

Report: Justice Gorsuch Just Made a Bold Move

During his confirmation process, Democrats complained that they didn't believe Associate Justice Neil Gorsuch would be sufficiently independent on the court.

Boy, did they get that call wrong.

According to a new report from *The New York Times*, the newest member of the U.S. Supreme Court has broken with a 44-year-old tradition that has played a major role in what cases are heard before the high court. Some are calling it a "power move," but it's clear that he's sending a message to those who have entrusted him with the seat about his desire to be independent of the groupthink that sometimes consumes the federal judiciary.

The report states:

In an early sign of Justice Neil M. Gorsuch's independence and work ethic, he has decided not to join a labor pool at the Supreme Court in which justices share their law clerks in an effort to streamline decisions about which cases to hear.

Justice Gorsuch joined the court last month. His decision not to participate in the pool was confirmed by Kathleen L. Arberg, the court's public information officer. The only other member of the court who is not part of the arrangement is Justice Samuel A. Alito Jr.

Justices in the pool receive a common "pool memo" on each petition seeking Supreme Court review—more formally, "petition for certiorari"—from a single law clerk. The memo analyzes the petition and makes a recommendation about whether it should be granted.

As a former law clerk to both associate justices Byron White and Anthony Kennedy, Gorsuch knows full well what goes into those pool memos. He also knows how they can be used to steer the court into a particular ideological direction.

The Supreme Court receives approximately 8,000 petitions for certiorari, official requests to hear cases, and by refusing to join the high court's labor pool, Gorsuch clearly wants to hear from his own clerks on each potential case. Retired Associate Justice John Paul Stevens said the pool had "lessened the docket," and many constitutional law scholars agree.

Statistics don't lie, and in this case, they support that assertion. Thirty years ago, the high court was issuing opinions on roughly 150 cases a year. Today, it issues about half that many. With less than 1 percent of petitions resulting in final opinions, that puts an enormous amount of power in the hands of law clerks—power the Constitution of the United States reserved to the members of the Supreme Court alone.

Each justice may hire up to four clerks who are recent law school graduates with little practical experience in spite of otherwise impeccable credentials. These clerks are trying to build their own careers that might one day land them on the high court, as well, and recommending a case that is later thrown out can be an embarrassment that kills any hope of that opportunity.

The labor pool, then, rewards clerks for recommending denials of cases that should perhaps be considered. {eoa}