

# INFO BRIEF



## Supreme Court Nomination of Neil Gorsuch and the Future of Reproductive Health

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### **The State of the Supreme Court**

The unexpected death of Supreme Court Associate Justice Antonin Scalia in February 2016 left a vacant seat on the court. In March, President Obama nominated Merrick Garland, a widely respected member of the D.C. Circuit Court of Appeals, for that seat. Shamefully, Senate Republicans blockaded the nomination, refusing to hold hearings or allow a debate in the full Senate. Adding insult to injury, the Republicans' justification for their obstructionism was transparently false. They insisted President Obama was "politicizing" the Supreme Court by making his nomination during an election year. But in fact, the Senate has routinely—eight times since 1900—confirmed justices in election years.

On January 20, 2017, the day of Donald Trump's inauguration, the Supreme Court seat remained vacant. On February 1, Trump nominated Neil Gorsuch.

### **Stolen Seat**

The Republicans' outrageous obstructionism must not be rewarded. No Supreme Court nominee should be confirmed unless that person is Merrick Garland or someone who shares Judge Garland's qualifications and judicial philosophy. Neil Gorsuch is not that person.

### **Gorsuch And The Right Wing's Agenda**

Neil Gorsuch was appointed to the 10th Circuit Court of Appeals by George W. Bush in 2006. As documented by the Alliance for Justice, he has a long history of hostility towards the claims of workers, consumers, children, immigrants, LGBTQIA people, incarcerated people, people with disabilities, and others seeking protection from the privileged and powerful.<sup>1</sup> Equally disturbingly, "his track record on money in politics comes down decisively on the side of billionaire donors and big corporations."<sup>2</sup>

### **Gorsuch And Women's Access To Reproductive Health Care**

NOW is especially troubled by Neil Gorsuch's record on reproductive rights and justice. As a candidate, Donald Trump promised to appoint Supreme Court justices who would overturn *Roe V. Wade*. Sen. Patrick Leahy (D-Vt.) has pointed out that Gorsuch's "willingness to limit women's access to health care ... suggests the President is making good on that promise."<sup>3</sup>

Women's health care, including the full range of reproductive health services, is not a privilege but a human right. Ninety-eight percent of sexually active women use contraception at some point, and one in three will have an abortion by the age of 45. These are common and necessary aspects of women's health. When they are criminalized, restricted, and stigmatized, women's basic human rights are abridged. Blocking women's access to birth control and abortion will predictably drive up rates

### **Sources**

<sup>1</sup> Alliance For Justice. (2017). Alliance For Justice: The Gorsuch Record. Retrieved March 6, 2017.

<sup>2</sup> Pierce, S. (2017, February 6). Democrats should focus SCOTUS fight on Gorsuch's backing of big donors. *Huffington Post*.

<sup>3</sup> Leahy, P. (2017, January 17). Statement On the Nomination of Judge Neil Gorsuch To The Supreme Court Of The United States.

of maternal mortality, maternal morbidity, and infant mortality -- hardly the “pro-life” consequences that Gorsuch has claimed he desires.

Below are just some examples of Gorsuch’s hostility to women’s access to reproductive health care:

- In his book, *The Future of Assisted Suicide and Euthanasia*, Gorsuch pooh-pooed the idea that courts should recognize women’s fundamental right to make their own health care decisions. Commenting on *Planned Parenthood V. Casey* (the 1992 Supreme Court decision upholding *Roe V. Wade*) he shrugged off the court’s holding that “at the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.” According to Gorsuch, none of that actually motivated the *Casey* court, which was merely adhering to precedent.
- At the appellate level in both *Hobby Lobby V. Sebelius* and *Little Sisters of the Poor V. Burwell*, Gorsuch advocated for the right of employers to block birth control coverage from their employees’ health plans, elevating employers’ desire to force their religious beliefs on their employees over the workers’ right to make their own health care decisions.
- Most disturbingly, Judge Gorsuch went so far as to mischaracterize both facts and law in *Planned Parenthood v. Herbert* in arguing for re-hearing of a 10th Circuit panel decision that enjoined the governor of Utah from stripping federal funding from Planned Parenthood in that state. This is an extreme level of zealotry one would expect from “an anti-abortion hardliner who wanted to cut off funds to a leading abortion provider and was willing to bend the rules to do so.”<sup>4</sup>

**The potential approval of Gorsuch as the ninth Supreme Court Justice leaves the reproductive rights of women hanging in the balance.** It has been said that Neil Gorsuch, who clerked for Justice Anthony Kennedy, “seems more likely than any other nominee to persuade Kennedy to vote with the conservatives rather than the liberals.”<sup>5</sup> If that is the case, the stakes for women’s lives and well-being could not be higher. This nomination must be stopped.

<sup>4</sup> Millhiser, I. (2017, February 1). [Neil Gorsuch’s crusade against planned parenthood](#). Retrieved March 6, 2017, from Think Progress.

<sup>5</sup> Rosen, J. (2017, February 1). [Why conservatives should Applaud—and liberals Fear—Neil Gorsuch’s nomination](#). *The Atlantic*.