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PRESIDENT

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July 30, 2025

Senator Charles Grassley
Chair, Senate Judiciary Committee

Senator Richard Durbin
Ranking Member, Senate Judiciary Committee

Dear Chairman Grassley and Ranking Member Durbin,

On behalf of the Alliance for Justice (AFJ), a national association representing nearly 140 public interest and civil rights organizations, I strongly urge you and your colleagues on the Senate Judiciary Committee to reject the nomination of Eric Tung to the U.S. Court of Appeals for the Ninth Circuit. Tung's record reflects a rigid, exclusionary judicial philosophy that privileges entrenched power and rejects the evolving needs of a pluralistic society. From his attacks on labor protections and reproductive rights to his embrace of radical theories that would disenfranchise millions of Americans, Tung has made clear that he would not be a fair-minded jurist committed to equal justice under law.

Tung's legal career and public commentary expose a consistent hostility toward working people and a deep allegiance to corporate interests. In both *Busker v. Wabtec Corporation* and *Martirosyan v. UPS*, he took positions that narrowed the scope of wage protections and denied basic accommodations to disabled employees. He also defended corporate efforts to strike down a Los Angeles ordinance raising the minimum wage for health care workers, siding with industry against frontline staff seeking fair compensation. These choices are not anomalies — they reflect a worldview Tung has embraced for decades, including in writings where he attacked redistributive policy as “repugnant” and dismissed the safety net as a system that discourages work and rewards dependence. This disdain for social programs and the people who rely on them permeates his legal reasoning and raises serious questions about whether he would safeguard the rights of everyday Americans from corporate abuse.

His record also demonstrates an alarming disregard for racial equity and gender justice. In multiple essays published while at Yale, Tung rejected diversity as a meaningful goal and characterized efforts to mitigate historical and ongoing discrimination as misguided. He went even further in his criticism of feminism, arguing that efforts to challenge entrenched gender roles undermine institutions like marriage and promote instability. In doing so, he framed the pursuit of gender equality as a threat rather than a constitutional imperative. These views are not simply academic musings from decades past; they align with a broader legal agenda he has pursued throughout his career — one that would diminish protections for women and communities of color and reinforce a legal hierarchy built on outdated norms and exclusion.

That same preference for hierarchy over equity is evident in Tung's commentary on environmental and criminal justice issues. In public letters and writings, he has argued against governmental environmental regulation, claiming that property rights and wealth creation are the best tools to protect the environment. This view ignores scientifically-proven facts and the lived realities of communities who bear the brunt of climate change and pollution — namely low-income neighborhoods and communities of color. Moreover, in a case where an incarcerated man sought relief after his conduct was no longer deemed criminal, Tung rejected the petition and insisted that the man's continued imprisonment was not a flaw in the law but "a feature." This callous prioritization of process over justice is emblematic of a jurisprudence more concerned with finality than fairness.

Tung's extremism is perhaps most visible in his views on democracy and constitutional interpretation. He filed a brief in *Moore v. Harper* defending the so-called independent state legislature theory — a fringe argument that would strip state courts of their ability to protect voters from abusive gerrymandering. His argument sought to grant near-total power to state legislatures, effectively erasing critical judicial checks and threatening the balance of power in our electoral systems. In speeches and Federalist Society appearances, Tung has derided core constitutional principles such as liberty and equal protection as vague and manipulable, advocating instead for an originalist framework that only protects those rights explicitly recognized in the 18th century. By that measure, there would be no constitutional basis for voting rights for anyone who is not a land-owning white man; or for abortion rights, marriage equality, women's rights, or protections for LGBTQ+ people. Tung's own words make this explicit: he has said the answers to these constitutional questions are "simple" for originalists — and that the answer to questions about whether those rights exist, is no.

This is not a vision of justice rooted in fairness or human dignity, or in the rule of law. It is a narrow, ideological framework designed to deny rights, consolidate power, and dismantle decades of progress. Eric Tung has shown through his legal work, public writings, and affiliations that he cannot be trusted to uphold the Constitution in a way that protects all people, especially the most vulnerable. Confirming him to the Ninth Circuit would endanger fundamental freedoms and undermine the public's trust in an impartial judiciary.

It is clear that Tung is not an impartial arbiter of the law. Rather, he is an extremist who aims to erode enshrined legal protections to benefit corporate interests.

For these reasons, Alliance for Justice strongly urges you to reject Eric Tung's nomination to the United States Court of Appeals for the Ninth Circuit.

Sincerely,

A handwritten signature in cursive script that reads "Rachel Rossi".

Rachel Rossi
President, Alliance for Justice