

Gorsuch Will Not Shift the Balance of Power on the Supreme Court as Much as You May Think

On Tuesday, President Trump announced that he would nominate Neil Gorsuch to fill the open seat on the U.S. Supreme Court.

Gorsuch currently serves on the 10th U.S. Circuit Court of Appeals in Denver, and he was confirmed unanimously by the Senate when he was appointed to that position by President George W. Bush in 2006. Gorsuch appears to have some strong similarities to Antonin Scalia, and many conservatives are hoping that when Gorsuch fills Scalia's seat, it will represent a shift in the balance of power on the Supreme Court. For almost a year, the court has been operating with only eight justices. Four of them were nominated by Republican presidents and four of them were nominated by Democrats, and so many Republicans are anticipating that there will now be a Supreme Court majority for conservatives.

Unfortunately, things are not that simple, because a couple of the "conservative" justices are not actually very conservative at all.

For example, it is important to remember that Scalia was still on the court when the Supreme Court decision that forced all 50 states to legalize gay marriage was decided. Justice Anthony Kennedy joined the four liberal justices in a majority opinion that Scalia harshly criticized. So with Gorsuch on the court, that case would still have been decided the same way.

Sadly, even though Kennedy was nominated by Ronald Reagan, he has turned out to be quite liberal. In the past, not nearly enough scrutiny was given to justices that were nominated by

Republican presidents, and a few of them have turned out to be total disasters.

And let us also remember that Scalia was still on the court when the big Obamacare case was decided. Chief Justice John Roberts joined the four liberal justices in a decision that was perhaps one of the most bizarre in the modern history of the U.S. Supreme Court.

For some reason, Justice Roberts was determined to preserve Obamacare, and if you read what he wrote, it is some of the most twisted legal reasoning I have ever come across.

As someone that was once part of the legal world, let me let you in on a little secret. Most judges simply do whatever they feel like doing, and then they will try to find a way to justify their decisions. So if you ever find yourself in court, you should pray you will get a judge who is sympathetic to your cause.

Fortunately, Gorsuch appears to be one of the rare breed of judges who actually care what the U.S. Constitution and our laws have to say. In that respect, he is very much like Scalia:

Gorsuch is seen by analysts as a jurist similar to Scalia, who died on Feb. 13, 2016. Scalia, praised by Gorsuch as “a lion of the law,” was known not only for his hard-line conservatism but for interpreting the U.S. Constitution based on what he considered its original meaning, and laws as written by legislators. Like Scalia, Gorsuch is known for sharp writing skills.

“It is the role of judges to apply, not alter, the work of the people’s representatives,” Gorsuch said on Tuesday at the White House event announcing the nomination in remarks that echoed Scalia’s views.

One of the most high profile cases that Gorsuch was involved with came in 2013. That was the famous “Hobby Lobby case,” and it represented a key turning point in the fight for religious freedom. The following comes from CNN:

In 2013, he joined in an opinion by the full Court of Appeals holding that federal law prohibited the Department of Health and Human Services from requiring closely-held, for-profit secular corporations to provide contraceptive coverage as part of their employer-sponsored health insurance plans.

And although a narrowly divided 5-4 Supreme Court would endorse that view (and affirm the 10th Circuit) the following year, Gorsuch wrote that he would have gone even further, and allowed not just the corporations, but the individual owners, to challenge the mandate.

Donald Trump said that he wanted a conservative judge in the mold of Scalia, but I think that he was also looking for someone he could get through the Senate.

And the fact that Gorsuch was confirmed unanimously by the Senate in 2017 will make it quite difficult for Democrats to block him now. Gorsuch has tremendous academic and professional credentials, and he will probably have a smoother road to confirmation than someone like appeals court judge William Pryor would:

Trump may have favored Gorsuch for the job in hopes of a smoother confirmation process than for other potential candidates such as appeals court judge William Pryor, who has called the 1973 Supreme Court ruling legalizing abortion “the worst abomination of constitutional law in our history.”

But Pryor is still reportedly on the short list for the next spot on the Supreme Court that opens up, and by then, the rancor in the Senate may have died down.

If Gorsuch is confirmed, what will this mean for some of the most important moral issues of our time?

As for abortion, even if Gorsuch is confirmed, I do not believe the votes are there to overturn *Roe v. Wade*. But if Trump is able to nominate a couple more Supreme Court justices, that could change.

But even if *Roe v. Wade* is overturned, it would not suddenly make abortion illegal. Instead, all 50 states would then be free to make their own laws regarding abortion, and a solid majority of the states would continue to keep it legal.

The analysis is similar when we look at gay marriage. If the Supreme Court decision legalizing gay marriage in all 50 states were overturned, each state would get to decide whether gay marriage should be legal or not for their own citizens. And just as with abortion, it is likely that only a limited number of states would end up banning gay marriage.

So the nomination of Neil Gorsuch to the Supreme Court appears to be a positive step, but it does not mean we are going to see dramatic change when it comes to issues such as abortion or gay marriage any time soon.

But at least Gorsuch can help stop the relentless march of the progressive agenda through our court system. So in the end we may not make that much progress for right now, but at least the liberals won't either. {eo}