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September 12, 2022

The Honorable Patty Murray
Chair
Committee on Health, Education, Labor &
Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Richard Burr
Ranking Member
Committee on Health, Education, Labor &
Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

Re: Nomination of Karla Gilbride to Serve as General Counsel of the U.S. Equal Employment Opportunity Commission

Dear Chair Murray and Ranking Member Burr:

The National Women's Law Center, together with the National Partnership for Women & Families, writes to express our strong support for the nomination of Karla Gilbride to serve as General Counsel of the U.S. Equal Employment Opportunity Commission (EEOC).

Ms. Gilbride is an outstanding choice to serve as EEOC General Counsel. The EEOC enforces the nation's federal employment anti-discrimination laws, including Title VII of the Civil Rights Act of 1964 (which includes the Pregnancy Discrimination Act), the Equal Pay Act, the Americans with Disabilities Act (ADA), and the Genetic Information Nondiscrimination Act. The primary role of the EEOC General Counsel is to "provide direction, coordination, and supervision to the EEOC's litigation program."¹ The General Counsel oversees the EEOC regional and field offices—responsible for investigating charges of discrimination and obtaining relief for victims—and approves and recommends cases to the Commission for litigation. The General Counsel also plays a role in advising the Commission on agency policies and enforcement matters.

Ms. Gilbride is an accomplished litigator with nearly 15 years of experience advocating for the right of everyday people to enjoy equal opportunity under the law. She has represented workers from all walks of life, including restaurant,² slaughterhouse,³ and warehouse⁴ workers and has successfully litigated cases at every level of the federal judiciary from federal district and appellate courts throughout the country, to the U.S. Supreme Court. Ms. Gilbride's litigation background, including her experience representing clients before a diverse set of judges based throughout the country, would strengthen the EEOC's enforcement

¹ *The Commission and the General Counsel*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/commission> (last visited Sept 6, 2022).

² *Howard v. Clyde's Restaurant Group, Inc.*, 1:11-CV-00687 (E.D. Va. 2012).

³ *Rural Community Workers Alliance v. Smithfield Foods, Inc.*, PUBLIC JUSTICE, <https://food.publicjustice.net/case/rcwa-jane-doe-v-smithfield/> (last visited Sept 6, 2022).

⁴ *Palmer v. Amazon*, PUBLIC JUSTICE, <https://www.publicjustice.net/case/brief/palmer-v-amazon/> (last visited Sept 6, 2022).

efforts, ensuring that litigation is strategic, complements other enforcement tools, and addresses systemic or egregious violations of the law.

Throughout her career, Ms. Gilbride has focused on ensuring that all individuals are able to enforce their legal rights, including under our antidiscrimination and employment laws. For example, as senior attorney and co-director of the Access to Justice Project at Public Justice, Ms. Gilbride has successfully challenged mandatory, pre-dispute arbitration agreements that prevent workers and others alleging unlawful behavior from seeking their day in court. Companies commonly force workers and consumers to agree to resolve disputes in arbitration as a condition of obtaining a job or purchasing a good or service. These agreements are usually buried in fine print; many individuals have no idea they have waived their ability to enforce their rights in court and must instead engage in a secret process controlled by a private arbitrator often chosen and paid for by the company. In 2022, Congress banned enforcement of mandatory pre-dispute arbitration agreements in cases involving sexual assault or harassment;⁵ however, these agreements may still be used to force individuals to waive their ability to fully enforce their rights to be free from other forms of unlawful harassment, discrimination, and abuse.

In May 2022, Ms. Gilbride argued and secured a unanimous decision at the U.S. Supreme Court clarifying that federal courts must treat arbitration agreements like any other contract and may not create rules to favor arbitration over litigation.⁶ In that case, an hourly employee of a Taco Bell franchise filed a collective action in federal court against her employer alleging violations under the Fair Labor Standards Act for failure to pay overtime wages. The employer engaged in the litigation for nearly eight months before attempting to force the employee into binding, confidential arbitration. The employee opposed, arguing that the employer had waived its right to arbitration by litigating the case for more than half a year. The Eighth Circuit, following a court-created, arbitration-specific rule, sided with the employer, finding that the fast-food franchise owner had not waived its right to arbitrate because the employee had not been prejudiced, or unfairly harmed, by the litigation. In an important ruling for workers and consumers, the Supreme Court reversed the Eighth Circuit, holding that the Federal Arbitration Act “does not authorize federal courts to invent special, arbitration-preferring procedural rules,”⁷ like the one used against the fast-food worker in this case, and sent the case back to the lower court to determine anew whether the employer had knowingly waived or forfeited its right to arbitration.

Ms. Gilbride has also demonstrated a commitment to ensuring that workers are treated fairly at workplaces free from unlawful discrimination. For example, before joining Public Justice, while an associate at Mehri & Skalet, Ms. Gilbride was part of the team representing over 500 women who worked for the Federal Bureau of Prisons facility in Coleman, Florida. The women alleged that their employer failed to protect them from repeated, ongoing sexual harassment and misconduct by prison inmates. The case ultimately settled and resulted in changes to the prison’s policies and practices to improve working conditions at the facility.⁸

In addition, Ms. Gilbride has sought to ensure that people with disabilities have access to reasonable accommodations necessary for equal opportunity. For example, while an attorney at Disability Rights Advocates, Ms. Gilbride helped secure a victory at the U.S. Court of Appeals for the Ninth Circuit

⁵ Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, Pub. L. No. 117-90, 136 Stat. 26.

⁶ *Morgan v. Sundance*, 142 S. Ct. 1708 (2022).

⁷ *Id.* at 1712.

⁸ *Federal Bureau of Prisons Coleman Facility Sexual Harassment*, MEHRI & SKLAET PLLC, <https://findjustice.com/cases/coleman-sexual-harassment/> (last visited Sept. 2, 2022).

granting a blind law school graduate the right to use assistive screen reading software—the same software Ms. Gilbride, who is blind, uses to perform her job—to take professional licensing exams.⁹

Ms. Gilbride’s extensive litigation experience, coupled with her commitment to ensuring that all people have access to opportunity and the ability to enforce their rights, make her well-qualified to serve EEOC General Counsel. She is also a graduate of Swarthmore College and Georgetown University Law Center and began her legal career as a clerk to Judge Ronald M. Gould of the U.S. Court of Appeals for the Ninth Circuit.¹⁰

We offer our strong support of Karla Gilbride to serve as EEOC General Counsel and urge you to approve her nomination. Please contact Gaylynn Burroughs, Director of Workplace Equality at the National Women’s Law Center (gburroughs@nwlc.org) or Michelle McGrain, Director of Congressional Relations for Economic Justice at the National Partnership for Women & Families (mmcgrain@nationalpartnership.org) with any questions.

Sincerely,

National Women’s Law Center
National Partnership for Women & Families

⁹ *Enyart v. National Conference of Bar Examiners, Inc.*, 630 F.3d 1153 (9th Cir. 2011).

¹⁰ *Staff, Karla Gilbride*, PUBLIC JUSTICE, <https://www.publicjustice.net/team/karla-gilbride/> (last visited Sept 6, 2022).