



AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY

**THE AMERICAN ASSOCIATION FOR ACCESS, EQUITY AND DIVERSITY
STATEMENT IN OPPOSITION OF THE CONFIRMATION OF NEOMI RAO
FOR THE U.S. COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT**

March 6, 2019

The Honorable Lindsey Graham
Chairman
Senate Committee on the Judiciary
290 Russell Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators Graham and Feinstein:

The American Association for Access, Equity and Diversity (AAAED), an organization of equal opportunity, diversity and affirmative action professionals, respectfully opposes the confirmation of Ms. Neomi Rao for United States Court of Appeals, District of Columbia Circuit. Founded in 1974 as the American Association for Affirmative Action (AAAA), AAAED is a national not-for-profit association of professionals working in the areas of equal opportunity, compliance and diversity. The longest-serving organization of individuals in the equal opportunity and diversity professions, AAAED has 45 years of leadership providing quality professional training to practitioners and promoting understanding and advocacy of affirmative action and other equal opportunity laws.

Given its mission, AAAED recognizes that the utmost importance of the U.S. Court of Appeals for the DC Circuit is to rule on matters before the federal regulatory and administrative agencies. The DC Circuit is considered the second most important federal court and its decisions have a profound effect on the rights of minorities, women, individuals with disabilities and the LGBTQ community. This court has also been the stepping stone for candidates to the Supreme Court of the United States.

Ms. Rao is a former law clerk of Justice Clarence Thomas, Associate White House Counsel in the Administration of President George W. Bush and a former law professor at George Mason University. She is currently White House Administrator of the Office of Information and Regulatory Affairs. She has no judicial experience.

Even in her college years, Ms. Rao displayed an extraordinary contempt for issues and actions in support of multiculturalism and affirmative action. As Editor-in-Chief of a Yale University publication, she wrote "Myths of racial and sexual oppression propagate themselves, create hysteria, and finally lead to the formation of some whining new group."¹ In a book review on Elitism, she wrote, "In this age of

¹ *Yale Free Press*, "Submission, Silence, Mediocrity," Yale Free Press, <https://www.documentcloud.org/documents/5684271-Rao-Submission-Silence-Mediocracy.html/>

affirmative action, women's rights, special rights for the handicapped and welfare for the indigent and lazy, elitism is a forgotten and embarrassing concept."²

In another publication celebrating the 25th anniversary of the admission of women to Yale University, she cavalierly wrote, "Over the past decades, 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."³ As a law and graduate student at the University of Chicago, she described affirmative action as the "anointed dragon of liberal excess."⁴ She was equally critical of the advocacy and efforts to promote multiculturalism on campus.⁵

Her "blame the victim" views on the role of women in instances of rape and assault were equally troubling. On the subject of date rape, Ms. Rao propounded a controversial view:

"Can the liberated '90s woman freely choose whether to drink or not? 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 part of her choice."⁶

On February 11, 2019, Ms. Rao wrote a letter to the Senate Judiciary Committee expressing regret for her previous sentiments on date rape. The National Women's Law Center responded: "[t]he damage to survivors is done. We are not fooled by her claims of evolved thinking after she rolled back protections for survivors of sexual assault in her role at OIRA."⁷ The Law Center is referring to Ms. Rao's approval as OIRA Administrator of the controversial proposed Title IX regulations on sexual assault posted by the U.S. Department of Education. AAAED submitted comments expressing serious concerns about the efficacy of the proposal for the protection of survivors of sexual harassment and assault.⁸ Ms. Rao was

² Neomi Rao, "In Defense of Authentic Elitism," *Yale Free Press*, Yale Free Press,

<https://assets.documentcloud.org/documents/5684158/Jan-1995-Rao-in-Defense-of-Authentic-Elitism.pdf>;

See also, Stephanie Mencimer, *Mother Jones*, "Trump's Nominee to Replace Kavanaugh Questioned Date Rape, Discrimination, and Climate Change," January 14, 2019, <https://www.motherjones.com/politics/2019/01/trumps-nominee-to-replace-kavanaugh-questioned-date-rape-discrimination-and-climate-change/> (accessed 4th March, 2019).

³ Neomi Rao, "Vive la Difference," *Yale Free Press*, Yale Free Press, February/March 1995, <https://afj.org/wp-content/uploads/2019/01/11-Vive-la-Difference.pdf>

⁴ Neomi Rao, "One Writer's Battles," November 10, 1996, <https://assets.documentcloud.org/documents/5684160/11-10-96-Rao-One-Writers-Battles.pdf>; See Sarah Von der Lippe's critique of Ms. Rao and her views on affirmative action in contracting: "Neomi Rao and Affirmative Action: Another Reason to Oppose," People for the American Way, February 4, 2019, <http://www.pfaw.org/blog-posts/neomi-rao-and-affirmative-action-another-reason-to-oppose/> (accessed 4th March, 2019).

⁵ Neomi Rao, "How the Diversity Game is Played," *The Washington Times*, Newsroom, July 17, 1994, <https://afj.org/wp-content/uploads/2019/01/07-How-the-Diversity-Game-is-Played.pdf>

⁶ Neomi Rao, "Shades of Gray," *Yale Free Press*, Yale Free Press, October 14, 1994, <https://afj.org/wp-content/uploads/2019/01/01-Shades-of-Gray.pdf>

⁷ *National Women's Law Center*, Five Things You Should Know About D.C. Circuit Nominee Neomi Rao, National Women's Law Center, <https://nwlc.org/blog/five-things-you-should-know-about-d-c-circuit-nominee-neomi-rao/>. See Letter of Neomi Rao to the Senate Judiciary Committee, February 11, 2019, <https://www.judiciary.senate.gov/imo/media/doc/Letter%20from%20N.%20Rao%20to%20SJC.pdf>, (accessed 4th March, 2019).

⁸ See AAAED Comments on Proposed Title IX Regulations, https://www.aaaed.org/images/aaaed/Press_Releases/2019/AAAED-Comments-OCR-NPRM.pdf

also at OIRA when the Office of Management and Budget attempted to halt the addition of pay data to the Equal Employment Opportunity Commission's EEO-1 form, a document that many employers are required to submit to the government regarding the racial, ethnic and gender composition of their workforces. A federal court recently decided against the stay and allowed the pay data addition to go forward.

In her legal writings, Ms. Rao has also expressed opposition to supporting the constitutional right of equal protection regarding sexual orientation and gender identity. LAMBDA Legal, in its letter opposing Ms. Rao's confirmation wrote: "The trouble is that Ms. Rao's analysis suggests that the equal recognition demanded for same-sex married couples in *United States v. Windsor*, for example, is materially different from the recognition afforded others in equal protection cases, and is constitutionally suspect."

From all indications, the President's choice to replace Justice Kavanaugh on the District of Columbia Circuit Court is reminiscent of another individual who lacked judicial experience and who strongly opposed affirmative action and other equal opportunity laws before his nomination for the DC Circuit: Supreme Court Justice Clarence Thomas. It is reported that Ms. Rao may be similarly on a trajectory to the Supreme Court in the event of a vacancy.⁹

For her absolute absence of judicial experience and for her extreme opposition to the rights of minorities, women, the LGBTQ community and others we stand with organizations for whom equal opportunity is essential to a just society and oppose the confirmation of Ms. Rao for the District of Columbia Circuit.¹⁰

Respectfully Submitted,

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⁹ See Johnson and Orr, "Trump White House urging allies to prepare for possible RBG departure," *Politico*, Politico, January 10, 2019, <https://www.politico.com/story/2019/01/10/trump-white-house-urging-allies-to-prepare-for-possible-rbg-departure-1096102> (accessed 4th March, 2019).

¹⁰ See, e.g., Statement of NAACP Legal Defense and Educational Fund, Inc, "THE SENATE MUST REJECT NEOMI RAO'S NOMINATION TO THE D.C. CIRCUIT," <file:///C:/Users/Shirley/Downloads/NeomiRaoBackground.pdf> ; Letter from 76 South Asian Women Civil and Human Rights Lawyers, Law Professors, and Survivor Advocates, https://gdoc.pub/doc/e/2PACX-1vTdmgSmpslZkgr7SlAx6k0Soh9-1qgPa2aPFqNhAhFugONSnUFnzrt_hUMOTu2KuFDgiBFTqjFRCulo; LAMBDA Legal, "National, State and Local LGBT Organizations Oppose Confirmation of Neomi Rao to the U.S. Court of Appeals for the District of Columbia Circuit," LAMBDA Legal, February 4, 2019, https://www.lambdalegal.org/sites/default/files/legal-docs/downloads/dc_20190204_rao-letter-of-opposition.pdf, (accessed 4th March, 2019).