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The Honorable Neomi J. Rao
Judge, U.S. Court of Appeals for the D.C. Circuit
Comprehensive Research

Red List Note: This prospect is designated as a red list candidate. The purpose of the “red list” designation is not to denigrate a prospect but rather to explain that serious concerns make them untenable given the availability of “green list” prospects that do meet the exceedingly high standard necessary for Supreme Court prospects. This is a research summary and, therefore, may not include all information located, and is subject to periodic updates and revisions. Content may not always reflect the latest developments.

2019 – Present: Judge, U.S. Court of Appeals, D.C. Circuit
2017 – 2019: Administrator, Office of Information & Regulatory Affairs, Office of Management & Budget
2006 – 2019: Law Professor, Antonin Scalia Law School, George Mason Univ.
2005 – 2006: Assoc. Counsel, White House Counsel
2002 – 2005: Associate, Clifford Chance, London, UK
2001 – 2002: Law Clerk, The Hon. Clarence Thomas, Supreme Court of the United States
2000 – 2001: Counsel for Nominations & Constitutional Law, U.S. Senate Committee on the Judiciary
1999 – 2000: Law Clerk, The Hon. Harvie Wilkinson, III, U.S. Court of Appeals for the Fourth Circuit
Education: Univ. Chicago (J.D.) 1999; Yale Univ. (B.A.) 1995.

CONCERNS

While Judge Rao has a few conservative associations, she has not evidenced a strong worldview consistent with the standards of other prospects.

- Conservative associations
 - The Heritage Foundation honored Rao with its Distinguished Alumni Award in 2018.¹
 - Rao has been a member of the Federalist Society since 1996.²
- Questionable associations

¹ S. Questionnaire, <https://www.judiciary.senate.gov/imo/media/doc/Neomi%20Rao%20SJQ%20-%20PUBLIC.pdf>, at PDF p. 3.

² S. Questionnaire, <https://www.judiciary.senate.gov/imo/media/doc/Neomi%20Rao%20SJQ%20-%20PUBLIC.pdf>, at PDF p. 4.

- Rao was a participant in the Aspen Institute Young Professionals Program from 2005 to 2006.³ The Aspen Institute is an international nonprofit organization whose funders include the Carnegie Corporation of New York and the Bill and Melinda Gates Foundation.⁴
- Faith & Worldview
 - According to the New York Post, Judge Rao “was raised in an immigrant family of Zoroastrian tradition and converted to Judaism when she got married.”⁵

At Rao’s confirmation hearing for the D.C. Circuit, conservative senators expressed serious concern and warned against placing her on the Supreme Court.

- Senator Cruz said that Rao’s “academic and professional background is particularly well-suited for the cases that go through the D.C. Circuit *[M]y assessment might be very different were this a consideration for the U.S. Supreme Court.*”⁶
- Senator Ernst shared, “should Ms. Rao be nominated for *another court at another time, my decisions, and my vetting process and considerations may be very different.*”⁷

Outside of that hearing, Senator Hawley expressed serious concerns about Rao.

- Hawley stated, “I have heard directly from at least one individual who said Rao personally told them she was pro-choice. I don’t know whether that’s accurate, but this is why we are doing our due diligence.”⁸
- In the Senate Questions-for-Answer, Hawley asked Rao several questions about her views on abortion, all of which she refused to answer.
 - Hawley asked: “In your article *Three Concepts of Dignity in Constitutional Law*, 86 Notre Dame L. Rev. 183, 231 (2011), you quote Professor Reva Siegel’s characterization of the Supreme Court’s holding in *Gonzales v. Carhart*, 550 U.S. 124 (2007), as being based on ‘gender-paternalist justification[s] for abortion restrictions’. . . . Do you agree with Professor Siegel’s view of the Supreme Court’s holding in *Carhart*?”⁹

³ S. Questionnaire, <https://www.judiciary.senate.gov/imo/media/doc/Neomi%20Rao%20SJQ%20-%20PUBLIC.pdf>, at PDF p. 3.

⁴ Funders, ASPEN INSTITUTE, <https://www.aspeninstitute.org/programs/national-commission-on-social-emotional-and-academic-development/funders/>.

⁵ Post Editorial Board, *Cory Booker makes himself look the fool, again*, N.Y. POST (Feb. 6, 2019), <https://nypost.com/2019/02/06/cory-booker-makes-himself-look-the-fool-again/>.

⁶ Exec. Business Meeting, S. Comm. on the Judiciary (Feb. 28, 2019), <https://www.judiciary.senate.gov/committee-activity/hearings/02/28/2019/executive-business-meeting>, at 42:12 (emphasis added).

⁷ Exec. Business Meeting, S. Comm. on the Judiciary (Feb. 28, 2019), <https://www.judiciary.senate.gov/committee-activity/hearings/02/28/2019/executive-business-meeting>, at 45:52 (emphasis added).

⁸ Jonathan Swan, *Concerns Rise Over Neomi Rao, Trump’s D.C. Circuit Nominee*, AXIOS (Feb. 24, 2019), <https://www.axios.com/2019/02/25/neomi-rao-dc-circuit-nominee-josh-hawley-concerns>.

⁹ Questions from Senator Hawley, Question #4(a), S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 71.

- Rao responded: “The purpose of this article was to identify and examine different conceptions of dignity used by constitutional courts and I cite many cases to elucidate these different conceptions. I quote Professor Siegel’s view of *Carhart*, because she characterizes the case as demonstrating a conflict between two dignities. *As a nominee to the court of appeals, it would be inappropriate for me to opine on the merits of Siegel’s view of a Supreme Court precedent.*”¹⁰
- Hawley then asked: “In your view, is *Carhart*’s holding consistent with ‘[t]he American constitutional law tradition [that] has primarily emphasized intrinsic human dignity that promotes liberty and autonomy’? Rao, 86 Notre Dame L. Rev. at 270.”¹¹
 - Rao responded: “*As a nominee to the court of appeals, it would be inappropriate for me to opine on the correctness of Supreme Court precedent.* If confirmed, I will faithfully adhere to *Carhart* and all other precedents of the Supreme Court.”¹²
- Hawley also asked: “In your view, how did the Supreme Court’s holding in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), extend, modify, or replace the Court’s holding in *Roe v. Wade*, 410 U.S. 113 (1973)?”¹³
 - Rao responded: “*Casey* and *Roe* are precedents of the Supreme Court that I would faithfully follow if confirmed. *As a nominee to the court of appeals, it would not be appropriate for me to opine on the relationship between Supreme Court precedents*, particularly as the scope of *Casey* and *Roe* continue to be the subject of litigation in the federal courts. The Code of Conduct for United States Judges, which is applicable to nominees for judicial office, states “judge[s] should not make public comment on the merits of a matter pending or impending in any court.”¹⁴
- Rao even refused to answer Senator Hawley’s basic question: “Do you believe that the promotion of moral behavior and the expression of moral judgment are legitimate government interests?”¹⁵

¹⁰ Questions from Senator Hawley, Question #4(a), S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 71 (emphasis added).

¹¹ Questions from Senator Hawley, Question #4(b), S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 71.

¹² Questions from Senator Hawley, Question #4(b), S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 71 (emphasis added).

¹³ Questions from Senator Hawley, Question #6, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 72.

¹⁴ Questions from Senator Hawley, Question #6, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 72 (emphasis added).

¹⁵ Questions from Senator Hawley, Question #8, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 72.

- Rao responded: “As a nominee to a court of appeals, it would not be appropriate for me to share my personal views on abstract issues that might be presented in litigation.”¹⁶
 - Although Rao refused to answer questions on the abortion cases, she chose to explain her understanding of *Washington v. Glucksberg* when asked by Senator Hawley “What is your understanding of the Supreme Court's holding in *Washington v. Glucksberg*, 521 U.S. 702 (1997)?”¹⁷
 - Rao explained: “In *Glucksberg*, the Supreme Court upheld the constitutionality of the State of Washington's prohibition against causing or aiding a suicide because the liberty protected by the Due Process Clause of the Fourteenth Amendment did not protect a right to assisted suicide. In reaching this conclusion, the Court held ‘that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.’ 521 U.S. at 721 (internal citations and quotations omitted).”¹⁸
- Hawley did ultimately end up voting in favor of Rao.¹⁹

Rao has espoused liberal views on LGBT issues.

- Rao has stated that she is pleased with the outcome of *Obergefell* from a political standpoint, but is dissatisfied with the methods utilized by the majority to reach that outcome.
 - Rao said: “*I’m absolutely pleased with the result [of Obergefell] as a political matter*, but I think the majority’s opinion has some serious problems because the Constitution is not really a charter for *all the policies that we like or feel strongly about* – and so I’m concerned about the fact that the Court has taken this issue out of the democratic process.”²⁰
- Rao has made the non-sensical argument that “no one knows” whether the source of sexuality is biological or social.

¹⁶ Questions from Senator Hawley, Question #8, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 72.

¹⁷ Questions from Senator Hawley, Question #5, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 71.

¹⁸ Questions from Senator Hawley, Question #5, S. Questions for Answer, <https://www.judiciary.senate.gov/imo/media/doc/Rao%20Responses%20to%20QFRs.pdf>, at PDF p. 71.

¹⁹ Anna North, *What A Republican Fight Over Brett Kavanaugh’s Replacement Says About The Abortion Debate Today*, VOX (Feb. 28, 2019), <https://www.vox.com/2019/2/27/18243090/neomi-rao-dc-circuit-josh-hawley-abortion>.

²⁰ *Supreme Court Makes Same-Sex Marriage Legal Nationwide*, WBUR (June 26, 2015), <https://www.wbur.org/onpoint/2015/06/26/same-sex-marriage-legal>, at 2:16 (emphasis added).

- She stated, “[N]o one knows whether sexuality is a biological phenomenon or a social construct. The truth may lie somewhere in the middle.”²¹ She went on to describe sexuality as an “attribute of an individual.”²²
- Rao opposed state efforts to protect marriage as “exclusionary.”
 - Rao previously stated as far back as 2013 that “[p]ublic opinion is shifting against an exclusionary definition of marriage, a change that I support as a political matter.”²³

While Rao had expressed skepticism about a constitutional right to abortion, she has also made problematic statements on this important issue.

- Rao has stated, “[T]here were many persuasive legal arguments against recognizing a constitutional right to abortion.”²⁴
- However, Senator Hawley expressed concerns over Rao’s stance on abortion due to statements she made in her past legal writings.²⁵
 - Rao made references in her past legal writing describing the pro-life movement as “anti-abortion,” rather than pro-life.²⁶
 - In a law review article, Rao wrote that *Planned Parenthood v. Casey* “treated a woman’s right to choose an abortion as part of her constitutionally protected liberty, because her choice implicated both dignity and autonomy.”²⁷
 - The day after stating that he was “undecided and concerned,” about Rao’s nomination, Senator Hawley published a public letter to Ms. Rao stating, “I will not vote to confirm nominees whom I believe will expand substantive due process precedents like *Roe v. Wade* and *Casey v. Planned Parenthood*.”²⁸
 - In his letter, Hawley questioned Rao on her written statements about *Casey*: “Later in *Three Concepts of Dignity in Constitutional Law*, you state that ‘[t]he *Casey* plurality treated a woman’s right to choose an abortion as part of her constitutionally protected liberty, because her choice implicated both dignity and autonomy,’ and that the plurality opinion ‘linked reproductive choices with the

²¹ Neomi Rao, *Queer Politics*, YALE HERALD (Nov. 11, 1994), <https://afj.org/wp-content/uploads/2020/03/13-Queer-politics.pdf> (emphasis added).

²² Neomi Rao, *Queer Politics*, YALE HERALD (Nov. 11, 1994), <https://afj.org/wp-content/uploads/2020/03/13-Queer-politics.pdf> (emphasis added).

²³ Neomi Rao, *The Trouble with dignity and Rights of Recognition*, 99 VA. L. REV. 29, 34 (2013), https://afj.org/wp-content/uploads/2020/03/Rao-The-Trouble-With-Dignity-and-Rights-of-Recognition_.pdf (emphasis added).

²⁴ Neomi Rao, *A backdoor to Policy Making: The Use of Philosophers by the Supreme Court*, 65 U. CHI. L. REV. (1998), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5009&context=uclrev>, at PDF p. 10.

²⁵ Annie Karni & Maggie Haberman, *Senator Josh Hawley Raises Questions About Neomi Rao’s Abortion Stance*, NYT (Feb. 26, 2019), <https://www.nytimes.com/2019/02/26/us/politics/josh-hawley-neomi-rao-abortion.html>.

²⁶ Annie Karni & Maggie Haberman, *Senator Josh Hawley Raises Questions About Neomi Rao’s Abortion Stance*, NYT (Feb. 26, 2019), <https://www.nytimes.com/2019/02/26/us/politics/josh-hawley-neomi-rao-abortion.html>.

²⁷ Annie Karni & Maggie Haberman, *Senator Josh Hawley Raises Questions About Neomi Rao’s Abortion Stance*, NYT (Feb. 26, 2019), <https://www.nytimes.com/2019/02/26/us/politics/josh-hawley-neomi-rao-abortion.html>.

²⁸ Annie Karni & Maggie Haberman, *Senator Josh Hawley Raises Questions About Neomi Rao’s Abortion Stance*, NYT (Feb. 26, 2019), <https://www.nytimes.com/2019/02/26/us/politics/josh-hawley-neomi-rao-abortion.html>.

essential nature of the individual and emphasized the importance of the freedom to make such choices without compulsion from the state.’ I have questions about your analysis of the Court’s decision in *Casey*, as well as in *Lawrence v. Texas*, *Gonzales v. Carhart*, and other constitutional cases discussed in that article.²⁹

Rao seems to have a mixed record on judicial restraint and separation of powers.

- Rao critiqued Judge Sotomayor’s judicial philosophy at Sotomayor’s Supreme Court nomination hearing.
 - Rao said, “*Judge Sotomayor has explicitly rejected the idea that there can be an objective stance in judging If there is no objective view, one can question whether there is any law at all, apart from a judge’s personal choices.*”³⁰
- Rao has authored an opinion in which she embraced judicial restraint with regard to deciding constitutional questions, particularly in the context of foreign affairs and national security, but rejected the concurrence’s application of judicial restraint in the due process context.
 - She wrote, “*Courts should not decide constitutional questions when alternative grounds for decision are fairly available. [citations omitted]. This principle applies with particular force in the context of foreign affairs and national security, which are entrusted to the political branches and should be approached by the judiciary with great care.*”³¹
 - She added, “The concurrence extends our court’s limited reservation of whether ‘procedural’ due process applies at Guantanamo Bay to now reserve the question of whether ‘substantive’ due process may apply at Guantanamo Bay. *With the rallying cry of judicial restraint, the concurrence would thus open a gaping hole in the foundation of our longstanding due process jurisprudence.*”³²

Rao has a mixed record on government overreach with respect to COVID-19.

- Judge Rao joined an opinion written by Judge Rogers which held that the Association of American Physicians and Surgeons lacked Article III standing to sue Congressman Adam Schiff, who wrote letters to technology and social media companies expressing concern about their publication of the Association’s vaccine-related information on their

²⁹ *Senator Hawley Sends Letter to Neomi Rao Outlining Questions About Judicial Philosophy*, JOSH HAWLEY (Feb. 26, 2019), <https://www.hawley.senate.gov/senator-hawley-sends-letter-neomi-rao-outlining-questions-about-judicial-philosophy>.

³⁰ *Sotomayor Confirmation Hearing, Day 4, Legal Scholars Panel*, U.S. S. COMM. ON THE JUDICIARY, <https://www.c-span.org/video/?287762-106/sotomayor-confirmation-hearing-day-4-legal-scholars-panel>, at 32:21 (emphasis added).

³¹ *Al Hela v. Trump*, 449 U.S. App. D.C. 286, 309-10, 972 F.3d 120 (D.C. Cir. 2020), <https://cases.justia.com/federal/appellate-courts/cadc/19-5079/19-5079-2020-08-28.pdf?ts=1598625074> (emphasis added), at PDF p. 33-34.

³² *Al Hela v. Trump*, 449 U.S. App. D.C. 286, 309-10, 972 F.3d 120 (D.C. Cir. 2020), <https://cases.justia.com/federal/appellate-courts/cadc/19-5079/19-5079-2020-08-28.pdf?ts=1598625074> (emphasis added), at PDF p. 32.

platforms.³³ The opinion claimed that the Association, which faced demonetization on these platforms allegedly due to Congressman Schiff's letters, had suffered no injury-in-fact.³⁴

- The opinion by Judge Rogers that Judge Rao joined stated, “[B]ecause appellants offer no plausible basis to conclude that Representative Schiff’s inquiries caused the technology companies to implement the policy changes to which appellants object, they have not established standing, and we affirm the district court’s dismissal of their amended complaint.”³⁵
- On jurisdictional grounds, Judge Rao authored an opinion rejecting National Nurses United’s attempt to compel OSHA [the Occupational Safety and Health Administration] to retain its emergency temporary standard (ETS)—a set of requirements promulgated to mitigate the risk of COVID-19 transmission in healthcare settings—or issue a permanent standard in its place. The ETS crafted requirements to encourage vaccination and exempted the “fully vaccinated” from certain provisions.³⁶
 - Judge Rao wrote, “We lack jurisdiction to compel OSHA to retain the Healthcare ETS because doing so would not aid our current or prospective jurisdiction as required for relief under the All Writs Act. Moreover, mandamus is reserved only for transparent violations of a clear duty to act. *We cannot order OSHA to promulgate a permanent standard because at the conclusion of the rulemaking process, OSHA is permitted to determine that no standard should issue. And enforcement of the Healthcare ETS is squarely within OSHA’s prosecutorial discretion and therefore inappropriate for judicial control through mandamus.* Therefore, we deny the petition in part and dismiss it in part for lack of jurisdiction.”³⁷

OTHER FINDINGS

Judicial Philosophy:

- Rao has indicated support for a textualist approach to interpretation.

³³ *Ass’n of Am. Physicians & Surgeons v. Schiff*, 455 U.S. App. D.C. 324, 23 F.4th 1028 (D.C. Cir. 2022), <https://cases.justia.com/federal/appellate-courts/cadc/21-5080/21-5080-2022-01-25.pdf?ts=1643128230>.

³⁴ *Ass’n of Am. Physicians & Surgeons v. Schiff*, 455 U.S. App. D.C. 324, 23 F.4th 1028 (D.C. Cir. 2022), <https://cases.justia.com/federal/appellate-courts/cadc/21-5080/21-5080-2022-01-25.pdf?ts=1643128230>.

³⁵ *Ass’n of Am. Physicians & Surgeons v. Schiff*, 455 U.S. App. D.C. 324, 23 F.4th 1028 (D.C. Cir. 2022), <https://cases.justia.com/federal/appellate-courts/cadc/21-5080/21-5080-2022-01-25.pdf?ts=1643128230>, at PDF p. 13 (emphasis added).

³⁶ *In Re: Nat’l. Nurses United*, 47 F.4th 746 (D.C. Cir. 2022), <https://cases.justia.com/federal/appellate-courts/cadc/22-1002/22-1002-2022-08-26.pdf?ts=1661526033>.

³⁷ *In Re: Nat’l. Nurses United*, 47 F.4th 746 (D.C. Cir. 2022), <https://cases.justia.com/federal/appellate-courts/cadc/22-1002/22-1002-2022-08-26.pdf?ts=1661526033> (emphasis added).

- She argued in a speech that, “*Formal approaches to legal interpretation, such as textualism, are an outgrowth of political morality and carry political morality into practice.*”³⁸
- She also stated regarding debates about statutory interpretation, “*I’m wholeheartedly on the textualist side of these debates.*”³⁹
- Rao has expressed distaste for judicial activism.
 - Rao said, “*Judicial nominees know they have to allege fidelity to the law. But the harder question, of course, is what they mean by fidelity to the law.* Does fidelity to the law allow the meaning of the Constitution to evolve over time? Does it mean that laws should be interpreted empathetically, as President Obama has suggested? What happens when a proper interpretation of the law leads to an outcome the judge finds undesirable? *Honest answers to these questions can highlight the differences between judges who emphasize the rule of law and others who have a more ‘flexible’ approach.*”⁴⁰
 - She has also written, “In the United States, we frequently reaffirm that we have a government ruled by laws, not men. The Supreme Court recently suggested a third possibility — rule by talking points.”⁴¹ She added, “*The judiciary has a duty to ‘say what the law is,’ not what some lawmakers hoped it would be.*”⁴² Lastly, Rao declared, “*Our federal courts were designed for independence precisely so they could exercise judgment and stay out of the talking points business. This term the Court has demonstrated, in constitutional and statutory cases, how grand themes rarely make for good law.*”⁴³
- Judge Rao has recognized the role of the separation of powers in protecting individual liberties.
 - She wrote, “While a district court plays a limited role in granting ‘leave of court’ to an unopposed motion to dismiss, it is long settled that a district court cannot supervise the prosecutorial decisions of the Executive Branch. *In our system of separated powers, the government may deprive a person of his liberty only upon the action of all three branches: Congress must pass a law criminalizing the activity; the Executive must determine that prosecution is in the public interest; and the Judiciary, independent of the political branches, must adjudicate the*

³⁸ CASE W. RES. UNIV. SCH. LAW, *Sumner Canary Memorial Lecture*, YOUTUBE (Mar. 3, 2022), <https://www.youtube.com/watch?v=7U6iSwWh660>, at 4:44 (emphasis added).

³⁹ CASE W. RES. UNIV. SCH. LAW, *Sumner Canary Memorial Lecture*, YOUTUBE (Mar. 3, 2022), <https://www.youtube.com/watch?v=7U6iSwWh660>, at 5:40 (emphasis added).

⁴⁰ Stephanie Hessler, et. al., *Obama’s Next Justice*, MANHATTAN INST. (Apr. 10, 2010), <https://www.manhattan-institute.org/html/obamas-next-justice-2476.html> (emphasis added).

⁴¹ Neomi Rao, *The Supreme Court’s rule by talking points*, WASH. EXAM’R (July 7, 2015), <https://www.washingtonexaminer.com/the-supreme-courts-rule-by-talking-points> (emphasis added).

⁴² Neomi Rao, *The Supreme Court’s rule by talking points*, WASH. EXAM’R (July 7, 2015), <https://www.washingtonexaminer.com/the-supreme-courts-rule-by-talking-points> (emphasis added).

⁴³ Neomi Rao, *The Supreme Court’s rule by talking points*, WASH. EXAM’R (July 7, 2015), <https://www.washingtonexaminer.com/the-supreme-courts-rule-by-talking-points> (emphasis added).

case. The Constitution divides these powers in order to protect individual liberty from a concentration of government authority.”⁴⁴

- Rao has commented on the originalist approaches of Justices Thomas and Scalia.
 - She said, “I do think in some ways Justice Thomas is a more thoroughgoing originalist than Justice Scalia was.”⁴⁵

Faith & the Public Square:

- Judge Rao joined an opinion written by Judge Millett which remanded for entry of a preliminary injunction requiring the military to allow Sikhs to enlist without shaving their heads or beards, and to permit the wearing of certain articles of faith, because the Sikhs showed an overwhelming likelihood of success on the merits of their RFRA [Religious Freedom Restoration Act] claims.
 - The opinion by Judge Millett stated, “*Plaintiffs are lifelong Sikhs for whom the failure to comply with those faith obligations would be intolerable.* Cutting one’s hair, for example, is ‘as reprehensible as adultery,’ as Milaap Chahal attested in his administrative appeal. J.A. 170. Throughout history, Sikhs have chosen death over cutting their hair. Compl. ¶ 85, J.A. 27; see also Sikh Coalition Testimony at 107 (‘[D]enying a Sikh the right to wear a turban and maintain unshorn hair is perceived by followers as the most humiliating and hurtful physical injury that can be inflicted upon a Sikh.’).”⁴⁶

Religious Liberty:

- Rao has indicated that expansive government policy can impede religious liberty.
 - She stated, “*[E]xpansive social regulations can impede choices that are fundamental to religious exercise and to freedom of conscience.*”⁴⁷

Sanctity of Life:

- Rao has commented that fetuses have “inherent dignity.”
 - She wrote, “*In Casey, the plurality focused on the inherent dignity of a woman’s freedom to choose an abortion, but minimized the competing inherent dignity of the fetus to life.*”⁴⁸

⁴⁴ *In re Flynn*, 449 U.S. App. D.C. 322, 339, 973 F.3d 74 (D.C. Cir. 2020), <https://www.courtlistener.com/opinion/4781231/in-re-michael-flynn/?q=cites%3A%28187244%29>, (emphasis added).

⁴⁵ Richard Wolf, *After 25 years, Clarence Thomas still dissents*, USA TODAY (Oct. 21, 2016), <https://www.usatoday.com/story/news/politics/2016/10/21/supreme-court-clarence-thomas-25-years-scalia/92063306/>.

⁴⁶ *Singh v. Berger*, 56 F.4th 88 (D.C. Cir. 2022), <https://law.justia.com/cases/federal/appellate-courts/cadc/22-5234/22-5234-2022-12-23.html> (emphasis added).

⁴⁷ HERITAGE FOUND., *The Administrative State and the Structure of the Constitution*, YOUTUBE (Oct. 5, 2017), <https://www.youtube.com/watch?v=-md49z1SuFU&t=528s>, at 9:25 (emphasis added).

⁴⁸ Neomi Rao, *Three Concepts of Dignity in Constitutional Law*, 86 NOTRE DAME L. REV. 183, 211 (2013),

- She has also argued, “[T]here were many persuasive legal arguments against recognizing a constitutional right to abortion.”⁴⁹

LGBT Issues:

- Rao has characterized the LGBT movement as a “trendy political movement[.]”
 - She wrote that, “*Trendy political movements have only recently added sexuality to the standard checklist of traits requiring tolerance.*”⁵⁰
- She has critiqued homosexuals as multiculturalists who seek to “redefine marriage.”
 - Rao explained, “[Multiculturalists] 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*”⁵¹
- Rao criticized the rationale of the Supreme Court in *Windsor v. United States*, which invalidated part of the Defense of Marriage Act.
 - Rao explained, “*The constitutional right at issue — some form of free-standing dignity of recognition — has little connection to our constitutional text or history and leaves important questions unanswered.* Regardless of what happens in the next case, constitutional dignity in the United States should be about individual rights and liberties or about the related limits on government power. *The dignity of recognition, no doubt pressing for individuals wishing to be recognized, is better left to the political process.*”⁵² She has also said, “[H]aving federal recognition for same-sex marriage is not a freedom or right in any meaningful sense. Consider that if every state eliminated same-sex marriage, *Windsor* would not protect any marriage rights.”⁵³
- Rao has criticized the decision in *Lawrence v. Texas* but says she favors the policy of homosexual marriage.
 - She declared, “*Lawrence expresses a strong preference for certain values but fails to articulate a coherent constitutional principle.*”⁵⁴

<http://ndlawreview.org/wp-content/uploads/2013/06/Rao.pdf> (emphasis added).

⁴⁹ Neomi Rao, *A backdoor to Policy Making: The Use of Philosophers by the Supreme Court*, 65 U. CHI. L. REV. (1998), <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5009&context=uclrev>, at PDF p. 10 (emphasis added).

⁵⁰ Neomi Rao, *Queer Politics*, YALE HERALD (Nov. 11, 1994), <https://afj.org/wp-content/uploads/2020/03/13-Queer-politics.pdf> (emphasis added).

⁵¹ Neomi Rao, *How the Diversity Game is Played*, WASH. TIMES (July 17, 1994), <https://afj.org/wp-content/uploads/2019/12/07-How-the-Diversity-Game-is-Played.pdf>, at PDF p. 2 (emphasis added).

⁵² Neomi Rao, *The Trouble with dignity and Rights of Recognition*, 99 VA. L. REV. 29, 34 (2013), https://afj.org/wp-content/uploads/2020/03/Rao-The-Trouble-With-Dignity-and-Rights-of-Recognition_.pdf, at PDF p. (emphasis added).

⁵³ Neomi Rao, *Windsor and the Problem with Rights of Recognition*, VOLOKH CONSPIRACY (Sept. 25, 2013), <http://volokh.com/2013/09/25/windsor-problem-rights-recognition/> (emphasis added).

⁵⁴ Neomi Rao, *On the Use and Abuse of Dignity in Constitutional Law*, 14 COLUMBIA J. EUROPEAN L. 201, 243 (2008), https://afj.org/wp-content/uploads/2020/03/Rao-On-the-Use-and-Abuse-of-Dignity-in-Constitutional-Law_.pdf, at PDF p. 43 (emphasis added).

- Judge Rao participated in a *per curiam* opinion rejecting malicious prosecution and defamation claims related to allegations centered on racist and anti-gay treatment by members of a police department.⁵⁵
- Rao has questioned the validity of the feminist movement.
 - Rao has stated, “*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.*”⁵⁶

Faith & Worldview:

- Rao is married with two children.⁵⁷

Second Amendment: No information has been located on this topic.

Education Issues:

- Rao has disparaged the “multicultural” movement on college campuses.
 - She wrote, “*Underneath their touchy-feely talk of tolerance, [multiculturalists] seek to undermine American culture.*” Rao called campus diversity initiatives a “silly little game.”⁵⁸
- Rao has also criticized affirmative action.
 - In a book review, she characterized affirmative action as the “anointed dragon of liberal excess.”⁵⁹
 - She has also argued: “*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.*”⁶⁰
- Rao criticized the “Liberal Party” organization at Yale University during her time as a student.

⁵⁵ *Harris v. Bowser*, 843 F. App’x 328 (D.C. Cir. 2021), <https://caselaw.findlaw.com/court/us-dc-circuit/2122302.html>.

⁵⁶ Neomi Rao, *The Feminist Dilemma*, YALE FREE PRESS (Apr. 1993), <https://afj.org/wp-content/uploads/2019/12/02-The-Feminist-Dilemma.pdf>, at PDF p. 2 (emphasis added).

⁵⁷ Judge Neomi Rao, *D.C. Circuit U.S. Court of Appeals*, PRESIDENTIAL PRAYER TEAM (Sept. 10, 2020), <https://www.presidentialprayerteam.org/2020/09/10/judge-neomi-rao-d-c-circuit-u-s-court-of-appeals/>.

⁵⁸ Neomi Rao, *How the Diversity Game is Played*, WASH. TIMES (July 17, 1994), <https://afj.org/wp-content/uploads/2019/12/07-How-the-Diversity-Game-is-Played.pdf>, at PDF p. 2 (emphasis added).

⁵⁹ Neomi Rao, *One Writer’s Battles*, WASH. EXAM’R (Nov. 10, 1996), <https://afj.org/wp-content/uploads/2020/03/08-One-Writer27s-Battles.pdf>, at PDF p. 4.

⁶⁰ Neomi Rao, *Gender, Race, & Individual Dignity: Evaluating Justice Ginsburg’s Equality Jurisprudence*, OHIO STATE L. J. 1053, 1080 (2009), https://afj.org/wp-content/uploads/2020/03/Rao-Gender-Race-and-Individual-Dignity-Evaluating-Justice-Ginsburgs-Equality-Jurisprudence_.pdf, at PDF p. 28 (emphasis added).

- She described the group as “representative of the modern elitist class of Democrat bent on paternalistic social engineering.”⁶¹

Administrative State:

- Rao criticized early 20th century progressives for eroding the boundaries of law’s province and ushering in the “wilderness theory of law,” which she believes allowed agencies to improperly exercise legislative power.
 - She stated, “The wilderness approach promotes an unbounded understanding of government power in pursuit of particular substantive ends . . . *it no longer mattered that the Constitution vested limited legislative power in Congress, executive agencies would now be able to exercise what amounted to the law-making power in the name of efficiency.*”⁶²
- Rao has criticized the expansiveness of the administrative state.
 - Rao has argued, “[W]e need less regulation, as well as more effective regulation.”⁶³
 - She has also stated, “Administrative agencies that operate on their own inertia often create regulations that are overly burdensome and fail to deliver any real benefits. *So today we have on the books many regulations that are arguably inconsistent with law, regulations that have never worked, or are no longer working, regulations that cause affirmative harm, and regulations that are duplicative or simply unnecessary.* Far too many regulations are a solution in search of a problem, rather than a response to an actual market failure.”⁶⁴
- Rao has indicated support for the Trump administration’s deregulation efforts.
 - She wrote in an opinion piece, “*The benefits of deregulation are felt far and wide, from lower consumer prices to more jobs and, in the long run, improvements to quality of life from access to innovative products and services* The administration’s reform agenda focuses on unleashing the freedom of American workers, innovators and businesses. *We are pushing back the expansion of the administrative state, which has too often imposed immense regulatory costs without any benefit*”⁶⁵

⁶¹ Neomi Rao, *Yale’s Mix of Undergraduate Organizations*, YALE FREE PRESS (Sept. 1994), <https://afj.org/wp-content/uploads/2020/03/04-Yale27s-Mix-of-Undergraduate-Organizations.pdf>, at PDF p. 1.

⁶² GEORGETOWN CTR. FOR THE CONST., 2021 Thomas M. Cooley Judicial Lecture: Judge Neomi Rao, YOUTUBE (May 4, 2022), https://www.youtube.com/watch?v=oyZ_wnxfuMU, at 11:13 (emphasis added).

⁶³ HERITAGE FOUND., *The Administrative State and the Structure of the Constitution*, YOUTUBE (Oct. 5, 2017), <https://www.youtube.com/watch?v=-md49z1SuFU&t=528s>, at 7:33 (emphasis added).

⁶⁴ HERITAGE FOUND., *The Administrative State and the Structure of the Constitution*, YOUTUBE (Oct. 5, 2017), <https://www.youtube.com/watch?v=-md49z1SuFU&t=528s>, at 7:59 (emphasis added).

⁶⁵ Neomi Rao, *The Trump Administration’s Deregulation efforts are saving billions of dollars*, WASH. POST (Oct. 17, 2018), https://archive.is/20201226000543/https://www.washingtonpost.com/opinions/the-trump-administration-is-deregulating-at-breakneck-speed/2018/10/17/09bd0b4c-d194-11e8-83d6-291fced2ab1_story.html (emphasis added).

- Rao was honored as Empowered Woman of the Year by the Network of Enlightened Women “for her work in cutting regulations, allowing women to flourish,” said Karin Lips, Founder and President of NeW, who added, “Thank you to Administrator Rao for her monumental leadership of regulatory reform.”⁶⁶
- Rao was Director and Founder of the C. Boyden Gray Center for the Study of the Administrative State at George Mason University Antonin Scalia Law School.⁶⁷

History of Commitment to Causes:

- Rao has been a member of the Federalist Society since 1996.⁶⁸
- She is also a Member of the South Asian Bar Association of North America.⁶⁹
- The Heritage Foundation honored Rao with its Distinguished Alumni Award in 2018.⁷⁰

Government Overreach:

- Judge Rao voted to vacate Judge Boasberg’s finding that the Trump administration should be held in criminal contempt for ordering planes that had already left the United States carrying deported Venezuelan criminal gang members to proceed, despite the judge’s order that the detainees could not be removed and that the planes be turned around.
 - While the deportees were on the plane and in the process of removal, the district court entered a temporary restraining order (TRO) barring their removal. Even though the Supreme Court then vacated the TRO, the district court issued an order finding that the Trump administration had willfully violated the [now vacated] TRO and gave the administration the choice of coming into compliance with the TRO or identifying officials responsible for the removals for criminal contempt proceedings.⁷¹
 - Judge Rao wrote in her concurrence, “*The district court’s abuse of the contempt power is especially egregious because contempt proceedings against senior Executive Branch officials carry profound ‘separation of power[s] overtones’ that demand the most ‘sensitive judicial scrutiny.’ [citation omitted] Lacking the authority to compel obedience, the district court nonetheless pressured the government to take custody of alleged alien enemies held in El Salvador. This*

⁶⁶ The Network of Enlightened Women Announces Neomi Rao as Winner of the 2018 Empowered Woman of the Year, ENLIGHTENED WOMEN (June 19, 2018), <https://enlightenedwomen.org/network-enlightened-women-announces-neomi-rao-winner-2018-empowered-woman-year/>.

⁶⁷ Neomi Jehangir Rao, FED. JUD. CTR., <https://www.fjc.gov/history/judges/rao-neomi-jehangir>.

⁶⁸ S. Questionnaire, <https://www.judiciary.senate.gov/imo/media/doc/Neomi%20Rao%20SJQ%20-%20PUBLIC.pdf>, at PDF p. 4.

⁶⁹ S. Questionnaire, <https://www.judiciary.senate.gov/imo/media/doc/Neomi%20Rao%20SJQ%20-%20PUBLIC.pdf>, at PDF p. 5.

⁷⁰ S. Questionnaire, <https://www.judiciary.senate.gov/imo/media/doc/Neomi%20Rao%20SJQ%20-%20PUBLIC.pdf>, at PDF p. 14.

⁷¹ See *J.G.G. v. Trump*, No. 25-5124 (D.C. Cir. 2025), <https://media.cadc.uscourts.gov/opinions/docs/2025/08/25-5124-2129262.pdf>, at PDF p. 40.

*intrusion on the President’s foreign affairs authority ‘constitute[s] an unwarranted impairment of another branch in the performance of its constitutional duties.’ [citation omitted] Because the order exceeds the court’s authority and amounts to a clear abuse of discretion, mandamus is appropriate.”*⁷²

- Rao added, “The proffered choice [between complying with the vacated order or providing identities for criminal contempt prosecutions] impermissibly commingles civil and criminal contempt in a manner that results in substantial prejudice to the government. Compounding this error, *the district court’s order attempts to control the Executive Branch’s conduct of foreign affairs, an area in which a court’s power is at its lowest ebb.*”⁷³
- Judge Rao was one of three judges on the panel upholding an effort by the federal government to force TikTok’s divestiture from its Chinese parent company.⁷⁴ The D.C. Circuit panel including Judge Rao rejected TikTok’s First Amendment defense in light of national security concerns involving China’s “ability to manipulate [TikTok] content covertly.”⁷⁵
 - The opinion written by Judge Ginsburg states, “The resulting judgment of the Congress and the Executive regarding the national security threat posed by the TikTok platform ‘is entitled to significant weight, and we have persuasive evidence [in the public record] before us to sustain it.’ [citation omitted] The petitioners raise several objections to each national security justification, which we take up next, but the bottom line is that they fail to overcome the Government’s considered judgment and the deference we owe that judgment.”⁷⁶

⁷² *J.G.G. v. Trump*, No. 25-5124 (D.C. Cir. 2025), <https://media.cadc.uscourts.gov/opinions/docs/2025/08/25-5124-2129262.pdf>, at PDF p. 41.

⁷³ *J.G.G. v. Trump*, No. 25-5124 (D.C. Cir. 2025), <https://media.cadc.uscourts.gov/opinions/docs/2025/08/25-5124-2129262.pdf>, at PDF p. 46.

⁷⁴ *DC Circuit rejects TikTok’s First Amendment defense, opening door for January ban*, COURTHOUSE NEWS (Dec. 6, 2024), <https://www.courthousenews.com/dc-circuit-rejects-tiktoks-first-amendment-defense-opening-door-for-january-ban/>.

⁷⁵ *DC Circuit rejects TikTok’s First Amendment defense, opening door for January ban*, COURTHOUSE NEWS (Dec. 6, 2024), <https://www.courthousenews.com/dc-circuit-rejects-tiktoks-first-amendment-defense-opening-door-for-january-ban/>.

⁷⁶ *TikTok v. Garland*, No. 24-1113 (D.C. Cir. 2024), <https://media.cadc.uscourts.gov/opinions/docs/2024/12/24-1113-2088317.pdf>, at PDF p. 38.