



NATIONAL
WOMEN'S
LAW CENTER

Justice for Her. Justice for All.



THE RECORD OF
**JUDGE KETANJI
BROWN JACKSON**
ON GENDER JUSTICE

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I. Introduction

On February 25, 2022, President Joseph Biden nominated Judge Ketanji Brown Jackson of the United States Court of Appeals for the District of Columbia Circuit to replace retiring Associate Justice Stephen Breyer of the United States Supreme Court.

As discussed in further detail below, Judge Jackson possesses distinguished legal credentials and experience. Her legal career spans across the legal profession, including service on the federal judiciary at the district court and appellate court level, on the United States Sentencing Commission, as a federal public defender and in private practice. If confirmed to replace Justice Breyer for whom she clerked, she will be just the second justice with trial court experience and the first to have served as a public defender. In addition to her exceptional legal credentials, Judge Jackson brings an inspirational life story and a demonstrated commitment to public service and equal justice under law.

President Biden's first Supreme Court nomination is historic on many accounts. Judge Jackson is the first Black woman to ever be nominated for the Supreme Court and the sixth woman overall. If confirmed, she would bring the number of sitting female Justices to the highest number in the history of the Court: four. In addition, Judge Jackson is only the fourth person of color and the second woman of color, to be nominated to the Court.

The National Women's Law Center ("the Law Center") has reviewed Judge Jackson's judicial record during her time on the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit, and her legal career with a focus on cases addressing issues of critical importance to women and girls. In addition, the Center has reviewed key activities, public statements, and experiences of Judge Jackson outside of her service on the federal bench and her testimony before the Senate Judiciary Committee during her confirmation hearings which began on March 21, 2022 and concluded on March 24, 2022. This report presents this analysis and is intended to educate the public about Judge Jackson's record on gender justice and the importance of fair and impartial courts.

Based on this review, the Law Center concludes that Judge Jackson is eminently qualified to serve on the Supreme Court and will bring much-needed professional and personal diversity and a fair and thorough approach to the Court. Additionally, Judge Jackson's record and testimony demonstrate that her approach to the law are consistent with the Law Center's core mission. As such, the National Women's Law Center strongly supports Judge Jackson's nomination and confirmation.

II. The Center's Criteria

The National Women's Law Center has worked for 50 years to expand opportunities and eliminate barriers for women and their families, with a major emphasis on the areas of family economic security, education, employment, and health and reproductive rights. Over the last five decades, the law has recognized the critical importance of core legal rights for women, including the right to make decisions about reproductive health care, the right to equal opportunities in the workplace

and schools, and a broad range of other legal protections that promote women’s well-being and safety. The Center has engaged in substantial public education and outreach activities to provide the public with information about these legal rights, and also about the legal records of judicial nominees and the importance of a fair and independent judiciary more generally.

In addition to meeting the necessary requirements of honesty, integrity, character, temperament, intellect, and lack of bias in applying the law, to be confirmed to a federal judgeship, a nominee should be required to demonstrate a commitment to protecting the rights of ordinary people and the progress that has been made on civil rights and individual liberties, including core constitutional principles and statutes that protect women’s legal rights. The Center focuses, in particular, on a nominee’s record on prohibitions against sex discrimination under the Equal Protection Clause, the constitutional right to liberty (which includes fundamental rights related to abortion, contraception and procreation, marriage, family relations, child rearing, and intimacy), as well as the statutory provisions that protect women’s legal rights in such fundamental areas as education, employment, health and safety, and social welfare. In addition, access to justice and public benefits represent additional areas of importance to women, and thus to the Center.

III. Judge Ketanji Brown Jackson Background

Judge Ketanji Brown Jackson was born in 1970 in Washington D.C. to Johnny Brown and Ellery Brown and grew up in Miami, Florida. Both her parents served as public-school teachers until her father was accepted into law school.¹ Judge Jackson’s father would transition from teaching and became the attorney for the Miami-Dade School Board and her mother later became the principal at New World School of Arts, a public magnet high school and college.² Growing up Judge Jackson was known as a speech and debate star at Miami Palmetto Senior High School. She participated in tournaments at Harvard University, where she first set her sights on attending after high school. When she made her goal to attend Harvard University known to her high school counselor, she was told to not “set her sights so high.” Judge Jackson aimed high anyway, not only attending Harvard University but also graduating *magna cum laude* in 1992. She went on to attend Harvard Law School, where she became an editor for the *Harvard Law Review* and graduated *cum laude* in 1996.³

¹ The White House, “President Biden Nominates Ketanji Brown Jackson to Serve on the Supreme Court,” accessed March 11, 2022, available here <https://www.whitehouse.gov/kbj/>.

² Aaron Leibowitz, Jay Weaver, and Bryan Lowry, “Supreme Court prospect Brown Jackson was ‘star in the making’ at Miami’s Palmetto High,” Miami Herald, January 27, 2022, available here Internal review link: <https://web.archive.org/web/20220202231046/https://www.miamiherald.com/news/local/community/miami-dade/article257749578.html>; Citation link: <https://www.miamiherald.com/news/local/community/miami-dade/article257749578.html#storylink=cpy>.

³ United States Senate Committee on the Judiciary, “Questionnaire for Nominee to the Supreme Court: Ketanji Brown Jackson,” accessed March 11, 2022, available here <https://www.judiciary.senate.gov/imo/media/doc/Jackson%20Public%20SJO.pdf>.

After earning her law degree, she went on to clerk at every level of the federal judicial system, a rare and notable accomplishment for attorneys and judges. First, she served as a law clerk for the Honorable Patti B. Sarris for the United States District Court for the District of Massachusetts in 1996 and then clerked for the Honorable Bruce M. Selya at the United States Court of Appeals for the First Circuit the following year.⁴ Judge Jackson eventually became a law clerk for Justice Stephen G. Breyer on the Supreme Court in 1999. Judge Jackson considers Justice Breyer, for whom she is nominated to replace, one of her mentors.⁵

Following her three clerkships, she began practicing as a litigation associate at Goodwin Proctor LLP from 2000-2002 and then joined the Feinberg Group LLP from 2002-2003 as an associate. From 2003-2005, Judge Jackson served as an Assistant Special Counsel to the United States Sentencing Commission. She then began her career as an Assistant Federal Public Defender from 2005-2007 in the Office of the Federal Public Defender for the District of Columbia's appeals division. Judge Jackson became a public defender to "...help people in need, and to promote core constitutional values..."⁶ She continued her career in public service in 2010 as Commissioner and Vice-Chair of the United States Sentencing Commission, where she worked on bipartisan reforms to federal sentencing guidelines that disproportionately harm Black and brown people. Justice Breyer had also previously served on the U.S. Sentencing Commission.⁷ Judge Jackson has also had periods in academia as a Professional Lecturer in Law for the Federal Sentencing Seminar at George Washington University Law School and as a Trial Advocacy Workshop Instructor at Harvard Law School.⁸

In 2013, Judge Jackson was nominated by President Barack Obama to the U.S. District Court for the District of Columbia. She spent eight years at the U.S. District Court and ruled on over 550 cases, ranging from federal funding for sexual and reproductive health programs to labor rights. Judge Jackson's thoughtful, methodological approach to the law is evidenced in every decision. In 2021, Judge Jackson became one of President Biden's first judicial nominees and was confirmed with bi-partisan support to the U.S. Court of Appeals for the District of Columbia, a position considered a steppingstone to the Supreme Court.⁹

Judge Jackson has contributed a significant amount of time to public service during her career. Appointed by Chief Justice John G. Roberts, Jr. to the Supreme Court Fellows Commission, she serves as a commissioner overseeing the program and the selection of the Supreme Court fellows. She has also served on the Board of Directors at the Council for Court Excellence, a nonprofit, nonpartisan organization working to build a justice system in D.C. that serves the

⁴ *Id.*

⁵ The White House, "President Biden Nominates Ketanji Brown Jackson to Serve on the Supreme Court," accessed March 11, 2022, available here <https://www.whitehouse.gov/kbj/>.

⁶ Response to Question for the Record from Senator Ben Sasse to Judge Ketanji Brown Jackson, Nominee to the United States Court of Appeals for the D.C. Circuit, S. Comm. on the Judiciary, 64 (2021) [Brown Jackson Responses1.pdf \(senate.gov\)](#)

⁷ *Id.*

⁸ United States Senate Committee on the Judiciary, "Questionnaire for Nominee to the Supreme Court: Ketanji Brown Jackson," accessed March 11, 2022, available here <https://www.judiciary.senate.gov/imo/media/doc/Jackson%20Public%20SJO.pdf>.

⁹ The White House, "President Biden Nominates Ketanji Brown Jackson to Serve on the Supreme Court," accessed March 11, 2022, available here <https://www.whitehouse.gov/kbj/>.

public equitably. Judge Jackson has also received numerous honors and awards for her work. She received the Women’s Bar Association of the District of Columbia Star of the Bar Award in 2019. She received the Third Annual Judge James B. Parsons Legacy Award from the Black Law Students Association at the University of Chicago Law School in 2020 and the Constance Baker Motley award at Empowering Women of Color at Columbia Law School in 2021. Judge Jackson has also been part of numerous bar associations including the Judicial Conference Committee on Defender Services, on which she currently sits. She has also served on the ABA Criminal Justice Section Sentencing Task Force for two years in 2018 and as the Women's Bar Association of the District of Columbia, Amicus Committee Co-Chair in 2006.¹⁰

Judge Jackson is supremely qualified and will make history by bringing her diverse legal, professional, and personal experiences to the Court. She has broad experience across the legal profession—as a federal appellate judge, a federal district court judge, a member of the U.S. Sentencing Commission, an attorney in private practice, and as a federal public defender. Judge Jackson has authored nearly 600 decisions during her considerable judicial service. She has been overruled only 2% of the time, a very low reversal rate that is two-thirds lower than other D.C. Circuit judges (6%) and half the percentage of federal judges nationally. Judge Jackson would be the first since Justice Thurgood Marshall to have experience representing criminal defendants. She has been confirmed by the Senate on a bipartisan basis three times—most recently in 2021 for her current seat on the D.C. Circuit. Judge Jackson has more judicial experience than four current Justices combined had when they were nominated.

In January 2022, Justice Stephen Breyer announced his retirement from the United States Supreme Court at the end of the October 2021 term. President Biden set out to nominate a justice—receiving advice from Senators in both parties and legal experts¹¹ and on February 28, 2022, President Biden nominated Judge Jackson to the United States Supreme Court. Her nomination has been met with a wave of endorsements including a letter from former Department of Justice officials.¹² Some of her other endorsements include 83 State Attorneys General and 850 Law Professors and Deans, each group respectively sending letters to the Senate in support of Judge Jackson.¹³ In March 2022, polling conducted by the Wall Street Journal reflected an overall positive view from the American public in support of confirming Judge Jackson.¹⁴

If confirmed, Judge Jackson will be the first Black woman and first public defender to serve on the Supreme Court. She will also be only the second Justice with trial court experience. Judge

¹⁰ United States Senate Committee on the Judiciary, “Questionnaire for Nominee to the Supreme Court,” accessed March 11, 22, available here <https://www.judiciary.senate.gov/imo/media/doc/Jackson%20Public%20SJQ.pdf>.

¹¹ *Id.*

¹² Sahil Kapur, “Loretta Lynch, former DOJ officials urge Jackson confirmation to Supreme Court,” NBC News, March 10, 2022, available her, <https://www.nbcnews.com/politics/congress/loretta-lynch-former-doj-officials-urge-jackson-confirmation-supreme-c-rcna19566>.

¹³ Cristine Charnosky, “Women Law Professors, Deans Send U.S. Senate Letters Supporting SCOTUS Nominee Ketanji Brown Jackson,” Law.com, March 10, 2022, available here <https://www.law.com/2022/03/10/women-law-professors-deans-send-us-senate-letters-supporting-scotus-nominee-ketanji-brown-jackson/>; Brooke Singman, “Supreme Court: Ketanji Brown Jackson: Nomination Endorsed by 83 Former State AGs,” Fox News, March 10, 2022, available here <https://www.foxnews.com/politics/dozens-of-republican-democrat-former-state-ags-endorse-ketanji-brown-jackson-for-supreme-court>.

¹⁴ Wall Street Journal, “Nation Wide Poll Mar 2022,” March 2-7, 2022, available here <https://s.wsj.net/public/resources/documents/WSJPOLL032022.pdf>.

Jackson comes from our country's deep bench of Black female jurists and lawyers who have a commitment to equal justice under law. And her nomination helps correct generations of bias and underrepresentation that keeps Black women from interpreting the laws whose worst impact they are most likely to face.

IV. Workplace Justice Record

As women's workforce participation and workplace progress continues to recover from the effects of the COVID-19 pandemic, it is all the more essential that the Supreme Court nominee understands and prioritizes the importance of gender and racial justice and workers' rights. The Supreme Court plays a key role in upholding the right to be free from unlawful discrimination in hiring and on the job, the right to organize a union and collectively bargain, and the right to enjoy other workplace protections meant to ensure economic security and safe working conditions. During her time on the United States District Court for the District of Columbia, Judge Jackson authored at least 12 opinions on workplace justice matters. In these opinions, Judge Jackson demonstrated her deep understanding of and fair and even-handed approach to the law.

Workplace Discrimination

Many of Judge Jackson's workplace justice cases concern Title VII of the Civil Rights Act of 1964. Title VII is a federal law which bars workplace discrimination on the basis of sex, race, national origin, and religion. In recent years, the Supreme Court has interpreted Title VII in ways that have made it more difficult for working people to enjoy the benefit of the law. Though bound by these restrictive precedents, Judge Jackson has continued to demonstrate a balanced, nuanced approach to these cases as well as cases involving other forms of unlawful discrimination and retaliation.

Judge Jackson's approach to workplace discrimination suggests that, on the Supreme Court, she will wield an impartial approach to these claims, favoring neither employers nor employees, and will reach decisions based on the law and the facts before her. The hallmark of Judge Jackson's jurisprudence, as the following selection of cases illustrate, is impartiality.

- In *Willis v. Gray*,¹⁵ a former public-school teacher challenged his termination under a district-wide reduction in force, alleging that the layoffs were not a budgetary measure but were a pretext to fire older, Black teachers. Judge Jackson found that Mr. Willis was barred from challenging the legitimacy of the overall reduction in force since that very issue had been previously litigated by his union and decided by a court. Nevertheless, Judge Jackson permitted Mr. Willis to proceed on his more specific complaint that he had

¹⁵ No. 14-cv-1746 (KBJ), 2020 WL 80565, (D.D.C. Feb. 18, 2020).

been unlawfully selected for termination under the reduction in force because of his race and age.¹⁶

- In *Tyson v. Brennan*,¹⁷ a supervisor prevented Mr. Tyson, who identifies as Christian, from playing gospel music, when other employees were permitted to play secular music in the same work area. Mr. Tyson alleged that his original post was eliminated, and he was transferred to another job location after having repeated arguments with his supervisor about playing gospel music at work. Mr. Tyson also claimed that his supervisor later unlawfully denied him the opportunity to take a new position at his previous job site. Judge Jackson found that Mr. Tyson provided sufficient facts to form the basis of a religious discrimination claim under Title VII and denied the defendant's motion to dismiss.¹⁸
- In *Badwal v. University of the District of Columbia*,¹⁹ a professor with more than 40 years of service alleged that his university's human resource department, his department chair, and other university officials pressured him to retire before abruptly terminating his employment. Judge Jackson allowed this age discrimination lawsuit to proceed, finding that Professor Badwal had stated a "plausible claim" for discrimination.
- In *Lawson v. Sessions*,²⁰ a Black woman and former employee of the Federal Bureau of Investigation (FBI) alleged that she was a victim of age, sex, and race discrimination because the FBI refused to reinstate her employment as a Special Agent after she resigned, claiming that forty-one-year-old Ms. Lawson was no longer eligible for reinstatement due to her age. Ms. Lawson also brought retaliation claims, stemming from past EEOC complaints, alleging that her supervisor interfered with the processing of her underlying EEOC complaint and refused to investigate her allegations because she had previously filed discrimination claims against the agency.²¹ Judge Jackson allowed the age discrimination and retaliation claims to proceed.
- In *Ross v. Lockheed Martin Corp.*,²² Judge Jackson denied preliminary class certification and preliminary approval of a settlement agreement for a race discrimination class action. At issue in *Lockheed* was whether Lockheed Martin's performance appraisal system discriminated against employees on the basis of race. Applying the Supreme Court's decision in *Wal-Mart v. Dukes*,²³ which made it more difficult for employees to bring discrimination class actions, Judge Jackson found that the proposed class of more than

¹⁶ *Id.* at *5-8.

¹⁷ 306 F.Supp.3d 365 (D.D.C. 2017).

¹⁸ *Id.* at 370.

¹⁹ 139 F.Supp.3d 295 (D.D.C. 2015).

²⁰ 271 F.Supp.3d 119 (D.D.C. 2017).

²¹ *Id.* at 139.

²² 267 F.Supp.3d 174 (D.D.C. 2017).

²³ 564 U.S. 338, 131 S. Ct. 2541 (2011).

5,500 current and former Black employees, nearly all of Lockheed Martin's Black employees between 2013 and 2016, did not have enough in common for their legal claims to be considered together as a class.

- o In addition, Judge Jackson found that the proposed settlement agreement was not "fair, reasonable, and adequate."²⁴ The proposed settlement agreement would have provided for a \$22.8 million settlement fund and have required Lockheed Martin to make certain changes to its performance appraisal system. As part of this agreement, however, class members would have to agree to waive "any and all racial employment discrimination claims of whatever nature, known or unknown,"²⁵ against Lockheed Martin, even those arising after the allegedly discriminatory actions at issue in the case, without even knowing the amount of money they were likely to receive as part of the settlement. Judge Jackson was particularly concerned that the proposed agreement would have forced class members who did not respond to a proposed notice of settlement to also give up all potential race discrimination claims against Lockheed Martin even though they would not be eligible to receive any compensation from the fund.
- In *Mount v. Johnson*,²⁶ Mr. Mount, a white man employed as a Supervisory Special Agent at the Department of Homeland Security ("DHS"), was not selected for any of the 43 DHS positions to which he applied. Mount filed a Title VII complaint alleging gender and race discrimination as well as retaliation against him for a previous complaint he lodged against Immigration and Customs Enforcement. Judge Jackson dismissed 42 of the 43 claims raised by Mr. Mount for failure to exhaust administrative remedies. Judge Jackson later granted DHS's motion for summary judgment on the last remaining claim, reasoning that the Department articulated a "legitimate, non-retaliatory reason for Plaintiff's non-selection" for the position.²⁷
- In *Rae v. Children's Nat'l Med. Ctr.*,²⁸ Mr. Rae, a Black man of Antiguan descent, sued his employer, Children's National Medical Center ("CNMC"), alleging discrimination based on race and national origin and retaliation. Mr. Rae and his supervisor, a white woman, had a strained relationship that eventually become so contentious Mr. Rae, who accused his supervisor of assault, refused to attend a performance review discussion with his supervisor and human resources ("HR"). A CNMC HR executive placed Mr. Rae on indefinite administrative leave pending an investigation. The HR department subsequently recommended that "Rae's employment be terminated for his repeated harassing and insubordinate conduct toward his supervisor."²⁹ Mr. Rae was then

²⁴ *Lockheed*, 267 F.Supp.3d at 193.

²⁵ *Id.* at 179.

²⁶ 174 F.Supp.3d 553 (D.D.C. 2016)

²⁷ *Id.* at 562.

²⁸ No. 15-CV-0736 (KBJ), 2020 WL 7693612 (D.D.C. Dec. 28, 2020)

terminated. In granting CNMC's motion for summary judgment, Judge Jackson held that Mr. Rae did not offer any admissible evidence that the reason provided by CNMC for his termination was pretextual and that the real reason for his termination was racial discrimination or retaliation.²⁹

- In *Beshir v. Jewell*,³⁰ Ms. Beshir, a fifty-one-year-old Black woman, sued the Secretary of the Interior for discrimination on the basis of race, sex, and age under Title VII of the Civil Rights Act and the Age Discrimination in Employment Act. Ms. Beshir and her supervisors, two middle-aged white men, had repeated disagreements over a workplace assignment. Ms. Beshir was eventually placed on indefinite paid administrative leave and was issued a notice of proposed suspension before her supervisor's superior granted Ms. Beshir's request to be reassigned to a different office. Judge Jackson found that the Department of the Interior articulated legitimate, nondiscriminatory explanations for each of the actions at issue and that Ms. Beshir failed to produce evidence sufficient for a jury to find that DOI's proffered reasons were mere pretext for race or sex discrimination.³¹ Judge Jackson also found that Ms. Beshir's allegations did not constitute legally actionable harassment under Title VII because the actions were not sufficiently severe and pervasive, nor was there any evidence linking the harassment to Ms. Beshir's race or gender.³² Finally, Judge Jackson found that the plaintiff failed to establish a prima facie case of age discrimination.³³ The Defendant's motion for summary judgment was therefore granted on all three counts.
- In *Lawrence v. Lew*,³⁴ Ms. Lawrence sued the U.S. Department of the Treasury ("USDT") over settlement agreements related to alleged sex, age, and race discrimination against Lawrence. Ms. Lawrence was an employee of the Bureau of Engraving and Printing and filed an Equal Employment Opportunity ("EEO") complaint against the Bureau. This complaint resulted in two settlement agreements. The Defendant subsequently determined that it overpaid the Plaintiff under the terms of these agreements and began garnishing her wages to recoup those overpayments. Ms. Lawrence then filed suit against USDT, alleging that the Bureau had acted with discriminatory or retaliatory motives by coercing her into signing the latter settlement agreement, breaching the terms of the former agreement, and improperly withholding her wages. Judge Jackson granted the Defendant's motion for summary judgment finding that there was no evidence that Ms. Lawrence had been coerced into signing the settlement agreement and that the District Court did not have jurisdiction over the breach of contract claim. Judge Jackson

²⁹ *Id.* at *8, *12.

³⁰ 961 F.Supp.2d 114 (D.D.C. 2013).

³¹ *Id.* at 125.

³² *Id.* at 128, 130.

³³ *Id.* at 132.

³⁴ 156 F.Supp.3d 149 (D.D.C. 2016).

also found that the Defendant offered legitimate, non-discriminatory reasons for its actions with respect to each settlement agreement and the decision to garnish Ms. Lawrence's wages.

- In *Sourgoutsis v. United States Capitol Police*,³⁵ Ms. Sourgoutsis filed suit against United States Capitol Police (USCP) for gender discrimination and requested a permanent injunction ordering t USCP to adopt certain practices to combat gender discrimination on the force. Ms. Sourgoutsis was terminated from her position as a USCP officer after her probationary period expired. Although Ms. Sourgoutsis had received multiple positive reviews during her probationary period, she had also been cited numerous times for violating USCP rules. Ms. Sourgoutsis alleged that gender discrimination was the cause of her termination while USCP maintained that she was terminated for repeatedly violating USCP rules. A jury determined that although sex was a motivating factor in USCP's decision to terminate Ms. Sourgoutsis, USCP would have fired her regardless of her sex. Judge Jackson, however, denied Ms. Sourgoutsis's motion for a preliminary injunction, holding that the requested relief was too expansive as there was no evidence that USCP had engaged in a practice of widespread discrimination. Ms. Sourgoutsis also did not demonstrate that it was likely that USCP would discriminate against her again.³⁶
- In *Bird v Barr*,³⁷ current and former employees of the Federal Bureau of Investigations ("FBI") filed suit alleging sex discrimination and requested a preliminary injunction to prevent the FBI from retaliating against the plaintiffs for filing suit. Plaintiffs allege that "while attending the FBI's Training Academy in Quantico, Virginia, they were sexually harassed, subjected to a hostile work environment and outdated gender stereotype, terminated, constructively discharged, or otherwise subjected to retaliation in whole or in part because of their gender or disability."³⁸ Judge Jackson denied the motion on several grounds. First, because the motion for injunctive relief did not mirror the final relief requested by the Plaintiffs, the Court lacked jurisdiction to grant the requested relief. Second, the plaintiffs could not show that they were likely to succeed on the merits of their sex discrimination claim and third they had not shown they were likely to suffer irreparable harm unless granted a preliminary injunction.³⁹ As such, the court could not issue the requested injunction.
- In *Sledge v. District of Columbia*,⁴⁰ a Black police officer for the Washington, D.C. Metropolitan Police Department (MPD) sued the District alleging race discrimination,

³⁵ No.16-CV-1096 (KBJ), 2020 WL 6887782 (D.D.C. Nov. 24, 2020); *See also Sourgoutsis v. United States Capitol Police*, No. 16-CV-1096 (KBJ), 2020 WL 109055 (D.D.C. Jan. 9, 2020).

³⁶ *Id.* at *3.

³⁷ No. 19-CV-1581 (KBJ), 2020 WL 4219784 (D.D.C. July 23, 2020)

³⁸ *Bird v. Barr*, No. 19-cv-1581, 2019 WL 2870234 at *1 (D.D.C. July 3, 2019).

³⁹ *Id.* at *5.

⁴⁰ 63 F.Supp.3d 1 (D.D.C. 2014).

retaliation, and hostile work environment as well as violation of the Fifth Amendment Equal Protection Clause. Mr. Sledge’s supervisor began an administrative investigation of Sledge after he had allegedly neglected his duties by failing to report to work to oversee three investigations, failing to brief his supervisors appropriately on those investigations, and leaving the office without ensuring that priority tasks would be completed in his absence. After an investigation, Mr. Sledge was demoted. He later appealed that decision and received a 20-day suspension without pay with 10 days of the suspension held in abeyance for one year. Mr. Sledge alleged that had been singled out for heightened scrutiny and more severe discipline because of his race. He also alleged that his supervisor had humiliated him in two group meetings, including by screaming at him. Carefully applying the relevant precedents, Judge Jackson granted the District’s motion for summary judgment finding that Mr. Sledge had not provided evidence that the MPD’s actions toward him were motivated by racial animus. Judge Jackson further noted that, under the controlling precedent, Mr. Sledge did not allege conduct that was sufficiently severe or pervasive to establish a hostile work environment claim.

Collective Bargaining

Unions play a critical role in helping to create and maintain economic security for women, including providing better job security and higher and more equal wages.

- At the trial and appellate level, Judge Jackson has ruled on two key cases involving the right of working people to collectively bargain and actively participate in decisions regarding their working conditions. In *American Federation of Government Employees v. Federal Labor Relations Authority*,⁴¹ Judge Jackson wrote for a unanimous panel, striking down an agency rule promulgated by the Federal Labor Relations Authority (“FLRA”) that would have restricted unions’ rights to bargain. In 2020, the FLRA released a policy statement changing the standard for when federal government agencies are required to collectively bargain with their employees. The FLRA changed the standard to only require collective bargaining for workplace changes with a substantial impact on employment. Previously, all workplace changes, except those considered de minimis, were subject to collective bargaining. The panel found that the FLRA’s decision to depart from precedent was arbitrary and poorly reasoned.⁴² As such, the panel rescinded the rule, reinstating the previous standard for when workers and federal agencies must collectively bargain.
- In *American Federation of Government Employees, AFL-CIO v. Trump*,⁴³ labor unions challenged Trump administration executive orders designed to eviscerate the right of

⁴¹ 25 F.4th 1 (D.C. Cir. 2022).

⁴² *Id.* at 2-3.

⁴³ *Am. Fed’n of Gov’t Emps., AFL-CIO v. Trump*, 318 F.-Supp.-3d 370 (D.D.C. 2018), *rev’d and vacated*, 929 F.3d 748 (D.C. Cir. 2019) (finding that certain provisions of the executive orders conflicted with the Federal Service Labor- Management Relations Statute (FSLMRS). The D.C. Circuit reversed on the threshold issue of subject-matter jurisdiction, without reaching the merits of her determination concerning the lawfulness under the FSLMRS.)

federal workers to collectively bargain and engage with union representatives. Judge Jackson ruled that several provisions of the executive orders were unlawful, including limitations on the amount of paid time union members could allocate to union-related work, bans on employees communicating with Congress, and provisions impacting collective bargaining and employee removals. According to Judge Jackson, President Trump exceeded his authority in issuing these executive orders because the orders curtailed workers' statutorily protected right to bargain.

Judge Jackson's record shows a fair and consistent legal analysis rooted in her commitment to the rule of law and respect for protecting workers' rights. It is imperative that nominees to the Supreme Court understand the importance of labor and employment rights for working women, as Judge Jackson's record demonstrates.

V. Reproductive Rights and Health Record

During her time on the federal bench, Judge Jackson has not directly ruled on the right to abortion, contraception, or other critical liberty rights. A review of her record indicates that Judge Jackson has been careful and methodical when weighing in on cases that touch these issues. There is every reason to believe that, as a Justice on the Supreme Court, Judge Jackson would be respectful of Supreme Court precedent that has long recognized the fundamental right of people to make decisions about their own reproductive lives and futures,⁴⁴ and would consider the impact on real people when assessing restrictions on that right.

- In *McGuire v. Reilly*,⁴⁵ while working as an associate at Goodwin Procter LLP, Judge Jackson helped draft an amicus brief which carefully and thoroughly defended a Massachusetts law protecting patient access to reproductive health care facilities.⁴⁶ The law sought to safeguard patients from harassment and violence, creating a buffer zone extending 18 feet from the reproductive health facility and then, within that zone, creating a bubble of six feet around patients or providers.⁴⁷ After the law was challenged as a violation of the First and Fourteenth amendments, state officers from various Massachusetts counties defended the law, arguing that the law was constitutional in light of the Supreme Court's recent decision in *Hill v. Colorado*, a case in which the Supreme Court upheld, by a vote of 6-3, a similar Colorado law.⁴⁸ The district court issued an

⁴⁴ In her confirmation hearing, Judge Jackson said *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), are settled law. United States Senate Committee on the Judiciary, "The Nomination of Ketanji Brown Jackson to be an Associate Justice of the Supreme Court of the United States (Day 2)," March 22, 2022 at 02:32:00, <https://www.judiciary.senate.gov/meetings/03/14/2022/the-nomination-of-ketanji-brown-jackson-to-be-an-associate-justice-of-the-supreme-court-of-the-united-states-day-2>.

⁴⁵ 260 F.3d 36 (1st Cir. 2001).

⁴⁶ Amicus Brief, *McGuire v. Reilly*, 260 F.3d 36 (1st Cir. 2001).

⁴⁷ Mass. Gen. L. ch. 266, §120E½.

⁴⁸ 530 U.S. 703, 707 (2000). The Court ruled 6-3 with Chief Justice Rehnquist and Justices Stevens, O'Connor, Souter, Ginsburg, and Breyer in the majority, and Justices Scalia, Thomas, and Kennedy dissenting from the judgment.

injunction striking down the law, holding that it violated the First Amendment.⁴⁹ After it was appealed to the First Circuit, Judge Jackson was assigned to help draft an amicus brief on behalf of a range of Massachusetts-based organizations, including religious organizations, health care provider associations, the Women’s Bar Association of Massachusetts, YWCA of Cambridge, and Big Sister Association of Greater Boston, among others.⁵⁰ The amicus brief carefully and thoroughly applied the Supreme Court precedent of *Hill v. Colorado*⁵¹ to the Massachusetts law, clearly demonstrating that the law was constitutional. The First Circuit reversed the district court’s decision and specifically praised the “exemplary briefing by the parties and the various amici.”⁵² After further proceedings, the plaintiffs appealed to the Supreme Court, but the Supreme Court declined to hear the case, thereby allowing the law to remain in effect.⁵³

While sitting on the U.S. District Court for the District of Columbia, Judge Jackson demonstrated careful consideration in cases challenging the Trump administration’s attempt to terminate teen pregnancy prevention funding to non-profits that were providing essential sexual and reproductive health education. In *Healthy Futures of Texas v. HHS* and *Policy and Research v. HHS*, Judge Jackson blocked the federal government’s unlawful attempts to terminate the funding.⁵⁴

Over the next few decades, the Supreme Court is likely to hear a range of cases concerning people’s ability to access health care and their fundamental rights to make decisions about their

⁴⁹ *McGuire v. Reilly*, 122 F.Supp.2d 97 (D. Mass. 2000).

⁵⁰ Brief in Support of Defendant-Appellant Women's Bar Ass'n of Mass., Abortion Access Project of Mass., AIDS Project of Worcester, Alternative Medical Care of Mass., American Ass'n of Univ. Women–Mass., Big Sister Ass'n of Greater Boston, Boston Women's Health Book Collective, Everywoman's Center, Four Women, Inc., League of Women Voters of Mass., Mass. NARAL, Mass. Chapter of NOW, Mass. Public Health Ass'n, National Council of Jewish Women–Mass., Religious Coalition for Reproductive Choice, Tapestry Health Systems, Union of American Hebrew Congregations–Northeast Council, Womancare/Repro Associates, and YWCA of Cambridge, amici curiae, *McGuire, et al. v. Reilly, et al.*, 260 F.3d 36 (1st Cir. 2001); *McGuire v. Reilly*, 386 F.3d 45 (1st Cir. 2004), cert. denied, 544 U.S. 974 (2005).

⁵¹ 530 U.S. 703 (2000).

⁵² *McGuire v. Reilly*, 260 F.3d 36, 38 (1st Cir. 2000).

⁵³ *McGuire v. Reilly*, 544 U.S. 974 (2005). The First Circuit’s decision reversed and remanded the case back to the lower court. After further proceedings at the district court level, the case again reached the First Circuit, in 2004. The First Circuit allowed the law to remain in effect, reiterating the same holding from the prior First Circuit decision. After the plaintiffs appealed to the Supreme Court, in 2005, the Supreme Court denied review. *McGuire v. Reilly*, 544 U.S. 974 (2005). Years later, the Massachusetts legislature changed the law to include the “public way or sidewalk” within 35 feet of an entrance or driveway to a reproductive health care facility. That version of the MA Act eventually went to the Supreme Court, which struck it down because of its “extreme step of closing a substantial portion of a traditional public forum to all speakers.” *McCullen v. Coakley*, 573 U.S. 464, 496-97 (2014).

⁵⁴ *Healthy Futures of Texas v. Dep't of Health & Hum. Servs.*, 315 F.Supp.3d 339 (D.D.C. 2018); *Pol'y & Rsch., LLC v. United States Dep't of Health & Hum. Servs.*, 313 F.Supp.3d 62 (D.D.C. 2018). Judge Jackson ruled in a case impacting health insurance coverage of birth control. In that case, a for-profit employer challenged the Affordable Care Act’s requirement that insurance plans cover the full range of contraceptive methods and related care and counseling. See *Barron Industries, Inc. v. Sebelius*, No. 1:13CV01330, (D.D.C. October 27, 2014). In a related case, *Burwell v. Hobby Lobby Stores, Inc.*, the Supreme Court allowed for-profit companies to use the Religious Freedom Restoration Act (RFRA) to secure an exemption from the ACA’s contraceptive coverage requirement. Following the *Hobby Lobby* decision, Judge Jackson issued a permanent injunction to the for-profit employer in *Barron Industries*.

own bodies, medical treatment, health and futures. It is imperative that a new Justice understands the longstanding precedent that firmly grounds these rights in the U.S. Constitution, and the devastating impact on individuals of losing any of these fundamental rights.

VI. Public Benefits Record

Access to public benefits is vitally important for millions of low-income people across the United States. When disputes arise concerning access to these benefits, the courts often become an avenue of last resort for those who have been denied the benefits they deserve. Judge Jackson has shown a unique appreciation for the importance of public benefits, writing thorough, well-reasoned opinions on this incredibly complex area of administrative law. Given the importance of public benefits, and the central role of administrative law in our legal system, having a justice on the Supreme Court with experience in this area would be enormously valuable. Judge Jackson has ruled on dozens of public benefits cases and can bring this expertise to the nation's highest court.

- In *Calderon-Lopez v. Saul*,⁵⁵ Plaintiff filed suit after his disability benefits were terminated by the Social Security Administration. After his benefits were terminated, Plaintiff requested a hearing before an administrative law judge to evaluate his eligibility for said benefits. Calderon-Lopez did not attend that hearing and his request for another hearing was denied. He subsequently filed suit in the D.C. District Court, requesting reinstatement of his benefits. The Commissioner filed a motion to dismiss, and the case was sent to a magistrate judge for case management. The magistrate judge found that Plaintiff's request for review of the SSA's decision was barred by issue preclusion, was time-barred because of the Social Security Act's 60-day statute of limitations and raised "vague and conclusory" claims against officials who were not party to the lawsuit. Judge Jackson adopted the magistrate judge's report and granted the Defendant's motion to dismiss.
- In *Dowell v. Colvin*,⁵⁶ Plaintiff was denied disability benefits and supplemental social security income benefits because an administrative law judge found that he did not have a disability, as defined by the Social Security Act. Dowell filed suit and motioned for the District Court to either reverse the administrative law judge's decision or remand the issue to the agency for a new hearing. The Defendant filed a motion for affirmance of the administrative law judge's decision. The magistrate judge reviewing the case stated that Dowell's motion for reversal or remand should be granted and that the Defendant's motion for affirmance should be denied. According to the magistrate judge, the administrative law judge's decision was flawed due to an error of law and a mistake in evaluating Dowell's disability status. Judge Jackson adopted the magistrate judge's report and granted the motion to reverse and remand.

⁵⁵ 2021 WL 2103224 (D.D.C. May 25, 2021).

⁵⁶ 232 F.Supp.3d 1 (D.D.C. 2017).

- In *HealthAlliance Hospitals, Inc. v. Azar*,⁵⁷ Massachusetts (“MA”) hospitals filed suit against the Secretary of the Department of Health and Human Services (“HHS”) alleging that the Department owed the hospitals \$6M in unpaid Medicaid/Medicare benefits. The hospitals alleged that the “HHS miscalculated the percentage of patients who are eligible for Medicaid and similar services within the meaning of the applicable regulations and thus improperly lowered the amount of money that the federal government owes.”⁵⁴ Judge Jackson found that the agency’s decision to re-formulate their reimbursement equation and deny funds to the MA hospitals amount to arbitrary and capricious agency action. Judge Jackson’s decision ensured that hospitals denied their proper Medicare reimbursements had access to the money they were owed for treating elderly and low-income patients.

VII. Disability Rights Record

Judge Jackson has heard several claims related to disability discrimination. These include claims brought under the two main federal laws prohibiting discrimination based on disability: the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Some courts have tried to interpret these laws narrowly and make it harder to bring disability discrimination claims. Judge Jackson, however, has hued closely to Congress’ original intent and language of these laws, which demand a broad application of their protections in order to eliminate pervasive discrimination against disabled people.

- In *Pierce v. D.C.*,⁵⁷ Judge Jackson ruled in favor of a Deaf man who was not provided with an American Sign Language interpreter while he was in prison. As a result, he was forced into “abject isolation” while in prison, unable to communicate with prison officials, doctors, teachers, and other inmates. Judge Jackson’s strongly worded opinion emphasizes the grave harm the prison inflicted on the plaintiff, and it recognizes that the duty to provide disability accommodations is “at its *apex* in the context of a prison facility, in light of the uneven power dynamics” that exist there.
- In *Equal Rights Center v. Uber Technologies, Inc.*,⁵⁸ Judge Jackson ruled in favor of disability advocates who challenged Uber’s discrimination against people who use non-foldable wheelchairs. Judge Jackson methodically rejected each of Uber’s attempts to skirt its obligations under federal and state nondiscrimination law. Her opinion denied Uber’s attempt to make it harder for plaintiffs to sue under the ADA and reaffirmed long-standing principles that the ADA should be broadly interpreted.

⁵⁷ 128 F. Supp. 3d 250 (D.D.C. 2015).

⁵⁸ 525 F. Supp. 3d 62 (D.D.C. 2021).

VIII. Conclusion

As this review demonstrates, Judge Ketanji Brown Jackson's record is fair and impartial. Throughout her judicial career, she has consistently applied existing precedent and shown a commitment to the rule of law. While her decisions on a broad range of issues of special concern to women is limited, she has approached cases concerning labor, employment and reproductive rights issues with respect and shown none of the hostility to these essential rights evidenced by recent prior nominees to the Court. Judge Jackson's judicial methodology is grounded in equal justice for all.

Judge Jackson's testimony at her Senate Judiciary Committee hearings further underscored the stellar qualities that embody her legal record. She emphasized her commitment to the rule of law, which is key for women and girls who have secured hard-won legal rights and protections under federal laws and the Constitution. Judge Jackson also repeatedly rejected the notion that she has a judicial philosophy or is seeking a particular outcome in cases that come before her. She demonstrated her legal expertise and deep knowledge of the Constitution. Furthermore, throughout the more than twenty hours of questioning during the hearings, Judge Jackson exhibited an exemplary judicial temperament. As such, the National Women's Law Center strongly supports her nomination to the United States Supreme Court.