

AFJ NOMINEE REPORT

# ALLISON JONES RUSHING



*U.S. Court of Appeals for the Fourth Circuit*

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# INTRODUCTION

On August 27, 2018, President [Trump nominated](#) Allison Jones Rushing to the Fourth Circuit Court of Appeals for the seat previously held by Judge [Allyson Kay Duncan](#), who is retiring. Rushing, who was born in 1982, appears to be the [youngest](#) person Trump has nominated for a seat on the circuit courts of appeals to date. Rushing's record suggests she will not be a fair-minded and non-biased jurist, and Alliance for Justice opposes her nomination.

# BIOGRAPHY

Although she is young, Rushing's extremely conservative [credentials](#) are well established. After graduating from Wake Forest University in 2004 and Duke Law School in 2007, she clerked for D.C. Circuit Judge David Sentelle, then-Tenth Circuit Judge Neil Gorsuch, and Justice Clarence Thomas. Rushing is a member of the Federalist Society.<sup>1</sup> She also worked at the [Alliance Defending Freedom](#) (ADF), which the Southern Poverty Law Center (SPLC) has classified as a "[hate group](#)."<sup>2</sup>

Rushing is now a corporate appellate lawyer at [Williams & Connolly](#) in Washington, D.C. Illustrative of her practice, Rushing represented Ernst & Young in [Ernst & Young LLP v. Morris](#), which later was consolidated with [Epic](#)

[Systems Corp. v. Lewis](#), 138 S. Ct. 1612 (2018). Rushing [argued](#) that employees who were denied overtime pay could then be deprived by their employers of the right to unite and join as a class action in arbitration under the National Labor Relations Act.<sup>3</sup> In a 5-4 decision, the Supreme Court ruled to make it harder for workers to enforce their rights.

# ALLIANCE DEFENDING FREEDOM

Rushing worked as a legal intern at ADF,<sup>4</sup> which "has supported the recriminalization of homosexuality in the U.S. and criminalization abroad; has defended state-sanctioned sterilization of trans people abroad; has linked homosexuality to pedophilia and claims that a 'homosexual agenda' will destroy Christianity and society."<sup>5</sup> In addition, SPLC [noted](#) that "[s]ince the election of President Donald Trump, the ADF has become one of the most influential groups informing the administration's attack on LGBT rights working with an ally in Attorney General Jeff Sessions."<sup>6</sup>

Rushing also co-authored a 2005 [article](#) with ADF Senior Counsel Jordan Lorence, titled *Nothing to Stand On: "Offended Observers" and the Ten*

*Commandments*.<sup>7</sup> Lorence's advocacy includes [fighting](#) against the rights of the LGBTQ community, with specific focus on the right to marry.

The Rushing-Lorence [article](#) criticizes and demeans those who seek to enforce the First Amendment's Establishment Clause, arguing that the Court's standing jurisprudence "provide[s] a loophole for every village secularist to charge into court with the ACLU and challenge governmental acknowledgements of religion, no matter how passive or benign. These delicate plaintiffs with eggshell sensitivities—who claim deep offense at the acknowledgement of any beliefs that conflict with their own—then seek court orders censoring the religious message, as a type of 'heckler's veto.'"<sup>8</sup>

Rushing and Lorence continue: "[o]nce these hecklers are allowed in court, their opinions override those of the rest of the population, including our duly elected representatives in the government. Granting anti-religious observers veto power to drive all religious references from the public square replaces a 'sense of proportion and fit with uncompromising rigidity at a costly price to the values of the First Amendment.'"<sup>9</sup>

In addition to writing this article, skeptical of efforts to enforce separation of church and state, Rushing has used her platform as a conservative lawyer to mentor other ideologues through ADF's [controversial](#)

Blackstone Legal Fellowship program. As described in one article, ADF develops and promotes "legal actions and its various legal training programs" – such as the Blackstone Legal Fellowship program – to focus "on fighting for the criminalization of abortion; against the rights of LGBT people; for so-called religious liberty (which often comes in the form of defending clients who wish to discriminate against gay people based on their religious beliefs); and for organized Christian prayer in government or public-school settings."

Rushing spoke to lawyers and law students at least three times through the Blackstone Legal Fellowship program, in 2013, 2015, and as recently as 2017. Her affiliation with these organizations demonstrates her commitment to the conservative legal movement, which is no doubt one reason why she was selected for a federal judgeship.

## DEFENSE OF MARRIAGE ACT

In 2013, Rushing participated in a panel at Capitol Hill Baptist Church [titled](#) "*Henry Forum: 'Enemies of Mankind': Religion and Morality in the Supreme Court's Same-Sex Marriage Jurisprudence*."<sup>10</sup> In this discussion, Rushing frequently referenced Justice Antonin Scalia's

opinion that the holding in *United States v. Windsor*, 570 U.S. 744 (2013), departed from “traditional” concepts of marriage and morality.

Rushing [said](#) that the Defense of Marriage Act (DOMA) “explicitly stated that its purpose was ‘protecting the traditional moral teachings reflected in heterosexual-only marriage laws’” and that “[t]he congressional record indicated that DOMA reflected ‘moral disapproval of homosexuality, and a moral conviction that heterosexuality better comports with traditional (especially Judeo-Christian) morality.’”<sup>11</sup>

Rushing then [highlighted](#) the dissenting justices in *Windsor* who emphasized “the fact that DOMA codified the definition of marriage that had prevailed throughout most of human history and, at the time of DOMA’s enactment, had been adopted by every State in the nation and every nation in the world, was evidence that the law did have a valid basis, or at least explained how lawmakers could enact such a law motivated by something other than hatred.”<sup>12</sup> Additionally, she noted how “[m]ost interestingly, the dissenters observed that the majority could have decided the case on legal principles that would have accused DOMA’s supporters simply of making a legal error, which is an error that one could make in good faith. But instead, the majority chose the [sic] write the

opinion in a unique way that calls it bigotry to believe that homosexuality does not comport with Judeo-Christian morality.”<sup>13</sup>

Rushing’s characterizations show an affinity for the dissent’s arguments in *Windsor*, presenting support of DOMA in a positive light and favorably comparing Justice Scalia’s dissent to Justice Anthony Kennedy’s majority opinion. This is especially disturbing at a time when the LGBTQ community faces incredible hostility from the Trump Administration and threats to its rights in the courts.

## CONCLUSION

Allison Rushing’s nomination is part of Trump’s takeover of the courts. Rushing exemplifies the young, minimally qualified and highly ideological type of judicial nominee that the Trump Administration has sought since it began. Like many other Trump nominees, she appears to have been chosen on the basis of her record of commitment to conservative causes and organizations rather than her legal career and experience. This raises serious questions about her ability to be an impartial arbiter in the courtroom, and to protect justice and equality for all, not just the privileged few. AFJ opposes her confirmation.

## ENDNOTES

- 1 Sen. Comm. On the Judiciary, 115th Cong., Allison Jones Rushing Questionnaire for Judicial Nominees, at 1-5.
- 2 See Southern Poverty Law Center, Extremist Files: Alliance Defending Freedom, available at <https://www.splcenter.org/fighting-hate/extremist-files/group/alliance-defending-freedom>.
- 3 Reply Brief for the Petitioners in Support of Certiorari at 2, *Ernst & Young LLP v. Morris*, 138 S. Ct. 1612 (2018) (No. 16-300) (“even if the NLRA were considered in isolation—which it decidedly should not be—it is best understood as leaving arbitration agreements and court rules for collective actions undisturbed, and as permitting covered employees to waive access to collective-litigation procedures and to agree to individual arbitration.”).
- 4 Sen. Comm. On the Judiciary, 115th Cong., Allison Jones Rushing Questionnaire for Judicial Nominees, at 2-3.
- 5 *Supra* note 1.
- 6 *Id.*
- 7 Allison Jones and Jordan Lorence, *Nothing to Stand On: “Offended Observers” and the Ten Commandments*, 6 Engage 138 (2005), available at <https://www.afj.org/wp-content/uploads/2018/10/Allison-Rushing-Nothing-to-Stand-On-Offended-Observers.pdf>.
- 8 *Id.*
- 9 *Id.* at 140.
- 10 Allison Jones Rushing, Co-Speaker, “Henry Forum: ‘Enemies of Mankind’: Religion and Morality in the Supreme Court’s Same-Sex Marriage Jurisprudence,” Capitol Hill Baptist Church (Oct. 30, 2013), available at <https://www.afj.org/wp-content/uploads/2018/10/Rushing-Religion-and-Morality-in-the-Supreme-Courts-Same-Sex-Marriage-Jurisprudence.pdf>.
- 11 *Id.* at 2.
- 12 *Id.* at 9.
- 13 *Id.*