



March 17, 2017

The Honorable Charles Grassley
Chairman
Senate Committee on the Judiciary
United States Senate
Washington, DC

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
United States Senate
Washington, DC

RE: Earthjustice Opposition to Supreme Court Nomination of Judge Neil M. Gorsuch

Dear Chairman Grassley and Ranking Member Feinstein:

Earthjustice opposes the confirmation of Judge Neil M. Gorsuch to a lifetime seat on the Supreme Court of the United States. The Supreme Court is the final arbiter of our laws, and its rulings dramatically impact the lives and rights of all Americans. Judge Gorsuch is an extreme and unacceptable choice for the Supreme Court, and we urge the Senate Judiciary Committee 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, as well as an alarming determination to close the courthouse doors to those seeking to defend their rights under the Constitution and laws that protect essential values from clean air and water to fair labor practices to bedrock civil rights. As his 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*.

Throughout his time on the bench, Judge Gorsuch has consistently sided with corporations, the wealthy, and the powerful, while working to erode the rights of women, workers, and the disabled, among other groups. 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, Judge Gorsuch is unsuited to provide that check, which is at the very heart of our democracy.

II. Judge Gorsuch's Environmental Record

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 dissent that tried to revive an obscure legal doctrine — 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 bedrock environmental laws. This dissent, among other opinions written by Judge Gorsuch, shows a general hostility to regulatory agencies and 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.

In *Wilderness Society v. Kane County*, Judge Gorsuch concurred with a decision to dismiss a claim brought by several environmental organizations who were seeking to protect public lands. As the dissent in that case observed, the majority’s holding “will have long-term deleterious effects on the use and management of federal public lands.”

III. Judge Gorsuch and Access to Courts

Judge Gorsuch is an opponent of litigation in the public interest, even suggesting in an article written for the *National Review* 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. Of course, 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 from the Clean Water Act to the Clean Air Act 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. 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 the *Friends of the Earth, Inc. v. Laidlaw* case that, “Congress has found that civil penalties in Clean Water Act cases do more than promote immediate compliance . . . they also deter future violations.”¹

Hostility to environmental litigants is apparent in Judge Gorsuch’s recent rulings and dissents. For instance, in a 2013 dissent, he argued 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.² If adopted, his test

¹ *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000).

² *New Mexico Off-Highway Vehicle Alliance v. U.S. Forest Service*, 540 Fed. Appx 877 (10th Cir. 2013) (unpublished opinion)

for intervention would effectively slam the courthouse door to conservation groups and others seeking to protect their interests in intervening on behalf of the government unless the groups could definitively prove that the federal government intended to undercut them.

In 2015 he ruled that environmental groups lacked standing to challenge the Forest Service's temporary approval of motorcycle use on forest trails.³

I. Judge Gorsuch Is Hostile to Giving Real People Relief in the Courts

Judge Gorsuch is a friend of big business, demonstrated by his lengthy record of decisions that seek to benefit corporations and restrict the federal government's regulatory responsibilities. In a working paper for the Washington Legal Foundation, *Settlements in Securities Fraud Class Actions: Improving Investor Protection*, Judge Gorsuch argued that the legislature and courts should make securities fraud class-action lawsuits more difficult to achieve.

Judge Gorsuch has a history of rulings against workers' rights. In *Compass Environmental Inc. v. OSHRC*, Judge Gorsuch voted to overturn a Department of Labor fine against a company whose failure to properly train a worker caused his death. In another case, Judge Gorsuch dissented from a decision upholding a National Labor Relations Board order that an employer pay back wages that were owed after the worker's wages were improperly reduced.

Judge Gorsuch has shown hostility to the rights of the disabled. In *Thompson R2-J Sch. Dist. v. Luke P., ex rel. Jeff P.*, Judge Gorsuch ruled that a student with autism did not have a right under the federal Individuals with Disabilities Education Act (IDEA) to an education that would provide the opportunity to develop intellectual and social skills outside the classroom.

Judge Gorsuch has shown repeated antipathy to reproductive rights. In *Hobby Lobby Stores, Inc. v. Sebelius*, Judge Gorsuch agreed with the majority opinion that corporations are persons and should not be required to pay for contraceptive coverage under the Affordable Care Act.

Judge Gorsuch has also shielded police officers charged with excessive force. In *Wilson v. City of Lafayette*, Judge Gorsuch held that a police officer was entitled to qualified immunity from an excessive force claim. The officer had used his stun gun and killed a young man who fled after admitting that he owned marijuana plants that were growing in the area. The police officer did not suspect the victim of any violent crime.

Conclusion

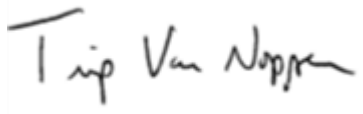
Earthjustice is committed to using the power of law to protect people's health, to preserve magnificent places and wildlife, to advance clean energy and combat climate change. We are

³ *Backcountry Hunters and Anglers v. U.S Forest Service*, 612 Fed. Appx. 934 (10th Cir. 2015) (unpublished opinion)

deeply committed to promoting a federal judiciary and Supreme Court that safeguard the rights of everyone in our country.

Based upon our review of Judge Gorsuch's record, we respectfully urge you and your colleagues to exercise your power to reject his nomination to a lifetime seat on the United States Supreme Court. We appreciate your consideration of our views.

Sincerely,

A handwritten signature in black ink that reads "Trip Van Noppen". The signature is written in a cursive style and is positioned above a thin horizontal line.

Trip Van Noppen
President
Earthjustice