personal conversations with each other to address discrimination. He has urged those who have not experienced discrimination to be open to hearing from those who have. “Once we can accept someone else’s experience [of discrimination] as valid, then we can have an uncomfortable and hopefully productive conversation that might start breaking down barriers. Then, and only then, can we include more voices that are not our own in [the legal] profession.”^v

This is the kind of wisdom that makes for an excellent judge.

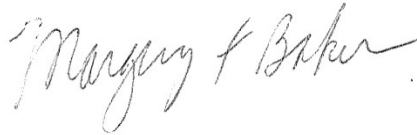
Judge Kasubhai has assisted in creating training material to help judges become aware of the impact of unconscious bias of all types in the legal system.^{vi} He has written that recognizing this bias “gives us the capacity to correct for it, and then leads to better and informed decisions.”^{vii}

Judge Kasubhai has earned the respect and admiration of the legal community. Last year, he earned the Wallace P. Carson, Jr., Award for Judicial Excellence from the Oregon State Bar. The award is given for significant contributions to the judicial system by a current or retired state court judge or federal judge who is a model of professionalism, integrity, and judicial independence. When the award was announced, the dean of the University of Oregon College of Law explained how Kasubhai's presence in the court enhances the judicial system:

[P]arties that appear before Judge Kasubhai know they are being heard, respected and valued. They receive their “day in court” in a manner that enhances faith in the judicial system and in the rule of law, and that fact holds true whether the litigant is pro se or a multi-million dollar corporation.^{viii}

U.S. Magistrate Judge Mustafa Kasubhai has the experience, principles, and wisdom needed to make an excellent federal judge. We urge his prompt confirmation.

Sincerely,



Marge Baker
Executive Vice President

ⁱ Investiture of Hon. Mustafa T. Kasubhai, U.S. District Court for the District of Oregon, Eugene, Oregon, p. 9.

ⁱⁱ *Coles Valley Church v. Oregon Land Use Board of Appeals*, 2020 U.S. Dist. LEXIS 199089.

ⁱⁱⁱ *White v. Taylor*, 2020 U.S. Dist. LEXIS 174457.

^{iv} “Is There a Place For Us? On Being a Muslim American in Oregon’s Legal Community,” Sarah Malik and Mustafa Kasubhai, Oregon State Bar Bulletin (Feb. / March 2021), <https://www.osbar.org/bulletin/issues/2021/2021FebruaryMarch/index.html?page=18>.

^v Id.

^{vi} Oregon Implicit Bias Training Video, Committee on Bias in the Justice System in Oregon, Portland, Oregon. Video available at https://www.youtube.com/watch?v=BA-z4mS_Evg&t=5s.

^{vii} “Is There a Place For Us,” above.

^{viii} “Celebrating Oregon Lawyers,” Oregon State Bar Bulletin, October 2022, p. 29, <https://www.osbar.org/bulletin/issues/2022/2022October/offline/download.pdf>.