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The Show Trial of Kentaji Brown Jackson

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The Supreme Court of the United States holds the distinction of being the highest court in the land (other than perhaps the Supreme Council of the Southern Jurisdiction of the Scottish Rite of Freemasonry). Yet, for the last decade or so, nomination hearings to the court have been some of the most overly dramatized political theater. From unfounded accusations of rape levied against Brett Kavanaugh to the attempted character assassination of Amy Coney Barrett because of her personal beliefs, it's pretty clear that those who vote to decide on appointments who will serve a life-long term care less about a nominee's ability to weigh the scales of justice protecting the constitutional rights

of citizens and more about the implications their confirmations for their political careers.

The absence of integrity to the nomination process of Supreme Court Justices has had in recent memory conveys how little matters of law and order have -- even when it comes to the highest court in the land. President Biden's nomination of Judge Kentaji Brown Jackson is perhaps the most egregious instance of this. From before she was even chosen by Biden as the nominee to succeed Associate Justice Stephen Breyer, her eventual selection has been marred by the President's ulterior motives.

Biden's decision to disqualify any candidates for the nomination who were not an African-American woman raises seriously constitutional concerns that have been shockingly disregarded by those vested with the authority to confirm her nomination. While the position taken by the Biden Administration to decide on nominating Jackson on the basis of her gender and race understandably brings ire to those supporting her confirmation, that premise should shine an equally glaring light upon opposition to it.

Under the Equal Protection Clause of the 14th Amendment to the US Constitution, discrimination on the basis of race and/or gender is forbidden. As such, the rationale behind the nomination process which put Judge Kentanji Brown Jackson before the Senate Judiciary Committee should have been such a non-starter that we wouldn't have gotten to a confirmation hearing in the first place. Yet, it appears to an afterthought among even the most vociferous opponents to her candidacy on the Senate Judiciary Committee.

Not only is discrimination on the basis of race and gender clearly unconstitutional, it's examined with strict scrutiny -- the highest and most stringent standard of judicial review. The application of strict scrutiny to discrimination on the basis of race has been a slow and arduous process despite the gravity of the constitutional amendment its rooted in. The Supreme Court has established case law which attempts to navigate the complexities of discrimination of the basis of race in particular, even going as far to designate certain demographics as "suspect classifications" in relation to their race of

national origin. Government action affecting those qualifying for this designation is examined with excruciating stringency accordingly to determine the impact of any discrimination that would infringe upon their constitutional rights.

While the White men and women overlooked by the Biden Administration certainly don't constitute a suspect classification under existing case law, candidates of Hispanic and Asian heritage were also disqualified during the nomination most certainly do. In fact, the entire impetus of recognizing suspect classifications resulted from the cases of *Hirabayashi v. United States*, 320 U.S. 81 and *Korematsu v. United States*, 323 U.S. 214 which concerned discrimination against Asian-Americans in the wake of the attacks on Pearl Harbor. That impact on her peers gives credence to the argument that the nomination process of Judge Jackson violates the constitutional rights of other potential justices by discriminating against them on the basis of their race.

Even if an argument in favor of nominating Judge Jackson could be made by parlaying the value of

citing historical discrimination against African-Americans, that argument overlooks the prerequisite that gives it relevance. Affording a seat on the Supreme Court to someone on the basis of being an African-American woman serves no real compelling government interest. The impact of her confirmation would in no way, shape, or form rectify institutional injustices which have resulted in discrimination on the basis of race and/or gender given that it perpetuates those very injustices in and of itself.

Despite the overwhelming interests of ensuring a constitutional nomination process, opponents of Judge Jackson on the Senate Judiciary Committee voiced their positions with empty rhetoric instead. In pointing to her judicial record, Texas Senator John Cornyn took umbrage with Jackson by asserting she referred to former President George W. Bush and Secretary of Defense Donald Rumsfeld. Though Jackson stated she did not recall making the accusation, Cornyn was likely referring to a habeas corpus petition Jackson filed on behalf of Khiali-Gul, a detainee of Guantánamo Bay, which raised the concerns that the respondents to the base violated

the Geneva Convention. Bush and Rumsfeld were those respondents.

Needless to say, Cornyn's position was nothing short of neo-con virtue signaling as a tacit display of allegiance to his political overlords. Regardless of the delusional worldview of the senator, a representative portion of people in the United States certainly contend that Bush, Cheney, Rumsfeld, Wolfowitz, et al. are indeed war criminals for their actions advancing the invasion of Iraq. Calling people like Bush and Rumsfeld war criminals is nowhere near as concerning as the continued sycophancy our elected representatives have for political interests that are direct conflict to the legitimacy of our state. Instead of rallying to the defense of the US Constitution, Senator Cornyn finds greater priority in defending architects of an unjust war which cost trillions of dollars and inflicted an immeasurable loss of life. Then again, it should be no surprise that this tenor was taken by Cornyn, a man who literally believes that the government should be able to conduct warrantless surveillance on the American public.

More importantly, Cornyn's remarks convey a glaring flaw in the opposition taken to Judge Jackson's nomination. Instead of taking an actionable position against the nomination on the basis of it being unconstitutional, the first thing on the mind's of members of the committee is using their seat to re-instill the hapless and divisive rhetoric that obfuscates the public from having an informed perspective. Cornyn's assertions were met by a response from the committee chair, Illinois Senator Dick Durbin, coming to Jackson's defense if not only to keep the wheels of the aimless exploration of her candidacy spinning.

Though the political conjecture voiced by committee members who have declared their intent to vote against the confirmation is consequential, it does not touch upon the poignant questions surrounding the constitutional integrity of her nomination. Instead of drawing focus to that, South Carolina Senator Lindsey Graham took a break from calling for the [assassinations](#) of heads of state to question the judge's candidacy on the basis of her [religious adherence](#). The Judge Jackson's response was

correct insofar as that whatever her religious beliefs are should not be a factor in weighing her candidacy. What Graham's remarks do is highlight the reckless abandon that either party polarized within the false dichotomy of our bipartisan political construct has for the constitution -- the very social contract which the legitimacy of their right to govern is vested in.

Will we see the likes of Graham and Cornyn file an injunction against Judge Jackson by making the compelling legal argument that the Biden Administration's nomination process was innately discriminatory and thus unconstitutional? Likely not. That lack of actionability despite the constitutional basis of the assertion being apparent enough for a lay person to observe reveals how disingenuous their opposition to her nomination is. Her opponents have a clear and legitimate means by which they could preclude her from being confirmed to the US Supreme Court. Instead, they would rather ramble on and rabble rouse in a vernacular that embodies the do-nothing congress they are emissaries of.

In some ways, it's apropos that constitutional law would be the furthest thing from the mind's of the

Senate Judiciary Committee in confirming the nomination of a Supreme Court Justice because it succinctly represents how deeply lawless and out of touch our elected officials are. If Jackson's confirmation is denied, it won't be because of a staunch defense of the US Constitution. If she is confirmed then the oversight of the errors of this nomination process will result in a paradoxical reality where the first female African-American Associate Justice of the Supreme Court was achieved through the very racial discrimination that her confirmation was supposed to disavow from the fabric of American society.

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