



Allison Jones Rushing

Potential SCOTUS Nominee

COURT

United States Court of Appeals for the Fourth Circuit

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. Before her time on the bench, Rushing worked for Alliance for Defending Freedom, a conservative hate group. Rushing also worked for years as a corporate appellate lawyer, frequently collaborating with Kannon Shanmugam, a well-known conservative attorney who clerked for Justice Antonin Scalia of the Supreme Court. Rushing's clients included a number of huge corporations, including Bank of America, Ernst & Young, and Eli Lilly. Rushing has been a member of the Federalist Society since 2015. She also served as a legal advisor to Mitt Romney's presidential campaign.

Since joining the Fourth Circuit, Rushing has made it a point to defend several of Trump's authoritarian, right-wing policies. She's also ruled in cases that make it harder for people to exercise their fundamental right to vote, for those who are incarcerated to access public media, and for employees to receive justice in the face of discrimination and retaliation. Rushing's track record proves she is not only well-connected to right wing causes, but also that she is willing to go one step further and rule in favor of an authoritarian agenda. If nominated and confirmed to the Supreme Court, Rushing would undoubtedly continue to enable Trump's authoritarian agenda and rule in favor of right-wing causes rather than follow the rule of law. She is unfit and unqualified for a lifetime role on the most powerful court in the United States.

Biography

Allison Jones Rushing graduated from Duke University School of Law in 2007. During law school, Rushing interned for the Alliance Defending Freedom, a right-wing, conservative Christian nonprofit organization that the Southern Poverty Law Center has identified as an anti-LGBTQ+ hate group. While at ADF, Rushing wrote several amicus briefs and spoke at a number of their events. Allison Jones Rushing graduated from Duke University School of Law in 2007. During law school, Rushing interned for the Alliance Defending Freedom, a right-wing, conservative Christian nonprofit organization that the Southern Poverty Law Center has identified as an anti-LGBTQ+ hate group. While at

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After graduation, Rushing served as a law clerk for then-Judge Neil Gorsuch of the United States Court of Appeals for the Tenth Circuit from 2007 to 2008. She went on to clerk for Judge David Sentelle on the U.S. Court of Appeals for the District of Columbia Circuit from 2008 to 2009. From 2009 to 2010, she returned to Williams & Connolly, where she had previously worked as a summer associate. She left after one year to clerk for Justice Clarence Thomas on the Supreme Court from 2010 to 2011. After this clerkship, she returned to Williams & Connolly and eventually became partner. 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). In the case, Rushing **argued** that employees who were denied overtime pay could then be deprived by their employers of the right to unite and combine their cases together in arbitration under the National Labor Relations Act. In a 5–4 decision, the Supreme Court ruled to make it harder for workers to enforce their rights.

She continued her work at the firm until she was appointed to the Fourth Circuit in 2018.

Before the Bench

Alliance Defending Freedom

Rushing worked as a legal intern at ADF, 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. 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.”

Rushing co-authored a 2005 article with then-ADF Senior Counsel Jordan Lorence titled Nothing to Stand On: “Offended Observers” and the Ten Commandments. Lorence has spent his career advocating for right-wing causes, using the First Amendment jurisprudence as a tool. His advocacy has included fighting against the rights of the LGBTQ+ community, with a 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.’” Rushing and Lorence continue: “Once 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.’”

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. 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.”

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.” In this discussion, Rushing frequently referenced Justice Antonin Scalia’s opinion that the holding in *United States v. Windsor* (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.’”

Rushing then highlighted the dissenting justices in *Windsor*:

“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 it at least explained how lawmakers could enact such a law motivated by something other than hatred.” 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.”

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.

Time on the Fourth Circuit

Since joining the bench in 2018, Rushing has penned a number of concerning opinions that reveal how she would rule

if elevated to the highest bench in our country. In several of her decisions, Rushing goes out of her way to make legal arguments that defend Trump's authoritarian policies.

- ***Maryland v. USDA*** – Executive power to terminate probationary employees
 - Rushing sided with the Trump administration when it terminated thousands of probationary federal government employees. She entered an order staying an injunction from the lower court, which had argued that the government's terminations failed to follow the proper procedures for a reduction in force, such as providing notice to the states. Rushing's decision cut off the states' ability to hold the federal government accountable when it suddenly terminated employees with insufficient notice.
- ***Nat'l Ass'n of Diversity Officers in Higher Educ. v. Donald J. Trump*** – Executive power
 - In this case, the Fourth Circuit granted the government's request for a stay pending appeal of a nationwide injunction that banned the government from enforcing two of Trump's DEI-related executive orders. In her concurrence, Rushing chided the district court judge for "overreaching" and emphasized that a judge's personal opinion on DEI programs should play no part in deciding a case.

These two cases provide insight into Rushing's judicial philosophy. Rushing has also authored opinions that reveal her hesitation to allow employees to find justice in the face of plausible discrimination and retaliation, that reduce the ability of people in prison to have access to public media, and that make it more difficult for everyday people's votes to count in elections. Rushing has already used her power to enable authoritarian policies, harm those seeking justice, and make it harder for basic rights to be vindicated through the judicial system. If confirmed to a position with more power — the highest court in the land — she will inevitably carry out an even more damaging legacy.