

Gorsuch Opening Statement as Prepared for Delivery  
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The question before us is, what happens when Republicans gain a five seat majority on the Supreme Court?

I can't help but notice the long array of 5-4 decisions, with all the Republican appointees lining up, to change the law to the benefit of distinct interests: Republicans at the polls, and big business everywhere.

Let's look at the 5-4 decisions: first, helping Republicans at the polls. All the Republican appointees' 5-4 decisions on election law favor Republicans at the polls. Six to zero.

Helping Republicans gerrymander, paving the way for the Republican "REDMAP" plan that won the House against the American majority vote in 2012: *Jubelirer*, 5-4, all the Republican appointees.

Helping Republican legislatures keep Democrat-leaning minorities away from the polls with targeted voter suppression laws: *Shelby County*, 5-4, all the Republicans; *Bartlett v Strickland*, 5-4, all the Republicans.

Helping corporate money flood elections and boost Republican candidates: *McCutcheon*, 5-4, all the Republicans counting the concurrence; *Bullock*, 5-4, all the Republicans; and the infamous *Citizens United* decision, 5-4, all the Republicans.

In each area, the Court made new law, 5-4, and each decision predictably helped Republicans win elections. At 6-0, it's a partisan rout.

Then look at cases that pit corporations against humans: all the 5-4 Republican-appointee decisions line up to help corporations against humans. *Citizens United* and the political money decisions should again count here; all three of them 5-4, all the Republicans.

Then come decisions that protect corporations who've harmed their employees: in pay discrimination, *Ledbetter*, 5-4, all the Republicans; in age discrimination, *Gross*, 5-4, all the Republicans. In harassment cases, *Vance*, 5-4, all Republicans. In anti-retaliation cases, *Nassar*, yup, you guessed it – 5-4, all Republicans.

Then there are the decisions that protect corporations from class action lawsuits: *Walmart v. Dukes*, 5-4 and *Comcast*, 5-4 -- both all the Republicans.

Then there are decisions that help corporations steer customers away from juries and into corporate-friendly mandatory arbitration: *Concepcion* and *Italian Colors Restaurant*, both 5-4, both all Republicans.

The *Iqbal* decision, 5-4, all Republicans, helped bar the courthouse door for all types of plaintiffs.

All of this helps keep corporations away from juries -- the one element of government hardest for corporations to control; indeed, tampering with a jury is a crime.

The Court also helps big business against unions: *Harris v. Quinn*, 5-4, all Republicans. Last year, *Friedrichs* was teed up as a 5-4 body blow against unions, when Justice Scalia died. With a new 5-4 Court, they'll be back.

Throw in *Hobby Lobby*: corporations have religious rights that supersede health care for their employees, 5-4, all Republicans.

Add *Heller* and *McDonald*, reanimating for gun manufacturers a legal theory a former Chief Justice once called a "fraud", 5-4, all Republicans. Help insulate investment bankers from fraud claims? Why not. *Janus Capital Group*, 5-4, all Republicans. *Chamber of Commerce v. EPA* gave corporate polluters an unprecedented victory. Again, 5-4. All Republicans.

That's an easy 16-0 record for corporations against humans.

This is no coincidence. Big business has law groups out trolling for test cases, to go get those cases before the friendly Court. The Republican politico-industrial complex piles in with amicus briefs to tell the Republicans on the Court what it wants. Republican justices are even starting to give hints, so big business lawyers can rush to get certain cases up pronto to the Court.

It's a machine: special interests set up and fund front groups; the front groups appear as amici before the Court; the amicus briefs of the front groups tell the Court what the special interests want; the Court follows the amicus briefs; the decision benefits the special interests; and the special interests pour more money into the front groups. On it goes, like turning a crank. The biggest corporate lobby of them all is winning better than 2:1 at the Court.

This 5-4 rampage is not driven by principle. Over and over, judicial principles -- even so-called "conservative" ones -- are overrun on the Court's road to the happy result.

Stare decisis: that's a big laugh. These were law-changing decisions, many upending a century or more of law and precedent.

Textualism: the Second Amendment uses the military term "arms" and talks about militias, but never mind that when the gun lobby wants something.

Originalism: there's a good one. Find me a Founding Father who planned a big role for business corporations in our elections; or one who would have countenanced the steady strangulation of the civil jury, without so much as a mention of the Seventh Amendment.

The *Citizens United* majority even fiddled with Court procedure to get to the decision it wanted to deliver, dodging its way around a record that would have belied their findings of fact; setting aside that their findings of fact were factually preposterous -- and that appellate courts are not even supposed to make findings of fact.

It's not just us who notice. Top writers and scholars describe the Roberts Court as essentially a delivery service:

- Jeffrey Toobin wrote in 2009, "Even more than Scalia, . . . [Chief Justice] *Roberts has served the interests, and reflected the values, of the contemporary Republican Party.*"
- Linda Greenhouse in 2014: "I'm finding it impossible to avoid the conclusion that the *Republican-appointed majority is committed to harnessing the Supreme Court to an ideological agenda.*"
- Norm Orenstein has described what he called "the new reality of today's Supreme Court: *It is polarized along partisan lines in a way that parallels other political institutions and the rest of society, in a fashion we have never seen.*"
- Studies of the Court's decisions show it's the most corporate-friendly Court in modern history, with Justices Roberts and Alito vying to be the most corporate-friendly Justice.
- And the American public knows something's gone wrong at the Court. A 2014 poll revealed that a majority of Americans think a person won't get a fair shake in this Court against a corporation.

Now, look at where Judge Gorsuch fits in. When *Hobby Lobby* was in the 10th Circuit, he held for a corporation having religious rights over its employees' health care. His record on corporate vs human litigants comes in, by one count, at 21-2 for corporations. Tellingly, big special interests and their front groups are spending millions of dollars in dark money to push his confirmation.

We have a predicament. In ordinary circumstances, he should enjoy the benefit of the doubt, based on his qualifications. But several things have gone wrong that shift the benefit of the doubt.

One, Justice Roberts sat in that very seat, told us he'd "just call balls and strikes," and then led his five-person Republican majority on that activist, 5-4 political shopping spree. "Once burned, twice shy." Confirmation etiquette has been unhinged from the truth.

Two, Republican Senators denied any semblance of due legislative process to our last nominee -- one even more qualified. Why go through the unprecedented political trouble to deny so qualified a judge even a hearing, if you don't expect someone more amenable to come along. Those political expectations also color the benefit of the doubt.

Finally, the special interests who did so well in that 5-4 extravaganza of decisions are now spending millions and millions of dollars to push this nominee. They obviously think he will be worth their money. These special interests also supported the Republican majority keeping this seat open.

I'm afraid that all costs whoever now sits in that seat the benefit of the doubt, to answer the question, will you saddle up with the other Republicans and launch the Court, 5-4 again, on another massive special interest and Republican election rampage?

I hope we can at least agree that we can't have a Court where litigants in these 5-4 decisions can predict how they'll do based on who they are. Here's what it looks like now: If they're big Republican election interests, they'll win. If they're corporations against a human, they will win. That can't be right.