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LAW BLOG

Legal Community Reacts to the Nomination



PHOTO: ASSOCIATED PRESS

By **SARA RANDAZZO**

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The nomination of Judge Neil Gorsuch of the 10th U.S. Circuit Court of Appeals to be the next Supreme Court justice came as little surprise Tuesday night after days of speculation that he was the president's leading candidate.

Within minutes of the nomination being announced, a website to support the judge's nomination had been set up with endorsements from around the legal industry. The Judicial Crisis Network said it is funding a \$10 million campaign to confirm his nomination, with Carrie Severino, chief counsel for the network, saying they will push back against any Democrats tempted to obstruct the path to confirmation.

Here's what others in the legal community had to say about how Judge Gorsuch, a textualist in the vein of the justice he's replacing, Antonin Scalia, could affect the balance of the nation's high court.

UC Irvine School of Law Dean **Erwin Chemerinsky** said via email that Judge Gorsuch is "impeccably qualified," but "the question is whether his views are so conservative to put him outside the judicial mainstream." As a self-described originalist, Mr. Chemerinsky asked, would he vote to overrule cases protecting rights not explicitly laid out in the Constitution, such as in the area of reproductive freedom? "A close examination of his writings and the confirmation hearings will be key in Senate Democrats deciding whether to filibuster him."

Elizabeth Price Foley, a constitutional law professor at Florida International University and of counsel at Baker & Hostetler LLP, said via email the nomination is an early sign that President Trump is looking for federal judges committed "to honoring the Constitution's original meaning." His choice, she said, will help preserve the Constitution's separation of powers. "Judge Gorsuch has a proven track record of defending federalism by keeping the federal government's powers within its constitutionally limited scope," Ms. Foley said, adding that it's a pick that "conservatives of all stripes should be applauding."

Jeffrey Fisher, a Supreme Court expert at Stanford Law School, said that while Judge Gorsuch has many clear similarities to Justice Scalia, and a few differences, it's too

simplistic to say that his appointment would return the court to the way it was before Scalia's death. For eight years, he said, the court was set up "as a foil to President Obama," but a court with a similar composition in today's political climate "is in itself such a different enterprise." And while today's pundits are focused on issues like voting rights and reproductive freedom, he said, the court is likely to face issues in the coming years that we aren't even considering today, making it hard to fully gauge Judge Gorsuch's potential impact.

Vikram Amar, a constitutional law scholar and dean of University of Illinois College of Law, said via email that Judge Gorsuch is "unquestionably conservative and committed to originalism." Mr. Amar said it'll be interesting to watch what side Judge Gorsuch comes down on "when originalist evidence and conservative outcomes cut in opposite directions," like in affirmative action cases or when dealing with sovereign immunity. "In these areas, Scalia did not follow originalism but instead embraced conservative outcomes, for which he was criticized," Mr. Amar said. "We'll see what kind of originalist Gorsuch turns out to be."

Harvard Law School professor **Laurence Tribe** said via email of the nominee "that he's extremely smart, knows federal law and procedure inside and out, writes elegantly and with nuance, is at the top of his game analytically, and totally idolizes the late Justice Scalia and what he identifies as Scalia's almost regal indifference to the practical human consequences of his rulings."

Edward Whelan, president of the Ethics & Public Policy Center and a former Scalia clerk, said via email that Judge Gorsuch is an "outstanding pick. His judicial record reveals a brilliant jurist and a dedicated textualist who writes with force and verve. He has been a great protector of religious liberty, and he has keen insights on the challenges posed by the administrative state." Mr. Whelan offered a detailed analysis of the judge's record on National Review, noting that his path to confirmation should be "smooth and swift."

Constitutional law professor **Josh Blackman** at South Texas College of Law in Houston said that Judge Gorsuch's presence on the court could help pull Justice Anthony Kennedy, long the swing vote, toward the right on contentious decisions. As a former clerk to Justice Kennedy, Judge Gorsuch has a personal connection to him.

Paul Clement, the former Solicitor General under President George W. Bush, said via email that as a Colorado native, Judge Gorsuch will bring "a distinct perspective to cases involving everything from water rights to Native American issues and beyond."

Hogan Lovells partner **Neal Katyal**, who served as acting Solicitor General in the Obama administration, said of the nominee that, "As a judge, he has always put aside his personal views to serve the rule of law."

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JUDGE NEIL GORSUCH

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