



October 23, 2019

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

Re: National Employment Lawyers Association (NELA) Opposes Nomination of Sarah Pitlyk to the U. S. District Court for the Eastern District of Missouri.

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members,

On behalf of the National Employment Lawyers Association (NELA), and its 4,000 circuit, state, and local affiliate members across the country, we write to express our strong opposition to the confirmation of Sarah Pitlyk to be United States District Judge for the Eastern District of Missouri.

NELA is the largest professional membership organization in the country comprised of lawyers who represent workers in labor, employment, and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. Our members litigate daily in every federal district and circuit, affording NELA a unique perspective on how employment cases actually play out on the ground and an accurate understanding of the profound impact of the judiciary on the daily lives and the rights of working people.

Ms. Pitlyk Is Not Qualified To Serve As A District Court Judge

Ms. Pitlyk lacks the basic legal experience and qualifications essential to being an effective and well-qualified district court judge. Someone who is not qualified, as she is not qualified, should not be given a lifetime federal judicial appointment. She has no experience as a judge and only 11 years' experience as a lawyer. The American Bar Association (ABA) Standing Committee on the Federal Judiciary generally considers 12 years to be the minimum number of years in practice considered necessary to perform the responsibilities of a federal judge. The nonpartisan ABA unanimously rated Ms. Pitlyk "Not Qualified." They stated in their finding that Ms. Pitlyk lacked "litigation, trial, and courtroom experience." The role of a district court judge is to preside over litigation, trials, and a courtroom. Ms. Pitlyk lacks the minimum qualifications for the job.

Presiding over a trial court both effectively and fairly is a significant responsibility, and requires significant knowledge of rules of evidence, civil and criminal procedure, and the skills to manage the proceeding, so that no party is prejudiced as a result of the judge's lack of knowledge and skill. A lawyer whose only experience is writing dispositive motions, appeals, and amicus briefs, should not be given a lifetime appointment as a federal district court judge.

The Senate Judiciary Committee is charged with vetting potential federal judges to ensure that nominees are properly qualified. Ms. Pitlyk's complete lack of judicial and trial experience should be viewed as disqualifying by every member of the Senate Judiciary Committee.

Ms. Pitlyk's Record Demonstrates Strong Determination To Undermine Many Existing Civil Rights Protections

NELA attorneys represent employees who often suffer deep harm economically, professionally and emotionally, in the face of discrimination, harassment, and retaliation in the workplace. Many of their cases are brought in federal court under the federal laws Congress enacted to combat the many forms of discrimination that unfortunately are all-too-common in many workplaces. Civil rights plaintiffs deserve the promise of our American court system—an opportunity to be heard by an independent, impartial judge who applies the law as it is written, fairly. NELA is committed to advocacy for working people and one thing that working people need and deserve is the absolute assurance that individuals who are awarded lifetime appointments to the federal judiciary are highly qualified lawyers who have demonstrated above all, fierce dedication to the rule of law in all matters, including civil rights and the many other well-established laws protecting workers.

Ms. Pitlyk wrote an amicus brief on behalf of the right-wing American Civil Rights Union opposing equal opportunity affirmative action programs in Michigan. In her brief, Ms. Pitlyk argued that racial considerations in education, employment, and contracting programs “entrench racial prejudices.”¹ She condescendingly asserted that “state-imposed racial classifications pose a basic affront to the dignity of the persons classified” and that “[m]embers of preferred groups suffer from the unjust stigma that they are inherently incapable of competing on an even footing.”² Ms. Pitlyk's effort in this case to undermine racial justice and equality is deeply troubling.

Ms. Pitlyk also has long been an advocate in favor of an employer's *right to discriminate* under Religious Freedom Restoration Act (RFRA) laws, under the guise of “religious freedom.” Ms. Pitlyk's notion of religious freedom is one which comes at the expense of the rights of working people, and would legalize certain forms of discrimination.

Every senator has an obligation to all of his or her constituents to carefully consider how a nominee's past advocacy and affiliations will affect the nominee's sensibilities as a judge. Lifetime seats on our nation's judiciary must be reserved for those who advocate for no cause above adherence to the law and Constitutional principles. Ms. Pitlyk has been a vociferous advocate for efforts to reinterpret well-settled law in order to restrict the rights of others, including employees.

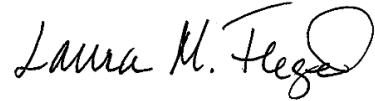
Our nation, and each one of us, relies daily on the every-day working people who are clients of NELA members. The working people of our nation care for our children, build buildings, clean buildings, serve food in restaurants, park our cars, grow our food, work as cashiers and much more. When they face illegal treatment in the workplace, those same working people and their families depend on skilled federal judges who clearly demonstrate respect for both the rule of law and the intent of Congress in passing our civil and workplace rights laws. Loyalty to the

¹ <https://www.theacru.org/wp-content/uploads/Schuetz-v-BAMN-ACRU-Amicus.pdf>

² *Id.*

Constitution and to all of our laws, including civil rights laws, are baseline qualifications for a federal judge. Sarah Pitlyk's record is not consistent with these most basic expectations. NELA strongly urges you to stand on behalf of working people across this country and to oppose the confirmation of Sarah Pitlyk. If you have questions or wish to discuss this letter, please contact Laura Flegel, Legislative & Public Policy Director at lflegel@nelahq.org or (202) 898-2880. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Laura M. Flegel". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Laura M. Flegel
National Employment Lawyers Association
Legislative & Public Policy Director