

AFJ NOMINEE REPORT

BARBARA LAGOA

U.S. Court of Appeals for the Eleventh Circuit

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INTRODUCTION

On August 12, 2019, President Trump [announced](#) his intent to nominate Barbara Lagoa to the United States Court of Appeals for the 11th Circuit. The Senate Judiciary Committee must carefully review Lagoa's record before confirming her to a lifetime seat on the U.S. Court of Appeals for the Eleventh Circuit.

BIOGRAPHY

Lagoa is a graduate of Florida International University and Columbia Law School. Following law school, she clerked for the Honorable Robert P. Patterson Jr. of the United States District Court for the Southern District of New York. After clerking, Lagoa practiced law in Miami. Among other cases, she represented the Miami relatives of Elian Gonzalez, pro bono. She then served as an Assistant United States Attorney for the Southern District of Florida.

In 2006, then-Governor Jeb Bush appointed Lagoa to the Third District Court of Appeals. In January 2019, newly elected Governor Ron DeSantis appointed her, along with Robert Luck and Carlos Muniz, to the Supreme Court of Florida.

Lagoa is a member of the Federalist Society, and her appointment to the Florida Supreme Court was "[screened](#)" by the group's executive vice president

Leonard Leo who "flew down to Orlando" and [interviewed](#) Lagoa for the state Supreme Court position. Fewer than three weeks after Lagoa became a state Supreme Court justice, she was feted at the Florida chapter of the Federalist Society's annual exclusive event at Disney World's Yacht and Beach Club Resort.

Her appointment to the Florida Supreme Court was [endorsed](#) by William W. Large, the President of the Florida Justice Reform Institute who is an advocate for conservative legal reforms and [led](#) Gov. Jeb Bush's fight to limit the ability of victims of medical malpractice to be fully compensated. The president of the Florida Family Policy Council, an anti-choice, anti-LGBTQ group [praised](#) her appointment.

JUDICIAL RECORD

Several of Lagoa's decisions raise concerns that she will side with the wealthy and powerful at the expense of everyday Americans as a federal judge. For example, one of Lagoa's first decisions on the state Supreme Court sided with businesses challenging Miami Beach's [decision](#) to raise the minimum wage (notably, her colleague, Robert Luck, ruled differently). In another [decision](#), she made it harder for homeowners to defend themselves

against banks that were improperly trying to foreclose upon their homes.

In February 2019, Lagoa, joined by a new majority of the court, reversed course and dismissed the appeal regarding a minimum wage ordinance that was \$5.00 higher than the state's minimum wage. The Miami Beach City Commission voted to phase in a citywide minimum wage of \$13.31 an hour by 2021. The increase was supported by a voter approved 2004 statewide referendum which provided cities could enact higher minimum wages than the state minimum wage.

The Florida Restaurant and Lodging Association sued, arguing the city did not have the authority to go beyond state law. An amicus brief filed by the National Employment Law Project noted "the provision of the 2004 Constitutional Amendment concerning local authority to raise the minimum wage was to affirmatively ensure that the state legislature, cities, and other public bodies retained the power to raise the minimum wage higher than the state-wide rate."

NELP's [report](#), *Fighting Wage Preemption*, found that because of the court decision, 24,210 Miami workers are losing a total of \$117,300,000 in wages annually.

Both the trial court and court of appeals [ruled](#) for the restaurant association. Miami Beach appealed to the Florida Supreme Court, which agreed to hear the case. Lagoa reversed course and [dismissed](#) the

appeal – thus siding with businesses and denying workers in Miami Beach an opportunity to have their case heard by the Court.

A similar occurrence happened in a case involving banks. On January 4, 2019, the Florida Supreme Court held, in *Glass v. Nationstar Mortgage, LLC*, that homeowners are entitled to attorney's fees under a mortgage contract if a bank improperly files a foreclosure action against them, before Luck and Lagoa joined the court. Florida was hit hard by the financial and housing crisis. In 2008, more than 40,000 foreclosures were [filed](#) in Lee County Florida alone. Between 2012 and 2017, 16,654 reverse mortgage holders [went](#) into foreclosure in Florida, at nearly double the rate of California, the second-hardest hit state. Many foreclosure filings are improper as the *Glass* case demonstrates. This decision was significant because it made it possible for indigent people facing foreclosure to obtain an attorney to defend them in court.

The [ruling](#), however, "sent tremors through the mortgage industry" as it meant homeowners could now mount proper defenses and be able to recover legal fees from banks that improperly sued them. Mortgage giant Nationstar requested a rehearing days after Luck, Lagoa, and one other Desantis-appointed judge were sworn in; and in April, the Florida Supreme Court, joined by Luck and

Lagoa, withdrew their *Glass* decision, giving the mortgage industry a huge win.

As one attorney wrote, in an [amicus brief](#), if Nationwide did indeed prevail:

[B]anks will have free reign. They can file suit no matter who they are, whether or not they have possession of the original note, because there are no consequences. There will be no recourse or liability if their ability to enforce the note and mortgage is disproven. Borrowers will have to pay for representation against lawsuits that should not have been brought in the first place, with no ability to be made whole for having to defend such wrongful litigation. Banks' unfettered ability to sue without any consequence will propel countless new, unfounded filings and further congest the court system.

Other decisions also raise questions regarding Lagoa's commitment to equal justice for consumers and workers:

- In *McGillis v. Department of Economic Opportunity*, Lagoa [ruled](#) that Uber Drivers are not entitled to unemployment benefits because they are independent contractors and not employees of the company.
- In *Caterpillar Logistics Services, Inc. v. Amaya*, she [reversed](#) a jury award of \$571,883 after Rudolf Amaya suffered an on the job injury and was retaliated against after filing for workers' compensation. She found that he did not suffer economic damages due to retaliation because he was unable to work while he was injured.
- In *Jackson v. Kleen 1, LLC*, she [reversed](#) a damage award for an employee who was fired – after just one week of work – after reporting racist comments to his supervisor.
- In *Deutsche Bank v. Beauvais*, she [sided](#) with a bank and reversed a decision that had found a foreclosure claim was barred by the statute of limitations; overturning what the dissent noted was “almost eighty years of well-established Florida jurisprudence.”
- In *Murga v. United Property*, Lagoa [affirmed](#) the dismissal of class certification in a class action against an insurance company. The dissent noted that the dismissal at the trial court level was, “completely defective, and as such, cannot be affirmed” because the lower court dismissed class certification without a hearing, any findings of fact or law, or “even cit[ing] to the rule under which dismissal” was granted.
- In *United Auto. Ins. v. Salgado*, Lagoa, reversed a trial court decision and [sided](#) with an insurance company that retroactively rescinded insurance coverage to Oscar Salgado after he was in an accident and submitted his

medical bills for payment. The insurance company said he failed to list his brother as a member of the “his household” on his insurance application and refused to payout.

CONCLUSION

The Senate Judiciary Committee should carefully consider Lagoa’s record before putting her in a lifetime seat on the U.S. Court of Appeals for the Eleventh Circuit.