

Trump nominates ultra-right justice to US Supreme Court

By Patrick Martin
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President Donald Trump has chosen an ultra-right acolyte of the late Supreme Court Justice Antonin Scalia to fill the vacancy created by Scalia's death a year ago, nominating Neil Gorsuch, a federal appellate judge from the Tenth Circuit Court of Appeals, based in Denver, Colorado.

Trump unveiled the nomination in a prime-time television production Tuesday night that had been hyped for several days but seemed anticlimactic, lasting only 15 minutes. The former reality television impresario sought to build suspense for the event by inviting the two "finalists" to Washington for the occasion, although he did not complete the degrading spectacle by forcing the runner-up, Judge Thomas Hardiman of the Third Circuit in Pennsylvania, to make an appearance.

Gorsuch has all the right-wing credentials to be Trump's selection. He is a reliable vote against abortion and for all manner of legal privileges and exemptions for religious groups and institutions; he is a proven defender of the police against democratic rights; and he has sided with businesses against consumers and workers in the vast majority of such cases he heard.

The judge comes from right-wing Republican stock. His mother, Anne Gorsuch Burford, was appointed administrator of the Environmental Protection Agency in 1981 by Ronald Reagan, and given the task of dismantling antipollution regulations. When the Democratic-controlled House of Representatives sought EPA records of how money in the so-called Superfund for cleaning up toxic waste was being spent, Gorsuch defied congressional subpoenas, was cited for contempt and was eventually forced to resign.

The newly nominated justice describes himself as an "originalist" and a "textualist," both terms embraced by Scalia, the longtime leader of the reactionary bloc

on the Supreme Court. These terms were employed to give Scalia's ultra-right jurisprudence a constitutional gloss, but they did not denote any intellectually consistent approach.

Scalia's method was entirely arbitrary: in cases of critical importance to the ruling class, he would start from the desired outcome, and work backwards to the necessary premises, while claiming to discern in the original text of the constitution, written in 1789, a literal meaning applicable to issues in a vastly more complex, mass society.

The most notorious example of this cynical approach was the 5-4-majority decision in *Bush v. Gore*, which halted the vote counting in Florida and awarded the 2000 presidential election to the Republican. Scalia invented an "equal protection" argument, supposedly rooted in the 14th Amendment but not raised by lawyers for either side, and which the court majority declared should be applied only once.

The result of Scalia's initiative was to install as president the candidate who lost the popular vote by half a million votes. Now Scalia's replacement is being selected by a president who lost the popular vote by a much wider margin, nearly three million votes.

Besides his professed admiration for Scalia, Gorsuch has another, equally reactionary judicial mentor. In his brief remarks accepting the nomination, he cited the great honor of having clerked for appellate court judge David Sentelle, now semi-retired. Sentelle was named to the Circuit Court of Appeals for the District of Columbia, the second-highest US court, by Ronald Reagan, with arch-reactionary US Senator Jesse Helms as his principal sponsor.

Sentelle would go on to form part of the 2-1 decision in 1990 quashing all charges against the two main conspirators in the Iran-Contra affair, Lt. Col. Oliver

North and Admiral John Poindexter, who ran and oversaw the illegal Reagan administration effort to arm the Contra terrorists fighting the Sandinista government in Nicaragua.

Four years later, Sentelle headed a three-member special judicial panel that decided to remove independent counsel Robert Fiske, who had been appointed to investigate charges against President Bill Clinton involving the Whitewater real estate deal, and had found no basis for any criminal prosecution. Fiske was replaced by Kenneth Starr, former Reagan solicitor general and a ferocious ultra-right partisan, who transformed the independent counsel probe into a five-year witch-hunt that culminated in Clinton's impeachment.

By citing both Scalia and Sentelle in his remarks, Gorsuch was sending a clear message to the ultra-right wing of the Republican Party: He may have spoken softly and diplomatically to the television audience in accepting the nomination, but he has learned his trade at the feet of experienced and deeply reactionary judicial operatives.

In his ten years on the appeals court, Gorsuch has had several cases involving bogus claims of religious exemption from the Affordable Care Act mandate that employers provide health plans that include birth-control coverage. He was part of the right-wing majority in the *Hobby Lobby* case, later upheld 5-4 by the Supreme Court, in which the evangelical family that owned the company claimed that it would violate their religious beliefs to allow their employees to have insurance coverage that included birth control.

The Supreme Court has been operating with only eight justices instead of nine for the past year because Senate Republicans refused to hold hearings or take a vote on the nomination of Circuit Court Judge Merrick Garland, the right-wing Democrat nominated by Barack Obama last March. Their purpose was to keep the vacancy open in case a Republican should win the presidential election and be able to fill it.

Neither Obama nor the Democratic presidential candidate, Hillary Clinton, made any serious effort to force a vote on Garland and, given his right-wing, pro-business record, there was little popular support or even interest in the issue.

Senate Democrats are expected to proceed in a similarly spineless and cowardly fashion in relation to

the Gorsuch nomination. He will receive all the courtesies of the Senate, including private meetings with key Democrats, a rubber stamp from the Judiciary Committee, and enough Democratic votes to insure his installation as the ninth member of the court.

While Senate Minority Leader Charles Schumer has threatened a filibuster, and the rhetoric has been amplified in the wake of mass protests against Trump's executive order banning refugees and visitors from seven majority-Muslim countries, this is entirely for show. When George W. Bush nominated Gorsuch for a seat on the Tenth Circuit in 2006, not a single Democratic senator voted against him.

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