

Opening Statement
Hearing on the Nomination of Neil Gorsuch to the Supreme Court
Monday, March 20, 2017

Judge Gorsuch, welcome to you and your family.

I often read stories about earlier Supreme Court nominations and how little politics played any role in the selection and vetting of nominees. Those of us on the Democratic side are frequently warned not to let politics be a part of our decision.

But when I consider your path to this historic hearing, this plea to ignore politics rings hollow.

Your journey began with the untimely death of Justice Antonin Scalia in February of 2016.

President Obama met his constitutional obligation by nominating Judge Merrick Garland to fill that vacancy in March of 2016.

Senate Republican Leader Mitch McConnell announced that for the first time in the history of the Senate he would refuse Judge Garland a hearing and a vote. He went further and said he would refuse to meet with him. It was clear that Senator McConnell was making a political decision hoping a Republican would be elected President. He was willing to ignore the tradition and precedent of the Senate so that you could have this opportunity.

In May and September of 2016 Republican Presidential candidate Donald Trump released a list of 21 names, including yours, that he would consider to fill the vacancy. President Trump thanked the Federalist Society and the Heritage Foundation, two well-known Republican advocacy organizations, for providing the list that included your name.

You are part of a Republican political strategy to capture our judicial branch of government at every level. That is why the Senate Republicans kept this Supreme Court seat vacant for more than a year and why they left 30 judicial nominees who had received bipartisan approval of this committee to die on the Senate calendar as President Obama left office.

Despite all of this you are entitled to be judged on your merits.

The Democrats of the Senate Judiciary Committee will extend to you a courtesy which the Senate Republicans denied to Judge Garland: a respectful hearing and a vote.

Judge Gorsuch, you have been nominated to a lifetime appointment on the highest court in the land – the court that has the final say on matters of fundamental importance affecting Americans from all walks of life. You have a lengthy record on the 10th Circuit that we will consider, and it raises many questions. Nominees are usually advised to artfully dodge the tough questions, but it is our job as Senators to seek the truth regardless.

At the nomination hearing of Justice Ruth Bader Ginsburg, my friend Senator Paul Simon set forth a standard for assessing Supreme Court nominations. I have noted this standard to each of the Supreme Court nominees who has appeared before me. Senator Simon said, quote, “You

face a much harsher judge . . . than this committee and that is the judgment of history. And that judgment is likely to revolve around the question: Did she restrict freedom or did she expand it?"

Let me be clear. When I talk about expanding freedom, I don't mean freedom for corporations. "We the people" does not include corporations. Senator Simon never would have imagined that the Supreme Court would give corporations rights and freedoms that were previously reserved for individuals under our Constitution.

And yet that is where we find ourselves under the Roberts Court. It is often said that the Roberts Court is a "Corporate Court" because of its pro-business tilt. For example, a study by the Constitutional Accountability Center found that the Roberts Court has ruled for the U.S. Chamber of Commerce's position 69 percent of the time. And the Roberts Court has certainly favored big business on issues like forced arbitration, corporate price-fixing, and workplace discrimination cases, to name just a few.

But the Roberts Court has gone further than just ruling the way that corporate America wants. In the 2010 Citizens United case, the Supreme Court held for the first time that corporations have the same right as living, breathing people to spend money on elections. And that was followed in 2014 by the Hobby Lobby case, which allowed for-profit corporations to discriminate against employees based on the corporation's exercise of religious beliefs.

I don't recall ever seeing a corporation in the pews of Old St. Patrick's in Chicago. Our founders never believed that corporations were "endowed with certain unalienable rights." But we are seeing the Supreme Court expand the rights of a legal fiction at the expense of the voices and the choices of actual people. This strikes at the heart of the Supreme Court's promise to provide "Equal Justice Under Law".

You took part in the Hobby Lobby case when it was before the 10th Circuit. As I read that case, I was struck by the extraordinary, even painful lengths the court went to protecting the religious beliefs of the corporation and its wealthy owners, and how little attention was paid to the employees - to their constitutionally protected religious beliefs, their choices as individuals, and the burdens that the court's decision placed on them.

I want to hear from you about a pattern I have seen in your decisions on the 10th Circuit. In case after case, you have dismissed or rejected efforts by workers and families to recognize their rights or defend their freedoms in court against businesses.

Cases like TransAm Trucking. Alphonse Maddin, a truck driver from Detroit, was fired because he refused to wait for hours in the middle of the night on the side of I-88 in Illinois with a broken trailer in sub-zero temperatures. It was cold in that truck - Al Maddin told me it was at least 14 below - but not as cold as your dissent, which argued that his firing was lawful. You cited a strict textualist argument to make your point, but you selectively chose the text that you focused on, and the majority pointed out that common sense and the Oxford Dictionary supported the majority's view, not yours.

And there's the Compass Environmental, Inc. case. In this case, your dissent would have vacated a penalty against an employer who failed to train construction employee Christopher Carder to avoid the electrocution hazard that killed him.

And Strickland v. UPS, where your dissent would have kept Carole Strickland's sex discrimination case from going to a jury, even though your fellow judges said Ms. Strickland provided ample evidence that she was regularly outperforming her male colleagues and yet she was treated less favorably than they were.

Like other Republican nominees that have come before this Committee, you invoke the supposedly neutral philosophies of "originalism" and "textualism." But somehow time after time these doctrines lead you to the same outcome- the company wins and the worker, the victim, and the consumer lose to the corporate elite. This is why the Associated Press stated that you, quote, "often sided with employers in workers' rights cases." Reuters also described you as, quote, a "friend of business" based on your work in private practice. Lawyers have a responsibility to faithfully represent their clients, but a justice of the Supreme Court has a greater responsibility to the Constitution, the law, and the values of our nation.

I also want to hear more about your views on some of the most fundamental individual rights that the Supreme Court is tasked to defend – like the right to privacy, the right for all faiths to practice their religion, the right to vote, equal protection, and the rights of women. The Committee has also received two letters from students who you taught last year that raise some serious concerns, and tomorrow we're going to get to the bottom of this.

We have learned that you were an aggressive defender of executive power during your time in the Bush Administration. In June 2004, after the Abu Ghraib torture scandal, I authored the first legislation to ban the cruel, inhuman, or degrading treatment of detainees. This legislation became the McCain Torture Amendment, which, despite a veto threat, passed the Senate in December 2005 by an overwhelming 90-9 vote. But when President Bush signed the amendment into law, he issued a signing statement claiming he had the authority to ignore the McCain Amendment. It turns out that you were deeply involved in this unprecedented and unconstitutional signing statement. We need to know what you will do when you are called upon to stand up to this President or any President if he claims the power to ignore laws that protect fundamental human rights.

And as we discussed in our meeting, I believe the Supreme Court is going to be challenged repeatedly by the presidency of Donald Trump. Before this presidency is over, we're going to see the limits of presidential authority and the limits of the Constitution tested, and the ultimate test will come to the Supreme Court. In only two months President Donald Trump has:

- fired an Attorney General for disagreeing with him;
- signed an unconstitutional executive order that was blocked by multiple federal courts;
- had his National Security Advisor resign over contacts with Russia;
- repeatedly attacked the intelligence community, the judiciary, and the free press; and
- repeatedly accepted unconstitutional foreign emoluments.

Clearly President Trump is going to keep the Supreme Court busy. It is incumbent on any nominee to demonstrate that he or she will serve as an independent check and balance on his presidency. With you, there are warning flags.

For example, on February 23, White House Chief of Staff Reince Priebus said, quote, “Neil Gorsuch...represents the type of judge that has the vision of Donald Trump.” I want to hear from you why Mr. Priebus would say such a thing. Make no mistake - when it comes to the treatment of workers, of women who have been victims of discrimination, of people of minority religious faiths, and of our Constitution, I personally do not believe America needs the vision of Donald Trump represented on the Supreme Court.

With my constitutional responsibility firmly in mind, I look forward to questioning you tomorrow.