

ALLIANCE FOR JUSTICE SNAPSHOT

*Trump's Supreme Court Shortlist:*  
**Raymond Kethledge**



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# Raymond Kethledge

*Raymond Kethledge, 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.*

## Protections for the Wealthy and Powerful Over the Rights of All

Kethledge has repeatedly affirmed his desire to tie the hands of the agencies that Congress has recognized as having the knowledge and experience to enforce critical laws, safeguard essential protections, and ensure the health and safety of the public. Kethledge [dissented](#) from an opinion allowing agencies to enforce vital consumer, environmental, and workplace protections in 2019 and [wrote](#) an article in 2017 criticizing the power of such agencies. He also [ruled](#) in favor of a creditor and against a class action in a lawsuit brought by a lawyer who accused a debt-collecting law firm of violating the Fair Debt Collection Practices Act (FDCPA) by unfairly charging garnishment fees.

On the Sixth Circuit, Kethledge has also consistently ruled against the rights of workers. Kethledge [upheld](#) the denial of disability benefits to an employee suffering from chronic lower-back pain, chronic neck pain, cervical radiculopathy, lumbar radiculopathy, chronic migraine headaches, fatigue, mood swings, anxiety, and Crohn's disease. Under the strict definition of disability adopted by Kethledge, the employee was not entitled to disability payments because there were other jobs he could perform. In another case, he [upheld](#) a Michigan law that was passed explicitly to retaliate against teachers engaging in their constitutional right to organize and argued to reduce major protections for [firefighters](#) and [nurses](#). Kethledge also [dissented](#) from a ruling in favor of an employee alleging serious sexual harassment and workplace abuse in a Title VII retaliation claim, stating that the "mere temporal proximity" between the victim's complaint of groping and repeated verbal abuse and the employer's retaliation was insufficient to show a violation of the law.

Kethledge [upheld](#) dismissal of a lawsuit alleging that thousands of inmates in a Tennessee prison were known to have hepatitis C and were not receiving treatment, and that thousands of other inmates went untested. By [2019](#), 4,740 of the 21,000 inmates in Tennessee's prisons had hepatitis C; 81 died from hepatitis C just since direct-acting antivirals became available. A majority of the Sixth Circuit panel, including Kethledge, found that the medical director did not act with "deliberate indifference to [the inmates] serious medical needs,"

particularly emphasizing the high cost of treatment. In dissent, Judge Ronald Lee Gilman argued that cost may be a factor in a treatment consideration, but cost does not remove a state's obligation for the treatment of people in its care. Moreover, he said, nothing in the record showed that the medical director had even asked for enough funding to treat all inmates suffering from hepatitis C.

## LGBTQ Equality

Kethledge [rejected](#) a claim of workplace harassment by an employee who had been repeatedly groped and verbally harassed, because Kethledge believed there was no “credible evidence that the harasser was homosexual.” The victim in the case was an oil rig worker who was sexually harassed until he was forced to leave his job. Kethledge argued that because the employee had failed to prove that his harasser was homosexual, he could not prove that the physical and verbal harassment he experienced was based on his gender. Kethledge's narrow view of same-sex sexual harassment allows workplace predators to go unpunished and was [rejected](#) by [multiple federal courts](#) in similar cases.

## Reproductive Rights

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.”

In 2019, Kethledge 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.

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

## Clean Air, Clean Water, and Climate

Unlike a majority of the Sixth Circuit, Kethledge 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.

In addition, he ruled [against](#) the ability of environmental groups and private citizens to hold Ohio polluters accountable under the Clean Air Act.

## Voting Rights and Racial Justice

Kethledge [ruled](#) in favor of a Michigan law that removed straight-ticket voting options from the ballot, which the district court judge had [found](#) intentionally [discriminated](#) against black voters. Kethledge wrote separately to accuse the lower court of “equating partisan motives with racial ones,” despite [evidence](#) of a strong relationship between the straight-ticket option and race.

He also [ruled](#) in favor of the Ohio Republican Party when it sued the state to block a [directive](#) that prevented typos and clerical errors in government databases from disenfranchising voters. The ruling forced these voters to vote “provisionally,” if they were able to vote at all. Kethledge’s holding would have prevented as many as [200,000](#) otherwise eligible voters from casting their ballots. The Supreme Court promptly [vacated](#) the decision and allowed the votes to be counted.

Kethledge voted to deny African Americans access to the courts to challenge documents that contain racially discriminatory language. In determining that deeds containing clauses prohibiting sale to African Americans may continue to be reproduced, he signed on to an [opinion](#) that suggested African Americans could never even bring a lawsuit asking courts to modify documents that “perpetuate discrimination or the badges and incidents of slavery.” The opinion minimizes the African-American plaintiff’s objection to the reproduction of racial covenants as simply “discomfort at the expression of historical language,” as the concurrence noted.

## Criminal Justice

Kethledge has a troubling record when it comes to criminal justice issues. In two illustrative cases, Kethledge has shown his willingness to go out of his way in order to rule against incarcerated individuals. In the first, Kethledge joined an opinion that [denied](#) an individual the opportunity to challenge his sentence after a change in the law meant that his initial sentence was improper. The result was that Ramon Hueso had to stay in prison for another ten years even though, under the new law, he should have been released immediately. In the other case, he voted to [deny](#) Michael Bailey’s request to have his conviction reviewed by the court. Bailey argued that the Ohio parole board had relied on incorrect and inflammatory records about the nature of an underlying conviction when they sentenced him. Kethledge joined an opinion arguing that relief is unavailable to a state prisoner who cannot show that, “but for” an

alleged constitutional violation, there “would” be a change in custody status. According to the searing dissent, this was misapplication of binding precedent and a denial of justice.

## Individual Rights and Privacy

Kethledge would allow the government to collect information from a private cell phone [without](#) a warrant, a position now [rejected](#) by the Supreme Court. Despite Michigan’s rape-shield law, Kethledge wrote a [dissent](#) that would have found a rape survivor’s sexual history relevant at trial. Kethledge, in a [conurrence](#), would have condoned the actions of police who forcibly [kneed](#) an elderly man who was being held on the ground by two officers, fracturing his ribs.

## Immigrants’ Rights

Kethledge [rejected](#) a challenge to the U.S. Border Patrol’s practices, which appeared to “target persons of Hispanic appearance for questioning.” In his opinion, Kethledge wrote that Border Patrol agents used the derogatory terms “wets” and “tonks” as “terms of art to refer to undocumented persons generally, rather than Hispanics specifically.”

## Education

Kethledge 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.