New Civil Liberties Alliance

Analysis of President Biden's Potential Nominees to the U.S. Supreme Court

Based Primarily on Their Views of the Administrative State

February 10, 2022

Hon. Ketanji Brown Jackson

Judge, U.S. Court of Appeals for the District of Columbia Circuit
Age: 51, born in Washington, D.C.; raised in Florida
Education: Harvard College (magna cum laude); Harvard Law School (cum laude)
Clerkships: Judge Patti Saris (D. Mass); Judge Bruce Selya (CA1); Justice Stephen Breyer (S. Ct.)

Judge Ketanji Brown Jackson is currently on the D.C. Circuit. She was confirmed in the summer of 2021 with three Republican votes (Senators Collins, Murkowski, and Graham). She served on the district court of D.C. before that. She has extensive big firm experience at WilmerHale, Miller Cassidy, Goodwin Procter, as well as the appellate practice at Morrison & Foerster. She also worked with the Feinberg Group for a year and therefore must have arbitration experience. She took two years to work at the D.C. public defender's office and then was appointed to the Sentencing Commission (a place near and dear to Justice Breyer). She then became a district court judge and served nine years before her elevation to the Circuit.

She is married to Patrick Jackson, a surgeon from an old Boston family, and they have two daughters, one in high school and one in college. She has spoken many times about the difficulty of being a mother and meeting the demands of big firm life. She is a sister-in-law through marriage to Paul Ryan as his wife's sister is married to her husband's twin brother. Paul Ryan introduced her to the Senate for her district court appointment, which was non-controversial. She has served on many boards, such as a now-defunct orthodox Christian day school that caused a stir with some groups. At her confirmation, she affirmed a commitment to religious liberty but said she did not adhere to all the views of all the organizations on whose Boards she sits. She is also on the Board of her kid's school (Georgetown Day) as well as Harvard's Board of Visitors. She has said she would recuse from the Harvard affirmative action case because her position would mean her impartiality could be questioned. News reports dwell on an uncle who received a life sentence and other more distant relatives who have encountered the criminal justice system.

Judicial Opinions. Judge Brown Jackson has issued only one opinion (unanimous) on the D.C. Circuit so far. In it, she sided with federal unions that had challenged an executive order and corresponding regulation that the D.C. Circuit found was proscribed by the applicable labor statute (FLRA). This was a challenge to a Presidential EO and represents curtailing the power of the executive

by adherence to statutory language. It also stated that the agency had failed to adequately explain its reasoning.

She wrote over five hundred opinions as a district court judge. For someone touted as being particularly sensitive to the claims of the accused and downtrodden, it is notable that scores of these cases involved her granting in forma pauperis applications and then dismissing the Complaints for not meeting pleading standards. She was very attentive to each claims-pleading standard generally and did not hesitate to dismiss poorly pleaded Complaints.

Some of her controversial district court decisions will no doubt be front and center of any confirmation. Her opinion as a district court judge ruling that Don McGahn could not resist a Congressional subpoena was both exceptionally long and noted the President is not a King. She has received conservative criticism for this case as it was overturned on separation of powers ground by a panel of the D.C. Circuit but then revived by the Court en banc. She tends to favor justiciability of questions before district courts both in this case and elsewhere.

This is reflected in both her approach to *Chevron* deference and her narrow reading of statutes that divest the district courts of jurisdiction. She appears in *Chevron* cases to follow the doctrine uncritically, but she does appear to apply it strictly even to "progressive" agencies, which would not be the case if the opinions were results oriented. On step one of the *Chevron* review, if the statute is clear she says so and stops agency action in contravention of it. On step two, even when the statute is ambiguous, she has found an agency's position unreasonable on occasion.

Among cases of interest in administrative law, she held unlawful and set aside under the APA an SEC rule that required companies to report to SEC and put on their websites that their products "have not been found DRC conflict free" as a violation of the first amendment. *Nat. Assoc. of Manufacturers v. SEC*, 2017 WL 3503370 (D.D.C.). She found the law clear in a patent case on "orphan drugs" and so did not go past *Chevron* step one as the agency wanted. In that case, *Depomed, Inc. v. HHS*, 66 F.Supp.3d 217 (D.D.C. 2014) Congress amended the law to overturn her decision, but it was praised by the D.C. Circuit majority (by J. Henderson) and attacked in a dissent that focused on the bad economic outcome. Crucially, no one disagreed with her view of what the words Congress wrote said. In *Otay Mesa Property, L.P. v. Department of the Interior*, 344 F.Supp.3d 355 (D.D.C. 2018), she held the Endangered Species Act allowed the agency to protect fairy shrimp in the vernal pools that were "occupied" by them. She sided with the Plaintiff landowner, who challenged the designation of land and water between the pools as so occupied. In a somewhat astringent upbraiding of the agency, she found that even though the term "occupied" was ambiguous, the agency's argument that it included adjacent vernal pools and the land in between was patently unreasonable because the shrimp were sedentary and did not migrate. She would not let the agency term areas "occupied" that literally had no fairy shrimp in them, so she vacated the designation and remanded the case to the agency to find out where the shrimp were.

She does not issue injunctions against agency action lightly. She has denied injunctions against agency action during adjudication even when finding the balance of harms tended slightly against the Plaintiff. *See American Meat Inst. v. Dept. of Agriculture*, 968 F.Supp.2d 38 (D.D.C. 2013) (denying injunction for First Amendment challenge). She apparently voted against enjoining the CDC eviction moratorium.

She has been criticized by Ed Whelan for many of her reversals by the D.C. Circuit. For challenging the administrative state, however, it would have been better if her view prevailed. In each

case, the agency argued there was no district court jurisdiction and the litigant had to go through the agency process with Circuit review in the sweet by and by. In *Make the Road N.Y., et al. v. McAleenan*, No. 19-cv-2369 (D.D.C. 2019), she found jurisdiction over DHS and granted a preliminary injunction on its new "expedited removal" regulation for illegal aliens. She found that the removal of process was reviewable under the APA but was reversed by the D.C. Circuit. She was also reversed in a case that is very much like her first majority opinion in the Circuit on the FLRA. She found jurisdiction and struck regulations that made it easier to fire federal employees as violative of the law. *American Federal Government Employees et al. v. Trump*, No. 18-5289 (D.C. Cir. 2019). Once again, she found district court jurisdiction and was reversed for it.

In a case in which an NCLA attorney was involved at a prior firm, she was reversed as to her decision that remand to the agency was "voluntary" when it had not agreed to review the actual decision made. *Limnia, Inc. v. U.S. DOE*, 857 F.3d 379 (D.C. Cir. 2017). She ultimately resolved the matter on the text of what applications for subsidy at the Dept. of Energy required, and the case was not appealed. One high-profile case that will likely be examined at any confirmation is that she sentenced the "pizza gate" shooter in D.C. for firing his rifle at the pizza parlor that became the target of a bizarre conspiracy theory.

Demeanor and Style. Judge Brown Jackson is an active questioner, and litigators should expect a lively bench. Her questioning is good natured, and she appears to enjoy the entire process. She is respectful of attorneys before her and gives the lawyer "a lot of rope." She is conversant with the briefs before oral argument, according to personal observation and her reputation among lawyers in D.C. Her writing has been criticized as turgid and orotund. She writes long opinions covering as many issues as she can find. She did clerk for Breyer after all. Nonetheless, her opinions tend to be informed and understandable if not sparkling or crackling. She is by all accounts a good colleague and has very good temperament, which would be an asset to her on the High Court.

Conclusion. Judge Brown Jackson shows no inclination to challenge long-standing doctrines like *Chevron*. Like nearly all Democratic appointees, she shows no skepticism of Covid-19 related pronouncements by the agencies. She does appear to apply *Chevron* actively rather than passively and cannot be accused of using it as a "rubber stamp" for agency action. She also leans wherever possible toward jurisdiction in the district court and avoids declining jurisdiction to send litigants to the mercies of the agencies. She has been reversed for this propensity and criticized by the business and administrative law community, but it is a positive development for challenging the administrative state. Finally, from personal observation, she challenges the government in oral argument and does not appear to be on the "Government team" during litigation.

Hon. Julianna Michelle Childs

Judge, U.S. District Court for the District of South Carolina, since 2010
Nomination pending to the U.S. Court of Appeals for the District of Columbia Circuit
Age: 56, born in 1966 in Detroit, Michigan
Education: University of South Florida, BA, Cum Laude, 1988
University of South Carolina School of Law, JD, 1991
University of South Carolina, MA, Personnel and Employment Relations, 1991
Duke University, School of Law, LLM, Judicial Studies, 2016
Clerkships: None

President Obama nominated Michelle Childs to the United States District Court in March 2009, and she was confirmed in August 2010. President Biden nominated her to the United States Court of Appeals for the District of Columbia Circuit last month. Her nomination is pending in the Senate Judiciary Committee. On January 28, 2022, the White House stated that Childs is among those whom Biden is considering for nomination to the Supreme Court.

Judge Childs was born in Detroit. When she was a teen, her father, who was a police officer, died. Her mother, a personnel manager for Michigan Bell Telephone, decided to move to Columbia, South Carolina due to the rising crime in Detroit. Childs was inspired to pursue a legal career after participating in a mock trial program at the University of South Florida.

From 1991 until 2000, Childs worked for the law firm Nexsen Pruet of Columbia, South Carolina, first as a summer associate and then as an associate attorney from 1992 to 1999. She became the firm's first African American partner in 2000. During her time at the firm, Childs gained a reputation for being an expert in employment and labor law, focusing part of her practice on representing employers dealing with allegations of race-based and gender-based discrimination, employee efforts to unionize, and other alleged civil rights violations.

After working for Nexsen Pruet, Childs worked in state government for six years. From 2000 to 2002, Childs served as the deputy director of the division of labor with the South Carolina Department of Labor, Licensing, and Regulation during the administration of Governor Jim Hodges. From 2002 until 2006, she served as a commissioner on the South Carolina Workers' Compensation Commission. In 2006, she was elected by the South Carolina General Assembly to become Richland County Circuit Court Judge based in Columbia. During her time as a state judge, she chaired a special business court pilot program and became chief judge for General Sessions, South Carolina's criminal court. Childs was elected to the American Law Institute in 2010 and served as an adviser on the Restatement Third, Employment Law. In 2020, Childs was elected chair of the judicial division of the American Bar Association.

Judicial Opinions. As a District Court Judge, Judge Childs has written over 2,000 orders and opinions. As a matter of course, she has dealt with claims of "arbitrary and capricious" administrative actions, and deference to administrative decisions. In her writings, she has not expressed strong views—or any views for that matter—on the ideology of the "administrative state." She is a trial judge who decides the cases in front of her based on the plain meaning of the law or, if there is a legal question, the law as determined, in her words, by the Supreme Court and Fourth Circuit. *Young v. AMISUB of South Carolina, Inc.*, 2018 WL 5668619 at 5 (Nov. 2018).

For example, in *Career Counseling, Inc. v. Amerifactors Financial Group, LLC*, the dispositive issue was the binding effect on the parties of a "declaratory ruling" issued by an FCC subdivision. 2021 WL 3022677 (July 16, 2021). Judge Childs's opinion is a textbook explanation of the differences between legislative/interpretive and persuasion/deference in administrative law. Though her analysis is academic, it gives no sense of an underlying constitutional struggle between great concepts.

Her cases have been decided well within administrative law norms. *See, e.g., U.S. v. Burkett*, 2016 WL 6581196, (Nov. 7, 2016) (per *Chevron*, deferring to the Department of Education's definition of a term); *Four Holes Land and Cattle, LLC v. U.S. Citizenship and Immigration Services*, 2016 WL 4708715, at 6 (denying labor certification not "arbitrary and capricious").

Judge Childs has not addressed or acknowledged the larger issues of the administrative state. This is not to say that she has not decided controversial issues. She legalized same-sex marriage in

South Carolina by ruling that South Carolina's denial of legal recognition violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment. *Bradacs v. Haley*, 58 F. Supp. 3d 514 (2014). She declined to enjoin a private employer's mandate that its employees be vaccinated against COVID-19 or be terminated, noting that loss of employment was not "irreparable harm." *Rhoades v. Savannah River Nuclear Solutions, LLC*, 2021 WL 5761761 at 17 (Dec. 3, 2021). She enjoined the enforcement of South Carolina's witness requirement for absentee ballots as a violation of the First and Fourteenth Amendments, *Middleton v. Andino*, 488 F. Supp. 3d 261, (2020), stayed by the Supreme Court, 141 S. Ct. 9 (Oct. 2020).

Conclusion. The absence of any significant judicial opinions or publications makes it impossible to draw any definitive conclusions regarding Judge Childs's views on administrative law or the various deference doctrines of particular interest to NCLA. She seems fair-minded and polite (that is, of good judicial demeanor). Her writings indicate that she is social justice-oriented, more concerned about results than core issues of constitutional structure and separation of powers.

Hon. Candace Rae Jackson-Akiwumi

Judge, U.S. Court of Appeals for the Seventh Circuit, since 2021
Age: 42-43, born in 1979 in Norfolk, Virginia
Education: Princeton, AB, 2000 (cum laude); Yale Law School, JD, 2005 (served on law review)
Clerkships: Judge David Coar (N.D.Ill.); Judge Roger Gregory (Fourth Circuit)

Judge Jackson-Akiwumi was nominated for the Seventh Circuit by President Biden in March 2021 as part of his first batch of judicial nominees. Her nomination was voted out of the Senate Judiciary Committee by a 12-10 vote (with the support of Senator Graham), and her nomination was confirmed 53-40 (with the support of all 50 Democrats plus Senators Graham, Collins, and Murkowski). She began serving in July 2021. Notably, her father is a U.S. district court judge (assumed senior status in Nov. 2021), and her mother was a Virginia state court judge in Norfolk.

Views on the Administrative State. Judge Jackson-Akiwumi has written virtually nothing that provides insight regarding her views on the administrative state. The information she submitted to the Senate Judiciary Committee suggests that she has never published an academic article, including during her service on the YALE LAW REVIEW. She worked as an assistant federal public defender in Chicago from 2010 to 2020, a period that covered most of the years between her clerkships and her appointment as a judge. She was a litigation associate at Skadden Arps in Chicago from 2007 to 2010, and was a litigation partner at Washington, D.C.'s Zuckerman Spaeder for several months before becoming a judge. Her work as a federal public defender entailed representing criminal defendants in federal court proceedings. She tried eight cases to verdict and was chief counsel in four of them. She briefed and argued six cases in the Seventh Circuit and filed two unsuccessful Supreme Court certiorari petitions.

Judge Jackson-Akiwumi has issued no signed opinions in the seven months since she joined the Seventh Circuit. She has joined in about 30 written case dispositions during that period, all of them unanimous and many of them in the form of unsigned orders. One such order, *Jones v. Kuschell*, 2021 WL 5563715 (7th Cir., Nov. 29, 2021), provides a minor insight into her views on administrative law issues. The court's order rejected a deputy sheriff's interlocutory appeal from denial of his qualified immunity defense to claims arising from a shooting during a domestic violence incident. The unsigned

order (joined by Judge Jackson-Akiwumi) held that interlocutory appeals are impermissible in qualified-immunity cases involving disputed issues of fact.

We have reviewed appellate briefs filed by Judge Jackson-Akiwumi in the two Seventh Circuit cases in which she sought Supreme Court review. In one of them, *United States v. Common*, 818 F.3d 323 (7th Cir.), *cert. denied*, 137 S. Ct. 323 (2016), she raised a substantial constitutional issue regarding the right to trial by jury. In *Almandarez-Torres v. United States*, 523 U.S. 224 (1998), the Supreme Court ruled 5-4 (opinion by Justice Breyer) that prior convictions are "sentencing factors" that may be determined by a judge and need not be alleged in the indictment or proven by a jury. *Almandarez-Torres* continues to be controversial, and some commentators have suggested that its continued vitality has been called into question by more recent decisions that have expanded the right of criminal defendants to demand that all important factual issues be determined by a jury. Judge Jackson-Akiwumi's certiorari petition in *Common* (on behalf of a client sentenced to 15 years' imprisonment as an armed career criminal) made a credible argument that the Supreme Court should overturn *Almandarez-Torres*.

Conclusion. The absence of any significant judicial opinions or publications makes it impossible to draw any meaningful conclusions regarding Judge Jackson-Akiwumi's views on administrative law or the various deference doctrines of particular interest to NCLA. Her views are likely to become much more apparent after her judicial tenure has lengthened and she has had an opportunity to write decisions on administrative law issues.

Hon. Leondra Kruger

Justice, California Supreme Court
Age: 45, born in Glendale, California
Education: Harvard University, Yale Law School (law review editor in chief)
Clerkships: Judge David Tatel (D.C. Circuit); Justice John Paul Stevens (S. Ct.)

Justice Leondra Kruger was an Assistant to the Solicitor General of the United States from 2007 to 2012 (including as the acting principal deputy starting in 2010). In that capacity, she argued twelve cases before the Supreme Court, including *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. 171 (2012). Justice Kruger left the SG's office in 2013 to briefly work in the Office of Legal Counsel as a Deputy Assistant Attorney General. Governor Jerry Brown appointed her to the California Supreme Court on November 24, 2014, and she was sworn in on January 5, 2015. Justice Kruger reportedly declined President Biden's request to join his administration as Solicitor General.

Judicial Opinions. Justice Kruger's judicial writings on administrative power are limited. She ruled in *Monterey Peninsula Water Management District v. Public Utilities Commission*, 364 P.3d 404 (Cal. 2016), that a state utilities commission lacked authority to regulate fees charged by a municipal water management district simply because those fees appear on a utility company's bill to customers. While the Commission's enabling statute authorized it to ensure utility companies charged "just and reasonable" rates, Justice Kruger emphasized that the statutory text does not expressly grant any power to regulate government entities, such as a municipal water-management district. Id. at 699. She explained that "read[ing] the statute's prescription of a 'just and reasonable' standard for reviewing the rates of public utilities as a general grant of authority to review the amounts of any and all municipal and other governmental fees and taxes that appear on a utility's customer bills would dramatically expand the Commission's powers in a manner the Legislature could not have intended." *Id.* at 700. If customers objected to the fees, "they can elect new leadership to the district's management board,"

but "those concerns do not justify expanding the [Commission's] jurisdiction beyond the limits fixed by law." *Id.* at 702.

Another notable decision was *National Lawyers Guild v. City of Hayward*, 464 P.3d 594 (2020), where Justice Kruger ruled that a statute authorizing municipalities to charge "extraction" fees when responding to public-record requests did not allow a city to charge a public-interest group for time spent by city employees redacting police body-camera footage requested by the group. A contrary interpretation, she explained, "would make it more difficult for the public to access information kept in electronic format" and would undermine the California Constitution's requirement to "avoid[] erecting such substantial financial barriers to access." *Id.* at 507.

Justice Kruger authored several noteworthy opinions in the criminal-justice context, including two close Fourth Amendment decisions. In *People v. Buza*, 413 P.3d 1132 (Cal. 2018), she wrote for a divided court (4-3) that neither the Fourth Amendment nor the California Constitution prevents law enforcement officers from collecting DNA samples from persons arrested for felony offenses. In *People v. Lopez*, 453 P.3d 150 (Cal. 2019), she wrote for another divided court (4-3) to overrule prior California Supreme Court precedent and hold that the Fourth Amendment does not contain an exemption to the warrant requirement for searches to locate a driver's identification following a traffic stop.

In *People v. Gallardo*, 407 P.3d 55 (Cal. 2017), Justice Kruger held that a court's post-conviction factual findings that increased a criminal defendant's maximum sentence violated the defendant's right to a jury trial under the Sixth Amendment. In *Gardner v. Appellate Division*, 436 P.3d 946 (2019), she interpreted the California Constitution to be more protective than the Sixth Amendment to find that a defendant had a right to counsel at the state's appeal of a pretrial suppression motion.

Justice Kruger joined the plurality in *Hassel v. Bird*, 420 P.3d 776 (Cal. 2018), to set aside a court order requiring Yelp to remove a defaming review. A three-justice plurality argued that requiring Yelp to remove the review would violate Section 230 of the Federal Communications Decency Act of 1996. Justice Kruger wrote separately that it was unnecessary to reach the Section 230 question because Yelp was not named as a defendant in the underlying defamation case.

Other Writings. The *Los Angeles Times* interviewed Justice Kruger in connection with an article discussing Governor Brown's appointments to the California Supreme Court. She is quoted as saying: "My approach reflects the fact that we operate in a system of precedent … . I aim to perform my job in a way that enhances the predictability and stability of the law and public confidence and trust in the work of the courts." The *Times* further stated: "While Brown's other appointees … have used their perches on the state's highest court to try to set clear rules or steer policy, Kruger strives to keep changes in the law incremental."

Conclusion. Justice Kruger's judicial writings on administrative power offer some evidence that she may be amenable to limiting agency power in certain circumstances, but her sparse record makes it impossible to predict her views with confidence. Justice Kruger appears to value individual rights in the criminal-enforcement context, but it is unclear if this would extend to administrative enforcement. Her self-identification as a judicial institutionalist suggests she would be unwilling to reverse precedent that empowers the administrative state. If confirmed, she may be inclined to work with justices of opposing views to craft narrower and thus more incremental decisions. This kind of approach could make her more persuasive in appealing to Chief Justice Roberts, for example, than the more doctrinaire approaches of some other potential nominees.

Hon. Eunice C. Lee

Judge, U.S. Court of Appeals for the Second Circuit (New York), since August 2021
Age: 52, born U.S. Air Force base in Wiesbaden, Germany (1970)
Education: Ohio State University (summa cum laude), Phi Beta Kappa; Yale Law School
Clerkships: Susan J. Dlott (S.D. Ohio); Eric L. Clay (Sixth Circuit)

Judge Lee was appointed to the Second Circuit by President Biden on the recommendation of Senator Chuck Schumer of New York. She was confirmed 50-47 (Three Republicans did not vote). She was an assistant federal defender in New York for 20+ years. An attorney search reveals fourteen reported cases as an attorney in the Second Circuit representing the criminally accused.

She had no prior judicial experience other than her clerkships and her work as a research assistant for Flemming L. Norcott, Jr. (Conn. S.Ct.) while at Yale. Before leaving Yale, she also interned at the Justice Department's Civil Division, spent time with the People for the American Way, and the NAACP Legal Defense and Educational Fund.

Lee spent many years at the Office of the Appellate Defender in New York City. While there, she taught a criminal appellate defense clinic at NYU Law. She followed that as assistant federal defender with the Federal Defenders of New York. Her career has had her representing hundreds of indigent criminal defendants before the appellate courts of New York.

She was grilled at her confirmation hearing on civil procedure by some Senators and seemed less sure of herself than in criminal procedure, which is to be expected given her background.

Lee has not written extensively except to blog and report on developments in New York criminal law. Her entire resume is extremely New York-centric and what one would expect from a lifetime doing appeals for criminally accused indigents. She has never tried a case nor argued before the Supreme Court (at least the most important cases she reported to the Senate are all NY criminal appeals).

It got little play in the press at the time, but in her submission to the Senate, she noted a letter to the editor of Ohio State's *Lantern* dated 18 October 1991 where she criticized Clarence Thomas's confirmation hearing in that she perceived him to undersell the racism Black people experience until his "butt was on the line" when he used it. If she is appointed, that item will likely garner greater attention. It was critical but not inflammatory, nor did it make wild allegations. She was in college at the time, and she distanced herself from it at her prior confirmation hearing.

Judicial Opinions. Judge Lee has only a few opinions since joining the Circuit less than a year ago. In a per curiam opinion with Judge Livingston and Judge Kearse, she rejected a facial challenge to the New York school district's vaccine mandate but remanded for religious exemption reasons. *Kane v. De Blasio*, 21-cv-2678 (2d Cir. 2021). In another per curiam ruling, she was on a panel that affirmed the dismissal of a class action alleging faxes to doctors were advertisements prohibited by the TCPA. Using textual analysis, the panel found they were not from the plain meaning of the statute. *Katz v. Focus Forward, LLC*, 21-1224 (2d Cir. 2022). In *Atlantica Holdings, Inc. v. Sovereign Wealth Fund Samruk-Kazyna JSC*, she sat on a summary affirmance of a grant of summary judgment on a fraud allegation. She appears to have no published opinions yet in Westlaw.

Conclusion. The absence of any significant judicial opinions or publications makes drawing meaningful conclusions regarding Judge Lee's views impossible. She is nearly a cipher when it comes

to administrative law and the various government deference doctrines, for example. As a criminal defense attorney, her experience with administrative law is virtually zero. She has been a long-time liberal going back to her college years and spent her career defending indigent criminals. One can only speculate what that means for those faced with government coercion in the regulatory realm, but at this point there are virtually no tea leaves to read. In fact, there is not yet a plant from which a tea leaf might be procured.

Vice President Kamala Harris

Vice President of the United States, 2021-present; United States Senator (Calif.), 2017-2021; Attorney General of California, 2011-2017; District Attorney, San Francisco, 2004-2011
Age: 57, born Oct. 20, 1964
Education: Howard University (BA, 1986); Univ. of Calif., Hastings College of Law (JD, 1989)
Clerkships: None

Vice President Kamala Harris's legal career began in 1990 when she was hired as a deputy district attorney in Alameda County, California. In 1998, San Francisco District Attorney Terence Hallinan brought her on as an assistant district attorney, during which she prosecuted homicide, burglary, robbery, and sexual assault cases. In the year 2000, she took a job at San Francisco City Hall running the Family and Children's Services Division handling child abuse and neglect cases.

In 2002, Ms. Harris ran for San Francisco District Attorney, pledging to never seek the death penalty and to prosecute "three strikes" offenders only in cases of violent felonies. She won with 56% of the vote (defeating Hallinan, her previous boss, by accusing him of incompetence). She was unopposed in 2007 when she ran for a second term.

Ms. Harris made good on her pledge never to seek the death penalty, refusing to pursue that option when San Francisco Police Department officer Isaac Espinoza was shot and killed in 2004. She again refused to pursue the death penalty against Edwin Ramos, an illegal immigrant and alleged MS-13 gang member, who murdered a man and his two sons in 2009. In 2014, however, after being elected as the State Attorney General, she defended California's death penalty, appealing from a lower court decision finding that it was unconstitutional.

One of Ms. Harris's most controversial programs as District Attorney related to the development and implementation of an anti-truancy program, which criminalized the parents of students who skipped school.

Ms. Harris announced in 2008 that she intended to run for the State Attorney General Position in 2010. She defeated two other Democrats in the primary and faced Republican Los Angeles County district attorney Steve Cooley in the general election. That election was followed by a protracted period of counting mail-in and provisional ballots. Cooley finally conceded on November 25, 2010. Ms. Harris was re-elected in 2014.

Ms. Harris created several "consumer protection" type programs as Attorney General, including the "Mortgage Fraud Strike Force." She also accused the nation's five largest mortgage service providers (JPMorgan Chase, Bank of America, Wells Fargo, Citigroup, and Ally Bank) of illegally foreclosing on homeowners. She eventually forced such companies to pay $18.4 billion in debt relief and $2 billion in other financial assistance. She was also instrumental in passage of the

"Homeowner Bill of Rights." From 2013 to 2015 she pursued financial recoveries for California's public employees and teacher's pensions against various financial companies.

Ms. Harris was roundly criticized for keeping wrongfully convicted people behind bars, rather than allowing them new trials. One of her more infamous cases involved the wrongful conviction of Daniel Larsen for the possession of a concealed weapon. After having been convicted and sentenced to 27 years to life (under California's "Three Strikes Law"), it was found that he was innocent of the charges (but only after he had already served 11 years behind bars). His conviction was subsequently reversed, and the court ordered him to be released. Ms. Harris, as the Attorney General, appealed the judge's ruling, arguing that even if he was innocent, his conviction should not be overturned because he had waited too long to file his petition. Her decision to appeal resulted in Mr. Larsen being kept in prison for an additional three years, until the Ninth Circuit Court of Appeals denied her appeal and the Los Angeles Federal Magistrate ordered his immediate release.

There was also substantial overcrowding in California prisons during Ms. Harris's tenure as Attorney General. After having been ordered by more than one federal court to establish a new parole program, Ms. Harris argued the prisons would lose an important labor pool (groundskeepers, janitors, and kitchen staff) if non-violent offenders were let out early. That argument failed.

Ms. Harris has also been criticized for her alleged "tough on crime" policies and claiming that she was California's "top cop." She was accused of too readily siding with law enforcement, even in cases of obvious misconduct. In one such case, a state prosecutor falsified a confession, using it to threaten a defendant with life in prison. After a court threw out the indictment, Harris's office appealed, downplaying the misconduct because it did not involve physical violence.

Senate career. Ms. Harris appears to have changed her views on criminal law, policing, and prosecutions since being elected to the Senate. She has fully embraced the idea of remaking the criminal justice system, advocating for legalizing marijuana, and supporting many of the demands made by "Black Lives Matter" protestors. She has argued that we must "reimagine how we do public safety in America," and advocated for shifting funding from law enforcement to addressing the "root causes" of crime. Comparing and contrasting her record as a District Attorney and as the California Attorney General, with her public statements as a politician (U.S. Senator, Presidential candidate, V.P. candidate, and as the Vice President) indicate that she is now fully aligned with the liberal wing of her party.

Ms. Harris introduced four (4) bills while she was in the Senate (none of which passed):

S. 4401 "A bill to restore, reaffirm, and reconcile environmental justice and civil rights, provide for the establishment of the Interagency Working Group on Environmental Justice Compliance and Enforcement, and for other purposes."

S. 2893 "A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to provide for the consideration of climate change, and for other purposes."

S. 1730 "A bill to direct the Administrator of the National Oceanic and Atmospheric Administration to make grants to State and local governments and nongovernmental organizations for the purpose of carrying out climate-resilient living shoreline projects that protect coastal communities by supporting ecosystem functions and habitats with the use of natural materials and systems, and for other purposes."

S. 3087 "Living Shorelines Act of 2018."

She co-sponsored twelve (12) bills while she was in the Senate (only one of which passed: S. 1768 "National Earthquake Hazards Reduction Program Reauthorization Act of 2018"). The last bill is the only one that made it from introduction all the way through passage and signature by President Trump. The foregoing shows that "climate change" is of great interest to Ms. Harris. These bills perhaps expose better than anything else what type of Supreme Court Justice she would be—one that looks to the government to "solve" whatever particular "crisis" is at hand.

Judicial Opinions. Vice President Harris has never been a judge, so there are no judicial opinions to analyze to determine how she would perform on the bench. We are not aware of any scholarly writings by Ms. Harris, such as law review articles. While she was identified as the attorney of record on numerous cases filed either by or against the State of California, there is no way to determine the extent of her direct involvement with preparing the legal documents that were filed.

Conclusion. The lack of judicial opinions or legal publications make any conclusion regarding Vice President Harris's views on the administrative state unreliable. She took positions as District Attorney and Attorney General of California that largely sided with the government against those accused of wrongdoing. If she were appointed to the United States Supreme Court, that track record might not bode well for those who find themselves facing enforcement actions from administrative agencies. However, she made many statements while running for President and Vice President that sought to distance herself from her prior record.