



November 18, 2020

Sent via electronic mail

Senator Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Senator Chuck Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of Kathryn Mizelle to the United States District Court for the Middle District of Florida

Dear Senators McConnell and Schumer:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) was founded in 1940 by Thurgood Marshall. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF’s mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF has been a pioneering force in our nation’s quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained.

Kathryn Mizelle’s Nomination to the District Court for the Middle District of Florida Should Not Advance

We urge the Senate to oppose the nomination of Kathryn Mizelle to the federal district court for the Middle District of Florida. On September 8, 2020, the American Bar Association’s (“ABA”) Standing Committee on the Federal Judiciary delivered a letter to Chairman Graham and Ranking Member Feinstein with an assessment of Ms. Mizelle as “Not Qualified” to serve as a district court judge for the Middle District of Florida.¹ Specifically the letter stated,

¹ Letter from the American Bar Association Standing Committee on the Federal Judiciary to the U.S. Senate Judiciary Committee, *Re: Nomination of Kathryn Kimball Mizelle to the United States District Court for the Middle District of Florida* (Sep. 8, 2020), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/2020-09-

“In view of the importance of substantial courtroom and trial experience as it relates to professional competence to serve as a lifetime Article III judge, the Standing Committee accordingly has concluded - after a thorough peer review evaluation and careful deliberation - that the nominee presently does not meet the requisite minimum standard of experience necessary to perform the responsibilities required by the high office of a federal trial judge.”²

The ABA has conducted evaluations of federal judicial nominees since 1953.³ The ABA evaluation process includes an assessment of a nominee’s competence, integrity, and temperament. This assessment is achieved through interviews of people familiar with the nominee as well as an analysis of the legal writings of the nominee. The ABA’s evaluation of judicial nominees has elicited bipartisan support from members of the Senate Judiciary Committee. Indeed, in 2018 Chairman Graham referred to the ABA evaluation as “the gold standard.”⁴

It is an essential and baseline requirement that judicial nominees, particularly those nominated to the district court, have criminal or civil litigation experience, and a demonstrated understanding of trial procedures. Ms. Mizelle lacks the minimum experience needed to be qualified for, or succeed in, a lifetime seat on the federal judiciary.

Ms. Mizelle graduated law school roughly eight years ago.⁵ Of those eight years, she spent four in federal clerkships and only four years practicing law. While the ABA generally holds that a judicial nominee should have a minimum of 12 years’ experience practicing law, they also find that a combination of “substantial courtroom and trial experience,” and “distinguished accomplishments” may demonstrate a

[08chair-rating-letter-to-graham-and-feinstein-re-nomination-of-kathryn-kimball-mizelle.pdf?logActivity=true.](#)

² Id.

³ Barry J. McMillion, *U.S. Circuit and District Court Nominees Who Received a Rating of "Not Qualified" from the American Bar Association: Background and Historical Analysis*, Congressional Research Service (Nov. 13, 2017), <https://fas.org/sgp/crs/misc/IN10814.pdf>.

⁴ Steve Kiggins, *American Bar Association calls for FBI investigation into Kavanaugh allegations*, USA Today (Sep. 28, 2018), <https://www.cnbc.com/2018/09/28/american-bar-association-calls-for-fbi-investigation-into-kavanaugh-allegations.html>.

⁵ Responses to the Senate Judiciary Questionnaire, Nomination of Kathryn Kimball Mizelle to the United States District Court for the Middle District of Florida <https://www.judiciary.senate.gov/imo/media/doc/Mizelle%20SJQ%20-%20PUBLIC.pdf>.

nominee's qualification.⁶ Ms. Mizelle's record does not meet either standard. Ms. Mizelle's post-law school experience has amounted to little more than successive federal clerkships. While the opportunity to clerk for a district court, a Court of Appeals and the Supreme Court is indeed prestigious, it does not—and cannot—serve as a substitute for litigation and/or trial experience. Judicial clerkships do not constitute the practice of law.

Furthermore, Ms. Mizelle has never served as lead counsel on any case that has gone to trial. Her trial experience is limited to participation in only two cases that have gone to verdict. At least one of these instances occurred during her law school career and she was a legal intern/law student supervised by the attorney on the case.⁷ Ms. Mizelle has conducted the direct examination of only one expert witness. She has never drafted a civil complaint or request for discovery.⁸ Ms. Mizelle's limited experience in the practice of law renders her unqualified to be considered for partnership at her current law firm, Jones Day, which generally requires that attorneys have nine and a half years of professional legal experience.⁹ Ms. Mizelle's experience is that of a junior lawyer. Her record does not exhibit the requisite experience, knowledge, or qualification necessary to serve as a federal district court judge, handling complex civil and criminal litigation.

The experience and qualifications of judicial nominees are of significant concern to LDF and the communities we serve. We litigate numerous cases in the federal district courts each year. The cases we litigate, like most civil rights cases, are complex. They involve significant discovery issues, questions of privilege, the manageability of class claims, and multiple contested motions prior to trial, including dispositive motions. At trial, these cases involve difficult evidentiary questions, the assessment of expert testimony and reports, jury instructions, rulings on the permissible scope of witness testimony, hearsay determinations, and rulings on

⁶ *Standing Committee on the Federal Judiciary: What It Is and How It Works*, American Bar Association (Aug. 18, 2020), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/background_er-8-19-2020.pdf.

⁷ Responses to the Senate Judiciary Questionnaire at 25 *supra* note 5.

⁸ Senate Judiciary Committee Hearing, Nominations, 116th Cong., at 0:53:34-00:54:09 (Sep. 8, 2020), <https://www.judiciary.senate.gov/meetings/09/09/2020/nominations>.

⁹ *Jones Day - Chicago, Illinois*, National Association for Law Placement Directory of Legal Employers (last visited Sep. 10, 2020), https://www.nalpdirectory.com/employer_profile?FormID=12042&QuestionTabID=37&SearchCondJ SON.

motions that may dispose of multiple claims. These decisions must be made by the district court judge in real time, during the course of trial, and often in the presence of a jury. The proper adjudication of these cases requires judges who are experienced in trial practice and procedure, and whose own litigation experience has prepared them to manage the exigencies of trial. The competence of trial judges is particularly important because the procedural decisions and findings of fact made by trial judges are rarely overturned. Appellate courts must defer to a trial court's factual findings unless they are "clearly erroneous,"¹⁰ and should not overturn most procedural rulings unless they constitute an abuse of discretion. This means that the vast majority of decisions made by district court judges will remain undisturbed by appellate review.

Ms. Mizelle's limited legal experience does not meet the necessarily high standard required for a lifetime appointment to the federal judiciary. In fact, Ms. Mizelle's lack of experience renders her woefully unqualified to serve on the district court for the Middle District of Florida.

No Judicial Nominees Should be Advanced During this Crisis

Moreover, this vote comes at a time when the country is facing a catastrophic health and safety crisis which should be the focus of the Senate. To date, there are more than 11.4 million confirmed cases of COVID-19 in the United States and over 248,350 deaths.¹¹ The unemployment rate remains high among the general population at 6.9% and at approximately 10.8% among the Black population.¹² Despite the ongoing public health and economic crisis caused by this pandemic, the Senate has failed to consider critical legislation passed by the U.S. House of Representatives on May 15, 2020, the Health and Economic Recovery Omnibus Emergency Solutions ("HEROES") Act, which provides relief for the COVID-19 crises facing the nation. As the COVID-19 pandemic rages on, reaching higher infection rates every day, people in this country are suffering in unspeakable ways.

¹⁰ Fed. R. Civ. P. 52(a)(6).

¹¹ *Coronavirus in the U.S.: Latest Map and Case Count*, New York Times (last visited Nov. 17, 2020, 10:45 PM), https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?action=click&pgtype=Article&state=default&module=styln-coronavirus®ion=TOP_BANNER&context=storylines_menu.

¹² The Employment Situation—October 2020, Bureau of Labor Statistics (Nov. 6, 2020), <https://www.bls.gov/news.release/pdf/empst.pdf>.

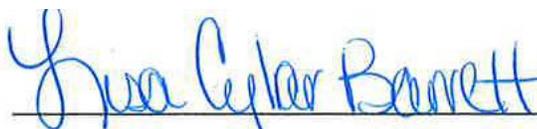
Furthermore, over 175 days have passed since the horrific killing of George Floyd at the hands of police officers in Minneapolis, Minnesota. Since May 25th, demonstrations against police brutality and systemic racism have erupted across the nation, igniting an intensified demand for substantive, comprehensive, and long-overdue policing reform. Despite this nation-wide call, the Senate has failed to take up the George Floyd Justice in Policing Act passed by the House of Representatives on June 25, 2020. The Senate must respond to this national unrest and act on this critical and robust police accountability legislation.

Conclusion

Ms. Mizelle is the tenth judicial nominee advanced by President Trump to receive a rating of “Not Qualified” from the ABA.¹³ With each lifetime appointment of a nominee that does not have the requisite experience, knowledge, or qualifications, irreparable damage is done to the credibility of our nation’s judicial system. Instead of advancing unqualified judicial nominees, the Senate must focus on addressing the two national crises which have engulfed this country- COVID-19 and police violence.

For all the foregoing reasons, we urge the Senate to oppose the nomination of Kathryn Mizelle to the Middle District of Florida.

Sincerely,



Lisa Cylar Barrett
Director of Policy
NAACP Legal Defense & Educational Fund
700 14th Street, NW Suite 600
Washington, DC 20005
lcylarbarrett@naacpldf.org

¹³ Congress (2017-2018) and 116th Congress (2019-2020), *Ratings*, American Bar Association https://www.americanbar.org/groups/committees/federal_judiciary/ratings/.