

Senator John Kennedy
Questions for the Record

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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?

I cannot answer hypothetical questions targeting specific justices. However, I would be happy to meet with senators and staffers to discuss precise language to ensure that all nine justices avoid sitting on cases in which there is an actual conflict of interest or an appearance of bias.

2. The Judicial Code of Conduct prohibits federal judges from engaging in political activity. Specifically, Canon 5 bars judges from leading or directing political organizations, which can broadly mean “a group affiliated with a political party” or “candidate for public office.” As Judge Ketanji Jackson Brown competed to win the nomination by President Biden to replace Justice Stephen Breyer, media reports suggest she “enlisted” a staff of liberal activists, including Robert Raben, a lobbyist for the dark money group Sixteen Thirty Fund. Reports also suggest a former clerk to Judge Jackson may have edited the Wikipedia pages of other contenders for the seat to reduce the likelihood of their selection. These reports became public before her nomination was announced. All Senate Democrats subsequently voted to confirm her.
 - a. Were Judge Jackson’s actions consistent with the Code of Conduct for lower court judges?
 - b. Does a sitting federal judge violate the spirit of the Code of Conduct if they openly and publicly assemble a team of operatives to achieve a political goal?

I have no comment on this citation-free summary of an individual justice’s conduct. Generally speaking, justices and judges should avoid engaging in political activity.

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

Generally speaking, politicians, organizations, and the public have the right to criticize Supreme Court decisions and to state their views on how a particular Supreme Court case should be decided. Article III of the Constitution gives life tenure and salary guarantees to all federal judges, but does not insulate them from criticism.

4. 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?

I am glad to hear that Senator Kennedy is concerned that restructuring the Supreme Court for purely political reasons is detrimental to the Court’s legitimacy. I hope he speaks out forcefully against the Republican leadership’s decision in 2016 to reduce the Court’s size to eight justices for nearly a year to control the outcome in pending cases. Republicans’ politically-motivated restructuring of the Court has significantly harmed its legitimacy.