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May 19, 2021

Senator Dick Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

Senator Chuck Grassley
United States Senate
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I write in support of the nomination of Judge Ketanji Brown Jackson to serve as a judge on the Circuit Court for the D.C. Court of Appeals. Judge Ketanji Brown Jackson’s diversity of experience as well as her reputation for fairness and impartiality demonstrate her clear qualification for service on the federal appellate bench.

LDF is the country’s first and foremost civil rights law firm. Founded in 1940 by Thurgood Marshall, LDF has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF’s mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF has been a pioneering force in our nation’s quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained. LDF has examined and reviewed the record of countless judicial nominees over decades. Our examination of the record of judicial nominees is focused on an assessment of the capacity of a judicial nominee to undertake their work with fairness and impartiality, and with respect for the rights of those who are often most marginalized in our society.

The role of the federal judge is among the most central to maintaining the rule of law and the preservation of our constitutional democracy. Article III judges enjoy lifetime tenure, and are subject to the rigorous process of Senate confirmation to ensure their independence and integrity, and to equip them to hold a position of the highest public trust. As such, it is important that individuals who serve as judges have a demonstrated commitment to fairness and to upholding the law, as well as the professional training and experience to adjudicate claims involving complex issues of law with powerful consequences for the lives of those who will appear before courts seeking justice. In her 8 years as a judge on the federal district court, Judge Jackson’s service has been exemplary. She is eminently qualified to serve with distinction on the D.C. Circuit Court of Appeals.

Service on the United States Sentencing Commission

After graduating from Harvard University and Harvard Law School, Judge Jackson served as a law clerk to three federal judges: Associate Justice Stephen G. Breyer of the Supreme Court of the United States, Judge Bruce M. Selya of the Court of Appeals for the First Circuit, and Judge Patti B. Saris of the District Court for the District of Massachusetts.¹ She briefly joined the firms of Goodwin Procter LLP and the Feinberg Group, LLP (now known as Feinberg Rozen, LLP) before turning to public service as an Assistant Special Counsel for the United States Sentencing Commission (“Commission”) and later as the Commission’s Vice Chair.² Nominated by President Obama in 2009, Judge Jackson was unanimously confirmed to the Commission by the Senate, and she served as Vice Chair and commissioner from 2010-2013. During her tenure as Vice Chair, the Commission sought to reduce and end the unjust discrepancy between sentences for crack cocaine and powder cocaine.

When the sentencing guidelines for crack cocaine were reduced by Congress in the Fair Sentencing Act of 2010, Judge Jackson advocated to ensure such reforms were retroactive, describing the decision as a question of “fundamental fairness.”³ During a public meeting of the Sentencing Commission, Judge Jackson said:

“In my view, now that Congress has taken steps to clear the air by making significant downward adjustments to the mandatory statutory penalties for crack cocaine offenses, there is no excuse for insisting that those who are serving excessive sentences under the long-disputed and now discredited prior guideline must carry on as though none of this has happened. I believe that the Commission has no choice but to make this right. Our failure to do so would harm not only those serving sentences pursuant to the prior guideline penalty, but all who believe in equal application of the laws and the fundamental fairness of our criminal justice system. The decision we make today, which comes more than 16 years after the Commission's first report to Congress on crack cocaine, reminds me in many respects of an oft-quoted statement from the late Dr. Martin Luther King, Jr. He said: ‘The arc of the moral universe is long, but it bends toward justice.’ Today the Commission completes the arc that began with its first recognition of the inherent unfairness of the 100:1 crack/powder disparity all those years ago. I say justice demands this result.”⁴

¹ Judge Ketanji Brown Jackson, *Questionnaire from Judicial Nominee*, Senate Judiciary Committee (last visited Apr. 26, 2021), at 3
<https://www.judiciary.senate.gov/imo/media/doc/Jackson%20Senate%20Judiciary%20Questionnaire1.pdf>.

² Id.

³ United States Sentencing Commission, *Transcript of Public Meeting of June 30, 2011*, (last visited Apr. 26, 2021),
https://web.archive.org/web/20110725020445/https://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20110630/Meeting_Transcript.pdf.

⁴ Id. at 13.

Diversity of Professional Experience

From 2005-2007, Judge Jackson served as an assistant federal public defender in the District of Columbia where she represented low-income criminal appellants before the U.S. Court of Appeals for the D.C. Circuit. As an assistant federal public defender, she represented people in Washington D.C. who were accused of crimes but who could not afford a lawyer.

Public defenders play a vital role in defending all people in the United States, a necessary function in our democracy. The central mission of a public defender is to provide the Constitutional right to counsel,⁵ to provide quality legal representation to people who would otherwise not be able to afford it. Public defenders provide an invaluable service to the nation in fulfilling the nation's duty to this right to counsel mandate made clear in *Gideon v. Wainwright*.⁶ Judge Jackson's work defending indigent people will bring a critical and underrepresented viewpoint to the Circuit Court for the D.C. Court of Appeals.

From 2007-2010, Judge Jackson worked as Of Counsel in the Washington, D.C. office of Morrison & Foerster LLP. Judge Jackson's practice included white-collar criminal defense cases, settlements of mass-tort claims, criminal and civil appellate litigation in both state and federal courts, as well as cases in the Supreme Court of the United States.

Esteemed Judicial Record on the District Court

Judge Jackson was confirmed to the District Court of the District of Columbia by a voice vote in the Senate on March 23, 2013.⁷ During her nomination process for the district court, Judge Jackson was rated *Unanimously Qualified* by the American Bar Association ("ABA").⁸ The ABA assesses a nominee's competence, integrity and temperament in a thorough and comprehensive process that includes interviews with people familiar with the nominee and an analysis of the nominee's legal writings.

On the District Court for the District of Columbia, Judge Jackson has a reputation of integrity, impartiality, and fairness. While on the District Court of the District of Columbia, Judge Jackson demonstrated a critical commitment to the protection of civil rights and equal justice under the law. In *Equal Rights Center v. Uber Technologies*,⁹ Judge Jackson ruled that Uber may be held liable for failing

⁵ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁶ *Id.*

⁷ PN18—Ketanji Brown Jackson, *The Judiciary*, 113th Congress (last visited Apr. 26, 2021), <https://www.congress.gov/nomination/113th-congress/18>.

⁸ American Bar Association, *Standing Committee on the Federal Judiciary, Ratings of Article III Judicial Nominees, 113th Congress* (last updated Dec. 16, 2014), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/web-rating-chart-obama-113.pdf.

⁹ *Equal Rights Ctr. v. Uber Techs., Inc.*, No. 17-cv-1272, 2021 WL 981011 (D.D.C. March 15, 2021)

to provide transportation services that can be fully and equally accessible to people who use wheelchairs. In her decision, she rejected a number of Uber's claims that the company should be exempt from the Americans with Disabilities Act and the D.C. Human Rights Act. Furthermore, in *Pierce v. District Columbia*, Judge Jackson ruled that prison officials had acted with "deliberate indifference"¹⁰ in denying and ignoring a deaf incarcerated person's request for accommodations under the Americans with Disabilities Act.

Most notably, in *Committee on the Judiciary, U.S. House of Representatives v. Donald McGahn*,¹¹ Judge Jackson ordered President Donald Trump's former White House counsel, Donald McGahn, to appear before the House Judiciary Committee to testify regarding possible obstruction of justice by the President. Mr. McGahn was a key witness in special prosecutor Robert Mueller's investigation, and the House Judiciary Committee, using their oversight authority, sought to question Mr. McGahn to determine if there were grounds for impeaching the President. President Trump ordered Mr. McGahn not to testify and the House Judiciary Committee went to court to enforce its subpoena. In a critical decision upholding the fundamental democratic principle that no one is above the law, Judge Jackson rejected the President's argument that close and/or former advisers, like Mr. McGahn, are absolutely immune to demands that they appear and testify before Congress. Judge Jackson, wrote that such an immunity "simply does not exist."¹² In ruling against the White House Counsel's broad and sweeping claim of privilege, Judge Jackson articulated with clarity and power, the constitutional principle at the core of the case:

"Presidents are not kings. This means that they do not have subjects bound by loyalty or blood, whose destiny they are entitled to control. 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."¹³

On appellate review, a divided panel of the D.C. Circuit reversed Judge Jackson's rulings on the specific issues of standing and cause of action. However, the entire D.C. Circuit granted *en banc* review of these matters twice and has now vacated both panel reversals.¹⁴ The *en banc* D.C. Circuit has affirmed Judge Jackson's conclusion that the House Judiciary Committee has standing to adjudicate its subpoena enforcement claims in federal court notwithstanding the inter-branch nature of the dispute. The cause of action and merits questions remain pending.¹⁵

¹⁰ *Pierce v. District of Columbia*, 146 F. Supp. 3d 197 (D.D.C. 2015)

¹¹ *Comm. on the Judiciary v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019).

¹² *Comm. on the Judiciary v. McGahn* at 115, <https://int.nyt.com/data/documenthelper/6516-jackson-ruling-in-mcgahn-subpo/92d4672db63b5cac498d/optimized/full.pdf#page=1>.

¹³ *Id.* at 114.

¹⁴ *Supra* note 9 at 70.

¹⁵ *Id.*

Diversity on Bench

If confirmed, Judge Jackson will be only the third Black woman to ever serve on the Court of Appeals for the D.C. Circuit.¹⁶ Since the establishment of the judiciary, there have only ever been eight Black women to serve on the federal appellate bench.¹⁷ Such disparities undermine the legitimacy and integrity of the judicial system. When the federal judiciary is reflective of the diversity of the nation, it increases public trust, confidence, and fairness in the justice system, and it therefore increases access to justice.¹⁸

The federal bench would also be improved by the addition of judges who, like Judge Jackson, have spent a portion of their legal career serving as public defenders. Although this period did not represent the bulk of Judge Jackson's career as a lawyer, her work as a federal public defender equips Judge Jackson with the experience of having represented the most vulnerable members of our society as a public defender. This service, combined with her experience on the U.S. Sentencing Commission, and her service for eight years as a judge on the District Court for the District of Columbia makes Judge Jackson uniquely qualified to serve on the D.C. Circuit Court of Appeals.

Conclusion

Judge Ketanji Brown Jackson is supremely qualified to serve on the Circuit Court for the D.C. Court of Appeals. The breadth and depth of her professional and judicial experience make her well suited to not only succeed as an appellate judge but to also have a positive impact in diversifying perspectives on the appellate bench. Based on Judge Jackson's record on the district court, the ABA has rated her as *Unanimously Well Qualified* to serve on the D.C. Court of Appeals.¹⁹ Judge Jackson has the reputation

¹⁶ Judges Janice Rogers Brown, and Judith Ann Wilson Rogers are the only Black women to ever serve on the Court of Appeals for the D.C. Circuit. *Advanced Search--Biographical Directory of Article III Federal Judges, 1789-present*, Federal Judicial Center (last visited Apr. 26, 2021), <https://www.fjc.gov/history/judges/search/advanced-search>.

¹⁷ They are: Janice Rogers Brown, Bernice Bouie Donald, Allyson Kay Duncan, Amalya Lyle Kearse, Johnnie B. Rawlinson, Judith Ann Wilson Rogers, Ojetta Rogeriee Thompson, and Ann Claire Williams. *Advanced Search--Biographical Directory of Article III Federal Judges, 1789-present*, Federal Judicial Center (last visited Apr. 26, 2021), <https://www.fjc.gov/history/judges/search/advanced-search>.

¹⁸ Ruthie Ashley, *Does a diverse bench really matter?*, American Bar Association (Oct. 18, 2018), https://www.abajournal.com/news/article/does_a_diverse_bench_really_matter.

¹⁹ American Bar Association, Standing Committee on the Federal Judiciary, Ratings of Article III Judicial Nominees, 117th Congress, (last updated April 27, 2021), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/webratingchart-117.pdf.



of a trusted and well-respected district court judge, and a demonstrated commitment to equal justice under the law. We urge the Senate Judiciary Committee to confirm Judge Ketanji Brown Jackson to the Circuit Court for the D.C. Court of Appeals without delay.

Sincerely,

A handwritten signature in black ink that reads "Sherrilyn A. Ifill". The signature is written in a cursive, flowing style.

Sherrilyn Ifill
President and Director-Counsel

cc: Members of Senate Judiciary Committee