

Statement of Senator Orrin G. Hatch  
Before the Senate Judiciary Committee  
Regarding the Nomination of Neil Gorsuch to be Associate Justice  
March 20, 2017

Thank you, Mr. Chairman. Judge Gorsuch, welcome back to the Judiciary Committee. This will be more of an ordeal than your last confirmation hearing, but your fitness for this appointment will be just as apparent.

I've served on this committee for 40 years, and some things in the confirmation process never change. The conflict over judicial appointments in general, and over this nomination in particular, is a conflict over the proper role of judges in our system of government.

I have long believed that the Senate owes the President some deference with respect to his qualified nominees. Qualifications for judicial service include legal experience, which summarizes the past, and judicial philosophy, which describes the present and anticipates the future.

Judge Gorsuch's legal experience is well-known. My Democratic colleagues have referred to the American Bar Association's rating as the gold standard for evaluating judicial nominees. The ABA's unanimous well qualified rating for Judge Gorsuch confirms that he has the highest level of professional qualifications including integrity, competence, and temperament.

Judicial philosophy is both the more important qualification and the more challenging to assess. It refers to a nominee's understanding of the power and proper role of judges in our system of government.

Over the last several weeks, I have addressed this issue on the Senate floor and in opinion pages around the country by contrasting what I have called impartial judges and political judges. An impartial judge focuses on the process of interpreting and applying the law according to objective rules. In this way, the law rather than the judge determines the outcome. A political judge, in contrast, focuses on a desired result and fashions a means of achieving it. In this way, the judge rather than the law often determines the outcome.

In my experience, a Supreme Court confirmation process reveals the kind of judge that Senators want to see appointed. A Senator, for example, who wants to know which side a nominee will be on in future cases, or who demands that judges be advocates for certain political interests, clearly has a politicized judiciary in mind.

The New York Times reported last week that the most prominent line of attack against this nomination will be that Judge Gorsuch is “no friend of the little guy.” Something is seriously wrong when the confirmation process for a Supreme Court Justice resembles an election campaign for political office.

This dangerous approach contradicts the oath of judicial office prescribed by federal law. When taking his seat on the U.S. Court of Appeals in 2006, Judge Gorsuch swore to administer justice without respect to persons and to impartially discharge his judicial duties. His opponents today demand, in effect, that he violate that oath.

Advocates of such a politicized judiciary seem to think that the confirmation process requires only a political agenda and a calculator. When a nominee is a sitting judge, they tally the winners and losers in his past cases and do the math. If they like the result, it's thumbs up on confirmation. If they don't, well, it's thumbs down.

What if, for example, Judge Gorsuch's record on the appeals court was as follows: he voted against the plaintiff in 83 percent of immigration cases, against the defendant in 92 percent of criminal cases, denied race claims more than 80 percent of the time, and agreed with other Republican-appointed judges 95 percent of the time. I can just hear the cries of protest, accusations that he favors certain parties and is hostile to others, and threats of filibuster.

That is, in fact, the record of a U.S. Circuit Judge nominated to the Supreme Court, but not the one before us today. It is the record of Judge Sonia Sotomayor as described by Senator Charles Schumer at her July 2009 confirmation hearing. Not only did he champion her nomination, but he offered that statistical summary of her record as proof that, as he put it, “she is in the mainstream.” Oh, what a difference an election makes.

Alexander Hamilton wrote about the importance of judicial independence, what Chief Justice William Rehnquist later called the crown jewel of our judicial system. Today, in a bizarre twist on that principle, Judge Gorsuch's opponents say that the only way for him to prove his independence is by promising to decide future cases according to certain litmus tests. In other words, judicial independence requires that he be beholden to them and their political agenda. If simply describing that unprincipled position is not enough to refute it, the confirmation process is in more trouble than I thought.

Judge, I know that the integrity of the judiciary, fairness to the litigants who come before you, and your own oath of office are your highest priorities. You will be in good company by resisting efforts to make you compromise your impartiality. When President Lyndon Johnson nominated Judge Thurgood Marshall to the Supreme Court, Senator Ted Kennedy, who would later chair this committee, said: “We have to respect that any

nominee to the Supreme Court would have to defer any comments on any matters which are before the Court or very likely to appear before the Court.”

That was 50 years ago. When Justice Ruth Bader Ginsburg appeared before this committee in 1993, she said: “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.”

In a speech earlier this year, Justice Sotomayor said this: “What you want is for us to tell you how as a judicial nominee we’re going to rule on the important issues you find vexing....Any self-respecting judge who comes in with an agenda that would permit that judge to tell you how they will vote is the kind of person you don’t want as a judge.”

I’ll close by reading from a letter we received from dozens of Judge Gorsuch’s Harvard Law School peers. After describing how they were of all political, ideological, religious, geographical, and social stripes, the signers wrote: “What unites us is that we attended law school with Judge Neil Gorsuch – a man we’ve known for more than a quarter century – and we unanimously believe that Neil possesses the exemplary character, outstanding intellect, steady temperament, humility and open-mindedness to be an excellent addition to the United States Supreme Court.”

I agree and look forward to this hearing. Thank, Mr. Chairman.