

October 1, 2022

The Honorable Richard J. Durbin,  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Chuck E. Grassley,  
Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Vacancy on the U.S. Court of Appeals for the Ninth Circuit

Dear Senators:

We are retired Justices of the Montana Supreme Court. We support the nomination of Professor Anthony Johnstone to fill the current vacancy on the Ninth Circuit Court of Appeals.

We realize you already have available Professor Johnstone's professional qualifications and resume, and we will summarize but not repeat in detail those here. Suffice to say that Professor Johnstone is a highly qualified practicing attorney and eminently-respected Professor of Law at the Alexander Blewett III School of Law at the University of Montana (hereafter, the Law School).

Professor Johnstone's educational background is of the highest quality; his undergraduate degree is from Yale College, and his J.D. degree is from the University of Chicago Law School, with honors.

Professor Johnstone possesses one of the best legal minds and is the finest and most respected legal scholar in the State of Montana. Each of us has read briefs written by Professor Johnstone when he was the Solicitor for the State of Montana and an Assistant Attorney General for this State. We have all observed Professor Johnstone during oral arguments before the Montana Supreme Court. His written briefs and oral arguments were of the highest quality and were, without exception, professionally, masterfully and zealously delivered in support of his client's positions. One of our number co-taught a semester of Montana Constitutional Law with Professor Johnstone, and he has often remarked that he learned a good deal more about the subject matter listening to Professor Johnstone than he possessed at the beginning of the course.

As an attorney Professor Johnstone litigated twenty-nine appeals in federal and state courts, including petition-stage or merit-stage briefs for six cases at the U.S. Supreme Court. He has tried six cases, five to judgment. He litigated for one of the most prestigious law firms in New York City. He clerked for 9<sup>th</sup> Circuit Court Judge Sidney Thomas. He served as an adjunct Professor at Carroll College in Helena, Montana.

Professor Johnstone is presently serving as the Helen and David Mason Professor of Law and the Affiliated Professor of Public Administration at the Law School. He has served as the Associate Dean for Faculty Development in previous years, and has taught a variety of courses and clinics at the Law School including, among others, Montana and Advanced Constitutional Law, Supreme Court Practice, Election Law, Antitrust and Securities Law, Regulatory Process, Native American Voting Rights, Legal Methods and Philosophy of Law.

Professor Johnstone has also authored and published numerous articles in law reviews and journals. He has been authoritatively cited more than one hundred times by judges, scholars, and practitioners. He is the recipient of numerous honorary awards for service and teaching, several of these being awarded over sequential years. In sum, Professor Johnstone's entire professional career has been one of commitment to the Montana and Federal Constitutions and to the ideals of equal protection, due process and the rule of law.

We know Professor Johnstone to be a person of unimpeachable character, eminently well-respected by the practicing bar and by State and Federal Judges throughout Montana and in other courts and venues. Moreover, in every setting he maintains an approachable and amiable demeanor.

We can think of no better person than Professor Johnstone to be nominated and appointed to fill the current vacancy on the Ninth Circuit Court of Appeals.

We urge your favorable consideration and vote for Professor Johnstone's appointment.

Thank you.

Respectfully submitted,

James C. Nelson  
Michael E. Wheat  
James M. Regnier  
Patricia O. Cotter  
W. William Leaphart  
John Warner

Montana Supreme Court Justices (Ret.)