

Accountable.US Case Study: The Nomination Of Kalpana Kotagal

SUMMARY: The nomination of Kalpana Kotagal to the Equal Employment Opportunity Commission is still ongoing. Kotagal was nominated to serve as a commissioner on the EEOC in April 2022 and would give the democrats a 3-2 majority on the Commission.

Prior to her nomination, Kotagal's career was hailed as that of a defender of civil and workers' rights. She helped develop a legal rider to ensure diversity in Hollywood and litigated cases designed to protect American workers from discrimination. Her legal history involved cases that dealt with Title VII (which protected workers from discrimination), the Equal Pay Act, the Americans with Disabilities Act, The Family and Medical Leave Act, and the Fair Labor Standards Act.

Since her nomination, the conservative research firm American Accountability Foundation (A.A.F.) has launched attacks against her to distort her record. A.A.F. attacked her as "anti-American" and drew attention to her legal work protecting trans people, mischaracterized her work in Hollywood as a "racial quota" enforcer, painted her as anti-law enforcement, and positioned her as a fossil fuel abolitionist. She has also been criticized for her use of class action suits and her work on behalf of unions. Numerous Republican Senators used these attacks against Kotagal to oppose her nomination, labeling her a radical partisan unfit for the position. While Kotagal's nomination is still pending, the persistent attacks against her are emblematic of the right's commitment to obstructing Biden's nominees—particularly women of color with a progressive political background.

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NOMINATION TIMELINE

Kotagal’s Nomination Process Is Proceeding At A Similar Pace As Biden’s Other Equal Employment Opportunity Commission Nominees, But The Senate Has Yet To Schedule A Confirmation Vote Date As Of 6/21/22

Status	Date Of Nomination	Date of Hearing	Floor Vote/Confirmation Date	Days From Nomination To Hearing	Days From Hearing To Confirmation	Days From Nomination To Confirmation
Confirmed	4/5/22	5/10/22	Not Yet Held	45	N/A	N/A
EEOC Average (As Of 1/14/22)				92	1	93
DIFFERENCE				Received a hearing 47 days sooner than average EEOC nominees	N/A	N/A

INITIAL MEDIA REACTION TO KOTOGAL

Mainstream And Progressive Outlets Highlighted Kotagal's History As A Workers' Rights Advocate With An Impressive History Of Litigating Cases On Behalf Of Disenfranchised People And Noted Her Creation Of An Entertainment Contract Template "Inclusion Rider"

Reuters: Kotagal's Confirmation Would Create A Democratic Majority On The Equal Employment Opportunity Commission And Allow It To Pass Pro-Worker Policies Supported By Biden's Administration. "Kotagal, a partner at prominent plaintiffs' law firm Cohen Milstein in Washington, D.C., would give Democrats a 3-2 edge on the Equal Employment Opportunity Commission and the ability to adopt various pro-worker policies supported by the Biden administration." [Reuters, [4/01/22](#)]

NDTV: Kotagal Has Represented Disenfranchised People In Issues Related To Title VII, The Equal Pay Act, The Americans With Disabilities Act, The Family And Medical Leave Act, And The Fair Labor Standards Act. "Kotagal is also a diversity, equity and inclusion expert, and represents disenfranchised people in employment and civil rights litigation involving issues related to Title VII, Equal Pay Act, Americans with Disabilities Act, Family and Medical Leave Act, and the Fair Labor Standards Act, the White House said. Indian-American Impact, nation's leading civic Indian American and South Asian organisation, welcomed the nomination of Kotagal to the Equal Employment Opportunity Commission." [NDTV, [4/02/22](#)]

Reuters: Kotagal Helped Develop The Concept Of An "Inclusion Rider" In Hollywood Contracts, Which Required Studios Hire More Diverse Casts And Crews. "President Joe Biden is nominating Kalpana Kotagal, a civil rights lawyer who helped develop a novel tactic for increasing diversity in Hollywood productions, for a seat on the U.S. agency that enforces workplace anti-discrimination laws, the White House said on Friday. [...] Amid the #MeToo movement, Kotagal and other lawyers developed the concept of an "inclusion rider," which is a provision in actors' contracts requiring studios to hire more diverse casts and crews." [Reuters, [4/01/22](#)]

Reuters: Kotagal Has Represented Workers In High Profile Sex Bias Class Action Lawsuits Against AT&T Mobility, Sterling Jewelers, And Walmart. "Kotagal has represented workers in high-profile sex bias class-actions against AT&T Mobility and Sterling Jewelers, and in the landmark case Dukes v. Walmart. The U.S. Supreme Court in a 2011 ruling in that case said a nationwide class of 1.5 million female Walmart employees was improper because of regional variations in company policies." [Reuters, [4/01/22](#)]

Reuters: Kotagal's Class Action Case Against Walmart Was A "Landmark Sex Bias" Supreme Court Decision That "Said A Nationwide Class Of 1.5 Million Female Walmart Employees Was Improper Because Of Regional Variations In Company Policies." [Reuters, [4/01/22](#)]

NDTV: Kotagal Was The First South Asian Woman To Become Law Partner In The Plaintiff's Bar. "Kotagal is an exceptionally talented litigator who has been a fierce advocate for employment equity and civil rights, said Neil Makhija, executive director of Indian American Impact. She has broken barriers as one of the first South Asian women to become a law partner in the plaintiffs' bar and has been a leading voice in the national conversation on diversity, equity and inclusion." [NDTV, [4/02/22](#)]

The American Bazaar: Kotagal Won A Law360's Award In 2018 That Recognized Her As One Of The Five Most Influential Employment Lawyers In The Country. "Co-author of the seminal legal template the "Inclusion Rider," Kotagal was a Harvard Law School Wasserstein Public Interest Fellow and was named an "Employment Law MVP" by Law360 in 2018, recognizing the top five most influential employment lawyers in the United States." [American Bazaar Online, [4/04/22](#)]

RIGHT-WING ATTACKS ON KOTAGAL

A Conservative Non-Profit Group, American Accountability Foundation Released Misleading Research On Kotagal And Peddled Lies That She Was A Radical Leftist Who Supported “Race Based Shakedowns”

The Week Of Kotagal’s Nomination Hearing, The American Accountability Foundation Launched A Website Called KalpanaKotagal.com To Expose Her “Anti-American Agenda”

The Week Of Kotagal’s Nomination Hearing, The American Accountability Foundation Launched A Website Called KalpanaKotagal.com To Expose Her “Anti-American Agenda.” “American Accountability Foundation (AAF) announced the launch this week of kalpanakotagal.com, a website designed to shine a light on Equal Employment Opportunity Commission (EEOC) nominee Kalpana Kotagal’s leftist politics which are poised to weaponize the EEOC with an anti-American agenda. In just a few short weeks, AAF has uncovered a trove of alarming research on Kotagal, revealing her to be the worst kind of wannabe defender of the American people – an opportunist with ties to the radical left and the BLM anti-police movement. Kotagal is also the author of the infamous Hollywood Inclusion Rider, which calls for quotas in auditioning and casting, punishing violators with a financial shakedown.” [AAF, [5/11/22](#)]

AAF’s Website Smeared Kotagal As A “Radical” “Left-Wing” Lawyer Who Is Anti-Police, Pro-Critical Race Theory, And The Originator Of A Legal Document That Will Allow For “Race-Based Shakedowns”

AAF Claimed The “Inclusion Rider” Kotagal Helped Develop Would Allow For “Race-Based Shake Downs” Of Studios Based On A “Quota.” “This sets up a situation where activist groups could shake down studios for contributions -similar to Jesse Jackson’s famous race-based shake downs if studios did not comply with the inclusion dictates. Compliance would be determined “by analyzing the demographics of characters on the project”, with the studio making a contribution “to establish and endow a scholarship fund for filmmakers from under-represented backgrounds” if it is found they fail “in good faith” to conform to the edicts of the inclusion rider. A reimagined inclusion rider was also issued by Kalpana Kotagal with additional language and policy guidelines that, to the minds of its creators, “brings together civil rights, racial justice, and legal expertise”. Newly added provisions also delineate how studios are to collect, measure and analyze application and hiring data, and implement “accountability measures to continue to support progress even where a company falls short of its goals.” The language would seem to once again rely on statistical analysis and a certain quota level of representation.” [AAF, [5/04/22](#)]

AAF Described Kotagal’s Legal Record As “Radical,” Working For A Firm AAF Called “The Go-To Firm For Left-Wing Groups And Constituencies.” “A Radical Record as an Attorney Following the conclusion of her clerkship with the U.S. Court of Appeals for the Ninth Circuit in 2006, Ms. Kotagal has practiced as a litigator for Cohen Milstein, a plaintiff’s side employment and civil rights firm. Ms. Kotagal serves as Co-Chair of the firm’s Civil Rights and Employment Practice Group and of the firm’s Hiring and Diversity Committee. [...] Kalpana Kotagal has litigated a number of high-profile cases throughout her tenure at Cohen Milstein being a go-to firm for left-wing groups and constituencies.” [AAF, [5/04/22](#)]

- **AAF Claimed That A Center For Reproductive Rights Case Filed Against Trump’s HHS’ Religious Freedom Division Where Kotagal Served As Lead Attorney Contained Numerous Errors.** “2019, Ms. Kotagal served as lead attorney representing the Center for Reproductive Rights (“the Center”) in a lawsuit seeking to compel the Health and Human Services Department’s (HHS) compliance with the Freedom of Information (FOIA). The case involved two FOIA requests the Center for Reproductive Rights (“the Center”) submitted seeking budget and staffing details for HHS’s Office of

Civil Rights's (OCR) Conscience and Religious Freedom Division (CRFD). [...] The case docket details a number of errors made by Cohen Milstein in their representation of the Center, including incorrect headings, captions and case numbers in court filings and invalid attorney signatures. The last action on the case is a joint status report entered by HHS." [AAF, [5/04/22](#)]

- **AAF: Kotagal Partnered With A Trans Rights Group To Help Pressure Insurance Company Aetna Into Expanding Healthcare Coverage For Gender-Affirming Care.** "January 2021, Kalpana Kotagal partnered with the Transgender Legal Defense and Education Fund and four women who were denied coverage for breast augmentation surgery, which Aetna previously deemed cosmetic. All parties entered into a collaborative pre-litigation agreement in which Aetna assented to expand its healthcare coverage of gender-affirming surgeries to include breast augmentation for qualifying transgender women." [AAF, [5/04/22](#)]

AAF: Kotagal Retweeted Leaders Of The 'Critical Race Theory' Movement. "Kotagal has been active online retweet and promoting some of the most divisive voices online. Whether it is Nikole Hannah-Jones author of the widely discredited 1619 project or Ibram Kendi whose decried Barack Obama's election to the presidency for furthering the "myth" of a postracial America, Kotagal has been in lock-step with the Critical Race Theory zealots on the left." [AAF, [5/04/22](#)]

AAF: Kotagal Retweeted A Claim That Of Refugees Were "Whipped" By Border Patrol Officers, Which AAF Claims Was Debunked. "On border security and immigration, Kalpana is a hyper-leftist in favor of open borders hostile to the police. Kalpana retweeted a tweet by Melissa Harris-Perry, a leftist podcaster who linked to a story that contained misinformation on two Border Patrol agents, alleging they "whipped" Haitian migrants attempting to cross the border. The story has long since been debunked, with the agents merely shifting their weight to control their horses and avoid injuries to the migrants. The falsehood was allowed to gain traction though, resulting in both Border patrol agents being placed on leave. An investigation later cleared both Border patrol agents of wrongdoing." [AAF, [5/04/22](#)]

- **Kotagal's Retweet Stemmed From The Following Image:**



[NPR, [11/06/21](#)]

- **The Incident That Was The Subject Of Kotagal's Retweet Prompted An Investigation By CBP, Which Called The Incident "Extremely Troubling."** "In response to the recent pictures, the Department of Homeland Security, which oversees CBP, issued a news release labeling them "extremely troubling." The agency also said it launched an investigation "which will be conducted swiftly [and] will define the appropriate disciplinary actions to be taken." [The Independent, [9/23/21](#)]

AAF Criticized Kotagal For Supporting The Nominations Of Kristen Clarke, Who Was Accused Of Supporting The 'Defund The Police Movement,' And Jennifer Sung, Who Signed A Letter Opposing Brett Kavanaugh's SCOTUS Nomination. "Kalpana has also applauded the nomination of Jennifer Sung to

the United States Court of Appeals to the Ninth Circuit. During Brett Kavanaugh's confirmation process to the Supreme Court, Jennifer Sung signed an incendiary letter along with other Yale Law School alumni claiming that Jude Kavanaugh, based on his opinions as D.C. Circuit judge [...] Kotagal also avidly supported the nomination of Kristen Clarke to be Assistant Attorney General for Civil Rights in the Department of Justice. Kristen Clarke has supported defund the police non-profits and special interest groups in the past." [AAF, [5/04/22](#)]

AAF: Kotagal Represented Liyah Brown Who Is "Is Anti-Police And Wants To Destroy The Law Enforcement Community In The United States." "Unfortunately for the American people Kalpana Kotagal has represented radicals who are far outside the mainstream of American thought. Of particularly note is Kotagal's representation of Liyah Brown, Legal Director at the Texas Civil Rights Project. From Kotagal's disclosure: It is important to understand who Brown is and what type of radical prescription she has for American public policy. Put simply, Ms. Brown is anti-police and wants to destroy the law enforcement community in the United States. Brown has called the police a tool of white supremacy and called for the abolition of police." [AAF, [5/07/22](#)]

- **The Daily Caller Published An Article Covering This Claim From AAF.** "Republicans on the Senate Health, Education, Labor and Pensions (HELP) committee plan on pressing President Joe Biden's nominee for Equal Employment Opportunity Commission (EEOC) during her hearing Tuesday who has ties to a client with a past of trashing law enforcement, the Daily Caller has learned." [Daily Caller, [5/09/22](#)]

In Response To Answers Kotagal Gave Regarding Fossil Fuels, AAF Accused Kotagal Of Inaccurately Representing Her Stance On Climate Change Policy And Said She "Want To Destroy Fossil Fuels"

Senators Murkowski (R – AK) And Sen. Braun (R – IN) Questioned Kotagal About Her Time Working For A Group That Supported Retiring Fossil Fuels. "You have served as a spokesperson for the Illinois chapter of the U.S. Public Interest Research Group (USPIRG) on climate matters and as a lobbyist for USPIRG. Both entities have posted on their websites the position that, "we must retire coal-fired power plants, oilbased transportation systems and other fossil fuel infrastructure" and that the nation should transition "to 100 percent renewable energy". The USPIRG's Climate Solutions plan "calls for federal, state and local governments to end subsidies and other incentives for fossil fuel infrastructure". Do you personally agree that that we must stop investing in and using fossil fuel infrastructure?" [Questions For The Record, Senate HELP Committee, [5/23/22](#)]

Kotagal Responded To This Question Saying That Her Personal Views From Two Decades Ago Will Not Impact Her Job At The EEOC. "My personal views from over 20 years ago related to fossil fuels will not impact my ability to treat employers in the fossil fuel industry fairly. In the event I am so fortunate as to be confirmed as a Commissioner, my personal views on climate issues would not impact my enforcement of federal workplace non-discrimination laws." [Questions For The Record, Senate HELP Committee, [5/23/22](#)]

AAF Accused Kotagal Of Lying, Pointing To Remarks She Made At A 2020 Conference In Support Of The Green New Deal And Pointing Out The Links Between Social Justice And Climate Change. "At the Sustainability Symposium 2020, Ms. Kotagal delivered remarks on "Sustainability for All: The Nexus Between Sustainability and Social Justice" Her comments are illuminating and should provide insights into how she could use her position on the EEOC if she were confirmed. She commented: [...] 'The connection between our built environments including where we live and discrimination is tangible and the connection between addressing climate change and adapting to its effects and furthering social justice and equity is a crucial one. There is an immediate connection between your daily work and that effort provided that you bring it into focus and I'm so glad that Rihanna gun night will be here to talk about the Green New Deal later today – I think that's such a central part of that conversation.'" [AAF, [5/31/22](#)]

AAF: "Kalpana Kotagal Wants To Destroy Fossil Fuels" [AAF, [5/31/22](#)]

RIGHT-WING ATTACK FUNDING SOURCES

American Accountability Foundation Is Closely Tied To The Conservative Partnership Institute, A Group Funded By A Trump PAC And Founded By Ex-Heritage Foundation Head Jim DeMint

The American Accountability Foundation's IRS Form 1023 Lists The Conservative Partnership Institute As Its "Care Of Name" And The Two Organizations Share An Address

The American Accountability Foundation's IRS Form 1023 Lists The Conservative Partnership Institute As Its "Care Of Name."

Part I Identification of Applicant			
1a Full Name of Organization (exactly as it appears in your organizing document) AMERICAN ACCOUNTABILITY FOUNDATION		b Care of Name (if applicable) CONSERVATIVE PARTNERSHIP INSTITUTE	
c Mailing Address (Number, street and room/suite) 300 INDEPENDENCE AVE SE		d City WASHINGTON	e Country UNITED STATES
f State DISTRICT OF COLUMBIA	g Zip Code + 4 20003	h Foreign Province (or State)	i Foreign Postal Code

[American Accountability Foundation IRS Form 1023, 1/25/21, Page 1]

American Accountability Foundation And Conservative Partnership Institute Share An Address

C Name of organization Conservative Partnership Institute	
Doing business as	
Number and street (or P.O. box if mail is not delivered to street address) 300 Independence Ave SE	Room/suite
City or town, state or province, country, and ZIP or foreign postal code Washington, DC 20003	

[Conservative Partnership Institute IRS Form [2019 990](#), Page 1]

The Conservative Partnership Institute Was Founded By Former Senator And Heritage Foundation Head Jim DeMint, Who Previously Employed Leading American Accountability Foundation Staff In His Senate Office

Former Senator And Heritage Foundation Head Jim DeMint (R – SC) Founded The Conservative Partnership Institute In 2017. “Former Sen. Jim DeMint will serve as chairman of the new Conservative Partnership Institute to fortify the presence of conservatives in Washington, he said in a news release Tuesday, adding that he thinks the status quo is hindering the development of conservative lawmakers and staffers. [...] Previously, DeMint served at the helm of the Heritage Foundation, a venerable conservative think tank that at times has had a turbulent relationship with the rise of Donald Trump.” [Politico, [7/25/17](#)]

- **The Conservative Partnership Institute Was Created To Place Right-Wing Lawmakers Into Powerful Positions In The White House And Congress.** “The backdrop: DeMint founded CPI because he felt the conservative movement did a lousy job at helping members of Congress be effective legislators once they get to D.C. His team has since focused on placing conservatives in prime spots in the Trump administration and Capitol Hill, and has trained staff on strategy and congressional rules and procedure.” [Axios, [1/27/21](#)]

Both Of American Accountability Foundation's Founders, Tom Jones And Matt Buckham, Worked For Jim DeMint. “AAF is led by Tom Jones and Matt Buckham. [...] While on Capitol Hill he served as the

Legislative Director for Senator Ron Johnson, ran the opposition research program for Cruz for President, and previously as a Senior Policy Advisor to Senator Jim DeMint. [...] Previously, he served as a legislative aide to former Senator Jim DeMint (R-SC), Senior Advisor to the House Freedom Caucus, and in various positions with conservative non-profit organizations.” [American Accountability Foundation, [Accessed 3/17/22](#)]

Leading Members Of The American Accountability Foundation Currently Work At The Conservative Partnership Institute And Even More Are Former Employees

Ed Corrigan, The Treasurer-Director Of The American Accountability Foundation, Is The President CEO Of The Conservative Partnership Institute. [CPI.org, [Accessed 3/17/21](#)]

- **Corrigan Is The Treasurer-Director Of The American Accountability Foundation**

First Name: ED	Last Name: CORRIGAN	Title: TREASURER - DIRECTOR
Mailing Address: 300 INDEPENDENCE AVE SE	City: WASHINGTON	
State (or Province): DC	Zip Code (or Foreign Postal Code): 20003	
First Name:	Last Name:	Title:

[American Accountability Foundation IRS Form 1023, 1/25/21, Page 1]

Wesley Denton, The Secretary-Director Of The American Accountability Foundation, Is The COO Of The Conservative Partnership Institute. [CPI.org, [Accessed 3/17/21](#)]

- **Wesley Denton Is American Accountability Foundation’s Secretary-Director**

State (or Province): DC	Zip Code (or Foreign Postal Code): 20003	
First Name: WESLEY	Last Name: DENTON	Title: SECRETARY - DIRECTOR
Mailing Address: 300 INDEPENDENCE AVE SE	City: WASHINGTON	
State (or Province): DC	Zip Code (or Foreign Postal Code): 20003	
First Name: ED	Last Name: CORRIGAN	Title: TREASURER - DIRECTOR
Mailing Address: 300 INDEPENDENCE AVE SE	City: WASHINGTON	

[American Accountability Foundation IRS Form 1023, 1/25/21, Page 1]

American Accountability Foundation Founder Matt Buckham Worked For The Conservative Partnership Institute At Its Inception. “DeMint has hired several former Heritage staffers for his new outfit, including Wesley Denton, Matt Buckham, Rachel Bovard, and Megan Tubb.” [Think Tank Watch, [10/27/17](#)]

- **Buckham Is One Of American Accountability Foundation’s Two Founders.** “AAF is led by Tom Jones and Matt Buckham. [...] While on Capitol Hill he served as the Legislative Director for Senator Ron Johnson, ran the opposition research program for Cruz for President, and previously as a Senior Policy Advisor to Senator Jim DeMint. [...] Previously, he served as a legislative aide to former Senator Jim DeMint (R-SC), Senior Advisor to the House Freedom Caucus, and in various positions with conservative non-profit organizations.” [American Accountability Foundation, [Accessed 3/17/22](#)]

The Conservative Partnership Institute Was Heavily Financed By Trump’s Own PAC

Shortly After Congress Launched The Committee To Investigate The Capitol Riot, Trump’s PAC Donated \$1 Million To The Conservative Partnership Institute. “Former President Donald Trump’s political action committee donated \$1 million to the conservative nonprofit organization where his former chief of staff, Mark Meadows, is a senior partner, according to a campaign finance report filed with the Federal Election Commission Monday night. [...] The tax-deductible seven-figure contribution to the Conservative Partnership Institute is by far the largest chunk of \$1.35 million in donations Trump’s “Save America” PAC made to political allies over the last six months of 2021, according to the campaign finance report. [...] On July 1, the House voted to establish a select committee to investigate the Capitol attack.” [CNBC, [2/01/22](#)]

Trump’s Former Chief Of Staff, Mark Meadows, Joined The Conservative Partnership Institute While He Was Advising Trump On His Impeachment Trial Following The Incitement Of Insurrection At The

Capitol. “Former White House chief of staff Mark Meadows is joining the Conservative Partnership Institute, a group run by former South Carolina Sen. Jim DeMint that operates as a “networking hub” for conservatives, sources familiar with his plans tell Axios. Between the lines: Meadows, who is still in frequent contact with former President Trump and has been advising him ahead of his impeachment trial, will now operate behind the scenes to help create more members like Jim Jordan, Ted Cruz, and Josh Hawley — conservative firebrands with strong networks and staffs.” [Axios, [1/27/21](#)]

- **Meadows Is A Senior Partner At The Conservative Partnership Institute.** “Former President Donald Trump’s political action committee donated \$1 million to the conservative nonprofit organization where his former chief of staff, Mark Meadows, is a senior partner, according to a campaign finance report filed with the Federal Election Commission Monday night.” [CNBC, [2/01/22](#)]

Trump’s PAC Donation To The Institute Came After Congress Recommended The Justice Department Charge Meadows Over His Refusal To Cooperate With Investigations Regarding The Capitol Riot. “In December, the House voted to recommend that the Justice Department pursue contempt of Congress charges against Meadows over his refusal to cooperate with an investigation into the Trump-inspired Jan. 6 attack on the U.S. Capitol.” [CNBC, [2/01/22](#)]

ATTACKS AGAINST KOTAGAL DURING HEARINGS

Numerous Senators Parroted Attacks Originated By AAF, Characterizing Her As An Enemy Of Law Enforcement And Religious Freedom

Sen. Burr Questioned Kotagal’s Involvement In A Center For Reproductive Justice Lawsuit Against An HHS Agency Created By Trump To Defend Religious Freedom, Mirroring Concerns Raised By AAF

May 4, 2022: AAF Claimed That A Center For Reproductive Rights FOIA Case Filed Against The Trump Administration’s HHS Religious Freedom Division Where Kotagal Served As Lead Attorney Contained Numerous Errors. “2019, Ms. Kotagal served as lead attorney representing the Center for Reproductive Rights (“the Center”) in a lawsuit seeking to compel the Health and Human Services Department’s (HHS) compliance with the Freedom of Information (FOIA). The case involved two FOIA requests the Center for Reproductive Rights (“the Center”) submitted seeking budget and staffing details for HHS’s Office of Civil Rights’s (OCR) Conscience and Religious Freedom Division (CRFD). [...] The case docket details a number of errors made by Cohen Milstein in their representation of the Center, including incorrect headings, captions and case numbers in court filings and invalid attorney signatures. The last action on the case is a joint status report entered by HHS.” [AAF, [5/04/22](#)]

- **May 23, 2022: In His Questions For The Record, Sen. Burr Grilled Kotagal About Whether She Thinks The Trump HHS Religious Freedom Division Is Legitimate And Referenced Her Role In The FOIA Lawsuit.** “In 2019, you served as lead attorney in a case representing the Center for Reproductive Rights in a lawsuit involving two FOIA requests seeking budget and staffing details for the Center for Religious Freedom. [...] Do you believe that upholding and preserving the freedom of Americans to worship according to their conscience free from incursion from the federal government to be a paramount American value? [...] In that same litigation, your firm claimed that “historically . . . only an extremely small fraction of the complaints received by OCR are related to religious and moral refusal issues.” Do you stand by this characterization of religious freedom? If yes, what data do you have to support such a position?” [Questions For The Record, Senate HELP Committee, [5/23/22](#)]

Sens. Braun, Tuberville And Marshall Asked Kotagal About Her Representation Of Liyah Brown, Who Was Characterized As “Hostile To Law Enforcement,” Mirroring AAF’s Attacks

May 7, 2022: AAF: Kotagal Represented Liyah Brown Who Is “Is Anti-Police And Wants To Destroy The Law Enforcement Community In The United States” And Believes Policing Is Rooted In White Supremacy. “Unfortunately for the American people Kalpana Kotagal has represented radicals who are far outside the mainstream of American thought. Of particular note is Kotagal's representation of Liyah Brown, Legal Director at the Texas Civil Rights Project. From Kotagal's disclosure: It is important to understand who Brown is and what type of radical prescription she has for American public policy. Put simply, Ms. Brown is anti-police and wants to destroy the law enforcement community in the United States. Brown has called the police a tool of white supremacy and called for the abolition of police.” [AAF, [5/07/22](#)]

- **May 23, 2022: Sen. Braun Asked Kotagal If She Regretted Representing Brown, Who Braun Described As “Hostile To Law Enforcement.”** “You represented Liyah Brown. Ms. Brown has commented that, “Police and prisons are institutions of White supremacy rooted in chattel slavery. This grave historical truth warrants total abolition instead of mere tweaks for “better” plantations and overseers.” 1. Do you disavow Ms. Brown's incendiary comments related to law enforcement and regret representing someone who is so hostile to law enforcement?” [Questions For The Record, Senate HELP Committee, [5/23/22](#)]
- **Sen. Roger Marshall (R – KS) Questioned Kotagal About Her Representation Of Brown, Claiming That Brown Believed Policing Was An Institution Of White Supremacy.** “A client of yours who you've chosen to represent, Liyah Brown, Legal Director of the Texas Civil Rights Project, has expressed her belief that police and prisons are institutions of white supremacy – do you believe police departments are institutions of white supremacy or police officers are tools of white supremacy?” [Questions For The Record, Senate HELP Committee, [5/23/22](#)]
- **Sen. Tommy Tuberville (R – AL) Asked Kotagal If She Wanted To Defund The Police Like Brown.** “You represented Liyah Brown.¹ Ms. Brown has commented that, “Police and prisons are institutions of White supremacy rooted in chattel slavery. This grave historical truth warrants total abolition instead of mere tweaks for ‘better’ plantations and overseers.”² a. Do you agree with Ms. Brown's incendiary comments related to law enforcement?” [Questions For The Record, Senate HELP Committee, [5/23/22](#)]

Sens. Braun And Tuberville Grilled Kotagal On Her Support Of Trans Issues, With Braun Specifically Referencing Her Past Work With The Transgender Legal Defense & Education Fund—An Attack Originated By AAF

May 4, 2022: AAF: Kotagal Partnered With The Transgender Legal Defense & Education Fund To Help Pressure Insurance Company Aetna Into Expanding Healthcare Coverage For Gender-Affirming Care. “January 2021, Kalpana Kotagal partnered with the Transgender Legal Defense and Education Fund and four women who were denied coverage for breast augmentation surgery, which Aetna previously deemed cosmetic. All parties entered into a collaborative pre-litigation agreement in which Aetna assented to expand its healthcare coverage of gender-affirming surgeries to include breast augmentation for qualifying transgender women.” [AAF, [5/04/22](#)]

May 10, 2022: Sen. Braun Brought Up Kotagal's Past Work With The Transgender Legal Defense & Education Fund And Asked If She Would Use Her Position At The EEOC To Advocate That Employers Pay For Gender-Affirming Healthcare. “You have collaborated with Transgender Legal Defense & Education Fund to pressure Aetna to expand insurance coverage of surgery on healthy body parts of males for breast augmentation in order to appear more like females. [...] In your role as commissioner, would “collaboration” include working with the U.S. Department of Health and Human Services and NIH to force employers to pay for gendertransition procedures for employees of for their children?” [Questions For The Record, Senate HELP Committee, [5/23/22](#)]

Sen. Braun Questioned If Kotagal Would Defend Religious Freedom Anti-Discrimination Policies Put Into Effect By The Trump Administration And Asked Her To Define What A “Woman” Is. “Do you support repealing the updated Compliance Manual on Religious Discrimination either in its entirety or any components of it? If only certain components, which components? [...] Can you define the term “woman” for purposes of sex discrimination?” [Questions For The Record, Senate HELP Committee, [5/23/22](#)]

Sen. Braun Questioned If Kotagal Supported Allowing Trans Workers And Customers Access To Gender-Affirming Restrooms. “Do you believe that this interpretation extends to requiring companies to permit biological males who do not identify as male (and instead identify as female, non-binary, gender fluid, pan gender, or with any other transgender identity) to staff dressing rooms for girls in children’s clothing sections of stores?” [Questions For The Record, Senate HELP Committee, [5/23/22](#)]

Sen. Tuberville Grilled Kotagal On Her Support For Trans Athletes Participating In School Sports And Support For Allowing Trans Individuals To Use Gender-Affirming Bathrooms. “Do you agree with the decision by the University of Pennsylvania to allow a biological male to compete on the women’s swimming team with biological women? [...] Do you agree that a biological male should be able to use sex-specific locker rooms with biological females present? [...] Do you believe that this interpretation extends to requiring companies to permit biological males who do not identify as male (and instead identify as female, nonbinary, gender fluid, pan gender, or with any other transgender identity) to staff dressing rooms for girls in children’s clothing sections of stores?” [Questions For The Record, Senate HELP Committee, [5/23/22](#)]

Senators Also Pressed Kotagal For Her Supposed Lack Of Impartiality And Accused Her Of Being An Enemy Of Transparency

Sen. Mike Braun (R – IN) Pressed Kotagal As An Enemy Of Transparency, Public Accountability, And Small Business During Her Confirmation Hearing

Sen. Mike Braun (R – IN) Questioned If Kotagal Wanted To Make The EEOC Less Publicly Accountable By Placing More Litigation Authority In The Hand Of Its General Counsel. “I’m worried that in what I’ve read in terms of what might happen and I’m referring to what occurred under the trump administration the EEOC created transparency and accountability by requiring commissioners to vote on whether or not to commence litigation and by posting those votes online and there’s a new discussion out there that if you’re confirmed the EEOC will put the authority to commence litigation in the hands of the general counsel and more alarming than that no longer require public voting.” [Senate HELP Committee, 5/10/22, [23:04](#)]

Sen. Braun Pressed Kotagal About Whether She Would Continue To Make The EEOC’s Business Public. “Sen. Mike Braun (R-Ind.) asked Kotagal if she would support the EEOC continuing to publicly disclose agency business, including litigation. The agency began doing so under the Trump administration, and has indicated it would continue the practice.” [Bloomberg Law, [5/10/22](#)]

Sen. Braun Questioned Whether Kotagal Would Enforce Anti-Discrimination Policies At The EEOC In A Way That Would Harm Small Businesses. “It’ll accentuate that burden on small business do you think it’s valid to just differentiate between where most of these problems might be similar to in the budget hearing that i was part of last week when amazon was being talked about 150 turnover rate an accident rate way above the norm that’s one thing that’s not typical of most small businesses especially ones that have been run by families for a long time is that a fair distinction to make or do you think whatever happens should be one size fits all regardless of your size and your behavior it has certainly been my experience.” [Senate HELP Committee, 5/10/22, [25:35](#)]

Sen. Richard Burr (R – NC) Released A Statement Attacking Kotagal As An Enemy Of Transparency And Accused Her Of Lacking Impartiality

Sen. Richard Burr (R – NC) Accused Kotagal Of Refusing To Promise To Keep EEOC Business Public And Claimed She Was An Enemy Of Transparency. “Yet Ms. Kotagal refused to commit to any of these reforms during her interview with my staff. The EEOC has not held any public meetings since January 7, 2021, and has held only one public hearing since that date. Basic measures of transparency, as well as Commission deliberations on whether to proceed on certain classes of litigation, particularly litigation that raises novel areas of law or issues upon which the Commission has not released guidance, is integral to due process and fairness. Ms. Kotagal’s refusal to continue these common-sense measures speaks volumes of her lack of commitment to due process and transparency.” [Sen. Richard Burr’s Office, [5/10/22](#)]

Sen. Burr Accused Kotagal Of Lacking Impartiality In Her Favorable Treatment Of Unions And Criticized Her Reliance On Class Action Lawsuits. “I am concerned Ms. Kotagal lacks impartiality to interpret the law, and I will oppose her nomination. The nominee testified as an expert in favor of banning the use of pre-dispute arbitration agreements in the workplace, or in the least only permitting unions to reap arbitration’s benefits. The nominee has also failed to explain why it is permissible to uphold the bargaining power of unions but limit that of individual workers. Ms. Kotagal has criticized the Supreme Court for upholding the plain language of the Federal Arbitration Act, and wishes to curtail employees’ ability to enter into arbitration proceedings. To Ms. Kotagal, class-action litigation seems to be the only effective means of obtaining relief for discrimination. However, Ms. Kotagal failed to note that class-action plaintiffs often get less monetary relief as a result of courts liberally certifying large classes of plaintiffs with uncommon interests. The process for class certification is itself often costly, requiring the hiring of attorneys at great expense to the average person.” [Sen. Richard Burr’s Office, [5/10/22](#)]

Sen. Burr Claimed Kotagal Was A Political Activist Who Worked For A Group That Launched “Intimidation Campaigns” To Undermine The Careers Of Former Trump Administration Members. “Ms. Kotagal has a history of political activism whose policy judgments would bring partisanship to the EEOC. As a class-action lawyer in the private sector, Ms. Kotagal served as a Board Advisory Member to the People’s Parity Project, an affiliation she initially failed to disclose. The People’s Parity Project has become notorious for launching intimidation campaigns against law firms and law schools to prevent the hiring of public servants who previously served in the Trump Administration. In an open letter, the People’s Parity Project proudly asserts their intention to criminalize policy differences by naming a number of esteemed public servants and demanding employers refuse to hire any of those distinguished individuals ‘to show there are consequences’ for serving a disfavored Administration.” [Sen. Richard Burr’s Office, [5/10/22](#)]

Burr Accused Kotagal Of Lacking Transparency Because She Deleted Tweets. “Additionally, Ms. Kotagal has not been transparent with this Committee regarding her social media presence, having admitted to deleting thousands of Tweets. For these reasons, I oppose Ms. Kotagal’s nomination, and I urge all of my colleagues to do the same.” [Sen. Richard Burr’s Office, [5/10/22](#)]