

**League of Conservation Voters – Judiciary Program**  
**Neomi Rao, Nominee to the D.C. Circuit Court of Appeals**

**Biography**

Neomi Rao (45), has been nominated to Brett Kavanaugh’s former seat on the D.C. Circuit Court of Appeals. She is currently the Administrator of the Office of Information and Regulatory Affairs, a position she has held since July 2017. Since 2006 she has been a professor at the Antonin Scalia Law School at George Mason University, and founded the school’s Center for the Study of the Administrative State in 2015. Ms. Rao served as Associate Counsel and special Assistant to President Bush (2005 - 2006) and was as an associate in Clifford Chance’s London office (2002- 2005). She began her legal career as a Counsel on the Senate Judiciary Committee. Rao earned her B.A. from Yale and her J.D for the University of Chicago Law School. After graduation, she clerked for Judge Wilkinson on the Fourth Circuit (1999-2000), and Justice Thomas on the Supreme Court (2001-2002).

**Areas of Concern**

The independence and fairness of our federal judiciary and the judges who serve on the bench is fundamental to a well-functioning democracy. An ability to objectively measure harm and benefits is especially essential for hearing cases involving the environment and public health. Too often, conservative judges view this issue under the narrow lens of corporate profits, and are unable or uninterested in fairly considering the impacts on public health, the environment, and other non-monetary costs or benefits.

Neomi Rao has explicitly shown throughout her career that she does not view public protections objectively, and time and time again has argued for Big Polluters over the public interest. Her extensive track record on this issue makes clear that she cannot serve fairly as a federal judge, or provide parties that come before her the confidence that their cases will be heard objectively.

**Tenure at the Office of Information and Regulatory Affairs (OIRA)**

As OIRA Administrator, Rao has led the Trump administration’s efforts to roll back decades of critical public protections. Shortly after taking office, Rao began implementation of Executive Order 13771 (also known as the Two-for-One rule), a sweeping action severely restricts the ability for federal agencies to issue new rules and protections and incentivizes the undoing of existing protections.

Rao led efforts to roll back protections intended to keep our air, water, and public lands clean. During her year and a half in the Trump administration she has served as the face of the administration’s regulatory reform, bragging about the undoing of hundreds of public protections established during the Obama administration.<sup>1</sup> Despite promoting herself as an objective arbiter seeking to restore order to the regulatory process, she has allowed agencies to disregard OIRA’s own rules when seeking to downplay benefits of protections, and exaggerate costs to corporations. While OIRA has typically served as a

---

<sup>1</sup> Neomi Rao, *The Trump administration’s deregulation efforts are saving billions of dollars*, Washington Post, [https://www.washingtonpost.com/opinions/the-trump-administration-is-deregulating-at-breakneck-speed/2018/10/17/09bd0b4c-d194-11e8-83d6-291fced2ab1\\_story.html?utm\\_term=.9802948e6e1c](https://www.washingtonpost.com/opinions/the-trump-administration-is-deregulating-at-breakneck-speed/2018/10/17/09bd0b4c-d194-11e8-83d6-291fced2ab1_story.html?utm_term=.9802948e6e1c) (Oct. 17, 2018).

compliance office, under Rao leadership it has served as a corporate lobbyist, interfering with the rulemaking process to achieve political gains and corporate profits at the expense of the public.

Since the Reagan administration, OIRA has recognized the importance of considering “co-benefits,” or positive impacts of public protections that are not the primary purpose of the rule.<sup>2</sup> The intent is to fully consider the impact of protections, rather than using a narrow lens to justify a partisan goal. Rao’s actions at OIRA have threatened the nearly forty years of bipartisan consensus on this issue; she has repeatedly approved setting aside co-benefits in order to artificially inflate the administration’s record on “regulatory reform,” and justify rolling back public protections that will put thousands of lives at risk every year.

### ***Rao’s most extreme anti-environment actions as OIRA Administrator***

- ***Methane and Waste Prevention Rule.*** In addition to approving a proposal to roll back protections reducing natural gas leaks or intentional releases, Rao’s office took an active role lobbying the EPA to further relax standards.<sup>3</sup> During the OIRA review process, Rao’s staff pressured the EPA to fulfill fossil fuel lobby demands and reduce the leak inspections from quarterly to annually.<sup>4</sup> OIRA’s proposal would have doubled the amount methane released into the atmosphere and, according to the EPA’s own determinations, conflicted with their legal obligation to reduce emissions.<sup>5</sup>
- ***Clean Power Plan.*** Rao approved proposed regulations rescinding the *Clean Power Plan*, a groundbreaking Obama administration policy to significantly reduce greenhouse gas emissions from power plants.<sup>6</sup> The *Clean Power Plan* provided an estimated \$34 - \$54 billion in benefits to the public, but the repeal approved by Rao took questionable steps to downplay the far-reaching benefits of the rule.<sup>7</sup> EPA’s flawed cost-benefit analysis significantly decreased estimates for costs

---

<sup>2</sup> Jason Perkins, *The Case for Co-Benefits: Regulatory Impact Analyses and the Environmental Protection Agency’s Mercury and Air Toxics Standards*, <https://bit.ly/2TrCM6L> (Sep. 6, 2016).

<sup>3</sup> Bureau of Land Management Final Rule: Waste Prevention, Production Subject to Royalties, and Resource Conservation, <https://www.govinfo.gov/content/pkg/FR-2017-12-08/pdf/2017-26389.pdf> (Dec. 8, 2017); Also see <https://www.npr.org/2018/06/23/622727843/large-methane-leaks-threaten-perception-of-clean-natural-gas>.

<sup>4</sup> *White House Backed Big Oil Over EPA on Finding Methane Leaks*, Bloomberg News, <https://www.bloomberg.com/news/articles/2018-10-19/white-house-backed-drillers-over-epa-on-plugging-methane-leaks> (Oct. 19, 2018)

<sup>5</sup> *Id.*

<sup>6</sup> *Electric Utility Generating Units: Repealing the Clean Power Plan: Proposal*, Environmental Protection Agency, <https://www.epa.gov/stationary-sources-air-pollution/electric-utility-generating-units-repealing-clean-power-plan-0> (Oct. 10, 2017).

<sup>7</sup> *How the Trump Administration Distorts Analysis of Key Environmental Rules*, Yale Environment 360, <https://e360.yale.edu/features/how-the-trump-administration-distorts-analysis-of-key-environmental-rules> (Jan. 29, 2018).

associated with climate change (despite confirming the same estimate for future pollution rates) and largely disregarded the health benefits achieved by reducing hazardous air pollution.<sup>8</sup>

- EPA went on to introduce the *Affordable Clean Energy* program, a proposed replacement for the *Clean Power Plan* that by its own estimates would cause upwards of 1,400 premature deaths annually.<sup>9</sup> During the review process, Rao’s office censored language referencing climate change and the significant costs it poses to public health and the environment.<sup>10</sup>
- This wasn’t the only time Rao’s office censored climate change language; OIRA cut language about the impact of climate change on child health when reviewing a proposed rollback of the *Refrigerant Management Program*, protections limiting the release of hydrofluorocarbons (HFCs), greenhouse gases thousands of times more powerful than carbon dioxide.<sup>11</sup> The proposed rollback downplayed the public benefits of reducing emissions, ignored the \$15 million in annual savings to businesses created by preventing leaks, and if finalized will result in at least 3 million tons of greenhouse gas emissions annually,
- *Mercury and Air Toxics Standards (MATS)*: Existing OIRA rules require agencies to consider “co-benefits” of rules, such as reduction of pollution that isn’t the primary objection of the protection.<sup>12</sup> However, to undermine the protections of the *Mercury and Air Toxics Standards*, Rao allowed the EPA to ignore co-benefits during their cost-benefit analysis, including an estimated 11,000 premature deaths and 130,000 asthma attacks prevented annually by the rule. These co-benefits represented over 90 percent of the rule’s public benefits, or an estimated \$37 to \$90 billion a year. The EPA reduced the estimated benefits to \$9.6 million, erroneously arguing that the co-benefits should not be counted because they were outside of the direct focus of the rule.<sup>13</sup>

---

<sup>8</sup> EPA’s Proposal to Repeal the Clean Power Plan: Benefits and Costs, Congressional Research Service, <https://fas.org/sgp/crs/misc/R45119.pdf> (Feb. 28, 2018).

<sup>9</sup> Cost of New E.P.A. Coal Rules: Up to 1,400 More Deaths a Year, New York Times, <https://www.nytimes.com/2018/08/21/climate/epa-coal-pollution-deaths.html?smid=tw-nyclimate&smtyp=cur> (Aug. 21, 2018).

<sup>10</sup> White House cut climate warnings from rule on power plants, E&E News, <https://www.eenews.net/climatewire/stories/1060095807/> (Sep. 5, 2018).

<sup>11</sup> Children’s health language deleted from climate rule, E&E News, <https://www.eenews.net/eenewspm/stories/1060100339/> (Oct. 2, 2018).

<sup>12</sup> 2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act, White House, [https://www.whitehouse.gov/wp-content/uploads/2017/12/draft\\_2017\\_cost\\_benefit\\_report.pdf](https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf) (Feb. 28, 2018).

<sup>13</sup> Mercury and Air Toxics Standards: Proposed Revised Supplemental Finding and Results of the Residual Risk and Technology Review, EPA, <https://www.epa.gov/mats/proposed-revised-supplemental-finding-and-results-residual-risk-and-technology-review> (Dec. 27, 2018).

The EPA also misrepresented the cost of MATS, setting it at \$9.6 billion, the highest estimate provided by the Obama administration. However, energy companies have already spent billions to comply with the rule since the Obama administration developed those estimates,<sup>14</sup> meaning that the repeal of MATS would result in minimal reduction of corporate costs while putting the lives of thousands at risk.

- **Corporate Average Fuel Economy (CAFE) Standards:** Rao approved a proposed rule freezing fuel economy standards and revoking a waiver allowing California to set higher air quality standards, which will significantly increase future oil demand and greenhouse gas emissions.<sup>15</sup> Rao allowed the proposed rule despite its use of a flawed analysis that argued freezing the standard would save lives, and agency disagreement about the model. During the OIRA review, EPA staff pushed back against National Highway Traffic Safety Administration (NHTSA) estimates in internal documents, saying that the “proposed standards are detrimental to safety, rather than beneficial.”<sup>16</sup> NHTSA based their savings on several wildly speculative factors, including assuming that freezing the standard would reduce frequency of driving, and yet increase the frequency of new car purchases. RAO did nothing to correct NHTSA’s flawed analysis and simply allowed NHTSA to proceed despite EPA objections. NHTSA now admits its modeling was wrong and has indicated that it will change it in the final rule.
- **Wood Stove Rule:** Rao approve a proposed EPA rule to roll back public health protections that reduce pollution from wood-burning stoves, despite admission by the EPA that the new rule would cost nine times as much in harm to public health as it would benefit the industry.<sup>17</sup> While Rao has aggressively pushed agencies to only propose rules that create more benefits than costs, she ignored her own standard when it meant putting public health at risk to benefit a corporate interest.

### Inflammatory Writings

During her time in college, Rao’s writings took direct aim at environmentalism efforts, calling the greenhouse effect a “controversial theor[y],” and referring to it, ozone depletion, and acid rain as “environmental bogeymen.”<sup>18</sup> In another article, she dismissed efforts to incorporate environmentalism on college campuses, bemoaning environmental literacy, reusable cups, and campus recycling as “eco-

---

<sup>14</sup> Letter from electric utility trade organizations to Assistant EPA Administrator William Wehrum, [https://www.eenews.net/assets/2018/07/11/document\\_gw\\_04.pdf](https://www.eenews.net/assets/2018/07/11/document_gw_04.pdf) (July 10, 2018).

<sup>15</sup> Trump is freezing Obama’s fuel economy standards. Here’s what that could do., Vox, <https://www.vox.com/energy-and-environment/2018/5/3/17314000/trump-epa-cars-trucks-fuel-economy-cafe-standards> (Aug. 2, 2018)

<sup>16</sup> EPA Doubted Fuel-Economy Freeze Would Save Lives as Claimed, Bloomberg News, <https://www.bloomberg.com/news/articles/2018-08-14/epa-doubted-car-fuel-economy-freeze-would-save-lives-as-claimed> (Aug. 14, 2018).

<sup>17</sup> Wood-heating proposal tests rule-busting claims, E&E News, <https://www.eenews.net/stories/1060109733> (Dec. 14, 2018).

<sup>18</sup> The Obedient Limbs of YSEC: Yale’s Powerful Environmental Movement, The Yale Free Press, <https://afj.org/wp-content/uploads/2019/01/15-The-Obedient-Limbs-of-YSEC.pdf> (Apr. 1992).

insanity.<sup>19</sup> A judge who does not believe fundamental scientific facts cannot be a fair arbiter of issues involving impact on our environment and public health. And yet, Rao is nominated to the D.C. Circuit, a court that hears a vast number of cases concerning environmental and public health protections.

*Note: In addition to her writings on environmental issues, Rao's articles regarding sexual assault and race are reprehensible, and reflect an extreme perspective that has no place on our judicial system.*<sup>20</sup>

### **Connection to Right-Wing Organizations**

Since college and throughout her career, Rao has been connected to far-right advocacy organizations. In college she received a journalism fellowship for the Heritage Foundation, an organization that elevates climate deniers and actively opposed efforts to address climate change. Since 1996 she has been a member of the Federalist Society and spoke at over 30 events over the past ten years.<sup>21</sup> While the organization claims not to take positions on policy issues, it frequently provides a platform for climate deniers and extremists who argue against the fundamental ability of federal agencies to act for the public benefit. The Federalist Society has also assisted the Trump administration in selecting some of the most extreme and partisan of its members as judicial nominees.

---

<sup>19</sup> *Choking on the 'greenies' diet*, Washington Times, <https://afj.org/wp-content/uploads/2019/01/14-Choking-on-the-27greenies27-diet.pdf> (Sep. 6, 1994).

<sup>20</sup> See, e.g., *Neomi Rao*, Alliance for Justice, <https://www.afj.org/neomi-rao> (Jan. 2019).

<sup>21</sup> *Neomi Rao Senate Judiciary Questionnaire*, <https://afj.org/wp-content/uploads/2019/01/Neomi-Rao-SJQ-Public-OCR.pdf> (Jan. 2019).