

April 4, 2017

RE: Environmental Groups Oppose the Supreme Court Nomination of Judge Neil M. Gorsuch

Dear Senator:

On behalf of the undersigned conservation and environmental organizations and our millions of members and supporters, we write to express our opposition to the confirmation of Judge Neil M. Gorsuch to a lifetime seat on the United States Supreme Court. Judge Gorsuch is an extreme and unacceptable choice for the Supreme Court, and we urge the Senate to reject his nomination.

Judge Gorsuch's decade-long record on the federal bench, as well as his writings, speeches, and activities throughout his career, reveal a deep hostility to government and the crucial role it plays in safeguarding public welfare. His record also shows an alarming determination to close the courthouse doors to those seeking to defend their rights under the Constitution and the laws that protect essential values, from clean air and water to fair labor practices to civil rights. As his rulings, dissents and concurrences make clear, he is seeking to advance a highly political, radically ideological agenda that cannot be squared with the core attributes that the American people correctly expect and deserve from any Supreme Court Justice: impartiality, moderation, and a profound commitment to justice for *all*.

Judge Gorsuch has unjustifiably sided with corporations, the wealthy, and the powerful, while working to erode the rights of women, workers, and the disabled, among other groups. Judge Gorsuch's judicial philosophy displays his belief that deep-pocketed people and corporations should be allowed to influence elections and Congress with money, potentially without limits.¹ In 2014, Judge Gorsuch suggested providing a higher level of constitutional protection—"strict scrutiny" review—to a donor's right to make political contributions. In this, Judge Gorsuch would afford political donors a higher degree of legal protection than even an individual's right to vote.² Judge Gorsuch's openness to applying rigid "strict scrutiny" review to contribution limits weakens one of our few remaining checks on political donations. Judge Gorsuch is not the appropriate nominee to ensure that all Americans, no matter their financial resources, share an equal voice in our political system.

It is essential that whoever is given the honor of a seat on the Supreme Court upholds the right of access to the courts for all, and honors the Constitutional obligation to provide an impartial check on the power of Congress and the President. Given his extreme views and record, Judge Gorsuch is unsuited to provide that check, which is at the very heart of our democracy. Judge Gorsuch did nothing to alleviate these concerns during his recent hearing before the Senate Committee on the Judiciary.

I. Judge Gorsuch's Environmental Record

¹ *Riddle v. Hickenlooper*, No. 13-1108 (10th Cir. 2014)

² *Riddle v. Hickenlooper*, No. 13-1108 (10th Cir. 2014)

A review of Judge Gorsuch’s writings and decisions indicate that he would seek to overturn well-established Supreme Court precedents and undermine the federal government’s ability to enforce bedrock environmental laws such as the Clean Air Act and Clean Water Act. Judge Gorsuch’s record indicates that he would take the Court in a far-right direction, doing irreparable harm to the health of communities, failing to protect wildlife and our public lands, and restricting efforts to combat climate change.

In *United States v. Nichols*, Judge Gorsuch wrote a lengthy, solo dissent that tried to revive a moribund legal principle — the non-delegation doctrine — that would stymie the federal government in implementing its core functions and could further provide the basis for striking down our fundamental environmental laws.³ This dissent, among other opinions written by Judge Gorsuch, shows a general hostility to regulatory agencies and the regulatory safeguards that protect our air, water and natural heritage. His stated desire to overrule the Supreme Court’s decision in *Chevron, U.S.A. v. Natural Resources Defense Council* is another such example.⁴

In *Wilderness Society v. Kane County*, Judge Gorsuch wrote an opinion concurring with a decision to dismiss a claim brought by several environmental organizations who were seeking to protect public lands.⁵ As the dissent in that case observed, the majority’s holding was “patently inappropriate to misstate and misconstrue the positions of the parties and the rulings of the trial court to achieve this result” and “will have long-term deleterious effects on the use and management of federal public lands.”⁶ These organizations represent the voices of many members of our community and should not be stifled or denied their day in court.

II. Judge Gorsuch Blocks Access to Courts

Judge Gorsuch is an opponent of litigation in the public interest, even suggesting in *Liberals ‘N’ Lawsuits*, an article he wrote for *National Review Online*, that groups seeking to defend their constitutional rights — to marriage equality, for example — are “addicted to litigation” and should seek recourse at the ballot box rather than the courts. This view is completely at odds with the essential role that courts play in defending civil liberties and securing the constitutional and legal rights of individuals in the face of majority rule.

In the environmental arena, these views would eviscerate vital protections, as all of our core environmental statutes depend on public interest litigation for their enforcement. Congress has repeatedly included “citizen suit” and private attorney general provisions in environmental, civil rights, and other laws to ensure that essential legal safeguards are upheld and enforced where there is insufficient will or resources on the part of the federal government to take on corporate polluters and other lawbreakers. These provisions are among the most important and successful innovations of modern environmental law. For example, in upholding the ability of individuals and organizations to sue polluters, the Supreme Court recognized in *Friends of the*

³ fn. 784, F.3d 666, 668 (10th Cir. 2016)

⁴ fn. 467 U.S. 837 (1984)

⁵ fn. 632 F.3d 1162 (10th Cir. 2011)

⁶ *Id.* at 1180, 1195.

Earth, Inc. v. Laidlaw that, “Congress has found that civil penalties in Clean Water Act cases do more than promote immediate compliance . . . they also deter future violations.”⁷

Hostility to environmental litigants is apparent in Judge Gorsuch’s recent rulings and dissents. For instance, in 2015 he ruled that environmental groups lacked standing to challenge the Forest Service’s temporary approval of motorcycle use on forest trails.⁸ In a 2013 dissent, he went out of his way to argue that an environmental group should not have been allowed to intervene in an action brought by off-road vehicle advocates against the Forest Service because they would be “adequately represented” by the government.⁹ If adopted, his test for intervention would effectively slam the courthouse door to conservation groups and others seeking to protect their interests in intervening on behalf of the federal government unless the groups could definitively prove that the government intended to undercut them.

Conclusion

The stakes for public health and environmental protection could hardly be higher. Judge Gorsuch’s long record of hostility toward the proper role of government in ensuring a healthy environment for all people in America and his favoritism toward corporations over individuals, combined with his interest in denying access to courts for organizations working on behalf of the public interest, make him particularly unsuitable for a lifetime appointment to the Supreme Court. We strongly urge you to vote against both cloture and his confirmation when you vote later this week.

Sincerely,

350.org
Alaska Wilderness League
American GI Forum of the United States
Center for Biological Diversity
Center for Food Safety
Clean Water Action
Climate Hawks Vote
Deep South Center for Environmental Justice
Defenders of Wildlife
Earth Action, Inc
Earthjustice
EarthRights International
EcoEquity
Endangered Species Coalition
Environmental Advocates of New York
Environmental Working Group
EPIC Environmental Protection Information Center

⁷ *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000).

⁸ *Backcountry Hunters and Anglers v. U.S Forest Service*, 612 Fed. Appx. 934 (10th Cir. 2015) (unpublished opinion)

⁹ *New Mexico Off-Highway Vehicle Alliance v. U.S. Forest Service*, 540 Fed. Appx 877 (10th Cir. 2013) (unpublished opinion)

Friends of the Earth
GreenLatinos
Greenpeace USA
KyotoUSA
League of Conservation Voters
Montana Conservation Voters
NextGen Climate
Ocean Futures Society
Power Shift Network
Rachel Carson Council
Safe Climate Campaign
Sierra Club
Students for a Just and Stable Future
The Regeneration Project/Interfaith Power & Light
Turtle Island Restoration Network
Union of Concerned Scientists
United States Hispanic Leadership Institute
Waterkeeper Alliance
WildEarth Guardians