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The Justice Standard.

Conservatives continue to be hit with what President Trump calls “shotgun blasts into the face.” There is an almost daily reminder that we have failed to nominate and confirm truly conservative Justices to the Supreme Court. Justice Gorsuch’s opinion in *Bostock* and Chief Justice Roberts’ numerous rulings are heartbreakingly tragic reminders. Thankfully, *future failure is avoidable*.

There is a workable standard for picking Supreme Court Justices that can transform past failure into future success. Before we discuss that standard, it is vital to first review *why* the Supreme Court is important and *why* a standard is essential.

Why is the Supreme Court Important? The Supreme Court is important because it makes the most important rules in our Nation. Although contrary to the clear text of the Constitution, we function under an illegitimate system whereby judges legislate from the bench like an unaccountable judicial oligarchy. Judicial nominations are an essential tool to correct this abuse and to restore power to the People.

Why is a Standard for Supreme Court Justices Important? Without a standard, everyone is acceptable. The Bible reveals that “where there is no vision, the people perish.” Over the last fifty years, conservatives have failed over half the time to nominate conservative constitutionalist Justices. To reverse course and achieve judicial renewal we must adopt a new vision and a new standard.

The Justice Standard. The standard for Constitutionally Conservative Justices identifies prospects with a (1) long-term, (2) record, (3) of courage, (4) conservatism, and (5) a constitutional judicial philosophy. These elements are explained in reverse order below.

Constitutional Judicial Philosophy. A constitutional judicial philosophy requires a conviction that:

- (a) the role of a justice is simply to “decide cases and controversies,”
- (b) a justice must never legislate from the bench,
- (c) a justice must prioritize their oath to follow the original public meaning of the text of the Constitution over precedent that might dictate a contrary result, and
- (d) the Judiciary is a co-equal – not supreme – branch of government.

Conservatism. In *Federalist No. 51*, Madison explained that “if men were angels, no government would be necessary.” In a perfect world, the political philosophy of judges would not matter. In the present world – littered with so-called “conservative” Justices drifting liberal – it does. Liberals always nominate liberal Justices and it works for them; conservatives do not always nominate conservatives, and it has failed us.

Conservatives should nominate only constitutionalists who are *also conservative* for at least four reasons. First, we are conservative! Second, the conservative philosophy opposes the usurpation of power – the liberal philosophy does not; thus, a conservative Justice is less likely to usurp legislative power. Third, conservatives are not tempted to legislate liberal social policy from the bench because they loathe it. Fourth, if a Justice does happen to fall off the “constitutional” wagon (as *non-angelic* Justices are prone to do) at least they will fall on the right – rather than the left – side of the wagon. Insisting on Justices who are constitutionalists *and* conservative is a “belt *and* suspenders” approach; perhaps Madison would call it an “auxiliary precaution.”

Courage. Given the misalignment of the Judiciary, it will take courage to correct it. It will also take great courage to remain faithful against the unrestrained wicked onslaughts of the left. The Judiciary has been the left’s last bastion of political power and taking it back will require courage.

Record. Groucho Marx quipped: “who you gonna believe, me or your own eyes?” When it comes to Justices, don’t believe the “endorsers” – believe your eyes – believe the record.

The next time an endorser proclaims a Justice prospect to be a “rock-ribbed,” “home-run,” “can’t miss,” “never betray us,” “conservative” with a “back-bone of woven tungsten strips of the actual text of the constitution” ... please tell that endorser: “show me the record,” “show me the evidence.” Endorsements are conclusions – not actual evidence. A credible endorsement must be preceded by evidence – the more evidence the better.

If a prospective Justice does not have an actual demonstrable record as a courageous, conservative, constitutionalist, then you should wisely infer that they are not. Judicial nominees without records are preferred by political operators who prize short-term confirmability over long-term success. A “stealth” Justice without a record may – or may not – be easier to confirm, but to what end? Conservatives have been sold “stealth” justices with “trust me” endorsements numerous times over the last fifty years, but most have transitioned and manifested as anti-constitutionalist liberals. Are we fools?

Only the fool would hire an employee without a record. When it comes to the eminently more important Supreme Court Justice – who is nearly impossible to fire – the wise would never hire one with a weak or stealthy record.

Long-Term. A Justice’s record should be long in duration. What kind of prospective Justice lives absent from the conservative fight for the first forty or fifty years of their life, but conveniently transitions with a late record only when it benefits their prospects? Answer: probably one who is neither courageous, nor conservative, nor a constitutionalist; and perhaps one who is weak, greedy for power, and slouching toward the left.

A prospective Justice who lacks a long-term record, but enjoys mainly recent, helpful speeches, articles, and/or rulings should be viewed with healthy skepticism. A long-term record is exceedingly more reliable, believable, and trustworthy than a short-term record.

Conclusion. All prospects for the Supreme Court will be imperfect. However, that reality does not dictate that we lose our minds, abandon a standard, and accept anyone. To the contrary, it heightens the necessity that we: (1) establish a meaningful, workable standard like the one articulated above, (2) diligently measure the prospects according to that standard, and (3) resolutely accept only those that measure up.

Only then can we reasonably expect to reverse our tragic trend of failed Supreme Court nominations. Only then will we achieve Judicial Renewal.