

**Prepared Statement by Senator Chuck Grassley of Iowa  
Chairman, Senate Judiciary Committee  
Nomination of Judge Neil Gorsuch to Serve as Associate Justice of the Supreme Court  
March 20, 2017**

One of Justice Scalia's best opinions begins with this declaration: it is the "proud boast of our democracy that we have a government of laws and not of men."

The phrase comes from the Massachusetts Constitution of 1780. This infant state constitution linked the government of *laws*, and not of *men*, directly to the separation of powers.

Justice Scalia said the founders "viewed the principle of separation of powers as the absolutely central guarantee of a just Government . . . [because] without a secure structure of separated powers, our Bill of Rights would be worthless."

In plain words, it was the desire to *preserve* and *protect* liberty and self-government that guided the Framers as they designed our Constitution. And the founding charter they designed is a remarkable thing.

The Bill of Rights, of course, preserves liberty by restricting what the government may do.

But the single most important feature of our Constitution isn't any particular enumerated right, or even the entire Bill of Rights, taken together. The most important feature of our Constitution is the design of the document itself. It divides the limited power of government vertically, between the states and federal government. And it distributes power horizontally, between the co-equal branches.

It's this delicate balance of power, entrusted to competing factions, that ensures the liberty of the People will endure.

It's the Constitution's design that protects against the mischief that results from the concentration of power. The Founders understood this fundamental principle, and Justice Scalia understood it better than anyone. He was fond of telling law students:

"Every tin horn dictator in the world today, every president for life, has a Bill of Rights."  
But, "the real key to the distinctiveness of America is the structure of our government."

Our constitutional republic is also designed around the notion that the People, acting through their representatives, retain the ultimate authority to govern themselves. It was the People, through their representatives, who ratified the Constitution that establishes our system of government.

Under that system, except where the Constitution has already answered the question, decisions are made by elected representatives. *Elected*, and accountable to the voters.

But to endure, our system of self-government requires judges to apply the text of our laws as the people's representatives enacted them. So our judges, by design, play a critical—but limited—role. They decide cases or controversies. But in resolving those cases, they may look only to the laws the People wrote.

Judges aren't free to re-write statutes to get results they believe are more just. Judges aren't free to re-order regulations to make them more fair. And no, Judges aren't free to "update" the Constitution. That's not their job.

*That* power is retained by the *People*, acting through their elected representatives. When our Judges don't respect this limited role, when they substitute their *own* policy preferences for those in the legislative branch, they rob from the American people the right to govern themselves.

As that happens, inch by inch and step by step, democracy is undermined, the carefully constructed balance of power is upset, and individual liberty is lost.

These aren't stale concepts. If anything, the enormous size, power and complexity of the modern State renders them more relevant than ever.

In recent months I've heard that "now more than ever" we need a Justice who is independent, and who respects the separation of powers. Some of my colleagues seem to have rediscovered an appreciation for the need to confine each branch of government to its proper sphere. I don't question the sincerity of those concerns, but some of us have been alarmed by executive overreach, and the threat it poses to the separation of powers, for quite some time now.

Whether it was the Executive branch unilaterally re-writing federal law as the Obama administration did dozens of times, or the Executive's repeated failure to enforce and defend the laws passed by Congress, over the last 8 years we've witnessed repeated abuses by one branch, at the expense of the other two. Just ask the Supreme Court, which unanimously rejected arguments the Obama Administration made in more than 40 cases.

The policies that drove those abuses were of course problematic. But policies can be changed.

To this Senator, what's far more distressing about each Executive overreach and each failure to defend the law, is the damage it does to our constitutional order. The damage those abuses inflict is far more difficult to undo than the policies that animated them. For as John Adams observed, "Liberty, once lost, is lost forever."

So, the separation of powers is just as critical today as it was during the last Administration. And the preservation of our constitutional order—including the separation of powers—is just as crucial to our liberty today as it was when our founding charter was adopted.

No matter your politics, for all of these reasons you should be concerned about the preservation of our constitutional order and the separation of powers.

And if you are concerned about these things, as you should be: meet Judge Neil Gorsuch.

Fortunately for every American, we have before us today a nominee whose body of professional work is defined by an unfailing commitment to these principles. His grasp on the separation of powers—including judicial independence—enlivens his body of work.

As he explains: “To the founders, the legislative and judicial powers were distinct by nature and their separation was among the most important liberty-protecting devices of the constitutional design.”

About the executive, he writes that through “[the] hard won experience under a tyrannical king, the founders found proof of the wisdom of a government of separated powers.”

The judge’s job, our nominee says, is to deliver on the promise that “all litigants, rich or poor, mighty or meek, will receive equal protection under the law and due process for their grievances.”

The nominee before us understands that any judge worth his salt will “regularly issue judgments with which they disagree as a matter of policy—all because they think that’s what the law fairly demands.”

Fundamentally, that is the difference between a legislator and a judge. All of us should keep this in mind during the course of this hearing.

Judge, I’m afraid over the next couple of days, you’ll get some questions that will cause you to scratch your head. Truth be told, it should puzzle anyone who’s ever taken a civics class.

We’ll hear that when you rule for one party and against another in a case, it means you must be *for* the winner and *against* the loser. Senators will cite some opinion of yours, and then we’ll hear that you’re *for* the “big guy,” and *against* the “little guy.”

You’ll scratch your head when you hear this, because it’s as if you judges write the laws instead of us Senators. But if Congress passes a bad law, as a judge you’re not allowed to just pretend we passed a good law. The oath you take demands that you follow the law, even if you dislike the result.

So if you hear that you’re *for* some business or *against* some plaintiff — don’t worry. We’ve heard it all before. It’s an old claim, from an even older playbook. You and I and the American People know whose responsibility it is to correct a law that produces a result you dislike. It’s the men and women sitting up on this dais.

Good judges understand this. They know it isn't their job to fix the law. In a democracy, that right belongs to be the People.

It's for this reason that Justice Scalia said,

"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, I look forward to hearing more about your exceptional record. And I look forward to the conversation we'll all have about the meaning of our Constitution and the job of a Supreme Court Justice in our constitutional scheme.