AFL-CIO

AMERICA'S UNIONS

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Dear Senator:

The next Justice confirmed to the U.S. Supreme Court will play a critical role in shaping and enforcing the laws that protect working people. A thorough review of Judge Neil Gorsuch's record on the U.S. Court of Appeals for the Tenth Circuit demonstrates that he is far more likely to rule in favor of corporate interests and against the interests of working men and women. He routinely rules against workers in health and safety cases; he regularly rejects the claims of employees seeking relief from discrimination in the workplace; and he frequently denies workers' efforts to secure earned wage and benefits. Based on this review and the evasive answers he provided during his confirmation hearing, we are compelled to oppose Judge Gorsuch's nomination to be an Associate Justice on the Supreme Court of the United States.

One of Judge Gorsuch's dissents deserves particular mention. *In TransAm Trucking, Inc. v. Administrative Review Board*, 833 F.3d 1206 (10th Cir. 2016), Judge Gorsuch denied the retaliation claim filed by a trucker – Alphonse Maddin -- who was fired after refusing to drive an unsafe vehicle or wait in sub-freezing temperatures for assistance to arrive. The driver's claim was upheld by six other judges, but Judge Gorsuch reached for a narrow dictionary definition to decide that the law did not protect Mr. Maddin. Judge Gorsuch's approach and decision in this case speaks volumes about his lack of appreciation for the importance of health and safety and other workplace laws designed to protect workers' lives and livelihoods.

Decisions like these – depriving workers of their statutory protections -- are particularly troubling when compared to other of Judge Gorsuch's decisions favoring corporations and actually giving them greater rights. Perhaps the most vivid example in this regard is *Hobby Lobby Stores, Inc., v. Sibelius*, 723 F.3d 1114 (10th Cir. 2013), in which Judge Gorsuch ruled that for-profit corporations have the right to religious freedom, and can invoke these rights to deprive their female employees health insurance coverage for contraception.

The AFL-CIO is deeply troubled by Judge Gorsuch's eagerness to overturn the well-established and oft-honored U.S. Supreme Court precedent of *Chevron*. In his opinions, Judge Gorsuch has inserted gratuitous attacks on agencies seeking to enforce laws that protect workers, whether dissenting from the imposition of sanctions on employers or when seemingly grudgingly upholding an agency finding. This disregard for the work of administrative agencies and longstanding Supreme Court precedent in our view places Judge Gorsuch well outside the legal mainstream.

Judge Gorsuch has also expressed the desire to resurrect the antiquated non-delegation doctrine, which once limited the power of elected lawmakers to permit executive branch agencies to fill inevitable gaps in laws and to respond to changing circumstances. The Supreme Court has not used the non-delegation doctrine since 1935, yet Judge Gorsuch disagrees with this long-settled legal principle. Resurrection of this doctrine that would cripple effective enforcement of key congressional mandates through administrative actions, and his view on this issue places Judge Gorsuch well outside the legal mainstream.

Wages have been stagnant for decades because of the imbalance of power between working people and corporations. In our view, Judge Gorsuch would be a corporatist justice – perhaps the most corporatist justice since Justice Powell. Adding another justice to the Supreme Court who will further skew the Court against working people and in favor of corporations would severely and adversely affect the lives and wellbeing of America's working families.

Working families need and deserve Supreme Court justices who understand and respect the importance of the laws and protections provided to working people under our laws and Constitution. The AFL-CIO urges you to oppose Judge Gorsuch's nomination and to insist on a nominee with a record demonstrating greater respect for the rights of working families.

Sincerely,

Richard L. Trumka
President

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