



March 8, 2017

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

The Honorable Dianne Feinstein
Ranking Member
U.S. Senate Committee on Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley, Ranking Member Feinstein, and members of the Senate Judiciary Committee:

On behalf of the two million members of the Service Employees International Union (SEIU), I am writing to express our opposition to the President's nomination of Judge Neil Gorsuch to be an Associate Justice on the Supreme Court of the United States. The next Associate Justice will play an incredibly important role in shaping constitutional precedent for the next generation. Based on Judge Gorsuch's record of siding with corporations and the wealthy over working people, a disturbing attitude towards police brutality, and his atrocious rulings on women's health and reproductive rights, we urge the Senate Judiciary Committee to reject the Judge's nomination and call upon the President to put forth a candidate with mainstream views of constitutional precedent and jurisprudence.

Judge Gorsuch's record on cases when it comes to the rights of working people is greatly troubling and his rulings and findings consistently display a judge with a reflexive rejection of worker's rights. In *Compass Environmental, Inc. v. OSHRC*, the majority opinion of the 10th Circuit Court ruled that the employer must pay a fine for disregarding an internal policy and for not providing training to a worker who was electrocuted to death near his work area. Judge Gorsuch dissented from the majority and voted to throw out the case because he didn't believe the employer had any responsibility in the worker's death. Such a ruling represents a real fear for workers that protections in the workplace would be gutted should Judge Gorsuch be confirmed.

Siding with corporations over workers isn't a one-time instance for Judge Gorsuch. In *TransAm Trucking, Inc. v Administrative Review Board*, a case decided last year, the majority of the 10th Circuit Court ruled that a trucking company had unlawfully fired a worker in violation of federal whistleblower protections. Alphonse Maddin, the truck driver involved in the case, had the brakes of his trailer fail during a very cold January night. The heater in the truck didn't work either, resulting in a truck that was so cold Mr. Maddin began to have trouble breathing. Despite the possible life-threatening situation Mr. Maddin unfortunately found himself in, his employer ordered him to stay in the truck until a repairperson had arrived on scene. After three hours in the

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harsh cold of his truck, Mr. Maddin left the trailer behind and drove to search for help in his truck. He was fired a week later for violating company policy for abandoning the trailer. The majority of the Court found that the firing of Mr. Maddin, given the conditions he found himself in, was unlawful and that he should be given his job back. Despite the majority opinion, Judge Gorsuch dissented, arguing that the employee should've followed orders despite the risk of possible injury or even fatality.

In a separate case, *NLRB v. Community Health Services, Inc.*, Judge Gorsuch once more ruled against working people and dissented from a majority opinion that ruled in favor of workers. In the case, the majority opinion upheld a National Labor Relations Board ruling that a hospital had to pay back pay to thirteen employees whose hours it had reduced in violation of the National Labor Relations Act. But Judge Gorsuch dissented, arguing that the employees' back pay awards should have been reduced by the amount of income that they earned from other jobs during the period when their hours were reduced.

Judge Gorsuch has ruled against working people numerous times during his time on the 10th Circuit Court, making it clear that his sympathies lie with big corporations rather than with the ordinary people whose rights they violate. His recurring dissents in cases involving workers show that Judge Gorsuch would refuse to follow binding case law in cases involving workers, and would instead give a blank check to corporations to take advantage of their workers.

Judge Gorsuch's questionable record goes beyond his support for corporations over protections for the American worker and includes his record on a case involving police brutality. In *Wilson v. City of Lafayette*, a 22-year-old man possessing marijuana was fleeing arrest when a police officer shot him in the head and killed him with a stun gun from a distance between ten and fifteen feet away, contrary to the procedures described in the police department training manual. Judge Gorsuch held that the officer was entitled to qualified immunity from an excessive force claim, saying that the use of force was reasonable because the young man was fleeing arrest. The Judge disregarded not only the loss of the young man's life, but also the stun gun training materials which said that officers should not aim at the head or throat unless the situation dictates a higher level of injury risk. Judge Gorsuch's ruling in this case demonstrates a disturbing disregard for law enforcement accountability, and a record that can't be trusted by working people who often find themselves at the mercy of a criminal justice rigged against them.

What also gives working people great concern is Judge Gorsuch's total disregard for women's health and protection of women's individual rights in the court room. Judge Gorsuch notoriously signed onto the decision in *Hobby Lobby Stores, Inc. v. Sebelius*, which allowed certain for-profit employers to refuse to comply with the birth control benefit in the Affordable Care Act. The decision cited *Citizens United v. FEC*, which held that corporations can be "persons," and therefore can have religious beliefs and that employers can use those religious beliefs to block employees' insurance coverage of birth control. The disastrous decision of *Hobby Lobby* has left women, many of whom are economically disadvantaged, without access to proper and necessary healthcare.

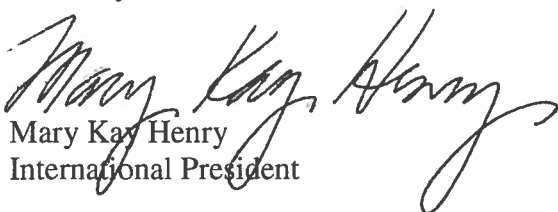
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Judge Gorsuch's extreme view in the *Hobby Lobby* decision is compounded by his opinion in *Little Sisters of the Poor Home for the Aged v. Burwell*. Judge Gorsuch dissented from the majority and joined an opinion that stated that the simple act of filling out an opt-out form that ensures employees still get birth control coverage constituted a substantial burden on religious exercise. The extremist view of the dissent in this case gives great concern to working women who expect the next Associate Justice to have an independent view of the law and to not project their own ideology onto the law.

Finally, in light of the ongoing legal battles over President Trump's discriminatory and ill-conceived Muslim ban, we are deeply troubled by Judge Gorsuch's dissent last summer in *Planned Parenthood Ass'n of Utah v. Herbert*. The Governor of Utah acted to prevent state agencies from passing along federal funding to Planned Parenthood, claiming he was acting based on concern about illegal activity because of the misleadingly edited hidden camera videos falsely portraying a different Planned Parenthood affiliate as selling fetal tissue. The Ten Circuit panel granted a preliminary injunction for Planned Parenthood, concluding it was likely to succeed on its claim that the Governor was actually retaliating against it for its involvement with abortion. But Judge Gorsuch dissented to say he would have deferred to the Governor's implausible explanation for his actions and allowed his executive action to stand. Another judge accused Gorsuch of "mischaracterize[ing] this litigation and the panel opinion at several turns to reach its desired result." Especially now, our country needs a Justice who will courageously stand up, not defer, when an Executive acts in disregard for our cherished Constitutional values.

In examining Judge Gorsuch's record in cases involving workers' rights, police brutality, women's reproductive health, and deference to Executive actions, we have found that he falls tremendously short of the independence and constitutional adherence required of the next Associate Justice on the Supreme Court. We therefore strongly and respectfully ask the Senate Judiciary Committee to reject Judge Gorsuch's nomination and instead call upon the President to put forth a nominee with mainstream views and who will be an independent arbiter of the law. If you need any additional information please contact John Gray, Legislative Director, at john.gray@seiu.org or (202)-730-7669.

Sincerely,



Mary Kay Henry
International President

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cc: Members of the Senate Judiciary Committee

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