

Gorsuch must show commitment to a democratic America

Joseph P. Tomain 12:21 p.m. ET Feb. 21, 2017



(Photo: Provided)

Joseph P. Tomain is dean emeritus and a professor at the University of Cincinnati College of Law.

Supreme Court nominees should have strong legal backgrounds, superb intellectual abilities and high reputations for professionalism and integrity. Ideally, they should also enjoy respect on both sides of the political aisle.

Judge Merrick Garland amply satisfied those criteria, yet he will not face the Senate. It can be easily argued that Judge Neil Gorsuch also possesses the same attributes. Democratic lawyer and Supreme Court litigator [Neal Katyal](https://www.nytimes.com/2017/01/31/opinion/why-liberals-should-back-neil-gorsuch.html?_r=0) warmly endorsed Gorsuch (https://www.nytimes.com/2017/01/31/opinion/why-liberals-should-back-neil-gorsuch.html?_r=0) as a person of fairness, decency and temperament as well as for his commitment to the rule of law. If appointments to the Court are to be based on personal familiarity, then such endorsements would be persuasive. Yet, Garland is also known for his fairness, decency, temperament and commitment to the rule of law. What distinguishes these two nominees is only one thing – politics.

The Supreme Court has always been a political institution; sometimes those politics are more visible than others. The failure of the Senate to honor its constitutional duty by holding hearings on Garland highlights how politicized the Court is currently.

Aside from partisan politics, it is not enough that a nominee possesses honorable intellectual and character traits. He must also evince a commitment to a democratic America, an America in which all branches of government are committed to the public good and no one branch usurps the will of the people. In the hearings to come, will Gorsuch assure us of his commitment to our traditional values?

The Senate hearings can serve as a teachable moment. Most significantly, the Supreme Court will be called upon to help define the distribution of power among the branches of government because that distribution is the necessary bulwark against government overreach. Trump's spate of executive orders, unfortunately, reveals a White House hell-bent on usurping power unto itself. Consequently, the judiciary, as specified in the Constitution, must protect citizens from that overreach. The administration's disregard of religious freedom and individual rights, as well as its disregard for the protection of political and civil liberties, is already being tested in court.

Soon, the Supreme Court will be asked whether or not the will of Congress is to be honored or ignored. Notably, a recent executive order has the laudable goal of reducing costly regulations. No one opposes eliminating such regulations. However, the executive order goes far beyond sensible regulation reduction to the point of ignoring the will of the people as expressed through the legislature.

Congress has directed administrative agencies to provide health and education, clean air and water, safe workplaces, energy-saving appliances, and safeguards against fraud and corruption, among other protections. The work of those expert agencies must be supported and protected by the judiciary. The judiciary lacks the time, expertise and experience to implement increasingly complex legislation. More to the point, Congress has delegated such authority to agencies, and the judiciary must protect that delegation.



Supreme Court nominee Neil Gorsuch meets with Sen. Chris Coons, D-Del. on Capitol Hill on Feb. 14. (Photo: AP/Andrew Harnik)

Current executive orders knowingly ignore the will of Congress. Thoughtlessly reducing congressionally authorized regulations inflicts costs on all members of society, puts lives at risk and reduces the benefits constitutionally adopted through legislation. More troubling, the orders financially benefit the very industries that caused the costs in the first place at the expense of the many.

Can the White House benefit cronies and harm citizens by increasing safety risks and pollution, reducing or eliminating cost savings, and raising costs to consumers? Or can the will of Congress override the administration's power grab by safeguarding agency action discharged in the public good? These questions will face the Supreme Court.

Where does Gorsuch stand? Will he be beholden to a White House that nominated him? Or will he exercise his considerable talents, rely on his commitment to the rule of law and use the judicial independence granted him by the Constitution to safeguard us? As citizens, we can learn much from the confirmation hearings. Hopefully, Gorsuch will also learn that constitutional values, the separation of powers and the common good are cherished by the citizenry and are to be protected by him as he takes his seat.

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