Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Executive Business Meeting
Thursday, October 11, 2018

Today, we are considering several judicial nominees and two pieces of legislation. The Eighth Circuit nominee, Jonathan Kobes, comes highly recommended by his two home-state senators, Senator Thune and Senator Rounds. He's also an Iowan, who served as an intern in my office many years ago. Currently, Mr. Kobes serves as Senator Rounds' general counsel.
The Committee has also received numerous letters in support of Mr. Kobes' confirmation from the South Dakota legal community, including from South Dakota's Attorney General.

Unfortunately, the American Bar Association is again politicizing a nomination to the Eighth Circuit. For the second time in less than one year, the ABA has rated an Eighth Circuit nominee "not qualified." Last year, the ABA rated Steven Grasz "not qualified" despite a stellar record of public service in the Nebraska legal community. What do both of these Eighth Circuit nominees have in common, besides their widespread support in their home states?

They were both involved in abortion litigation and both were evaluated by the same ABA 8th Circuit evaluator.

This particular evaluator has a long history of liberal activism. So it's no surprise that the ABA's two "not qualified" recommendations for circuit-court nominees came for nominees she evaluated. Here are a few other positions this evaluator has taken:

- She submitted a letter to the Senate Judiciary Committee opposing the confirmation of Justice Alito to the Supreme Court. The ABA rated Justice Alito "Unanimously well qualified."

- She submitted a letter to the Obama Administration and Congress opposing legal protections for the religious liberty of religiously-affiliated and non-profit organizations, like the Little Sisters of the Poor.

- She has retweeted tweets mocking Justice Scalia and originalist interpretations of the Constitution.

In short—as the experiences of Judge Grasz and Mr. Kobes demonstrate—a Republican nominee to the Eighth Circuit can't expect a fair shake.

The ABA admitted that "Mr. Kobes is a very accomplished, competent, and capable person" and that it "does not have any question about Mr. Kobes' integrity or temperament." According to its own explanation, the ABA relied solely on one fact to reach its determination. The ABA had "difficulty analyzing Mr. Kobes' professional competence because he was unable to provide

sufficient writing samples of the caliber required to satisfy Committee members that he was capable of doing the work of a United States Circuit Court judge."

There's a good reason for this: Mr. Kobes' legal practice for the vast majority of his career has been in-house.

He has served as counsel to Senator Rounds and to several South Dakota corporations on compliance and regulatory matters. The written work product he has developed are not matters of public record like briefs or court opinions are, and are protected by attorney-client privilege. It would be detrimental to our judiciary if we only permitted litigators, as opposed to the equally important and competent attorneys who advise clients on a range of legal issues, to join the appellate bench. Furthermore, the Committee has confirmed on a bipartisan basis many nominees with very limited written work to evaluate.

I see no basis for concluding that the absence of written work product means Mr. Kobes is "not qualified." The most that the ABA could've said is that they didn't have enough information to come to a conclusion about his writing abilities.

The ABA's own evaluation found Mr. Kobes accomplished, competent, and capable as well as having integrity and temperament. To weigh the absence of written work product over these critical characteristics looks like politics, not an objective evaluation.

We also have two bills on today's agenda. First is S. 2785, the "DETER ACT," sponsored by Senators Durbin and Graham. This bill combats offensive election interference by foreign adversaries by denying entry to any foreign national who has been deemed to engage in election interference. Of the many bills introduced in the Senate that attempt to address interference with United States elections, this is the only such bill that is within the Judiciary Committee's jurisdiction.

We will also be taking up S. 3178, the "Justice for Victims of Lynching Act," sponsored by Senators Harris, Scott, Booker, Tillis, Feinstein, Blumenthal, Leahy, Durbin, Hirono, Klobuchar, Whitehouse, and Coons. This bill rights a historic wrong and makes lynching a federal crime. Nearly 200 anti-lynching bills were introduced in Congress during the first half of the 20th century, but none were signed into law. More than 4,700 people—predominantly African Americans—were lynched in the United States between 1882 and 1968. And most of those who committed these vile murders escaped punishment or even prosecution.

Since then, Congress has given federal prosecutors more tools to go after criminals who commit racially-motivated violence and murder—notably the federal hate crimes statute and the riot act. But we still don't have a statute that specifies that lynching is a federal crime. It's time that changed.