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The Honorable Charles E. Grassley, Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein, Ranking Member
Committee on the Judiciary
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

March 16, 2017

Dear Chairman Grassley and Senator Feinstein:

Thank you for asking me to testify at the hearing on Judge Neil Gorsuch's nomination to be an Associate Justice of the Supreme Court of the United States. Because I will be out of the country and unavailable to attend the hearing, I am submitting this written testimony in lieu of a personal appearance.

I have known Judge Gorsuch for more than 18 years. During that time, no matter what lofty professional heights he has reached – whether as a law firm partner, a high-ranking lawyer in the Department of Justice, or a Judge for the United States Court of Appeals for the Tenth Circuit – he has remained the same warm-hearted, humble, decent person I first met those many years ago. He is a person of great integrity, honor, intelligence, and empathy. He is thoughtful and principled. I have always been struck by how someone with such a wealth of talent can be so genuinely modest and unassuming, but that is who Judge Gorsuch is. (I should note that if it were up to him, I would be referring to him throughout this letter as Neil, because he has never insisted on a title or any other formality.)

I first met Judge Gorsuch in 1998 when I joined the law firm then known as Kellogg, Huber, Hansen, Todd, & Evans, P.L.L.C., as an associate. The firm was quite small in those days (I believe it fell well short of three dozen lawyers in total), so we all saw each other fairly

frequently. Judge Gorsuch was a partner when I joined the firm, but he is not a person who sees the world in hierarchical terms. He treated me as an equal and with the utmost respect. He always took the time to see how I and others were doing and would never hesitate to offer to help in whatever way he could. Whenever I saw him, he was upbeat and calm. I would sometimes learn later that he was in the midst of an intense period of litigation or facing a deadline in his case, but his personality never shifted. He was unfailingly polite and unflappable.

Put another way, Judge Gorsuch has an innate judicial temperament. He is level-headed and analytical and not prone to extremes. He also cares deeply about others. He was as attentive to the issues in his cases as he was to the lives of the people with whom he worked and interacted.

I have witnessed these same qualities in Judge Gorsuch's judicial opinions. He has written numerous opinions in the fields I teach – criminal and administrative law – that have come to my attention through academic colleagues because they are so well written, intellectually honest, and balanced in their portrayal of the arguments. His criminal law opinions, for instance, demonstrate that he is as attuned to the specific factual details as he is to the broader separation of powers implications that are often at stake. Whether he ultimately rules for the defendant or the government, his opinions show the care with which he analyzes all sides of the issues and the open-mindedness he brings to the task.

His approach in administrative law reflects similar values. The starkest example comes from a contested issue among administrative law scholars: the proper scope of the *Chevron* doctrine. I take no position here on what the right answer to that question should be, but the question received a characteristically thoughtful analysis by Judge Gorsuch that reflected his strong commitment to safeguarding the appropriate balance of power among the three branches and to making sure the courts are not sidelined from playing a critical role. He has shown an unflagging commitment to protecting the independence of the judiciary, and his devotion to the rule of law comes through in everything he does, including this complicated question of administrative law doctrine.

I should also add that Judge Gorsuch has a prodigious talent for making even the most complicated legal issue accessible to anyone, even those without legal training. You can pick up one of his opinions and know exactly what is at stake, what the strongest arguments are for and against his position, and why he reaches the decision he does. His opinions are hallmarks of transparency and integrity, and the result is that the majesty of our constitutional government becomes more accessible to all of us, whether you end up agreeing or disagreeing with his bottom line. Along with temperament, integrity, intelligence, and devotion to the rule of law, the ability to communicate clearly and effectively should be a key metric by which we assess prospective judges. And on this – as with all the other measures – Judge Gorsuch is a standout.

Writing this letter is bittersweet for me. The seat Judge Gorsuch would occupy on the Court belonged to my former boss, Justice Scalia. I miss him greatly, and it remains difficult for me to see the Court without him on it. At the same time, I have been dismayed to see the process for filling that seat become even more politicized than previous vacancies on the Court. I believe that all nominees to our nation's courts should be afforded a timely hearing and an opportunity to be considered on the merits by the United States Senate. We are blessed in this country to have many dedicated, talented judges, and when a president

nominates one of them to serve on the Supreme Court, he or she should be considered based on his or her qualifications.

Judge Gorsuch's qualifications speak for themselves, and it has been my honor to amplify them here. He is an outstanding jurist and person, and he represents the very best of Article III.

Sincerely,

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