

**Senator John Kennedy**  
Questions for the Record

**Thomas Dupree**

1. Under the Twenty First Century Courts Act, a judge or justice would be disqualified from hearing a case “[w]henver a party, a party’s counsel, an individual employed in a supervisory capacity at a party or law firm, or an affiliate of a party or law firm in the case lobbied or spent substantial funds in support of a judge’s or Justice’s nomination.”
  - a. If enacted, could this disqualify future-Justice Jackson from hearing a case involving as a party *any organization* that supported her confirmation to the Supreme Court?

If enacted, this provision could disqualify Justice Jackson under those circumstances. The outcome would likely turn on the nature and extent of the organization’s support – whether the support involved lobbying or the expenditure of “substantial funds.” I note that this proposed provision raises serious constitutional concerns under the First Amendment and the Due Process Clause, among other things.

2. Is it appropriate for politicians, organizations, or the public to bully, intimidate, or pressure Supreme Court Justices to decide a case a particular way?

It is not appropriate for anyone to bully, intimidate, or pressure Supreme Court Justices to decide a case a particular way. That is not to say that Justices, and the Court’s opinions, are immune from criticism. Nor is it to say that members of the public cannot offer their views as to how they think a case should be decided, either through a formal court submission (an amicus brief) or through speech in a public forum. But there is a clear difference between speech and advocacy, on the one hand, and threats, coercion, or intimidation on the other.

3. Is a threat in an amicus brief submitted by Members of Congress to “restructure” the Supreme Court, unless it rules a certain way, harmful to the Court’s legitimacy as an independent and impartial institution?

Members of Congress should not be threatening the Justices of the Supreme Court under any circumstance, either in an amicus brief or through other means. Our Constitution enshrines a system of separated powers in which the judicial branch functions as an independent and impartial institution that provides a check on the other branches. The system begins to break down if Justices cast votes as a result of congressional threats that the Court will be restructured if the Justices do not reach the “correct” outcome in a particular case. Threats of this nature are inappropriate; they undermine the separation of powers and potentially the independence of the Court.