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33-Year-Old Trump Judicial Pick Attacked Over Experience

By **Andrew Kragie**

Law360 (August 21, 2020, 5:26 PM EDT) -- Liberal advocates are lambasting President Donald Trump's youthful pick for a Florida federal judgeship, questioning the trial experience of a Jones Day associate who graduated law school in 2012 and would be the youngest federal judge in over 30 years.

Middle District of Florida nominee Kathryn Kimball Mizelle, who turned 33 last month, is the youngest selection yet from a president who touts young judges likely to serve for decades. Conservatives praise Mizelle's four years with the U.S. Department of Justice, mostly as a Tax Division trial attorney, and her four federal clerkships, including at the U.S. Supreme Court. Liberals say the Federalist Society regular is not qualified to oversee a federal district court after trying two cases to verdict in the eight years since graduating law school.

"What stands out to me is her astonishing lack of relevant experience," said Paul Gordon of People for the American Way. "You just need to have a lot of hands-on experience doing [litigation] in order to actually have the incredible responsibility of presiding over litigation where people's rights are at stake."

Three appellate clerkships have not equipped Mizelle to make instantaneous decisions about discovery, juries and evidence, argued Daniel Goldberg of the Alliance for Justice.

He pointed to Mizelle's biography on her firm's website, which lists only one item under Mizelle's experience: assisting with a U.S. Chamber of Commerce-led amicus brief in May on a **D.C. Circuit case** about workplace safety standards during the coronavirus pandemic.

The liberal advocates said Mizelle was selected for her conservative credentials.

"She'll be an ideologue from the bench," Goldberg said. "This is somebody with deep ties here in Washington to the advancement of right-wing ideological goals, as opposed to the neutral application of the law."

Mizelle clerked for jurists prominent in the conservative legal movement: Eleventh Circuit Judge William H. Pryor Jr., D.C. Circuit Judge Gregory G. Katsas and U.S. Supreme Court Justice Clarence Thomas, with whom she later co-taught a course on the First Amendment's religion clauses.

She held a leadership role in the Federalist Society's D.C. chapter and belongs to the Teneo Network, which describes itself as "extraordinary men and women from diverse fields who share a commitment to modern conservatism." After her high court stint, last year she joined Jones Day, which has represented Trump's **presidential campaigns** and provided many administration appointments.

Her family also has administration ties, not uncommon for nominees in any presidency. Her husband, Chad Mizelle, worked in the White House counsel's office and is currently the top lawyer

at the U.S. Department of Homeland Security. After a watchdog's **assessment** that acting DHS leaders were appointed illegally, Chad Mizelle made news with **his response** alleging that "something is afoot in the swamp."

Kathryn Mizelle did not respond to a detailed request for comment, but conservative advocates rejected the criticism.

"There is no question that she is very young, but that is a remarkable pedigree," said the Heritage Foundation's John Malcolm, who advises the Trump administration on judicial selection. "She is whip smart and she did clerk for a federal trial judge. I had that experience; you can learn a lot about good judging." Mizelle clerked for Judge James S. Moody Jr. in the Middle District of Florida.

Judicial Crisis Network president Carrie Severino, who knows Mizelle personally, called her "an incredibly brilliant lawyer who I think will very quickly adjust to that role." She said the nominee has plenty of courtroom experience, arguing that it was not significant she had tried only two cases to verdict because trials are rare.

Mizelle appeared frequently before judges and grand juries representing the Tax Division from 2014 to 2017, according to her Senate questionnaire. As a special assistant U.S. attorney in the Eastern District of Virginia for about a year, she "appeared in federal district court multiple times a week," she said. She also handled criminal jury trials while interning with a Florida prosecutor's office.

Mizelle is Trump's youngest judicial nominee yet, but not by much. A recent Alabama pick, **Edmund G. Lacour Jr.**, turned 35 in February. Fourth Circuit Judge Allison Jones Rushing also made headlines when she was **nominated** at 36. Southern District of Florida Judge Roy K. Altman turned 37 the year he was **selected**. And Judge Justin R. Walker was 37 when tapped for a Kentucky court **and then the D.C. Circuit**.

At least 22 other Trump appointees turned 38, 39 or 40 the year they were nominated, according to Federal Judicial Center data, which lists judges by birth year without date, obscuring precise ages.

Federal judges in their 30s are rare, though. Of the 570 federal district judges active mid-2017, just 3.8% were under 40 when appointed, the Congressional Research Service calculated.

Trump has prioritized youth to extend his appointees' average tenure. Last year, he proudly noted his circuit court picks were 10 years younger than President Barack Obama's at the same point. Sen. Lisa Murkowski, R-Alaska, told Alaska Public Media last year that the White House "has made it very clear they are looking for younger men and women to serve on the bench."

Severino charged that liberal advocates hypocritically ignore young Democratic picks such as Southern District of New York Judge Alison J. Nathan, whom Obama **tapped** the year she turned 39. However, Obama had few selections under 40 — of approximately 325 appointees, the youngest were four who turned 39 the year they were nominated.

If confirmed, Mizelle would be the youngest lifetime federal judge since 1986, when Judge Sidney A. Fitzwater joined the Northern District of Texas at age 32.

Although it is relatively late in an election year and the Senate has few weeks left in session, Mizelle could easily get approved this year as the Senate GOP prioritizes red-state selection. Several people familiar with Judiciary Committee planning said her confirmation hearing could come as soon as Sept. 9.

With her youth, conservative credentials and appellate clerkships, a district judgeship could put Mizelle in position for an appeals court if Trump wins a second term. The president has already elevated four of his district court picks.

Severino said a Judge Mizelle would be "one of the real shining stars of Trump's legacy."

--Editing by Peter Rozovsky.

*Law360 is **tracking Trump's judicial nominations** from the White House to the Senate to the federal bench.*

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