

**RESPONSES TO QUESTIONS FOR THE RECORD
FROM SENATOR JOHN KENNEDY**

**SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON FEDERAL COURTS,
OVERSIGHT, AGENCY ACTION, AND FEDERAL RIGHTS**

**HEARING ON “AN ETHICAL JUDICIARY:
TRANSPARENCY AND ACCOUNTABILITY FOR 21ST CENTURY COURTS”
May 3, 2022**

**Responses of Kedric Payne, Vice President, General Counsel, and Senior Director of Ethics
at Campaign Legal Center**

1. Under the Twenty First Century Courts Act, a judge or justice would be disqualified from hearing a case “[w]henever 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?

RESPONSE: As written, the Twenty First Century Courts Act of 2022 (S. 4010) would prohibit any Justice from hearing a case that involves a party that made a lobbying contact, presumably as defined under the Lobbying Disclosure Act, or spent substantial funds in support of their nomination, confirmation, or appointment.

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?

RESPONSE: I am not sufficiently familiar with the facts on which this question is premised to offer a legal opinion regarding the application of the Code of Conduct to such facts.

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?

RESPONSE: The description of the hypothetical activity does not provide sufficient information for me to offer a legal opinion regarding that 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?

RESPONSE: The description of the hypothetical activity does not provide sufficient information for me to offer a legal opinion regarding that activity.

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?

RESPONSE: The description of the hypothetical activity does not provide sufficient information for me to offer a legal opinion regarding that activity.