



March 22, 2022

U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Re: Statement of Support for the Confirmation of Judge Ketanji Brown Jackson to the Supreme Court of the United States

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

The American Association for Access, Equity and Diversity (AAAED), the longest-serving organization of equal opportunity professionals, writes to express its strong support for the Honorable Judge Ketanji Brown Jackson for Associate Justice of the United States Supreme Court. We respectfully urge your swift confirmation of this outstanding jurist. Her record indicates that Judge Jackson is *quintessentially* qualified to serve on the nation's highest court.

Founded in 1974 as the American Association for Affirmative Action (AAAA), AAAED is a national not-for-profit association of practitioners working in the areas of equal opportunity, compliance and diversity. AAAED has 48 years of leadership, providing quality professional training to practitioners and promoting understanding and advocacy of affirmative action and other equal opportunity laws. AAAED's membership includes both institutional members and individual practicing professionals, students and retired members. Currently, half of the membership works for colleges and universities, ranging from Ivy League research institutions, leading public universities, prestigious liberal arts colleges, historically black colleges and universities (HBCUs) and technical and community colleges. AAAED has members in 40 states and international membership as well.

AAAED was established at a time when the first modern equal opportunity laws were being implemented. In light of AAAED's mission, the announcement of Judge Jackson's nomination is a particularly momentous occasion for our organization.

AAAED understands the significance of having an African-American woman serve on the Supreme Court. Of the 115 justices since the Supreme Court was created in 1789, Judge Ketanji Brown Jackson will make history being the first justice who is a woman of African descent. The majority of justices have been white males with only three others being individuals of color (Marshall, Thomas and Sotomayor), and five being women (O'Connor, Ginsburg, Sotomayor, Kagan and Barrett). While some may argue that the demographics of the Supreme Court are irrelevant, AAAED suggests that race, and the experience that comes with race in America,

matters. As a child, one becomes conscious of her status as “not quite equal” than her white counterparts. She also begins to understand that in the world around her, she may be perceived as not as competent, not as able - only because of her race. So, she is taught that she has to work harder to be appreciated in the way her white counterparts are valued. Intersectionality becomes a complicating feature as well because it is not only her race that matters; it is also her gender.

Judge Ketanji Brown Jackson has overcome the barriers that come with the intersectionality of being a woman of color, undoubtedly with the support of her parents and family. She overcame and she excelled. So, when there are cases involving issues such as discrimination on the basis of race, gender, LGBTQ status or other badges and incidents of inequality including disability, Judge Jackson may recall the experiences she has had or seen in her application of the law. While applying the law faithfully and impartially, she will understand the *context* in which such cases may have arisen.

With Judge Jackson’s sterling credentials, her selection also lends another form of diversity besides her gender and race/ethnicity: legal experience. Raised by middle-class parents who graduated from HBCUs and worked as public servants, a lawyer and a school teacher, alongside her brother who is a police officer, Judge Jackson went on to earn her undergraduate (*magna cum laude*) and law (*cum laude*) degrees from Harvard University. While many Supreme Court nominees have clerked for judges after law school, Judge Jackson excelled clerking for *three* federal judges, including Supreme Court Justice Stephen Breyer, whom she will succeed.

Judge Jackson also worked as an attorney in private practice and as a federal public defender. As a former public defender representing low-income defendants, she will bring expertise in criminal law, a background few Supreme Court justices reportedly hold. She went on to serve as a federal district court judge for eight years, writing nearly 600 opinions. Reportedly, her decisions have been reversed in only two percent of her cases, a notable record. In 1991, she was nominated by President Biden to serve on the Court of Appeals for the District of Columbia Circuit.

Thus, in our view, Judge Jackson *exceeds* the apparent qualifications for this position, *i.e.*, excellent law school record, law clerkship and experience as a jurist. Moreover, her track record demonstrates that she can view the law from *diverse* legal perspectives, having had both a criminal defense as well as a civil law practice. This will undoubtedly be an asset to the nation’s highest court.

As a district court judge, Judge Jackson has heard numerous cases regarding discrimination, providing individuals who are fighting discrimination in the workplace a fair opportunity to present their claims. In *Barber v. D.C. Government*<sup>1</sup>, Judge Jackson determined that the allegations made by the plaintiff - claiming that she and fellow Black judges were passed over for promotions in favor of less-qualified white colleagues, and was retaliated against when making complaints that resulted in her termination - were sufficient to support claims of

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<sup>1</sup> Barber v. District of Columbia Government et al, No. 1:2017cv00620 - Document 43 (D.D.C. 2019).  
<https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2017cv00620/185623/43/>

employment discrimination and retaliation under the District of Columbia Human Rights Act and Title VII of the Civil Rights Act of 1964.

When presented with the issue of race-conscious policies in contracting, Judge Jackson recognized that remedying race-based discrimination is a compelling government interest. See *Rothe Development, Inc. v Department of Defense*.<sup>2</sup> We believe her decision was the right one.

These cases do not imply that Judge Jackson will give preferential treatment to claimants who are racial minorities, however. According to an article in the *ABA Journal*, Judge Jackson has ruled against plaintiffs in many race bias cases.<sup>3</sup> This record should not be considered unusual because, as the story suggests, Judge Jackson did so following legal precedent.

Judge Jackson has also demonstrated her record in cases involving the Americans with Disabilities Act. In a case involving a disabled former DC Department of Corrections inmate who needed an accommodation, she ruled that the department had to pay damages to the hearing-impaired inmate because it failed to assess what accommodations he needed when he was assigned to this facility.<sup>4</sup>

AAAED has been an advocate for equal opportunity through affirmative action since its establishment in 1974. Our association has submitted *amicus curiae* briefs in support of the defendants in the *Fisher v. University of Texas* cases, and in 2021, AAAED was a plaintiff in *National Urban League, et al. v. Trump*<sup>5</sup> seeking to rescind Executive Order 13590, which prohibited several forms of diversity and inclusion training in the workplace. With the most recent attack on affirmative action in *Students for Fair Admissions v. Harvard*, now before the Supreme Court, it is imperative that justices on the Court have a clear understanding of diversity and the reasons why there is a long line of decisions since *Bakke v. Regents of the University of California* in 1978, that stand for the proposition that diversity is a compelling interest under the Constitution. It is our belief that Judge Jackson understands this history and that she will respect the principle of *stare decisis* in this matter.

Lastly, Judge Ketanji Brown Jackson embodies the fundamental purpose of affirmative action: giving everyone who is *qualified*, an opportunity to serve. Affirmative action is not about promoting the unqualified; it is about removing the barriers that have been in place since the nation's founding, and giving everyone, including this *quintessentially* qualified jurist, an opportunity to participate at all levels of government.

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<sup>2</sup> *Rothe Dev., Inc. v. Dep't of Def.*, 107 F. Supp. 3d 183, 97 Fed. R. Evid. Serv. 969 (D.D.C. 2015). <https://casetext.com/case/rothe-dev-inc-v-dept-of-def> .

<sup>3</sup> Debra Cassens Weiss, Supreme Court nominee Jackson rarely ruled for plaintiffs in bias cases, *ABA Journal*, March 18, 2022, <https://www.abajournal.com/news/article/supreme-court-nominee-jackson-rarely-ruled-for-plaintiffs-in-bias-cases>

<sup>4</sup> Matt Zapotosky, "Judge rules D.C. Corrections must pay damages in case of deaf inmate," *Washington Post*, September 12, 2015, [https://www.washingtonpost.com/local/crime/judge-rules-dc-corrections-must-pay-damages-in-case-of-deaf-inmate/2015/09/12/34a9fda4-58bd-11e5-abe9-27d53f250b11\\_story.html](https://www.washingtonpost.com/local/crime/judge-rules-dc-corrections-must-pay-damages-in-case-of-deaf-inmate/2015/09/12/34a9fda4-58bd-11e5-abe9-27d53f250b11_story.html)

<sup>5</sup> *National Urban League v. Trump*, 1:20-cv-03121 (D.D.C.). <https://clearinghouse.net/detail.php?id=17825>.

We respectfully urge the Senate to act swiftly to confirm Judge Jackson so that she may take her seat among the other justices of the High Court.

Thank you.

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