Prepared Opening Statement by Senator Chuck Grassley of Iowa
Ranking Member, Senate Judiciary Committee
Executive Business Meeting to Consider Supreme Court Nomination
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We have six judicial nominees and one executive nominee on the agenda today.

I'll be supporting Jennifer Rearden. Ms. Rearden has spent her career litigating at some of the best law firms in the country. She's familiar with the types of cases that the Southern District of New York handles.

Finally, I'd like to take a few minutes to discuss Judge Jackson's nomination. Judge Jackson was very personable and engaging. I also enjoyed the opportunity to meet her family before the hearing started. They obviously are, and should be, proud of her achievements.

Having carefully studied her record, unfortunately, I think she and I have fundamentally different views on the role judges should play in our system of government. Because of those disagreements, I can't support her nomination.

Over the last several weeks, I've talked about how the White House and Democrats have shielded important parts of Judge Jackson's record. We don't have any non-public documents from her time at the sentencing commission. The Obama White House held back more than 48,000 pages.

Judge Jackson also gave the White House confidential, non-public probation recommendations for some of her cases. But last week we asked for other documents having to do with a probation filing in the Hawkins case.

Judge Jackson told us she can't get records for her old cases because she's no longer a district court judge. That's pretty convenient. However, it is a big inconvenience for this senator.

The refusal tells us that those documents wouldn't help the nominee because we've seen the willingness to leak any helpful information.

So senators have to make a decision on her nomination based on the information we have.

As I said when this started, we would thoroughly examine her record and judicial philosophy. We've done both.

In the last few weeks, we've heard the remarkable argument from Democrats that we shouldn't consider a nominee's judicial philosophy in voting.

Democrats have themselves to blame. After vicious, misleading attacks on Judge Bork and other conservatives, Republicans didn't use those same tactics against Clinton nominees, Ginsburg and Breyer.

Then, you know the history, Senator Schumer decided to bring back attacks on judicial nominees based on judicial philosophy and ideology. In a June 2001 op-ed, Senator Schumer pointed to the Bork nomination and argued it would be good to return to a "more open and rational debate about ideology when we consider nominees." He clearly thought the Bork nomination was a model.

Over the next few years, Senator Schumer put his Bork strategy into practice. In 2003, he even said he was "proud" of his role in blocking nominees based on ideology. Eighteen years later, Senator Schumer are you still proud you poisoned the water on judicial nominees?

Now he and other Democrats think it's unfair that we looked at Judge Jackson's record and asked her about it. That doesn't hold up to even the lightest scrutiny. Senator Schumer and Democrats decided to destroy the model of deference if a nominee was qualified, excluding consideration of their philosophy.

So that's why judicial philosophy has become the focus with judicial nominations.

At her hearing and in her meetings with senators, Judge Jackson explained she does not have a judicial philosophy. Instead, she has a methodology.

She said to look to her cases to see how that methodology worked. I did, and I found the results of that methodology alarming when Judge Jackson applied it to the First Step Act.

At the hearing, Judge Jackson testified about the compassionate release provisions of the Act. Senator Cotton walked through a specific case – that of Keith Young – where Judge Jackson misused a motion for compassionate release to resentence a dangerous drug kingpin.

As the lead author of the First Step Act, I know a thing or two about compassionate release.

It's meant to allow elderly inmates and those suffering from terminal illness to petition the court for a sentence reduction.

The statute also allows for a reduction if the court finds an "extraordinary and compelling" reason. This is supposed to mean that it'd be a rare instance and used with great discretion, particularly as weighed against the charge, danger to society, and risk of recidivism.

At her hearing, Judge Jackson said that she based her "extraordinary and compelling" finding on the non-retroactive change in the law.

Congress chose which provisions of the First Step Act would apply retroactively. I should know. I wrote it.

The Senate is currently considering legislation that I cosponsored with Chairman Durbin that makes some of the First Step Act retroactive.

But Congress must make that change because the First Step Act didn't provide for retroactive application in all instances. For instance, retroactivity isn't mentioned once in the compassionate release statute.

The relevant sentencing guidelines don't mention retroactivity as an "extraordinary and compelling" reason, either.

So Judge Jackson's consideration of applying retroactivity to the First Step Act when it's not explicitly provided is extremely concerning.

Judge Jackson's interpretation was so extreme that she even got Senator Cotton to defend the First Step Act. I don't think that's what the White House had in mind when they said she was a consensus builder.

The other troubling part about this case is that Judge Jackson gave a different explanation of her reasoning in the sentencing hearing than she did before the committee.

She found that Mr. Young's health and COVID were "extraordinary and compelling reasons" that warranted the reduction of his sentence. But the reasons have to justify the reduction. Reducing his sentence based on a current health condition and a pandemic but leaving him in prison for another seven years makes no sense. Here, it meant that Judge Jackson got to sentence the defendant to the sentence she'd wanted to all along.

The compromise that I brokered with Senator Durbin and many others wouldn't have been possible if we thought that activist judges would insert their own views into the law. Decisions like this represent serious separation of powers concerns and will make bipartisan work harder to do.

Young is just one example of Judge Jackson's lenient approach to criminal law and sentencing. She's declined to apply a number of sentencing enhancements Congress put into the sentencing guidelines.

I've worked to reform sentencing for non-violent offenders, but Judge Jackson's approach applies across most areas of criminal law.

Another case shows that Judge Jackson can apply her methodology to reach a result that goes against the plain meaning of a statute. That case is *Make the Road New York v. McAleenan*. It involved a question over the meaning of a statutory provision to commit a decision about when illegal immigrants are subject to expedited removal to Homeland Security's "sole and unreviewable discretion."

But Judge Jackson concluded she could still review the agency's decision because this language didn't mean the decision was "committed to agency discretion by law."

By reaching that strange conclusion, she gave herself the power to oversee Homeland Security's decisions about expedited removal.

I think there's been bipartisan frustration with how little nominees say and how candid they are in hearings. But Judge Jackson wasn't ready to answer a number of questions other nominees were willing to answer.

One senator asked Judge Jackson about the judicial philosophy for three sitting justices. She said she wasn't familiar and hadn't had time to research the issue. This is a question asked in almost every interview for interns and law clerks around the country.
We don't expect a nominee to say that they will agree with a specific justice 100% of the time.

But it's not asking too much that a nominee be able to explain the justices' approaches to the law and where they might differ.

Judge Jackson also said she didn't watch and wasn't familiar with the Kavanaugh confirmation. That's pretty surprising for a sitting federal judge who worked in the same courthouse as then-Judge Kavanaugh.

As a member of the committee, it's hard to satisfy everyone. I've had calls to my office complaining about Senator Durbin saying good things about me. Or they argue that I didn't say enough about how Democrats treated Kavanaugh and Barrett. And then I have Democrats who are saying I was too mean to the nominee.

Throughout this process, I've focused on thoroughly and fairly assessing Judge Jackson's record. I think I've done that. We need confidence that judges will interpret the laws as they are written. Judge Jackson's re-interpretation of laws I've helped write does not give me that confidence.

Unfortunately, that means I can't support her nomination.

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