



To: Interested Parties

From: Ellie Langford, NARAL Pro-Choice America Research

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Subject: The Conservative Refrain Claiming Their Nominees Are Like “Umpires”

Kavanaugh

Kavanaugh: “A Good Judge Must Be An Umpire—A Neutral And Impartial Arbiter Who Favors No Litigant Or Policy.” He continued: “I don’t decide cases based on personal or policy preferences. I am not a pro-plaintiff or pro-defendant judge. I am not a pro-prosecution or pro-defense judge. I am a pro-law judge.” [Judge Brett Kavanaugh’s Opening Remarks before the Senate Judiciary Committee, 9/4/18]

Pro-Kavanaugh Witness Jennifer Mascott Spoke On A Heritage Panel About Kavanaugh, Describing Him As “Independent And Fair-Minded.” Mascott said, “[Kavanaugh] has really emphasized that to keep accountability in government, that the role of Congress and the role of the executive [branch] as being the elected branches of government is to really be playing the lead in making policy, carrying out policy...He has conceptualized the role of a judge as that of, more of an umpire, calling balls and strikes. So, that doesn’t always mean that a judge is not going to step in, but it means that a judge is going to try to be independent and fair-minded.” [The Daily Signal, [8/14/18](#)]

Mascott Also Described Kavanaugh As “Independent, “Fair-Minded” And Like An “Umpire” On A CBS News Interview. [YouTube.com, [7/10/18](#)]

Roberts

In His Confirmation Hearing, Roberts Said “Judges Are Like Umpires” Whose Job It Is “To Call Balls And Strikes.” John Roberts said in his opening statement at his Supreme Court confirmation hearing: “My personal appreciation that I owe a great debt to others reinforces my view that a certain humility should characterize the judicial role. Judges and justices are servants of the law, not the other way around. Judges are like umpires. Umpires don’t make the rules; they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went to a ball game to see the umpire. I have no agenda, but I do have a commitment. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench. And I will decide every case based on



the record, according to the rule of law, without fear or favor to the best of my ability. And I will remember that it's my job to call balls and strikes and not to pitch or bat." [CNN, [9/12/05](#)]

Thomas

In Nominating Clarence Thomas To The Supreme Court, President George H.W. Bush Told Thomas “He Ought To Do It Like The Umpire: Call Them As You See Them.” “Q. Mr. President, when did you make this decision in your own mind, and when did you call Judge Thomas to—The President. Well, I called him yesterday and told him I was getting very, very close. And keeping the faith with those who were at the golf course, I called him after I came back from the golf course. [Laughter] And then I closed the deal today. I had one or two points that I wanted to make to him to see that he felt comfortable with them. I wanted to be sure that he knew from me that there was no litmus test involved. I told him, if it's not violating a privacy, that he ought to do like the umpire: Call them as you see them. And I'm satisfied he will.” [The American Presidency Project, [7/1/91](#)]

Alito

Senators Grassley And Hatch Compared Alito To An “Umpire” During His Confirmation Hearing. Grassley said, “Like Chief Justice Roberts, it appears that Judge Alito tries to act like an umpire, calling the balls and strikes, rather than advocating for a particular outcome in a case.” Hatch said, “We do not evaluate an umpire’s performance based on which team won the game but on how that umpire applied the rules inning after inning. We do not hire umpires by showing them the roster for the upcoming season and demanding to know which teams they will favor before those teams even take the field.” [NBC News, accessed [9/4/18](#), ThinkProgress, [1/9/06](#)]

Gorsuch

Statement From Sen. John Thune: “Judge Gorsuch Believes That Supreme Court Justices Should Be Like An Umpire Who Calls Balls And Strikes.” In a February 2017 statement, Senator John Thune’s office wrote: “Judge Gorsuch’s resume is impeccable. He is the graduate of Oxford University, Harvard Law School, and Columbia University. He served as a clerk for two Supreme Court justices, including Anthony Kennedy who still serves on the court today. For more than a decade, Judge Gorsuch has served on the 10th Circuit Court of Appeals, a position to which he received unanimous support in the Senate. Perhaps most importantly, Judge Gorsuch believes that Supreme Court justices should be like an umpire who calls balls



and strikes. The law is the law, and Judge Gorsuch agrees.” [Senator John Thune Press Statement, [2/3/17](#)]

Sen. Ben Sasse Lobbed Gorsuch A Number Of Softball Questions That Compared His Role To That Of An “Umpire.” From Justice Gorsuch’s confirmation hearings:

SASSE: have you ever gotten to a little league game early pulled the umpire aside in the parking lot and asked him or her to commit in advance that they will decide the games for the underdog?

GORSUCH: No, but I think some of my buddies have.

SASSE: Have you ever asked a referee underneath the zebra stripes of their jersey to wear your kids Little League jersey as the undershirt?

GORSUCH: No rather woulda helped any. The kids were pretty rotten at basketball.

SASSE: We're obviously not going to pursue this very far but I do want to make sure that everybody at home knows a little bit of what's been happening in the room over the course of the last six or seven hours because some of my colleagues are asking a bunch of tough questions that are really important for you to have to answer at the same time there are a whole bunch of questions that have been asked today that are really asking you to take your legal career and your legal ethics and set them aside and play politician on TV today and that really isn't your job and some of this questioning really hasn't been a fruitful use of our time. It's well meaning to talk about the outcome objectives of a whole bunch of these cases, but I would submit that it's dead wrong. I want to give you just a couple of the questions we've heard earlier today at different times: How can we have confidence that you won't be for the big guy? At another point: How can we know how can we know that you feel for the little guy. This sounds noble but it's fundamentally a corruption of what the judges job is. To seek assurances from you like this is like seeking assurances from a referee before the game that they will pledge to a certain outcome before the tip-off. If the law is wrong and I'm somebody who believes that lots of our laws are wrong and overreaching around here the questions should be directed back at us on this panel and on this dias why we don't fix the laws that are wrong. We shouldn't be asking you as the judge to commit that when our laws are clunky and bad and in conflict you will divine how to change the law on the fly. That's not the oaths that you'll take. That's not the Constitution that we've all taken an oath to and pledge to and it's not what the American people want. So frankly I applaud you for your perseverance



and patience with us as we've continually gone down a path of asking you to answer questions many of which are fundamentally political questions and that you shouldn't be answering and that we shouldn't be asking so thank you for your endurance. [YouTube, [3/21/17](#)]