

- Actions speak louder than words. Rao is apologizing for her past remarks; yet, Rao has taken several steps as head of Trump's OIRA that still reflect these extreme and harmful beliefs. We are not fooled by her claims of evolved thinking.
- Rao's mea culpa letter to the Senate Judiciary is a politically calculated move. She asserts that her views have evolved since she wrote those college pieces that perpetuate victim blaming and minimize the seriousness of rape. But, her decisions at OIRA contradict those claims. She also did not demonstrate this supposed change during her hearing testimony when she continued to defend her writings as "common sense observations." Instead, Rao's "evolved thinking" emerges only after a slew of negative press coverage about her statements and is a superficial attempt to appease key committee members.
- Rao's refusal to acknowledge the seriousness and impact of the discrimination, harassment, and barriers women face in their daily lives is present in her policy decisions at OIRA.
 - Rao says in her letter that "we should create an environment where survivors feel empowered and comfortable coming forward."
 - But, Rao rolled back protections for survivors of sexual assault. She approved a series of actions by the Department of Education (DOE) that would require schools to set up unfair procedures that disadvantage survivors of sexual harassment, including sexual assault, raise the threshold for when schools must respond to sexual assault and other sexual harassment complaints by students and employees, and actually prohibit schools from responding to many sexual harassment and assault complaints.¹
 - As head of OIRA, Rao is responsible for calculating the costs and benefits of proposed rules—but when she approved these proposed changes to rules about how schools address sexual assault and other types of sexual harassment, she completely ignored the cost to students of scaling back sexual assault protections—such as the costs of sexual assault to a student's education and the costs to survivors when a school fails to address sexual assault or other forms of harassment.² She only considered the money school would save if they did fewer harassment investigations.
 - Rao says in her letter that "equal rights and equal opportunities for women are important to [her]."
 - But, Rao blocked, with only a few words of explanation, a critical Equal Employment Opportunity Commission (EEOC) equal pay measure intended to help uncover pay discrimination and close the wage gap.³
 - Rao's decision protected corporate employers, allowing them to continue to hide pay discrimination, instead of prioritizing working women and people of color who experience pay discrimination.
 - In Rao's letter, she agrees that "the #MeToo movement has brought forth previously untold stories and shed light on the problems of sexual harassment and assault."
 - Yet, Rao has been sitting on an EEOC guidance for over 15 months that explains and confirms important protections for individuals who experience sexual harassment in

¹ <https://nwlc.org/blog/three-reasons-why-betsy-devoss-draft-title-ix-rules-would-hurt-survivors/>

² <https://rewire.news/article/2019/02/05/neomi-rao-unfit-federal-judiciary/>

³ <https://nwlc.org/press-releases/advocates-sue-to-stop-illegal-trump-administration-rollback-of-equal-pay-rule/>

the workplace and would provide critical guidance to employers about their obligations under law.⁴

- This updated Harassment Guidance came at a critical time, as #metoo went viral and increased public awareness of and attention to workplace harassment.
- Rao's letter claims that she would have "more empathy and perspective" today, but in the last two years, she approved agency actions that ignore the harm to women:
 - Her office failed to undertake a full analysis of the rule's economic impact on families, when considering a proposed rule that would radically restructure the Title X family planning program, which her office was required to do.⁵
 - Her office also failed to fully calculate the costs consumers would have to incur if a proposed rule that would unnecessarily and dramatically disrupt the way insurers could offer comprehensive health insurance plans that include abortion coverage were to take effect.⁶
- Rao's letter fails to address her other disturbing college writings about race and LGBTQ equality.⁷ Rao may not have written or spoken about issues of rape or sexual assault since college, but she has written on a litany of issues "outside her expertise" including:
 - A 1998 article questioning the legal framework of *Roe v. Wade*.⁸
 - A 2011 article criticizing the *Planned Parenthood v. Casey* decision for focusing on "the inherent dignity of a woman's freedom to choose an abortion."⁹
 - A 2011 article defending the cruel and demeaning practice of dwarf-tossing and proposing that the right of a little person to be tossed is a liberty interest.¹⁰
 - A 2013 article arguing that *U.S. v. Windsor* "has little connection to our constitutional text."¹¹
 - A 2015 opinion piece criticizing the Supreme Court's decision to affirm the use of disparate impact analysis to prove housing discrimination under the Fair Housing Act.¹²
- Rao's letter does not explain why, during her nomination hearing, she refused to affirm whether foundational cases were rightly decided including *Brown v. Board*, *Griswold v. Connecticut*, *Roe v. Wade*, and *Lawrence v. Texas*
- Lastly, Rao's fingerprints are on many of the regulatory actions from the Trump Administration. Yet, during her hearing, Rao repeatedly refused to affirm that she would recuse herself from matters in which she played a part in her role at OIRA.
- Considering her writings, her OIRA decisions, and her answers at the hearing that reflect her troubling views on women, sexual assault, and legal protections for marginalized communities, we cannot trust that she will set aside these beliefs and treat parties before her equally.

⁴ <https://nwlrc.org/resources/coalition-comments-to-eeoc-on-proposed-harassment-guidance/>; <https://www.bna.com/white-house-leaves-n73014476431/>

⁵ <https://www.federalregister.gov/documents/2018/06/01/2018-11673/compliance-with-statutory-program-integrity-requirements>

⁶ <https://www.federalregister.gov/documents/2018/11/09/2018-24504/patient-protection-and-affordable-care-act-exchange-program-integrity>

⁷ <https://assets.documentcloud.org/documents/5684160/11-10-96-Rao-One-Writers-Battles.pdf> (calling affirmative action "the anointed dragon of liberal excess."); <https://assets.documentcloud.org/documents/5684159/11-11-94-Rao-Queer-Politics.pdf> ("because homosexuality, unlike gender and race, concerns a socially unacceptable activity, many gays have responded to the demands of normalcy in radical ways.")

⁸ <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5009&context=uclev>

⁹ <https://afi.org/wp-content/uploads/2019/01/12-Three-Concepts-of-Dignity-reduced-size.pdf>

¹⁰ <http://volokh.com/2011/05/18/substantive-dignity-dwarf-throwing-burqa-bans-and-welfare-rights/>

¹¹ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2313234

¹² <https://www.washingtonexaminer.com/the-supreme-courts-rule-by-talking-points> Rao argued that the court has adopted "rule by talking points" and that "the judiciary has a duty to 'say what the law is,' not what some lawmakers hoped it would be."