

Statement for the Record of Aliza Shatzman, Former DC Superior Court Law Clerk

House Committee on the Judiciary
Subcommittee on Courts, Intellectual Property, and the Internet
“Workplace Protections for Federal Judiciary Employees: Flaws in the Current System and the
Need for Statutory Change”

March 17, 2022

Chairman Johnson, Ranking Member Issa, and Members of this Subcommittee, my name is Aliza Shatzman, and I am a family law attorney in Washington, DC. After graduating from Washington University School of Law in St. Louis, Missouri in 2019, I served as a Law Clerk in the Superior Court of the District of Columbia (DC Superior Court), in both the Criminal and Family Court Divisions, from August 2019 to May 2020. My forthcoming law journal article, “Untouchable Judges? What I’ve learned about harassment in the judiciary, and what we can do to stop it,” will be published with the *UCLA Journal of Gender & Law* in June 2022, and it details my personal experience with harassment in the judiciary—including my attempts to report the mistreatment, how the system failed me when I tried to report, and my efforts to seek justice for myself and accountability for the misbehaving former judge. The following written statement does not attempt to document every instance of gender discrimination, harassment, retaliation, and misconduct that I experienced during my clerkship and in the years following it. However, I have chosen to highlight the following examples as evidence of the scope of the problem, the entrenched systems that contribute to it, and the deficiencies in the judicial accountability mechanisms that perpetuate these types of injustices. I hope that my experience provides a framework for considering why the Judiciary Accountability Act of 2021 (H.R. 4827) is so urgently needed, and why the bill should be amended to include the DC Courts.

I. DC Superior Court Clerkship (August 2019-May 2020)

Early in my law school career, I decided that I wanted to be an Assistant United States Attorney (AUSA) with the DC U.S. Attorney’s Office (USAO). I was highly focused on this goal, so I interned with four different U.S. Department of Justice (DOJ) offices during law school in order to gain a breadth of government experience. I spent hundreds of hours building relationships with government attorneys, in the hopes that they would assist me when I applied for an AUSA position. I chose to clerk in DC Superior Court because that is the jurisdiction in which DC AUSAs practice. The DC Courts are unique. DC judges are confirmed by the Senate for 15-year terms.¹ The DC judiciary enjoys many of the same benefits as the federal judiciary. At the time I interviewed for the clerkship, the DC Courts seemed to be a particularly appealing place to clerk. Local crime is prosecuted and adjudicated with federal resources.

The judge for whom I clerked was a former AUSA himself. At least one female professor from my law school—a personal friend of the judge’s—made calls on my behalf to help me secure the clerkship. I thought the position would be a good fit. Unfortunately, it was not.

¹ See Code of the District of Columbia, § 11–1501.

Beginning just weeks into my clerkship, in September 2019, the judge would throw me out of the courtroom, ordering me to switch places with my male co-clerk, stating that I made him “uncomfortable” and that he “just felt more comfortable” with my male co-clerk. The judge later snapped that he was “trying to punish” me because he “knew how much I liked to be in court.”

In October 2019, the judge escalated the situation. Hours after I learned that I had passed the District of Columbia Bar Exam, the judge called me into his inner chambers and began to detail what he referred to as my “personality issues.” The judge raised his voice, wagging his finger, visibly frustrated, and stated, “You’re *bossy!* And I know bossy because my *wife* is bossy!”

The judge would call me into his inner chambers at least weekly—almost always when my male co-clerk was not around—to berate me for being “bossy” and “aggressive” and “nasty” and a “disappointment.” He would criticize my personality because I did not behave the way he expected female clerks to behave in the workplace. The judge would demand that I stay late, until after my male co-clerk had left for the evening, and he would berate me when he knew no one was around to witness it. I could feel the fear building inside me on those nights, as I watched my co-clerk pack up and leave chambers. I felt defenseless.

I wished there was a place where I could report the mistreatment without fear of retaliation. I wanted to be reassigned to a different judge for the remainder of the clerkship, but there was no Employee Dispute Resolution (EDR) plan in place at the time that might have provided for a reassignment.² I knew that, if I did report, the judge could retaliate against me and fire me at any time. After all, it would be my word against his. He was a Senate-confirmed judge. I was just a law clerk a few months out of law school. My legal career could easily be over before it even started.

From the time the courthouse transitioned to remote work in mid-March until late April of 2020, the judge ignored me for six weeks during the COVID-19 pandemic. My emails, texts, and calls went unanswered. While it was a welcome respite from the mistreatment I was experiencing in chambers, it was difficult to do my job without a supervisor to provide guidance or answer questions. I would email the judge orders to sign off on, but I would not hear back from him. Several days would go by. Then, I would receive a text from my male co-clerk, indicating that the judge had told him to tell me that the orders I had drafted were approved.

Finally, in late April 2020, after weeks of almost total silence, the judge called me and told me that he was “ending my clerkship term of appointment” four months early. He said that I “made him uncomfortable” and that I “lacked respect for” him, but that he “didn’t want to get into it.” While the judge refused to elaborate on the “issues” that led to my early separation, I understood that he did not approve of the fact that I did not present in the way he felt women should in the workplace—because I was assertive, confident, and voiced my opinions.

² See DC Courts, *District of Columbia Courts Announce New Employment Dispute Resolution Plan* (May 20, 2021), <https://newsroom.dccourts.gov/press-releases/district-of-columbia-courts-announce-new-employment-dispute-resolution-plan>.

In my final phone conversation with the judge, he stated that he would provide a “neutral” reference if contacted during a background investigation. I decided not to pursue legal action because I mistakenly believed the judge did not intend to interfere with my future career prospects. The judge knew how focused I was on securing a position with the DC USAO. Interfering with the USAO application process would be particularly malicious.

After the judge informed me that he was ending my clerkship early, I contacted Human Resources (HR) for the DC Courts, hoping that HR could assist me with workplace harassment. They told me there was “nothing they could do” because “HR doesn’t regulate judges” and that “judges and law clerks have a unique relationship.” They asked me, “Didn’t I know that I was an ‘at-will’ employee?” No one ever mentioned my Equal Employment Opportunity (EEO) rights or directed me to the DC Courts’ EEO Office. I asked multiple times to be reassigned to a different judge for the remainder of my scheduled clerkship period. HR said that “the DC Courts doesn’t handle that” (referring to requests for judicial reassignment).

After confiding in another DC judge about the harassment I experienced during my clerkship, I drafted a complaint to submit to the DC judicial regulatory body. However, I decided to wait until I had secured a new job to file my complaint. I feared that the judge would retaliate against me, especially since I was job-searching in the jurisdiction where he presided.

II. Post-Clerkship Period

After a challenging pandemic job search, I accepted a position as a Special Assistant U.S. Attorney (SAUSA) with the DC USAO in late spring of 2021. These positions are difficult to secure: it often takes months between the application process and multiple rounds of interviews. I began USAO training in early July, while my background investigation was still pending. However, I had previously undergone five government background investigations at various security clearance levels—four for DOJ internships, and one for my clerkship—as well as a background check for the DC Bar, so I was not overly concerned when my background check seemed to drag on.

I quickly fell in love with my position, relieved to have finally put my negative clerkship experience behind me. I even spent one morning shadowing domestic violence prosecutors in remote court, envisioning myself taking over their caseload later that month. However, two weeks into training, I received several devastating calls from leadership that altered the course of my legal career. On Friday, July 16, 2021, the USAO alerted me that the judge had given me a “bad reference” and had made negative statements about me during my background investigation. They told me that I “would not be able to obtain a security clearance” and therefore that my job offer was being revoked.

That afternoon, I sobbed on the phone with the EEO Officer for the DC Courts, as I told her about both the harassment I had experienced during my clerkship, and the judge’s recent misconduct. I choked back tears during calls with several members of the USAO’s leadership team, including a representative from HR. I was devastated that my job had suddenly been yanked away, since I had been working toward the goal of becoming a federal prosecutor for the past five years. It seemed like the judge’s conduct would make it difficult for me to ever obtain

another government position. I could not believe that one person could have such enormous power and influence over my career and reputation. The USAO would not tell me what the judge had said about me, even after I told them that I had been the victim of gender discrimination and harassment, and even after I explained that the judge had previously agreed to provide a neutral reference if contacted. The USAO refused to reconsider. The damage had been done.

After the phone call with the HR representative, I emailed her to ask for a formal letter documenting the job offer revocation and the security clearance denial. It took HR more than a week to send me the letter.

On July 19, 2021, I filed a lengthy complaint with the DC Commission on Judicial Disabilities and Tenure (CJDT), the regulatory body for DC judges. I described both the harassment I experienced during my clerkship, and the judge's recent negative reference, which I believed was gender-based.

The same day I filed my CJDT complaint, I received a call from the USAO, inviting me to interview for a different position with the office, based on an application that I had submitted in April 2021. I was thrilled for the opportunity. I spent the week preparing for the interview.

On July 26, 2021, three days before the scheduled interview, I finally received a letter from the USAO's HR department. The letter both formally revoked my SAUSA job offer, and also stated that my previously scheduled AUSA interview was being canceled, based on the judge's same negative reference. The judge seemed to have limitless power to destroy my career, ruin my reputation, and prevent me from ever securing a government position.

III. Judicial Complaint Process

In the late summer and early fall of 2021, I participated in the CJDT's investigation of my former supervisor. Toward the end of the investigation, I found out that the judge had been on administrative leave, pending an investigation, since June. In fact, he had already agreed to take leave when he filed the negative reference with the DC USAO.

I understood that the CJDT was not the ideal forum to seek relief, but I had very few options. My complaint was filtered through an unelected, un-appointed Special Counsel, who wielded enormous power over the investigation. I could not make arguments directly to most of the Commissioners. I could not question any witnesses—in fact, the CJDT would not even confirm who the witnesses were. I had no ability to recover damages. The CJDT is not empowered to provide relief to victimized clerks—its purpose is to potentially discipline misbehaving judges.

I had taken on enormous professional risk by coming forward with allegations of gender discrimination and harassment against a then-sitting judge, at a time when I had no job security. I subjected my own reputation in the DC legal community—including among the government attorneys who I hoped would assist me in my job search—to scrutiny. I understood that my complaint would not be anonymous. I accepted that the judge might continue to retaliate against me. I had no reason to be anything less than fully truthful.

Unfortunately, the CJDT seemed to be searching for witnesses to disprove my claims. It felt like the CJDT was set up to protect misbehaving judges, no matter how much misconduct they commit. I was told that I had a “personality issue” and that what transpired between myself and the then-judge was merely a “personality conflict.” Just minutes into my first formal conversation with the CJDT, I was told that I “must have done *something* wrong, because the judge hired [me] in the first place.” The CJDT seemed to blame me for not being able to make things work with the judge, asking me repeatedly what steps I had taken to try to adjust to the judge’s unique work style of harassing me. I understood that this type of skepticism and mistreatment were not unusual for a judicial misconduct investigation, since the judge’s friends and colleagues in the DC legal community were the ones deciding whether to discipline him. I feared that the CJDT’s mishandling of the investigation would chill future complaints by law clerks against DC judges, if they believed that their allegations would not be taken seriously.

I knew—based on both personal experiences and conversations with attorneys, judges, law clerks, and court employees—that the CJDT’s investigation barely scratched the surface of the misconduct the judge committed during his five years on the bench. I was frustrated that many stories about the judge were told to me in confidence, and that most attorneys told me they would “never” file a complaint against a judge because he would “definitely” retaliate against them.

The former judge is no longer on the bench. He was ordered by the CJDT into “involuntary retirement”³ in 2021. He was disciplined for violating Rule 2.5 (Competence, Diligence, and Cooperation), Canon 2 of the Code of Judicial Conduct, due to extraordinary delays on his judicial calendar, which caused emotional and financial harm to litigants in family law matters. He was also certified as having a disability that would prevent or interfere with performance of his judicial duties.

IV. Ongoing Effects of Judicial Misconduct on My Life, Career, and Reputation

I eventually read the former judge’s inflammatory negative reference to the USAO. Based on the phrasing of his statements, I believe the judge acted with the intent of thwarting my ability to ever obtain a job with the USAO. Drawing from his experience as a former AUSA and a former judge, he phrased the statements in such a way as to maximally harm me, while minimizing my ability to raise a tort claim against him. The former judge took time out of his life to maliciously try to destroy my career and ruin my reputation. The USAO accepted his statements unquestioningly. After all, he was a judge in their jurisdiction, and the USAO is incentivized to maintain positive relationships with judges. They did not ask any follow-up questions of the judge. They did not afford me the opportunity to defend myself. The USAO was never alerted that the then-judge was under investigation and on administrative leave at the time he gave the negative reference. I felt the USAO should have been told—by the CJDT, by the DC Courts, or by the then-judge—about the circumstances surrounding the negative reference.

I was shocked when the CJDT told me that the negative reference was beyond the scope of their judicial misconduct investigation and that they were not going to investigate it. To the best of my knowledge, the CJDT did not ask the then-judge for a copy of the negative reference,

³ See D.C. Code § 1526(b).

nor did they question him about it. The CJDT only asked me one question about the negative reference—whether I believed that I had been retaliated against—despite the fact that my allegations about the reference were thoroughly detailed in my judicial complaint. I answered this question affirmatively. No follow-up questions were asked.

The former judge has since agreed to “clarify” some but not all of his outrageous statements about me to the USAO, in a message that admitted no responsibility or contrition for his misconduct. However, the office can never “un-know” the contents of the negative reference. I will probably never be able to work at the DC USAO, a career goal for which I made so many sacrifices, including enduring eight horrible months as a law clerk. In exchange for the “clarification,” I have agreed not to publicly identify the former judge by name. The fact that the former judge could dangle the reference—and the prospect that I might one day be able to secure an AUSA position after all—in order to exact this concession from me, is evidence of the scope of the problem of judicial misconduct. The former judge never should have filed the negative reference, both because he had previously agreed to provide a neutral reference if contacted and, more importantly, because his statements were untrue and misleading. Unfortunately, there are no effective safeguards to prevent this type of misconduct, nor are there real remedies for law clerks.

There is nothing that the former judge can do to repair the damage he has done to my life. No employer—not even a Senate-confirmed judge—should be able to exert unchecked power over former clerks’ careers and reputations, nor should they be able to disparage their clerks with impunity. However, a judge’s word is currently accepted unquestioningly by employers in the legal community, regardless of how they privately view the judge, and a judge’s reference can make or break a former clerk’s career.⁴

My personal experience with judicial harassment and misconduct over the past few years showed me that statutory reforms are urgently needed. No law clerk should ever endure the type of mistreatment that I experienced, both during my clerkship and in the years following it.

V. Judiciary Accountability Act of 2021

In late July 2021, when I was already involved with the DC judicial complaint process, I became aware of the proposed Judiciary Accountability Act (JAA).⁵ I knew that the federal judiciary was exempt from Title VII of the Civil Rights Act of 1964.⁶ Because DC judges, like federal judges, are Senate-confirmed, I suspected that DC judges and DC law clerks were likely also exempt from Title VII. I read the JAA and discovered that the DC Courts were not covered under the proposed legislation. Therefore, I reached out to House and Senate offices involved with JAA drafting to share my experience and explain why I felt the DC Courts should be included in the bill.

⁴ See Leah M. Litman & Deeva Shah, Essay, *On Sexual Harassment in the Judiciary*, 115 NW. U. L. REV. 599, 616 (2020).

⁵ See H. Comm. on the Judiciary, *Nadler & Johnson Introduce Bipartisan, Bicameral Legislation to Hold Judiciary Accountable to Workers* (July 29, 2021), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=4685>.

⁶ See 42 U.S.C. §§ 2000e-2000e(17)(b).

The judiciary is unique even among hierarchical workplaces. Members of Congress are subject to Title VII pursuant to the Congressional Accountability Act of 1995.⁷ Furthermore, Members are accountable to the voters via congressional elections every two or six years. Federal judges evade scrutiny and avoid accountability due in part to their life tenure (or tenure during “good behavior”).⁸ They can only be removed from office by impeachment, which is exceedingly rare.⁹ Additionally, if a misbehaving judge “retires” rather than “resigns” after misconduct allegations, he can continue to collect his lifetime pension—consuming taxpayer dollars even after committing misconduct.¹⁰ Senate-confirmed judges act as if they are accountable to no one—and the longer they are on the bench, the more dangerous this god-like complex becomes. Judges who believe they are untouchable mistreat their clerks with impunity.

Harassment in the judiciary is pervasive because of the enormous power disparity between Senate-confirmed judges and fresh-out-of-law-school clerks. This problem persists because of a lack of accountability mechanisms—both a lack of reporting avenues that are accessible to clerks, and the judiciary’s repeated failure to punish judges who abuse their clerks. The JAA is a strong piece of legislation that would begin to address the lack of workplace protections in the judiciary. The JAA has three major parts to its framework.¹¹ First, it empowers judiciary employees to sue their harassers under Title VII. Second, it creates real accountability for judicial misconduct by creating a Special Counsel to investigate some misconduct complaints, revising the judicial complaint process under the Judicial Conduct and Disability Act,¹² standardizing Employee Dispute Resolution (EDR) plans, and creating a confidential reporting system. Finally, it provides for the collection and publication of data on diversity in clerkship hiring, workplace culture, and the outcomes of judicial complaints, areas that are shrouded in secrecy.

The DC Courts should be included in the JAA. Due primarily to their Senate-confirmed status, DC judges enjoy many of the same protections as federal judges—they are difficult to discipline, and difficult to remove.¹³ Furthermore, the DC Courts resemble the federal judiciary in many ways. In fact, DC attorneys treat local judges, despite their unique status, like federal judges.¹⁴

⁷ See 2 U.S.C. § 1301 et. seq.; Pub. L. 104-1, 109 Stat. 3 (104th Cong.); see also Congressional Accountability Act of 1995 Reform Act, Pub. L. 115-397, 132 Stat. 5297 (115th Cong.).

⁸ See art. III(1).

⁹ See U.S. Courts, Judges and Judicial Administration—Journalist’s Guide, <https://www.uscourts.gov/statistics-reports/judges-and-judicial-administration-journalists-guide>.

¹⁰ See 28 U.S.C. §§ 371-74 (defining judicial retirement and resignation).

¹¹ See H.R. 4827, S. 2553 (117th Cong.).

¹² See 28 U.S.C. §§ 351–364.

¹³ See D.C. Code § 11–1501.

¹⁴ See Lorelie S. Masters, Latosha M. Ellis, James S. Bubar, Thorn L. Pozen, and Kevin Hilgers, Brief of the District of Columbia Affairs Community of the District of Columbia Bar, and Other Concerned District of Columbia Legal Organizations and Professionals as *Amici Curiae* in Support of Petitioners and Reversal, at 19-20, https://www.supremecourt.gov/DocketPDF/20/20-1279/175729/20210414150102962_20-1279%20Amici%20Brief.pdf.

1. DC Courts: A Workplace That Lacks Oversight

The DC Courts—specifically, the Superior Court of the District of Columbia¹⁵ and the District of Columbia Court of Appeals¹⁶—are described by many DC attorneys as “hybrid” state/federal courts. They are Article I courts¹⁷ (or “legislative courts”) that were created by Congress in 1970.¹⁸ That same year, Congress also created the CJDT to regulate DC judges¹⁹ and to ensure that judges complied with the Code of Judicial Conduct.²⁰ Several years later, in 1973, under the District of Columbia Home Rule Act, Congress clarified that the DC Council could not pass laws that would alter the composition or jurisdiction of the DC Courts.²¹ In effect, Congress asserted ongoing federal authority over the DC Courts.²² This differentiates the DC Court system from other state court systems. In no jurisdiction are local judges as unaccountable to the public as they are in DC, due to both their Senate-confirmed status and the politicized nature of DC judicial appointments.²³

DC judges resemble federal judges because they are appointed by the President and confirmed by the Senate.²⁴ For every judicial vacancy, the Judicial Nomination Commission (JNC) provides the White House with a list of three candidates from which to select a nominee.²⁵ Rather than receiving lifetime appointments, DC judges serve for fifteen-year terms.²⁶ They are then considered for reappointment by the CJDT.²⁷ However, the majority of DC judges who seek reappointment are reappointed for a second term.²⁸ This creates a system of de facto life tenure, since very few judges would reasonably seek to serve for more than thirty years (two terms).

¹⁵ See DC Courts, *About DC Superior Court*, <https://www.dccourts.gov/superior-court>.

¹⁶ See DC Courts, *District of Columbia Court of Appeals Judges*, <https://www.dccourts.gov/court-of-appeals/judges>.

¹⁷ See *Legislative Courts*, <https://www.law.cornell.edu/constitution-conan/article-3/section-1/legislative-courts>.

¹⁸ See Pub. L. 91-358, 84 Stat. 475; see also D.C. Code Sec. 11-101.

¹⁹ See DC Court Reform and Criminal Procedure Act, 84 Stat. 473, 91 Pub. L. 91-358; D.C. Code § 11-1525(a).

²⁰ See DC Courts, *Code of Judicial Conduct, 2018 Edition, District of Columbia Courts* (updated Mar. 2021), <https://www.dccourts.gov/about/code-of-judicial-conduct>.

²¹ See District of Columbia Self-Government and Government Reorganization Act (1973), Pub. L. 93-198, 84 Stat. 744.

²² See House Committee on Oversight and Reform, *Committee Jurisdiction*, <https://oversight.house.gov/about/committee-jurisdiction>; see also U.S. Senate Committee on Homeland Security and Governmental Affairs, *District of Columbia*, <https://www.hsgac.senate.gov/issues/district-of-columbia>.

²³ See Ann E. Marrimow, “Two judges, one courthouse and an unusual accusation of unethical conduct,” WASH. POST (Nov. 8, 2021), https://www.washingtonpost.com/politics/courts_law/judge-emmet-sullivan-ethics-allegation-laurence-silberman/2021/11/08/81d83056-400a-11ec-a3aa-0255edc02eb7_story.html; see also Meagan Flynn and Michael Brice-Saddler, “D.C. courts ‘sound the alarm’ on judicial vacancies as local officials demand movement in the Senate,” WASH. POST (Jan. 1, 2022), https://www.washingtonpost.com/dc-md-va/2022/01/01/dc-judges-vacancy-senate/?wpisrc=nl_sb_smartbrief.

²⁴ See DC Courts, *Types of Judges*, <https://www.dccourts.gov/court-of-appeals/judges>.

²⁵ See Judicial Nomination Commission (JNC), *FAQs About JNC’s Application Process*, <https://jnc.dc.gov/page/faqs-about-jnc%E2%80%99s-application-process>.

²⁶ See Judicial Nomination Commission, *Judicial Service in the District of Columbia Courts Frequently Asked Questions*, <https://jnc.dc.gov/page/judicial-service-district-columbia-courts-frequently-asked-questions>.

²⁷ See Commission on Judicial Disabilities and Tenure, *Judicial Reappointments*, <https://cjdt.dc.gov/service/judicial-reappointments>.

²⁸ See Commission on Judicial Disabilities and Tenure, *About CJDT*, <https://cjdt.dc.gov/page/about-cjdt>.

The structure of the DC Courts also enables various groups who might reasonably be expected to exert oversight over judges, to disclaim responsibility. HR does not regulate DC judges. The EEO Office handles workplace dispute resolution, but they are not empowered to discipline judges either. Even the Chief Judges of the DC Superior Court and the DC Court of Appeals do not have real disciplinary authority over DC judges. Similar to a federal judge, a DC judge’s “boss” for removal purposes is the President of the United States.²⁹ The CJDT has both disciplinary authority over judges—which they rarely exercise—and control over reappointments, creating the appearance of a conflict of interest for one of the few entities empowered to remove misbehaving judges from the bench.

Not only is the DC judiciary likely exempt from Title VII, but the DC judiciary is also exempt from the DC Human Rights Act.³⁰ While DC judges are theoretically subject to §1983 claims, there has never been a § 1983 claim by a law clerk against a DC judge.³¹ Victimized judiciary employees are understandably skeptical about legal claims against Senate-confirmed superiors, filed in the jurisdiction where the misbehaving judge works and where one of his judiciary colleagues would preside over the case.

2. The DC Courts share many similarities with federal courts.

The DC Courts should be covered under the JAA because they resemble federal courts. The DC Courts are funded through the federal budget.³² They are regulated by the House and Senate Oversight Committees.³³ Furthermore, DC judges follow the federal judicial salary plan.³⁴ Additionally, DC judges interact closely with the local federal prosecutor’s office—the DC USAO.³⁵

In addition, many of the DC Courts policies, including the recently-adopted EDR Plan, are modeled after the federal courts’ plan.³⁶ Furthermore, DC law clerks,³⁷ with whom judges interact on a daily basis, resemble federal clerks in both their daily clerkship tasks and their employment benefits structures (including their salary plans, health insurance, and receipt of

²⁹ See James Durling, *The District of Columbia and Article III*, 107 GEO. L.J. 1205, 1212 (2019) (explaining that DC judges do not have life tenure and “can be removed outside of the impeachment process.”)

³⁰ See *Robertson v. District of Columbia, et al.*, No. 19-CV-567, DC Ct. App. (Feb. 17, 2022).

³¹ See 42 U.S.C. § 1983; see also *Forrester v. White*, 484 U.S. 219, 228-30 (1988).

³² See House Appropriations Comm., Financial Services and General Government Subcomm., <https://appropriations.house.gov/subcommittees/financial-services-and-general-government-117th-congress>; see also H.R. 4345 (No. 117-79), 117th Cong., <https://www.congress.gov/117/bills/hr4345/BILLS-117hr4345rh.pdf>.

³³ See House Committee on Oversight and Reform, Committee Jurisdiction, <https://oversight.house.gov/about/committee-jurisdiction>; see also U.S. Senate Committee on Homeland Security and Governmental Affairs, District of Columbia, <https://www.hsgac.senate.gov/issues/district-of-columbia>.

³⁴ See Judicial Nomination Commission, Judicial Service in the District of Columbia Courts Frequently Asked Questions, <https://jnc.dc.gov/page/judicial-service-district-columbia-courts-frequently-asked-questions>; see also U.S. Courts, Judicial Compensation, <https://www.uscourts.gov/judges-judgeships/judicial-compensation>.

³⁵ See U.S. Attorney’s Office for the District of Columbia, *Superior Court Division*, (last updated Nov. 29, 2021), <https://www.justice.gov/usao-dc/superior-court-division>.

³⁶ See DC Courts, Employment Dispute Resolution Plan, https://www.dccourts.gov/sites/default/files/divisionspdfs/DC_Courts_Employment_Dispute_Resolution_Plan.pdf.

³⁷ See D.C. Code § 11-708 (explaining that “each associate judge may appoint and remove two personal law clerks”).

Standard Form 50 proof of employment at the end of their clerkships).³⁸ Finally, other Article I courts—including the U.S. Court of Federal Claims—are currently covered under the JAA.³⁹ In fact, the Senate Judiciary Committee recently dealt with a similar issue related to Article I courts in a judicial security bill: that legislation (S. 2340) specifically enumerates several Article I courts to be included.⁴⁰ It makes no sense to exclude the DC Courts from the JAA.

3. The JAA Would Provide Critical Workplace Protections to Uniquely Vulnerable DC Courts Law Clerks.

The existing avenues for judicial accountability—internal EDR with the DC Courts and/or a judicial complaint with the CJDT—do not protect DC law clerks. As previous House Judiciary Committee⁴¹ and Senate Judiciary Committee testimony⁴² about similar processes in the federal courts have revealed, EDR and judicial complaints provide inadequate relief, considering the sensitivity of the issues, the scope of the problem, the lack of available remedies, and the long-term negative ramifications of judicial misconduct on law clerks’ careers. For law clerks seeking to achieve justice for themselves and accountability for the judges who harassed them, the message from the DC judiciary is one of deafening silence in the face of misconduct.

If the JAA is not amended to cover the DC Courts, DC law clerks will have limited recourse against judges who mistreat them during their clerkships. The right to sue one’s harasser is critical, and Title VII is a particularly robust antidiscrimination law with decades of precedent from which complainants could structure their claims. Through Title VII litigation, law clerks can seek monetary damages.⁴³ Monetary relief is particularly important for clerks who were wrongfully terminated or who were harassed until they quit partway through their clerkships. Financial remedies are also important for clerks who experience the far-reaching consequences of a malicious judge working against them, by giving negative references or badmouthing them to potential employers, and who remain unemployed for long periods after their clerkships. Furthermore, litigation (or the threat of litigation) can produce legally-binding documents—for example, an agreement for a neutral or positive reference. In order to eliminate any uncertainty about whether DC law clerks are protected by Title VII, the JAA should cover the DC Courts.

³⁸ See D.C. Code § 11-1726; see also DC Courts, *Clerking on the D.C. Court of Appeals*, <https://www.dccourts.gov/court-of-appeals/judges/clerkships>; and see DC Courts, *Benefits of the DC Courts*, <https://www.dccourts.gov/about/benefits-of-dccourts>.

³⁹ See Judiciary Accountability Act, §5(c)(1)(B).

⁴⁰ See Daniel Anderl Judicial Security and Privacy Act of 2021, S. 2340 (117th Cong.).

⁴¹ See Protecting Federal Judiciary Employees from Sexual Harassment, Discrimination, and Other Workplace Misconduct: Hearing Before the Subcomm. on Cts., Intell. Prop., and the Internet of the H. Comm. on the Judiciary, 116th Cong. (Feb. 13, 2020) (testimony of Olivia Warren), <https://www.congress.gov/116/meeting/house/110505/witnesses/HHRG-116-JU03-Wstate-WarrenO-20200213-U2.pdf>.

⁴² See generally *Confronting Sexual Harassment and Other Workplace Misconduct in the Federal Judiciary*, Senate Comm. on the Judiciary, 115th Cong. (June 13, 2018); <https://www.judiciary.senate.gov/meetings/confronting-sexual-harassment-and-other-workplace-misconduct-in-the-federal-judiciary>.

⁴³ See 42 U.S.C. § 1981a(a)(1)-(3).

DC law clerks would also benefit from the JAA’s other important provisions. For example, if the JAA covered the DC judiciary, this would reduce the burden on the CJDT, since a representative from the centralized Special Counsel’s Office would be assigned to the DC Courts and could assist with judicial misconduct investigations. Additionally, DC clerks would benefit from the JAA’s data collection provisions—data on diversity in hiring, workplace culture, and complaints against DC judges. In DC, the CJDT has not released an annual report documenting data on complaints against judges since 2018 (representing Fiscal Year 2017’s data).⁴⁴ Without access to data on judicial complaints, the DC legal community is unaware of the scope of misconduct within the DC judiciary. This threatens both judicial legitimacy and public confidence in the DC judiciary. Law clerks, litigants, and attorneys who interact with and appear before judges have a right to know about judges’ misconduct.

VI. Conclusion

The JAA would make vital and necessary changes to protect law clerks and other judiciary employees from harassment, discrimination, and retaliation. It would provide judiciary employees with the right to sue their harassers; it would make real strides toward robust judicial accountability by investigating and punishing judges who abuse their clerks; and it would finally aggregate and publicize data on issues that have remained hidden for decades.

Congress should amend the JAA to cover the DC Courts, in order to protect more vulnerable judiciary employees and expand their rights. DC law clerks deserve the same access to the legal system as the litigants who appear before them every day. Furthermore, DC judges, who preside over antidiscrimination cases, should be subject to antidiscrimination laws themselves.

Congress should pass the JAA, so that fewer law clerks are harassed the way I was, and those who are, can hold their harassers accountable. My story of harassment by a member of the judiciary is not rare. I am grateful for the brave law clerks who have already spoken out on this issue. I appreciate the opportunity to share my experience with this Subcommittee and to explain why harassment in the judiciary is one of the most urgent issues facing the legal community. My experience illustrates why the DC Courts should be included in the JAA: to prevent Senate-confirmed superiors from harassing and retaliating against future generations of clerks. I hope that other law clerks will feel empowered to speak out, file complaints, and work to remove more abusers from the bench. Harassment and misconduct should not be tolerated in any workplace. The judiciary is uniquely insulated from scrutiny, and uniquely unaccountable to the public. I applaud the Committee’s work to draft the JAA, and I hope that it will be amended to include the DC Courts and passed this year.

⁴⁴ See CJDT Publications, <https://cjdt.dc.gov/publications>; see also CJDT, 2017 Annual Report, <https://cjdt.dc.gov/sites/default/files/dc/sites/cjdt/publication/attachments/CJDT%20annual%20report.pdf>. In 2019 and 2020, the CJDT provided extremely limited data about the number of judicial complaints filed and their dispositions—but not annual reports—in response to questions from the DC Committee on the Judiciary and Public Safety. See JPS Performance Oversight Responses (Feb. 6, 2019), <https://dccouncil.us/wp-content/uploads/2019/02/JPS-Performance-Oversight-Responses-2019-CJDT.pdf>; and see JPS Performance Oversight Responses 2020 CJDT (Feb. 11, 2020), <https://dccouncil.us/judiciary-public-safety-3/jps-performance-oversight-responses-2020-cjdt/>.