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Budding Textualist Star Barbara Lagoa Eyed For High Court

By *Carolina Bolado*

Law360 (September 21, 2020, 10:54 PM EDT) -- Known as a budding superstar in Florida conservative legal circles, committed textualist Judge Barbara Lagoa could continue her lightning-quick ascent through the appellate ranks if President Donald Trump taps her for the now-vacant [U.S. Supreme Court](#) seat, where she would become the first Cuban-American, and first Floridian, to sit on the high court.

The 52-year-old judge, who has sat on the Eleventh Circuit since late last year, has emerged as a top contender to fill the vacancy left by the death of Justice Ruth Bader Ginsburg on Friday. The president said Monday that he may meet with her when he visits Miami later this week on a trip to the must-win swing state.

A nomination could launch the judge directly into a political maelstrom as Democrats fight Republican efforts to fill the seat so soon before the election, but attorneys who know her say they expect she will be as prepared for a contentious confirmation hearing as she is for every case she hears.

"I have no doubt that she has her paperwork in order," Thomas Ward of [Rennert Vogel Mandler & Rodriguez PA](#) said. "It may be more political this time around, but I think she'll be able to compartmentalize and say, 'I know it's not about me, I know I'm qualified.' I would be beyond shocked if we saw anything other than a calm, composed answer from her."

Born in Miami to Cuban exiles, Judge Lagoa grew up in Hialeah, a heavily Cuban working-class suburb of Miami, where she attended Catholic school and later nearby Florida International University before heading to New York for law school at Columbia University.

She worked as a commercial litigator in Miami at [Greenberg Traurig LLP](#) and [Morgan Lewis & Bockius LLP](#) and was on the team that represented the Miami family of Elián González, the 5-year-old Cuban boy whose mother drowned while trying to get them to Florida.

After a few years as an assistant U.S. attorney, she was appointed by Gov. Jeb Bush in 2006 to the Third District bench, where she spent the next 12 years of her career.

Judge Lagoa has always been a strong believer in the distinct and separate powers of each of the branches of government and the limited role of the courts, according to Ed Guedes of [Weiss Serota Helfman Cole & Bierman PL](#), who argued before Judge Lagoa many times at the Third District.

"She's a textualist," he said. "I would try as much as possible to hew closely to the plain meaning of statutes or texts."

He said he is not surprised at her rapid rise and likened her to Justice Sandra Day O'Connor, who was an Arizona appellate judge who was relatively unknown outside the state when she was appointed by President Ronald Reagan to the U.S. Supreme Court.

"And yet she ends up being a tremendous justice with an amazing record on the court and a tremendous legacy, and she sort of came out of nowhere," Guedes said.

In January 2019, Gov. Ron DeSantis tapped her for a seat on the [Florida Supreme Court](#) in an event at Miami's Freedom Tower, where most Cuban exiles in the 1960s were processed on arrival. He touted her sterling credentials and her family's story of fleeing a repressive regime in Cuba.

"Her backdrop understanding has really made her appreciate the importance of the rule of law," DeSantis said at the event.

In her application for the Florida Supreme Court, the judge stressed her textual approach to interpreting the law.

"The first thing I would do is look at the text of the statute," Judge Lagoa told the Judicial Nominating Commission in a November 2018 interview. "Generally statutes are unambiguous, and I would just apply the black letter and the meaning of the statute. If the statute is ambiguous, then I would resort to the canons of statutory construction."

But she was on the bench of the Florida Supreme Court for just a few months before Trump nominated her for the federal Eleventh Circuit. In November, she sailed through confirmation in a bipartisan 80-15 vote.

Her lack of a lengthy paper trail on hot-button social issues like abortion may have helped her in that first confirmation. But the stakes are heightened now, and since that vote, she has signed on to a controversial majority opinion upholding a Florida law requiring former felons to pay off all of their fines and fees before voting, a decision that is sure to earn her questions from Democratic senators.

In addition to joining the majority, Judge Lagoa added her own concurrence emphasizing that the Florida law at issue should not be subject to heightened scrutiny because felons do not have a fundamental right to vote and because indigency is not a suspect class.

She added that though Florida voters had approved limited felon reenfranchisement in a 2018 ballot initiative known as Amendment 4, it was not within the court's power to extend it further.

"Our role in the constitutional system is simply to review that step for compliance with the Constitution, not to lengthen its stride," she wrote. "To proceed otherwise would violate the principles of federalism and separation of powers — the two structural guarantors of individual rights and liberty in our Constitution."

She would also likely face renewed questioning about two decisions she authored while at the Florida Supreme Court that backed DeSantis' broad use of executive power to suspend officials. She wrote in both cases that the Florida Constitution limits the judiciary's role in reviewing the executive's use of suspension power and said the Senate, not the judiciary, is the place to review evidence for or against suspension orders.

The judge has earned a reputation from attorneys for being thorough in her preparation and quick to pierce right through any weaknesses in their arguments. Kara Rockenbach Link of [Link & Rockenbach PA](#), who argued before Judge Lagoa about a dozen times at Florida's Third District Court of Appeal in Miami, called her "the consummate professional" and praised the judge's approach to cases — even if she didn't always rule in Link's favor.

"I didn't win every time," Link said. "I think that speaks volumes because it shows that I felt like I was heard and I took no issue with the ruling or judicial process because of her thoroughness and adherence to how the law is written."

On a personal level for Guedes, who attended Immaculate Conception Catholic School at the same time as Judge Lagoa, he said it would mean a great deal to him and the rest of the Cuban-American community to see someone from Hialeah ascend to the U.S. Supreme Court.

"It is a source of tremendous pride to me to think that someone like her who shares a similar cultural background and went through a similar upbringing, that she would end up at the Supreme Court," Guedes said.