

Statement of Senator Patrick Leahy (D-Vt.)
Senate Judiciary Committee
Hearing On The Nomination Of Neil Gorsuch
To Be An Associate Justice Of The Supreme Court
March 20, 2017

Today marks the first time that the Senate Judiciary Committee has met publicly to take action on the Supreme Court vacancy that resulted from Justice Scalia's death 13 months ago. Just hours after we learned of Justice Scalia's sudden passing, the Majority Leader declared that the Senate would not provide any process to any nominee selected by President Obama, despite the President having nearly a year left in his term. This was an extraordinary blockade, and one backed by then-candidate Donald Trump. Committee Republicans met behind closed doors and declared that they would surrender the independence of this Committee to do the Majority Leader's bidding, and they ignored the Constitution in the process. This unprecedented obstruction is one of the greatest stains on the two-hundred-year history of this Committee.

The Judiciary Committee once stood against a court-packing scheme that would have eroded judicial independence. That was a proud moment. Now, Republicans on this Committee are guilty of their own "court un-packing scheme." The blockade of Chief Judge Merrick Garland was never grounded in principle or precedent.

While Senate Republicans were meeting in back rooms to block President Obama's nominee, extreme special interest groups were also meeting in private – to vet potential Supreme Court nominees for then-candidate Donald Trump. I do not know of any other Supreme Court nominee who was selected by interest groups, rather than by a president in consultation with the Senate, as required by the Constitution.

Senate Republicans made a big show last year about respecting the voice of the American people in this process. Now they are arguing that the Senate should rubber stamp a nominee selected by extreme interest groups, and nominated by a President who lost the popular vote by nearly three million votes. In just his first two months in office, this President has demonstrated hostility toward our constitutional rights and values. He has levied personal attacks against Federal judges and career prosecutors who dare to see his promised Muslim ban for what it is: unconstitutional. And he called our constitutionally protected free press "the enemy of the American people." When the President's chief of staff says that the nominee before us "has the vision of Donald Trump," that should concern anyone who has read the Constitution or cares about the rights it protects.

More than perhaps any confirmation hearing for the last 30 years, I expect this nominee's judicial philosophy will play a central role. Judge Neil Gorsuch has spent more than a decade on the Federal bench. He graduated from Harvard Law School, clerked for the Supreme Court, served in the Department of Justice, and has received a unanimous "Well Qualified" rating from the American Bar Association. If all of those things were sufficient reason to confirm a nominee to the Supreme Court, Chief Judge Merrick Garland would be sitting on the Court today. That is why this nominee's judicial philosophy is so important.

In contrast to past nominees – like John Roberts, whose judicial philosophy was not clearly articulated when he appeared before this Committee – Judge Gorsuch appears to have a comprehensive originalist philosophy. This is the approach taken by jurists such as Justice Scalia,

Justice Thomas, and Judge Bork. While it has gained some popularity within conservative circles, originalism remains outside the mainstream of modern constitutional jurisprudence. It has been 25 years since an originalist has been nominated to the Supreme Court. Given what we have seen from Justice Scalia and Justice Thomas, and in Judge Gorsuch's own record, I worry that this is not just a philosophy; it is an agenda. We know that the conservative groups that vetted Judge Gorsuch, and the millionaires who fund them, have a clear agenda – one that is anti-choice, anti-environment, and pro-corporate. These groups are confident that Judge Gorsuch shares their agenda. The first person to interview Judge Gorsuch in this process explained these groups did not ask “Who’s a really smart lawyer who’s been really accomplished?” Instead they sought a nominee “who understands these things like we do.” After all, Judge Gorsuch has been described by a former leader of the Republican Party as “a true loyalist (and a good, strong conservative).”

Because of the concerns I have about Judge Gorsuch's judicial philosophy, the process by which he was selected, and the views of the president who nominated him, I hope, Judge, that you will answer my questions, and the questions of all Senators, as clearly as possible. It is not enough to say in private that the President's attacks on the judiciary are “disheartening.” I need to know that you understand the role of the courts in protecting the rights of all Americans. I need to know that you can be an independent check and balance on the administration that has nominated you, and on any administration that follows it.

Public Hearing Process for the American People

Judge Gorsuch, these hearings, occurring the week after Sunshine Week, are the first opportunity for the American people to hear your views on the role of the courts and the meaning of our Constitution. This constitutional discussion is part of our great democracy set in motion by the Founders. Like the Founders, we do not know what legal questions will be presented in the decades to come. But it is important to determine whether you understand how the Court has a profound impact on small businesses and workers, law enforcement and victims, and families and children across America. It is not contrary to the duties and obligations of a Supreme Court Justice to consider the effects of their rulings. The Court's aspiration, after all, is to provide “Equal Justice Under Law,” as inscribed in Vermont marble over its front doors.

Judge Gorsuch, these hearings will help us conclude if you are committed to the fundamental rights of all Americans. Will you allow the Government to intrude on Americans' personal privacy and freedoms? Will you elevate the rights of corporations over those of real people? Will you rubberstamp a President whose administration has asserted that executive power is not subject to judicial review? It is important to know whether you will serve with independence, or as a surrogate for the President who nominated you or the special interest groups that provided him with your name.

While I approach this hearing with these thoughts in mind, I want to emphasize that I have yet to decide how I will vote on this nomination. Unlike those who blocked the nomination of Chief Judge Merrick Garland, I believe it is my constitutional responsibility to fairly evaluate a President's nominee to the Supreme Court. I have voted for Supreme Court nominees, and I have voted against others. I will base my determination on the full record at the conclusion of these

hearings – just as I have done for the 16 previous Supreme Court nominees since I have been in the Senate.

The Supreme Court is the guarantor of the liberties of all Americans. Judge Gorsuch, when you took the oath to sit on the Federal bench, you spoke the following words: “I will administer justice without respect to persons, and do equal right to the poor and to the rich.” If confirmed, you must be a justice for all Americans, not for the special interests of a few. Perhaps at no time in our Nation’s history is that commitment more important than now.

The stakes for the American people could not be higher.

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