

**Prepared Opening Statement by Senator Chuck Grassley of Iowa
Ranking Member, Senate Judiciary Committee
Hearing to Consider Supreme Court Nominee Judge Ketanji Brown Jackson
March 21, 2022**

Judge Jackson, welcome to you and your family. Thank you for taking the time to meet with me after being nominated. Since President Biden announced his nominee for the Supreme Court, I've been encouraging my colleagues to schedule meetings with you. I've continually emphasized the need for a thorough, respectful process.

Now, I want to talk a bit about what everyone watching should expect from this hearing, and what they shouldn't expect. We will conduct a thorough, exhaustive examination of Judge Jackson's record and views. We won't try to turn this into a spectacle based on alleged process fouls. On that front, we're off to a good start. Unlike the start to the Kavanaugh hearings, we didn't have repeated, choreographed interruptions of Chairman Durbin during his opening statement like Democrats interrupted me for more than an hour during my opening statement at the Kavanaugh hearing.

What we will do, however, is ask tough questions about Judge Jackson's judicial philosophy. In any Supreme Court nomination, the most important thing we look for is the nominee's view of the law, judicial philosophy and view on the role of a judge. I'll be looking to see whether Judge Jackson is committed to the Constitution as originally understood.

There's a difference of opinion about the role judges should play. Some of us believe that judges are supposed to interpret the law as it was understood when written, not make new law, or simply fill in a vacuum. Those of us who share that view think that, under our Constitution, Congress and not the federal courts are given the authority to make law and set policy.

Others believe that courts should make policy. They believe in a so-called living constitution. They think that the Constitution's text and structure don't limit what judges can do. To them, deciding what the Constitution means is really a "value judgment." Under that approach judges can exercise their own independent value judgments.

One of the leading advocates for this approach explained that, as a judge, you "reach the answer that essentially your values tell you to reach." In other words, those who subscribe to this philosophy think that the Founders really meant to hide elephants in mouse holes. Then, with a bit of creativity, these judges can always find that elephant. That sounds like a good job description for a legislator, not a judge.

For four years, Democrats systemically voted against many well-credentialed nominees that were diverse professionally, geographically, religiously and ethnically. Was it racist or anti-woman for them to do so? I don't believe it was. Democrats did it because the nominees didn't agree with living constitutionalism. Just as Republicans have opposed nominees based on their judicial philosophy.

There are lots of problems with living constitutionalism. In the Senate, we spend a lot of time writing legislation. We argue over the language. We negotiate over how broad or narrow certain provisions of a law should be. If we can't convince our colleagues to adopt all of our ideas, we have been known to compromise every once in a while.

We depend on judges to interpret the laws as we write them. If judges impose their own policy preferences from the bench and essentially revise the laws we pass, it makes it harder for us to write good laws. Sometimes, we need to include a provision that is very broad to get a colleague's support. If a judge re-writes the law later because of vague notions about fairness or equity or the common good, that unravels all of our work.

More importantly, the American people should be able to read a law and know what it means. They shouldn't have to ask how a federal judge who disagrees with the law could re-interpret the words on the page.

This is why we must carefully examine federal judges' records, especial Supreme Court nominees.

Judge Jackson has served as an Assistant Federal Public Defender, worked in private practice, and served at the United States Sentencing Commission. She also served as a federal district court judge from 2013 to 2021. She's served on the D.C. Circuit since June 2021. I'm sure senators will have a few questions for Judge Jackson about the two opinions she's authored since joining that court.

As for her district court record, there have been some accusations that we cherry-picked some of Judge Jackson's criminal cases. Don't worry. We're going to talk about the other ones too.

I was disappointed we weren't able to get bipartisan agreement to ask for Judge Jackson's documents from her time as Vice Chair at the Sentencing Commission. The Commission is an independent agency created to "advise and assist Congress and the executive branch in the development of effective and efficient crime policy." Unfortunately, it sounds like we'll have to wait until those documents are required to be released—20 years from now.

Democrats have argued her time on the Commission is an important part of Judge Jackson's experience that she'll draw on as a judge. They're right. That's why it would've been good to see what her views were. As the head of the Commission explained in a letter to Senator Durbin, the public documents turned over to this Committee represent the consensus views of the Commission, not necessarily Judge Jackson's own views.

The Obama White House sent us roughly 68,000 pages of material. But more than 38,000 pages are repeated copies of an email thread keeping track of tweets about the Garland nomination. Those emails contain one tweet about Judge Jackson. More than 13,000 pages are just lists of previous nominations. So that leaves only 16,000 pages that we received from the White House that aren't obviously useless like all the other documents we received. But, for comparison, the White House has still withheld 48,000 pages under the Presidential Records Act and FOIA exemptions. That's a lot of hiding.

But the limited number of useful records we received from the Obama White House show exactly why Sentencing Commission documents would have been important.

There are a number of dark money groups on the Left that argue federal judges should make policy decisions based on the judges' own values. I've talked about the troubling role far-left dark money groups like Demand Justice have played in this administration's judicial selection process.

When Demand Justice isn't creating short lists for President Biden to pick judicial nominees from or putting out new litmus tests, they're running ad campaigns attacking the independence of the judiciary. They've strongly supported the so-called "progressive" prosecutors who are soft on violent crime in the face of a rising crime wave in cities like San Francisco, Philadelphia, Boston and Los Angeles.

What does that have to do with Judge Jackson? The Obama White House records indicate that a co-founder of Demand Justice played an important role on Judge Jackson's nominations to the Sentencing Commission and the district court. The Demand Justice co-founder even interviewed Judge Jackson about a nomination to the Sentencing Commission. It would be helpful to know what the Demand Justice co-founder learned during that process and why they so strongly support Judge Jackson.

However, it hasn't all been bad on the document front. We'd asked for briefs that aren't available online for D.C. Circuit cases Judge Jackson worked on as an attorney. At first we were told they might not be available for a few weeks. To our pleasant surprise, we received them early, apparently because the White House had asked for them too. Judging by the timetable we were originally given to get the briefs, that request was made after she was announced.

Now, those documents concern Judge Jackson's time as an Assistant Federal Public Defender. Democrats have accused Republicans of vilifying nominees who have represented criminal defendants. That's just not the case. Previous Supreme Court nominees have also represented criminal defendants on appeals. Chief Justice Roberts was appointed by the Supreme Court to represent a defendant in an important criminal law case, and he also helped represent an inmate on Florida's death row. And Justice Barrett represented criminal defendants appealing their conviction while she was in private practice.

I've distinguished between two types of nominees who have worked on criminal cases. There are Bill of Rights attorneys who want to protect defendants' constitutional rights. Then there are what I've called criminal defense lawyers who disagree with our criminal laws and want to undermine laws that they have policy disagreements with. That's an important difference.

Just a year or two ago, Democrats had no trouble opposing nominees based on arguments those nominees made on behalf of clients. I could read off quotes of Democrats doing that to Trump nominees. But we only have ten minutes for opening statements, and I'd run out of time.

One final note. During Justice Barrett's confirmation hearing, Democrats said she was a "judicial torpedo" aimed at protections for pre-existing conditions. We heard that argument repeatedly. Conservatives and anyone else who actually looked at her record and the law said it was nonsense. But Democrats were sure otherwise. When the case was decided, Democrats were proven wrong. I'm sure that won't deter any of my Democrat colleagues from making some confident predictions this time around as well. But the public should remember their track record, and perhaps take those claims with a grain of salt. They were wrong in their strong declaration on how Justice Barrett would rule.

Judge Jackson, congratulations on your nomination. I look forward to hearing from you about your record, your views on the law, and your judicial philosophy.