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July 12, 2017

United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510-6050

Hon. Mitch McConnell, Majority Leader  
317 Russell Senate Office Building  
Washington, DC 20510

Hon. Charles Schumer, Minority Leader  
322 Hart Senate Office Building  
Washington, D.C. 20510

Hon. Michael Bennet  
261 Russell Senate Office Building  
Washington, DC 20510

Hon. Cory Gardner  
354 Russell Senate Office Building  
Washington, D.C. 20510

Hon. Steven Daines  
320 Hart Senate Office Building  
Washington, D.C. 20510

**Re: National Native American Bar Association Support for Confirmation of Colorado  
Supreme Court Justice Allison Eid to the Tenth Circuit Court of Appeals**

Dear Senators:

As President of the National Native American Bar Association, it is my privilege to endorse Colorado Supreme Court Justice Allison Eid to be a Judge on the United States Court of Appeals for the Tenth Circuit. Since she began her tenure on the Colorado Supreme Court in 2006, and indeed throughout her legal career before her appointment to the bench, Justice Eid has demonstrated deep understanding of federal Indian law and policy matters, as well as

significant respect for tribes as governments. Such qualities and experiences are rare among nominees to the federal bench and consequently, many in Indian Country strongly support Justice Eid's confirmation.

The National Native American Bar Association's mission is to advance justice for Native Americans. As our name implies, NNABA represents the interests of all populations indigenous to the lands which are now collectively the United States: American Indians, Alaska Natives, and Native Hawaiians. Our members include Native American attorneys, Indian law practitioners and professors, as well as numerous tribal court advocates and tribal court judges. As you know, all branches of the Federal government play an integral role in justice for Native Americans and their government-to-government relationship with the United States. The unique legal posture of Indian tribes to the federal government is deeply rooted in American history and has always been heavily intertwined with often-shifting federal Indian policy, but often a central role in justice for Native Americans rests with the federal courts. Yet nearly all federal courts have suffered without any Native voice on the bench and often without judges with knowledge of federal Indian law or familiarity with Indian Country. NNABA strongly encourages the confirmation of judges with experience or interest in federal Indian law and who respect the role of tribal sovereigns under the Constitution and treaties with the United States. It is NNABA's honor and privilege to commend for your consideration for the confirmation of Justice Allison Eid, who exemplifies those qualities and who is also an exceptionally well-qualified candidate in every other regard, as well as the first Colorado woman to be nominated to the Tenth Circuit.

Her academic credentials are excellent. Raised by a single mother in Spokane, Washington, Justice Eid began college at the University of Idaho and then transferred to Stanford University where she graduated with distinction and was a member of the Phi Beta Kappa honor society. After Stanford, Justice Eid served as a speechwriter to President Ronald Reagan's Secretary of Education, William Bennett. She went on to attend the University of Chicago Law School where she served as Articles Editor on the Law Review, graduated with High Honors, and was elected Order of the Coif. Justice Eid began her legal career as a law clerk for Judge Jerry Smith on the United States Court of Appeals for the Fifth Circuit. She then served as a law clerk to Justice Clarence Thomas on the United States Supreme Court.

In private practice at Arnold and Porter following her clerkships, Justice Eid practiced both commercial and appellate litigation for a variety of clients, including significantly for the Hopi Tribe. She was a key part of litigation teams asserting the Hopi Tribe's sovereign rights in litigation against the United States Department of the Interior, for example in the so-called "Bennett Freeze" litigation, wherein the Hopi Tribe sought the right to develop its lands and resources despite a federal moratorium on such development.

Justice Eid later became a tenured professor at the University of Colorado Law School where she taught Legislation, Constitutional Law, and Torts, and served as the faculty clerkship advisor. During her time at the University of Colorado, Justice Eid continued her service in the legal community, being active in a number of bar organizations and serving as a frequent speaker and author. In 2005 she was appointed by Colorado Attorney General John Suthers to serve as the Solicitor General of Colorado. One year later, Governor Bill Owens appointed Justice Eid to the Colorado Supreme Court where she has served for 11 years, and was successfully retained by the voters of Colorado on a statewide ballot. While serving as a Justice on the Colorado

Supreme Court, Justice Eid has continued to teach at the University of Colorado. She also serves as the Chair of the Supreme Court Water Court Committee which works to identify rule and statutory changes to achieve efficiencies in water court cases, while maintaining quality outcomes for all. Justice Eid was also appointed by Chief Justice John Roberts to serve on the Federal Advisory Committee on Appellate Rules—a prestigious appointment where she has served alongside federal judges, law professors, and lawyers to craft revisions to the Federal Rules of Appellate Procedure—including her support for efforts to allow tribes to file amicus briefs as of right at the Supreme Court just as state governments can. Justice Eid is also active in her community and church. As the mother of two children, Justice Eid has volunteered numerous hours at her children’s schools and for their extracurricular activities.

NNABA is very concerned that federal appointees, whether judicial, executive branch or independent agency representatives, be well versed in and respectful of tribal sovereignty. Justice Eid has significantly more experience with Indian law cases than any other recent Circuit Court nominee. Her Indian law cases generally reflect her respect for tribes as sovereign governments and understanding of tribes’ roles in our federalism. Justice Eid has been involved in five Indian law cases, each addressing only a subset of myriad issues of importance to Indian tribes. We have examined Justice Eid’s record and are heartened by the respect and fairness she has always shown tribes appearing before the Colorado Supreme Court. We have canvassed NNABA members who have appeared before or clerked for Justice Eid (yes, Justice Eid has hired a Native American law clerk!) and received unanimous positive feedback.

Justice Eid has knowledge gained from living in and working in a State which has Indian Country and strong tribal governments, and also from being the spouse of a noted American Indian Law practitioner, Mr. Troy Eid, who served as Chair of the Indian Law and Order Commission, as the United States Attorney for Colorado from 2006-2009, and who now co-chairs the national Indian law practice group at Greenberg Traurig LLP, is admitted to practice before numerous tribal courts and serves as a Tribal appointee on the Navajo Nation Commission on Judicial Conduct. Her husband is widely regarded as an expert in Indian law, and in particular on tribal law enforcement and access to justice issues. In her personal life, Justice Eid regularly interacts with tribal leaders and Native American lawyers and often brings that knowledge to bear on the bench. We believe her to be a conscientious, diligent, careful and scholarly jurist. Each NNABA member we heard from concluded that Justice Eid is a woman of integrity and extremely well-qualified for the Tenth Circuit.

NNABA has long sought the nomination of federal judges with knowledge of federal Indian law, and more generally with experience on western issues directly impacting Indian tribes such as water law and public lands. With Justice Neil Gorsuch’s elevation to the U.S. Supreme Court, that knowledge base and experience is lacking in the current makeup of the Tenth Circuit, and is a vitally important perspective. In short, Justice Eid has shown herself to be interested and engaged and willing to make the federal judiciary more accessible to tribes, who regrettably often find themselves in the position of federal court litigants.

On the Colorado Supreme Court, Justice Eid has always “gotten it right” on Indian law matters, as reflected in her majority opinion in *Pawnee Well Users v. Wolfe*, 320 P.3d 320 (Colo. 2013) (tribal water rights), in her joining of the dissent in *Southern Ute v. King Consolidated*

*Ditch Co.*, 250 P.3d 1226 (Colo. 2011), and in her votes to grant certiorari in *TMR v. TER*, 2013 WL 3809175 (Indian Child Welfare Act case) and *Begaye v. People*, 2011 WL 6162622 (*Batson* challenge involving Native American jury pool). We also note her important concurring opinion in *Cash Advance & Preferred Cash Loans v. State*, 242 P.3d 1099 (Colo. 2010), principally a case about tribal enterprises' sovereign immunity from suit and service of process. This opinion illustrates Justice Eid's respect for tribal sovereignty and we think is emblematic of the practicality, fairness, the careful attention to what the law requires, and the accessibility of writing style that she would bring to the Tenth Circuit.

In sum, while we do not expect that Justice Eid will agree with tribal interests on every issue, we also believe that she is immensely well qualified and we are confident that Justice Eid is a mainstream, commonsense Westerner who will rule fairly on Indian Country matters. We endorse her confirmation to serve.

Thank you for considering our views.

And special thanks to Senators Daines and Gardner, who have consistently solicited feedback from tribes and tribal organizations regarding federal judicial nominations. NNABA appreciates your continued commitment to Indian country, to fortifying the government-to-government relationship between the United States and tribes, and to ensuring that Native American voices are heard at the highest levels of the federal government.

If you have any further questions, do not hesitate to contact our NNABA Nominations and Endorsements Committee Chair, and Immediate Past NNABA President Jennifer Weddle via e-mail at [weddlej@gtlaw.com](mailto:weddlej@gtlaw.com) or via telephone at 303.572.6565.

Respectfully and humbly,



Diandra Benally, President  
National Native American Bar Association, 2017-2018