

Gorsuch restores ultra-right majority on US Supreme Court

By Patrick Martin
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Neil Gorsuch was sworn in Monday to fill the vacancy on the US Supreme Court created by the death of the ringleader of the ultra-right majority on the court, Antonin Scalia. As with the entire confirmation process, the final swearing-in of the new ninth justice was saturated with political cant and hypocrisy, an inseparable part of rituals that have long been emptied of any genuine democratic content.

In keeping with longstanding precedent, Gorsuch was required to lie under oath twice, in separate ceremonies held at the Supreme Court and at the White House Rose Garden. At the court chambers, Gorsuch took the same false oath that President Trump did at his inauguration, swearing to uphold and defend the Constitution of the United States and “bear true faith and allegiance to the same.”

Unlike Trump, who is completely ignorant of the Constitution he swore to uphold (he vowed in one campaign appearance to defend a non-existent “Article XII”), Gorsuch is a highly educated lawyer who is a conscious participant in the ultra-right project to demolish the Bill of Rights and establish an authoritarian state in America. It is reported that he was first informed of his prospective nomination by Leonard Leo, head of the ultra-right Federalist Society, not by any representative of the Trump White House.

Following the private ceremony at the Supreme Court, Gorsuch traveled to the White House, where Trump presided and Justice Anthony Kennedy administered the judicial oath, whose text was laid down by the Judiciary Act of 1789. In keeping with the democratic and revolutionary spirit of that age, judges are required to swear to “administer justice without respect to persons, and do equal right to the poor and to the rich ...” Gorsuch should have choked on those words.

This is an undertaking that no judge in many decades has taken seriously, as the Supreme Court has moved steadily to the right, particularly on issues involving property rights and the privileges of the super-rich, where 9-0 rulings are increasingly common. Gorsuch served as the personal lawyer for mega-billionaire Philip Anschutz, who prevailed on the Bush administration to place Gorsuch on the 10th Circuit Court of Appeals in 2006, setting the stage for his subsequent elevation to the highest court.

In perhaps the most notorious opinion of his judicial career, the so-called “frozen trucker” case, Gorsuch dissented against a majority decision supporting the right of a truck driver, caught in an unexpected blizzard, to disconnect his load and drive his rig to shelter. The trucking company fired him for abandoning their property, but the appeals court ordered his reinstatement. By Gorsuch’s logic, the truck driver should have sacrificed his life to save his bosses’ cargo.

In his public remarks at the White House, Gorsuch groveled before the president who nominated him and the senators who pushed through his confirmation, while declaring, referring to the late Justice Scalia, “I will never forget that the seat I inherit today is that of a very, very great man.”

He was paying tribute to a political monster, author of countless decisions attacking democratic rights and upholding corporate greed, religious bigotry, and the police. Scalia’s most notorious action was the court ruling in *Bush v. Gore*, which suppressed the recounting of ballots in Florida after the 2000 presidential election and awarded the White House to Bush.

There is, of course, no “Scalia seat” in the literal sense. But in his absence, the Supreme Court has been

divided on many critical cases 4-4. Gorsuch will restore the five-member right-wing majority in most cases, except for those in which Anthony Kennedy sides with the four liberals, generally those involving cultural issues such as gay marriage and abortion rights.

The court will hold a private session April 13 to discuss which cases to hear in its next term, which begins in October, Gorsuch's first opportunity to weigh in. Among those under consideration, according to press reports, are several involving the right to carry firearms outside the home, as well as the "right" of businesses to refuse services to same-sex couples.

Gorsuch will have an impact on a number of issues raised in the current court session. In several key cases, where the justices had been deadlocked 4-4, the court may order a rehearing to allow Gorsuch to participate as the tie-breaking vote.

He will also participate in the last round of oral arguments, beginning April 17, including a major separation of church and state case from Missouri. Trinity Lutheran Church is suing against the exclusion of church-affiliated schools from a state program to fund safety materials for playgrounds. The state constitution bars the use of public funds "directly or indirectly, in aid of any church, sect, or denomination of religion."

Gorsuch will have a vote if the Supreme Court considers President Trump's executive order banning travel visas and refugees from six majority-Muslim countries, which has been struck down by several federal district judges and by the Ninth Circuit Court of Appeals.

The new justice was confirmed Friday by the US Senate, on a 54-45 vote, after the Republican majority changed Senate rules to bar a filibuster of the nomination. Despite Democratic complaints that the rules change was unprecedented, there had never been a partisan filibuster of a judicial nominee in the 18th, 19th or 20th centuries. Clarence Thomas was confirmed by a narrow 52-48 margin in 1991, without any attempt by any senator to block the final vote.

Filibusters of judicial nominees, requiring 60 senators to force a vote, became widespread under the Bush and Obama administrations, as each party sought to pack the courts with its own nominees, with the Republican Party being more ruthless, and more successful.

Obama was able to win confirmation of only 22

judges during the final two years of his term, when Republicans controlled the Senate, leaving 50 nominations pending when he left office. There are now 100 federal judicial vacancies to be filled by Trump, whose nominees could comprise fully 10 percent of all federal judges by the end of this year.

The impotence of the Democratic Party when it comes to judicial nominations is in sharp contrast to its ferocious militancy on the question of Trump's alleged ties to Russia. The Democrats have been able to push the new administration into an abrupt reversal of policy on Syria, with the launching of missile strikes on the armed forces of President Bashar al-Assad.

But when it comes to the selection of a Supreme Court justice who will attack the democratic rights of working people and uphold the privileges of corporations and billionaires, the Democrats roll over meekly, after a "struggle" that was purely for show.

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