



July 30, 2025

The Honorable Chuck Grassley, Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dick Durbin, Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, DC 20510

RE: Earthjustice Action Opposes the Nomination of Joshua Dunlap to the United States Court of Appeals for the First Circuit

Dear Chairman Grassley and Ranking Member Durbin:

On behalf of Earthjustice Action, we write in opposition to the nomination of Mr. Joshua Dunlap for the United States Court of Appeals for the First Circuit. Senators should reject any nominee that does not meet the highest standards of fairness, independence, legal expertise, and ethical behavior. Mr. Dunlap's record indicates he does not meet this high standard. Mr. Dunlap has spent a career seeking to limit the rights of ordinary citizens while protecting the rights of powerful corporations. We urge you to reject his nomination.

As we have framed in previous letters to the Senate Judiciary Committee, our courts are critical to a functional democracy that honors the rule of law, and not the rule of might. All people in America, no matter who they are, where they live, or how much money they make, deserve to have their rights respected. In courthouses across our country, federal judges decide cases affecting our rights and ability to live in a thriving, multiracial democracy. That is why we need judges who recognize that the government has a responsibility to protect the environment, public health, and public lands for all people. We need judges who can tell the difference between science and politics. We need judges who know that individuals need access to courts to hold government and industry accountable. And finally, we need judges who will be a bulwark against tyranny and overreach that may manifest from the more political branches of our federal government.

Unfortunately, Mr. Dunlap has spent much of his career litigating on behalf of corporate interests, including defending financial institutions against class actions brought by aggrieved consumers.¹ Moreover, he has chosen to be an advocate for several radically conservative legal views, including expressing troubling theories on critical rights, including reproductive freedom and voting rights.² Mr. Dunlap has also represented energy industry interests challenging a Maine law banning transmission lines for a power project that were causing undue environmental harm,³ and represented an energy company and other litigants opposing reservation rights asserted by the Penobscot Nation.⁴ It would be hard for many litigants to believe they would be treated equitably and with impartiality if they were in Mr. Dunlap's courtroom.

Mr. Dunlap has also authored a blog for the last twelve years, and what he has chosen to repeatedly write about reveals much regarding his dim views on state and federal agency expertise and

¹ See Joshua Dunlap Senate Judiciary Questionnaire ("SJQ") at 12.a, pgs. 5-11 (extensive writings), pg. 27 (*In re TD Bank N.A. Debit Card Overdraft Fee Litig.* Case).

² SJQ at pg. 26 – *Payne v. Secretary of State*, 2020 ME 110, 237, 237 A.3d 870.

³ <https://climatecasechart.com/case/necec-transmission-llc-v-bureau-of-parks-lands-maine-department-of-agriculture-conservation-and-forestry/>

⁴ SJQ at pg. 25; https://www.narf.org/nill/bulletins/federal/documents/penobscot_v_frey21.html

delegated authority to implement laws to protect the environment and public health.⁵ In his blog posts, Mr. Dunlap has repeatedly written about narrowing the power and scope of agency review,⁶ constricting the power of environmental reviews to consider all the impacts of agency actions,⁷ limiting deference to agency subject matter and scientific expertise,⁸ and limiting standing to sue for aggrieved citizens and even for state legislators.⁹ He has also written at length about the importance for corporations to enforce coercive pre-disputing forced arbitration clauses on consumers, rather than allowing them to vindicate their rights in a court of law.¹⁰

Finally, Mr. Dunlap is a long-standing member and active participant in the Federalist Society, including acting as Maine “State Chair” from 2016-2021.¹¹ Federalist Society members generally hold extreme (and dim) views on the power of Congress to pass complicated statutes such as the Clean Air Act, and to delegate to expert agencies the responsibility to implement those statutes. As just one of many representative examples of Federalist Society members currently serving as federal judges, Fifth Circuit judge, Andrew Oldham, said publicly two years before being nominated to the federal bench in 2018 that, “*the entire existence... of administrative law is constitutionally suspect*” and that “the reason why the administrative state is enraging is not that we disagree with what the EPA does, it’s the illegitimacy of it.”¹² These kinds of legal views are extremely concerning. It is critical that our judges uphold the nearly 100 years of administrative law precedence that protects the American public from large corporations and polluters. Based on his record, it appears Mr. Dunlap’s views hew closely to these Federalist Society views which undermine a century of laws that provide foundational protection for our environment and all our communities’ public health in the face of ever more powerful polluting industries.

We will continue to call for a judiciary comprised of impartial, highly qualified judges who understand the distinction between facts and politics and will uphold our environmental laws. We urge you to carefully consider the qualifications of each nominee that comes before the Committee and do not simply act as a rubber stamp for the executive branch. Our courts, and the judges that serve there, are critical to the power of our democracy to work equitably for all and to protect our air, water, and public health. To that end, we urge you to reject the nomination of Joshua Dunlap.

Sincerely,

Coby Dolan

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⁵ Joshua Dunlap “Attachment Package” included as supplement to his Senate Judiciary Questionnaire submitted to the Senate Judiciary Committee, 2025 (709 total pages).

⁶ Attachment package at 141-142, 145-146, 155-156.

⁷ *Id.* at 145-146, 155-156, 168

⁸ *Id.* at 178-79, 181-183, 197, 233, 270-271.

⁹ *Id.* at 3-47, 175-176, 256-257, 308-311, 418, 430, 462-463, 488-489

¹⁰ *Id.* at 24-25, 37, 46-47, 68-69, 299-300, 458-459, 474, 491-496, 507-508, 510-511.

¹¹ SJQ at pg. 4.

¹² Andrew Oldham, Speaker, “Article V and a Convention of States,” Federalist Society, University of Chicago Student Chapter, Recording at 10:25 & 57:30, available at <https://www.law.uchicago.edu/recordings/andy-oldham-texas-plan-amending-constitution-and-restoring-rule-law> (May 9, 2016).