

United States Senate

July 21, 2020

The Hon. Andrew Brasher
United States Court of Appeals for the Eleventh Circuit
Hugo L. Black United States Courthouse
1729 Fifth Avenue North, Room 268
Birmingham, AL 35203-2000

Dear Judge Brasher:

We write to request an explanation for your involvement in *Jones v. DeSantis*, a case implicating the voting rights of 750,000 Florida residents.

The *Jones v. DeSantis* case addresses whether Florida can require individuals with past felony convictions to pay fines, fees, and other costs before regaining the right to vote. While Alabama's Solicitor General, you participated in a related case, *Thompson v. Alabama*, in which plaintiffs challenged an Alabama felon disenfranchisement law similar to that at issue in *Jones*. According to a motion to disqualify filed by the Campaign Legal Center, in *Thompson v. Alabama*, you "raised the same legal arguments to defend against plaintiffs' . . . claims as the State" of Florida raises in *Jones*. (Campaign Legal Center Motion to Disqualify at 17)

In documents submitted to the Committee as part of your Eleventh Circuit nomination you promised under oath that, if confirmed to the Eleventh Circuit, you would recuse yourself from cases implicating laws or policies that you had defended in your role as Solicitor General. Specifically:

- In your Senate Judiciary Questionnaire (SJQ), you stated that you "will recuse in any litigation where [you] have ever played a role." You added that you "intend to recuse from any current or future case that challenges a government law or policy that [you] have previously defended." (SJQ at 48)
- You likewise asserted in your SJQ that, "[f]or a reasonable period of time, [you] anticipate recusing in cases where the Office of the Alabama Attorney General represents a party." (*Id.*)

Your apparent plan to participate in the *Jones* case appears to contradict the commitments you made to the Committee that you would recuse yourself from *any* litigation where you have *ever* played a role. As the Campaign Legal Center highlights, the outcome in *Thompson* "will likely be controlled by the decision in this case." It likewise contradicts your commitment to recuse from cases implicating laws or policies that you had previously defended.

Your involvement in this case also appears to violate the Code of Conduct for United States Judges. Canon 3(C) of the Code governs “Disqualification,” and 3(C)(1)(e) directs a judge to disqualify himself or herself where he or she “participated as a . . . counsel . . . concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.”

As the first branch, it falls to Congress to oversee the federal Judiciary. That oversight includes a responsibility to ensure that sitting federal judges honor their commitments to the Senate and the public and follow all applicable rules and codes of judicial conduct. Consistent with this congressional oversight purpose, we ask you to explain how your potential involvement in *Jones v. DeSantis* is consistent with the commitments you made to the Senate Judiciary Committee and the Code of Conduct.

Sincerely,



DIANNE FEINSTEIN
Ranking Member



PATRICK LEAHY
United States Senator



RICHARD J. DURBIN
United States Senator



SHELDON WHITEHOUSE
United States Senator



AMY KLOBUCHAR
United States Senator



CHRISTOPHER A. COONS
United States Senator



RICHARD BLUMENTHAL
United States Senator



MAZIE K. HIRONO
United States Senator



CORY A. BOOKER
United States Senator



KAMALA D. HARRIS
United States Senator

cc: The Hon. Ralph R. Erickson; The Hon. William H. Pryor, Jr.