

ALLIANCE FOR JUSTICE REPORT

# Nomination of Kathryn Mizelle

*District Court for the Middle District of Florida*



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Alliance for Justice Report:

# Kathryn Mizelle

## Introduction

On August 12, 2020, President Trump [announced](#) his intent to nominate Kathryn Kimball Mizelle to the U.S. District Court for the Middle District of Florida. If confirmed, she would take the seat of Judge Virginia M. Hernandez Covington, who took senior status on July 7, 2020. Mizelle has an appalling lack of qualifications to be a district court judge; the only apparent rationale for nomination is her extreme ideology and connection to high ranking ultraconservatives, not the ability to be a fair and unbiased jurist. Alliance for Justice strongly opposes her confirmation.

Mizelle graduated from University of Florida Law School in 2012. After law school, she clerked for Judge James Moody in the Middle District of Florida, Judge William Pryor on the Eleventh Circuit, Greg Katsas on the D.C. Circuit, and Supreme Court Justice Clarence Thomas. She served for brief stints at the U.S. Attorney's Office in Virginia and Tax Division at the Justice Department, before serving as Counsel to the Associate Attorney General from 2017-2018. Since 2019, she has been an associate at Jones Day.

## Lack of Experience

The law firm Jones Day, where Mizelle serves as an associate, believes an attorney should [have a minimum of nine and a half years](#) of experience before being considered for partner. Mizelle graduated law school just [eight](#) years ago; and she spent four of those eight years clerking. During her entire career, she has tried [two cases](#) to verdict; she was co-counsel in one and associate counsel in the other. By her own [admission](#), she has conducted the direct examination of only *one* expert witness.

She does not appear to have been entrusted by her firm or any client to be lead counsel, appear before a jury, defend or take witness depositions, argue motions or appeals at any level, select a jury, try a case, or otherwise handle the types of responsibilities that judges are expected to oversee. Her only experience highlighted on her firm's website is a [brief](#) to the D.C. Circuit, where she is listed fourth in seniority.

In Senate paperwork, Mizelle emphasized her work in the Tax Division at the Justice Department, [stating](#) "I represented the United States in criminal cases

during investigation, trial court proceedings, appeals, and post-conviction litigation.” Yet, she conceded in a recent [interview](#) that, instead of gaining valuable courtroom experience, “most of the time was spent reviewing documents and preparing for witness interviews or grand jury.”

In her own words, her work history is that of a junior lawyer and is decidedly not meaningful preparation for managing a trial courtroom or the awesome power of determining the rights, liberty, or in some cases, life of litigants as a judge.

A comparison is useful. In 2012, Obama nominated [Stephanie Rose](#), 39, to be a district court judge in Iowa, the [youngest judge](#) at the time. Rose, who enjoyed bipartisan support, including from [Senator Chuck Grassley](#), had been a career federal prosecutor for 12 years, had been involved in over 800 criminal cases - at least 250 as lead counsel – and 45 civil cases. She tried 33 cases to verdict. A far cry from the two cases Mizelle participated in as co-counsel.

***Given her lack of experience, it becomes clear that Mizelle was nominated because of her right-wing ideology and ultraconservative credentials, not her ability to be a fair and unbiased jurist.***

## Health Care

Donald Trump has made clear that one of his [litmus tests](#) is to appoint judges who, if given the opportunity, will erode the health care of the American people.

It is telling that the only experience listed on her law firm biography [page](#) is a brief filed on behalf of the Chamber of Commerce opposing a request by the AFL-CIO that the Occupational Safety and Health Administration (OSHA) establish emergency safety procedures in workplaces to protect workers during the COVID-19 pandemic. In response to the AFL-CIO’s [request](#), Mizelle assisted with a [brief](#) arguing that OSHA’s existing standards were enough to protect workers from the highly contagious virus. A panel on the D.C. Circuit, which included Trump judge Neomi Rao, [rejected](#) the AFL-CIO’s request.

At an event this year introducing Justice Clarence Thomas, whom Mizelle clerked for and taught a class with, Mizelle [introduced](#) her former boss as, “the greatest living American.” In addition to his consistent rulings against equality for women and LGBTQ Americans, voting rights, immigrants, workers, consumers, and the environment, Justice Thomas would have [held](#) the entire ACA unconstitutional and ripped health insurance from [millions](#), including people with preexisting conditions.

At the same event, Mizelle [introduced](#) Trump nominee Judge Gregory Katsas, for whom she also clerked, and said of him, “I am convinced there is no human being better to serve on that court.” Prior to his confirmation to the D.C. Circuit, Katsas’ most significant work as a lawyer was representing the National Federation of Independent Business (NFIB) in its challenge to the ACA in [NFIB v. Sebelius](#). Like Justice Thomas, had he been successful, millions of Americans would have lost health insurance and critical protections against insurance

companies would have been eviscerated.

It says a lot about her own values that the two judges she so deeply admires have worked so tirelessly to erode health care.

## Ultraconservative Credentials

Mizelle has [clerked](#) for some of the most conservative judges – William Pryor, Greg Katsas and Clarence Thomas. She worked under Jeff Sessions in the Justice Department and was involved in advancing an anti-civil rights agenda. [Her husband](#) is acting general counsel of the Department of Homeland Security, an “[ally](#)” of Stephen Miller. She personally [knows](#) Carrie Severino, chief counsel at the Judicial Crisis Network.

Like other Trump nominees, moreover, she has [strong ties](#) to the ultraconservative Federalist Society. She has been a [member](#) since 2012 and spent three years on the D.C. Young Lawyers Chapter Steering Committee. She is also a member of the lesser known Teneo Network, [described](#) by the National Review as “a network of young conservatives, doing what they can to advance conservative principles.” Teneo [described](#) itself as “an organization of exceptional young professionals under 40 years of age committed to advancing conservative and libertarian ideas.” Members “commit ourselves to...innovative applications of conservative principles.” In 2017, she was a [fellow](#) with the Claremont Institute, an organization whose president [believes](#) that “multiculturalism and its politics of identity pose an existential threat to the American political order.” Most recently, the Claremont Institute has been behind a “birther” [campaign](#) against Kamala Harris, which is falsely claiming Harris is not a U.S. citizen because she is the child of immigrants.

## Civil Rights

Mizelle [served](#) as Counsel to the Associate Attorney at the Department of Justice under Attorney General Jeff Sessions. There, she “advised on litigation handled by the Department’s Civil and Civil Rights Divisions.” Sessions’ most notable legacy as Attorney General was his work [eroding](#) critical civil rights, [defending](#) Trump’s Muslim travel ban, filling a brief [arguing](#) that civil rights laws do not protect individuals from discrimination based on their sexual orientation or gender identity, and [rescinding](#) guidance protecting transgender Americans. He [withdrew](#) the Department’s position that Texas had adopted a voter ID law for discriminatory reasons and [sided](#) with Ohio’s voter purge designed to make it more difficult for minorities to vote. He also [dropped](#) oversight of police departments that have a pattern or practice of unconstitutional policing.

During the Senate confirmation process, the Senate has an obligation to determine exactly which matters she worked on at the Justice Department in order to probe her own commitment to proper application of some of our nation’s most critical laws, which she will be charged with applying as a judge.

## Extreme Views

Mizelle takes an extreme approach to her originalist legal philosophy. In [remarks](#) to the Federalist Society, she discussed how she prepared for her clerkship with Justice Thomas, explaining, “by night I studied the original meaning of the constitution, like whether paper money is constitutional. It is not.” Proponents of such a view argue that the Constitution [grants](#) Congress the power “to coin Money, [and] regulate the Value thereof,” however, it does not allow for the creation of paper with monetary value. Of course, for 150 years paper money has been recognized as [constitutional](#); and, it is obviously the basis for the entire U.S., and world, economy.

As the American Anti-Defamation League (ADL) [has pointed out](#), Mizelle’s view is widely held among “an extreme anti-government movement whose members believe the government has no authority over them.” Such a belief is extreme and dangerous. Robert Bork himself [noted](#), “if a judge today were to decide that paper money is unconstitutional, we would think he ought to be accompanied not by a law clerk but by a guardian.” As Trump judge Amy Coney Barrett [put it](#): “Adherence to originalism arguably requires, for example, the dismantling of the administrative state, the invalidation of paper money, and the reversal of *Brown v. Board of Education*.”

To believe that paper money is unconstitutional because the word “coinage” but not “paper” appears in the Constitution likely means that, for Mizelle, any power or right not expressly stated or enumerated in the constitution must not exist. It [raises](#) serious questions about Mizelle’s commitment to proper application of scores of constitutional rights and protections that are essential to ensuring civil rights, reproductive rights, LGBTQ equality, Social Security, and the federal government’s ability to protect the health and safety of its citizens.

In fact, Mizelle [considers](#) Justice Scalia’s comment that Justice Thomas is a “blood-thirsty originalist” to be a compliment, and has praised Thomas’ “courage” in taking “the commitment to originalism to new heights . . . regardless of outcome.” As noted above, Thomas has fought civil rights and protections for women and LGBTQ Americans. In recent years, Justice Thomas has [argued](#) against respecting decades of precedent established by Supreme Court decisions, including [Batson v. Kentucky](#), which prohibited striking jurors from serving on a jury based on race; [Gideon v. Wainwright](#), which established a criminal defendants’ right to effective counsel; and [Mapp v. Ohio](#), which held that “all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.” He has also [argued](#) that the Voting Rights Act doesn’t apply to redistricting.

If this is the commitment to “originalism” Mizelle celebrates and intends to emulate, if she is confirmed millions of people in Florida will have their rights eroded for decades to come.

## Conclusion

Mizelle lacks the necessary legal experience to take a lifetime seat on the federal bench. It is clear from her lack of experience that she was nominated solely because she has demonstrated her commitment to advancing the conservative interests of the moment and undermining the civil rights of everyday Americans. The Senate should oppose her confirmation to the bench.