

The Honorable Kathy Hochul
Governor of New York
NYS State Capitol Building
Albany, NY 12224

August 12, 2022

Dear Governor Hochul:

The appointment of New York's next Chief Judge offers a critical opportunity for our state and your administration. We urge you to nominate a thoughtful, principled lawyer who will safeguard New Yorkers' rights, bring independence and a demonstrated appreciation for the law's power to protect the most vulnerable, and defend our democracy in the challenging years ahead.

New Yorkers have watched in horror as the U.S. Supreme Court has stripped us of fundamental rights, including most prominently the right to abortion, while embracing extremist right-wing ideas to invalidate common-sense state laws and undermine our democratic institutions. The Court of Appeals can and should act as a bulwark against such federal attacks, protecting New Yorkers and defending the rule of law. But under Chief Judge Janet DiFiore, it has done neither.

The DiFiore Court's [conservative turn](#)—most dramatically displayed in its decision in [Harkenrider v. Hochul](#) to give redistricting power to a single Republican trial court judge—has been complemented by institutional dysfunction. Under Chief Judge DiFiore, the Court of Appeals has [heard fewer cases than ever before](#), [especially criminal appeals](#), and has written fewer and shorter decisions than previous courts. Its decisions have harmed [workers](#), [immigrants](#), and [tenants](#), [curtailed New Yorkers' rights](#), [undermined our state's democratic institutions](#), and [made it more difficult for the state to protect our natural environment](#). This Court's priorities have been clear—and they have been clearly wrong for New York.

We call on you to nominate someone with the following qualities to be our next Chief Judge:

- **A professional background that demonstrates commitment to using the law to protect the most vulnerable and which would bring much-needed diversity of experience to the Court.** The Court of Appeals has long had a [shocking lack of professional diversity](#). Though the Court admirably reflects the racial and gender diversity of our state, it currently has a majority of former prosecutors but zero former career civil rights lawyers or public defenders. This comes despite New York's wealth of legal talent—our state has arguably the deepest bench of practitioners who have worked in public defense, civil rights, impact litigation, labor law, poverty law, legal academia, eviction defense and tenant protection, and other similar practice areas—and despite an [explicit commitment in law to consider professional diversity in selecting judges for our state's high court](#). The status quo is unacceptable for such an important court in a state with such diversity of legal talent, expertise, and dedication. **The next Chief Judge must not be a former prosecutor**, and the next new judge added to the Court must add to the Court's diversity of experience—in particular, bringing experience using the law to protect the most vulnerable. Nationally, Democrats have recognized the importance of

professional diversity on the bench: The Biden administration has shown remarkable leadership, selecting judges from a wide range of non-prosecutorial and non-corporate backgrounds. And our state's senators, Chuck Schumer and Kirsten Gillibrand, have stewarded extraordinary nominees to confirmation, including former public defender Judge Eunice Lee, former voting rights advocate Judge Myrna Pérez, former Innocence Project attorney Judge Nina Morrison, and Supreme Court Justice Ketanji Brown Jackson, the first justice since Thurgood Marshall with significant indigent criminal defense experience. When you nominate a new judge to join the Court of Appeals, we call on you to stand with our state's federal representatives and select an accomplished lawyer who has made their career fighting for the most vulnerable and marginalized New Yorkers against the government and corporations.

- **Commitment to protecting New Yorkers' rights and upholding, not undermining, New Yorkers' values.** [You recently said](#), "New York is once again in the familiar, but unwelcome, position of stepping up after the Supreme Court strikes a blow to our basic protections. But as always, New York is ready." New York may be ready, but its courts are not. In recent years, the Court of Appeals has been out of step with your administration and New Yorkers' values. Chief Judge DiFiore has presided over [a conservative majority bloc that acts in concert even more reliably than the conservative majority on the Supreme Court](#). This conservative majority has been deeply harmful to New Yorkers and has shown an inclination to sharply depart from precedent—including, [in one notorious case](#), reviving the reasoning of a 1905 Supreme Court decision so discredited and so extreme that even Trump-appointed Supreme Court justices reject it. The Court of Appeals was once a national leader in protecting family and privacy rights, defending civil rights, protecting consumers, and ensuring fair trials. But New York now trails numerous other states, including New Jersey, Massachusetts, California, and Washington, in these respects. New York should be a national leader in defending against reactionary, anti-democratic federal courts. We therefore call on you to nominate a Chief Judge who has clearly demonstrated their commitment to preserving, protecting, and advancing the civil and social rights of all New Yorkers.
- **Demonstrated understanding of how the Chief Judge's administrative powers can advance justice, and the independence required to implement necessary changes to court policy.** The Chief Judge presides not only over the Court of Appeals but also over the entire New York State Unified Court System. In this capacity, the Chief Judge sets court policy, selects administrative judges, oversees the budget, and manages relations with court personnel, among many other duties. These decisions have profound consequences on the provision of justice across the state, including the amount of time that detained New Yorkers languish in jail before trial, whether tenants' rights are respected during eviction proceedings, and the working conditions of court officers. The Unified Court System desperately needs a fresh and independent approach. The next Chief Judge must have a record that demonstrates appreciation for the ways court administration can expand or contract access to justice for the most vulnerable New Yorkers—who represent the vast majority of the people impacted by our court system. It is also imperative that the next Chief Judge be a truly independent leader of our

independent judiciary. The era of the Chief Judge being [expressly identified as a “close ally” of the Governor](#) must end.

- **A commitment to separation of powers and the preeminence of the elected branches in setting policy.** Anti-democratic courts at the federal and state levels have undermined the transformative policies enacted by New York’s elected officials. Along with the Legislature, you have advanced nation-leading legislation on voting rights, climate protection, reproductive rights, and more. But the DiFiore Court has regularly undercut critical legislative accomplishments. And when it has interpreted laws, its decisions have departed so much from the Legislature’s intent that the elected branches have repeatedly been forced to [take swift corrective action](#). Without a course correction, the Court of Appeals will continue to endanger your ability to do the people’s work defending labor rights, protecting consumers, fighting discrimination, and advancing justice in housing, healthcare, education, immigrants’ rights, disability policy, climate protection, and more. Our next Chief Judge must not aggrandize the courts’ power or improperly substitute judges’ political judgment for that of the people’s elected representatives.
- **A commitment to New York’s tradition of independent state constitutional interpretation.** Federal courts, which once protected women, minority groups of all kinds, and workers against racist and sexist laws, are instead now stripping away rights and ignoring depredations. Fortunately, New York’s constitution, and our numerous anti-discrimination laws, go beyond federal law in protecting New Yorkers’ fundamental rights. But these laws are only as meaningful as the Court of Appeals interprets them to be. In recent years—and over the stringent objections of two current Judges—the Court of Appeals has disregarded these additional protections. Instead of interpreting the New York Constitution independently, the Court has often read it as merely duplicating federal protections. This jurisprudential trend contracts our rights at the very moment we most need our state courts to defend them. We need a Chief Judge who understands how our state constitution and laws offer New Yorkers greater legal protections than their federal counterparts, especially in the face of federal hostility.

It is time to put our courts back on the path to protecting vulnerable New Yorkers. In replacing Chief Judge DiFiore as our state’s Chief Judge and as a judge on the Court of Appeals, we call on you to select a nominee who meets all the criteria above—bringing much-needed expertise and professional experience, independence from but respect for the elected branches, and proven commitment to protecting individual rights—and who will further, not hinder, your goal and responsibility as Governor to protect the people of our state.

Sincerely,

A Little Piece of Light
Alliance for Justice
American Constitution Society - NYC Lawyer Chapter
Bend The Arc
Breaking Down Barriers Project
Campaign for NY Health

Capital Area Relief & Liberation
CD17Indivisible
Center for Appellate Litigation
Center for Community Alternatives
Center for Family Representation
Chief Defenders Association of New York
Churches United for Fair Housing
Citizen Action of NY
Citizen Action WNY
Civil Rights Corps
Close Rosie's
CodePink Long Island
Cohen & Green P.L.L.C.
College and Community Fellowship
Community Voices Heard
Concerned Families of Westchester
Congregation Beit Simchat Torah
Demand Justice
Downtown Independent Democrats
Drug Policy Alliance-NY
ECLI-VIBES
Empire State Indivisible
EndQiNY
Environmental Advocates NY
Envision Freedom Fund
Erie County Bar Association's Aid To Indigent Prisoners Society, Inc.
Exodus Transitional Community
Families and Friends of the Wrongfully Convicted
Five Boro Defenders
For the Many
Free the People WNY
Grand Street Democrats
Hamilton Clarke LLP
HK Dems
Housing Court Answers
Housing Justice for All
Housing Works
Hudson Catskill Housing Coalition
Immigrant Defense Project
Incarcerated Nation Network, Inc.
Indivisible Nation BK
Indivisible Westchester
Irvington Activists
Jews For Racial & Economic Justice (JFREJ)
Jim Owles Liberal Democratic Club
LatinoJustice PRLDEF

Long Island Activists
Long Island Progressive Coalition
Long Island Social Justice Action Network (LISJAN)
Make the Road New York
Mental Health Association of Columbia-Greene Counties
Met Council on Housing
Monroe County Conflict Defender's Office
National Alliance on Mental Illness - Huntington
National Alliance on Mental Illness - NYS Criminal Justice
National Police Accountability Project
Neighborhood Defender Service of Harlem
New Hour for Women & Children LI
New York Communities for Change
New York Progressive Action Network
New York State Defenders Association
New York Working Families Party
Newburgh LGBTQAI+ Center
North Star Fund
NYCAIC
NYCD16 Indivisible
Office of the Monroe County Public Defender
Parole Preparation Project
Partnership for the Public Good
PEER/NYPAN Progressive End Reformers, Suffolk County
People's Parity Project
Peter L. Zimroth Center on the Administration of Criminal Law, NYU School of Law
Policing and Social Justice Project
Red Hook Initiative
Release Aging People in Prison Campaign
Right to Counsel NYC Coalition
Rise And Resist NY
Riverside Edgecombe Neighborhood Association (RENA)
Steffel Wellness Services, Inc
Strategic Advocacy Clinic, Yale Law School
Strong Economy For All Coalition
Surveillance Technology Oversight Project
Syracuse DSA
Syracuse Tenants Union
T'ruah: the Rabbinic Call for Human Rights
Tenants Political Action Committee
The Action Lab
The Center on Race, Inequality, and the Law, NYU School of Law
The Fortune Society
The Gathering for Justice
The Gault Center
The Legal Aid Bureau of Buffalo, Inc.

The New York Immigration Coalition
Turning Points Resource Center
Unchained
United Auto Workers Region 9A
United Tenants of Albany
United Voices of Cortland
Unlock the Bar
Urban Justice Center
Urban Justice Center | Domestic Violence Project
Village Independent Democrats
VOCAL-NY
VOICE Buffalo
WESPAC Foundation, Inc.
Westchester Coalition for Police Reform
Westchester for Change
Youth Represent