

April 6, 2022

By electronic mail

Dear Senator:

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 and testimony during her confirmation proceedings, 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

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

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).

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 *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

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). In written testimony during her confirmation proceedings, Judge Jackson explained that the plaintiff in the case “was not required to engage in the ‘futile act’ of downloading the Uber app or requesting an accessible ride because she had averred in a sworn affidavit that she knew Uber’s service was not accessible for a user in a motorized wheelchair like herself.”

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

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

Importantly, during her confirmation proceedings Judge Jackson emphasized that she is a “strong believer” in the legal principle of stare decisis, under which courts are obligated to look to precedent when deciding cases. Judge Jackson described stare decisis as a “bedrock legal principle that ensures consistency and impartiality of judgments.” She testified that she is

very conscious of the limits of judicial authority, of the restrictions that exist in the law to prevent me, as a judge, from becoming a policymaker. This means that . . . I look at the text and focus on the text and the intentions of the legislatures that drafted that provision . . . [I]f I was fortunate enough to be confirmed to the Supreme Court, I would be upholding the principles of stare decisis as I consider the precedents and making sure that the Court is putting forward consistent and predicable rulings as is important to maintain the rule of law.

People with disabilities, and Congress, can take heart that, were she confirmed to the Court, Judge Jackson would appropriately respect the Court’s landmark decisions interpreting disability rights laws consistent with Congressional intent, including *Olmstead v. L.C.*, which held that unnecessary segregation on the basis of disability is prohibited under the ADA, and *Tennessee v. Lane*, which confirmed that the ADA fully protects the rights of people with disabilities to access to our courts.

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

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).

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

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

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The Center for HIV Law & Policy

Center for Public Representation

The Honorable Tony Coelho

The Coelho Center for Disability Law, Policy and Innovation

Connecticut Legal Rights Project

Count US IN (Count US Indiana)

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
Curtis Devine
Miriam Fisher
Kathy Flaherty
Fox & Robertson, PC
Georgia Advocacy Office
Haben Girma
Jasmine E. Harris
Judith Heumann
Kent Hull
Indiana Disability Rights
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Professor Arlene S. Kanter, Director, Disability Law and Policy Program, Syracuse
University College of Law
Kiva Centers
Law Office of Lainey Feingold
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Kylie Miller
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National Center for Law and Economic Justice
National Council on Independent Living
National Disabled Law Students Association
National Health Law Program
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Triage Cancer
Uptown People's Law Center
Washington Lawyers' Committee for Civil Rights & Urban Affairs
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cc: Dana Remus, White House Counsel
Emily Voorde, Associate Director for Disability Community Engagement
White House Office of Public Engagement