

United States Court of Appeals

Eleventh Circuit

56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

Amy C. Nerenberg
Chief Deputy Clerk

July 22, 2020

All Counsel of Record

RE: Ex Parte Communications Received in No. 20-12003, Kelvin Jones, et al. v. Governor of Florida, et al.

Dear Counsel:

Chief Judge William H. Pryor Jr., who has consulted with Judge Robert J. Luck, Judge Barbara Lagoa and Judge Andrew L. Brasher, has directed me to provide notice to you of the attached ex parte communications in this matter.

Very truly yours,

/s/ David J. Smith

Attachments

United States Senate

July 21, 2020

The Hon. Robert Luck
United States Court of Appeals for the Eleventh Circuit
United States Courthouse Annex
111 North Adams Street, Room 5 SE
Tallahassee, FL 32301

Dear Judge Luck:

We write to request an explanation for your continued participation 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 a member of the Florida Supreme Court, you participated in an Advisory Opinion on this very issue, issued at the request of Governor Ron DeSantis. According to a motion to disqualify filed by the Campaign Legal Center, you participated in oral argument in that case on November 6, 2019 — just weeks before your confirmation to the Eleventh Circuit.

In documents and written testimony 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 in which you participated as a Florida Supreme Court Justice. Specifically:

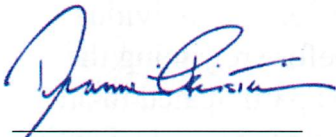
- In your Senate Judiciary Questionnaire (SJQ), you stated that you would “recuse [yourself] from any case where [you] have ever played any role.” You likewise asserted you would “address any real or potential conflicts of interest by reference to section 455 of Title 28 of the United States Code and all applicable canons of the Code of Conduct for United States Judges.” (SJQ at 56) Notably, 28 U.S.C. § 455 requires a judge disqualify himself or herself “in any proceeding in which his impartiality might reasonably be questioned.”
- In Questions for the Record (QFRs) submitted to the Committee, you “anticipate[d] that there will be matters from which [you would] need to recuse [yourself], most notably cases on which [you] served as a lawyer, or as a trial or appellate judge.” (Response to Leahy QFR 18(a))

Your participation in the decision to grant *en banc* review in *Jones*, and any further participation in this case, appears to contradict the commitments you made to the Committee that you would recuse yourself from *any* case where you have “ever played any role.”

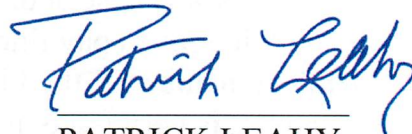
Your involvement in this case also appears to violate the Code of Conduct for United States Judges. Canon 3(C) of the Code governs “Disqualification,” and 3(C)(1)(e) directs a judge to disqualify himself or herself where he or she “participated as a judge (in a previous judicial position) . . . concerning 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 involvement in the decision to grant *en banc* review in *Jones v. DeSantis* — and your continued participation in this case — 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



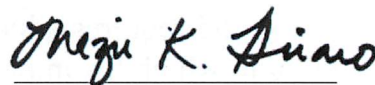
AMY KLOBUCHAR
United States Senator



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.

United States Senate

July 21, 2020

The Hon. Barbara Lagoa
United States Court of Appeals for the Eleventh Circuit
James Lawrence King Federal Justice Building
99 Northeast Fourth Street, Room 1223
Miami, FL 33132

Dear Judge Lagoa:

We write to request an explanation for your continued participation 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 a member of the Florida Supreme Court, you participated in an Advisory Opinion on this very issue, issued at the request of Governor Ron DeSantis. According to a motion to disqualify filed by the Campaign Legal Center, you participated in oral argument in that case on November 6, 2019 — just weeks before your confirmation to the Eleventh Circuit.

In documents and written testimony 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 in which you participated as a Florida Supreme Court Justice. Specifically:

- In your Senate Judiciary Questionnaire (SJQ), you stated that you “would recuse [yourself] from any case in which [you] participated as a justice on the Supreme Court of Florida.” (SJQ at 54)
- In Questions for the Record (QFRs) submitted to the Committee, you reaffirmed this commitment to recuse yourself from “cases involving either the Supreme Court of Florida or the Florida Third District Court of Appeals while [you were] a member of either court.” (Response to Leahy QFR 19(a))


Your participation in the decision to grant *en banc* review in *Jones*, and any further participation in this case, appears to contradict your commitment to recuse yourself from *any* case in which you participated during your time on the Florida Supreme Court.

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

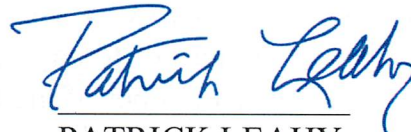
3(C)(1)(e) directs a judge to disqualify himself or herself where he or she “participated as a judge (in a previous judicial position) . . . concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.”

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 involvement in the decision to grant *en banc* review in *Jones v. DeSantis* — and your continued participation in this case — is consistent with the commitments you made to the Senate Judiciary Committee and the Code of Conduct.

Sincerely,



DIANNE FEINSTEIN
Ranking Member



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KAMALA D. HARRIS
United States Senator

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

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.

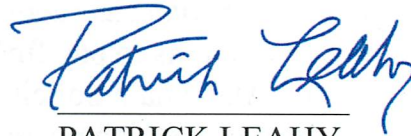
Your involvement in this case also appears to violate the Code of Conduct for United States Judges. Canon 3(C) of the Code governs “Disqualification,” and 3(C)(1)(e) directs a judge to disqualify himself or herself where he or she “participated as a . . . counsel . . . concerning the proceeding or has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



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SHELDON WHITEHOUSE
United States Senator



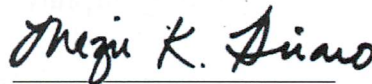
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cc: The Hon. Ralph R. Erickson; The Hon. William H. Pryor, Jr.