

August 10, 2022

Senator Richard J. Durbin
Chair, United States Senate Committee on the Judiciary
Washington, DC 20510-6275

Dear Chair Durbin, Senator Kennedy, and members of the committee,

I received a set of questions on July 26 from Senator Kennedy for the May subcommittee hearing entitled “An Ethical Judiciary: Transparency and Accountability for 21st Century Courts.” I include below responses to each question. I answered as fully and completely as I could under my time constraints. I hope this is helpful.

Senator Kennedy asks: **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.” 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?**

My reply is simple. In all legislation, Congress should clearly define its terms. “Spent substantial funds” should have a clear definition, as lobbying does in the series of statutes that regulate lobbying behavior. Then any “party, party’s counsel, individual employed in a supervisory capacity at a party or a law firm, or affiliate of a party or law firm in a case,” as defined in the statute, who has either lobbied or “spent substantial funds” would trigger recusal by any judge or justice hearing the case.

Senator Kennedy further asks: **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. Were Judge Jackson’s actions consistent with the Code of Conduct for lower court judges? Does a sitting federal judge violate the spirit of**



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the Code of Conduct if they openly and publicly assemble a team of operatives to achieve a political goal?

I have not followed the particulars of any of this and so cannot offer an expert opinion on it.

Senator Kennedy further asks: **Is it appropriate for politicians, organizations, or the public to bully, intimidate, or pressure Supreme Court Justices to decide a case a particular way?**

I am not an expert on the “appropriateness” of behavior by members of the public, politicians, or organizations. As I’m sure the Senator knows, a lot of otherwise legal and constitutionally-protected behavior may still be uncomfortable to experience or distasteful to observe. Appropriateness aside, lacking more information about what the Senator meant by “bully,” “intimidate,” and “pressure,” I cannot even comment on the legality of any behavior the Senator is concerned about.

Finally, Senator Kennedy asks: **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?**

To my knowledge, we do not have political science research on how discussions of “restructuring” the Supreme Court affect the Court’s legitimacy or perceived legitimacy. It seems possible that the threat could harm either or both branches, but I am not aware of research on that specific point.

Thank you again for the invitation to testify in May. I would be happy to be of further assistance to you when my schedule permits.

Best regards,

A handwritten signature in black ink, appearing to read 'Abby Wood', written in a cursive style.

Abby Wood
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and Public Policy
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