



September 4, 2020

United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way opposes the forthcoming nomination of Kathryn (Kat) Kimball Mizelle to be a judge on the Middle District of Florida. She plainly lacks the minimal litigation experience needed for a responsible senator to entrust her with a lifetime seat on the nation's federal judiciary. Indeed, Mizelle's record suggests that she is exactly the kind of partisan nominee that the framers intended the Senate to protect us from.

As an initial matter, this country is facing multiple crises that threaten any hope of achieving a just and equitable society: an unchecked pandemic that is killing more than 1,000 people in the United States every day; systemic racism in law enforcement that puts Black and Brown Americans in daily jeopardy; and a president who is subverting the rule of law, ignoring democratic norms, and now threatening the very integrity of our elections through his attacks on voting and refusal to provide the resources necessary to conduct safe and secure voting. The Senate has before it measures passed by the House, in some cases months ago, to address these emergencies. They include the HEROES act to provide testing and treatment for COVID, essential support to local and state governments to meet the challenges of confronting the pandemic, and critical election security resources; the Justice in Policing Act, an overdue first step in addressing the challenges of systemic racism in law enforcement; and the Delivering for America Act, to provide critical financial support for the U.S. Post Office and roll back the steps taken by the Postmaster General that could jeopardize the Postal Service's ability to deal with the anticipated volume of mailed-in ballots this November. But instead of dealing with any, let alone all, of these measures, the Senate majority turns to confirming even more Trump nominees to lifetime seats on our federal courts. The nation is in crisis – this is not a time for “business as usual.”

**Mizelle's Inexperience.** If the president had wanted someone with the demonstrated skills and experience to be a district court judge, he had any number of qualified Floridians to choose from. Instead, he picked someone who only graduated from law school in 2012, a mere eight years ago. Much of that time was spent in clerkships that, while prestigious, did not involve the actual practice of law.

According to material that she herself provided to the Judiciary Committee, only once has she conducted direct examination of an expert witness, and only twice has tried a case to verdict.<sup>i</sup>

The time that she has spent working as an attorney falls far short of meeting the American Bar Association's nonpartisan standard of competence for the federal bench: "at least twelve years' experience in the practice of law." She lacks the long, substantial courtroom or trial experience that is vital for someone overseeing complex litigation and criminal prosecutions where the rights and the lives of people are at stake.

Even the law firm where she works makes that clear. She has been a junior attorney at Jones Day since 2019. The firm's website profiles each attorney and highlights their legal experience in their respective issue areas. For Mizelle, that experience consists of only one case.<sup>ii</sup> As the site notes, the firm had filed an amicus brief on behalf of business groups opposing a mandamus petition against OSHA that would have directed the agency to adopt an emergency temporary standard protecting working people from COVID-19. In fact, the matter was of such little complexity that a unanimous panel of the D.C. Circuit denied the petition without oral argument in a short, unpublished *per curiam* order.<sup>iii</sup> Moreover, in this lone example of her experience, her own firm listed her as the last of four Jones Day lawyers on the brief.

To entrust a lifetime judicial position to someone with so little relevant experience would do a disservice to the people of the Middle District of Florida. It would also subvert the cause of justice that the third branch of government is supposed to protect and embody.

**Mizelle's Conservative Credentials.** In 2019, Sen. Ted Cruz made clear what conservatives are looking for in a judge as he explained their opposition to Sul Ozerden's nomination to the Fifth Circuit:

He is not a conservative. He's never been affiliated with the conservative movement. He's never volunteered his time to advance conservative causes. He's never been active in conservative legal circles. And he's never written any decisions that have advanced conservative principles.

Mizelle clearly meets their ideological requirements. She joined the Federalist Society upon graduating law school and spent three years on its D.C. Young Lawyers Chapter Steering Committee. She has clerked for conservative hero Justice Clarence Thomas, as well as the far-right judges William Pryor (Eleventh Circuit) and Greg Katsas (D.C. Circuit). And while all ten of President Trump's confirmed Florida district court nominees first went through Sen. Marco Rubio and then-Sen. Bill Nelson's bipartisan Judicial Nominating Commission before being recommended to the White House,<sup>iv</sup> no such commission has existed since Nelson was replaced by Sen. Rick Scott in 2019.<sup>v</sup> According to Mizelle's committee questionnaire, her selection process began with a conversation with Trump officials in the White House Counsel's Office.<sup>vi</sup>

**Conclusion.** The Republican majority should be ensuring that the Senate is doing everything possible to address the major crises facing this nation. Instead, it is continuing to approve President Trump's judicial nominees, regardless of whether they are qualified. We urge senators

not to support the forthcoming nomination of Kathryn Kimball Mizelle to the Middle District of Florida.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker  
Executive Vice President for Policy and Program

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<sup>i</sup> Senate Judiciary Committee Questionnaire, p. 17.

<sup>ii</sup> Jones Day, <https://www.jonesday.com/en/lawyers/m/mizelle-kathryn?tab=experience> (accessed Sep. 3, 2020).

<sup>iii</sup> In re AFL-CIO, No. 20-1158, 2020 U.S. App. LEXIS 18562 (D.C. Cir. June 11, 2020), rehearing denied 2020 U.S. App. LEXIS 23837 (D.C. Cir. July 28, 2020).

<sup>iv</sup> <https://www.rubio.senate.gov/public/index.cfm/2019/12/rubio-applauds-senate-confirmation-of-raag-singhal-to-be-u-s-district-court-judge-for-the-southern-district-of-florida>;  
<https://www.rubio.senate.gov/public/index.cfm/2019/12/rubio-statement-on-florida-district-court-nominee>.

<sup>v</sup> "Florida Federal Judicial Nominating Commission," Florida Bar, <https://www.floridabar.org/directories/jnc/commissions-fed>.

<sup>vi</sup> Questionnaire, p. 31.