AFJ NOMINEE REPORT

NEOMI RAO

U.S. Court of Appeals for the District of Columbia Circuit

CONTENTS

INTRODUCTION, 1
BIOGRAPHY, 2
SEXUAL ASSAULT AND WOMEN'S RIGHTS, 4
RACIAL JUSTICE, 7
LGBTQ RIGHTS, 9
DISABILITY RIGHTS, 11
HEALTH CARE, 12
PUBLIC PROTECTIONS, 13
CLIMATE, 15
LABOR, 16
EXECUTIVE POWER, 17
CRIMINAL JUSTICE, 19
CONCLUSION, 19

INTRODUCTION

On November 14, 2018, President Trump nominated Neomi J. Rao to the D.C. Circuit Court of Appeals seat previously held by Judge Brett M. Kavanaugh. The nomination immediately sparked intense controversy, for reasons related both to Rao's own record and the unique circumstances surrounding her nomination and this moment in history.

Two decades into her career, Neomi Rao is deeply embedded in an ultraconservative political milieu. Her generation of hard-right partisans comprises the veterans of the 1990s culture wars. But Rao, despite her ties to traditional pillars of the right wing such as the Koch brothers, Leonard Leo, and the Federalist Society, is no mere establishment Republican.

Rao currently serves as Administrator of the Office of Information and Regulatory Affairs (OIRA), and on her watch OIRA has begun laying waste to a vast range of legal protections for vulnerable people. The targets include Title IX protections for sexual assault survivors, prohibitions on racial discrimination in housing, protections ensuring that doctors cannot refuse to treat LGBTQ patients, and more. Under Rao, OIRA has adopted a slash-and-burn extremism that reflects harsh indifference to human consequences.

What is so significant about this transformation of OIRA is that its roots can clearly be traced to long-held attitudes of its chief. Even among similarly strident young conservatives – such as her contemporary, former judicial nominee Ryan Bounds – Rao in her twenties would have stood out for opinions and writings that were brutal, even tinged with cruelty. A raft of these writings came to light in January 2019, shortly after her nomination, and the revelation was a bombshell.

Rao wrote op-eds and articles that lobbed attacks at LGBTQ advocacy, racial justice, and climate. She wrote insultingly about the speech and mannerisms of leading African-American scholars. She saved some of her harshest judgment for survivors of sexual assault, blaming survivors for being attacked.

The writings are appalling, and Rao's supporters hastened to dismiss them as irrelevant because she was younger when she penned them. But it is impossible to dismiss the evidence that Rao, in mid-career, is determinedly translating her extreme views into policy affecting millions of Americans. What makes her nomination even more unconscionable is the fact that she has been named to fill Kavanaugh's former seat.

For weeks in 2018, the nation was convulsed over sexual abuse allegations leveled against Kavanaugh by Dr. Christine Blasey Ford and others during his nomination to the Supreme Court. The nomination of Rao was a severe blow to women's rights advocates who did not hesitate to call Rao out as a rape apologist. Clearly, the White House either did not know or did not care how deeply this nomination would undermine the faith of women – and many men – in our justice system.

It also comes at a time of heightened sensitivity about the racial justice records of judicial nominees. The judicial nomination of Ryan Bounds was withdrawn after Senators Tim

Scott and Marco Rubio reportedly made clear they "would oppose him over racially-charged writings" in his record. Like Rao, Bounds had a record replete with offensive writings about people of color, rape survivors, LGBTQ Americans and others. In an effort to rescue his nomination, Bounds attempted to apologize for his earlier views. As of this writing, Rao has not – and there is intense pressure for senators who rejected Bounds to reject Rao's nomination on similar grounds.

At the same time, Rao's intense anti-regulatory zeal has arrayed powerful pro-business interests on her side. The Wall Street Journal editorialized aggressively in her favor. The corporate-friendly Trump Administration has openly admitted to searching for judicial nominees who are hostile toward government agencies and their powers. Former White House Counsel Don McGahn unabashedly laid out a "coherent plan" to install judges who will gut federal laws, roll back civil rights, dismantle climate protections, and gut worker rights. "These efforts to reform the regulatory state begin with Congress and the executive branch," McGahn said, "but they ultimately depend on courts." Rao embodies this spirit.

Rao also shares with many other Trump judicial nominees an expansive view of presidential power and authority. At a time when President Trump may be facing legal jeopardy, it is no coincidence that his White House has shown a pattern of nominating judges with a strong likelihood of finding legal justification for abuses of executive power.

This report addresses Rao's legal philosophy and her record regarding critical legal rights and protections.

Our research finds that throughout her career, Rao has shown exceptional hostility to the rights of women, LGBTQ Americans, workers, consumers, people of color, people with disabilities, and the environment, while aligning herself with the interests of the wealthy and powerful. AFJ strongly opposes her confirmation.

BIOGRAPHY

Since her confirmation in July 2017 as Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA), Rao has overseen and championed President Trump's agenda of stripping away public protections and safety standards.

Before joining the Trump Administration, Rao worked as a law professor at George Mason Law School. There, she took a leading role in advocating to change the name of the law school in honor of Justice Antonin Scalia, following a multi-million dollar donation from the Charles Koch Foundation. The Kochs donated $10 million to support the school's renaming, fueling a student-led lawsuit over concerns about the law school's academic independence. The suit sought disclosure of any agreements the school may have made with the Koch brothers in exchange for the funds.

Rao was also the director and founder of the Center for the Study of the Administrative State,[1] founded in 2015 at what is now Antonin Scalia Law School. The Koch Foundation's 2016 grant agreement binds the law school to provide funding to the center for at least ten years, prioritizing its influence.[2] Consistent with the agenda of its wealthy and powerful benefactors, the Center

fights against protections for the environment, consumers, and workers.

While working at the law school, Rao, along with the law school dean, also met with Leonard Leo, the influential executive at the Federalist Society who has played a key role in Trump's judicial appointments.[3] Rao and Leo's personal relationship is evinced by emails uncovered by UnKoch My Campus through a Freedom of Information Act request.[4]

Rao's affinity for Leo's Federalist Society began long before it became the main outside group to which Trump has delegated important aspects of the judicial nomination process. She joined at age 23 and has been a member since then. Rao is a frequent speaker at Federalist Society events, listing at least 32 Federalist Society speeches in her Senate Judiciary Questionnaire. Rao also gave a 2016 speech, "Executive Agency Overreach and Civil Justice," at the Lawyers for Civil Justice National Conference. This organization advocates to limit Americans' access to the courts. In 2018, she received the Heritage Foundation Distinguished Alumni Award.

Rao's public appearances and early writings strongly suggest she would be an ideological, partisan jurist if confirmed to the D.C. Circuit. She has consistently opposed judges appointed by Democratic presidents. Rao testified in opposition to Supreme Court nominee Sonia Sotomayor, criticizing Sotomayor's "personal, consequentialist approach to judging."[5] Rao also wrote skeptically about Elena Kagan's nomination to the Supreme Court, arguing that "Ms. Kagan and those preparing her face a simple, political problem: 'progressive' views of judging are difficult to defend."[6]

Rao's antipathy to Democrats emerged early; she once criticized a liberal group on Yale's campus as "representative of the **modern elitist class of Democrat bent on paternalistic social engineering**" [emphasis added]. In an article arguing against the movement for women's equality, she wrote, "Women can be reduced neither to the **Hillary Clinton bitch-model** nor to the primeval earth mother wielding mystical powers over men" [emphasis added].

Prior to her career as a law professor, Rao served from 2005 to 2006 in the George W. Bush Administration as Special Assistant to the President and Associate Counsel in the White House Counsel's Office.[7] From 2002 to 2005, Rao was in private practice at Clifford Chance LLP in London.[8] She worked as Counsel for Nominations and Constitutional Law for the U.S. Senate Judiciary Committee from 2001 to 2002.[9] Rao also interned for the Institute for Justice,[10] which was initiated with seed money from the Koch brothers. The Institute for Justice's purported mission is to "litigate[] to limit the size and scope of government power." After college, Rao wrote for the Weekly Standard, a conservative publication.[11]

Rao also clerked for Supreme Court Justice Clarence Thomas and for Fourth Circuit Court of Appeals Judge J. Harvie Wilkinson, III. Rao received her J.D. from the University of Chicago Law School in 1999 and a B.A. from Yale University.

SEXUAL ASSAULT AND WOMEN'S RIGHTS

Rao's record contains egregious, deeply offensive statements regarding sexual assault, women's rights, and gender equality. Writings from her twenties foretell Rao's efforts throughout her career to undermine protections for women's rights and assault survivors, as well as efforts toward equality.[12]

A. CAMPUS SEXUAL ASSAULT AND TITLE IX ROLLBACKS

Many of Rao's writings concern women's rights and sexual assault on college campuses.[13] Most notably, Rao suggested that survivors of sexual assault bear responsibility for violence perpetrated against them if they drink or do not exercise control over their own "sexuality."

In a 1994 article titled "Shades of Gray," Rao appears to place the responsibility of sexual assault on survivors if they choose to consume alcohol:

> Unless someone made her drinks undetectably strong or forced them down her throat, a woman, like a man, decides when and how much to drink. **And if she drinks to the point where she can no longer choose, well, getting to that point was a part of her choice** [emphasis added].

Moreover, Rao offered her opinion that "[i]t has always seemed self-evident to me that even if I drank a lot, I would still be responsible for my actions." While Rao conceded that someone "who rapes a drunk girl should be prosecuted," she continued to blame survivors by arguing, "[a]t the same time, **a good way to avoid a potential date rape is to stay reasonably sober**" [emphasis added].

In addition to perpetuating attitudes that blame and shame victims, Rao downplayed the responsibility of those who perpetrate sexual assault at the expense of survivors. In another article, she attacked the idea that consent is a simple concept that should be adhered to without exception. She argued that the "controversy" – referring to sexual assault and date rape – "has been painted in terms of 'yes' and 'no,' **reducing sex to something merely consensual**" [emphasis added]. Rao suggested that survivors who accuse men of sexual assault do so not because an assault occurred, but because "casual sex for women often leads to regret and a profound loss of self-esteem. This in turn can force women to run from their choices and actions."

Rao also contended that women's "sexuality" is to blame for sexual violence. Rao asserted that "[w]omen believe falsely that they should be able to go anywhere with anyone." Women's sexuality, in Rao's view, is expressed in a way that goes beyond the "blatant signs" of choosing to "wear short skirts or bright lipstick." Rao argued that "when playing the modern dating game women have to understand and accept the consequences of their sexuality." Instead of holding perpetrators responsible for sexual assault, Rao claimed there are signals given off by women that cause "misunderstandings," such as "subtle glances, ambiguous words."

Far from walking back any of these comments, in her notes for a 2018 speech, Rao said:

> When I was an undergraduate at Yale, now a number of years ago, I greatly enjoyed participating in the debates of that time with my classmates . . . We engaged in public debates, in writing in various newspapers and magazines . . . Although students at Yale were disproportionately of a progressive or liberal perspective, I found that my more conservative (sometimes contrarian) perspective was often sought out and treated with respect.

Given Rao's history, it is notable that OIRA, under Rao's leadership, signed off on Education Secretary Betsy DeVos's efforts to roll back protections for survivors of sexual assault on college campuses. The proposed rule, while not yet final, would make a series of changes to Title IX processes on college campuses that many survivor groups oppose. As organizations such as End Rape on Campus and Know Your IX explain, "[I]f the proposed rule becomes law, survivors will lose access to their education and schools will continue to sweep sexual violence under the rug. The new rule will stop survivors from coming forward and make schools more dangerous for all students."

The language of the DeVos proposed rule reflects the sentiment of Rao's previous writings that stigmatize and blame sexual assault survivors. The rule changes several important processes that currently ensure survivors' rights, and instead focuses on elevating protections for the alleged sexual assailant. When discussing changes to internal processes that determine repercussions for sexual assault, the rule states that "pending the finding of facts sufficient for the [university] to make a determination regarding responsibility, the requirement **mitigates the stigma and reputational harm that accompany the allegation of sexual misconduct**" [emphasis added]. By weakening protections and deterrent measures, this rule would unnecessarily burden and re-traumatize survivors.

In the era of the #MeToo movement and at a time when there is growing public awareness regarding sexual violence, Rao's views – views that lay the blame for sexual violence on survivors – raise serious concerns about her fitness to serve as a lifetime appointee to the federal bench.

B. VIOLENCE AGAINST WOMEN ACT

At a 2014 Federalist Society event, Rao criticized the Violence Against Women Act (VAWA), a landmark law with bipartisan support that protects survivors of sexual and domestic violence and seeks to root out sexual violence. In discussing Supreme Court precedent, Rao stated: "So they're able to invalidate things like **the Guns Free School Zone Act or parts of the Violence Against Women Act, which are really kind of grandstanding statutes,** which are largely covered by other state laws or something like that" [emphasis added].[14] Rao continued, arguing that the Court won't invalidate statutes "when it's anything really important."

By implying that parts of VAWA are "grandstanding" and unimportant, Rao further minimized the positive impact of VAWA on survivors and families. One study found that, following the passage of VAWA, "the rate of intimate partner violence against females declined 53% between 1993 and 2008" and "[t]he number of victims of intimate partner

violence declined, from approximately 2.1 million victimizations in 1994 to around 907,000 in 2010." Moreover, "between 1993 and 2007, the number of intimate partner homicides of females decreased 26%, and the number of intimate partner homicides of males decreased 36%."

If Rao is so dismissive of a law that has made such a difference, it raises serious questions as to her ability to fairly apply acts of Congress.

C. SEXUAL HARASSMENT GUIDANCE

Under Rao, OIRA has held up proposed guidance from the Equal Employment Opportunity Commission (EEOC) to give employers additional information on how to handle sexual harassment. The proposed guidance has been delayed at OIRA since November 2017. Moreover, it is unusual for OIRA to review an independent agency's guidance. The proposed guidance would assist the EEOC and employers in preventing, investigating, and addressing sexual harassment in the workplace. Additionally, the status of the sexual harassment guidance does not appear to be available on any OIRA public platform.

D. WOMEN'S EQUALITY AND PAY EQUITY ROLLBACKS

Rao's other writings show her broader hostility towards women's equality. For example, in the 1993 article "The Feminist Dilemma," Rao argued that "[i]n exchange for access into the working world and sexual freedom, women have lost much of the previous caring and affection of men." She criticized women who fight against structural inequality: "Women should be able to realize themselves as human beings without identifying themselves as a marginalized group. True liberation cannot come from coddling and support sessions. The real world will simply not wait for women to come out of therapy." This callous perspective demonstrates Rao's disregard for the real inequalities that women face every day, both then and now.

Rao, moreover, is directly connected to rolling back public protections that would promote pay equity for women in the workplace. One group highlighted how an EEOC report, which was completed after six years of researching the issue, showed how "employee pay data was critical to enforcing the nation's anti-discrimination and related civil rights laws." As a result, the EEOC required employers to submit a form including various kinds of data that advocates explained were "necessary to enforce pay discrimination laws, a pressing concern given the persistent pay disparities across lines of gender, race, and ethnicity."[15]

As the National Women's Law Center (NWLC) and the Labor Council for Latin American Advancement (LCLAA) explained in related litigation, Rao was instrumental in halting the previously established pay data collection process.[16] Less than two months after becoming the administrator of OIRA, Rao issued a memo explaining how the agency would cease implementing the pay data collection process. Rao argued, "some aspects of the revised collection of information **lack practical utility**, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues" [emphasis added].

Rao's rollback of public protections for gender pay equity echoes her earlier ideological writings. However, efforts advocating for pay equity are vital

because the gender pay gap has significant consequences for women's lives. Without adequate data to accurately measure pay disparity – as the public protection that Rao blocked was designed to do – the possibility of realizing pay equity for women shrinks even further.

E. WOMEN'S HEALTH CARE

As an academic, Rao frequently uses her ideas regarding "dignity" in constitutional law as an ideological framework to couch problematic stances regarding social justice.[17] Using this framework, Rao cited "dignity" in expressing her opposition to a woman's right to access health care. For example, in a 2011 article titled "Dignity as Intrinsic Human Worth," Rao twisted the reasoning the Supreme Court outlined in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), to allude that the "dignity" of fetuses should perhaps override the right of women to control decisions regarding their health care. Rao explained how *Casey* "explicitly connected dignity, autonomy, and choice as 'central to the liberty protected by the Fourteenth Amendment.'" She then challenged this reasoning by stating that while "the plurality highlighted the inherent dignity of a woman's freedom to choose an abortion . . . it minimized the competing inherent dignity of the fetus to life." In Rao's view, courts "have often avoided the conflict by emphasizing the centrality of one of these dignities at the expense of the other."

In another article titled "A Backdoor to Policy Making: The Use of Philosophers by the Supreme Court," Rao described *Roe v. Wade*, 410 U.S. 113 (1973), as "perhaps the most disputed decision in recent history" and argued that "there were many persuasive legal arguments against recognizing a constitutional right to abortion." Notably, Rao asserted that "substantive due process arguably has no textual support in the Fourteenth Amendment Due Process Clause, and was at any rate severely discredited after the Lochner era."[18] In addition, Rao argued "most states have historically prohibited abortion."[19]

As the head of OIRA, Rao has overseen or approved rollbacks of protections for women's health care, including: allowing employers to refuse to cover birth control by claiming religious or moral objections; overseeing a proposed domestic gag rule under which Title X healthcare providers would be prohibited from referring or supporting abortion care services for patients accessing family planning; overseeing a proposed rule that would interfere with women's ability to receive insurance coverage for abortion care; allowing medical professionals to refuse to provide reproductive and contraceptive care based on "conscientious objections"; and engaging in a process to eliminate anti-discrimination protections under the Affordable Care Act (ACA) for women who have terminated a pregnancy.

Rao's hostility towards women's rights to access health care raises serious concerns about her ability to protect women's constitutional rights as a federal judge.

RACIAL JUSTICE

Rao has written disparagingly about racial justice. As head of OIRA, Rao approved the rollback of protections against discrimination based on race in housing. As the NAACP Legal Defense

and Educational Fund (LDF) stated, Rao's writings are "offensive" and fit into "a pattern of this Administration's judicial nominees who demonstrate hostility to civil and human rights principles of equality. No litigant with a civil rights claim before her could trust she would fairly and impartially provide equal justice under the law."

In a 1994 piece titled "How the Diversity Game is Played," Rao disparaged "multiculturalists:" "Some people believe the multicultural movement exists only on the radical fringes, but it infects nearly every area of college life." She warned, "[u]nderneath their **touchy-feely talk of tolerance**, they seek to undermine American culture" [emphasis added]. In conclusion, Rao called diversity initiatives on campus a "silly little game."

Rao expressed disdain for women or people of color who identify strongly with their gender or ethnicity. Rao wrote, "Though the diversity bean counters consider me a minority (Asian Indian, if you're curious), I find myself in the awkward position of not considering my race and gender very important. To the 'multicultural police' this means I'm a 'traitor.'" She added, "[t]hose who reject their assigned categories are called names: So-called conforming blacks are called 'oreos' by members of their own community, conservatives become 'fascists.'" Criticizing those who celebrate diversity of all forms, Rao wrote that "**multiculturalism fans the flames of minority resentment against everybody else**" [emphasis added].

Rao also wrote disparagingly about non-white, non-male affinity groups:

> More than a third of registered undergraduate organizations are based on race, ethnicity, or gender. While this is not wrong in itself, it seems that Yalies should have more creative ways of organizing themselves. This separation is not just to promote cultural awareness, but usually to advance some political agenda.

Rao also displayed biased ideas toward African-Americans. For example, in discussing Henry Louis Gates and Cornel West, well-known black professors and public figures, Rao criticized not only the content of their book tour discussion in 1996, but also their speech patterns. Rao wrote that "[r]ace may be a hot, money-making issue," trivializing the actual issue of racism and those advocating for a more racially just society. Despite the "money-making" aspect of discussing race, she explained that "even West seems to realize that it can be talked to death." Her description of West is couched in racist terms: "His slow English transfixed the salt-and-pepper bourgeois audience . . . Gesticulating wildly with his white starched cuffs and cufflinks shining in the spotlight." Rao's personal critiques and word choice suggest an inability to arbitrate issues around civil rights in an unbiased manner.

Rao also wrote in a derogatory manner about affirmative action. In a book review, she discussed affirmative action as the "anointed dragon of liberal excess." In another article, she wrote that "Yale has dedicated itself to a relatively firm meritocracy, which **drops its standards only for a few minorities,** some legacies and a football player here or there" [emphasis added]. She also argued, in a 2009 law review article, that affirmative action diminishes the inherent dignity of minority applicants: "Choosing to put out a separate entrance for minorities,

not just a welcome mat, overlooks or minimizes the dignitary harms to individuals, even if that entrance is in front and not at the back of the building."[20]

In another article, Rao lamented:

> In this **age of affirmative action**, **women's rights**, **special rights for the handicapped** and **welfare for the indigent and lazy**, elitism is a forgotten and embarrassing concept. Elitist ideals and social hierarchies are something from an unenlightened past. In our **new feelgood era**, everybody is okay, and political and **academic standards can adjust to accommodate anyone** [emphasis added].[21]

Finally, Rao has criticized efforts to address hate speech. In 2011, she wrote, "[y]et the dignity of recognition protected by hate speech regulations runs headlong into the dignity of the speaker, a dignity protected by allowing the maximum degree of freedom of speech."[22] Rao's article undervalues the impact of hateful rhetoric, especially in an era where racist hate speech has so often incited violence against minorities.

Under Rao's leadership, OIRA reviewed and is in the process of working with the Department of Housing and Urban Development to roll back rules that protect against housing discrimination based on race. This rule had previously allowed courts to consider "disparate impact" when evaluating housing discrimination claims. Previous protections, implemented in 2013, were reaffirmed in the landmark 2015 Supreme Court case *Texas Dep't of Housing and Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507 (2015). The proposed roll back directly undermines this Supreme Court precedent.

LGBTQ RIGHTS

A. HOSTILITY TOWARD LGBTQ EQUALITY

Rao's writings demonstrate a hostility toward LGBTQ rights and equality. One notable example is a 1994 article she authored titled "Queer Politics." In the article, Rao characterized the decades-long struggle for LGBTQ rights and equality as a part of "[t]rendy political movements" which, in her opinion, "have only recently added sexuality to the standard checklist of traits requiring tolerance."

Later in the same article, Rao proposed that homophobia "is often more deeply rooted" than racism and sexism because people view "homosexuality as a behavior – and behaviors, unlike gender and race, are subject to change." She explained her view that "[w]hen **homosexuality is viewed as a correctable behavior, it can be judged as being immoral, unnatural, and contrary to religious doctrine**" [emphasis added]. She justified this kind of ideology by stating "no one knows whether sexuality is a biological phenomenon or a social construct. The truth may lie somewhere in the middle."

Rao's personal biases are also reflected in her commentary on *Lawrence v. Texas*, 539 U.S. 558 (2003), the Supreme Court case which held that a Texas law criminalizing sex between two partners of the same sex was unconstitutional. In a 2013 law review article, Rao minimized the holding and societal impact of *Lawrence* by describing the case as "about a right to particular

sexual behavior."[23] In another article, Rao argued that "*Lawrence* expresses a strong preference for **certain values** but fails to articulate a coherent constitutional principle" [emphasis added].[24]

Particularly given her criticism of substantive due process, discussed above, which has been a foundation of modern constitutional jurisprudence and has protected LGBTQ individuals in cases such as *Lawrence* and *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), it seems that Rao will endanger LGBTQ rights if confirmed to the D.C. Circuit.

B. MARRIAGE EQUALITY

In addition to her general animus towards LGBTQ rights, Rao has fought to undermine marriage equality. Rao began publicly voicing her opposition to marriage equality in her twenties. In an article titled "How the Diversity Game is Played," she criticized "homosexuals [who] want to redefine marriage and parenthood."

On several occasions, Rao cloaked her anti-LGBTQ views using a concept she calls the "dignity of recognition."[25] As discussed below, she argued that this particular conception of dignity – one that recognizes the equal dignity of LGBTQ individuals to marry – does not belong in our constitutional jurisprudence. Rao expressed her problematic views regarding marriage equality using this "dignity of recognition" framework in a series of articles published prior to the historic 2015 Supreme Court decision in *Obergefell*, which established the constitutional right to marriage equality.[26]

For example, in a 2013 article regarding *United States v. Windsor*, 133 S. Ct. 2675 (2013), the case that struck down part of the discriminatory Defense of Marriage Act (DOMA), Rao expressed her view that the Court's decision in *Windsor* was based on "the unusual right to recognition" and that its use of "dignity rights [has] a problematic relationship to individual rights and the structural protections of federalism."[27] Although Rao wrote that she might "support as a political matter"[28] the shift in public opinion away from an "exclusionary definition of marriage,"[29] she quibbled that the acknowledgement of states' recognition of the dignity of marriage equality was "a novel constitutional right to recognition unconnected to any substantive right."[30]

Moreover, Rao has articulated her belief that the historic fight for marriage equality may have been unnecessary, as she considered options available to same-sex couples prior to marriage equality to be on an equal footing with marriage. In a 2011 article, Rao wrote dismissively of a concept that "requires the state adopt policies that express the equal worth of all individuals and their life choices, such as requiring gay marriage, **not just legally equivalent civil unions**, because of the expressive and symbolic importance of marriage" [emphasis added].[31]

C. ATTACKS ON PUBLIC PROTECTIONS FOR THE LGBTQ COMMUNITY

The hostility Rao demonstrated towards the LGBTQ community in her writings extends to her current role as the head of OIRA. The Trump Administration has rolled back a series of protections for the LGBTQ community: eliminating protections against discrimination for LGBTQ patients accessing health care; supporting the expansion of Title IX

religious exemptions; failing to collect data about LGBTQ individuals in the census; and removing a sexual orientation question from a crucial elder survey.

Under Rao's leadership, OIRA is finalizing a rule proposed by the Department of Health and Human Services (HHS) that would allow health care providers to refuse to provide medical care to patients towards whom providers have "conscientious objections." This encompasses LGBTQ patients and women seeking reproductive care. Larry T. Decker, executive director of the Secular Coalition for America, explained how this rule "does not protect conscience but instead weaponizes it, turning religious belief into yet another barrier between vulnerable patients and the health care they need."

Additionally, Rao's office worked with Betsy DeVos's Department of Education to roll back protections for LGBTQ students on college campuses. Proposed changes to Title IX would expand schools' ability to discriminate against LGBTQ students under the guise of religious exemptions. Under current policy, many schools can "claim religious exemptions from certain Title IX provisions, such as admissions of certain students or counseling services, but must submit a letter to the U.S. Department of Education requesting specific exemptions." DeVos claims this protective step is "confusing or burdensome" and proposed to eliminate it in a new proposed rule that Rao's office signed off on. These rollbacks of protections greatly threaten the rights of the LGBTQ community, whether facing discrimination at school or in the doctor's office.

At the same time, the Trump Administration is attempting to eliminate gender identity protections from the Affordable Care Act's anti-discrimination provisions. Section 1557 of the ACA prohibits discrimination on the basis of "race, color, national origin, sex, age, or disability," which the Obama Administration interpreted to include discrimination based on "gender identity" and "sex stereotyping." However, the Trump administration, with input from Rao's office, engaged in a process to eliminate those protections for LGBTQ patients from Section 1557's anti-discrimination provision. This change puts the rights and health of LGBTQ individuals severely at risk and discourages LGBTQ individuals from seeking health care due to fear of discrimination.

DISABILITY RIGHTS

Rao has written numerous articles criticizing bans on "dwarf-tossing," a degrading practice in which individuals throw little people for sport or entertainment. The competitive practice is most commonly performed in bars, where little people are paid to be thrown onto mattresses or against Velcro walls. Dwarf-tossing has encouraged violence towards little people, even paralyzing one man who eventually died after he was picked up and thrown against his will.

Despite the real-world consequences of the vile practice, Rao is fixated on the theory that bans on dwarf-tossing violate the "dignity" of little people who wish to participate. She argued that a French ban on dwarf-tossing

demonstrates how "concepts of dignity can be used to coerce individuals by forcing upon them a particular understanding of dignity."[32] Rao argues that the state's restriction of such activity impinges upon the individual's ability to make money, drawing parallels to prostitution and pornography.[33]

The organization Little People of America wrote a letter urging the Senate to reject Rao's confirmation to the D.C. Circuit because of her views on dwarf-tossing:

> We vehemently disagree with Ms. Rao's view that banning dwarf tossing negates individual's[sic] dignity. A ban on dwarf tossing event[sic] significantly reduces the risk of inevitable bodily harm to the person being tossed. We strongly support our community in having individual choice in every aspect of their lives and we advocate for equal employment opportunities so that our community need not be constrained to earning a living by being the recipient of a dehumanizing and injurious activity.

As an expert at the Center for American Progress noted, "I hear some of you say Dwarf Tossing is a choice, but it's not when our bodies are more delicate than yours, our spines more compressed, our respiratory systems more compromised. A plastic bubble doesn't protect you from paralysis . . . And if it's legal in a bar, it spreads into the street." Rao's unashamedly ableist writings and callous advocacy against bans on dwarf-tossing raise questions as to whether she will give proper effect to some of our nation's most important laws ensuring equality for persons with disabilities.

HEALTH CARE

Like many Trump nominees, Rao has openly criticized the Affordable Care Act. Most notably, she criticized Chief Justice John Roberts for his opinion in the 2014 case *King v. Burwell*, 135 S. Ct. 475 (2014), which held the ACA tax mandate was constitutional:

> Rather than follow the natural reading of the law – that 'established by the State' means 'established by the State' – Roberts resorted to the Affordable Care Act's purported goals, echoing the arguments of political supporters that giving the law its ordinary meaning would push health insurance markets into a 'death spiral.' The talking points trumped the law.[34]

Rao also denounced liberals who support the constitutionality of the ACA – even comparing their defense of the ACA to past criticisms of the Bush Administration's overreach and abuse of executive power: "Leave the Constitution to the courts, their argument goes. Yet many liberals don't want the courts involved in constitutional issues either – at least not in any robust way." Rao bemoaned that "[a]s challenges to ObamaCare work their way through the courts, we hear lamentations that such attempts represent judicial activism and are undemocratic. This leaves the president to protect the Constitution." Moreover, she juxtaposed the ACA's objective of providing health care to millions of people to the transgressions of the Bush Administration, arguing that "when George W. Bush asserted his own interpretation of the

Constitution, liberals raised the specter of an 'imperial presidency.'"

Additionally, Rao criticized the conservative justices on the Supreme Court for not creating a "revolution" that would overturn "important" acts such as the ACA. She complained about the failure of the Supreme Court to overrule progressive laws, specifically noting "when it comes to something important . . . or we get the Affordable Care Act, well we're not going to really interfere in those areas. So there seems like they're saying we can draw a line, but they just won't. Not when it's anything really important."[35]

Rao's demonstrated animosity toward the ACA makes her a threat to millions of Americans' health care should she be confirmed to the second most powerful court in the country.

PUBLIC PROTECTIONS

Rao's actions as head of the Office of Information and Regulatory Affairs and her record as an administrative law professor indicate that she will erode vital public protections – including those safeguarding consumers, workers, the environment, and health and safety – if confirmed to a lifetime appointment on the D.C. Circuit.

OIRA, part of the Office of Management and Budget, reviews drafts of executive branch rules and regulations. As administrator, Rao oversees changes to public protections.[36] Rao also works with agencies throughout the process of promulgating, changing, or rescinding significant regulations. As Rao stated in a Bloomberg Government interview, significant regulations are reviewed by her office, and she "get[s] to determine whether a rule is significant ultimately."[37] Rao further explained, "Irrespective of economic impacts . . . we will review things that are important enough for us to review them . . . In part, that's at the discretion of OIRA and also the White House."[38] In this interview, Rao takes pride in the central role she plays in the Trump Administration's policy-making process.

As discussed above, since taking over as head of OIRA in July 2017, Rao has played a role in dismantling protections against racial discrimination in housing, removing protections against discrimination based on gender identity, and blocking the authorization of vital sexual harassment protections. She has also given a green light to corporate greed at the expense of protecting all Americans. She acquiesced to big oil corporations' demands by turning back the clock on protections preventing natural gas leaks.

The Trump Administration has a goal to eliminate two existing regulations for each newly promulgated regulation. Rao bragged about this harmful rollback of public protections, describing it as "an unprecedented advance against the regulatory state." Further, Rao conceded that she became head of OIRA in order to roll back public protections: "I'm not sure I would have taken this job if I wasn't optimistic about the possibility of rolling some of this back."[39] With public protections for consumers, the environment, workers, and health and safety "in the crosshairs of the new administration,"[40] Rao accepts a great deal of responsibility for the damage inflicted upon us all.

There is evidence that Rao's office disregarded legal requirements in order to repeal public protections at such a hasty pace. According to a study by the Institute for Policy Integrity at New York University School of Law, on average, the government normally defeats challenges to regulations 70 percent of the time. However, during the Trump Administration, more than 90 percent of legal challenges to major deregulatory actions have been successful. According to the NYU study, the Trump Administration is losing because Rao's office bypasses legal requirements, such as properly incorporating public feedback or conducting cost-benefit analyses. For an individual who wants to be a judge, Rao has shown a disturbing willingness to put aside the law to carry out her ideological agenda.

Rao's assault on public protections for consumers, workers, the environment, and health and safety stems from her unabashed disdain for the so-called "administrative state." She has argued that agencies should have less power to issue public protections and enforce safety standards, including independent agencies, which historically have been insulated from political management. She opined that such agencies should no longer be independent: "The precedents and functional justifications for supporting agency independence have largely collapsed. The issue is ripe for reconsideration."[41]

As one example, Rao criticized the Consumer Financial Protection Bureau's broad authority to issue protections against unfair lending practices, predatory financial companies, and powerful banks.[42]

Rao has also taken radical stances on critical legal doctrines that have been crucial in ensuring that the federal government, since the New Deal, has the ability to protect health and safety, consumers, workers, and the environment. Rao suggested that the nondelegation doctrine, last used successfully in 1935 by a famously reactionary Supreme Court, should be revived.[43] Since 1935, as Justice Scalia noted, "we [the justices] have 'almost never felt qualified to second guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law.'" *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 474-75 (2001).

Nevertheless, despite almost 90 years of precedent, the nondelegation doctrine is not dead according to Rao, who says she "happen[s] not to be one of those people" claiming its demise.[44] In fact, she has stated, "I would support more robust enforcement of the nondelegation doctrine."[45] She also wrote, "[P]erhaps the time has come to revisit judicial enforcement of a more robust non-delegation doctrine." If confirmed, Rao would no doubt adhere to her promises by attempting to limit Congress's ability to give federal agencies the ability to protect the health and safety of the American people.

In addition to accepting the nondelegation doctrine, Justice Scalia also accepted the legal principle that gives agencies the authority to determine how they will carry out their mandates when the congressional act governing their actions might be open to different interpretations – referred to as "*Chevron* deference." As Justice Scalia noted, "[i]n the long run, *Chevron* will endure and be given its full scope" because "it more accurately reflects the

reality of government, and thus more adequately serves its needs."

Rao's record shows she disagrees on this point and would tie the hands of precisely those agencies that Congress has recognized have the knowledge and experience to enforce critical laws, safeguard essential protections, and ensure the health and safety of the public. In a report for the Heritage Foundation, Rao argued for "more robust" judicial review, stating:

> I think courts can provide more meaningful checks on agency action and authority, enforcing both statutory and constitutional due process. And we've seen over the past few years that the Supreme Court, particularly Justices Thomas, Alito, and Gorsuch, is engaged in a reconsideration of the non-delegation doctrine and the judicial deference doctrines.

In another article, Rao offered a strategy for reconsidering *Chevron* deference, arguing that her "insights about how delegation benefits members of Congress and undermines separation of powers can provide a foundation for reevaluating the deference regimes."[46]

Rao has already impacted the lives of all Americans by rolling back vital public protections and would undoubtedly continue to do so if given a lifetime appointment to the D.C. Circuit. Rao even expressed interest in getting "libertarian law professors on the courts" in order to turn back the clock on public protections.[47] As she said then: "The proponents of judicial restraint have overwhelmingly won or captured . . . both in the academy and in the courts, they have prevailed to a large extent. So . . . do you think it's possible to still fight the war?"[48] Rao envisions her role in dismantling public protections as waging a war, a goal worthy of anti-protection judicial activism. Given her own professed views and actions as a top Trump official, she would almost certainly apply such activism on the bench.

Two areas where this agenda is abundantly apparent is in protecting clean air and water and in protecting workers.

CLIMATE

Rao's writings from her twenties deny the impact of climate change, and her recent rollbacks of environmental protections display her continued antipathy to the notion of climate change.

While in her twenties, Rao authored several articles expressing her disdain for environmentalism and her rejection of mainstream scientific theories. She wrote derisively of "[t]he three major environmental bogeymen, the greenhouse effect, the depleting ozone layer, and the dangers of acid rain." She criticized environmental groups at Yale for "accept[ing] issues such as global warming as truth with no reference to the prevailing scientific doubts." Rao also bashed environmental groups for "promot[ing] a dangerous orthodoxy that includes the unquestioning acceptance of controversial theories like the greenhouse effect." At the time Rao published her article, President George H. W. Bush had already signed the 1990 Clean Air Act into law, attempting to address the near-universally acknowledged problem of acid rain. As recently reported, climate impacts are extreme and dramatic.

In another article titled “Choking on the ‘Greenies’ Diet,” Rao asked, “[w]hen was the last time you hugged a tree? If you don’t remember, you obviously haven’t been on a college campus recently.” After describing examples of environmental activism, Rao explained, “These are just a few examples of eco-insanity on college campuses. But funny as they may be, environmental hysteria in the university has dangerous implications for the real world.” Warning of environmentalists’ desire to force people “to live up to their standards of environmental purity,” Rao cautioned that they “seem perfectly comfortable discarding scientific evidence and common sense in their crusade to ‘save’ the Earth.” Rao’s words age poorly, as the scientific community has fully embraced the existential dangers of our changing climate.

Rao’s efforts to roll back environmental protections at OIRA have only served to exacerbate this crisis.

As head of OIRA, Rao supported changes that reduced public protections against mercury pollution. The Mercury and Air Toxics Standards (MATS) are protections to track and reduce the amount of mercury power plants may release into the air, aiming to shield the public from dangerous neurotoxins. Highly successful, the MATS has reduced mercury pollution from power plants more than 81% from 2011 to 2017. Further, the number of children born each year with prenatal exposure to dangerous methylmercury levels has decreased by half. Despite these benefits, Rao’s office misrepresented the benefits and costs of the MATS.

Other major environmental protections Rao helped roll back include the Clean Power Plan and the Methane and Waste Prevention Rule. Rao approved a proposal to rescind the public protection that aimed to reduce greenhouse gas emissions from power plants. This proposal ignored the impact of the changing climate on the public, warping its cost-benefit analysis. Rao also acquiesced to corporate interests at the expense of public health when she turned back the clock on protections preventing natural gas leaks.

Rao’s cynicism regarding scientific realities about climate also carried through to her work at OIRA. In a proposal for a deficient replacement for the Clean Power Plan, Rao’s office censored climate language and minimized its cost on public health. While attempting to roll back standards preventing harmful leaks from refrigerant and air conditioning appliances, Rao withheld information regarding the impact of climate change on children.

LABOR

Rao’s consistent rhetoric touting the far-reaching benefits of deregulation and economic freedom betray a strong bias in favor of corporate interests. Her libertarian faith in free markets and devotion to rolling back protections would leave workers at the mercy of their more powerful employers.

The Trump Administration has acted aggressively to roll back safety protections for workers. For example, Rao’s office allowed revisions to Occupational Safety and Health protections that would allow certain employers to conceal workplace injuries. Rao’s office has apparently

refused to meet with labor groups to discuss worker safety rules, despite her claim that her agency maintains transparency and an open-door policy. Similarly, Rao's office oversaw the EPA's proposed rule that would lower minimum age requirements for applying pesticides, a rule that the EPA recently dropped after outside scrutiny.

OIRA is also in the process of reviewing changes to Department of Labor standards under the Fair Labor Standards Act that would allow employers to avoid paying some workers for overtime work. The change would disqualify millions of American workers from overtime pay after the Trump Administration dropped the legal defense of a rule that would have "doubled the minimum salary required" for exemptions under the Fair Labor Standards Act. The rule the Trump Administration chose not to defend would have made an estimated 4.2 million additional workers eligible for overtime pay.

EXECUTIVE POWER

Rao, like many other Trump nominees and appointees, supports an expansive view of executive power.

Perhaps most significantly, Rao is a proponent of the "unitary executive" theory. She has advocated vigorously for the President to obtain complete control of the executive branch – most notably independent agencies – where Congress has specifically enacted legislation to insulate agencies and agency officers from political influence. These agencies, such as the Federal Reserve Board, the National Labor Relations Board and Consumer Product Safety Commission, are critical to protecting the health and safety of the American people.

In fact, Rao's record suggests she believes that the President, as the head of the executive branch, retains absolute control over agencies. As a result – and as her 2011 article titled "A Modest Proposal: Abolishing Agency Independence in Free Enterprise Fund v. PCAOB," suggests – Rao supports eliminating the "independence" of independent agencies altogether. She also wrote:

> [T]he ability to remove principal officers is necessary and sufficient for presidential control of the executive branch. This means that all agencies, including the so-called independent agencies, must answer to the President . . . Limits on the President's removal authority have always been in tension with the basic constitutional design.[49]

She argued that courts should ignore congressional intent and lead a "wide assault on agency independence."[50]

Before she was nominated to head OIRA, Rao promoted the idea that independent agencies should be under the authority of OMB. At OIRA, Rao has already asserted White House control over actions at agencies like the EEOC.[51]

Rao's record also has potential implications for the Mueller investigation.

Notably, Rao criticized the Supreme Court's decision in *Morrison v. Olson*, 487 U.S. 654 (1988), which upheld the independent counsel statute in effect at the time.[52] Rao argued that "[i]ndependent discretion for executive

officers" is "contrary to the best understanding of Article II" powers outlined in the Constitution.[53] She explained her view that the President "must have the ability to remove all executive branch officers at will."[54] This extreme view of presidential power is particularly dangerous at a time when the President repeatedly threatens to remove Robert Mueller in order to impede the investigation.

Moreover, in a 2009 article, "The President's Sphere of Action," Rao emphasized that there is only a limited ability to hold the President accountable while he is in office.[55] By implication, she dismisses the notion that the President can be held accountable criminally. While she conceded that "even after removal from office, a President may be criminally liable for his actions," Rao noted how "[t]he slow, ponderous, and majoritarian methods of holding the President accountable leave a significant space in which the President may act unimpaired."[56]

She explained how the President, vested with the constitutional powers given to the executive branch, may choose to ignore or override laws passed by Congress and decisions by the Supreme Court on the basis that he or she deems them unconstitutional:

> If after careful review **the President determines that a statute is unconstitutional, he may decline to enforce it. The President may also decide not to follow Supreme Court precedent,** and in the rare instance, may decide against enforcement of a particular judgment [emphasis added].[57]

In addition to supporting the idea that the President can ignore and override the other two coequal branches of government, Rao observed that there are sometimes no contemporaneous means of recourse to thwart the President from taking unitary actions. Rao explained that "[u]nlike Congress and the Supreme Court, the President can act alone in his judgment of what the Constitution requires." Rao also noted how "[j]udicial review, political condemnation, and even impeachment may follow, but they do not impede the President at the moment of action."[58]

In another article, Rao contended that the President's authority over foreign affairs extends to his or her ability to override international law and treaties – many of which are often confirmed by the Senate:

> As Commander-in-Chief of the nation's military, the President leads the conduct of war, which provides a significant source of authority to interpret the obligations of the law of war.[59]

Rao explained how "even after determining that international law applies to a contemplated action, the President may have, in certain circumstances, the authority to disregard international law. This may include the unilateral authority to terminate treaties."[60]

Rao's expansive views of presidential power and control of independent agencies are especially concerning in this era of rampant abuses of power and disdain for the rule of law by the Trump Administration.

CRIMINAL JUSTICE

In an article titled "On the Use and Abuse of Dignity in Constitutional Law," Rao proposed limiting constitutional protections for criminal defendants. Discussing *Miranda v. Arizona*, 384 U.S. 436 (1966), Rao explained her view that "*Miranda* exemplifies the recurring problem in criminal cases – promoting the dignity of the accused may greatly discount the dignity of the victims of crime."[61] Instead of highlighting how *Miranda* strengthened vital Fourth Amendment protections for individuals against abuses of governmental power and violations of constitutional rights by state actors, Rao proposed that protections like *Miranda* protect the rights of defendants at the expense of victims.

Rao also criticized the Supreme Court's efforts to protect the trial rights of defendants. In particular, she argued that the Supreme Court's decision in *Indiana v. Edwards*, 554 U.S. 164 (2008), to prevent a defendant with severe mental illness from representing himself infringed on his dignity.[62] In *Edwards*, the Supreme Court held that a defendant who demonstrated some mental incapacity, but was competent enough to stand trial, could be prevented from representing himself without violating the Sixth Amendment. In the majority opinion, Justice Stephen Breyer explained the concern over balancing the right to represent oneself with a defendant's right to a fair trial: "insofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial."[63]

Instead of recognizing the importance of securing fair trial rights for defendants – especially defendants who demonstrate mental incapacity – Rao suggested that the concern for a defendant's ability to sufficiently defend himself may inappropriately infringe on the defendant's dignity. Rao failed to address, however, how allowing a defendant with a severe mental illness "the ultimate human dignity of choosing how to represent himself"[64] could result in unjust rulings that infringe on his or her constitutional rights and, ultimately, liberty.

CONCLUSION

Throughout her career, Neomi Rao has shown her dedication to dismantling public protections and safety standards intended to protect all Americans. Moreover, she has shown hostility to the rights of women and sexual assault survivors, racial justice, LGBTQ equality, and the climate. She has opposed the existence of independent agencies and advocated for an expansive, virtually unchecked interpretation of presidential power. For these reasons, Alliance for Justice strongly opposes her confirmation to a lifetime seat on the federal bench.

ENDNOTES

1. Sen. Comm. On the Judiciary, 116th Cong., Neomi Jehangir Rao Questionnaire for Judicial Nominees, 2, available at https://afj.org/wp-content/uploads/2019/01/Neomi-Rao-Senate-Judiciary-Questionnaire.pdf.
2. FOIA Request from UnKoch My Campus, "Grant Agreement", at 150, available at https://ia802807.us.archive.org/2/items/GMUFOIACharlesKochFoundationFull/GMU%20FOIA%20Charles%20Koch%20Foundation%20Full.pdf.
3. FOIA Request from UnKoch My Campus, "Lunch with Henry Butler, Neomi Rao, and Leonard Leo" Email Calendar Invite, April 19, 2016, at 420, available at https://ia802807.us.archive.org/2/items/GMUFOIACharlesKochFoundationFull/GMU%20FOIA%20Charles%20Koch%20Foundation%20Full.pdf.
4. FOIA Request from UnKoch My Campus, Emails Between Neomi Rao and Leonard Leo, at 513, 598 available at https://ia802807.us.archive.org/2/items/GMUFOIACharlesKochFoundationFull/GMU%20FOIA%20Charles%20Koch%20Foundation%20Full.pdf.
5. Neomi Rao, Testimony, Hearing before the Senate Judiciary Committee Hearing on "Continuation of the Nomination of Sonia Sotomayor to be an Associate Justice of the Supreme Court of the United States," July 16, 2009, at 3, available at https://afj.org/wp-content/uploads/2019/02/Rao-Sotomayor-Testimony.pdf.
6. Neomi Rao, *Elena Kagan and the 'Hollow Charade,'* Wall Street Journal, May 11, 2010, at 2, available at https://afj.org/wp-content/uploads/2019/02/Rao-Kagan-comments.pdf; Using standards applied in the past by Republicans, Rao's comments regarding Sotomayor and Kagan alone should be disqualifying. As Mike Lee said about Goodwin Liu, who had questioned whether Justice Alito would apply the law in a "mechanical way abstracted from human experience" and would turn a blind eye to discrimination: "[Liu's] comments about Justice Alito were offensive . . . because they were a misleading and unwarranted personal attack on a dedicated public servant." John Cornyn remarked that Liu's comments "raise some serious questions about whether [Liu has] the sort of temperament and the ability to set aside . . . strongly held academic and scholarly views. . . "
7. Sen. Comm. On the Judiciary, 116th Cong., Neomi Jehangir Rao Questionnaire for Judicial Nominees, 2, available at https://afj.org/wp-content/uploads/2019/01/Neomi-Rao-Senate-Judiciary-Questionnaire.pdf.
8. *Id.*
9. *Id.*
10. *Id.* at 3.
11. *Id.*
12. Rao's writings are similar to the writings of another Trump nominee, Ryan Bounds, whose nomination was withdrawn after Senators Tim Scott and Marco Rubio refused to support him, following the discovery of his earlier, problematic writings. See Karoun Demirjian, *White House withdraws judicial nominee Ryan Bounds, after GOP realizes he didn't have votes for confirmation*, Washington Post, July 19, 2018, https://www.washingtonpost.com/powerpost/senate-gop-withdraws-judicial-nominee-ryan-bounds-delivering-a-blow-to-trumps-court-plans/2018/07/19/0d81ff50-8b83-11e8-8aea-86e88ae760d8_story.html?utm_term=.355d27de66c0.
13. This report only contains key examples of her disturbing writings. To see more of Rao's commentary, as well as links to a series of original articles in full, please see Alliance for Justice's website at afj.org/rao.
14. Neomi Rao, Interviewer, "*Overruled*," Federalist Society, the Charles Koch Institute, and Reason, Recording at (24:18), available at https://fedsoc.org/commentary/videos/overruled-the-long-war-for-control-of-the-u-ssupreme-court-event-video and https://www.youtube.com/watch?time_continue=1613&v=rfpdFYp3Hbk (Nov. 19, 2014).
15. Plaintiffs' Memorandum in Support of Their Motion for Summary Judgment, *National Women's Law Center, et al., v . Office of Management and Budget, et al.*, (No. 17-2458), 2, available at https://democracy-forward.org/wp-content/uploads/2017/11/22-1-Memo-in-Support-of-MSJ.pdf.
16. *Id.* at 11-12.
17. See e.g., Neomi Rao, *Three Concepts of Dignity*, 86 Notre Dame L. Rev. 183, 252 (2011), available at https://afj.org/wp-content/uploads/2019/01/12-Three-Concepts-of-Dignity-reduced-size.pdf; Neomi Rao, *The Trouble with Dignity and Rights of Recognition*, 99 Va. L. Rev. Online 29, 31 (2013), available at https://afj.org/wp-content/uploads/2019/02/Rao-The-Trouble-With-Dignity-and-Rights-of-Recognition.pdf; Neomi Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 Colum. J. Eur. L. 201, 243 (2008), available at https://afj.org/wp-content/uploads/2019/02/Rao-On-the-Use-and-Abuse-of-Dignity-in-Constitutional-Law_.pdf.
18. *Id.* at 1380.
19. Neomi Rao, *A Backdoor to Policy Making: The Use of Philosophers by the Supreme Court*, 65 U. Chi. L. Rev. 1371, 1379-80 (1998), available at https://afj.org/wp-content/uploads/2019/02/Rao-Backdoor-to-policy-making_.pdf.

20. Neomi Rao, *Gender, Race, and Individual Dignity: Evaluating Justice Ginsburg's Equality Jurisprudence*, Ohio State L. J. 1053, 1080 (2009), available at https://afj.org/wp-content/uploads/2019/02/Rao-Gender-Race-and-Individual-Dignity-Evaluating-Justice-Ginsburgs-Equality-Jurisprudence_.pdf.
21. Neomi Rao, Book Review: *"In Defense of Authentic Elitism,"* Yale Free Press, Jan. 1995, available at https://afj.org/wp-content/uploads/2019/02/Rao-In-Defense-of-Authentic-Elitism.pdf.
22. Neomi Rao, *Three Concepts of Dignity*, 86 Notre Dame L. Rev. 183, 252 (2011), available at https://afj.org/wp-content/uploads/2019/01/12-Three-Concepts-of-Dignity-reduced-size.pdf.
23. Neomi Rao, *The Trouble with Dignity and Rights of Recognition*, 99 Va. L. Rev. Online 29, 31 (2013), available at https://afj.org/wp-content/uploads/2019/02/Rao-The-Trouble-With-Dignity-and-Rights-of-Recognition.pdf.
24. Neomi Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 Colum. J. Eur. L. 201, 243 (2008), available at https://afj.org/wp-content/uploads/2019/02/Rao-On-the-Use-and-Abuse-of-Dignity-in-Constitutional-Law_.pdf.
25. See Neomi Rao, *Three Concepts of Dignity*, 86 Notre Dame L. Rev. 183, 189 (2011), available at https://afj.org/wp-content/uploads/2019/01/12-Three-Concepts-of-Dignity-reduced-size.pdf.
26. See Neomi Rao, *The Trouble with Dignity and Rights of Recognition*, 99 Va. L. Rev. Online 29, 31 (2013), available at https://afj.org/wp-content/uploads/2019/02/Rao-The-Trouble-With-Dignity-and-Rights-of-Recognition.pdf; Neomi Rao, *Dignity of Recognition and Federalism*, Volokh Conspiracy, Sept. 26, 2013, available at https://afj.org/wp-content/uploads/2019/02/Rao-Dignight-of-Recognition-and-Federalism-Volokh-Conspiracy.pdf; Neomi Rao, *Windsor and the Problem with Rights of Recognition*, Volokh Conspiracy, Sept. 25, 2013, available at https://afj.org/wp-content/uploads/2019/02/Rao-Windsor-and-the-Problem-with-RIghts-of-Recognition-Volokh-COnspiracy.pdf.
27. Neomi Rao, *The Trouble with Dignity and Rights of Recognition*, 99 Va. L. Rev. Online 29, 30 (2013), available at https://afj.org/wp-content/uploads/2019/02/Rao-The-Trouble-With-Dignity-and-Rights-of-Recognition.pdf.
28. *Id.* at 34.
29. *Id.*
30. *Id.* at 30.
31. Neomi Rao, *Three Concepts of Dignity*, 86 Notre Dame L. Rev. 183, 188-89, 270-71 (2011), available at https://afj.org/wp-content/uploads/2019/01/12-Three-Concepts-of-Dignity-reduced-size.pdf.
32. *Id.* at 227.
33. *Id.* at 228-29.
34. Neomi Rao, *The Supreme Court's Rule by Talking Points*, Wash. Examiner, July 7, 2015 https://afj.org/wp-content/uploads/2019/02/Rao-The-Supreme-Courts-rule-by-talking-points_.pdf.
35. Neomi Rao, Interviewer, "*Overruled*," Federalist Society, the Charles Koch Institute, and Reason, Recording at (24:18), available at: https://fedsoc.org/commentary/videos/overruled-the-long-war-for-control-of-the-ussupreme-court-event-video and https://www.youtube.com/watch?time_continue=1613&v=rfpdFYp3Hbk (Nov. 19, 2014).
36. Sen. Comm. On the Judiciary, 116th Cong., Neomi Jehangir Rao Questionnaire for Judicial Nominees, 37-38, available at https://afj.org/wp-content/uploads/2019/01/Neomi-Rao-Senate-Judiciary-Questionnaire.pdf.
37. Neomi Rao, In/Site: *OIRA Administrator Neomi Rao*, Bloomberg Government, Recording at (15:12), available at https://about.bgov.com/event/insite-administrator-neomi-rao/ (Sept. 25, 2018). Rao asked who determines what regulations are "significant" and thus require OIRA review. She responded, "I get to determine whether a rule is significant ultimately" after an agency preliminarily designates its significance.
38. Neomi Rao, In/Site: *OIRA Administrator Neomi Rao*, Bloomberg Government, Recording at (15:44), available at https://about.bgov.com/event/insite-administrator-neomi-rao/ (Sept. 25, 2018). "Irrespective of economic impacts . . . we will review things we think are important enough for us to review them. In part that's at the discretion of OIRA and of the White House;" Id. at (16:07) "Agencies generally will send us quarterly or monthly, depending on the agency, a list of upcoming regulations with their significance . . . we talk through those regulations with the agency . . . there is an ongoing dialogue and back and forth, you know mostly at the staff level."
39. Neomi Rao, *The Administrative State and the Structure of the Constitution*, The Heritage Foundation, Recording at (30:40), available at https://www.heritage.org/the-constitution/event/the-administrative-state-and-the-structure-the-constitution (Oct. 4, 2017).

40. Neomi Rao, Panel Moderator, *"The Time for Regulatory Reform in Congress,"* The C. Boyden Gray Center for the Study of the Administrative State and the American Bar Association Administrative Law and Regulatory Practice Section, Recording at (1:40), available at https://vimeo.com/207306375 (Mar. 2, 2017).
41. Neomi Rao, *Removal: Necessary and Sufficient for Presidential Control*, 65 Ala. L. Rev. 1205, 1234 (2014), available at https://www.law.ua.edu/pubs/lrarticles/Volume%2065%20Issue%205/Issue%205/Rao_1205-1276.pdf.
42. Neomi Rao, *Administrative Collusion: How Delegation Diminishes the Collective Congress*, 90 N.Y.U. L. Rev. 1463, 1479-80, 1490 (2015), available at https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-5-Rao.pdf.
43. Neomi Rao, *Why Congress Matters: The Collective Congress in the Structural Constitution*, 70 Fla. L. Rev. 1, 3-7 (2018).
44. Neomi Rao, Panelist, "*Supreme Court Case Discussion*," Conservative Women's Network, Recording at (6:52), available at https://www.youtube.com/watch?v=uE6wuAJcWsY.
45. Neomi Rao, Panelist, *"Constitutional Problems in Financial Regulation,"* Public Policy Conference on Financial Regulation: Political, Administrative, and Constitutional Accountability, The C. Boyden Gray Center for the Study of the Administrative State, Recording at (1:00:30), available at: https://vimeo.com/195655839/ (Dec 9, 2016).
46. Neomi Rao, *Administrative Collusion: How Delegation Diminishes the Collective Congress*, 90 N.Y.U. L. Rev. 1463, 1520 (2015), available at https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-5-Rao.pdf.
47. Neomi Rao, Interviewer, "*Overruled*," Federalist Society, the Charles Koch Institute, and Reason, Recording at (23:15, 26:48), available at: https://fedsoc.org/commentary/videos/overruled-the-long-war-for-control-of-the-u-ssupreme-court-event-video and https://www.youtube.com/watch?time_continue=1613&v=rfpdFYp3Hbk (Nov. 19, 2014)..
48. *Id.* at (26:55).
49. Neomi Rao, *Removal: Necessary and Sufficient for Presidential Control*, 65 Ala. L. Rev. 1205, 1234 (2014), available at https://www.law.ua.edu/pubs/lrarticles/Volume%2065%20Issue%205/Issue%205/Rao_1205-1276.pdf.
50. Neomi Rao, *A Modest Proposal: Abolishing Agency Independence in Free Enterprise Fund v. PCAOB*, 79 Fordham L. Rev. 2541, 2543 (2011), available at https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4719&context=flr.
51. See e.g. above section regarding sexual harassment guidance being held up at OIRA, AFJ Rao Report at 6.
52. Neomi Rao, *Removal: Necessary and Sufficient for Presidential Control*, 65 Ala. L. Rev. 1205, 1230 (2014), available at https://www.law.ua.edu/pubs/lrarticles/Volume%2065%20Issue%205/Issue%205/Rao_1205-1276.pdf.
53. *Id.* at 1220,
54. *Id.* at 1227.
55. Neomi Rao, *The President's Sphere of Action*, 45 Willamette L. Rev. 554, 567 (2009), available at http://willamette.edu/law/resources/journals/review/pdf/volume-45/wlr45-3-rao.pdf.
56. *Id.*
57. *Id.* at 551-52.
58. *Id.* at 554.
59. Neomi Rao, *Public Choice and International Law Compliance: The Executive Branch is a 'They' Not an 'It,'* 96 Minn. L. Rev. 194, 218 (2011), available at http://www.minnesotalawreview.org/wp-content/uploads/2012/01/Rao_MLR.pdf.
60. *Id.* at 219.
61. Neomi Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 Colum. J. Eur. L. 201, 230 (2008), available at https://afj.org/wp-content/uploads/2019/02/Rao-On-the-Use-and-Abuse-of-Dignity-in-Constitutional-Law_.pdf.
62. Neomi Rao, *Three Concepts of Dignity*, 86 Notre Dame L. Rev. 183, 230 (2011), available at https://afj.org/wp-content/uploads/2019/01/12-Three-Concepts-of-Dignity-reduced-size.pdf.
63. *Id.*
64. *Id.*