

**Washington, D.C.**— Senator Orrin Hatch, R-Utah, the senior member and former Chairman of the Senate Judiciary Committee, spoke on the floor today about the nomination of Judge Neil Gorsuch to the United States Supreme Court. In his remarks, Senator Hatch focused on what lies ahead for the Senate.

The full speech, as prepared for delivery, is below:

Mr. President, last week President Trump nominated U.S. Circuit Judge Neil Gorsuch to fill the vacancy left by the death of Supreme Court Justice Antonin Scalia. I want to address both the process and the substance of what lies ahead for the Senate.

The Constitution gives to the President the power to nominate and, subject to the Senate's advice and consent, the power to appoint judges. The first step in the Senate exercising its power of advice and consent is to decide the best way to handle a nomination made by the President. The Constitution does not mandate a one-size-fits-all process; in fact, the Senate has handled Supreme Court nominations in at least a dozen different ways.

Nearly one year ago, shortly after Justice Scalia's death, I explained here on the Senate floor the two reasons why the next President should choose his replacement.

First, the circumstances and timing of the Scalia vacancy supported separating the confirmation process from the presidential election season. When he chaired the Judiciary Committee in 1992, then-Senator Joe Biden urged the Senate not to consider a Supreme Court nomination in that presidential election year. Each of his four reasons applied, with even greater force, to the circumstances we faced last year.

Second, I said that elections have consequences. The American people were increasingly concerned about the illegal and unconstitutional actions of the Obama administration, actions that the

courts struck down dozens of times. The two presidential candidates last year represented very different ideas about the power and proper role of judges in our system of government. The American people, therefore, had a unique opportunity to address the future course of the judiciary in general, and the Supreme Court in particular. Not surprisingly, the percentage of American voters who said that the Supreme Court was a very important issue tripled between 2008 and 2016.

The issue was always when, not whether, the Senate would consider a nominee to fill the Scalia vacancy. Plunging into a divisive, ideological confirmation battle in the middle of a confrontational and ugly presidential campaign would have done more harm than good to the judiciary, the Senate, and the country. We were right to avoid that perfect storm and, as a result, today we can focus properly on the appointment of Justice Scalia's successor.

Democrats and their left-wing allies, however, sound like they exist in some kind of parallel universe. In editorials since the election, for example, the New York Times claims that Republicans stole this Supreme Court seat from President Obama. I am sure they are in denial about the election results, and some observers have called this bizarre fiction sour grapes. I think that's an insult to sour grapes.

No judicial position, including the Supreme Court seat occupied by Justice Scalia, belongs to any President. President Obama exercised the power that the Constitution gave him by nominating someone to that vacancy. The Senate exercised the power that the Constitution separately gave it by not granting its consent to that nomination. I have news for my Democratic colleagues: not getting your way does not mean that anyone stole anything, it just means that you did not get your way.

When Chairman Biden refused to give a hearing to more than 50 judicial nominees during the 103<sup>rd</sup> Congress – a record that still stands, by the way – the New York Times never said that those seats were being stolen from President Bush. When Democrats blocked a

confirmation vote 20 times during the 108<sup>th</sup> Congress, the Times never accused Democrats of theft but was right there egging them on. Republicans last year decided to defer the confirmation process without knowing who would win the election. Democrats this year are objecting because of who won the election. I think we should stop the nonsense and act like grown-ups because we have work to do.

Turning to that work, the task before us is to determine whether Judge Neil Gorsuch is qualified to serve as an Associate Justice of the Supreme Court. Qualifications for judicial service include both legal experience and judicial philosophy, and I believe we should look at a nominee's entire record for evidence of these qualifications.

Judge Gorsuch's legal experience is well-documented and widely acknowledged. Judge Gorsuch clerked for two Supreme Court Justices, spent a decade in private practice, and then served as Acting Associate Attorney General. His qualifications for the U.S. Court of Appeals were so obvious that the Senate confirmed him in 2006 without even a roll call vote. Let me put that in perspective. During the four years that Republicans were back in the majority, 2003 to 2006, the Senate took roll call votes on 86 percent of judicial nominations. Democrats were demanding roll call votes even when, as happened 82 percent of the time, the nominations were unopposed. In other words, it was the very rare exception for a judicial nomination to be confirmed without a roll call vote at all. That is how self-evidently qualified this nominee was for the appeals court.

In 11 years on the appellate bench, he has authored approximately 240 majority or separate opinions. There is no question that he has the legal experience to serve on the Supreme Court.

As I have said many times, the more important category of qualification is a nominee's judicial philosophy, or the kind of Justice he will be. This is what the conflict over judicial appointments, over

judicial power, is really all about.

Federal judges have two basic tasks, and can perform those tasks in two basic ways. Their tasks are to interpret and apply the law to decide cases. They can perform those tasks impartially or politically.

An impartial judge interprets statutes and the Constitution to mean what they already mean, while the political judge interprets them to mean what he wants them to mean. When an impartial judge applies the law, he deliberately excludes his own views and does not put his thumb on the scale to make sure the result of a case benefits one party or group over another. The political judge accepts, and even embraces, that his background and biases shape his decisions and considers how individual decisions will affect other parties, groups, or issues.

Our system of government, and the liberty it makes possible, requires impartial judges. In his farewell address in 1796, President George Washington said that the heart of our system of government is the right of the people to control the Constitution. One of his original Supreme Court Justices, James Wilson, described our system of government by saying that here, the people are masters of the government.

Our liberty can be secure only if the people control the Constitution, only if the people remain masters of the government. That cannot happen if judges control the Constitution because then, government will be the master of the people.

That's why the kind of judge Presidents appoint is so important. Impartial judges let the people govern themselves, political judges do it for them. The best way to tell which kind of Justice this nominee will be is to determine which kind of judge he already is. One of the most obvious places to look is in the opinions he has been writing for more than a decade. Last year, for example, the Tenth Circuit had to decide whether to use the Constitution to create new categories of lawsuits against law enforcement officers. Judge Gorsuch agreed that

the court should resist doing so and wrote [REFER TO CHART]:

“Ours is the job of interpreting the Constitution. And that document isn’t some inkblot on which litigants may project their hopes and dreams...but a carefully drafted text judges are charged with applying according to its original public meaning.”

In other words, the Constitution is not a blank check that judges may write to whomever, and for whatever amount, they like. It is not a shape-shifting blob that judges can manipulate into whatever they want it to be. In this, Judge Gorsuch was merely echoing America’s founders. Thomas Jefferson, for example, argued that if the Constitution means whatever judges say it means, the Constitution will become “a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please.”

The Constitution, after all, is the primary way the people set rules for government – including for the judiciary. If the people are to remain masters of the government, they must remain masters of the Constitution, and that includes not only what it says but also what it means. Impartial judges take statutes and the Constitution as they are, not only for what they say but also for what they mean. Political judges act as if the people and their elected representatives established a Constitution or enacted statutes that are merely collections of words with no meaning.

Judge Gorsuch is an impartial judge. He knows that he is to interpret, but cannot make, the law. He knows that the Constitution must control judges, not the other way around. Judge Gorsuch is exactly the kind of judge America needs on the Supreme Court.

Last year, Judge Gorsuch delivered a lecture at Case Western Reserve University School of Law about Justice Scalia’s legacy. There, Judge Gorsuch described in detail the kind of judge he is. I referred to this lecture in my remarks last week. This week I sent this lecture to each of my colleagues, on both sides of the aisle, and I truly hope each and every member of this body reads it carefully. It presents an answer to

the most important question before us in exercising our power of advice and consent: what kind of Justice will this nominee be? In his lecture, Judge Gorsuch said:

“[J]udges should be in the business of declaring what the law is using the traditional methods of interpretation, rather than pronouncing the law as they might wish it to be in light of their own political views, always with an eye on the outcome.”

Some Senators and liberal groups have already stated that they oppose this nomination. Perhaps they think that judges should, to paraphrase Judge Gorsuch, be in the business of pronouncing the law as they might wish it to be in light of their own political views.

Judge Gorsuch said in his lecture that the task of a judge is to interpret and apply the law rather than, as he put it, “to amend or revise the law in some novel way.” Perhaps his critics believe the opposite, that judges actually do have the power to amend and revise the law in novel ways.

Last year, Judge Gorsuch echoed America’s founders in saying that the power of the legislative branch to make law and the power of the judicial branch to interpret law should be kept separate and distinct. Confusing them, he said, would be a grave threat to our values of personal liberty and equal protection. Perhaps his critics believe that it does not matter whether judges make or interpret the law?

Last year, Judge Gorsuch said that judges must “assiduously seek to avoid the temptation to secure results they prefer.” What the law demands, he said, is more important than the judge’s policy preferences. Perhaps his critics think that judges should give in to that temptation, putting their preferred results ahead of what the law demands?

The more we find out about Judge Gorsuch and his judicial philosophy, the more we should ask what his opponents and critics really find so objectionable. If Democrats and their left-wing allies

believe that judges, rather than the people, should control the Constitution, they should say so. If they believe that judges may manipulate the law to produce politically correct results, they should be honest about it.

As I close, Mr. President, I want to offer some wisdom from Daniel Webster, who served in the House and Senate and twice as Secretary of State under three different Presidents. In a speech on March 15, 1837, he said:

“Good intentions will always be pleaded for every assumption of authority. It is hardly too strong to say that the constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.”

Well, there are also judges who mean to be good masters, but they mean to be masters. They mean to govern well, but they do mean to govern. That kind of judge compromises the heart of our political system, and undermines the liberty that it makes possible.

Neil Gorsuch has no intention of governing, of being any kind of master of the Constitution or of the people. He is instead an impartial judge, the kind who follows rather than controls the law. He will be the kind of Justice that America needs on the Supreme Court.