

**Hearing on the Nomination of Judge Ketanji Brown Jackson
to be an Associate Justice of the Supreme Court of the United States**

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**Prepared Statement of
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Members of the Committee:

Thank you for the opportunity to comment on the nomination of Judge Ketanji Brown Jackson, whom I have known personally and professionally since 1998, and whose career I have followed closely since that time.

I have taught constitutional law and legal history for twenty years at the University of Virginia, where since 2016 I have served as Dean of the School of Law, Arnold H. Leon Professor of Law, and Professor of History. Today I am speaking in my personal capacity, not in my official capacity as Dean of UVA Law. My testimony is not based on the views or positions of the University of Virginia. It is based on my personal opinions as a scholar, considering Judge Jackson's legal experience and judicial approach in both a broad historical perspective and the context of contemporary thought on the judicial role.

My overall conclusion is that the Supreme Court and the nation will benefit enormously from the keen intelligence, impeccable integrity, even-handed temperament, and intellectual open-mindedness of a Justice Ketanji Brown Jackson.

Historical Context

Before I turn to the main portion of my testimony, let me offer a historian's brief reflection on the historic nature of this appointment. Some 56 years ago, the Senate confirmed Constance Baker Motley as the first Black woman judge to serve on any federal court. Judge Motley served with distinction for almost forty years, devoted to the rule of law and the role of the judge as neutral arbiter. That Judge Jackson shares Judge Motley's birthday is a happy coincidence. That she shares her status as a trailblazer is far more than that: We would not be here today without Judge Motley and others like her who paved the way.

Qualifications

Judge Jackson is eminently qualified to serve on the Supreme Court of the United States. As you have already heard much about Judge Jackson's qualifications, I will use a few numbers to highlight how extraordinary they are in both what Judge Jackson has achieved and how well her achievements have prepared her for service on the Supreme Court: Judge Jackson holds two degrees from Harvard University, receiving Latin honors from both Harvard College and Harvard Law School. She has served as a law clerk to three federal judges, nominated by presidents of both parties. She has been confirmed to federal office three times by bipartisan Senate votes. She has spent 7 years of her career in private practice, and 19 in public service, including two years representing indigent criminal defendants as a federal public defender, 6 years working with and on the bipartisan United States Sentencing Commission, and 9 years serving as a judge on two federal courts, at both the trial and appellate levels.

This abbreviated litany of Judge Jackson's career makes clear that she will bring enormous distinction to the Supreme Court. It also highlights the tremendous breadth of Judge Jackson's legal experience, which will enrich both her own opinions as a justice and the collective deliberations of the Court. That Judge Jackson has represented clients across the spectrum from well-resourced corporations to the indigent and unpopular is testament not only to her robust embrace of every lawyer's obligation to serve the public but also to her commitment to the rule of law in an adversarial system in which every party is entitled—and criminal defendants are constitutionally entitled—to zealous advocacy. Her experience as a former trial judge, a trait shared by only one justice currently on the Court, bears special mention. The insights she has gained on the United States District Court for the District of Columbia will enhance the Supreme Court's understanding of the effects of its decisions on trial courts and their implementation of the law nationwide.

Judicial Approach

This brings me to my second point, about the salutary judicial approach Judge Jackson has developed out of this varied and extensive legal and judicial experience. As a trial judge, she has shown a deep and abiding respect for precedent and for the appropriately modest place of the judiciary in the constitutional scheme. She has written at length about the importance of *stare decisis*, not only “because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process[.]” but also because of the “limiting function” it performs in maintaining the constitutional separation of powers.

To Judge Jackson, the role of the judge in the constitutional scheme is simultaneously crucial and modest. Her opinions reflect the rigor and nuance such an approach demands. They are fact-based and pragmatic, committed to precedent and the rule of law, open-minded and analytical, careful and accessible. Across the more than 500 cases Judge Jackson has decided, whether the matters at hand concerned environmental regulation or immigration law, criminal charges or alleged employment discrimination, possible civil rights violations or administrative law questions, she has found in favor of both plaintiffs and defendants, for individuals, nonprofits, businesses, and the government. One cannot presume what Judge Jackson's ruling will be based on the parties' political affiliations, positions in the world, or other characteristics. Rather, what remains constant across these hundreds of opinions is Judge Jackson's commitment to serving as a neutral arbiter whose role is to apply precedents to the facts before her, maintain procedural consistency, reason with common sense and humanity, and do justice for the parties before her in accordance with the rule of law.

These traits place Judge Jackson in the heartland and mainstream of the American judicial tradition. That tradition calls for opinions that are carefully written, committed to getting the law and the facts right, intent on applying existing precedent to the case at hand, and dedicated to the rule of law and the integrity of the judicial process. These are the essential characteristics of Judge Jackson's opinions.

Judge Jackson and Justice Breyer

My final point is personal as well as scholarly, and it concerns the connection between Judge Jackson and the justice who has most recently held what is known as "Seat Two" on the Supreme Court: Justice Stephen G. Breyer, for whom Judge Jackson and I both clerked. Judge Jackson is very much her own judge. She has developed her judicial approach in the context of her own experience and the mainstream currents of judicial thought in the twenty-first century. That said, Judge Jackson's intellectual curiosity and open mind, her concern for the facts, and the care and clarity she brings to her analysis of the law all resemble the justice she has been nominated to succeed.

Two shared traits are particularly noteworthy. Like Justice Breyer, Judge Jackson's deep patriotism and love of country have motivated a career dedicated overwhelmingly to public service. Also like Justice Breyer, Judge Jackson came by that patriotism and call to serve through her upbringing. She absorbed those values from family members who dedicated their professional lives to such service—in education, law enforcement, and the military. Judge Jackson believes as deeply as Justice Breyer in American values and the value of the American Constitution.

Second, Judge Jackson, like Justice Breyer, has collaborated “across the aisle” throughout her career. She has worked with lawyers from across the political spectrum as a law firm associate, and she has found consensus with her colleagues on the bipartisan Sentencing Commission and on the D.C. Circuit. William Burck, who served as a law clerk for Justice Kennedy at the same time that Judge Jackson clerked for Justice Breyer (and who later served in President George W. Bush’s White House), notes in a letter to this committee that Judge Jackson “was a person my colleagues and I could always depend upon for her discerning analysis of the most difficult legal questions and her commitment to collaboration across Chambers, regardless of the perceived ideological bent of the individual Justices.” Throughout her career, Judge Jackson has rightly been known as a consensus-builder who is as interested in hearing the views of others as in sharing her own, and who builds relationships and bridges across every type of difference. During her remarks at the White House on the occasion of her nomination, Judge Jackson described Justice Breyer as a person of “civility, grace, pragmatism, and generosity of spirit.” She might easily have been describing herself.

Just after Justice Breyer announced his retirement, I wrote: “[T]he lessons Justice Breyer taught me are ones I rely on every day. The appetite for dialogue, the optimism, the open minded and open heartedness, and the joy he embodies are what I hope to see every time I look in the mirror. They are what I hope will remain with the court, and the nation, long after he retires.” If you confirm Judge Jackson, as I urge you to, those virtues—both personal and judicial—will indeed remain with the Court, much to the benefit of us all.