



**STATEMENT OF WADE HENDERSON, INTERIM PRESIDENT AND CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY**

**HEARING ON
“THE NOMINATION OF JUDGE KETANJI BROWN JACKSON TO BE AN ASSOCIATE
JUSTICE OF THE SUPREME COURT OF THE UNITED STATES”**

MARCH 24, 2022

Chairman Durbin, Ranking Member Grassley, and members of the committee: I am Wade Henderson, interim president and CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to speak on behalf of The Leadership Conference in strong support of the confirmation of Judge Ketanji Brown Jackson to be an associate justice of the Supreme Court of the United States.

The Leadership Conference is the nation’s oldest, largest, and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. Our coalition — which today includes more than 230 national organizations — has marshaled our shared power to advance advocacy efforts on behalf of every major civil rights law since 1957. We continue that legacy today through our 11 task forces, which drive the coalition’s priorities and play a vital role in debates on Capitol Hill about actions affecting civil and human rights. The Fair Courts Task Force brings together organizations committed to civil and human rights to work on issues related to our federal courts, including nominations to the U.S. Supreme Court, in order to build a judiciary committed to equal justice and protecting the rights of all. I am privileged to represent the voices of this community at today’s hearing.

To Achieve Equal Justice, Supreme Court Justices Must Be Committed to Civil and Human Rights

The nomination of Judge Jackson comes at a pivotal moment in our nation’s history. Her confirmation will not only be historic, but will also be crucial as we write the next chapter of our democracy. Nearly 13 years ago, I had the privilege of testifying before this committee in support of now-Justice Sonia Sotomayor’s historic confirmation as the first Latina — and first woman of color — to serve on our

nation’s highest court. Today, I share the same testimony: “While great challenges remain on our nation’s quest for equal opportunity, we have truly reached an historic marker on the journey toward our goal of ‘Equal Justice Under Law’ – the phrase inscribed, not far from here, on the front of the Supreme Court building.”¹ By confirming Judge Jackson, the Senate will move our judiciary closer to the promise of equal justice for all. Indeed, the hope and joy of this monumental moment will be felt for generations to come.

The civil and human rights community recognizes that our nation’s ongoing pursuit of equal justice for all requires that we work together to make our federal judiciary fair and impartial. Federal courts have sweeping power, and perhaps none more so than the Supreme Court, which hears only a handful of cases each year but has a significant impact on every aspect of our lives. Over our nation’s history, federal courts have acknowledged and protected our civil and human rights, including ending legal apartheid in education,² recognizing marriage equality for interracial and LGBTQ couples,³ honoring the right to privacy,⁴ ensuring people with disabilities can receive care in their communities,⁵ and upholding the right to bodily autonomy and abortion.⁶ For securing the recognition of fundamental rights and “equal dignity in the eyes of the law,” the role of our federal courts is critical.⁷

Throughout our history, however, federal courts have also done tremendous harm by denying people their humanity, an equal voice in our democracy, and their fundamental civil and human rights. Take for example both *Plessy v. Ferguson* and *Korematsu v. United States*, in which the Supreme Court chose to maintain racial apartheid systems to subjugate Black and Asian Americans under the guise of promoting the rule of law.⁸ More recently, the Supreme Court in multiple decisions eviscerated key provisions of the Voting Rights Act, the landmark civil rights law that prohibits racial discrimination in voting.⁹ In 2018, five justices diminished the power and freedom of working people to come together to form strong unions.¹⁰ The Court’s decisions have significant consequences for people of color and other communities who have historically been excluded from the ranks of power and decision-making.

Given this substantial and consequential power, it is essential that those chosen to serve on the Supreme Court — and all federal courts — are fair-minded, committed to the civil and human rights of all people, and possess diverse backgrounds and experiences that will inform their role on the bench. Our

¹ Henderson, Wade. [*Testimony in Support of the Nomination of Hon. Sonia Sotomayor, to be an Associate Justice of the Supreme Court of the U.S. before the U.S. Senate Committee on the Judiciary*](#). July 16, 2009.

² *Brown v. Board of Education*, 347 U.S. 483 (1954).

³ *Loving v. Virginia*, 388 U.S. 1 (1967); *Obergefell v. Hodges*, 576 U.S. 644 (2015).

⁴ *Griswold v. Connecticut*, 381 U.S. 479 (1965).

⁵ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

⁶ *Roe v. Wade*, 410 U.S. 113 (1973).

⁷ *Obergefell* at 681.

⁸ *Plessy v. Ferguson*, 163 U.S. 537 (1896); *Korematsu v. United States*, 323 U.S. 214 (1944).

⁹ *Shelby County v. Holder*, 570 U.S. 529 (2013); *Brnovich v. Democratic National Committee*, 141 S.Ct. 2321 (2021).

¹⁰ *Janus v. AFSCME*, 1 138 S.Ct. 2448 (2018).



communities depend on the federal courts and the jurists who sit on them to administer justice and, importantly, to recognize injustice from the perspective of many — not the narrow perspective of one.

As an institution that we entrust to safeguard our democracy, the Supreme Court must work for everyone — and each senator plays an important part in ensuring that it does. The constitutional responsibility to provide “advice and consent” on those who might be federal judges, including Supreme Court justices, is one of the most solemn duties of senators. This moment demands that you take this duty seriously. We believe that after reviewing her exceptional qualifications, hearing her testimony, and examining her stellar record of protecting the constitutional rights of all people, the decision should be clear: Judge Ketanji Brown Jackson is exactly the kind of nominee who all senators should support and vote to confirm to our nation’s highest court.

Judge Jackson Is Exceptionally Qualified to Serve on the Supreme Court

Civil and human rights organizations agree that Judge Jackson’s elevation to the Supreme Court is well-deserved and will matter tremendously. Her broad and impressive legal career has demonstrated her commitment to civil and human rights, and during her time as a judge, she has earned a superb reputation for being an outstanding, fair-minded arbiter of justice. Her nomination to the Court has been celebrated by all who believe that our judiciary should be staffed with well-qualified and impartial jurists. Indeed, our coalition praised Judge Jackson’s nomination and urged confirmation in a letter signed by 187 national organizations that believe she is supremely qualified to become our nation’s next Supreme Court justice.¹¹

Since June 2021, Judge Jackson has served with distinction on the U.S. Court of Appeals for the D.C. Circuit. Prior to her elevation to the D.C. Circuit, she spent eight years as a district court judge on the U.S. District Court for the District of Columbia. Before her judicial service, she served as vice chair of the U.S. Sentencing Commission from 2010 to 2014. Judge Jackson worked as an assistant federal public defender in the Office of the Federal Public Defender in the District of Columbia and as assistant special counsel at the U.S. Sentencing Commission. She has also worked in private practice as of counsel at Morrison & Foerster and as an associate at the Feinberg Group, Goodwin Procter, and Miller, Cassidy, Larocca & Lewin. Judge Jackson also helped train future lawyers, teaching classes on trial advocacy and federal sentencing at Harvard Law School and George Washington School of Law, respectively. A graduate of Harvard University and Harvard Law School, she clerked for Judge Patti Saris of the U.S. District Court for the District of Massachusetts, Judge Bruce Selya of the U.S. Court of Appeals for the First Circuit, and Associate Supreme Court Justice Stephen Breyer — who Judge Jackson will replace on the Court when confirmed. This vast experience, and her record which is further detailed below, make her eminently qualified to serve on the Supreme Court.

¹¹ <https://civilrightsdocs.info/pdf/judicial-nominations/2022/LCCHR%20&%20186%20Civil%20Rights%20Organizations%20Support%20the%20Confirmation%20of%20Judge%20Ketanji%20Brown%20Jackson%20to%20the%20U.S.%20Supreme%20Court.pdf>.

Judge Jackson’s depth and breadth of experience would bring perspectives to the Supreme Court that have historically been excluded and are desperately needed today. As a federal public defender, Judge Jackson defended the constitutional rights of those accused in the criminal-legal system who could not afford an attorney. If confirmed, she would be the first former public defender ever to sit on the Supreme Court. In addition, her service as vice chair and commissioner of the bipartisan U.S. Sentencing Commission — an agency created by Congress to reduce sentencing disparities and promote transparency and proportionality in sentencing — is vitally important.¹² During that time, the commission implemented crucial bipartisan reforms to federal sentencing guidelines to address their disproportionate impact on Black and Brown people, as well as their families and communities.¹³ For example, when the commission voted to retroactively apply the new guidelines reducing significant sentencing disparities between crack cocaine and powder cocaine offenses, Judge Jackson argued the necessity of doing so, noting that failure to apply the amended guidelines retroactively would harm not only those serving sentences pursuant to the prior guidelines, but all people who believe in fairness and in equal application of the law.¹⁴ While our criminal-legal system is still in desperate need of reforms to make it more fair and just, this was an important step to address sentencing disparities.

Since 2013, Judge Jackson has served with distinction on the federal bench as both a district court and circuit court judge. As Judge Jackson said in her opening statement, “I decide cases from a neutral posture. I evaluate the facts, and interpret and apply the law to the facts of the case before me, without fear or favor, consistent with my judicial oath.”¹⁵ Throughout her tenure as a jurist, she has done just that and has a record that demonstrates her commitment to fairness and equal justice. For example:

- **Judge Jackson has a record of upholding the rights of immigrants.** She treats immigrants and immigrant communities with dignity and respect by refusing to use the terms “illegal” or “alien,” regardless of her ruling on a matter.¹⁶ Judge Jackson also found that executive efforts to dramatically expand the government’s expedited deportation powers could cause irreparable harm to immigrant communities, granting a preliminary injunction against the rule.¹⁷ While the D.C. Circuit ultimately reversed the injunction on procedural grounds in a 2-1 decision, the case still

¹² [About](#), United States Sentencing Commission (accessed March 2022).

¹³ These changes included bipartisan efforts to reduce draconian sentencing practices and ensure that sentencing guidelines aligned with federal law. *See, e.g., U.S. Sentencing Commission Public Meeting Minutes*, U.S. Sentencing Commission (April 6, 2011) Pgs. 11-12 (Reducing the 100:1 sentencing disparity between crack cocaine and powder cocaine offenses and ending mandatory minimums for simple possession of crack cocaine); *U.S. Sentencing Commission Public Meeting Minutes*, U.S. Sentencing Commission (April 10, 2014) Pg. 16 (Reducing guideline ranges for certain offenses that tied punishment to drug quantities); *U.S. Sentencing Commission Public Meeting Minutes*, U.S. Sentencing Commission (July 18, 2014) Pg. 8 (Reducing guidelines for certain nonviolent drug trafficking offenses retroactively).

¹⁴ U.S. Sentencing Commission Public Meeting Minutes, U.S. Sentencing Commission (June 30, 2011) Pg. 3.

¹⁵ [Ketanji Brown Jackson's opening statement at her Supreme Court confirmation hearing](#), CNN (March 21, 2022).

¹⁶ [The SCOTUS Shortlist and Immigration: What Their Previous Rulings Reveal](#), National Immigration Law Center (Feb. 2022).

¹⁷ *Make the Road New York v. McAleenan*, 405 F.Supp.3d 1 (D.D.C. 2019).

proceeded on the merits.¹⁸ In another ruling, she blocked a U.S. Citizenship and Immigration Services practice that unlawfully limited the number of immigrants who could successfully prove their need for asylum.¹⁹

- **Judge Jackson has approached the rights of working people with fair-mindedness and ensured all people have access to justice — not just the wealthy and powerful.** In her first published opinion on the D.C. Circuit, Judge Jackson ruled that a policy change introduced by the Federal Labor Relations Board was arbitrary and capricious because it would limit the terms and conditions that federal workers could bargain over with their employers.²⁰ While on the district court, after labor unions challenged a number of executive orders designed to eviscerate the right to collective bargaining for federal workers, she ruled that several provisions — including limitations on official time, bans on employees communicating with Congress, and other provisions impacting collective bargaining and employee removals — were unlawful.²¹
- **Judge Jackson has repeatedly upheld the rights of people with disabilities.** She ruled in favor of William Pierce, a deaf person who was unlawfully denied accommodations while in prison.²² She also ruled that Uber may be held liable for failing to provide transportation services that can be fully and equally enjoyed by people who use wheelchairs.²³
- **Judge Jackson has a record of defending against efforts to restrict access to essential sexual and reproductive health information.** In 2018, Judge Jackson ruled that the administration’s attempts to terminate dozens of grants under the Teen Pregnancy Prevention Program were unlawful.²⁴
- **Judge Jackson’s environmental and administrative decisions show her expertise and ability to understand and clearly explain complex regulatory and statutory issues and appropriately apply the facts to the law.** She has ruled in favor of government transparency and public access to Food and Drug Administration data that impacts health and environmental concerns.²⁵ She also found that the U.S. Coast Guard acted lawfully when it detained and investigated ships that had violated environmental laws on oil spills.²⁶ In 2018, Judge Jackson allowed a lawsuit by the U.S. territory of Guam to proceed where it was seeking to hold the U.S. government liable for cleanup costs for decades of environmental contamination brought on by

¹⁸ *Make The Rd. New York v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020)

¹⁹ *Kiakombua v. Wolf*, 2020 WL 6392824 (D.D.C. 2020).

²⁰ *Am. Fed’n of Gov’t Emps., AFL-CIO v. Fed. Lab. Rels. Auth.*, 25 F.4th 1 (D.C. Cir. 2022).

²¹ *AFGE v. Trump*, 318 F.Supp.3d 370 (D.D.C. 2018).

²² *Pierce v. District of Columbia*, 128 F.Supp.3d 250 (D.D.C. 2015).

²³ *Equal Rights Center v. Uber Technologies, Inc.*, 2021 WL 981011 (D.D.C. 2021).

²⁴ *Policy and Research LLC v. HHS*, 313 F.Supp.3d 62 (D.D.C. 2018).

²⁵ *Government Accountability Project v. Food & Drug Administration*, 206 F.Supp.3d 420 (D.D.C. 2016).

²⁶ *Watervale Marine Co. v. U.S. Department of Homeland Security*, 55 F.Supp.3d 124 (D.D.C. 2014).

the actions of the U.S. Navy.²⁷ Though the D.C. Circuit reversed the ruling, the Supreme Court ultimately upheld Judge Jackson’s ruling in a rare unanimous decision.²⁸

- **Judge Jackson has carefully approached questions dealing with the separation of powers and executive authority to defend the Constitution and its principles.** While on the district court, Judge Jackson ordered a former White House counsel to appear before the House Judiciary Committee after the committee issued them a subpoena related to the committee’s investigation of Russia’s interference in the 2016 election and potential obstruction of justice by the president.²⁹ She rejected the Department of Justice’s arguments that senior presidential advisors have absolute immunity from congressional subpoenas, saying, “The primary takeaway from the past 250 years of recorded American history is that Presidents are not kings... Rather, in this land of liberty, it is indisputable that current and former employees of the White House work for the People of the United States, and that they take an oath to protect and defend the Constitution of the United States.”³⁰

Judge Jackson’s lauded legal reputation and record as a fair and impartial jurist speaks for itself and has garnered respect and recognition across partisan and ideological lines. She has been confirmed with bipartisan support by the Senate three times, first to the U.S. Sentencing Commission in 2010 without opposition by voice vote,³¹ then to the U.S. District Court for the District of Columbia in 2013 without opposition by voice vote,³² and finally to the U.S. Court of Appeals for the D.C. Circuit in 2021 with bipartisan support.³³

In addition to the support she has from the civil and human rights community, her nomination to the Supreme Court has been met with broad support from colleagues in the judiciary, law enforcement, academia, and the legal profession. For example, Judge J. Michael Luttig, who served on the Fourth Circuit, described Judge Jackson as “eminently qualified” and “as highly credentialed and experienced in the law as any nominee in history.”³⁴ Judge Thomas Griffith, who served on the D.C. Circuit, also praised Judge Jackson’s even-handed application of justice, saying that although they “occasionally differed on the best outcome of a given case,” he “always respected her careful approach, extraordinary judicial

²⁷ *Gov’t of Guam v. United States*, 950 F.3d 104 (D.C. Cir. 2020).

²⁸ *Territory of Guam v. United States*, 141 S. Ct. 1608, 209 L. Ed. 2d 691 (2021).

²⁹ *Committee on Judiciary, U.S. House of Representatives v. McGahn*, 415 F.Supp.3d 148 (D.D.C. 2019) (After a D.C. Circuit panel initially ruled that the House lacked standing to sue the White House counsel the full court reheard the case, reversing the panel ruling. The case ultimately settled, with the White House counsel providing his [testimony](#) to the House Judiciary Committee on June 4, 2021).

³⁰ *Id.* at 213.

³¹ PN802: *Ketanji Brown Jackson (United States Sentencing Commission)*, 111th Congress (Feb. 11, 2010).

³² PN18: *Ketanji Brown Jackson (United States District Court for the District of Columbia)*, 113th Congress (March 23, 2013).

³³ PN391: *Ketanji Brown Jackson (United States Circuit Court for the District of Columbia Circuit)* 117th Congress (June 14, 2021).

³⁴ [Statement of Judge J. Michael Luttig](#), U.S. Senate Committee on the Judiciary (Feb. 26, 2022).

understanding, and collegial manner, three indispensable traits for success as a Justice on the Supreme Court.”³⁵ Judge Jackson’s impressive and distinguished legal career, her collegiality and professionalism to all she encounters in and out of her courtroom, and her record as a fair-minded judge demonstrate that she is an exceptional choice to serve on our nation’s highest court.

The Senate Must Meet this Historic Moment and Confirm Judge Ketanji Brown Jackson

When confirmed, Judge Jackson will make history as the first Black woman to serve on the Court, and it will happen 55 years after civil rights lawyer Thurgood Marshall was confirmed as the nation’s first Black Supreme Court justice. The Leadership Conference is overjoyed that this day has finally arrived.

In the Court’s entire history, there have only been three justices of color, two Black justices, and five justices who were women. The historic exclusion of Black women from the entire federal judiciary is a well-documented problem³⁶ — today, fewer than 6 percent of all active federal judgeships in the United States are held by Black women.³⁷ In fact, last year Judge Jackson became the first Black woman in nearly a decade to be confirmed to a federal appellate court and just the ninth Black woman ever confirmed to this level of our federal judiciary.³⁸ A more racially diverse court includes the perspectives of communities who have been traditionally excluded from seats of power in the judiciary’s formal and informal decision making, and judges from different demographic and legal backgrounds infuse more viewpoints into judges’ deliberations.³⁹ Importantly, a diverse court helps communities trust that judicial decisions are fair and do not favor a select few like the wealthy and powerful.⁴⁰ This historic nomination is long overdue, and Judge Jackson’s confirmation and presence on the Supreme Court matters greatly.

Judge Jackson’s experience as a public defender also means that she will be the first justice with any significant criminal defense experience since the retirement of Justice Marshall in 1991. Public defenders play a critical role in our criminal-legal system, protecting the constitutional rights of people who cannot afford lawyers. Yet they remain vastly underrepresented on the federal bench. At all levels of our judiciary, there are nearly six times as many former prosecutors on the federal bench than former criminal

³⁵ [Letter to Chairman Durbin and Ranking Member Grassley from Judge Thomas Griffith](#), U.S. Senate Committee on the Judiciary (Feb. 26, 2022).

³⁶ Sen. Maya, [Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time](#), Wis. L. Rev. 367 (2017).

³⁷ See [Biographical Directory of Article III Federal Judges, 1789-present](#), Federal Judicial Center (Accessed March 2022).

³⁸ *Id.*

³⁹ See Ifill, Sherrilyn A. [Racial Diversity on the Bench: Beyond Role Models and Public Confidence](#). 57 Wash. & Lee L. Rev. 405 (2000); Sen. Maya. [Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time](#). 2017 Wis. L. Rev. 367 (2017).

⁴⁰ *Id.*

defense lawyers,⁴¹ and just over 5 percent of federal appellate judges have experience as a public defender.⁴²

During her confirmation hearing this week, Judge Jackson explained how her work as a public defender has informed how she approached litigants in her courtroom. She also noted during her D.C. Circuit Court confirmation hearing that when she would discuss a client’s appeal with them, she was surprised to learn how little had been explained to them about the criminal-legal system up to that point. She said that they “had just been through the most consequential proceeding in their lives and no one really explained to them what they were supposed to expect, so they didn’t know where things might have gone wrong.”⁴³ Judge Jackson would therefore take time to explain the proceedings to the litigants in her courtroom, taking particular care to explain any sentencing decisions — believing that this understanding is “really important for our entire justice system because it’s only if people understand what they’ve done, why it’s wrong, and what will happen to them if they do it again that they can really start to rehabilitate.”⁴⁴ Our highest court should reflect the diversity of the legal profession, which is why Judge Jackson’s meaningful experience is greatly needed on the Supreme Court.

As Judge Jackson said in March 2021 while accepting Columbia Law School’s Constance Baker Motley Award for empowering women of color lawyers and advancing the rights of people of color, “We are now charged with the responsibility...of doing the work that is necessary to protect the rule of law and to promote equality and justice for all.”⁴⁵ That important responsibility — working toward equal justice for all — is an essential duty of our judicial branch. Judge Jackson’s record powerfully demonstrates that she is extraordinarily qualified to render that justice on the Supreme Court.

We strongly urge you to meet this incredible moment in history. Judge Jackson is ready. We are ready. And our nation is ready. The Senate must confirm her as soon as possible.

Thank you for giving me the opportunity to present the views of The Leadership Conference. I would be pleased to answer any questions you may have.

⁴¹ Neily, Clark, [Are a Disproportionate Number of Federal Judges Former Government Advocates?](#), Cato Institute (May 27, 2021).

⁴² [Biographical Directory of Article III Federal Judges, 1789-present](#), Federal Judicial Center (Accessed March 2022) Search includes all judges for the U.S. Courts of Appeal who listed “public defender” or “federal defender” as non-volunteer work experience.

⁴³ Jackson, J. Ketanji Brown. [Nominations Hearing](#). U.S. Senate Committee on the Judiciary. April 28, 2021.

⁴⁴ *Id.*

⁴⁵ Jackson, Ketanji Brown, *Remarks for the Empowering Women of Color Sixth Annual Constance Baker Motley Gala*, Columbia Law School (March 12, 2021).