

Biden nominates Ketanji Brown Jackson to the Supreme Court

Kevin Reed**25 February 2022**

The White House announced Friday morning that President Biden was nominating federal judge Ketanji Brown Jackson to replace Justice Stephen Breyer on the US Supreme Court, citing a 2020 campaign promise that he would select the first-ever black woman to sit on the high court.

The race and gender identity of Biden's nominee has been almost the sole subject of media discussion of the court vacancy since Justice Breyer announced on January 27 that he would be retiring at the end of this year's term.

This is in part because there will be no change in the political balance of the court, which will remain divided 6–3 between reactionary judges appointed by Republican presidents and moderate liberals appointed by Democrats. Breyer was appointed by Democrat Bill Clinton.

The emphasis on the "first black woman" is a desperate attempt by Biden and the Democrats to use race and gender to attract political support in the November midterm elections. The Democrats' political support among working people is plummeting, under conditions where the administration has failed to enact promised social reforms or block attacks on democratic rights, such as the ongoing attack on voting rights by Republican-controlled state governments. Millions of working people who voted for Biden in 2020, hoping to deal a blow to the vicious right-wing policies of Trump and the Republicans, have seen these illusions exploded.

During an afternoon press conference, where Biden introduced Jackson, the president said, "For too long, our government, our courts haven't looked like America." However, a review of Jackson's background and experience shows that she is a very much a conventional representative of the capitalist legal establishment.

Far from her presence on the Supreme Court, assuming she is confirmed, counteracting the right-wing trajectory of the court over many decades, the remarks of both

Biden and Jackson Friday indicate the continued shift of the Democrats to the right and their orientation to appeasing and winning over a section, however small, of Senate Republicans.

Biden emphasized Jackson's connections with the police. He said, "She comes from a family of law enforcement, with her brother and uncles having served as police officers." Biden highlighted the preliminary endorsement she has received from the national Fraternal Order of Police, quoting their statement which said they are confident she will "approach her future cases with an open mind and treat issues related to law enforcement fairly and justly."

Biden also emphasized that Jackson had been confirmed by the US Senate with "bipartisan support" three times: as a member of the US Sentencing Commission, as a federal district court judge and as a federal appeals court judge. Biden quoted the comments of a Republican-appointed retired judge who he said backed her "enthusiastically."

Ketanji Brown Jackson, 51, was raised in an upper-middle class family in Miami. Her father, Johnny Brown, was chief attorney for the Miami-Dade County School Board and her mother was principal at New World School of Arts, a public magnet school in downtown Miami.

She attended Harvard University and then Harvard Law School where she was supervising editor of the *Harvard Law Review* and graduated with Juris Doctor in 1996. She served as law clerk for the US District Court of Massachusetts and for the US First Circuit Court of Appeals from 1996 to 1999. She worked one year in private law practice for a firm in Washington D.C. and then clerked for Justice Breyer at the Supreme Court from 1999 to 2000.

Jackson returned to private practice from 2000 to 2003 and then worked as an assistant special counsel for the US Sentencing Commission, the US government agency that sets federal court sentencing guidelines, from 2003 to

2005. She became an assistant public defender in Washington D.C. before the US Court of Appeals for the D.C. Circuit between 2005 and 2007.

In an apparent reference to her role as a public defender, the official White House statement said Jackson, “has an unusual breadth of experience in our legal system.” If confirmed, she would be the first former public defender to become a Supreme Court justice, and the only justice in the past three decades to have conducted a defense case in court (the last was Thurgood Marshall). This fact exposes the distance of the Supreme Court from the experiences of working class Americans with the judicial system, where the poor are regularly incarcerated due to lack of resources and inadequate representation.

After three years at the multinational law firm Morrison & Foerster, Jackson returned to the US Sentencing Commission as its vice chair, nominated for the position by Barack Obama, from 2010 to 2014. During her time on the commission, the body reduced the guideline range of penalties for crack cocaine offenses.

Obama nominated her for the US District Court for the District of Columbia in 2012 and she appeared before the Senate Judiciary Committee on March 22, 2013, where she was introduced by Republican Representative Paul Ryan (fresh off his run for vice president), who is related to Jackson by marriage.

Among the decisions Jackson wrote was a ruling in November 2019 that ordered Donald Trump’s White House counsel Donald McGahn to comply with a legislative subpoena, where she wrote that “presidents are not kings.” This ruling was then overturned by the Court of Appeals. Other decisions reported in the press were those of a typical moderate liberal, siding with victims of racial, gender or other forms of discrimination based on identity, but otherwise not challenging the more fundamental divisions in American society based on class and wealth.

In March 2021, Biden nominated Jackson to the Court of Appeals for the D.C. Circuit, to fill the seat vacated by Merrick Garland, whom Biden appointed as attorney general. She was confirmed by the US Senate on June 14, 2021, in a 53–44 vote, with the support of three Republicans and all 50 Democrats. According to legal commentators, her time on the court of appeals has been too short to make any evaluation of her decisions there.

Whatever her past rulings, the comments she made after being introduced by the president were significant as to her political positions and the orientation of the Democratic Party more generally. First of all, her remarks

could have been made—apart from her references to the first black female federal judge, Constance Baker Motley—by any Republican law-and-order figure.

She started by “thank[ing] God for delivering me to this point in my professional journey. My life has been blessed beyond measure, and I do know that one can only come this far by faith.” While Jackson is entitled to her religious beliefs, they have no bearing on her fitness for a lifetime appointment to the highest federal court.

Invoking religious belief as, in effect, a requirement for the job is especially discreditable at a time when democratic rights are under attack in the US by far-right and fascistic political forces which regularly employ Christian fundamentalism as a battering ram against the secular foundations of the Constitution.

Jackson went on to promote her family police and military connections: her brother became an officer and a detective for the Baltimore police department and then enlisted in the US Army and served two tours of duty in the Middle East. Here identity politics is employed to justify American militarism and police violence.

Her remarks contained so many olive branches to the Republican right that there was little time for anything else. Meanwhile, there were no such signals to the so-called “left” and “progressive” wing of the Democratic Party. She avoided any reference to abortion rights, which are likely to be further gutted in the current Supreme Court term, nor did she refer to the massive assault on voting rights, which Biden just a few months ago compared to the slaveowners’ rebellion in the Civil War.



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