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Birmingham, AL 35210  
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Ms. Sharon N. Harris, Clerk of Court  
United States District Court  
Northern District of Alabama  
1729 5th Avenue North  
Birmingham, AL 35203

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Ms. Harris:

I am writing about the potential reappointment of Paul W. Greene to the position of Magistrate Judge for the United States District Court for the Northern District of Alabama. As you will remember, I was hired and employed twice by the Northern District in two different attorney roles. Prior to my work at your court, I served as a judicial clerk at both the Western District of Tennessee and the United States Court of Federal Claims. Throughout my federal court employment, I frequently received remarkable compliments about my performance. I enjoyed serving my country and each court recommended me to the next. I worked directly with Mr. Greene during my time at the Northern District and I've also had professional reasons to interact with and observe him from roles outside the court.

I understand that any particular person can only approach or understand an elephant from his own particular viewpoint, but my experience may offer a unique perspective to explain why Mr. Greene would be a poor choice to reappoint as a Magistrate Judge. It is my opinion that he is a dim, biased, and unsophisticated thinker; an incompetent supervisor; a foolishly consistent man of dishonest and vengeful character; a reckless and unethical public servant; and a potentially felonious perjurer. Paraphrasing regulation § 420.10.10(c), Mr. Greene is not competent, lacks good moral character, lacks commitment to equal justice under the law, and is not emotionally stable, patient, courteous, or mature. Given that other competent attorneys would currently be available, the Northern District could and should find someone better.

I have a low opinion of Mr. Greene's capacity as a thinker and jurist. My experience with him from both inside and outside the court would indicate that he is frequently ignorant of the law, though he acts arrogantly as if he was omniscient or infallible. I do not believe he comprehends or understands sophisticated legal arguments. This lack of facility, however, does not appear to stop Mr. Greene from exhibiting hostility towards individuals as litigants and I believe he is typically prejudiced against them. Further, as sloppy writing is often a symptom of sloppy thinking, Mr. Greene's judicial writing can be full of typographical or stylistic errors. And though a working knowledge of computer research, drafting, and communication may be essential requirements for the 21st century, I have some reason to believe that Mr. Greene may not be functionally computer literate.

Mr. Greene's arrogant demeanor made him a poor supervisor. I observed him being mostly cold and dictatorial to court employees. He often does not bother to learn or remember employee

names. This was only one way he expressed a surprisingly poor attitude towards federal attorneys. On the record, I'm sure Mr. Greene would reiterate the conventional view that judges expect law clerks and other court attorneys to exercise good and independent judgment. Behind the scenes, however, Mr. Greene (and other judges) routinely demeaned the responsibilities and expertise of these highly-educated and high-functioning professionals. Corrupt officials like Mr. Greene tend to view the courthouse as their own personal playground - rather than a place dedicated to serving the public - and think that subordinate attorneys are "just here to do what we tell you to do." This warped and selfish view overlooks the broad and independent obligations of government attorneys to both the legal profession and the American people.

His one-sided and uncooperative nature made Mr. Greene virtually unapproachable with regard to any discussion of court business. My experience was that he expected any court employee without a black robe to stay quiet and out of his way. In the recent past, Mr. Greene's practice has been to reflexively and recklessly terminate employees who voiced conflicting interpretations with regard to the law or important court matters, even when those employees might be hired specifically for their expertise or opinions. Rather than promoting or encouraging forward-looking discussions about court business, Mr. Greene would rather cull his playground of anyone who will not submit to his personal views. Those who are accustomed to near total dominance of articulate opinion often feel that the world is coming to an end if their control is threatened or weakened ever so slightly, reacting in the manner of an overindulged child who is chided for the first time. My opinion is that Mr. Greene has come to view the Northern District courthouse as *his* - and other employees better not forget it. This view is unacceptable under our democratic system.

Even the United States Supreme Court has sensibly advised that public employers should, as a matter of good judgment, be receptive to constructive criticism. Dissent is not always a personal challenge and criticism is usually an organization's friend. For example, my criticism of Mr. Greene in this letter represents my attempt to improve the Northern District. Juvenile bullies like Mr. Greene who intentionally or recklessly discourage the free discussion of ideas have a chilling effect on the speech and counsel of government employees. Mr. Greene's outdated, Old Testament approach engenders a constant fear of capricious retaliation. I know from experience that this fear regularly discourages government workers from giving candid advice and assistance. I would not be surprised to find that other court personnel have had similar, negative experiences - or could corroborate my experiences - but are deterred from speaking by a real apprehension of endangering their jobs or careers by irritating Mr. Greene or other judges at the Northern District. I suppose leadership at one time meant muscles, but today it means getting along with people. This is not an appropriate way to run our government.

Also during my tenure at the Northern District, Mr. Greene (and other judges) implemented a self-serving and unethical policy towards death penalty cases. I was told multiple times that the Northern District had made a conscious and intentional decision to delay its review and publication of death penalty opinions for the sole purpose of increasing its reported number of active cases. This practice artificially inflated the Northern District's budgetary "requirements" for staffing and resources. On at least one occasion, a Magistrate Judge specifically ignored my finished death penalty drafts and told me to slow down my work on those opinions. I still find it repulsive and corrupt that any group of judges would keep an incarcerated citizen waiting months longer than

necessary – or would force the state of Alabama to postpone justice – all so the Northern District could score additional funding or play games with its budget.

The Code of Conduct for federal judges requires these officials to observe only the highest standards of integrity and honor. Judges are called upon to set a high bar for honesty as they act as one of the primary defenders of truth within our system. Based on my time with the Northern District, I believe that Mr. Greene has been fundamentally – and possibly criminally – dishonest. There is reason to believe that Mr. Greene intentionally made material statements to government officials which were misleading, misrepresentations, or outright false. By repeating some of these statements in the form of a sworn declaration (2:09-cv-700), he may have compounded the problem and committed criminal perjury.

I wrote a November 2009 letter to Chief District Judge Sharon L. Blackburn which explained this issue in further detail and asked her to take action on behalf of the District Court. She did nothing about it. I then personally visited the Federal Bureau of Investigation and reported this as a potentially criminal matter. I spoke with an agent and compared the statements Mr. Greene had made with the documents that would indicate that he had lied under oath. The agent led me to understand that he believed that Mr. Greene may have committed criminal perjury. Very pointedly, however, he told me that – for political reasons – there was almost no way the FBI would investigate or prosecute a sitting federal judge.

To this day, this reaction shocks my conscience. Federal officials are not exempted from the rule of law. If anything, they should be subject to higher standards and more accountability. Instead, every supervisory authority provided disingenuous reasons why they would do *nothing*. This pretense of oversight is a truly frightening illusion. But the truth is the truth, even if you are a minority of one. For that reason, even in the absence of any formal investigation and prosecution, my opinion of Mr. Greene is that he is fundamentally dishonest and probably a criminal perjurer. Even without a conviction, this taint should raise questions which should disqualify him from reappointment as a Magistrate Judge. He is not competent to adjudicate the honesty or credibility of others.

It is my understanding that Judge Blackburn and the judges of the Northern District cooperatively made the decision to submit Mr. Greene's name for reappointment. I find this decision baffling, considering that I'd already made Northern District officials aware of Mr. Greene's problematic, unethical, and potentially criminal behavior. It does not reflect well on either Judge Blackburn's leadership or our judiciary as a whole that they would either cover up or ignore these issues. The judges of the Northern District have repeatedly demonstrated that they are inflexibly determined to circle the wagons and lash out against any perceived attack on one of their brethren, rather than acting to assess the situation with proper administrative objectivity or with proper regard to ensuring the integrity of the judiciary and serving citizens. It should come as no surprise that judges treat judges much more fairly than they treat other people. Orwell was right: Some animals are more equal than others.

This reappointment also appears unimaginative and inequitable. So far as I know, there are spots for five Magistrate Judges in the Northern District. Reappointing Mr. Greene to this position would continue a possibly unbroken tradition of empanelling five old, white men. Not just five old,

white men, but the *same* five old, white men. Alabama is over 50% female, over 25% non-Caucasian, and our median age is around 35. It's 2011. The time has long passed to start promoting and considering candidates who are female, non-Caucasian, and/or under 40. Although the District Judges (if judges with senior status aren't included) are a somewhat satisfactory reflection of Alabama demographics, this group of Magistrate Judges look like they stepped right out of Birmingham's Bull Connor era. The lack of ability to imagine any citizen in these positions other than those who look like Mr. Greene may represent the most insidious kind of glass ceiling discrimination.

This decision to re-nominate Mr. Greene calls into serious question the Northern District's commitment to diversity and to behaving like an Equal Opportunity Employer. It also reveals a certain institutional blindness and a troubling drift in philosophy, especially given this particular district's important flagship role with regard to discrimination and race relations. When our nation considers difficult problems of race and diversity, it often cites to Birmingham. And what would commentators, journalists, and historians find in 21st century Birmingham? They find that our federal judges *still* prefer that their discrimination and criminal cases be handled by five old, white men. One of the most durable and destructive legacies of discrimination is the way we've internalized a sense of limitation; so many in our community have come to expect so little from the world and from themselves. I'm embarrassed by this kind of narrow-mindedness.

I intend to spend the next thirty years helping to lead America forward. Reactionary forces surrounding the baby boom generation have rotted our country, its institutions, its economy, and our court system. Like Howard Zinn, my experience is that if you're not part of the old, white establishment, they will hate you and want you to fail. I believe I speak for many or most of my generation when I say that we disagree with virtually everything about Mr. Greene's philosophy and attitude – and we represent the future. Experience alone is not a trustworthy panacea. Neither does an error become truth by reason of multiplied propagation. We the people hold in our hands the power to choose our leaders, control our laws, and shape our own destiny. We can't afford to stand pat while the world races by. We can't meet the challenges of today with old habits and stale thinking. America became successful because each time a new generation of Americans has faced a changing future and a changing world, we have acted to shape it. This reappointment would not facilitate progress – it would guarantee more of the same.

I have serious concerns about some practical problems or limitations with this reappointment procedure. As explained to me, our district judges have hand-picked twelve of their most-favored attorneys and civilians for the merit selection panel. Chief District Judge Blackburn then submitted Mr. Greene's name to this panel for consideration. The panel is then asked to make an "objective" recommendation back to the same judges that picked them for service. I find this disturbingly incestuous. For one, any person asked to serve on the panel surely already has a cozy relationship with the court and would be highly unlikely to endanger this affinity by voting against its intended nominee. This procedure recalls Alabama's Jim Crow era, where our government officials acted out empty theater with fixed or predetermined outcomes. Also, there is nothing to stop the Northern District from empanelling (the one-sided equivalent of) twelve old, white men. These panelists could get fifty or a hundred negative letters about a nominee, but still recommend reappointment. The only check on this important government process would be transparency. In fact, the Administrative Office of the United States Courts recommends that district courts provide

the names of panel members to the public. Though I imagine most north Alabama attorneys would be interested to know which members of the bar have attained most-favored or insider status with our federal judiciary and which groups were denied a seat at this table, the Northern District refuses to provide these names. Perhaps for that very reason. The court also refuses to disclose any comments from the public or the panel's final recommendation. This open disdain for oversight and transparency raises bothersome and fundamental questions about how the Northern District prefers to conduct the work of our government.

Finally, most citizens will not be aware of or interested in this process. Regional attorneys or court staff might be interested, but my intuition is that the majority of letters will anticipate that Mr. Greene will be reappointed and include only empty brown-nosing and ingratiation. Any "no" uttered with deep conviction should be better than any "yes" merely uttered to please, or worse, to avoid trouble. Most will be afraid to speak out because – let's be frank – federal judges have a lot of discretionary power. My experience with the Northern District shows that several of its judges, including Mr. Greene, may be prone to misusing their authority to strike out at perceived enemies. I guarantee I'm not the only attorney or citizen in the Northern District who finds that our judicial officials can frequently set a paranoid, malevolent, or vindictive tone. Any retaliation or defamation directed at me, however, would represent a strike at democracy, the freedom of political discourse, and the promise of a better tomorrow. Our courts of conscience consistently function on a higher level than our courts of justice.

The merit selection panel should recommend against this reappointment. The Northern District of Alabama can do a lot better than Paul W. Greene.

Respectfully,

/s/ Daniel M. Hurst

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