

Impressive Supreme Court pick has a mixed legal record

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As the United States and other Western nations respond to Russia's disturbing invasion of Ukraine, President Joe Biden's selection of Judge Ketanji Brown Jackson to replace Stephen Breyer as a U.S. Supreme Court justice has gotten less attention than it has deserved.

Jackson currently serves as a judge on the U.S. Court of Appeals in Washington, D.C. Confirmed by the Senate as a district judge on a voice vote, Jackson was elevated to her current post with three GOP senators' votes. Many Republicans have previously praised her background, even though they obviously don't agree with her philosophy.

"For too long our government and our courts haven't looked like America," Biden said last week. The president's focus on ethnic diversity, however, has led some Republicans to blast the choice as an example of identity politics. For instance, Sen. Lindsey Graham, R-S.C., said the choice "means the radical left has won President Biden over yet again."

That's a perplexing — and unfair — statement given that Graham was one of three Republicans who voted to confirm her to the appeals court. None of her decisions thus far has reflected anything particularly radical, although it's clear that she will become part of the court's liberal wing. If confirmed, the court will maintain its 6-3 conservative majority.

On the encouraging side, Jackson joined with the libertarian Cato Institute in 2009 in an amicus brief on behalf of Guantanamo detainees. "Allowing the executive to use the military to detain, without charge or trial, persons who are lawfully in the United States could give rise to manipulation of the civilian criminal justice system," the brief argued.

That argument — and her later work on behalf of detainees — has given Republicans an opening to, absurdly, portray her as pro-terrorist, but her argument tracks closely with this editorial board's point of view. The government needed to give detainees their day in court, and not simply detain them indefinitely by invoking military powers.

Republicans also will focus on Jackson's decision on the trial court to order former President Donald Trump's counsel to testify before a House committee regarding Russian election meddling.

She also opposed Trump's effort to expedite the removal of illegal immigrants and opposed his claims of executive privilege regarding White House documents.

We generally agree with the underlying arguments Jackson made that attempted to limit executive power. However, her limited record and the support she's received from progressive groups suggest that she won't provide a consistent check on government power.

We do appreciate, as Cato's legal scholar Clark Neily noted, the "professional diversity" she would bring to the court: "Unlike eight of the nine sitting justices, Judge Jackson has never served as a prosecutor or other courtroom advocate for government, and she would be the first justice since Thurgood Marshall with criminal defense experience."

We're troubled by her decisions in a series of cases involving the power of public-employee unions. She opposed a presidential directive that made it easier to fire employees for misconduct and opposed federal efforts to make reasonable changes to the terms of some working conditions, as the Associated Press reported.

Nevertheless, there's no doubt Judge Jackson is a highly qualified nominee. We urge Republicans to give her a fair hearing — and to focus on her judicial record rather than on Trump-era politics.