

Idaho Senator Mike Crapo
Opening Statement
Confirmation Hearing of Judge Neil Gorsuch to be Associate Justice
United States Supreme Court
Monday, March 20, 2017

Thank you, Mr. Chairman.

Judge Gorsuch, welcome and congratulations on the high honor of your nomination.

Much of the discussion surrounding this nomination has centered on answering the key question, “What kind of justice should serve on the U.S. Supreme Court?”

Some want a judge in their own making--predictable, ideological and political.

Others regard the role of judge as final arbiter of justice--clothed in dark robes, unquestioned and seated on an elevated platform well above the court proceedings.

In recent years, selecting judges has become more about a numbers game with the courts, measured at least in part by comparing vacancies filled by each president. Often, we read about federal court proceedings invariably coupled with the name of the judge and the president who appointed him or her.

Because venue-shopping has become all-too-common a practice today, the individual judge can become more important than the facts of any case. In this scenario, the judge serves not justice, but politics in another form.

Whenever Congress considers a judicial nomination, people talk earnestly about the importance of “independence.” For some, that word flows from the central work of the Founders of our Constitution, who crafted a separate branch of government empowered to review laws passed by the legislature and signed by the executive branch.

To others, “independence” is more about giving judges the power to issue decisions without personal consequence.

The true American vision of justice is one in which the judge is not influenced by personal opinions. The law is supreme. The facts decide the day. The judge could be substituted with another and the outcome remains the same. The president who nominated him or her is never mentioned in the article about the decision. Venue-shopping is a relic of another era.

This is the vision most Americans have of the proper judge on the federal bench.

As I reflect on the nomination of Judge Gorsuch, I think back to our meeting soon after his nomination was announced. I’ve met several Supreme Court nominees in my service in the Senate. All of them have impressive credentials and legal experience.

But Judge Gorsuch stands out for a notable reason. He understands and is focused on the principle that a judge is a servant of the law, not the maker of it.

One of his comments during our talk still resonates. He said, “My personal views are irrelevant as a judge.”

Isn't that the ideal illustration of a judge steadfastly committed to the law?

To quote the late Justice Scalia, "If you're going to be a good and faithful judge, you have to resign yourself to the fact that you're not always going to like the conclusions you reach. If you like them all the time, you're probably doing something wrong."

Judge Gorsuch recognizes that the law may be imperfect, being the product of an imperfect system.

But there is a remedy to the imperfection of law – the political system, directly accountable to the public. The people choose policy-makers, not federal judges.

The law can frustrate. In black and white, it is stark and change comes slowly and deliberately, just as our forebears designed. Law that can change in a moment and capriciously is inherently destabilizing.

An activist judge who makes law plants insecurity in our system. Rather, our Constitution provides for law to be enacted legislatively with the sanction of the American people through the ballot box. Policy changes advanced by judges can be reversed and reversed again. Law properly grounded in the democratic and political process cannot.

“Equal treatment under the law.”

“Justice is blind.”

These aren't just catchy phrases that echo back to our time in civic classes. These are guiding principles of our republic and reaffirmed in the 14th Amendment to our Constitution. Fundamentally, each of us should know courts will find for us when the law is on our side, whether we are rich or poor, strong or weak, or a “big guy” or a “little guy.”

Now, that's principled justice.

Some may not like a particular law. That's fair and not unexpected. But, the remedy for this disagreement is not changing judges but changing the law. Fortunately, our system of government has the exact solution available to us—passing a new law through the deliberate, careful and publicly-accountable political process.

No one seriously questions Judge Gorsuch's fitness and capability to serve on the highest court in the land. His credentials are exemplary. He is widely respected for his intellect, judgement and modesty. His admirers span the political spectrum. Judge Gorsuch is intelligent and open-minded.

He is exactly the model for appointment to the Supreme Court.

Mr. Chairman, I look forward to hearing from the nominee himself. The next few days will prove extraordinarily insightful as we discuss with Judge Gorsuch his philosophy of jurisprudence, what animates him to interpret the law, and his vision for the federal judiciary.

I look forward to this hearing.

Thank you, Mr. Chairman.

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