

Intersections of Our Lives

February 11, 2019

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

The Honorable Dianne Feinstein, Ranking Member
Senate Committee on the Judiciary
331 Hart Senate Office Building
Washington, D.C. 20510

RE: Reproductive Justice Groups Oppose Confirmation of Neomi Rao

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate Committee on the Judiciary:

We, In Our Own Voice: National Black Women's Reproductive Justice Agenda, the National Asian Pacific American Women's Forum, and the National Latina Institute for Reproductive Health, write to express our strong opposition to the confirmation of Neomi Rao to the U.S. Court of Appeals for the D.C. Circuit. We are three women of color-led Reproductive Justice organizations committed to lifting up the voices and experiences of Black, Latinx, and Asian American and Pacific Islander women and girls.

Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-determination.

Given our commitment to reproductive justice, we are deeply troubled by Ms. Rao's nomination. While we do champion a diverse judiciary that accurately reflects the demographics of our society, a judicial nominee must also have qualifications beyond their identity- they must possess the skills, knowledge, and values necessary to enforce equal justice under the law. Importantly, Ms. Rao's identity as a woman of color does not automatically qualify her for a seat on the D.C. Circuit, nor does it make her an authority on the oppressions experienced by communities of color or women of color. In fact, her record demonstrates hostility towards communities of color, women, and LGBTQ people, as well as a disregard for fundamental constitutional and civil rights. Ms. Rao reaffirmed her dangerous ideologies during her Senate Judiciary Committee hearing and did nothing to assuage our deep concerns about her ability to protect and preserve essential rights for our communities. In light of Ms. Rao's record and

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responses during her hearing, we believe this nominee lacks the qualifications to serve with the fairness and impartiality required of a judge.

Throughout college and in the year after she graduated, Ms. Rao wrote op-eds that used inflammatory and discriminatory language to discuss women, people of color, the LGBTQ community, and sexual violence. These views do not reflect the key tenets of reproductive justice and have carried over into Ms. Rao's career and current position as the head of the Office of Information and Regulatory Affairs (OIRA). If confirmed, Ms. Rao's harmful views would inform her judicial opinions and ultimately result in the erosion of critical legal protections for our communities.

Sex and Gender Equity

Ms. Rao has repeatedly undermined the existence of sex discrimination. For example, in an article discussing feminism, she refers to “the dangerous feminist idealism which teaches women that they are equal. Women believe falsely that they should be able to go anywhere with anyone.”¹ In another article, she states that women have achieved “virtual equality” with men and that any existing inequalities can be attributed to differences between the two sexes: “We have achieved virtual equality, yet we will never achieve sameness. Nature has been kept hidden under power suits as women have climbed the corporate ladder. Perhaps now, after 25 years of coeducation, the power suit can be put away just long enough to hear the questions asked by nature.”² In the same article, Ms. Rao suggests that women's choice to have families is the cause of gender inequality. Ms. Rao's writings perpetuate dangerous stereotypes about women and ultimately show that she vehemently opposes reproductive justice values, which center all peoples' right to bodily autonomy and the ability to make decisions about themselves, their bodies, and to parent or not, free from discrimination.

These harmful beliefs clearly continue to inform her work as the Administrator of OIRA, where she suspended the implementation of a regulation created during the Obama administration requiring companies to report pay by race and gender. That regulation was promulgated in an effort to better understand and address the gender pay gap. In a memo to the Acting Chair of the Equal Employment Opportunity Commission, she justified her decision to stay the regulation by stating that the collection of that data “lack[ed] practical utility.” By suspending this regulation, particularly with that pointed justification, Ms. Rao demonstrated an ongoing disregard for the existence of sex discrimination and gender inequality in the workplace. These beliefs are dangerous to achieving autonomy and self-determination for women of color, who face intersecting discrimination based on their race and gender.

Racial Justice

Ms. Rao has consistently expressed views in her writing throughout college and in her 20s that demonstrate hostility toward communities of color. In an article titled *Separate, But More Than Equal*, Ms. Rao referred to recruitment efforts geared toward students of color and the existence

¹ Neomi Rao, *The Feminist Dilemma*, Yale Free Press (Apr. 1993).

² Neomi Rao, *Vive la Différence*, Yale Free Press (Feb./Mar. 1995).

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of cultural centers at Yale as “special treatment for minority students.”³ In another article, Ms. Rao stated, “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.”⁴ More specifically, she referred to affirmative action as the “anointed dragon of liberal excess.”⁵ Speaking of race generally, she called it a “hot, money-making issue.”⁶

In addition, she denied the existence of both sexual and racial oppression in an article titled *Submission, Silence, Mediocrity*.⁷ She wrote, “Myths of sexual and racial oppression [propagate] themselves, create hysteria and finally lead to the formation of some whining new group. One can only hope to scream, ‘Perspective, just a little perspective, dahling!’”⁸ These comments suggest that Ms. Rao does not see racial oppression as a serious threat to the rights and autonomy of communities of color despite the real issues our communities face everyday.

More recently, Ms. Rao worked with the Department of Housing and Urban Development to roll back protections against housing discrimination based on race. During her hearing before the Senate Judiciary Committee, Ms. Rao refused to take ownership of her role in these rollbacks as the head of OIRA. This indicates that she either does not understand the implications of her work or is willfully denying involvement because she understands that admitting her role in these dangerous rollbacks could have negative ramifications on her confirmation prospects. Either way, this further underscores Ms. Rao’s lack of commitment to the needs of our communities and overall lack of fitness for this position. Additionally, we are deeply troubled by her refusal to unequivocally state that *Brown v. Board of Education*, a cornerstone of constitutional rights for people of color, was correctly decided. The views expressed in her comments and her current practices as the head of OIRA raise serious concerns about Ms. Rao’s ability to effectively and fairly apply civil rights laws in cases of race discrimination and other intersecting oppressions faced by our communities.

LGBTQ Rights

Ms. Rao has also espoused dangerous views on LGBTQ rights. In discussing LGBTQ groups on Yale’s campus at the time, Ms. Rao wrote, “Trendy political movements have only recently added sexuality to the standard checklist of traits requiring tolerance.”⁹ In talking about activists for racial justice, gender equality, and LGBTQ rights, she wrote, “Underneath their touchy-feely talk of tolerance, they seek to undermine American culture . . . 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 womyn.”¹⁰ In the same article, Ms. Rao expressed a disdain for multiculturalism more broadly and how movements for racial

³ Neomi Rao & Luis Roth, *Separate, But More Than Equal*, Yale Free Press.

⁴ Rao, *Vive la Différence*, *supra* note 2.

⁵ Neomi Rao, *One Writer’s Battles*, Weekly Standard (Nov. 10, 1996, 11:00 PM).

⁶ Neomi Rao, *The Hottest Duo in Academe*, Weekly Standard (Apr. 22, 1996, 12:00 AM).

⁷ Neomi Rao, *Submission, Silence, Mediocrity*, Yale Free Press (Nov. 1993).

⁸ *Id.*

⁹ Neomi Rao, *Queer Politics*, Yale Herald (Nov. 11, 1994).

¹⁰ Neomi Rao, *How the Diversity Game is Played*, Wash. Times (July 17, 1994).

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justice, gender equality, and LGBTQ rights are harming society. Ms. Rao's writings demonstrate dangerous views about societal values and norms.

Similarly to her previously expressed ideologies on gender equity and racial justice, Ms. Rao's harmful views on the LGBTQ community persist in informing her work. At OIRA, Ms. Rao finalized rules promulgated by the Department of Health and Human Services that allow for religious refusals, which would allow medical providers that have "conscientious objections" to refuse to treat a patient. This rule will harm LGBTQ patients seeking health care services, as well as patients seeking reproductive health care or who have previously obtained services with which the provider disagrees, including abortion care. Furthermore, these rules will disproportionately impact queer and transgender communities of color and create more barriers for individuals with limited English proficiency. Ms. Rao's role in furthering this policy reveals her continued belief that LGBTQ people do not deserve dignity and autonomy in making decisions about their lives, families, and communities. Ms. Rao's writings and current attacks on LGBTQ rights and equality raises serious concerns about her ability to be a fair and impartial judge on these issues.

Sexual Violence

Finally, Ms. Rao has made odious statements about sexual violence and sexual violence survivors. She has said, "It has always seemed self-evident to me that even if I drank a lot, I would still be responsible for my actions. A man who rapes a drunk girl should be prosecuted. At the same time, a good way to avoid a potential date rape is to stay reasonably sober."¹¹ Here, Ms. Rao is engaging in survivor-shaming and blaming, a dangerous narrative that advocates have long sought to disrupt. Ms. Rao has also suggested that if a woman chooses to drink, she is making the choice to be sexually assaulted: "And if she drinks to the point where she can no longer choose, well, getting to that point was part of her choice."¹²

The beliefs Ms. Rao expressed in her past writings are reflected in her current work as the head of OIRA and in the statements she made at her Senate Judiciary Committee hearing. Most recently, she has been involved with rolling back Title IX protections for sexual assault survivors in school. Additionally, she has blocked the issuance of guidance on sexual harassment enforcement intended as a reference for employers and employees. During her hearing, Ms. Rao both refused to take responsibility for her role in the Title IX rollbacks and refused to commit to recusing herself if a case dealing with those rules came before her as a judge on the D.C. Circuit.

Most concerningly, Ms. Rao also reaffirmed her prior statements regarding sexual assault. Her transparent efforts to reframe her prior statements as a "common sense observation" about how a woman can avoid becoming a victim failed to show an evolution in her thinking around sexual assault. In fact, her language further perpetuates rape culture by insinuating that there could be circumstances in which the onus can be on the survivor rather than on the abuser. Ms. Rao did nothing to indicate that she would not use these dangerous ideologies to inform her decision-making if confirmed to the court. The dangerous ideologies expressed in her prior writings, the actions she has since taken in her current position, and her statements at her hearing suggest that

¹¹ Neomi Rao, *Shades of Gray*, Yale Herald (Oct. 14, 1994).

¹² *Id.*

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Ms. Rao would fail to protect women of color from discrimination and harassment they face. These views raise serious concerns about Ms. Rao's ability to be a fair and impartial judge in cases dealing with sexual assault and gender discrimination more broadly.

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For women of color, threats to protections of our various identities and experiences, including reproductive rights, LGBTQ rights, workplace protections, survivors' rights, and racial justice, are threats to our bodily autonomy and undermine our ability to make decisions for our own lives and families. Women of color rely on the protections enforced by courts, yet Ms. Rao's repeatedly-expressed disdain for any movement looking to empower those most discriminated against indicates that she would be a threat to our communities. As a judge on the second highest court of the land, Ms. Rao will have the power to decide many cases involving critical legal protections for groups and civil rights she has openly mocked and opposed. We cannot support a nominee who will not only ignore the needs of communities of color, including queer and transgender communities of color, but be in a position to establish legal precedent based on dangerous and discriminatory views of these communities and our civil rights. Our communities are counting on women of color in positions of power to ensure that our fundamental and civil rights are protected and preserved, yet Ms. Rao has repeatedly shown that she will not and cannot fulfill that role. For the foregoing reasons, we urge you to strongly oppose the confirmation of Neomi Rao to serve on the U.S. Court of Appeals for the D.C. Circuit.

Sincerely,

In Our Own Voice: National Black Women's Reproductive Justice Agenda
National Asian Pacific American Women's Forum
National Latina Institute for Reproductive Health