

ALLIANCE FOR JUSTICE SNAPSHOT

Trump's Supreme Court Shortlist:

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Joan Larsen, currently a judge on the U.S. Court of Appeals for the Sixth Circuit, is on President Trump's shortlist for the U.S. Supreme Court.

Reproductive Rights

President Trump has again and again reminded us that he will only put justices on the Supreme Court who will pass his litmus test of overturning *Roe v. Wade*. Trump said [overturning Roe](#) “will happen automatically... because I am putting pro-life justices on the court.” Larsen meets this test.

In 2019, Larsen voted to [allow](#) Ohio to eliminate state funding for Planned Parenthood. As the dissent noted, the decision rested on the false premises that “plaintiffs do not have a Fourteenth Amendment right to perform abortions” and that “[t]he Supreme Court has never identified a freestanding right to perform abortions.” This holding jeopardizes Ohioans’ access to vital, affordable health care, including STI testing, HIV/AIDS treatment, breast and ovarian cancer screenings, and access to contraception.

Larsen has also been highly [critical](#) of substantive due process, an essential constitutional doctrine for women’s rights and LGBTQ rights.

Protections For The Wealthy And Powerful Over Rights Of All

On the Sixth Circuit, Larsen has consistently ruled in favor of the wealthy and powerful over the rights of everyday people.

In one notable example, Larsen would have [prevented](#) Flint, Michigan residents, Shari Guerten and her daughter, who drank and bathed in lead-tainted water, from suing state and city officials for exposing them to contaminated water.

She also has regularly ruled against workers. For example, Larsen would have let a life insurance company [deny](#) benefits to a woman with leukemia who was unable to continue working on the grounds that she “did not meet the definition of disability.” In the case, medical records documented her debilitating symptoms, including fatigue and chronic bleeding. The woman’s doctor concluded that she “need[ed] to go out on disability” and did not “have

any work capacity.” The majority specifically noted that Principal Life ignored the doctor’s recommendation and the physically taxing job duties she had to perform as a nurse. Yet, Larsen argued that the insurance company should be extended “extreme deference” and that there was no “absolute requirement” for Principal Life to consider the woman’s actual job duties before determining she was able to perform the job.

She also [ruled](#) to allow a cable company to deny disability benefits to a sick employee even though the company unlawfully used the same doctor to evaluate — and reject — both the initial claim and the appeal.

She [dissented](#) from a ruling in favor of an employee whistleblower who brought a retaliation claim against her employer, the City of Flint, after she was unfairly fired for disclosing “unethical conduct” by the mayor, who was inappropriately funneling funds following the Flint water crisis. Similarly, she [voted](#), over a dissent, to dismiss a case brought by an airline employee who alleged she had been fired after filing multiple complaints warning that her boss — who oversaw production of maintenance manuals for pilots — was impeding work in a manner that compromised safety. Larsen found that the airline could reasonably interpret the worker’s complaints as mere disagreements with her supervisor, and thus the lawsuit could not even go to trial. Judge White, a George H.W. Bush appointee, dissented and noted that the employee had consistently raised public safety concerns.

In yet another example, Larsen [dismissed](#) a suit brought by workers against the Tennessee Valley Authority alleging that, in the wake of the 2009 financial crisis, the TVA slashed pension benefits without proper notice and in violation of the plan’s terms. Over a dissent, she held the workers could not even bring the suit because, in her opinion, the cuts “did not cause plaintiffs any harm.”

During Larsen’s bid for reelection to the Michigan Supreme Court, big business and billionaires, including Betsy DeVos, spent [heavily](#) to support her.

LGBTQ Equality

As a state supreme court justice, Larsen [failed](#) to give the Supreme Court’s ruling in [Obergefell v. Hodges](#) full effect: She refused to grant parental visitation rights to a lesbian mother who would have been married to her ex-partner had same-sex marriage been legal at the time the couple was together.

Larsen also took issue with the Supreme Court’s decision in [Lawrence v. Texas](#), the landmark case decriminalizing same-sex relationships. She [wrote](#), “It would be an understatement in the extreme to call the Supreme Court’s decision in *Lawrence v. Texas* revolutionary.” Larsen called the *Lawrence* decision “remarkable” and asserted that the majority’s reasoning in reaching its decision “should alarm us.”

On the Sixth Circuit, Larsen [joined](#) an opinion finding that a municipality violated anti-LGBTQ preachers' First Amendment rights. The preachers, who made anti-LGBTQ speeches for hours through amplified bullhorns at the 2015 Nashville Pride Festival, were removed after being warned that they did not have the required permit to continue disrupting the event from the location they were occupying. Nashville had argued that the police had acted to avoid a threat to public safety and to allow a permitted event to proceed. As the dissent articulated, "[A] municipality sought to regulate the position of a group of continuously disruptive speakers with bullhorns in order to prevent that group from interfering significantly with another group, which had secured a permit enabling it to use public land for its own expressive purpose." Moreover, "[t]he municipality regulated the first group's position in a way that did not silence them or seriously curtail their communication; it simply required them to cross the street."

Torture And Executive Power

Larsen has demonstrated extreme views when it comes to executive power. In 2006, she wrote an op-ed defending President George W. Bush's use of signing statements to limit the application of the McCain Amendment, which outlawed the use of torture against persons in custody in the U.S. Larsen [claimed](#) that "if circumstances arose in which the law would prevent [the president] from protecting the nation, he would choose the nation over the statute."

Larsen worked in the Office of Legal Counsel during the so-called "war on terror," when it issued some of its most controversial opinions. While her exact role in some of our nation's most troubling policies is not clear, in 2002 she [authored](#) a memo on detention and habeas corpus. At her Sixth Circuit nomination hearing, she was asked what subject matters she worked on at OLC, and she said "topics related to the war on terror."

Larsen also wrote a law review [article](#) in which she suggested that the congressional oversight system, including its oversight function, is unconstitutional.

At a time when the president acts as if he is above the law, Larsen's record supporting extensive presidential power is deeply troubling. One law professor [wrote](#) that Larsen's "enthusiasm for unchecked executive power should be profoundly worrying....We cannot afford judges who would grant President Trump extreme leeway to decide what statutes he may ignore in the interest of what so mercurial and unreliable a leader might deem 'protecting the nation.'"

Clean Air, Clean Water, And Climate

Larsen [held](#) that citizen groups representing communities along a proposed natural gas pipeline could not demonstrate an “injury-in-fact” against a gas company. The company received permits from the Ohio EPA to construct the pipeline, even though a leak in the line had the potential to cause pollution. Because Larsen found the groups did not have standing to challenge the permits, she stopped them from being able to further their claim. However, as the dissent explained, “The very fact that this is the only review process created for a very dangerous activity suggests that the petitioners have standing.” The dissent further argued that “[t]he petitioners have a clear interest in the outcome. They live close to the facilities in question. A leak could cause an explosion. If the proposed facilities are built, their property values may decrease, they may be exposed to air pollution, and their peace and quiet may be disturbed by two noisy factories.”

Larsen also voted to [reverse](#) a district court ruling that held that a federal agency must comply with the Endangered Species Act and the National Environmental Policy Act before approving plans by an oil pipeline operator to deal with the serious risks of oil spills.

Criminal Justice

Larsen has a troubling record when it comes to criminal justice. In 2019, she [joined](#) an opinion that reinstated an erroneous sentence of James Walker, a 65-year-old man who was convicted of possessing thirteen bullets that he had found in a rooming house he managed and removed for safekeeping. The 15-year sentence was based on mistaken interpretation of the Armed Career Criminal Act that resulted in sending Walker to prison for seven years longer than the law required. When Walker requested a rehearing, Larsen and the other five Trump-appointed judges on the Sixth Circuit refused to reconsider the decision, despite a strongly worded dissent by George W. Bush-appointed judge Kethledge, who called on the court to “correct our own mistakes.”

Police Misconduct

Larsen also has a troubling record when it comes to holding authorities, including law enforcement, accountable for constitutional violations. She regularly sides with officers who move to dismiss cases brought against them on the grounds that they have qualified immunity. As her opinions demonstrate, she is more than willing to stretch this doctrine well beyond its limits in order to shield police officers from liability.

In one illustrative case, she [dissented](#) from a ruling that three police officers were not entitled to qualified immunity after they shot a schizophrenic man who was in a state of “severe” psychosis, and then tasered him, even though, as one of the officers later admitted, he was unresponsive after being shot. As a result of the incident, the man is now “completely blind in his right eye. His face is severely disfigured. He no longer has a right cheekbone and his sinus cavity is exposed ... His nose remains broken, and his right nostril has caved in and will not permit air to flow to his lungs. He suffers from headaches and constant jaw pain.”

In another notable example, Larsen [overruled](#) a lower court’s decision to deny qualified immunity to four police officers who followed a black man around Walmart, and then questioned him in a parking lot after he lawfully purchased space heaters and other items. The officers told Christopher Lee-Murray Bey that they were investigating “retail or credit card fraud.” Bey cooperated with the officer’s inspection of his credit card and receipt and also informed them that he had a gun, which he showed them along with his license. Because the license was expired, the officers decided to arrest Bey. At trial, Bey moved to have evidence of the gun thrown out because it had been discovered as a result of an unlawful police stop and the district court judge agreed and threw out the case. Bey then brought a lawsuit alleging violations of his Fourth Amendment rights, and a lower court rejected the officers’ motion to dismiss based on qualified immunity. On appeal, Larsen overruled the lower court and found that the officers should be shielded from liability for the unlawful search. Judge Clay, in dissent, argued that the only crime Bey was guilty of was “shopping while black,” and warned that Larsen’s opinion “incentivizes other officers to engage in race-based policing and commit future constitutional violations.”

Education

Larsen voted to [reverse](#) a Sixth Circuit panel decision that ruled the Fourteenth Amendment’s Due Process Clause protects a fundamental right to a “basic minimum education” that is potentially violated when the state fails to provide adequate public schools and foundational literacy. The case involved students at several of Detroit’s worst performing public schools, which had missing or unqualified teachers, physically dangerous facilities, and inadequate books and materials.

Immigration

Larsen voted to [uphold](#) the deportation of Luis Eduardo Cuellar Garcia, an immigrant who had received legal status to remain in the country after a court found that he had fled El Salvador as a child to escape gang violence and he could not return to the country due to “insufficient parental protection.” The government relied on a “new, unwritten and informal” policy to justify bringing

removal proceedings against Garcia in immigration court, and Thapar and Larsen agreed with its reasoning over the strong objections of Judge Merritt.