



March 9, 2017

The Honorable Mitch McConnell, Maj. Leader
United States Senate
S230 US Capitol
Washington, DC 20510

The Honorable Charles Schumer, Min. Leader
United States Senate
S221 US Capitol
Washington, DC 20510

The Honorable Chuck Grassley, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein, Ranking Member
United States Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Chairman Grassley, and Senator Feinstein:

On behalf of the hundreds of thousands of members of People For the American Way, I write to express our strong opposition to Neil Gorsuch's nomination to the United States Supreme Court.

The Supreme Court is a vital and necessary component of our carefully balanced separation of powers, one of the Constitution's key structural mechanisms that protects our rights and liberties. In times when key underpinnings of our democracy have been under attack from within, the Supreme Court has played a vital role in protecting and maintaining the system the founders bequeathed to us. Most famously, for instance, a unanimous Supreme Court ruled in 1974 that President Nixon had to surrender the Watergate tapes. Nixon believed that if the president orders something, that makes it legal. The Supreme Court emphatically rejected that view and restored the rule of law and our constitutional protections.

At this moment in our nation's history, it is vital that the Supreme Court act independently of the political branches. We must be fully confident that any nominee will respond strongly should one branch overreach its authority. And there must be no doubt that the next justice recognizes that our Constitution and laws were adopted to protect people's rights, not to empower large corporations and others to strip us of those rights.

As indicated by his record, as well as the Administration's own statements, Judge Gorsuch does not meet these important qualifications.

The president has virulently attacked courts that rule against him or his administration. He does more than attack the rulings: He attacks the legitimacy of any court directing him to stop doing something he wants to do. As reported by Politico in January, a key Trump adviser made it clear that the president plans to prevent such rulings in the future by nominating judges who are loyal to him:

"If Trump is going to be a transformational president, not a transitional president, he needs a supportive court," said Roger Stone, a longtime Trump adviser. "Not a conservative court, not a right-wing court — a Trump court."

One is left to wonder how it is that President Trump became so confident that he'd found his man in Neil Gorsuch.

But it is Gorsuch himself, rather than his benefactor, who has indicated he subscribes to a twisted concept of judicial independence. In a 2005 *National Review* article called “Liberals ‘N’ Lawsuits,” he condemned Americans who turn to the courts when they believe their constitutional rights have been violated—but only Americans who present progressive constitutional arguments that the conservative Gorsuch apparently disagrees with in areas such as marriage equality and church-state separation. He also criticized judges who carefully consider the competing legal arguments before them in such cases and rule differently from how he would rule:

[This] politicization of the judiciary undermines the only real asset it has — its independence.

The idea that judicial independence means being a conservative (or a liberal) is not only inaccurate, it is also dangerous. Gorsuch also demonstrated at best a fundamental misunderstanding of the very purpose of courts in our constitutional system. The beliefs he openly professed in that article disqualify him from sitting on the nation’s highest court.

Unfortunately, Gorsuch’s record as a judge is equally disturbing. He routinely favors large corporations and other powerful authorities, while harming the interests of workers and of people who have suffered abuse by government officials. He is perhaps best known for joining the majority Tenth Circuit’s *Hobby Lobby* case before it went to the Supreme Court. Judge Gorsuch ruled that large for-profit corporations are people that not only exercise religion, but which can also cite their religion as an excuse to deny vital healthcare coverage that their women employees are legally entitled to. But *Hobby Lobby* is far from the only example:

- In a dissent, he would have upheld the right of a company to fire an employee for not obeying instructions to remain parked in an unheated truck in sub-zero weather, possibly for hours, even though he had already been waiting for hours, felt numbness in his extremities and torso, and had difficulty breathing; Gorsuch wrote that a law giving truckers the right not to put their own lives at risk did not apply. (*TransAm Trucking, Inc. v. Administrative Rev. Bd.*).
- In another dissent, he would have struck down a Department of Labor fine against a company that had failed to adequately train a worker, resulting in his death by electrocution. (*Compass Environmental v. OSHRC*)
- Gorsuch wrote an opinion for a split panel concluding that a police officer had not used unconstitutionally excessive force when [he used a Taser and shot a young man named Ryan Wilson](#) in either the back of the head or neck. The man was being chased only because he owned some marijuana plants. The Taser training manual specifically warned against aiming at the head or throat, the Taser had a targeting function, and the officer had fired from a mere 10-15 feet away. Nevertheless, Judge Gorsuch ruled that the man’s grieving family could not sue the officer who recklessly killed their son. (*Wilson v. City of Lafayette*)
- In a dissent in a criminal case, he would have upheld the conviction of a man whose lawyer gave him terribly bad advice about plea bargaining and even threatened to quit if the man accepted the offered 10-year plea. As a result, he rejected the plea, went to trial and was sentenced to life in prison without parole. Unlike his colleagues, including other Republican appointees, Judge Gorsuch wrote that the verdict should stand, because the constitutional right to effective assistance of counsel only really applies to the trial itself (*Williams v. Jones*)

- He wrote for a split panel in a case ruling in favor of a medical equipment maker Medtronic, which had persuaded Patricia Caplinger and her doctor to use one of the company's devices in an off-label and unsafe way. The results were disastrous for Caplinger, who developed substantial neurological complications. Notably, while all of the judges on the panel agreed that her legal briefs could have been written more clearly, the dissenting judge interpreted them in a way that made sense in the case and would have allowed the legal questions to be considered. Gorsuch, however, chose to interpret them in such a way as to ensure that her case could not go forward. (*Caplinger v. Medtronic*)

Judge Gorsuch's decade on the bench is rife with cases where he somehow manages to interpret a wide variety of laws and constitutional provisions in such a way as to benefit large corporations and other powerful figures, while harming the individuals who those laws and provisions were designed to protect. A number of these individuals' often-heartbreaking stories are told in a PFAW report, [Real People, Real Lives: The Harm Caused By Judge Gorsuch](#). And People For the American Way's report: [The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream](#), provides a particularly important view of his jurisprudence that consistently favors big business and the powerful. Even on a court that until recently had a majority of its judges nominated by Republican presidents, Gorsuch's dissents stand out in their sharp far right ideology that goes too far for his fellow GOP-nominated judges.

America needs an independent, apolitical justice who will protect the rights and liberties of every American, not just those of the mighty and powerful. Unfortunately, Judge Gorsuch's record makes clear that he would be the opposite of what we need. Especially in these unusual times, a judge with a record like Gorsuch's simply must not be allowed to sit on the Supreme Court.

We urge you to oppose this nominee and to hold his confirmation to a 60-vote standard.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marge Baker".

Marge Baker
Executive Vice President for Policy and Program