

AFGE Local 704 · AFGE Local 3354 · American Indian Mothers Inc.  
Animals Are Sentient Beings Inc · Anthropocene Alliance · Association of Young Americans · Azul  
Benedictine Sisters of Chicago · Bold Alliance · Center for Environmental Health  
Chesapeake Climate Action Network · Children's Environmental Health Network  
Clean Water Action · Climate Hawks Vote · Concerned Citizens for Nuclear Safety  
Conservation Voters New Mexico · Defenders of Wildlife · Earthjustice · Earth Ethics, Inc.  
Environmental Law & Policy Center · Food & Water Watch · Friends of the Earth  
Friends of the River · Healthy Gulf · Interfaith Power and Light  
Kansas Black Farmers Association · Lawyers for Good Government  
League of Conservation Voters · Moms Clean Air Force · Natural Resources Defense Council  
New Mexico Environmental Law Center · Oil Change International  
Pass the Federal Green New Deal Coalition · Rachel Carson Council  
Revitalization Strategies · Rural Coalition · Sunrise Movement · Tewa Women United  
The Climate Reality Project · The Water Collaborative of Greater New Orleans  
The Wilderness Society · Turtle Island Restoration Network · Union of Concerned Scientists  
Unitarian Universalist Association · V. Martin Environmental Justice LLC · Waterkeeper Alliance  
Waterspirit · Waterway Advocates · West End Revitalization Association · WildEarth Guardians

March 17, 2022

The Honorable Dick Durbin, Chairman  
Senate Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Chuck Grassley, Ranking Member  
Senate Committee on the Judiciary  
United States Senate  
Washington, DC 20510

**RE: Supporting Judge Ketanji Brown Jackson for the U.S. Supreme Court**

Dear Chairman Durbin and Ranking Member Grassley:

The 50 undersigned environmental groups and coalition partners write today on behalf of our millions of members and supporters to express our strong support for the confirmation of Judge Ketanji Brown Jackson as the next Associate Justice to the United States Supreme Court.

We are at an urgent moment in our nation's history and the federal courts have become more important than ever. In addition to protecting the right to vote and other critical civil rights, the courts must also enforce the environmental laws that Americans rely on to protect them from climate change, pervasive environmental injustice, and threats to public lands, clean air, and clean water. Those laws are only as strong as the judges who uphold them, so we need fair-minded Justices who decide cases based on facts, science, and settled law, and who understand the Court's proper place in our system of government. We believe that Judge Jackson will be exactly this kind of Supreme Court Justice, and we urge you to confirm her as quickly as possible.

### **Judge Ketanji Brown Jackson is Eminently Qualified**

Judge Jackson is one of the brightest legal minds in the country. Her character and qualifications have earned bipartisan support in all her past confirmations. She has served as a federal judge for eight years, worked as a public defender, and served on the U.S. Sentencing Commission to address disparities in federal criminal sentencing. Her even-handed judicial philosophy is reflected in her substantially lower reversal rate than other district court judges on average across the nation and in the D.C Circuit. We believe that these qualifications would make her a welcome addition to the Court.

Confirming Judge Jackson would also improve the Court's perspective and credibility. The Supreme Court has never been as diverse as the public it serves, either demographically or in terms of life experience. Judge Jackson would be the first Black woman to sit on the Supreme Court in our republic's 233-year history. Confirming her would send a message that our courts serve everyone in the country, no matter their race or background. Judge Jackson would also be the first Justice to have worked as a public defender and would add critical professional experience to the Court, which serves as the final arbiter of the rights of the accused and condemned.

### **The Environment is a Civil & Human Right**

As you consider Judge Jackson's nomination, we urge you to recognize that the right to a healthy and sustainable environment is a civil and human right, and that people need to be able to fight for those rights in court.

Throughout our history, this nation has systematically deprived people of color, Indigenous communities, and immigrant communities of their voting and civil rights. It has exploited these communities for economic gain and brutalized them to suppress their voices and votes, and this has led, among other things, to deeply unjust environmental outcomes. Our nation's industrial policies have perpetuated sacrifice zones in communities where severe health impacts are compounding other racial injustices. Our public lands policies have deprived Indigenous communities of their sacred lands. And our inattention to the climate crisis is already falling most heavily on those least able to bear its impacts.

Our next Supreme Court Justice must face these truths and uphold the law for all people, not just the privileged few.

### **Judge Jackson Is Well Qualified to Rule on Environmental Law Cases**

We are confident of Judge Jackson's ability to decide environmental cases fairly based on our review of her record. In many instances, judges decide environmental cases by applying administrative law principles to complex regulatory regimes and difficult scientific judgments by administrative agencies. It is not easy to make these decisions, nor is it easy to explain the decision in a way that the public can understand.

Judge Jackson's record shows that she understands the complexities of administrative law and the need to articulate clear decisions that lower courts and agencies can apply to their work.<sup>1</sup> Neither environmental groups nor corporate interests have always prevailed before her, but we have known that she approaches cases with an open perspective and fairness, exactly what we all should want in a judge.<sup>2</sup>

### **Judge Jackson Understands the Government's Power and Obligation to Combat Climate Change & Protect Public Health**

For nearly a century, the Supreme Court recognized that Congress has broad powers to pass environmental laws, as well as the authority to delegate regulatory powers to the executive branch, especially in complex and technical areas rife with scientific uncertainty. (Just 20 years ago, the Court unanimously rejected a nondelegation challenge to Clean Air Act regulations in *American Trucking v. Whitman*.<sup>3</sup>) While this may seem like common sense, powerful corporate interests are trying to take us backwards by promoting restricted views of Congress' Article I powers under the Commerce Clause and by limiting Congress' ability to assign regulatory decisions to federal agencies under an expanded version of the nondelegation doctrine. Several members of the Supreme Court appear interested in embracing these arguments, thereby restricting the power of the elected branches to protect the public, and their first targets are environmental and public health regulations.

Most recently, several members of the Court applied a novel and ill-defined "major questions doctrine" to limit OSHA's authority to address the COVID crisis<sup>4</sup> and now seem eager to use it to limit EPA's authority to address climate change in a recently argued Clean Air Act case.<sup>5</sup> Additionally, the Court has agreed to reconsider prior decisions giving EPA the authority to protect wetlands and seasonal waterways under the Clean Water Act.<sup>6</sup>

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<sup>1</sup> See [clerk letter of support](#) "She is keenly aware that judges serve the public, and because of that, she strives to ensure that the parties and the public understand the law and the basis for her decisions in each case;" [Dahlia Lithwick, Ketanji Brown Jackson's Lesser-Known SCOTUS Qualifications, Slate \(2-28-22\)](#) ("Judge Jackson approaches every opinion with the clear intention that anyone can access it, read it, and understand it. And I think that's what is so extraordinary about her as a jurist. It's something that is deep-seated in her commitment to public service, and through her family's commitment to service").

<sup>2</sup> For example, in [Community In-Power and Development Association v. Pruitt](#), a Clean Air Act case over EPA rules to clean up toxic air pollutants, Judge Jackson rejected EPA's argument that it would take it eight years to comply, and ordered them to come into compliance within three years, even where the environmental plaintiffs were seeking the rules to be completed in one year. [Government of Guam v. United States](#), No. 1:17-cv-2487 (KBJ) (holding U.S. Navy could be legally accountable for cleaning up decades of toxic contamination under CERCLA, rather than leaving the people of Guam with the entire cost).

<sup>3</sup> [Whitman v. American Trucking Assns., Inc.](#), 531 U.S. 457 (2001).

<sup>4</sup> [National Federation of Independent Business v. OSHA](#) 595 U. S. \_\_\_\_ (2022) Per Curiam.

<sup>5</sup> See Supreme Court docket for [West Virginia v. EPA](#)

<sup>6</sup> [idsupra story 1/27/22](#) (news announcing cert grant of [Sackett, Michael, et al v. EPA](#))

Again, Judge Jackson's rulings and background show that she is a mainstream jurist who will apply long-settled principles of constitutional law rather than pursue an ideological agenda.<sup>7</sup>

### **Access to the Courts is Access to Justice**

When Congress passed our core environmental laws, it recognized that our political branches can be captured by polluting industries. That's why nearly all of our environmental laws give regular people the ability to go to court to vindicate their right to a healthy environment and to an open and transparent government decisionmaking process.<sup>8</sup>

Powerful industries and their allies have tried for years to eliminate citizen suit provisions from our laws without success. More recently, they have fought back by promoting legal doctrines that make it more difficult for people to bring their claims to court. Some Justices have expanded "justiciability" doctrines, including "standing," to create amorphous and ever-higher barriers to entry for members of the public – while holding the courtroom doors open to industries wishing to challenge pollution-control regulations. These doctrines can allow result-oriented judges and Justices to dismiss legal claims without even examining them.

We are confident that Judge Jackson will recognize that standing doctrine applies to all litigants fairly, finding standing where appropriate under both the Constitution and the law.<sup>9</sup>

### **Conclusion**

We support the confirmation of Judge Ketanji Brown Jackson because she is a well-qualified and fair-minded judge who understands the power and responsibility the federal government has under the Constitution to protect the environment and public health, who knows how to evaluate difficult questions about administrative law and complex regulations, and who understands the need to keep the courthouse doors open to those seeking justice. We strongly urge you to support her nomination and vote to confirm her as the next Associate Justice to the U.S. Supreme Court.

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<sup>7</sup> For example, Judge Jackson in 2014 upheld the power of the U.S. Coast Guard to impose non-financial conditions on ships found to have improperly disposed of oil waste in violation of a federal anti-pollution law. [Watervale Marine Co. v. DHS](#), Civil Action No. 12-cv-0105 (KBJ) (2014).

<sup>8</sup> See e.g. *supra* note 2 (*Guam* case; *Community In-Power* case); [Coal River Mountain Watch V. DOI](#), 146 F.Supp.3d (2015) (denying the government's motion to dismiss in a challenge to a West Virginia coal mining permit).

<sup>9</sup> See e.g., [Equal Rights Center v Uber Technologies, Inc.](#), 2021 WL 981011(D.D.C. 2021) (finding plaintiff civil justice organization had associational standing to bring complaint and finding Uber could be held liable for failing to provide wheelchair accommodations). In addition, her record shows that she recognizes the importance of public interest litigation. For example, in [Env't Integrity Project v. Gen. Servs. Admin.](#), No. 18-cv-0042 (KBJ) (2021)/ Judge Jackson held that an environmental group was entitled to recover attorney fees under a FOIA lawsuit, noting that litigation was "necessary to obtain the requested record" and that the lawsuit served a public benefit because of ongoing national controversies related to, "potentially illegal travel expenditures" by the EPA Administrator and the Secretary of the Interior." @ pg. 19

Sincerely,

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