

Common Cause Renews Its Call for the Senate to Confirm Judge Ketanji Brown Jackson to the U.S. Supreme Court: Will “Score” Vote in our next Democracy Scorecard

April 5, 2022

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of Common Cause’s 1.5 million members and supporters committed to building an open, representative, and inclusive democracy, we again write to urge you to confirm Judge Ketanji Brown Jackson to the United States Supreme Court. This letter updates and supplements our letter to the Senate of March 17, 2022. As we wrote then, we will score the final confirmation vote in our 2022 Democracy Scorecard that we will release this summer.

Judge Jackson’s leadership in the law, lived experience, and commitment to the Constitution will strengthen the Court’s legitimacy and, by extension, our democracy.

As the Senate is no doubt aware from Judge Jackson’s testimony in the Judiciary Committee hearings last month, and its repeated confirmation of Judge Jackson over the years, she is exceptionally well-qualified to serve on the high court. Judge Jackson has led a distinguished career, including leadership on the *Harvard Law Review*; a clerkship with Justice Breyer; work as an appellate litigator and federal public defender; and public service as a Senate-confirmed member of the United States Sentencing Commission, a federal district court judge, and a federal appellate court judge. Judge Jackson’s strong record advancing accountability in government and equity in the criminal legal system speaks for itself.

The Senate has vetted and confirmed Judge Jackson three times—always with bipartisan support, including twice to lifetime judicial appointments. It is worth noting that if confirmed, Judge Jackson will have more judicial experience than the combined tenure of Chief Justice Roberts, Justice Thomas, Justice Kagan, and Justice Barrett when the Senate confirmed them to the Supreme Court.

At her hearing, Judge Jackson discussed her experience as a jurist and how it will apply to her work on the Supreme Court. She said that she would “do what I’ve done for the past decade, which is to rule from a position of neutrality, to look carefully at the facts and the circumstances of every case, without any agendas, without any attempt to push the law in one direction or the other [and] interpreting the law consistent with the Constitution and precedents, and to render rulings that I believe and I hope that people would have confidence in.”

We were disappointed as several Republican senators on the Judiciary Committee demeaned their constitutional charge of providing advice and consent by distorting her record in their divisive effort to score political points. They launched baseless and cynically misleading attacks on her record as a jurist in sentencing matters and as a public defender, one of the highest callings of the legal profession. Judge

Jackson rebutted the charges soundly and resolutely. Her responses were grounded in the law and in the truth. How she handled the hostile questioning underscores why the Senate should confirm Judge Jackson to the high court.

The importance of the Supreme Court in our system of checks and balances cannot be overstated. Article III of the Constitution vests the “judicial power of the United States . . . in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.” This power is vast and touches nearly every facet of Americans’ lives and freedoms. In recent years, the Court has decided cases with profound implications for our freedom to vote, our access to healthcare, and our families. The Court is soon expected to hear and decide cases on racial justice and affirmative action, reproductive freedom, and access to firearms. The American people are highly attuned to these issues because they affect their everyday lives.

Public confidence in the judicial branch and the Supreme Court has been shaken in recent years. Last September, Gallup released survey data that revealed a “steep decline over the past year in the percentage of Americans who express ‘a great deal’ or ‘fair amount’ of trust in the judicial branch of the federal government,” which is headed by the Supreme Court.¹ Americans’ opinion of the Supreme Court hit a new low in their tracking since 2000, with just 40% approval.² This is consistent with declining confidence and trust in government and democratic institutions. A survey last year found that “only 16% of Americans say democracy is working very or extremely well.”³ Among young people aged 18 to 29 surveyed in a separate study, only 7% viewed the United States as a “healthy democracy.”⁴ These numbers are deeply troubling, even if their cause is multidimensional and complex.

The Court is unique in our system in that it has neither “the sword or the purse,” but “merely judgment.”⁵ Its power depends on the people obeying its orders. Because “it is emphatically the duty of the Judicial Department to say what the law is,”⁶ bolstering the public’s trust and confidence in the Supreme Court strengthens its legitimacy, and by extension, democracy itself. As Judge Jackson testified to the Senate Judiciary Committee last month, “confidence in the judiciary . . . is the currency of the judicial branch.” The Court’s legitimacy is a matter of existential concern for the rule of law as we know it, as Justice Sotomayor’s question at oral argument showed earlier this Term in a case that could overturn *Roe v. Wade*: “Will this institution survive the stench that this creates in the public perception that the Constitution and its reading are just political acts?”⁷

¹ Jeffery M. Jones, “Approval of Supreme Court Down to 40%, a New Low,” Gallup, Sept. 21, 2021, <https://news.gallup.com/poll/354908/approval-supreme-court-down-new-low.aspx>.

² *Id.*

³ Steven Sloan & Thomas Beaumont, “AP-NORC Poll: Few In U.S. Say Democracy Is Working Very Well,” Associated Press, Feb. 8, 2021, <https://apnews.com/article/ap-norc-poll-us-democracy-403434c2e728e42a955c72a652a59318>.

⁴ Nora Delaney, “Harvard Youth Poll Finds Young Americans Are Worried About Democracy and Even Fearful of Civil War,” Harvard Kennedy School, Dec. 1, 2021, <https://www.hks.harvard.edu/faculty-research/policy-topics/politics/harvard-youth-poll-finds-young-americans-gravely-worried>.

⁵ Alexander Hamilton, The Federalist No. 78.

⁶ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

⁷ Oral argument in *Dobbs v. Jackson’s Women’s Health Organization*, Dec. 1, 2021, pg. 15, https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/19-1392_4425.pdf.



For many reasons, Judge Jackson’s confirmation would mark a historic and overdue step toward fulfilling the promise of a democracy where “We the People”—the first three words of the Constitution that the Supreme Court interprets—includes everyone. This begins by reimagining who has a seat at the table on the matters of extraordinary consequence that the Court decides. For the first time in history, when the Supreme Court meets to decide cases (or even which cases to hear), its deliberations will include the perspective of a Black woman as well as the perspective of a former public defender. Of the 115 jurists who have served on the Supreme Court and authored opinions over the past two centuries, 108 have been white men. Only three have been people of color, and five have been women. This was not an accident, but the direct result of an entrenched discriminatory system. None of the 115 jurists have been public defenders, nor have any served on the Sentencing Commission. None have any had the qualifications and suite of experience of Judge Jackson, who will enrich the Court and its work with her background, both professional and personal, and her commitment to the rule of law.

Judge Jackson discussed this during her hearing, describing all of her legal and life experience from being a public defender, to the U.S. Sentencing Commission, to the federal bench, to being a Black woman and “lucky inheritor of the civil rights dream.” She explained why this matters for our democracy, describing how “we have a diverse society in the United States. There are people from all over who come to this great nation and make their lives. When people see that the judicial branch is comprised of a variety of people who have taken the oath to protect the Constitution, and who are doing their best to interpret the laws consistent with that oath, it lends confidence that the rulings that the Court is handing down are fair and just, that everything has been considered, that no one is being excluded because of a characteristic like race or gender of anything else. That’s important.”

Ultimately, it is our view that a more reflective and representative Court across many dimensions and perspectives is essential to fairness and its legitimacy, so that the Court can uphold its commitment to “equal justice under law,” as inscribed in marble above the Supreme Court. It is the entirety of Judge Jackson’s record as a jurist and attorney, her demonstrated commitment to justice and the rule of law, combined with her lived experience and perspective, that compels us to urge her confirmation. Judge Jackson is the first Supreme Court nominee that Common Cause has endorsed in our half-century history. Your affirmative vote to confirm her to the Supreme Court will help build an inclusive democracy.

Sincerely,



Karen Hobert Flynn
President, Common Cause

Since 1970, [Common Cause](#) has been working to hold power accountable through lobbying, education, litigation, and organizing. Our non-partisan, pro-democracy work has helped pass hundreds of reforms at the federal, state, and local levels. We now have 30 state chapters and more than 1.5 million members in every congressional district around the country who are working to strengthen our democracy.