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“Law and Economics: Excerpts from a Letter Concerning Judge Ketanji Brown Jackson”

It is common knowledge that Black Americans suffer adverse inequality in several socioeconomic categories: Criminal justice, economics, education, health, etc.

All of these categories assume relevance when considering Judge Ketanji Brown Jackson’s nomination to, and potential seating on, the US Supreme Court.

From a BlackEconomics.org perspective, justice/law and economics comprise the most germane categories given the burgeoning economics subfield—Law & Economics.

BlackEconomics.org Contributor, Lindsey “Rob” Robinson, identified law and

economics concerns about Judge Jackson’s nomination. Accordingly, he presented a nine-page letter to US Senator Cory Booker, who sits on the Senate Judiciary Committee, which will play a pivotal role in Judge Jackson’s confirmation. The letter is wide ranging, and, *inter alia*, draws stark parallels between President Joe Biden’s nomination of Judge Jackson and President George Bush’s nomination of then Judge Clarence Thomas to the Supreme Court.

While we do not present the entire letter below, we provide selected and salient portions that have legal and economic import that should cast a shadow over Judge Jackson’s nomination.

The Honorable Senator Cory Booker
717 Hart Senate
Office Building
Washington, DC 20510

Subject: Confirmation of Judge Ketanji Brown Jackson to the US Supreme Court.

Dear Senator Booker:

Joe Biden nominated Ketanji Brown Jackson for the United States Supreme Court to replace Justice Stephen Breyer. Biden, and perhaps others, convinced Breyer to resign and not die in office as Justice Anthony Scalia did back in February 2016. Clearly, Biden and the Democrats wished to preclude any chance that the Republicans—either Donald Trump or any other Republican—from getting to appoint Breyer’s replacement.

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If we mark the interrupted series of improvements to the lives of Americans who descended from the African prisoners brought here in the 16th through the 19th centuries from the 1954 Supreme Court decision, *Brown v. Topeka, Kansas*, Judge Clarence Thomas' appointment to SCOTUS has singularly been the biggest step backward. George Bush certainly should have not only appointed a liberal jurist, but one consistent with the tradition set by Thurgood Marshall. Justice Marshall was not only as a Justice of the Supreme Court, but he was a practicing attorney before the Supreme Court. Some researcher counted and claimed Marshall won 29 of 32 cases he brought before SCOTUS. On the contrary, Bush cynically appointed the most antagonistic person possible to the Marshall tradition.

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If everything Thurgood Marshall did as a United States Supreme Court justice got cancelled and wiped completely from government records or the history books, his contributions as a brilliant lawyer, as the lead counsel for the NAACP Legal Defense Fund are beyond spectacular and legendary. We need to push on to finish this explanation in a few pages, so we recommend: Do your own research so you actually know about Marshall's contributions if you don't already know.

When we examine Ketanji Brown Jackson's most pertinent case as an appellate judge, it matches up well with both Clarence Thomas and Joe Biden judgements and actions. Thirty-one years ago, Joe Biden refused to include pertinent testimony by the women who might have provided the kind of evidence to disqualify Thomas in the eyes of the American public. This was a unilateral act by Joe Biden. Think of how his one act of omission allowed a gangster like Clarence Thomas to move forward in the confirmation process. Alternatively, had Biden allowed those testimonies, the 31-year slant of the court bending right possibly never happens. Thomas had shown at EEOC a strong dedication to tamp down race discrimination claims to the detriment of black workers across America. Apparently, Brown Jackson studied Clarence Thomas' tactics in preparation for becoming a Supreme Court justice.

In the class action lawsuit presented to Brown Jackson in 2017, Brown Jackson refused to certify some 5,000 plus black employees at Lockheed Martin. The claim—brought originally by two black employees—suggested racial discrimination in the performance appraisal process at Lockheed. By denying the recognition of these black employees as a class, Brown Jackson prevented the discovery process from possibly identifying the exact, detailed pattern of prohibited race discrimination which Brown Jackson said she could not detect beyond the anecdotal level.

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The judge is not from the Fannie Lou Hammer school of thought. Not from the Shirley Chisholm school of thought. Brown Jackson is no kin to Harriet Tubman. No play cousin to Representative Sheila Jackson-Lee. Never an intellectual niece to Constance Baker Motley, the first black woman appointed as a federal judge who had her nomination held up by segregationist Senator James Eastland for seven months. Not connected in any way to Madame C. J. Walker who risked her fortune, her business, and her life to come against lynching of black men. I wonder if the judge would risk having a photo-op with Maxine Waters. You know the white men are not very fond of Maxine Waters.

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¹ There is a recent—2017—case presented to the Judge while assigned to federal district court in which Ketanji Brown Jackson refused to certify the 5,500 black employees at Lockheed Martin as a class in a lawsuit brought claiming discrimination against two black employees. The two employees wanted Brown Jackson to extend the lawsuit to include the other black employees potentially adversely affected by the employee performance evaluation process at Lockheed Martin.

Ketanji Brown Jackson refused to certify the class ending the lawsuit. Brown Jackson justified her decision to deny certification in her ruling pointing to a lack of commonality in the way the black employees were discriminated against. She characterized the two complainants' experiences as anecdotal. She seemed oblivious to the possibility of finding that commonality in discovery. Her denial of class certification removed discovery and prevented the exposure of incriminating

evidence of exactly how Lockheed's performance evaluation process became a racist disadvantage for blacks and simultaneously advantageous to white employees.

These excerpts highlight Judge Jackson's alignment with Justice Clarence Thomas and not with the late great Justice Thurgood Marshall. They also reflect her decision in a particularly important Federal District Court case involving a major US corporation that prevented thousands of Black Americans from seeking redress against claimed racial discriminatory practices by that corporation. The case had significant economic implications for Black Americans.

The US is a very litigious society. However, Black Americans have learned how to use the law to obtain economic justice. It is through the courts that we may be able to force more institutions that have been called out for

racial discriminatory practices to alter their practices.¹ In the meantime, monetary judicial awards for those who have been discriminated against serve as a form of economic justice and may play a small role in narrowing the Black-White wealth gap. Also, the awards may motivate the nation to adopt a more just mindset. Unfortunately, based on the above excerpts from "Rob" Robinson's letter, it is not certain that Judge Jackson will play a favorable role in this regard.

If you desire access to the entire letter from "Rob" Robinson to Sen. Cory Booker, please write to:

BlackEconomics@BlackEconomics.org.

¹ Two recent media reports describing such cases come readily to mind: (1) Shawn Donnan *et al.* (2022) "Wells Fargo Rejected Half Its Black Applicants in Mortgage Refinancing Boom." *Bloomberg.com* (March 10); [https://www.bloomberg.com/graphics/2022-wells-](https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/)

[fargo-black-home-loan-refinancing/](https://www.bloomberg.com/graphics/2022-wells-fargo-black-home-loan-refinancing/); and (2) Emily Flitter (2022). "Where State Farm Sees 'a Lot of Fraud,' Black Customers See Discrimination." *The New York Times* (March 18); <https://www.nytimes.com/2022/03/18/business/state-farm-fraud-black-customers.html>.

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