

March 29, 2022

Dear Senator:

In explaining how he would choose a nominee for the Supreme Court, President Biden said, “The Constitution is always evolving slightly in terms of additional rights or curtailing rights” and he was looking for someone with a judicial philosophy in which, “there are unenumerated rights, and all the amendments mean something, including the Ninth Amendment.”

The Ninth Amendment simply says, “*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*” Liberal activist judges have wrongly imputed an expansive and “evolving” meaning to the Ninth Amendment and the Equal Protection Clause of the Fourteenth Amendment to invent or curtail rights as they deem appropriate.

While Judge Ketanji Brown Jackson dodged questions about her judicial philosophy during her confirmation hearings, her record indicates that she is the kind of liberal activist that “Demand Justice” and other dark money groups spent millions of dollars to promote and that President Biden is now seeking to deliver.

As a member of the United States District Court for the District of Columbia, Judge Jackson’s decisions were frequently reversed by the Court of Appeals for the District of Columbia Circuit. Even liberal judges ruled against her and found that she intervened in cases where she did not have jurisdiction and engaged in judicial “abuse of discretion.”

Judge Jackson has cited a 2019 case involving a challenge to the Department of Homeland Security’s decision to expand the category of noncitizens subject to expedited removal processes as one of the 10 most significant cases of her career. In that case, she issued a nationwide injunction to stop the DHS action and said the Trump administration’s legal argument “reeks of bad faith” and “demonstrates contempt for the authority that the Constitution’s Framers have vested in the judicial branch.”

In spite of Judge Jackson’s hyperbolic arguments, the D.C. Circuit reversed her ruling and cancelled the injunction. The court held that, because Congress granted “sole and unreviewable discretion” to the DHS secretary to determine whether to expand expedited removal, the decision was not subject to judicial review and there was no legal basis for the injunction Judge Jackson had entered. Arguably, it was Judge Jackson who showed “bad faith” and “contempt” for the authority of both Congress and the Executive Branch.

During her time in private practice, Ketanji Brown Jackson co-authored a brief on behalf of several pro-abortion groups. Jackson’s brief supported the creation of discriminatory free speech “buffer zones” outside abortion clinics, where abortion clinic workers could speak to pregnant women, but pro-life advocates could not. The brief disparaged pro-life advocates seeking to support pregnant women as a “hostile, noisy crowd of ‘in-your-face’ protestors.” This biased view raises serious concerns about how a Justice Jackson would rule in free speech and religious freedom cases.

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During her confirmation hearings, Judge Jackson declined to answer simple questions like, “When does life begin?” and “Can you provide a definition for the word ‘woman?’” Incredibly, Judge Jackson said, “I’m not a biologist” in trying to justify her non-response on the definition of woman.

In one child pornography case, the sentencing guidelines recommended 10 years in jail for the defendant. Prosecutors recommended two years in jail, but Judge Jackson issued a sentence of just three months. That case wasn't an aberration. In virtually every opportunity, Judge Jackson issued a far more lenient sentence in cases involving child pornography than what the sentencing guidelines called for or what government prosecutors recommended.

In another instance, Judge Jackson used COVID as a pretext to essentially rewrite a criminal justice reform law from the bench and make it retroactive, which Congress had declined to do. She did so to cut the sentence of a fentanyl trafficker while Americans died in huge numbers from overdoses.

In a 2015 lecture on federal prison sentencing guidelines, Judge Jackson said sentencing “melds together myriad types of law – criminal law, of course, but also administrative law, constitutional law, **critical race theory . . .**”

Judge Jackson has praised CRT pioneers Derrick Bell and *1619 Project* author Nikole Hannah-Jones for their work. CRT is in the kindergarten curriculum of Georgetown Day School and Judge Jackson sits on their Board of Trustees. Nonetheless, when asked during a confirmation hearing if CRT was taught in kindergarten, elementary and high school, Judge Jackson said, "I don't think so. I believe it's an academic theory that is [taught] at the law school level."

During questioning about judicial activism, Judge Jackson said: “Well, any time the Supreme Court has five votes, then they have a majority for whatever opinion they determine.”

By any reasonable measure, Judge Jackson is a liberal judicial activist who bends the law and the Constitution to achieve a desired policy result. She has not been forthcoming in explaining her judicial philosophy to the Senate or the American people, but her ideological agenda has been exposed in her amicus briefs, policy lectures and judicial opinions.

President Biden has other qualified candidates to choose from in nominating a justice to our nation’s highest court. Justice Breyer is planning to serve until the end of the Supreme Court’s current term and the next term won’t begin until October.

The Senate should exercise its “advise and consent” authority by withholding approval for Judge Jackson’s nomination. That will give President Biden a second chance to get this lifetime appointment right. The American people deserve a Supreme Court justice who will faithfully interpret the law and the Constitution, not one who has been selected to advance the agenda of liberal dark money groups.

Sincerely,

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