



March 13, 2017

Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Senator:

On behalf of the 1.6 million members of the American Federation of Teachers, I urge you to carefully examine and vigorously question the record of Judge Neil Gorsuch during the hearing on his nomination to the Supreme Court.

Given the current composition of the Supreme Court, the next Supreme Court justice will have the power to determine the direction of the United States for generations, dramatically affecting millions of American lives. The Supreme Court is tasked with upholding the Constitution, protecting American values, and serving as an important check and balance against any abuse of power or overreach by the president or Congress.

In 2016, the Republican Senate majority refused, in defiance of the Constitution, to provide Judge Merrick Garland—former President Obama’s pick for the vacancy created by Justice Antonin Scalia’s death—the fair hearing specified under the Constitution. While we are a democracy centered on majority rule, respect for constitutional precepts is essential. The failure to even hold a hearing, which was engineered by Republican Majority Leader Mitch McConnell, put politics over precedent and over the Constitution’s clear language and intent.

We believe that, to correct this breach of its constitutional duty, the Senate must consider Judge Garland’s nomination before anyone else’s.

If the Senate does act to consider Judge Gorsuch’s nomination, the standard must be very high: Will Judge Gorsuch apply the Constitution’s language and intent correctly, to ensure individual Americans their core rights and legal protections?

From our preliminary review of Judge Gorsuch’s decisions, it appears that President Trump has nominated a judge who sides with the powerful over those without power. Judge Gorsuch’s decisions show a clear pattern of favoring corporations over working-class Americans, students and consumers. He has ruled against workers’ health and safety, rejected claims of employees seeking relief from discrimination in the workplace, and denied workers’ claims for wages and benefits they have earned.

American Federation  
of Teachers, AFL-CIO

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AFT PSRP  
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The **American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.



His legal decisions have tended to narrow and restrict the rights of working people. Judge Gorsuch's record raises significant concerns about his ability to be fair and to respect and follow the law rather than his own ideology.

In addition, President Trump's actions during his early days in office—rolling back rights and disregarding aspects of the Constitution and American democratic tradition he disagrees with—require a stronger allegiance by the Senate to an independent judiciary than ever before. Statements like this one from Citizens United (the organization behind the *Citizens United v. FEC* case, which opened the money spigot in federal elections) suggest that Judge Gorsuch's ideology trumps his judicial independence: "President Trump promised the American people that he would nominate a conservative judge to the high court in the mold of Justice Scalia and that's exactly what he did."

Below are areas in which we have significant concerns about Judge Gorsuch's record, his ability to exercise independence, and his willingness to apply the law in a way that protects America's workers, educators, students and consumers.

**Judge Gorsuch has denied students the full protection of the IDEA.**

*Thompson R2-J School District v. Luke P.* involved a student with autism whose parents argued that he needed placement in a private residential school program because the public school system was unable to address his needs. Before the case reached the 10th Circuit Court of Appeals, an impartial hearing officer, an administrative law judge and a federal district court judge all agreed that the Individuals with Disabilities Education Act required that this accommodation be provided to the student. Judge Gorsuch issued an opinion reversing the district court decision. In doing so, he applied a very narrow standard of review to determine that the district had met its obligations under IDEA. The narrow standard applied by Judge Gorsuch in this case is now under review in a case before the Supreme Court, *Andrew F. v. Douglas County School District*.

**Judge Gorsuch has argued in favor of outcomes that put the rights of corporations over the health and safety of American workers.**

Judge Gorsuch's dissent in *TransAm Trucking, Inc. v. Administrative Review Board* is notable for its callous disregard for a worker's health and safety. This case involved an Illinois truck driver whose brakes froze due to subzero temperatures. After reporting the problem to his employer and waiting several hours for a repair truck to arrive (without heat in the cab), the driver began to experience serious health problems. He unhitched his truck from the trailer and drove away, leaving

the trailer unattended. He was terminated for abandoning the trailer. In an administrative proceeding, a Department of Labor Administrative Review Board found that whistleblower provisions of the Surface Transportation Assistance Act made it unlawful to discharge an employee who refused to operate a vehicle due to reasonable threat of serious injury. The majority of the 10th Circuit panel that heard the case deferred to the Administrative Review Board's finding on the whistleblower issue. Judge Gorsuch, however, disagreed and would have allowed the truck driver, who was sincerely concerned for his health and safety, to be terminated by his employer with no further recourse.

Judge Gorsuch has sided with employers 21 out of 23 times in disputes over the U.S. pensions and benefits law (the Employee Retirement Income Security Act or ERISA), and in employment discrimination cases, he has sided with employers 66 percent of the time.

**Judge Gorsuch has acted to deny American women the right to contraceptive coverage under the Affordable Care Act.**

Judge Gorsuch may be best known for his concurrence in *Hobby Lobby Stores, Inc. v. Sebelius*, the case involving the Affordable Care Act's contraceptive-coverage mandate. He wrote a concurrence in which he sided with the company and its owners, who argued that the ACA substantially burdened their religious exercise, in violation of federal law.

**Judge Gorsuch is an ideological extremist opposed to allowing the federal government to protect vulnerable Americans.**

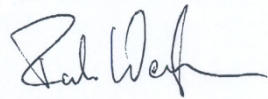
In *Gutierrez-Brizuela v. Lynch*, Judge Gorsuch made a troubling argument to do away with the important legal doctrine known as *Chevron deference*, which says courts should defer to a government agency's interpretation of a statute it administers. In *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, the Supreme Court held that courts should defer to agency interpretations of such statutes unless they are unreasonable. This commonsense approach requires judges to defer to the expertise of the National Labor Relations Board on labor issues, the Environmental Protection Agency on environmental issues, and the Food and Drug Administration on food and drug safety issues, rather than imposing their own views in highly technical areas in which even the most learned judge could not hope to attain expertise. If Judge Gorsuch were to join the Supreme Court and issue a decision doing away with the *Chevron* precedent, other ideologically minded judges like him would be able to put people's rights, and their health and safety, at risk, without paying any mind to the views of federal agency officials who have dedicated

their careers to building their technical expertise and applying it to protect all Americans.

During the nomination process, we urge you to thoroughly examine Judge Gorsuch's record and views on the above issues, as well as his views on voting rights, immigration, police misconduct, women's rights, LGBT rights, money in politics and workers' rights. If his record proves he is unable to uphold Americans' constitutional rights or is unlikely to be an independent voice who would give a fair hearing to all, we urge you to reject his nomination.

Thank you for your consideration of our views on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Randi Weingarten". The signature is fluid and cursive, with a long horizontal stroke at the end.

Randi Weingarten  
President

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