



April 1, 2022

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 230 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, and the 55 undersigned organizations, we write to the Senate Judiciary Committee following the committee's confirmation hearing for Judge Ketanji Brown Jackson to express concern over the treatment of Judge Jackson by certain members of the committee. As many of us expressed in our strong support for the confirmation of Judge Jackson to serve as an associate justice of the U.S. Supreme Court, we had hoped the Senate would fulfill its constitutional role of advice and consent fairly and honestly. While most members of the committee treated the process and this exceptional nominee with seriousness and respect, we are compelled to address the insidious behavior and unfounded assertions made by some senators throughout the hearing.

Given the significant constitutional responsibility to provide advice and consent on presidents' nominees to serve in lifetime positions on our federal courts, senators are expected to thoroughly review nominees' backgrounds and records. For weeks, many senators on both sides of the aisle noted the need for a thorough and fair process. Ranking Member Chuck Grassley said that he "continually emphasized the need for a thorough respectful process by the committee," promising not to turn Judge Jackson's hearing into a "spectacle." He expressed a desire for the committee to "conduct a thorough, exhaustive examination of Judge Jackson's record and views."<sup>1</sup> Senator John Cornyn reiterated this before the hearing, saying "I expect this process to be fair and dignified."<sup>2</sup> Unfortunately, instead of asking Judge Jackson substantive and thoughtful questions, some senators used their time during the hearing to launch meritless attacks on her record and engage in demagoguery and pandering to fringe conspiracy theorists.

By any standard, Judge Jackson is exceptionally qualified to serve on our country's highest court. She served as a law clerk to judges at every level of our federal judicial system and continued her public service at the bipartisan U.S. Sentencing Commission, as an assistant public defender in the appeals division of the Office of the Federal Public Defender for the District of Columbia, and as a federal district court and circuit court judge. Judge Jackson's well-established dedication to public service and equal justice speaks to her well-rounded experience as well as her character. Judge Jackson will be a tremendous asset to the Supreme Court as the first public defender to serve on the Court and the first justice with any significant criminal defense work since the retirement of Justice Thurgood Marshall more than 30 years ago.

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<sup>1</sup> [\*The Nomination of Ketanji Brown Jackson to be an Associate Justice of the Supreme Court of the United States \(Day 2\)\*](#): Hearing Before the Senate Judiciary Committee, 117 CONG. (March 21, 2022) (Statement of Senator Chuck Grassley).

<sup>2</sup> Todd Ruger, [\*Republicans stress process for Supreme Court confirmation will be one of 'respect'\*](#), ROLL CALL (February 3, 2022).

Attacks made on Judge Jackson’s service as a federal public defender and the clients she vigorously represented are spurious and undermine one of the central tenets of our democracy. The right to counsel is one of our nation’s most bedrock principles, helping to fulfill the constitutional promise of a fair trial and the Sixth Amendment’s right to counsel. The Supreme Court has reinforced the right to counsel, considering it a “fundamental right essential to a fair trial.”<sup>3</sup> Thus, the work of public defenders and criminal defense lawyers is critical. Those who enter public service as public defenders and criminal defense lawyers — like Judge Jackson and so many others — should be commended, not maligned.

As Judge Jackson noted at the hearing, “federal public defenders don't get to pick their clients. They have to represent whoever comes in and it's a service. That's what you do as a federal public defender: You are standing up for the constitutional value of representation.”<sup>4</sup> Senator Leahy, a former prosecutor, reinforced the importance of criminal defense attorneys, stating, “for a criminal justice system to function properly you have to have skilled, dedicated lawyers on both sides of the issue, both the prosecutor and the defense attorney. It is equally essential for judges to have a nuanced and a balanced understanding of our criminal justice system if we are going to have justice done.”<sup>5</sup> Attacks on Judge Jackson for her zealous defense of her clients, including her defense of clients detained at Guantanamo Bay, are misguided attempts to score political points while undermining the fundamental right to counsel. As noted by esteemed national security lawyers, “[f]or its integrity, both internally and abroad, the American system of justice depends upon strong advocacy on both sides of the courtroom. Capable advocates willing to defend the most reviled in society, without endorsing the crime, is a pillar of our system that distinguishes us from other notions of justice around the world.”<sup>6</sup> The attacks on Judge Jackson’s record grossly mischaracterize her work and threaten the ideals of our democracy. Despite these inappropriate and knowingly misleading attacks, Judge Jackson showed a poised and patient judicial temperament, reminding senators that constitutional protections are not privileges reserved for a select few, but rights afforded to us all. This is a much-needed perspective on our highest court.

With no basis upon which to honestly question Judge Jackson’s impressive qualifications, some senators made false statements about Judge Jackson’s sentencing practices in a sad and transparent attempt to derail her path to confirmation. Notably, these concerns over sentencing were not raised in her previous confirmation hearing nor in the consideration of numerous appellate nominees whose sentencing histories as district court judges align with Judge Jackson’s.<sup>7</sup> It was particularly disturbing that these attacks

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<sup>3</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>4</sup> [The Nomination of Ketanji Brown Jackson to be an Associate Justice of the Supreme Court of the United States \(Day 2\)](#): Hearing Before the Senate Judiciary Committee, 117 CONG. (March 22, 2022) (Statement of Judge Ketanji Brown Jackson).

<sup>5</sup> [The Nomination of Ketanji Brown Jackson to be an Associate Justice of the Supreme Court of the United States \(Day 2\)](#): Hearing Before the Senate Judiciary Committee, 117 CONG. (March 22, 2022) (Statement of Senator Patrick Leahy).

<sup>6</sup> Jeh Charles Johnson *et al.*, [Letter to Senators Durbin and Grassley](#), SENATE JUDICIARY COMMITTEE (March 16, 2022).

<sup>7</sup> Glenn Kessler, [These Trump judges failed Hawley’s sentencing test for Jackson](#), WASHINGTON POST (March 24, 2022); Linda Qiu, [Critics of Jackson’s Child Sex Abuse Sentences Backed Judges With Similar Records](#), NEW YORK TIMES (March 24, 2022).

continued after significant fact-checking ahead of the hearing, which disproved the attacks,<sup>8</sup> and after Judge Jackson's clear and direct answers throughout the hearing. This is a new low for this esteemed body, especially at a time when our nation is united in its strong bipartisan support for Judge Jackson.<sup>9</sup>

Attacks on Judge Jackson's sentencing record in non-production child sexual abuse material cases are baseless. As those who have closely studied this issue explain, Judge Jackson's sentences were well within the range of her peers.<sup>10</sup> The 2021 U.S. Sentencing Commission report noted that less than 30 percent of people convicted of non-production child sexual abuse material offenses received a sentence within the guideline range.<sup>11</sup> Such discrepancies were also described to Congress in a 2012 report by the U.S. Sentencing Commission.<sup>12</sup> In these reports, the commission recommended Congress change the guidelines, yet "[t]o date, Congress has not implemented the Commission's statutory or guideline recommendations."<sup>13</sup> It is within Congress' authority, not the courts', to update sentencing guidelines.

Additionally, many sentencing experts have been outspoken in their support of Judge Jackson. Kenya Davis, a former assistant U.S. attorney for the District of Columbia who led many investigations and trials involving child sexual abuse materials, noted that Judge Jackson "had a reputation for carefully considering the circumstances of every case."<sup>14</sup> Davis stated that attempts to vilify Judge Jackson's record on these issues "lack[] any appreciation for the complexity of these cases or any factors that play a part in final sentencing decisions beyond the guideline recommendations."<sup>15</sup> Additionally, nine retired federal judges affirmed that Judge Jackson's record is consistent with other judges as well as the U.S. Department of Justice.<sup>16</sup> Survivors of sexual violence and advocates for victims of these horrific crimes agree that Judge Jackson is highly qualified for this position.<sup>17</sup>

Further, the comprehensive review by the American Bar Association's Standing Committee on the Federal Judiciary noted that in interviews, the standing committee affirmatively raised the issue of whether Judge Jackson could be fair or was somehow biased, which they also did in their previous

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<sup>8</sup> Linda Qiu, [Attacks on Judge Jackson's Record on Child Sexual Abuse Cases Are Misleading](#), NEW YORK TIMES (March 21, 2022).

<sup>9</sup> Charles Franklin, [New Marquette Law School Poll National Survey Finds Two-Thirds of Public Support Confirming Ketanji Brown Jackson as a Supreme Court Justice](#), MARQUETTE LAW SCHOOL (March 30, 2022).

<sup>10</sup> Rachel Barkow (@RachelBarkow), [Twitter](#) (Mar. 17, 2022, 7:51 PM).

<sup>11</sup> Charles R. Breyer, *et al*, [Federal Sentencing of Child Pornography, Non-Production Offenses](#) at 11, U.S. SENTENCING COMMISSION (June 2021).

<sup>12</sup> Patti B. Saris *et al*, [Federal Child Pornography Offenses](#), U.S. SENTENCING COMMISSION (2012).

<sup>13</sup> Charles R. Breyer, *et al*, [Federal Sentencing of Child Pornography, Non-Production Offenses](#) at 3, U.S. SENTENCING COMMISSION (June 2021). ("As a result, judges have continued to sentence most non-production child pornography offenders below their guideline ranges.")

<sup>14</sup> Manu Raju (@mkraju), [Twitter](#) (Mar. 28, 2022, 2:24 PM).

<sup>15</sup> *Id.*

<sup>16</sup> Hon. Nancy Gertner *et al*, [Letter to Senators Durbin and Grassley](#), SENATE JUDICIARY COMMITTEE (March 21, 2022). ("Judge Jackson's record -- both as a Commissioner on the United States Sentencing Commission and as a judge on the District Court for the District of Columbia -- is entirely consistent with the record of other district court judges across the country (appointed by presidents of both parties) as well as with the position of the Department of Justice.")

<sup>17</sup> [Crime Victim/Survivors and Advocates Support for Judge Jackson to Serve as Associate Supreme Court Justice](#), (March 9, 2022).

evaluations in 2012 and 2021, and “[a]ll rejected any concern that Judge Jackson was biased.”<sup>18</sup> Indeed, one former federal prosecutor who worked with Judge Jackson asserted that she lacked bias, was fair to all sides regarding sentencing and other issues, and was of the highest integrity and competence.<sup>19</sup> This is the true record of Judge Jackson’s notable career as a fair-minded federal judge.

We thank Chair Dick Durbin for respecting survivors and keeping confidential information that could otherwise be used to exacerbate the harms done to victims. Requests by some senators to review pre-sentencing records in child sexual abuse material cases are a transparent attempt to score political points at the expense of inflicting ongoing harm on already traumatized survivors and their families. No senator had access to these records, and the Senate has never considered requests for this kind of information. Disclosing such information would violate the promises made to victims and their families and bring a new level of disturbing theatrics to the Senate’s confirmation process. Information contained in these records, such as the victim impact statements, were provided by survivors with the understanding that the information would be shared only with the judge. Breaching this confidentiality, even with redactions, can retraumatize survivors and would make it more difficult to hold offenders accountable. Such a request disregards the well-being of survivors and their families. This is nothing more than a dangerous and politically motivated attempt to malign Judge Jackson’s character.

Judge Ketanji Brown Jackson is an extraordinary nominee and belongs on our highest court. We are celebrating this historic moment and Judge Jackson’s unique qualifications. But as we celebrate, we must reiterate that it is unacceptable that some senators have embraced political pandering to extremists, which undermines our fragile democracy. Judge Jackson should not have to endure this differential treatment by senators who are willing to tear down a highly respected public servant in order to secure media attention for their own antics. This cannot be the way that the Senate Judiciary Committee considers nominees to sit on our federal courts for a lifetime. It will poison both the Senate and our federal judiciary if some senators on the committee continue this dangerous trajectory.

History will remember this moment. We urge *all* senators to bring fairness and honesty to this process — for this nominee and for all nominees to come.

Sincerely,

The Leadership Conference on Civil and Human Rights  
A Better Balance  
Advocates for Youth  
African American Ministers In Action  
Alliance for Justice  
American Association of People with Disabilities  
American Association of University Women  
American Constitution Society

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<sup>18</sup> [Statement of Honorable Ann Claire Williams on behalf of the Standing Committee on the Federal Judiciary](#), AMERICAN BAR ASSOCIATION (March 24, 2022).

<sup>19</sup> *Id.* at 14

American Federation of State, County and Municipal Employees  
American-Arab Anti-Discrimination Committee (ADC)  
Asian and Pacific Islander American Vote (APIAVote)  
Autistic Self Advocacy Network  
Bazelon Center for Mental Health Law  
Bend the Arc: Jewish Action  
Catholics For Choice  
Center for American Progress  
Center for Constitutional Rights  
Center for Disability Rights  
Common Cause  
Demand Justice  
DemCast USA  
Democracy Initiative  
End Citizens United / Let America Vote Action Fund  
Human Rights Campaign  
In Our Own Voice: National Black Women's Reproductive Justice Agenda  
Indivisible  
League of Conservation Voters  
League of United Latin American Citizens (LULAC)  
Muslim Advocates  
NAACP  
NAACP Legal Defense and Educational Fund, Inc. (LDF)  
National Center for Lesbian Rights  
National Coalition Against Domestic Violence  
National Community Reinvestment Coalition (NCRC)  
National Education Association  
National Employment Law Project  
National Health Care for the Homeless Council  
National Immigration Law Center  
National Partnership for Women & Families  
National Urban League  
National Women's Law Center  
NETWORK Lobby for Catholic Social Justice  
Open The Government  
People For the American Way  
People's Parity Project  
Robert F. Kennedy Human Rights  
Service Employees International Union (SEIU)  
Southern Poverty Law Center Action Fund  
The Advocates for Human Rights  
The Workers Circle  
True North Research

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United State of Women  
URGE: Unite for Reproductive & Gender Equity  
Women Lawyers On Guard Action Network, Inc.  
Women's March  
Workplace Fairness