



Written by [Warren Mass](#) on April 7, 2017

Senate Employs “Nuclear Option,” Confirms Gorsuch to Supreme Court

The Senate on April 7 confirmed Neil Gorsuch (shown) to the Supreme Court, ending an often-bitter political battle that began after the death of Justice Antonin Scalia in February 2016. Three Democrats facing reelection next year in states that President Trump carried easily in last November’s election voted to confirm Gorsuch: Joe Manchin (W.Va.), Heidi Heitkamp (N.D.), and Joe Donnelly (Ind.). Every Republican who was present voted to confirm Gorsuch, but one Republican, Johnny Isakson (Ga.), who recently underwent back surgery, missed the vote.



Democrats in the Senate had fought a long and stubborn battle to block Gorsuch’s nomination and initiated a filibuster to prevent an up-or-down vote on April 6. Under then-existing Senate rules, 60 votes were required to “invoke cloture,” ending debate and the filibuster. The only way for Republicans to break the stalemate and advance to a vote on the nominee was to employ the so-called “nuclear option.” They voted to lower the threshold for advancing Supreme Court nominations from 60 votes to a simple majority. All 52 Republicans voted to change Senate precedent and all 48 Democrats and liberal-leaning independents voted to keep it.

The ultimate showdown was predictable. We reported in [a March 24 article](#) that on the previous day Senate Minority Leader Chuck Schumer (D-N.Y.) called for a filibuster to stop a vote on the Gorsuch nomination.

Schumer began his speech by throwing down the gauntlet: “After careful deliberation, I have concluded that I cannot support Judge Neil Gorsuch’s nomination to the Supreme Court. His nomination will have a cloture vote. He will have to earn 60 voters for confirmation.”

During his speech, Schumer criticized what he perceived as Gorsuch’s “deep-seated conservative ideology.” But at least one example he offered to bolster his argument revealed much about the New York senator’s own deep-seated disregard for the Constitution. He said:

[Gorsuch’s] career and judicial record suggest not a neutral legal mind but someone with a deep-seated conservative ideology. He was groomed by the Federalist Society and has not shown one inch of difference between his views and theirs.

Schumer’s condemnation of Gorsuch for having views that are compatible with the Federalist Society indicated that he, himself, has very opposite views. This makes a brief examination of the society worthwhile.

The Federalist Society looks to *Federalist* No. 78 for an articulation of the virtue of judicial restraint, as written by Alexander Hamilton: “It can be of no weight to say that the courts, on the pretense of a



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repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature.... The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legislative body." (Emphasis in original.)

Given its clearly constitutionalist goals, and the stature of many of its founding and present members (including Attorney General Edwin Meese and Solicitor General and Reagan Supreme Court nominee Robert Bork), it is fair to surmise that Schumer does not so much have a problem with the Federalist Society as he has with the Constitution.

Even the liberal *New York Times* acknowledged in its report on the nomination vote, that Gorsuch is indisputably qualified. The report noted:

Judge Gorsuch possesses the credentials typical of the modern Supreme Court justice. He is a graduate of Columbia, Harvard and Oxford, served as a Supreme Court law clerk and worked as a lawyer at a prestigious Washington law firm and at the Justice Department. He joined the United States Court of Appeals for the 10th Circuit, in Denver, in 2006, where he was widely admired as a fine judicial stylist.

The *Times* also observed, based on the 20 hours of questioning from senators that Gorsuch underwent during his confirmation hearings, that the nominee was a strict constructionist of the Constitution, noting:

But neither side harbored any doubts, based on the judge's opinions, other writings and the president who nominated him, that Judge Gorsuch would be a reliable conservative *committed to following the original understanding of those who drafted and ratified the Constitution*. [Emphasis added.]

The firm opposition to Gorsuch among Senate Democrats is generally believed among unbiased political observers to be based not on his lack of qualifications, but on ideological opposition of the type exhibited by Schumer. However, there was another key factor, as well. Democrats were waging a political vendetta against any person nominated by a Republican president, because Senate Majority Leader Mitch McConnell had refused to allow a vote on Merrick Garland (chief judge of the U.S. Court of Appeals for the District of Columbia Circuit) — former President Obama's pick for the vacant seat on the High Court left after the death of Scalia. The Republican Senate majority insisted that the next elected president should fill the vacancy.

Had Hillary Clinton won last November's election (as many polls indicated she might), the choice would have been hers. But with Trump winning and being able to name a successor to Scalia's spot on the court, Senate Democrats cried foul and were not about to confirm *any* nominee named by Trump.

Trump nominated Gorsuch for the Supreme Court post on February 1. It took more than two months for the confirmation process to play out, but it is now a settled matter.

Chief Justice John Roberts will administer the constitutional oath to Gorsuch in a private ceremony at 9 a.m. on April 10, and Justice Anthony Kennedy will administer the oath at a public ceremony at the White House later in the morning.

Photo: Neil Gorsuch

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