



Neomi Rao

Potential SCOTUS Nominee

COURT

U.S. Court of Appeals for the
D.C. Circuit

Introduction

Born in 1973 to immigrant physician parents from India, Neomi Jehangir Rao grew up in Bloomfield Hills, Michigan and attended Yale University as an undergraduate, earning a B.A. in 1995. She then spent a year working as a reporter for The Weekly Standard, a neoconservative political magazine. She attended the University of Chicago Law School from 1996 to 1999 and received her J.D. in 1999. During law school, Rao clerked at the Koch-funded Institute for Justice and served as a summer associate for both Gibson, Dunn & Crutcher LLP and Williams & Connolly LLP.

After she graduated law school, Rao clerked for Judge J. Harvie Wilkinson III on the U.S. Court of Appeals for the Fourth Circuit from 1999 to 2000. From 2000–2001, Rao served as counsel for nominations and constitutional law to the U.S. Senate Committee on the Judiciary. She then clerked for Supreme Court Justice Clarence Thomas from 2001–2002. Following her clerkship, Rao entered private practice at the London office of Clifford Chance LLP from 2002 to 2005. Her practice there included commercial law and public international law arbitrations. In 2005, Rao left private practice to serve as the associate counsel and special assistant to the president during the second Bush administration.

Following her time at the White House, Rao became a professor of law at George Mason University. She taught courses on constitutional law, comparative constitutional law, legislation and statutory interpretation, and administrative law. While at George Mason, Rao led efforts to change the name of the law school in honor of Justice Antonin Scalia, following a multi-million-dollar donation from the Charles Koch Foundation. Rao, along with the law school dean, also met with Leonard Leo, the influential executive at the Federalist Society who has played a key role in Trump's judicial appointments. Rao and Leo's personal relationship is evidenced by emails uncovered by student movement UnKoch My Campus through a Freedom of Information Act request.

Rao's affinity for Leo's Federalist Society began long before it gained notoriety as Trump's go-to source for federal judicial nominees. She joined at age 23 and has been a member for nearly thirty years. Rao frequently speaks at Federalist Society events, listing at least 32 Federalist Society speeches in her Senate Judiciary Questionnaire. Rao

also gave a 2016 [speech](#), “Executive Agency Overreach and Civil Justice,” at the Lawyers for Civil Justice National Conference. This [organization](#) advocates to limit individuals’ access to the courts. In 2018, she received the Heritage Foundation Distinguished Alumni Award.

During her tenure at Antonin Scalia Law School, Rao founded the Center for the Study of the Administrative State, a Koch-funded think tank focused on the constitutional and legal foundations of the administrative state. Consistent with the [agenda](#) of its wealthy and powerful benefactors, the center regularly advocates for a weakened administrative state and against protections for the environment, consumers, and workers.

On April 7, 2017, Trump nominated Rao to become the administrator of the Office of Information and Regulatory Affairs (OIRA). The Senate confirmed her on July 10, 2017, and she served as OIRA’s administrator until her nomination to the Court of Appeals for the D.C. Circuit.

On November 14, 2018, President Trump nominated Rao to fill the seat on the Court of Appeals for the D.C. Circuit left open by Justice Brett Kavanaugh after he was appointed to the Supreme Court. On March 13, 2019, the Senate confirmed Rao by a party-line vote of [53–46](#). On March 18, she received her judicial commission and was officially appointed to the Court of Appeals for the D.C. Circuit, where she continues to serve as a judge.

Sexual Assault Apologist and Opponent of Women’s Rights

Rao’s record contains deeply offensive statements regarding sexual assault, women’s rights, and gender equality. Writings from her twenties foreshadowed efforts throughout her career to undermine protections for women, assault survivors, and broader equality initiatives.

Many of Rao’s writings concern women’s rights and sexual assault on college campuses. Most notably, she suggested that survivors of sexual assault bear responsibility for violence committed against them if they drink alcohol or fail to exercise control over their “sexuality.”

In a 1994 [article](#) titled “Shades of Gray,” Rao appeared to place responsibility for sexual assault on survivors who consume alcohol: “Unless someone made her drinks undetectably strong or forced them down her throat, a woman, like a man, decides when and how much to drink. And if she drinks to the point where she can no longer choose, well, getting to that point was a part of her choice.” Moreover, Rao offered her opinion that “[i]t has always seemed self-evident to me that even if I drank a lot, I would still be responsible for my actions.” While Rao conceded that someone “who rapes a drunk girl should be prosecuted,” she continued to blame survivors by arguing, “At the same time, a good way to avoid a potential date rape is to stay reasonably sober.”

In addition to perpetuating victim blaming, Rao downplayed the responsibility of those who perpetrate sexual assault at the expense of survivors. In another [article](#), she attacked the idea that consent is a simple concept that should be adhered to without exception. She argued that the “controversy” — referring to sexual assault and date rape — “has

been painted in terms of ‘yes’ and ‘no,’ reducing sex to something merely consensual.” Rao suggested that survivors who accuse men of sexual assault do so not because an assault occurred, but because “casual sex for women often leads to regret and a profound loss of self-esteem. This in turn can force women to run from their choices and actions.”

Rao went even further in her 1993 [article](#) “The Feminist Dilemma.” Rao contended that women’s “sexuality” is largely to blame for sexual violence. She argued that “when playing the modern dating game women have to understand and accept the consequences of their sexuality.” Women’s sexuality, in Rao’s view, is expressed in a way that goes beyond the “blatant signs” of choosing to “wear short skirts or bright lipstick.” According to Rao, “The battle against date rape is a reaction to the problems of a society without traditional protections for women.” She defended controversial academic Camille Paglia’s view that women bear a large amount of the responsibility for “date rape.” Rao wrote that Paglia “accurately describes the dangerous feminist idealism which teaches women that they are equal. Women believe falsely that they should be able to go anywhere with anyone. Their view of sex is naive and prudish.” Rao also argued that the focus should be on educating women about “the powerful effects of their sexuality” rather than attempting to change the bad behavior of men. Instead of holding perpetrators responsible for sexual assault, Rao claimed there are signals given off by women that cause “misunderstandings,” such as “subtle glances, ambiguous words.”

At a time when there is growing public awareness regarding sexual violence, Rao’s views — views that lay the blame for sexual violence on survivors — raise serious concerns about her fitness to serve in any position of public trust, much less on the Supreme Court.

Rao’s other writings demonstrate her broader hostility towards women’s equality. For example, in the “The Feminist Dilemma,” Rao [argued](#), “In exchange for access into the working world and sexual freedom, women have lost much of the previous caring and affection of men.” She criticized women who fight against structural inequality: “Women should be able to realize themselves as human beings without identifying themselves as a marginalized group. True liberation cannot come from coddling and support sessions. The real world will simply not wait for women to come out of therapy.” This callous perspective demonstrates Rao’s disregard for the real inequalities that women face every day, both then and now.

Rao has continued to espouse extreme anti-feminist beliefs throughout her legal career. At a 2014 Federalist Society [event](#), Rao [criticized](#) the Violence Against Women Act (VAWA), a landmark law with bipartisan support that protects survivors of sexual and domestic violence and seeks to root out sexual violence. In discussing Supreme Court precedent, Rao stated: “So they’re able to invalidate things like the Guns Free School Zone Act or parts of the Violence Against Women Act, which are really kind of grandstanding statutes, which are largely covered by other state laws or something like that.” Rao continued, arguing that the Court won’t invalidate statutes “when it’s anything really important.”

By implying that parts of VAWA are “grandstanding” and unimportant, Rao further minimized the positive impact of

VAWA on survivors and families. A National Institutes of Health study found that, following the passage of VAWA, “the rate of intimate partner violence against females declined 53% between 1993 and 2008” and “[t]he number of victims of intimate partner violence declined, from approximately 2.1 million victimizations in 1994 to around 907,000 in 2010.” Moreover, “between 1993 and 2007, the number of intimate partner homicides of females decreased 26%, and the number of intimate partner homicides of males decreased 36%.”

Far from walking back any of these comments, in her notes for a 2018 speech, Rao said:

“When I was an undergraduate at Yale, now a number of years ago, I greatly enjoyed participating in the debates of that time with my classmates . . . We engaged in public debates, in writing in various newspapers and magazines . . . Although students at Yale were disproportionately of a progressive or liberal perspective, I found that my more conservative (sometimes contrarian) perspective was often sought out and treated with respect.”

Opponent of Abortion Rights

As an academic, Rao frequently used her ideas regarding “dignity” in constitutional law as an ideological framework to couch problematic stances regarding social justice. Using this framework, Rao cited “dignity” in expressing her opposition to a woman’s right to access abortion care.

For example, in a 2011 article titled “Three Concepts of Dignity,” Rao twisted the Supreme Court’s reasoning in *Planned Parenthood v. Casey* to allude to the fact that the “dignity” of fetuses should perhaps override the right of women to control decisions regarding their health care. Rao explained how the Casey plurality “explicitly connected dignity, autonomy, and choice” as “central to the liberty protected by the Fourteenth Amendment.” She then challenged this reasoning by stating that the plurality highlighted “the inherent dignity of a woman’s freedom to choose an abortion, but minimized the competing inherent dignity of the fetus to life.” In Rao’s view, courts “have often avoided the conflict by emphasizing the centrality of one of these dignities at the expense of the other.”

In another article titled “A Backdoor to Policy Making: The Use of Philosophers by the Supreme Court,” Rao described *Roe v. Wade* as “perhaps the most disputed decision in recent history” and argued that “there were many persuasive legal arguments against recognizing a constitutional right to abortion.” Notably, Rao asserted that “substantive due process arguably has no textual support in the Fourteenth Amendment Due Process Clause, and was at any rate severely discredited after the *Lochner* era.” In addition, Rao argued “most states have historically prohibited abortion.”

Opponent of Racial Justice

Under Rao’s leadership, OIRA supported the Department of Housing and Urban Development’s efforts to roll back a rule that protected against housing discrimination based on race. The relevant rule previously allowed courts to

consider disparate impact when evaluating housing discrimination claims. Previous protections, implemented in 2013, were reaffirmed in the landmark 2015 Supreme Court case *Texas Dep't of Housing and Cmty. Affairs v. Inclusive Cmty. Project, Inc.* The proposed roll back directly undermined this Supreme Court precedent. The current Trump administration has expanded on Rao's efforts, making it even more difficult to bring disparate impact housing claims. Additionally, Rao has frequently written disparagingly about racial justice. In a 1994 piece titled "How the Diversity Game is Played," Rao disparaged "multiculturalists," stating that "[s]ome people believe the multicultural movement exists only on the radical fringes, but it infects nearly every area of college life." She warned that "[u]nderneath their touchy-feely talk of tolerance, they seek to undermine American culture." In conclusion, Rao called diversity initiatives on campus a "silly little game."

In the same piece, Rao expressed disdain for women or people of color who identify strongly with their gender or ethnicity. She wrote, "Though the diversity bean counters consider me a minority (Asian Indian, if you're curious), I find myself in the awkward position of not considering my race and gender very important. To the 'multicultural police' this means I'm a 'traitor.'" Rao added, "Those who reject their assigned categories are called names: So-called conforming blacks are called 'oreos' by members of their own community, conservatives become 'fascists.'" Criticizing those who celebrate diversity of all forms, Rao wrote that "multiculturalism fans the flames of minority resentment against everybody else."

Rao also wrote dismissively about non-white, non-male affinity groups:

"The multiculturalists are not simply after political reform. Underneath their touchy-feely talk of tolerance, they seek to undermine American culture. They argue that culture, society and politics have been defined — and presumably defiled — by white, male heterosexuals hostile to their way of life. For example, homosexuals want to redefine marriage and parenthood; feminists in women's studies programs want to replace so-called male rationality with more sensitive responses common to wom[e]n. It may be kinder and gentler, but can you build a bridge with it?"

Rao also displayed biased ideas toward African Americans. For example, in discussing Henry Louis Gates and Cornel West, well-known black professors and public figures, Rao criticized not only the content of their book tour discussion in 1996, but also their speech patterns. Rao wrote that "[r]ace may be a hot, money-making issue," trivializing the actual issue of racism and those advocating for a more racially just society. Despite the "money-making" aspect of discussing race, she explained that "even West seems to realize that it can be talked to death." Her description of West is couched in racist terms: "His slow English transfixed the salt-and-pepper bourgeois audience . . . Gesticulating wildly with his white starched cuffs and cufflinks shining in the spotlight." Rao's personal critiques and word choice suggest an inability to arbitrate issues around civil rights in an unbiased manner.

Rao also wrote in a derogatory manner about affirmative action. In a book review, she discussed affirmative action as the "anointed dragon of liberal excess." In another article, she wrote that "Yale has dedicated itself to a relatively firm meritocracy, which drops its standards only for a few minorities, some legacies and a football player here or there." She also argued in a 2009 law review article that affirmative action diminishes the inherent dignity of minority

applicants: “Choosing to put out a separate entrance for minorities, not just a welcome mat, overlooks or minimizes the dignitary harms to individuals, even if that entrance is in front and not at the back of the building.”

In another article, Rao lamented:

“In this age of affirmative action, women’s rights, special rights for the handicapped and welfare for the indigent and lazy, elitism is a forgotten and embarrassing concept. Elitist ideals and social hierarchies are something from an unenlightened past. In our new feel-good era, everybody is okay, and political and academic standards can adjust to accommodate anyone.”

Finally, Rao has criticized efforts to address hate speech. In 2011, she wrote, “Yet the dignity of recognition protected by hate speech regulations runs headlong into the dignity of the speaker, a dignity protected by allowing the maximum degree of freedom of speech.” Rao’s article undervalues the impact of hateful rhetoric, especially in an era where racist hate speech has so often incited violence against minorities.

As the NAACP Legal Defense and Educational Fund (LDF) stated, Rao’s writings are “offensive” and fit into “a pattern of this Administration’s judicial nominees who demonstrate hostility to civil and human rights principles of equality. No litigant with a civil rights claim before her could trust she would fairly and impartially provide equal justice under the law.”

Opponent of LGBTQ+ Rights

Rao’s writings also demonstrate a hostility toward LGBTQ+ rights and equality. One notable example is a 1994 article she authored titled “Queer Politics.” In the article, Rao characterized the decades-long struggle for LGBTQ+ rights and equality as a part of “[t]rendy political movements” which, in her opinion, “have only recently added sexuality to the standard checklist of traits requiring tolerance.”

Later in the same article, Rao proposed that homophobia “is often more deeply rooted” than racism and sexism because people view “homosexuality as a behavior — and behaviors, unlike gender and race, are subject to change.” She explained her view that “[w]hen homosexuality is viewed as a correctable behavior, it can be judged as being immoral, unnatural, and contrary to religious doctrine.” She justified this kind of ideology by stating “no one knows whether sexuality is a biological phenomenon or a social construct. The truth may lie somewhere in the middle.”

Rao’s personal biases are also reflected in her commentary on *Lawrence v. Texas*, the Supreme Court case that held that laws criminalizing consensual sexual activity between same-sex individuals are unconstitutional. In a 2013 law review article, Rao minimized the holding and societal impact of *Lawrence* by describing the case as “about a right to particular sexual behavior.” In another article, Rao argued that “*Lawrence* expresses a strong preference for certain values but fails to articulate a coherent constitutional principle.”

In addition to her general animus towards LGBTQ+ rights, Rao has fought to undermine marriage equality. Rao began

publicly voicing her opposition to marriage equality in her twenties. In “How the Diversity Game is Played,” she criticized “homosexuals [who] want to redefine marriage and parenthood.”

On several occasions, Rao cloaked her anti-LGBTQ+ views using a concept she calls the “dignity of recognition.” As discussed below, she argued that this particular conception of dignity — one that recognizes the equal dignity of LGBTQ+ individuals to marry — does not belong in our constitutional jurisprudence. Rao expressed her problematic views regarding marriage equality using this “dignity of recognition” framework in a series of articles published prior to the historic 2015 Supreme Court decision in *Obergefell v. Hodges*, which established the constitutional right to marriage equality.

For example, in a 2013 article regarding *United States v. Windsor*, the case that struck down part of the discriminatory Defense against Marriage Act (“DOMA”), Rao espoused her view that the Court’s decision in *Windsor* was based on “the unusual right to recognition” and that its use of “dignity rights [has] a problematic relationship to individual rights and the structural protections of federalism.” Although Rao wrote that she might “support as a political matter” the shift in public opinion away from an “exclusionary definition of marriage,” she argued that states’ recognition of the dignity of marriage equality was “a novel constitutional right to recognition unconnected to any substantive right.”

Moreover, Rao has articulated her belief that the historic fight for marriage equality may have been unnecessary, as she considered options available to same-sex couples prior to *Obergefell* to be on equal footing with state-recognized marriage. In a 2011 article, Rao wrote dismissively of a concept that “requires the state adopt policies that express the equal worth of all individuals and their life choices, such as requiring gay marriage, not just legally equivalent civil unions, because of the expressive and symbolic importance of marriage.”

Opponent of Disability Rights

Rao has written numerous articles criticizing bans on “dwarf-tossing,” a degrading practice in which individuals throw people with dwarfism for sport or entertainment. The competitive practice is most commonly performed in bars, where little people are paid to be thrown onto mattresses or against Velcro walls. This practice has encouraged violence towards little people, even paralyzing one man who eventually died after he was picked up and thrown against his will.

Despite the real-world consequences of this vile practice, Rao is fixated on the theory that bans on dwarf-tossing violate the “dignity” of little people who wish to participate. She argued that a French ban on dwarf-tossing demonstrates how “concepts of dignity can be used to coerce individuals by forcing upon them a particular understanding of dignity.” Rao argues that the state’s restriction of such activity hinders an individual’s ability to make money, drawing parallels to prostitution and pornography.

The organization Little People of America wrote a letter urging the Senate to reject Rao’s confirmation to the D.C. Circuit because of her views on dwarf-tossing:

“We vehemently disagree with Ms. Rao’s view that banning dwarf tossing negates individual’s dignity. A ban on dwarf tossing event significantly reduces the risk of inevitable bodily harm to the person being tossed. We strongly support our community in having individual choice in every aspect of their lives and we advocate for equal employment opportunities so that our community need not be constrained to earning a living by being the recipient of a dehumanizing and injurious activity.”

As disability advocate Rebecca Cockley notes, “Dwarf tossing does not just put the person being tossed at risk, but the lives of other little people who are not associated at all with the activity, who go about their lives in society minding their own business.”

Rao’s unashamedly ableist writings and callous advocacy against bans on dwarf-tossing raise questions as to whether she will give proper effect to some of our nation’s most important laws ensuring equality for persons with disabilities.

Supports Efforts to Weaken Agency Oversight

Rao has taken radical stances on critical legal doctrines that have been crucial in ensuring that the federal government has the ability to protect health and safety, consumers, workers, and the environment. Rao suggested that the nondelegation doctrine, last used successfully in 1935 by a famously reactionary Supreme Court, should be revived. As Justice Scalia noted in *Whitman v. Am. Trucking Ass’n*, “We [the justices] have ‘almost never felt qualified to second guess Congress regarding the permissible degree of policy judgment that can be left to those executing or applying the law.’”

Nevertheless, despite over 90 years of precedent, the nondelegation doctrine is not dead according to Rao. In fact, she has written extensively in support of a more robust enforcement of the nondelegation doctrine. If confirmed, Rao would no doubt adhere to her promises by attempting to limit Congress’s ability to give federal agencies the ability to protect the health and safety of the American people.

Rao’s record shows she would tie the hands of precisely those agencies that Congress has recognized have the knowledge and experience to enforce critical laws, safeguard essential protections, and ensure the health and safety of the public. In a lecture for the Heritage Foundation, Rao argued for “more robust” judicial review, stating, “I think courts can provide more meaningful checks on agency action and authority, enforcing both statutory and constitutional due process. And we’ve seen over the past few years that the Supreme Court, particularly Justices Thomas, Alito, and Gorsuch, is engaged in a reconsideration of the non-delegation doctrine and the judicial deference doctrines.”

Opponent of Climate Justice

While in her twenties, Rao authored several articles expressing her disdain for environmentalism and her rejection of

mainstream scientific theories. She wrote derisively of “[t]he three major environmental bogeymen, the greenhouse effect, the depleting ozone layer, and the dangers of acid rain.” She criticized environmental groups at Yale for “accept[ing] issues such as global warming as truth with no reference to the prevailing scientific doubts.” Rao also bashed environmental groups for “promot[ing] a dangerous orthodoxy that includes the unquestioning acceptance of controversial theories like the greenhouse effect.” At the time Rao published her article, President George H. W. Bush had already signed the 1990 Clean Air Act into law, attempting to address the near-universally acknowledged problem of acid rain. The existence of human-caused climate change has become increasingly obvious, and the impacts have become more extreme and devastating.

In another article titled “Choking on the ‘Greenies’ Diet,” Rao asked, “When was the last time you hugged a tree? If you don’t remember, you obviously haven’t been on a college campus recently.” After describing examples of environmental activism, Rao explained that “[t]hese are just a few examples of eco-insanity on college campuses. But funny as they may be, environmental hysteria in the university has dangerous implications for the real world.” Warning of environmentalists’ desire to force people “to live up to their standards of environmental purity,” Rao cautioned that they “seem perfectly comfortable discarding scientific evidence and common sense in their crusade to ‘save’ the Earth.” Rao’s words aged extremely poorly, as the scientific community has fully embraced the existential dangers of our changing climate.

Rao’s efforts to roll back environmental protections while at OIRA only exacerbated this crisis. As head of OIRA, Rao supported changes that reduced public protections against mercury pollution. The Mercury and Air Toxics Standards (“MATS”) are protections to track and reduce the amount of mercury power plants may release into the air, aiming to shield the public from dangerous neurotoxins. MATS successfully reduced mercury emissions from power plants by 86% from 2011 to 2017. By 2018, the number of children born each year with prenatal exposure to dangerous methylmercury levels decreased by half. Despite these benefits, Rao’s OIRA consistently misrepresented the benefits and costs of the MATS.

Other major environmental protections that Rao helped roll back include the Clean Power Plan and the Methane and Waste Prevention Rule. In her proposal for a deficient replacement to the Clean Power Plan, Rao’s office censored climate language and minimized its cost on public health. Rao also approved a proposal to rescind the public protection aimed at reducing greenhouse gas emissions from power plants. This proposal ignored the impact of climate change on the public, warping its cost-benefit analysis. While attempting to roll back standards preventing harmful leaks from refrigerant and air conditioning appliances, Rao withheld information regarding the impact of climate change on children. Additionally, Rao kowtowed to corporate interests at the expense of public health when she turned back the clock on protections preventing natural gas leaks.

Opponent of Labor Rights

Rao’s consistent rhetoric touting the far-reaching benefits of deregulation and economic freedom shows her strong

bias toward corporate interests. Her libertarian faith in free markets and devotion to rolling back protections would leave workers at the mercy of their more powerful employers.

The first Trump administration acted aggressively to roll back safety protections for workers. For example, under Rao's leadership, OIRA allowed revisions to occupational safety and health protections that enabled certain employers to conceal workplace injuries. Rao's office apparently refused to meet with labor groups to discuss worker safety rules, despite her claim that her agency maintained transparency and an open-door policy. Similarly, Rao's office oversaw the EPA's proposed rule that would lower minimum age requirements for applying pesticides, a rule that the EPA eventually dropped after intense outside scrutiny.

Opponent of Criminal Justice Reform

In an article titled "On the Use and Abuse of Dignity in Constitutional Law," Rao proposed limiting constitutional protections for criminal defendants. Discussing *Miranda v. Arizona*, Rao explained her view that "*Miranda* exemplifies the recurring problem in criminal cases — promoting the dignity of the accused may greatly discount the dignity of the victims of crime." Instead of highlighting how *Miranda* strengthened vital Fourth Amendment protections for individuals against abuses of governmental power and violations of constitutional rights by state actors, Rao argued that Miranda rights protect defendants at the direct expense of victims.

Rao also criticized the Supreme Court's efforts to protect the trial rights of defendants. In *Indiana v. Edwards*, the Court held that a defendant who demonstrated some mental incapacity, but was competent enough to stand trial, could be prevented from representing himself without violating the Sixth Amendment. In the majority opinion, Justice Stephen Breyer explained the concern over balancing the right to represent oneself with a defendant's right to a fair trial: "Insofar as a defendant's lack of capacity threatens an improper conviction or sentence, self-representation in that exceptional context undercuts the most basic of the Constitution's criminal law objectives, providing a fair trial." Instead of recognizing the importance of securing fair trial rights for defendants — especially defendants who demonstrate mental incapacity — Rao suggested that the concern for a defendant's ability to sufficiently defend himself may inappropriately infringe on the defendant's dignity. Rao failed to address how allowing a defendant with a severe mental illness "the ultimate dignity of choosing how to represent himself" could result in unjust rulings that infringe on their constitutional rights and liberty.

Proponent of Radically Expanding Executive Power

Rao, like many other Trump nominees and appointees, supports an expansive view of executive power. Perhaps most significantly, Rao is a proponent of the "unitary executive theory." She has advocated vigorously for the president to obtain complete control of the executive branch — most notably independent agencies — where Congress has specifically enacted legislation to insulate agencies and agency officers from political influence. These agencies, such as the Federal Reserve Board, the National Labor Relations Board, and the Consumer Product Safety Commission, are critical to protecting the health and safety of the public.

In fact, Rao's record suggests she believes that the president, as the head of the executive branch, retains absolute control over all agencies. In her 2011 [article](#) "A Modest Proposal: Abolishing Agency Independence in *Free Enterprise Fund v. PCAOB*," Rao advocates for eliminating the "independence" of independent agencies altogether. In another [article](#), Rao wrote:

"[T]he ability to remove principal officers is necessary and sufficient for presidential control of the executive branch. This means that all agencies, including the so-called independent agencies, must answer to the President . . . Limits on the President's removal authority have always been in tension with the basic constitutional design."

She argued that courts should ignore congressional intent and lead a wide assault on agency independence. Before she was nominated to head OIRA, Rao promoted the idea that independent agencies should be under the authority of the Office of Management and Budget. At OIRA, Rao asserted White House control over actions at agencies like the Equal Employment Opportunity Commission ("EEOC"). Rao's beliefs and actions are even more concerning in the wake of *Trump v. Slaughter*, in which the Supreme Court overturned 91 years of precedent and ruled that Congress cannot restrict the president's ability to fire the heads of executive agencies for any reason.

Notably, Rao has criticized the Supreme Court's decision in *Morrison v. Olson*, which upheld the independent counsel statute in effect at the time. Rao [argued](#) that "[i]ndependent discretion for executive officers" is "contrary to the best understanding of Article II" powers outlined in the Constitution. She explained her view that the president "must have the ability to remove all executive branch officers at will." This extreme view of presidential power is particularly dangerous at a time when President Trump is actively seeking to consolidate as much power in the executive branch as possible.

Moreover, in a 2009 [article](#) called "The President's Sphere of Action," Rao emphasized that there is only a limited ability to hold the president accountable while he is in office. By implication, she dismisses the notion that the president can be held accountable criminally. While she conceded that "even after removal from office, a President may be criminally liable for his actions," Rao noted how "[t]he slow, ponderous, and majoritarian methods of holding the President accountable leave a significant space in which the President may act unimpaired." The Supreme Court echoed Rao's reasoning in *Trump v. United States* when it held that former presidents are entitled to absolute immunity from criminal prosecution for actions performed within the broad scope of their official responsibilities.

Even more concerning, Rao argued that the president, vested with the constitutional powers given to the executive branch, may choose to ignore or override laws passed by Congress and decisions by the Supreme Court on the basis that he or she deems them unconstitutional:

"If after careful review the President determines that a statute is unconstitutional, he may decline to enforce it. The President may also decide not to follow Supreme Court precedent, and in the rare instance, may decide against enforcement of a particular judgment."

In addition to supporting the idea that the president can ignore and override the other two coequal branches of government, Rao argued that there are sometimes no contemporaneous means of recourse to thwart the president from taking unitary actions. Rao explained that “[u]nlike Congress and the Supreme Court, the President can act alone in his judgment of what the Constitution requires.” Rao also noted how “[j]udicial review, political condemnation, and even impeachment may follow, but they do not impede the President at the moment of action.”

In another [article](#), Rao contended that the president’s authority over foreign affairs extends to his or her ability to override international law and treaties — many of which are often confirmed by the Senate: “As Commander-in-Chief of the nation’s military, the President leads the conduct of war, which provides a significant source of authority to interpret the obligations of the law of war.” Rao explained how “even after determining that international law applies to a contemplated action, the President may have, in certain circumstances, the authority to disregard international law. This may include the unilateral authority to terminate treaties.”

Rao’s expansive views of presidential power and control of independent agencies are especially concerning in this era of rampant abuses of power and disdain for the rule of law by the Trump administration.

Disastrous Tenure as OIRA Administrator

During her tenure as OIRA administrator from July 2017 to March 2019, Rao oversaw and championed President Trump’s [agenda](#) of stripping away public protections and safety standards. On her watch, OIRA laid waste to a vast range of legal protections for vulnerable people. The targets included Title IX protections for sexual assault survivors, prohibitions on racial discrimination in housing, protections ensuring that doctors cannot refuse to treat LGBTQ+ patients, and more. She also gave a green light to corporate greed at the expense of protecting everyday individuals. She acquiesced to big oil corporations’ demands by [turning back](#) the clock on protections preventing natural gas leaks. Under Rao, OIRA adopted a slash-and-burn extremism that reflected harsh indifference to human consequences.

One of Trump’s first term goals included eliminating two existing regulations for each newly promulgated regulation. As OIRA administrator, Rao bragged about this harmful rollback of public protections, [describing](#) it as “an unprecedented advance against the regulatory state.” Further, Rao proudly stated that the main reason she became head of OIRA was to roll back public protections, noting, “I’m not sure I would have taken this job if I wasn’t optimistic about the possibility of rolling some of this back.”

Additionally, there is evidence that under Rao’s leadership, staff at OIRA disregarded legal requirements to repeal public protections at a faster rate. According to a [study](#) by the Institute for Policy Integrity at New York University School of Law, the government normally defeats challenges to regulations 70% of the time on average. However, during the first Trump administration, more than [90% of legal challenges](#) to major deregulatory actions were successful. According to the NYU study, the Trump administration lost so frequently because Rao’s OIRA bypassed legal requirements, such as properly incorporating public feedback or conducting cost-benefit analyses. For an individual being considered for a Supreme Court seat, Rao has shown a disturbing willingness to put aside the law to carry out her ideological agenda.

Rao's assault on public protections for consumers, workers, the environment, and health and safety stems from her unabashed disdain for the so-called "administrative state." She has argued that agencies should have less power to issue public protections and enforce safety standards, including independent agencies, which historically have been insulated from political management. She opined that such agencies should no longer be independent: "The precedents and functional justifications for supporting agency independence have largely collapsed. The issue is ripe for reconsideration."

As one example, Rao criticized the Consumer Financial Protection Bureau's broad authority to issue protections against unfair lending practices, predatory financial companies, and powerful banks. This past term, these extreme views found purchase among the Supreme Court's far-right majority in *Trump v. Slaughter*, where the Court overturned 91 years of precedent and held that the president can fire the heads of independent agencies without cause.

Rao also led efforts to roll back public protections that promoted pay equity for women in the workplace. An EEOC report focused on women's pay equity showed how "employee pay data was critical to enforcing the nation's anti-discrimination and related civil rights laws." As a result, under the Obama administration, the EEOC required employers to submit various kinds of employee data that were necessary to address the persistent pay disparities across lines of gender, race, and ethnicity.

As the National Women's Law Center and the Labor Council for Latin American Advancement explained in related litigation, Rao was instrumental in halting the previously established pay data collection process. Less than two months after becoming the administrator of OIRA, Rao issued a memo explaining how the agency would cease implementing the pay data collection process. She argued that "some aspects of the revised collection of information lack practical utility, are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues." Rao's rollback of public protections for gender pay equity echoed her earlier ideological writings. Without adequate data to accurately measure pay disparity — as the public protection that Rao blocked was designed to do — the possibility of realizing pay equity for women shrinks even further.

Rao also oversaw or approved rollbacks of protections for women's health care, including: allowing employers to refuse to cover birth control by claiming religious or moral objections; overseeing a proposed domestic gag rule under which Title X healthcare providers would be prohibited from referring or supporting abortion care services for patients accessing family planning; overseeing a proposed rule that would interfere with women's ability to receive insurance coverage for abortion care; allowing medical professionals to refuse to provide reproductive and contraceptive care based on "conscientious objections"; and engaging in a process to eliminate anti-discrimination protections under the Affordable Care Act ("ACA") for women who have terminated a pregnancy.

Given her past writings, it is unsurprising that Rao's OIRA signed off on then-Education Secretary Betsy DeVos's efforts to roll back protections for survivors of sexual assault on college campuses. The proposed rule made a series of changes to Title IX processes on college campuses that many survivor groups opposed. The rule changed several

important processes that previously ensured survivors' rights and instead focuses on elevating protections for the alleged sexual assailant. When discussing changes to internal processes that determine repercussions for sexual assault, the rule stated that "pending the finding of facts sufficient for the [university] to make a determination regarding responsibility, the requirement mitigates the stigma and reputational harm that accompany the allegation of sexual misconduct." As the Colorado Coalition Against Sexual Assault explained at the time, "If the proposed rule becomes law, survivors will lose access to their education and schools will continue to sweep sexual violence under the rug. The new rule will stop survivors from coming forward and make schools more dangerous for all students."

Additionally, Rao's office held up proposed guidance from the EEOC aimed at providing employers with additional information on how to handle sexual harassment. The proposed guidance would have assisted the EEOC and employers in preventing, investigating, and addressing sexual harassment in the workplace. First proposed in November 2017, the guidance was delayed for the rest of Rao's tenure at OIRA, despite OIRA's previous practice not to review an independent agency's guidance. Additionally, the status of the sexual harassment guidance was never available on any OIRA public platform.

The hostility Rao demonstrated toward the LGBTQ+ community in her past writings extended into her tenure at OIRA. With OIRA's support, the first Trump administration rolled back a series of protections for the LGBTQ+ community: eliminating protections against discrimination for LGBTQ+ patients accessing health care; supporting the expansion of Title IX religious exemptions; failing to collect data about LGBTQ+ individuals in the census; and removing a sexual orientation question from a crucial elderly survey.

Rao's OIRA also finalized a rule proposed by Trump's Department of Health and Human Services that would allow health care providers to refuse to provide medical care to patients towards whom providers have "conscientious objections." The rule encompassed LGBTQ+ patients and women seeking reproductive care. At the time, the executive director of the Secular Coalition for America explained that this rule "does not protect conscience but instead weaponizes it, turning religious belief into yet another barrier between vulnerable patients and the health care they need."

Additionally, Rao's office worked with the Department of Education to roll back protections for LGBTQ+ students on college campuses. Under the pre-Trump policy, many schools could "claim religious exemptions from certain Title IX provisions, such as admissions of certain students or counseling services, but must submit a letter to the U.S. Department of Education requesting specific exemptions." Then-Secretary DeVos argued this protective step was "confusing or burdensome" and eliminated it in a new rule that Rao's office signed off on.

At the same time, the first Trump administration eliminated gender identity protections from the ACA's anti-discrimination provisions. Section 1557 of the ACA prohibits discrimination on the basis of "race, color, national origin, sex, age, or disability," which the Obama administration interpreted to include discrimination based on "gender identity" and "sex stereotyping." However, the first Trump administration, with input from Rao's OIRA, eliminated those protections.

These rollbacks of protections greatly threatened the rights of the LGBTQ+ community, whether facing discrimination at school or in the doctor's office.

Disastrous Tenure on the D.C. Circuit

Rao's beliefs in originalism, textualism, and a strong unitary executive have largely aligned with Justice Thomas's beliefs and writing. Here are some opinions she's drafted while serving on the U.S. Court of Appeals for the D.C. Circuit:

Trump v. Mazars USA, LLP: Executive Power

Rao dissented from the D.C. Circuit Court of Appeals and sided with Trump, writing that the impeachment process is the only time Congress may investigate allegations of illegal conduct against the president. Trump had challenged congressional subpoenas related to his businesses and entities. The district court and court of appeals both sided with Congress and agreed that the subpoenas were issued pursuant to legitimate legislative investigations.

Natural Resources Defense Council v. Wheeler: Environment

Rao dissented from the D.C. Circuit Court of Appeals and argued that a 2015 EPA rule forbidding the use of hydrofluorocarbons ("HFCs") as a substitute for ozone-depleting substances (since HFCs also led to climate change) was interpretive rather than legislative. As such, this rule was not subject to traditional notice-and-comment requirements and therefore did not create any new legal obligations for companies who wanted to switch to HFCs from other ozone-depleting substances.

National Treasure Employees Union v. Vought: CFPB reductions in force

Rao sided with the Trump administration and against Consumer Financial Protection Bureau ("CFPB") employees, dissenting from an order that prohibited the Trump CFPB's planned reduction in force during ongoing litigation. The D.C. Circuit had granted employees a partial stay (pause) on the Trump administration's attempted dismantling of the congressionally established consumer protection agency. Rao characterized this order as "hamstring[ing] the Executive and prevent[ing] the CFPB from downsizing until the merits of the appeal are resolved." She would have allowed the Trump CFPB to continue its layoffs.

Associated Press v. Budowich: First Amendment

In February 2025, Trump issued an order purporting to rename the Gulf of Mexico the Gulf of America. The Associated Press ("AP") did not follow suit and was soon cut off from certain media events with the president. AP filed a suit against the White House chief of staff, her communications deputy, and press secretary seeking a preliminary injunction from being excluded due to its differing viewpoint. Trump-appointed D.C. District Court Judge Trevor McFadden granted the AP's request, citing such a wholesale exclusion was "contrary to the First Amendment." The U.S. Court of Appeals for the D.C. Circuit also granted this motion to stay, except to press events hosted in the East Room.

Writing for the majority, Rao held that the AP was not likely to succeed on its viewpoint discrimination and retaliation claims, in part because the majority concluded that the Oval Office, Air Force One, and similar restricted spaces are not forums under the First Amendment. Furthermore, only 1% of journalists are able to access White House events in tight spaces and the First Amendment does not necessarily apply to the president's communications at restricted press pool events.

Make the Road New York v. Wolf: Immigration

In 2019, the secretary of homeland security expanded the reach of the expedited removal process to sweep in all individuals without documentation who had resided in the United States for less than two years. Three organizations filed suit, contending that this decision violated the Administrative Procedure Act ("APA"), the Immigration and Nationality Act (INA), the Due Process Clause of the Fifth Amendment, and the Suspension Clause. The district court granted a preliminary injunction based only on the APA claims. On appeal, the Court of Appeals for the D.C. Circuit held that the Illegal Immigration Reform and Immigrant Responsibility Act's text and statutory structure preserved the district court's jurisdiction over the APA challenges but went on to hold that the organizations' APA claims, based on notice-and-comment and reasoned decision making, could not stand. Judge Rao dissented, reasoning that the majority should have gone a step further and dismissed the organizations' claims entirely. Rao argued that the INA expressly barred courts from reviewing the secretary's discretionary decisions regarding expedited removal and she critiqued the majority opinion as "another marker on the road to government by injunction."

Circus Circus Casinos, Inc. v. National Labor Relations Board: Labor

This case involved a petition for review of an order of the National Labor Relations Board ("NLRB") determining that an employer (a casino) committed unfair labor practices by investigating an employee without a union representative present, terminating the employee based on their union membership, and threatening the employee for exercising statutory rights under the National Labor Relations Act ("NLRA"). Writing for the majority, Rao held, among other things, that the employee did not sufficiently communicate his desire for representation at an investigation meeting. The employee was given the contact information for the union to arrange for representation at the meeting. Once he arrived, the employee stated that he had called the union three times, no one had shown up, and he was there unrepresented. According to Rao's majority opinion, this was insufficient to trigger the employee's entitlement to representation. The majority expressed concern that if the employee's comments were considered "requests" for representation under the NLRA, cautious employers would have to assume that the right to union representation automatically applied to all covered investigatory meetings.

Conclusion

Throughout her career, Neomi Rao has shown her dedication to dismantling public protections and safety standards intended to protect all Americans. Moreover, she has shown hostility to the rights of women and sexual assault survivors, racial justice, LGBTQ+ equality, and the climate. She has opposed the existence of independent agencies and advocated for an expansive, virtually unchecked interpretation of presidential power. For these reasons, she continues to be unfit and unqualified to sit on the federal bench and especially should not be considered as a nominee to the Supreme Court.