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**Ketanji Brown Jackson**  
**Prospect for the United States Supreme Court**



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(no alterations)

Age 52. Born: Washington, D.C. Harvard Law School (J.D.) Harvard University (B.A.)

2021 – present: Judge, U.S. Court of Appeals, D.C. Circuit  
2013 – 2021: Judge, U.S. District Court for the District of Columbia  
2010 – 2014: Commissioner & Vice Chair, U.S. Sentencing Commission  
2007 – 2010: Of Counsel, Morrison & Foerster LLP  
2005 – 2007: Assistant Federal Public Defender  
2003 – 2005: Assistant Special Counsel, U.S. Sentencing Commission  
2002 – 2003: Associate: The Feinberg Group, LLP  
2000 – 2002: Goodwin Procter LLP  
1999 – 2000: Law Clerk, U.S. Supreme Court Justice Stephen Breyer

1998 – 1999: Associate, Miller, Cassidy, Larroca & Lewin LLP  
1997 – 1998: Law Clerk, U.S. Court of Appeals for the First Circuit, Judge Bruce Selya  
1996 – 1997: Law Clerk, U.S. District Court, District of Massachusetts, Judge Patti Saris  
1996: Summer Associate, Ropes & Gray LLP  
1995: Summer Associate, Miller, Cassidy, Larroca & Lewin LLP  
1994: Summer Associate, Kirkland & Ellis, LLP  
1992 – 1993: Staff Reporter/Researcher, Time Magazine, Inc.

**Teaching Experience**

2019 and 2018: Trial Advocacy Instructor, Harvard Law School  
2014, 2012, and 2011: Lecturer in Federal Sentencing, George Washington Univ. Law School

**Other Affiliations**

2019 – present: Board of Trustees, Georgetown Day School  
2019 – present: Commissioner, Supreme Court Fellows Commission  
2016 – present: Board of Overseers, Harvard University  
2016 – present: Council, American Law Institute  
2015 – present: Board of Directors, D.C. Circuit Historical Society  
2014 – present: Vice President, Edward Bennett Williams Inn of Court  
2014 – 2017: Board of Directors, Council for Court Excellence  
2011-2013: Advisory Board, National Institute of Corrections  
2010-2011: Advisory School Board, Montrose Christian School  
2004-2007: Elected Director, Harvard Alumni Association

**Jackson has suspect reactions to religious liberty.** “I do believe in religious liberty,” Jackson told Hawley. It is, she said, a “foundational tenet of our entire government.”<sup>1</sup> She agreed that the First Amendment and other federal laws (like RFRA) “guarantee that religious individuals and organizations will have substantial autonomy to act consistently with their religious beliefs.”<sup>2</sup> However, she sounded perhaps resistant to Supreme Court’s view that RFRA requires courts to scrutinize whether government has compelling interest in forcing that person to violate religious belief.<sup>3</sup> She noted that “[f]ederal courts, including the Supreme Court, are actively elevating the scope of the fundamental First Amendment right of religious liberty in a variety of circumstances.”<sup>4</sup> In response to Senator Cruz she seemed to begrudgingly admit that under Supreme Court precedents, the right to free exercise of religion extends outside of the walls of a church.<sup>5</sup> She declined to answer whether an individual’s right to religious liberty is solely because of Supreme Court precedent.<sup>6</sup>

**Jackson has distanced herself from pro-life and biblical marriage value-statements.** At her confirmation hearing in April 2021, Jackson faced questions about her service from 2010 to 2011 on the board of Montrose Christian School, a Maryland private school that has since closed. Sen. Josh Hawley, R-Mo., noted that the school’s statement of faith indicated that “[w]e should speak on behalf of the unborn and contend for the sanctity of all human life from conception to natural death” and that marriage should be limited to a man and a woman. Hawley noted that Justice Amy Coney Barrett had been “attacked” for serving on the board of a Christian school with similar positions and he asked Jackson whether, based on her service at Montrose Christian, she believed in “the principle, and the constitutional right, of religious liberty.” But Jackson distanced herself from the Montrose Christian statement of faith, telling Hawley that she had “served on many boards” and did not “necessarily agree with all of the statements . . . that those boards might have in their materials.” And in this case, she added, she “was not aware of” the statement of beliefs.<sup>7</sup>

**Senator Cruz has commented on Jackson’s then lack of record.** “On her confirmation hearing, Ketanji has been very, very careful. At least in her confirmation hearing to the D.C. Circuit, she had said very little that reveals her political orientation, that reveals what kind of judge she would be. She did not have, as so many of the Biden nominees have had, she did not have these outrageously partisan statements. She didn’t have these wildly left-wing statements. I think more than a few people suspect that those may be her sentiments, but she hasn’t left much of a paper trail.”<sup>8</sup>

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<sup>1</sup> Amy Howe, *Profile of a Potential Nominee: Ketanji Brown Jackson*, SCOTUSblog (Feb. 1, 2022), <https://www.scotusblog.com/2022/02/profile-of-a-potential-nominee-ketanji-brown-jackson>

<sup>2</sup> Grassley Responses, *infra* note 17, at 16.

<sup>3</sup> Grassley Responses, *infra* note 17, at 16-17.

<sup>4</sup> Grassley Responses, *infra* note 17, at 16.

<sup>5</sup> Cruz Responses, *infra* note 23, at 5.

<sup>6</sup> Tillis Responses, *infra* note 51, at 6.

<sup>7</sup> *Id.*

<sup>8</sup> Ted Cruz, *Only Black Women Need Apply* 20:47-21:21, Verdict with Ted Cruz (Jan. 29, 2022).

**Obama considered nominating her to replace Justice Scalia.** Although Barack Obama nominated Merrick Garland, Judge Jackson was one of five judges the White House interviewed to replace Scalia.<sup>9</sup>

**Jackson has ignored jurisdiction to rule in favor of unions.** In 2018, Judge Jackson struck down President Trump’s executive orders that made it easier to fire federal workers.<sup>10</sup> The D.C. Circuit reversed, finding that Judge Jackson lacked jurisdiction.<sup>11</sup>

**Economic cases.** In 2013, Judge Jackson denied a request from meatpackers to enjoin an Obama rule requiring meatpackers to provide a label with the meat’s country of origin, plaintiffs claiming this would drive up costs.<sup>12</sup> The D.C. Circuit affirmed.<sup>13</sup>

**NYT: Jackson’s style is detailed and meticulous.** “According to the New York Times, as a judge, Jackson “is known more for being detailed and thorough, sometimes to a fault, than for crisp and succinct rulings.” In arguments, she “tends to assert lively command” by displaying her skills as a national oratory champion in high school.”<sup>14</sup> Jackson said that judges within the D.C. Circuit often have to issue lengthier opinions because of the complexities of cases arising within that jurisdiction.<sup>15</sup>

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<sup>9</sup> Reuters Staff, *White House Interviewing Five Potential U.S. Supreme Court Nominees: Source*, Reuters (Mar. 9, 2016), <https://www.reuters.com/article/us-usa-court-nominees/white-house-interviewing-five-potential-u-s-supreme-court-nominees-source-idUSKCNOWC08T>.

<sup>10</sup> *Am. Fed. of Gov. Employees, AFL-CIO v. Trump*, 318 F. Supp. 3d 370 (D.D.C. 2018).

<sup>11</sup> *Am. Fed. of Gov. Employees, AFL-CIO v. Trump*, 929 F.3d 748 (D.C. Cir. 2019).

<sup>12</sup> *Am. Meat Inst. v. U.S. Dep’t of Agriculture*, 968 F. Supp. 2d 38 (D.D.C. 2013).

<sup>13</sup> *Am. Meat Inst. v. U.S. Dep’t of Agriculture*, 760 F.3d 18 (D.C. Cir. 2014) (en banc).

<sup>14</sup> Debra Cassens Weiss, *Possible SCOTUS Nominee Saw Impact of Criminal Justice System in Uncle’s Case*, ABA Journal (Feb. 1, 2022), <https://www.abajournal.com/news/article/possible-scotus-nominee-saw-impact-of-criminal-justice-system-in-uncles-case>.

<sup>15</sup> Tillis Responses, *infra* note 51, at 3.

**Jackson was “assigned” to work pro-bono on an amicus brief supporting abortion.** She is listed as counsel in an amicus curiae brief in *McGuire v. Reilly*, 260 F.3d 36 (1st Cir. 2001) on behalf of several pro-abortion groups including Abortion Access Project of Massachusetts, NARAL, Religious Coalition for Reproductive Choice, and Repro Associates.<sup>16</sup> This case challenged a floating buffer zone around an abortion clinic. The trial court ruled in favor of the pro-life sidewalk counselors. The First Circuit applied *Hill v. Colorado* and reversed. During her 2021 questioning, Jackson explained that she was assigned to work on this along with a partner and senior associate of her firm.<sup>17</sup> Jackson explained that more than 20 years had passed since the Supreme Court’s decision in *Hill* and that as a sitting federal judge it would be improper for her to comment on how she would apply that jurisprudence today.<sup>18</sup> She also took that case pro bono.<sup>19</sup>

**Jackson has given her definition of judicial activism.** “[A] judge unable or unwilling to separate personal views from the law and ruling consistent with those views instead of the law.”<sup>20</sup> “Judicial activism occurs when a judge who is unwilling or unable to rule as the law requires and instead resolves cases consistent with his or her personal views. It is my testimony that judicial activism is properly defined as characterizing a judge who is unwilling or unable to rule as the law requires.”<sup>21</sup>

**Jackson has dodged strong statements regarding the anti-constitutional judicial philosophy of “Living Constitutionalism.”** In 2013, she said that she didn’t believe in a living constitution. In 2020, she changed it to not being sure due to lack of expertise, even though she had been a sitting federal judge for 7 years.<sup>22</sup> She claimed that she did not have a judicial philosophy on whether the Constitution is living or dead.<sup>23</sup> Instead, she claimed that it would be inappropriate for her to comment on what lies in the Supreme Court’s province alone since she was a lower-court judge.<sup>24</sup> As a Supreme Court nominee she will probably not be able to rely on the same excuse to get out of the question.

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<sup>16</sup> *McGuire v. Reilly*, 260 F.3d 36, 37 (1st Cir. 2001).

<sup>17</sup> Response to Questions for the Record from Senator Chuck Grassley, Ranking Member to Judge Ketanji Brown Jackson, Nominee to the United States Court of Appeals for the D.C. Circuit at 5, Senate Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/Brown%20Jackson%20Responses1.pdf> (last visited Feb. 9, 2022) (hereinafter “Grassley Responses”).

<sup>18</sup> Grassley Responses, *supra* note 17, at 5-6.

<sup>19</sup> Jackson Senate Questionnaire 101, Senate Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/Jackson%20Senate%20Judiciary%20Questionnaire1.pdf> (last visited Feb. 10, 2022).

<sup>20</sup> Grassley Responses, *supra* note 17, at 12.

<sup>21</sup> Grassley Responses, *supra* note 17, at 12.

<sup>22</sup> Grassley Responses, *supra* note 17, at 12-13.

<sup>23</sup> Responses to Questions from Senator Ted Cruz at 1, Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/Brown%20Jackson%20Responses1.pdf> (last visited Feb. 15, 2022) (hereinafter “Cruz Responses”).

<sup>24</sup> Cruz Responses, *supra* note 23, at 2.

In her confirmation to the D.C. Circuit, Judge Jackson indicated that because the Supreme Court has increasingly been resorting to originalism in constitutional interpretation, she would follow that method as a lower-court judge.<sup>25</sup>

**Jackson has dealt some with separation of powers concepts.** Jackson ruled that the former White House Counsel had to comply with House Judiciary Committee subpoena investigating purported foreign interference with 2016 election.<sup>26</sup> This is troubling.<sup>27</sup>

She acknowledged that it's for Congress, not the President, to change the law.<sup>28</sup> She declined to opine on whether the President could order the Executive Branch to not enforce the death penalty, but she seemed to think that he couldn't, based on her quoting the "Take Care" Clause of Article II.<sup>29</sup>

**Jackson has a three-part analysis for statutory ambiguity.** She analyzes statutory ambiguity by: (1) structure of the statute as a whole and other indicia of meaning from the text, (2) if still unresolved, then Supreme Court rules of interpretation (e.g. rule of lenity), and (3) sometimes consults legislative history but has never made decision based on that ground.<sup>30</sup>

**At least one of Jackson's rulings on immigration shows disregard for the separation-of-powers.** Judge Jackson granted a nationwide injunction enjoining Homeland Security's decision to expand the category of non-citizens that might be subject to expedited removal procedures.<sup>31</sup> The D.C. Circuit reversed her on appeal, reasoning that Congress explicitly delegated this decision to the agency.<sup>32</sup> Judge Rao dissented, reasoning that the court did not even have jurisdiction to consider the claim, meaning that Judge Jackson should have dismissed the case immediately.<sup>33</sup>

However, in another case, Judge Jackson ruled against an immigration challenge that was intended to slow down building the wall along the southern border.<sup>34</sup>

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<sup>25</sup> Responses to Questions from Senator Mike Lee, Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/Brown%20Jackson%20Responses1.pdf> (last visited Feb. 15, 2022) (hereinafter "Lee Responses").

<sup>26</sup> *Committee on the Judiciary v. McGahn*, 415 F. Supp. 3d 148 (D.D.C. 2019).

<sup>27</sup> *Cf. Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (establishing balancing procedure to account for separation of powers concerns with subpoenaing Presidential documents); *id.* at 2037 (Thomas, J., dissenting) (engaging in originalist analysis of the issue).

<sup>28</sup> Cruz Responses, *supra* note 23, at 8.

<sup>29</sup> Cruz Responses, *supra* note 23, at 8.

<sup>30</sup> Grassley Responses, *supra* note 17, at 14.

<sup>31</sup> *Make the Rd. N.Y. v. McAleenan*, 405 F. Supp. 3d 1 (D.D.C. 2019).

<sup>32</sup> *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020).

<sup>33</sup> 962 F.3d at 635 (Rao, J., dissenting).

<sup>34</sup> *Ctr. for Biological Diversity v. McAleenan*, 404 F. Supp. 3d 218 (D.D.C. 2019).

**Jackson has called for drug law reform.** When she was a member of the Sentencing Commission, she said that our drug laws need to be reformed.<sup>35</sup> In fairness, Judge William Pryor of the Eleventh Circuit has agreed with this as well.<sup>36</sup> There is a growing bipartisan movement to reform our drug laws. Judge Jackson also attested that as a judge, she is not a policy maker, so it would be inappropriate for her to amend the law in her judicial capacity.<sup>37</sup>

**Jackson has never owned Guns.** Does not and has never owned any firearms.<sup>38</sup>

**Jackson’s response to free speech and free exercise of religion questions is concerning.** She acknowledged that the First Amendment protects offensive speech,<sup>39</sup> and also acknowledges that the Supreme Court recognizes that so-called “hate speech” is protected by the First Amendment.<sup>40</sup> When asked what the limits of “hate speech” are, she cited *Chaplinsky v. New Hampshire*’s “fighting words” doctrine.<sup>41</sup> While this is technically a correct answer under the Supreme Court’s precedents, conservatives have sometimes flagged this as a potential way for the government to punish Christians who hold to Biblical truth about homosexuality.

She cited *Christian Legal Soc’y v. Martinez* early in her response when she was asked to explain how the First Amendment applies in university settings.<sup>42</sup> Again, while this is a Supreme Court precedent, it is alarming that this is one of the first places she went when asked to explain how the First Amendment applies. For instance, she made no reference to *Rosenberger v. Rector & Visitors of the Univ. of Va.*,<sup>43</sup> which was a key case in this area. *Rosenberger* held that a university may not discriminate on the basis of viewpoint once it has opened a forum. In contrast, *CLS* held that the First Amendment does not protect the right of a Christian student group to condition leadership positions on the basis of adhering to traditional Christian doctrine. Thus, her response may indicate that she is more concerned about forcing students to accept other students than she is about the government discriminating against students.

**Jackson has claimed empathy has no place on the bench.** She stated: “A judge has a duty to decide cases based solely on the law, without fear or favor, prejudice or passion. In all cases, courts should generally be mindful that the exercise of judicial authority has a profound impact of the lives and circumstances of litigants. But to the extent that empathy is defined as one’s ability to share what another person is feeling from the other person’s point of reference, empathy should not play a role in a judge’s consideration of a case.”<sup>44</sup>

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<sup>35</sup> Response to Questions from Senator Tom Cotton at 1-2, Committee on the Judiciary, <https://www.judiciary.senate.gov/download/ketanji-brown-jackson-responses> (last visited Feb. 15, 2022) (hereinafter “Cotton Responses”).

<sup>36</sup> Cotton Responses, *supra* note 35, at 1-2.

<sup>37</sup> Cotton Responses, *supra* note 35, at 1-2.

<sup>38</sup> Cruz Responses, *supra* note 23, at 3.

<sup>39</sup> Cruz Responses, *supra* note 23, at 9.

<sup>40</sup> Cruz Responses, *supra* note 23, at 10.

<sup>41</sup> Cruz Responses, *supra* note 23, at 10.

<sup>42</sup> Cruz Responses, *supra* note 23, at 11.

<sup>43</sup> 515 U.S. 819 (1995).

<sup>44</sup> Lee Responses, *supra* note 25, at 8.

**Jackson’s statement’s regarding other matters impacting judicial philosophy.** Jackson:

- Declined to explore the relative dangers of judicial activism versus judicial passivity.<sup>45</sup>
- Answered that the difference is between judicial review and judicial supremacy without saying that the latter was a bad thing.<sup>46</sup>
- Acknowledged that each branch of government has the duty to independently interpret the Constitution but declined to explain how to balance that with the judiciary’s role.<sup>47</sup>
- Professed that it is not appropriate for a judge to look past jurisdictional issues to address a manifest injustice.<sup>48</sup>
- Argued that judicial inconsistencies are probably more attributable to other factors than to the group bias of the judge, rebutting an argument that judicial bias cannot be avoided.<sup>49</sup> This may indicate that she is not a critical race theorist.
- Rejected the proposition that a “defendant who belongs to a historically disadvantaged group” should be sentenced “less severely than a similarly situated defendant who belongs to a historically advantaged group to correct systemic sentencing disparities.”<sup>50</sup>
- Believes that faithfully applying the law sometimes results in outcomes that go against a judge’s personal views.<sup>51</sup>

**Jackson has advocated for issues surrounding the detention of terrorists.** She represented Guantanamo detainee during time as federal public defender.<sup>52</sup>

She filed two amicus briefs in cases while in private practice in cases involving the detention of terrorists in Guantanamo Bay.<sup>53</sup> One of those briefs was on behalf of libertarian-leaning groups (the Cato Institute and the Rutherford Institute) that are often allied with conservatives but appeared to be more concerned about civil liberties after 9/11.

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<sup>45</sup> Lee Responses, *supra* note 25, at 9.

<sup>46</sup> Lee Responses, *supra* note 25, at 9.

<sup>47</sup> Lee Responses, *supra* note 25, at 9.

<sup>48</sup> Lee Responses, *supra* note 25, at 12-13.

<sup>49</sup> Lee Responses, *supra* note 25, at 13-14.

<sup>50</sup> Lee Responses, *supra* note 25, at 15.

<sup>51</sup> Responses to Questions from Senator Thom Tillis at 2, Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/Brown%20Jackson%20Responses1.pdf> (last visited Feb. 15, 2022) (hereinafter “Tillis Responses”).

<sup>52</sup> Responses to Questions from Senator Ben Sasse at 6, Committee on the Judiciary, <https://www.judiciary.senate.gov/imo/media/doc/Brown%20Jackson%20Responses1.pdf> (last visited Feb. 15, 2022) (hereinafter “Sasse Responses”).

<sup>53</sup> Sasse Responses, *supra* note 52, at 7.