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OPPOSE THE CONFIRMATION OF KATHRYN MIZELLE TO THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in strong opposition to the confirmation of Kathryn Mizelle to be a U.S. District Judge in the Middle District of Florida.

Ms. Mizelle – age 33 – is woefully unprepared and unqualified to serve as a federal judge. She is only eight years out of law school – well short of the American Bar Association's 12-year standard for finding nominees to be minimally qualified to serve as a federal judge. While this matters little to the Trump administration – which has spent the past four years attempting to lard the federal courts with young, right-wing extremists like Ms. Mizelle – her lack of experience should make her nomination a non-starter. This nominee has been put forward not only because she is an ultraconservative ideologue, but also because she is a Trump loyalist, having worked in the Trump Justice Department to dismantle many critical civil rights protections. The Senate must reject her nomination.

More broadly, rather than processing judicial nominees, the Senate should be focused on addressing the many urgent challenges that are gripping our nation at this moment – from the devastating health and economic impact of the COVID-19 crisis, to the alarming rates of police violence against people of color, to the need to safeguard our democracy by helping fund the November election and U.S. Postal Service. The U.S. House of Representatives has passed legislation to tackle these problems, but the Senate, under Majority Leader McConnell's partisan and ineffective leadership, has failed to consider any of the life-saving measures passed by the House. Instead, the Majority Leader has devoted much of the Senate's time and attention to remaking the federal courts.

Stunning Lack of Legal Experience: Ms. Mizelle falls well short of the minimum qualifications necessary to serve as a federal district court judge. At age 33, she is among the youngest people ever nominated to the federal judiciary. The average age of a federal judge at initial appointment has been between 45 and 50 years for over a century, since the 1880s.¹ Ms. Mizelle has been out of law school for only eight years, well below the 12-year minimum threshold of years of law practice that the American Bar Association (“ABA”)

¹<https://www.fjc.gov/history/exhibits/graphs-and-maps/age-and-experience-judges>.

believes is necessary to serve as a federal judge.² She has held four different judicial clerkships, but these experiences do not constitute the practice of law. She has practiced law for only four years and has conducted just two trials. In fact, Ms. Mizelle's legal experience is so thin that a case she listed in her Senate paperwork as one of the ten most important cases in her legal career, *State v. Covington*, took place when she was a legal intern during law school.³ The ABA rating for Ms. Mizelle has not yet been submitted, but it would be an abdication of its responsibility and standards if the ABA did not rate Ms. Mizelle as Not Qualified. And it would be an insult to the federal judiciary and to the millions of residents of the Middle District of Florida for the Senate to confirm someone who is so patently unqualified for the job.

Involvement in Civil Rights Rollbacks: In 2017 and 2018, Ms. Mizelle served in the Trump Justice Department as Counsel to the Associate Attorney General (who is the third highest ranking official in the Department) and in that role, she supervised litigation handled by the Department's Civil Rights Division and Civil Division.⁴ During that time period, these Justice Department components:

- rescinded Title IX guidance that had provided critical legal protections for transgender students;
- dropped the federal government's longstanding position that a Texas voter ID law under legal challenge was intentionally racially discriminatory;
- argued that it should be easier for Ohio to purge registered voters from its rolls – again reversing a longstanding position by the federal government;
- sent letters to 44 states demanding extensive voter information that could be used to purge voters from voter rolls;
- asserted that Title VII of the Civil Rights Act of 1964 does not prohibit discrimination based on sexual orientation or gender identity – a position subsequently rejected by the Supreme Court;
- filed a brief with the Supreme Court arguing that businesses have a right to discriminate against LGBTQ customers;
- filed a brief asking a federal court to dismiss a lawsuit against President Trump's transgender military ban;
- issued sweeping religious liberty guidance to federal agencies to create a license to discriminate against LGBTQ individuals;
- wrote a letter to the Census Bureau requesting they insert a question about citizenship on the 2020 Census form;
- argued in court that the Affordable Care Act's protections for people with pre-existing conditions are unconstitutional;
- opposed legally permissible admissions policies that colleges and universities use to expand educational opportunity for students of all backgrounds; and
- filed a statement of interest opposing a consent decree negotiated by the Chicago Mayor and Illinois Attorney General to overhaul the Chicago Police Department.⁵

²https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/backgrounder-8-19-2020.pdf.

³<http://civilrightsdocs.info/pdf/judicial-nominations/documents/Mizelle-Public-SIQ.pdf>.

⁴*Id.*

⁵<https://civilrights.org/trump-rollbacks/>.

It is deeply disturbing that someone like Ms. Mizelle – who was involved in many of the Trump administration’s most egregious civil rights rollbacks – would be rewarded for these actions with a lifetime appointment to the federal bench.

More recently, Ms. Mizelle filed an amicus brief on behalf of the U.S. Chamber of Commerce that opposed a request from the AFL-CIO that the Trump administration’s Occupational Safety and Health Administration implement emergency standards to protect millions of U.S. health care providers, nursing home aides, and other essential workers from the deadly COVID-19 pandemic.⁶ Ms. Mizelle supported the Trump administration’s refusal to provide such standards and protections.

Extreme Right-Wing Ideology: Ms. Mizelle’s extreme views are also reflected in her past statements and organizational affiliations. At a Federalist Society event earlier this year, she called Justice Clarence Thomas “the greatest living American, and I mean that with all sincerity.”⁷ Justice Thomas has been the most radically right-wing Supreme Court Justice in the past century.⁸ In an article about Justice Thomas, legal commentator Jeffrey Toobin wrote: “His vision is more reactionary than that of any Justice who has served on the Court since the nineteen-thirties, and his views are closest to those of the Justices who struck down much of the New Deal during that era.”⁹ Indeed, during his three decades on the Court, Justice Thomas has consistently voted to restrict voting rights, LGBTQ equality, reproductive freedom, fair housing, health care access, immigrant rights, consumer rights, environmental protection, workplace safety, and myriad other critical civil and human rights. The fact that Ms. Mizelle believes Justice Thomas to be “the greatest living American,” and pointedly emphasized that she offered this tribute “with all sincerity,” paints a highly disturbing picture of her own legal views and judicial philosophy.

Many of Justice Thomas’s anti-civil rights views are grounded in outcome-based originalism – the notion that the words of the Constitution should be read as frozen in time without regard for societal development and legal precedent. At the same Federalist Society event, Ms. Mizelle asserted that “Justice Thomas has taken the commitment to originalism to new heights. Justice Scalia once called him a ‘bloodthirsty originalist,’ which maybe wasn’t meant as a compliment but I really think it is one.”¹⁰ Ms. Mizelle’s support for that extreme judicial philosophy provides another data point about what type of jurist she would be.

Ms. Mizelle is an active member of the right-wing Federalist Society and served for three years on its D.C. Young Lawyers Chapter Steering Committee. She is also a member of the Teneo Network, a far-right, Koch Brothers funded organization that has been described as “the Olympic Village of

⁶<https://www.chamberlitigation.com/sites/default/files/cases/files/20202020/U.S.%20Chamber%2C%20et%20al.%20Amicus%20Brief%20--%20In%20re%20AFL-CIO%20%28D.C.%20Circuit%29.pdf>.

⁷<https://fedsoc.org/conferences/2020-annual-florida-chapters-conference?#agenda-item-banquet-and-discussion-with-justice-clarence-thomas> at 13:00.

⁸<https://www.usnews.com/news/national/articles/2008/05/12/ranking-the-politics-of-supreme-court-justices>.

⁹<https://www.newyorker.com/news/daily-comment/clarence-thomass-twenty-five-years-without-footprints>.

¹⁰<https://fedsoc.org/conferences/2020-annual-florida-chapters-conference?#agenda-item-banquet-and-discussion-with-justice-clarence-thomas> at 13:45.

conservatism.”¹¹ And in 2017, she received a fellowship from the ultraconservative Claremont Institute, which employs extremists who have promoted the Kamala Harris birther lie and which, according to one commentator, “masquerades as an intellectual salon of the right, but it is really just a racist fever swamp with deep connections to the conspiratorial alt-right.”¹²

In addition, Ms. Mizelle served as a law clerk to several of the most conservative jurists in the country: Justice Thomas, Judge William Pryor (on President Trump’s Supreme Court short list), and Judge Gregory Katsas (President Trump’s first appointment to the U.S. Court of Appeals for the D.C. Circuit). Although a law clerk’s views do not necessarily line up with a judge for whom they clerk, in the case of Ms. Mizelle, they appear to be congruent with one another.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Kathryn Mizelle to be a U.S. District Judge in the Middle District of Florida. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel, or Lena Zwarenstejn, Fair Courts Campaign Director, at (202) 466-3311.

Sincerely,



Vanita Gupta
President & CEO

¹¹<https://www.teneonetwork.com/about/>.

¹²<https://slate.com/news-and-politics/2020/08/kamala-harris-birther-birthright-citizenship-claremont.html>.