



Kenneth Lee

President Trump nominated Kenneth Lee to serve on the U.S. Court of Appeals for the Ninth Circuit on January 31, 2019. Lee is anti-choice.

Career¹

- Bachelor of Science, Cornell University, 1997
- Juris Doctorate, Harvard Law School, 2000
- Clerk, Hon. Emilio Garza, United States Court of Appeals for the Fifth Circuit, 2000-2001
- Special Counsel, U.S. Senate Committee on the Judiciary, Summer 2005
- Associate, Wachtell, Lipton, Rosen & Katz, 2001-2006
- Associate Counsel and Special Assistant to the President, The White House, 2006-2009
- Adjunct Faculty, Pepperdine Law School, 2010-2011
- Partner, Jenner & Block LLP, 2009-present

Record on Choice-Related Issues

Notable Information

- Lee wrote an article using well-known anti-choice rhetoric to accuse feminists on the Cornell campus of hypocrisy for their support of abortion rights and disdain for Playboy. Lee's own disdain for abortion rights is clear throughout the article:²
 - “Most feminists support unfettered abortion-on-demand. They want the government to subsidize abortions for 16 year olds without parental consent, and they have no qualms about it. Why? Because they see abortion in terms of purely ‘rights’ and not morality. They only have scorn for anyone who questions the morality of using taxpayers’ money to subsidize teen abortions. Yet somehow on the matter of Playboy, they refuse to see the issue in terms of rights, and instead talk of morality. (‘Playboy is degrading to women.’)”
 - “It is hypocritical and sanctimonious for feminists – the vast majority of whom are fervent pro-choicers – to restrict the free will of other women. Ironically, it is an anti-feminist notion that women should not have the choice to pose in Playboy. The four women from Cornell who posed in the magazine

did so out of their own free will. Applying the typical pro-choice rhetoric can lucidly illuminate the hypocrisy of some of Cornell's feminists."

- "Feminism today, unfortunately, is not about extending equal rights and opportunities to women. Instead, it is about adhering to a stifling orthodoxy."
- Lee wrote an article in which he lamented the idea that legal clinics at law schools are "training young lawyers to pursue partisan, often radical, policy goals – at the expense of the public."³ In it, he expressed his frustration with efforts to challenge laws limiting abortion access:
 - "Lately we've seen many crocodile tears shed by left-wing lawyers lamenting the judicial decisions which cemented George W. Bush's election victory... Ironically, the Left has for years been relying on courts to accomplish what it could not achieve in the voting booth. To take just one instance among thousands, when the New Jersey state legislature passed a law against taxpayer-financed abortions a few years ago, pro-choice groups didn't lobby politicians or try to elect similarly-minded legislators. Instead, they challenged the statute in the New Jersey Supreme Court as a violation of the constitutional guarantee of equal protection. And sure enough, the court struck down the law as 'discriminatory.'"
 - "Perhaps one of the oldest and most successful 'impact litigation' clinics is the Rutgers Law School's Women's Rights Litigation Clinic... The Women's Rights Litigation Clinic was one of the groups that successfully challenged the New Jersey abortion statute barring taxpayer funds for abortions. That legal victory was doubly painful for abortion opponents because the law school used taxpayers' money in court to force the public to fork over even more of their money for abortion services."
- Lee wrote an article insisting that the defense of women's rights in academia has been based on false claims.⁴ He insinuated that he does not believe statistics known to be accurate about college sexual assault, instances of eating disorders, and the general idea that women face disparate treatment:
 - "From Afrocentric claims of Cleopatra's being black to phony feminist statistics on rape, anorexia, and discriminatory treatment of girls, academia has in recent years been beset by revelations of fraudulent facts and spurious studies."
 - "This postmodern playing with facts has thoroughly infected feminist arguments about the oppression of women. On most college campuses, professors repeat the mantra, 'one in four girls is a victim of rape or attempted rape.' Yet as Christina Hoff Sommers has shown, this claim is

deeply flawed. In the survey from which it is derived, 73 percent of the girls counted as rape victims said that they were not aware at the time that they had been raped. A similar untruth much bruited about on campus is the 'fact' that 150,000 women die of anorexia every year. Actually, official statistics show that 150,000 women suffer from the disease but only about 100 women die each year from it. When figures like these are traced back to their sources and refuted, professors often fall back on the defense that while their specific numbers may not be wholly accurate, they nevertheless represent the 'larger truth' that society mistreats women."

- RAINN, the Rape, Abuse, & Incest National Network, confirms that one in four college women experience sexual assault.⁵ Moreover, it is deeply offensive and contrary to fact to suggest that any instance in which a woman was not aware at the time of her rape that she was being raped should be discounted.
- Lee wrote an article, in which he (presumably) purposefully misspelled the word "women" repeatedly, insisting that men and women could never be equal: "Some egalitarians have charged that womon [sic] should be treated equally in all cases; this would include putting womein [sic] into the front-line battle-field. Unfortunately, no matter how many times they cry that both genders are equal, the reality is that men and womoen [sic] are biologically different, e.g. men are usually innately physically stronger than womin [sic] (although exceptions to that rule exists, especially in the author's case). Any one [sic] who disputes that fact disputes nature. Some tasks are better suited for men, and others for women. This is not sexism; it is reality."⁶
- Lee is an active member of the conservative, anti-choice Federalist Society.⁷ He has spoken at several Federalist Society events and appeared six times on Federalist Society podcasts. The Federalist Society is led by Leonard Leo, the anti-choice activist who is heavily involved in selecting Trump's Supreme Court and lower court nominees. Leo has been outspoken in his anti-choice views, calling abortion "an act of force" and "a threat to human life,"⁸ and serves as co-chairman of Students for Life,⁹ a group whose mission is to "abolish abortion."¹⁰
- Lee has donated thousands of dollars to anti-choice political candidates, including Elise Stefanik, Tom Cotton, Ted Cruz, and Mitt Romney.¹¹

Record on Other Key Issues

- Lee wrote an article defending a Cornell professor accused of sexual assault.¹² He used common conservative tropes about sexual assault survivors known to be false to attempt to discredit the women who reported the harassment, and suggested that a feminist agenda motivated them to falsely accuse the professor:
 - “After this alleged incident occurred in 1988, the complainant continued to accompany Maas as his film crew assistant on four more trips. If a lecherous professor grabs a student’s breast, the last thing she would do is continue to accompany him on another trip – let alone four more trips – just so she can hold on to a part-time job. But the complainant did exactly that.”
 - “Coworkers testified that the complainant did not seem depressed during this period, and they failed to note any change of behavior in the complainant. One would expect her to display some downtrodden emotions.”
 - “If Maas’ affectionate actions made any of his students uncomfortable, they never told him. Instead, they kept a secret log detailing Maas’ actions...to use against him later at the hearings.”
 - “If Maas did not harass them, why would the complainants accuse Maas of sexual harassment? The two main instigators of this witch hunt were twin sisters who served as members of Maas’ film crew. They had described their working relationship with Maas as ‘fun’ until they took a human sexuality course in the Human Ecology College and became teaching assistants for the courses [sic]. The class propagated the pernicious view that all women are victims of inexorable sexism inherent in our patriarchal society. Indeed, a central tenant of some radical strands of feminism is the quasi-Marxist notion that the all [sic] actions of the ‘oppressors’ (males, in this case) are used to perpetuate dominance over the ‘oppressed’ (females). Cornell’s sexual harassment counselor, Prof. Sandra Bem has written that our ‘androcentric social world’ was ‘built by rich, white, heterosexual men’ to ‘serve political ends.’ After being exposed to these feminist ideas, the twins joined a date rape and a Violence Against Women organization. They then suddenly construed Maas’ kindly acts – the same actions that they had previously welcomed – as sexual harassment. Maas’ gift-giving and hugging could not be motivated by kindness; some lascivious intent to assert male dominance had to be involved.”
 - Lee wrote that another complainant had hired a therapist who, “persuaded her that Maas’ affectionate acts caused her this aggrievement, and that his kind acts were actually sexual predations.”

- Of the result of the case, Lee wrote: “The case against Maas was so tenuous that the Professional Ethics Committee reported that, ‘Professor Maas was found not in the present proceedings to have either had, or sought, an intimate sexual relationship with any of his students nor to have engaged in the physically abusive behaviors often associated with the term ‘sexual harassment.’ Nonetheless, any conduct that constitutes sexual harassment is an affront to the entire Cornell community and will not be tolerated.’ Translation: Maas did not commit what any rational person would consider sexual harassment, but we are not rational people, so we’ll lynch him anyway.”
- Lee wrote an op-ed complaining about Cornell’s decision to open a Gay, Lesbian, and Bisexual Resource office on campus. He wrote, “Although the administrators vehemently deny it, the Gay Resource Office is more political in nature than anything. Contrary to the University’s open assertions, the Gay Resource Office is a token to appease the more militant gay activists on campus.”¹³
- Lee supports felon disenfranchisement, having written, “felon disenfranchisement laws are justified on the basis of the Lockean notion of a social contract; as Judge Henry Friendly once put it, someone ‘who breaks the laws’ may ‘fairly have been thought to have abandoned the right to participate’ in making them.”¹⁴ He continued, “Critics of felon disenfranchisement laws note that these laws have a disproportionate impact on certain racial minority groups. While society can be sensitive to such concerns, it is not a sufficient reason to abolish longstanding and justifiable laws in the attempt to achieve some form of racial balance.”
- Lee believes that Republicans and conservatives face rampant discrimination, and has written as much in several instances:
 - “The simple legal logic underlying much of contemporary civil rights law applies equally to conservative Republicans, who appear to face clear practices of discrimination in American academia that are statistically even starker than previous blackballings by race.”¹⁵
 - “The paucity of Republican professors presents this question: Is there discrimination against conservatives at our nation’s top universities? For years, liberals have argued that the underrepresentation of minority professors is ipso facto proof of racism, and they have implemented affirmative action programs to reach the goal of proportional representation. Since Republicans represent over a third of the electorate, and an even higher proportion of the college-educated population, perhaps universities should recruit intellectually conservative professors with the same zeal they display for balancing flesh tones.”¹⁶

- “The main culprits espousing this new intolerance tend to be affiliated with the ethnic/ multicultural classes. They ironically purport to be vanguards of ‘tolerance and diversity.’ But they in reality stifle dissenting views. Those who fail to see their point of view are casually denigrated as racist.”¹⁷

¹ Questionnaire for Judicial Nominees: Kenneth Kiyul Lee, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Kenneth%20Lee%20SJQ%20-%20PUBLIC.pdf>

² Kenneth Lee, *In Defense of Playboy*, CORNELL REVIEW (Sept. 15, 1995)

³ Kenneth Lee, *Where Legal Activists Come From*, THE AMERICAN ENTERPRISE (June 2001)

⁴ Kenneth Lee, *Untruth in Academe*, THE AMERICAN ENTERPRISE (May/June 1999)

⁵ *Campus Sexual Violence: Statistics*, RAINN, <https://www.rainn.org/statistics/campus-sexual-violence> (last visited Feb. 27, 2019)

⁶ Kenneth Lee, *Is America Evil?*, THE CORNELL REVIEW (Nov. 11, 1993)

⁷ Questionnaire for Judicial Nominees: Kenneth Kiyul Lee, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Kenneth%20Lee%20SJQ%20-%20PUBLIC.pdf>

⁸ Jeffrey Toobin, *The Conservative Pipeline to the Supreme Court*, THE NEW YORKER (April 17, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court>

⁹ *Board of Directors*, STUDENTS FOR LIFE, <http://studentsforlife.org/supporters/board-of-directors-1> (last visited July 5, 2018)

¹⁰ *Mission Statement*, STUDENTS FOR LIFE, <http://studentsforlife.org/about/mission-statement/> (last visited July 5, 2018)

¹¹ *Open Secrets Donor Lookup: Kenneth Lee*, <https://www.opensecrets.org/donor-lookup/results?name=Kenneth+Lee&cycle=&state=CA&zip=&employ=&cand=> (last visited Feb. 27, 2019)

¹² Kenneth Lee, *Why Maas is Innocent*, CORNELL REVIEW (Sept. 15, 1995)

¹³ Kenneth Lee, *Gay Office Opens*, CORNELL REVIEW (Oct. 20, 1994)

¹⁴ Roger Clegg, Kenneth Lee, and George T. Conway III, *The Bullet and the Ballot? The Case for Felon Disenfranchisement Statutes*, 14 *Am. U. J. Gender & Soc. Pol'y & L.* 1, 17-25 (2006).

¹⁵ Kenneth Lee, *Time to Fight Back: An anti-discrimination campaign waiting to happen?*, THE AMERICAN ENTERPRISE (Sept. 2002)

¹⁶ Kenneth Lee, *Our Monotone Universities*, THE AMERICAN ENTERPRISE (Sept./Oct. 1995)

¹⁷ Kenneth Lee, *End Racist Policies*, THE CORNELL REVIEW (Oct. 20, 1994)