

REMARKS ON JUDGE NEIL GORSUCH'S SUPREME COURT CONFIRMATION HEARING

Thank you, Mr. Chairman and Ranking Member Feinstein. Judge Gorsuch, congratulations on your nomination. You are a man of considerable qualifications and experience, and having reviewed your decisions, I can say that you are a man of strong opinions. But the task before this Committee is not to determine whether you are a man of conviction. Rather, it is incumbent upon us to determine whether the views you espouse, and whether your interpretation of the Constitution, take proper measure of the challenges the American people face every day. We must determine whether your understanding of our founding document is one that will make real its promise of justice and equality to all Americans—black and white; immigrant and Native American; gay, straight, and transgender. We must determine whether your interpretation of our laws and Constitution will unfairly favor corporate interests over working families or limit the ability of Minnesotans to get their day in court.

The justices who sit on the Supreme Court wield enormous power over our daily lives, and so before this Committee decides whether to advance your nomination, we have an obligation to fully examine your views on these important issues, and to make sure that those views are known to the public. That's the whole purpose of these hearings—to allow the people of Minnesota, who I represent, and the American people to meet you and to decide for themselves whether you are qualified to serve. But, Judge Gorsuch, having reviewed your decisions and your writings, I have concerns. In the days ahead, I will use this hearing as an opportunity to better understand your views and, perhaps, to alleviate some of those concerns. But in order for the hearing to serve that purpose—in order for the public to determine whether you should be confirmed—you must answer the questions this Committee poses fully, candidly, and without equivocation. So I hope that's how you will approach our exchanges.

Now, with that in mind, I think it's important to acknowledge just exactly how it is that you came to be sitting before us here today—namely, this Committee's failure to fulfill one of its core functions. Immediately following the death of Justice Scalia, and before President Obama had even named a nominee, my Republican colleagues announced that they would not move forward with filling the vacancy until after the presidential election. The majority leader said, quote, "[t]he American people should have a voice in the selection of their next Supreme Court justice." The only problem with the Majority Leader's reasoning is that the American people did have a voice in this decision. Twice. Nonetheless, when President Obama nominated Chief Judge Merrick Garland, the Republican members of this Committee responded by refusing to hold a hearing—a truly historic dereliction of this body's duty, and a tactic as cynical as it was irresponsible.

As a result of my Republican colleagues' unprecedented obstructionism, Justice Scalia's seat on the Court remained vacant until President Trump was able to name a replacement. Now, during the campaign, then-candidate Trump made no secret about what kind of a nominee he would select. In fact, he openly discussed his litmus test. He said that he would, quote "appoint judges very much in the mold of Justice Scalia." During the final presidential debate, then-candidate Trump said, quote "the justices that I'm going to appoint will be pro-life. They will have a conservative bent. They will be protecting the Second Amendment. They will interpret the Constitution the way the founders wanted it interpreted."

Now, Justice Scalia was a man of great conviction and, it should be said, a man of great humor. But Justice Scalia embraced a rigid view of our Constitution—a view blind to the equal dignity of LGBT people and hostile to women’s reproductive rights, and a view that often refused to acknowledge the lingering animus in laws and policies that perpetuated the racial divide. Judge Gorsuch, while no one can dispute the late Justice Scalia’s love for the Constitution, the document he revered looks very different from the one that I have sworn to “support and defend.” So it troubles me that at this critical juncture in our nation’s history, at this moment when our country is so fixated on the things that divide us from one another, that President Trump would pledge to appoint jurists whose views of our founding document seek to reinforce those divisions rather than bridge them.

This is an important moment in our history. To my mind, our country has never been more divided. The public's trust in our government and in the integrity of our institutions is at an all-time low. But that erosion of trust didn't take place overnight, and it didn't happen on its own. The American people's loss of confidence in our public institutions was quickened by the Court. A study published in the *Minnesota Law Review* found that the Roberts Court is more likely to side with business interests than any Supreme Court since World War II. Time and time again, the Roberts Court issued decisions that limit our constituents' ability to participate freely and fairly in our democracy. Decisions like *Shelby County v. Holder*, where the Court gutted one of our landmark civil rights laws and removed a crucial check on race discrimination at the ballot box; or like *AT&T Mobility v. Concepcion*, a 5-4 decision that allows corporations to place obstacles between consumers and the courthouse door. Perhaps most egregious of all was *Citizens United*, which paved the way for individuals and outside groups to spend unlimited sums of money in our elections. It's no surprise that during the 2016 election, voters from across the ideological spectrum—Democrats and Republicans alike—described our system as “rigged.” That's because it is—and the Roberts Court bears a great deal of responsibility for that.

Now, in each one of these 5-4 decisions, Justice Scalia was among the majority. So as this Committee sets about the task of evaluating his potential successor, I want to better understand the extent to which you share Justice Scalia's judicial philosophy, and I will be paying close attention to the ways in which your views set you apart.

One of the ways in which your views are distinct from Justice Scalia's is in the area of administrative law. Just this past August, you wrote an opinion in which you suggested that it may be time to re-evaluate what's known as the *Chevron* doctrine. Now, in broad strokes, the *Chevron* doctrine provides that courts should be reluctant to overrule agency experts when they are carrying out their missions, like when the FDA sets safety standards for prescription drugs. This principle, outlined by the Supreme Court, recognized that our agencies employ individuals with great expertise in the laws they are charged with enforcing—like biologists at the FDA—and that where those experts have issued rules in highly technical areas, judges should defer to their expertise.

Now, administrative law can be an obscure and sometimes complicated area of the law, but for anyone who cares about clean air or clean water, or about the safety of our food and our medicines, it is incredibly important. And *Chevron* simply ensures that judges don't discard an agency's expertise without good reason. Justice Scalia recognized this to be true.

But to those who subscribe to President Trump's extreme view, *Chevron* is the only thing standing between them and what the president's chief strategist Steve Bannon called the quote unquote "deconstruction of the administrative state"—which is shorthand for gutting any environmental or consumer protection measure that gets in the way of corporate profit margins. Speaking before a gathering of conservative activists last month, Mr. Bannon explained that the president's appointees were selected to bring about that deconstruction. And I suspect that your nomination, given your views of *Chevron*, is a key part of that strategy.

So this hearing is important. Over the next few days, you'll have an opportunity to explain your judicial philosophy and I look forward to learning more about how you would approach the great challenges facing our country. But if past is truly prologue, then I fear that confirming you would guarantee more of the same from the Roberts Court: decisions that continue to favor powerful corporate interests over the rights of average Americans. During your time on the Tenth Circuit, you have sided with corporations over workers, corporations over consumers, and corporations over women's health. What this moment in our nation's history calls for is a nominee who has earned a reputation for working to bridge the partisan divide—a nominee whose experience demonstrates an ability to set aside rigid views in favor of identifying common ground and crafting strong, consensus opinions—someone like Merrick Garland. But your record suggests that, if confirmed, you will espouse an ideology that I believe has already infected the bench—an ideology that backs big business over individual Americans and refuses to see our country as the dynamic and diverse nation that my constituents wake up in every morning.

As I said before, I see this hearing as an opportunity to learn more about your views and, perhaps, to alleviate some of my concerns. So I hope that we are able to have a productive conversation.

Thank you, Mr. Chairman.