

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Executive Business Meeting
April 3, 2017**

Good morning everyone. We have a lot to do today, so I appreciate everyone being here.

Today, we have three nominees on the agenda who are all ripe for consideration:

- Neil Gorsuch to be an Associate Justice of the Supreme Court
- Rod Rosenstein to be the Deputy Attorney General
- Rachel Brand to be the Associate Attorney General

Before I turn to my remarks, let me explain how we're going to proceed.

As I said, in addition to the Supreme Court nominee, we need to report out the nominees for Deputy Attorney General and Associate Attorney General. I think all of us understand that it's important for the Department of Justice to get its senior leadership in place.

My intention is to have everyone speak on the Judge and then vote on his nomination. Then we'll turn to Mr. Rosenstein and Ms. Brand. I'll have a statement on both of them that I'll put in the record so we can keep things moving.

Regarding the Judge, for the most part, everyone has already indicated one way or another how they intend to vote. So, there isn't a lot of mystery about how this is going to go.

But regardless, I want everyone to have an opportunity to explain their vote.

So, I'm not going to put anyone on the clock. But my hope is that Members can try to keep their remarks under 10 minutes, so everyone can have a chance to speak and we can proceed in an orderly way.

With that, I'll turn to my remarks, and then I'll turn to the Ranking Member.

Today we're considering the nomination of Judge Neil Gorsuch to serve as Associate Justice of the United States Supreme Court.

Over the last couple months, the nominee's opponents have tried to find a fault with him that will stick. And it just hasn't worked.

Before the President made his announcement, the Minority Leader declared that any nominee must prove himself "mainstream" to get confirmed. Well, that test ran into trouble the minute the President selected this nominee.

He was confirmed to the Tenth Circuit in 2006 by unanimous voice vote. In the ten years since, his record on the bench has proved that the Judge falls well within the mainstream.

He's participated in 2,700 cases. He's voted with the majority 99% of the time. And roughly 97% of those 2,700 cases were decided unanimously.

Two of his former Tenth Circuit colleagues, one Reagan appointee and one Clinton appointee, remarked upon "his fair consideration of opposing views, his remarkable intelligence, his wonderful judicial temperament expressed to litigants, and his collegiality toward colleagues."

Legal commentators across the political spectrum have recognized he's a mainstream nominee.

Even Rachel Maddow, who isn't exactly a conservative, said the Judge is a "fairly mainstream choice that you might expect from any Republican president."

Once it became clear that Judge Gorsuch is "mainstream," opponents moved the goal posts and set a different test.

Any nominee of President Trump's, the Minority Leader said, must prove that he is "independent."

Of course, there's no debate on this question either.

The night Judge Gorsuch was nominated, President Obama's Solicitor General Neal Katyal wrote a New York Times op-ed entitled: "Why Liberals Should Back Neil Gorsuch." Mr. Katyal argued that one basic question should be paramount: "Is the nominee someone who will stand up for the rule of law and say no to a president or Congress that strays beyond the Constitution and the laws?" Mr. Katyal answered his own question: "I have no doubt that if confirmed, Judge Gorsuch would help to restore confidence in the rule of law."

He went on to write that the Judge's record "should give the American people confidence that he will not compromise principle to favor the President who appointed him."

It's for these reasons and others that David Frederick, a board member of the liberal American Constitution Society, argued in an opinion piece that there is "no principled reason to oppose" Judge Gorsuch and that "we should applaud such independence of mind and spirit in Supreme Court nominees."

So the "independence" charge didn't stick, either.

Next, we heard that the Judge is against the "little guy" and for the "big guy."

As an initial matter, this is a strange criticism, considering that my colleague the Minority Leader praised Justice Sotomayor as a judge who "puts the rule of law above everything else . . . even when doing so results in rulings that go against so-called sympathetic litigants."

And the Judge himself proved how absurd this argument is by citing a number of cases where he ruled for the “little guy.”

But regardless, it’s of course a silly argument. No good judge considers the status of the litigants before them when deciding cases.

That’s why liberal Harvard Law professor Noah Feldman described the critique that Judge Gorsuch doesn’t side with the little guy as a “truly terrible idea. . . The rule of law isn’t liberal or conservative – and it shouldn’t be.”

In other words, a good judge listens to the arguments, regardless of who makes them, and applies the law, regardless of the results.

Next, we heard that the Judge hasn’t answered questions. That argument is basically a complaint that he won’t tell us how he’ll vote on a host of legal questions.

Well, the irony here, of course, is that seeking assurances from the nominee about how he’ll vote on particular legal questions undermines the very independence we demand from Supreme Court nominees.

His approach is consistent with the canons of judicial ethics. And it’s consistent with the position nominees have taken since at least Justice Ginsburg.

In fact, that’s where the “Ginsburg Rule” comes from. She put it this way: “A judge sworn to decide impartially can offer no forecasts, no hints, for that would show not only disregard for the specifics of the particular case, *it would display disdain for the entire judicial process.*” Judge Gorsuch’s responses reflect this same principle.

And so at last, after all the charges leveled against the nominee and his record have fallen flat, we learn that the nominee should be opposed not because of *his* record or *his* qualifications, but because of *clients* he’s had, or the groups who now support him.

We’ve heard criticism of the Judge’s former *client*, the Department of Justice, and its litigating positions. Opposition on these grounds may be creative, but it’s baseless.

Justice Kagan, for example, argued as Solicitor General that the government could constitutionally ban pamphlet materials. When that issue was raised at her hearing, she said she was a government lawyer acting on behalf of her client, the United States Government.

But today, the other side is all of a sudden arguing that government lawyers should be held personally responsible for every policy or legal position the government takes. So that argument doesn’t stand up under scrutiny, either.

And finally, of course, we've heard criticism of the advocacy groups who are speaking out in support of his nomination and spending "dark money" on issue advocacy.

As an initial matter, I think it speaks volumes of the nominee that at the end of the day, after reviewing 2,700 cases, more than 180,000 pages of documents from the Department of Justice and the George W. Bush Library, and thousands of pages of briefs he filed as a lawyer in private practice, all his detractors are left with is an attack on those who *support* his nomination. But as a Senator who's participated in 14 Supreme Court hearings, I must say these comments strike me as odd.

To hear my friends on the other side tell it, it's only conservative outside groups who are engaged in the nomination process. But we all know that isn't true.

It's no secret that there are dozens of advocacy groups on the left who get involved in the nomination process. And there's absolutely nothing wrong with that.

A group called the "Coalition for Constitutional Values" ran ads in support of Justice Sotomayor and Justice Kagan before their confirmations. The American Constitution Society touted Justice Kagan as "A Justice for Every American."

Where did their money come from? I don't know, and I don't care.

And advocacy groups on the left are engaged on this nomination as well. Liberal billionaires like Tom Steyer and George Soros fund their own "dark money" organizations like NextGen Climate—a group that describes Judge Gorsuch as "an extreme candidate . . . wrong for the Supreme Court under any circumstances."

Everyone in this room knows that liberal and progressive groups have been pressuring the Minority Leader to find a reason—any reason—to filibuster this nominee. NARAL has run ads to pressure members to filibuster. We even had some group called the Progressive Change Campaign Committee target a senior and extremely well respected Democrat over his "squishy" comments suggesting he might not filibuster. In short, they've threatened to primary any Democrat who supports the nomination. Now, that's dark.

And of course all last year, the groups on the left coordinated to attack me. They followed me all over Iowa, ran commercials, put up billboards and even had a plane pulling a banner fly over special events. I never heard any Democrat complain about all the money these groups spent.

We had a debate. I believed then, and I believe now, that we took the right course for the Senate and the Court. And, I said regardless of who won the election, we'd process the nominee.

All of that's fine. That's democracy at work. By and large, I disagree with those advocacy groups on most issues. But I don't take issue with them engaging in the process and making their voices heard. And I don't try to intimidate or silence them.

The bottom line is this: if you don't like the fact that issue advocacy groups are engaged in the process, the remedy is *not* to attack, intimidate, and try to silence them. The remedy is to support nominees who apply the law as it's written. The remedy is to support nominees who leave the legislating to Congress.

If you want politics out of the process, the solution is judges who apply the law as it's written, and leave the policy-making to the other branches.

Which brings me back to where I started. Judge Gorsuch is eminently qualified.

He's a mainstream judge who's earned the universal respect of his colleagues on the bench and in the bar. He applies the law as we in Congress write it—as the judicial oath says, without respect to persons. And he refuses to compromise his independence.

This nominee we're voting on today is a judge's judge. He's a picture of the kind of Justice we should have on the Supreme Court. So I urge you to join me in supporting his nomination.