

March 18, 2022

The Honorable Dick Durbin
Chair
Judiciary Committee
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley
Ranking Member
Judiciary Committee
United States Senate
135 Hart Senate Office Building
Washington, DC 20510

Dear Senators Durbin and Grassley:

The undersigned organizations and individuals representing the interests of millions of individuals with disabilities write in enthusiastic support of President Biden's nomination of Judge Ketanji Brown Jackson to the United States Supreme Court. Based on our review of her judicial record, we believe that Judge Jackson has demonstrated an understanding of disability rights and other civil rights laws and their importance to people with disabilities—and a steadfast commitment to fair, thorough adjudication of their legal claims. We believe she will be a worthy successor to the retiring Justice Stephen G. Breyer, whom she would replace on the Supreme Court.

There is much to celebrate in Judge Jackson's nomination to the Supreme Court. The nomination of a Black woman to our nation's highest court is long overdue. We also wholeheartedly commend Judge Jackson's record as a thorough and thoughtful jurist who has repeatedly engaged in searching inquiries regarding the application of the facts to the law in the cases before her. Not least of these are her decisions involving disability rights and other civil rights.

Even before becoming a judge, as a federal public defender in Washington, D.C., Judge Jackson represented criminal defendants with mental health disabilities before the court on which she now sits, the United States Court of Appeals for the District of Columbia Circuit. Her work on their behalf ensured that these individuals would receive high quality representation and their fair day in court.¹

¹ See, e.g., *United States v. Kosh*, 184 Fed. Appx. 4 (D.C. Cir. 2006); *United States v. Lowe*, 186 Fed. Appx. 1 (D.C. Cir. 2006).

Since becoming a federal district court judge in 2011, Judge Jackson has shown a keen appreciation for a key principle of our nation’s disability rights laws, including the landmark Americans with Disabilities Act (ADA): To have equal opportunities for participation in our workplaces, government programs, and public accommodations, people with disabilities must sometimes be provided accommodations to policies, practices, and procedures. Under our laws, these accommodations must be reasonable, but they must also be effective.

In employment discrimination cases under the ADA and the Rehabilitation Act, which among other things protects federal employees from workplace discrimination, Judge Jackson has repeatedly held that employers must engage in a meaningful, interactive process with workers with disabilities to determine what reasonable accommodations they need to do their jobs—and that this duty continues as long as requests for such accommodations may be considered and met.² Importantly, in more than one case Judge Jackson has held employers to their duty to consider whether reassigning employees to other positions for which they are eligible may be a reasonable accommodation when other supports will not help the employee perform job duties.³

Notably, in the compelling case of a deaf inmate at the D.C. Jail, Judge Jackson held that the jail’s failure to evaluate the inmate’s request for a sign language interpreter so that he could understand information communicated to him by jail staff, and its failure to provide these interpreter services, amounted to deliberate indifference to his rights. Judge Jackson awarded the inmate damages to compensate him for his injuries.⁴

In a recent decision, Judge Jackson reaffirmed that people with disabilities need not actually experience discriminatory treatment before they sue to prevent it. In a case alleging that Uber discriminated against people who use wheelchairs, for whom Uber cars took longer to arrive and cost more to use, Judge Jackson held that a disability rights advocate did not have to engage in the “futile gesture” of downloading the Uber App in order to have standing to challenge Uber’s policies in court.⁵ This principle applies in many disability rights and other civil rights contexts, including in cases where people with disabilities at serious risk of unjustifiable institutionalization challenge state and local policies that deny them community-based services and supports.

In a decision interpreting the Individuals with Disabilities Education Act (IDEA), which requires schools to provide students with disabilities an “appropriately ambitious” education that will help them meet “challenging objectives,” Judge Jackson held that before placing a student with significant behavioral issues in a separate private school, school district officials must ensure that the school can provide the student

² See, e.g., *Von Drasek v. Burwell*, 121 F. Supp. 3d 143, 159-60 (D.D.C. 2015).

³ See *id.*; *Mitchell v. Pompeo*, No. 1:15-cv-1849 (KBJ), 2019 U.S. Dist. LEXIS 54797, **41-42 (D.D.C. Mar. 31, 2019).

⁴ *Pierce v. District of Columbia*, 128 F. Supp. 3d 250 (D.D.C. 2015).

⁵ *Equal Rights Ctr. v. Uber Techs., Inc.*, 525 F. Supp. 3d 62 (D.D.C. 2021).

individualized supports of adequate intensity, as required by the IDEA, so that the student can receive a free appropriate public education (FAPE).⁶ In another IDEA case, Judge Jackson rejected a school district’s defense that serving a student with significant behaviors was “impossible,” or that the student’s behavior excused the district from placing him in a program that could meet his needs.⁷

Judge Jackson has been vigilant in reviewing administrative decisions denying Social Security disability benefits, and has reversed those decisions in cases involving people with mental health disabilities. In these cases and others, she has been appropriately solicitous of pro se plaintiffs who may have misunderstood administrative claim processes, including for disability-related reasons.⁸

In sum, our review of her decisions supports our strong belief that Judge Jackson will be a Supreme Court Justice who understands the importance of disability and other civil rights laws—which protect people with disabilities from other types of discrimination—and who is committed to a fair day in court for people bringing claims under these laws. She appears to understand that Congress intended these laws to have a broad remedial effect on the relationships between persons with disabilities and covered entities like employers, schools, state agencies, and public accommodations. She has been unafraid of taking strong positions on issues where she believes her reading of the law and facts is correct. Like Justice Breyer, Judge Jackson understands the impact of Supreme Court decisions on people with disabilities and other historically marginalized populations. Her thorough, thoughtful approach as a judge indicates a respect for those who come before her seeking justice.

Thank you for your leadership on Judge Jackson’s nomination. Based on her judicial record and other professional experience, we strongly urge the Senate Judiciary Committee to confirm Judge Jackson for the Supreme Court. Should you have questions about this letter, please feel free to contact Lewis Bossing, Senior Staff Attorney, Bazelon Center for Mental Health Law, at lewisb@bazelon.org or (202) 467-5730 x1307.

Sincerely,

Access Ready Inc.

American Association of People with Disabilities

⁶ *W.S. v. District of Columbia*, 502 F. Supp. 3d 102 (D.D.C. 2020).

⁷ *Schiff v. District of Columbia*, Civil Action No. 18-cv-1382 (KBJ), 2019 U.S. Dist. LEXIS 189606 (D.D.C. Nov. 1, 2019).

⁸ See, e.g., *Meriwether v. Colvin*, No. 12-cv-0067 (KBJ), 2015 U.S. Dist. LEXIS 65337 (D.D.C. May 19, 2015) (Social Security); *Horsey v. U.S. Dep’t of State*, 170 F. Supp. 3d 256 (D.D.C. 2016) (Title VII), *aff’d*, 805 Fed. Appx. 10 (D.C. Cir. 2020).

American Council of the Blind
American Foundation for the Blind
American Network of Community Options and Resources
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Barajas & Rivera, APC
Bazelon Center for Mental Health Law
Leslie Salzman and Rebekah Diller, Cardozo Bet Tzedek Legal Services
The Center for HIV Law & Policy
Center for Public Representation
The Honorable Tony Coelho
The Coelho Center for Disability Law, Policy and Innovation
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Deaf and Hard of Hearing Bar Association
Disability Rights Advocates
Disability Rights California
Disability Rights Center – New Hampshire, Inc.
Disability Rights DC at University Legal Services
Disability Rights Education and Defense Fund
Disability Rights Legal Center
Disability Rights North Carolina
Fox & Robertson, PC
Georgia Advocacy Office
Jasmine E. Harris
Indiana Disability Rights
Indiana Statewide Independent Living Council
Kiva Centers
Law Office of Lainey Feingold

Legal Aid at Work

Andrea Marcus

National Association for Rights Protection and Advocacy

National Center for Law and Economic Justice

National Council on Independent Living

National Health Law Program

RespectAbility

Rosen Bien Galvan & Grunfeld LLP

Jo Anne Simon and Mary Goodwin Oquendo, Jo Anne Simon, PC

Susan Stefan, Esq.

The Tanya Project: A Medical-Legal Partnership for Women with Cancer

Uptown People's Law Center

Washington Lawyers' Committee for Civil Rights & Urban Affairs

cc: Dana Remus, White House Counsel

Emily Voorde, Associate Director for Disability Community Engagement
White House Office of Public Engagement