



Feinstein signals she'll lead Democrats against Gorsuch

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Photo: Chip Somodevilla, Getty Images



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Sen. Dianne Feinstein, the top Democrat on the Senate Judiciary Committee (left), is introduced to Supreme Court nominee Neil Gorsuch by former Sen. Kelly Ayotte, R-N.H., at the Capitol.

WASHINGTON — Sen. Dianne Feinstein signaled Wednesday that she is likely to lead Democratic resistance to President Trump's nomination of Judge Neil Gorsuch to the Supreme Court, saying the high court has been functioning just fine with a vacancy for nearly a year.

With the nomination arriving less than two weeks into Trump's administration, Senate Democrats were wrestling with how to handle what could be the first of several Supreme Court vacancies that the new president might fill.

For the time being, Democrats were threatening to filibuster Gorsuch's nomination, but it was unclear whether they could remain unified. On Wednesday,

Trump urged Republicans to enact the so-called nuclear option to eliminate the 60-vote threshold for confirmation. The move would allow Senate Republicans, who hold a 52-48 majority, to confirm Gorsuch with ease.

But Senate Minority Leader Chuck Schumer, D-N.Y., said his party will demand that the threshold remain. At least eight Democrats would then be needed for confirmation, but Feinstein promised a thorough vetting that could help solidify party members' resolve. As many as 10 Democrats face re-election in two years in states that Trump won in blowouts and so are viewed by Republicans as potential yes votes.

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Many Democrats view the seat Gorsuch was nominated to fill as “stolen” by Senate Republicans, who refused to hold a hearing on federal appeals court Judge Merrick Garland, President Barack Obama’s choice for the court, and they may not be eager to confirm Gorsuch.

Feinstein, who recommended Garland to Obama after the death nearly a year ago of conservative Justice Antonin Scalia, is among them.

“To see the way he was treated, with almost a year to consider his nomination, was just appalling,” Feinstein said. “The humiliation that he went through. Asking people just to meet with him and getting turned down. Asking just to have a hearing and getting turned down. Bringing volumes, literally box after box after box of records, putting it all together, walking these halls day and night, and getting the back of the Republican hand.

“Many of us haven’t recovered from that. So I think the appropriate thing is to take our time considering this nominee. The court’s not going to fall apart. It’s going to be just fine.”

Some Democrats have suggested, as a few Republicans did when it appeared that Hillary Clinton might win the presidency, that the Scalia seat be left vacant indefinitely, leaving the court with just eight members and a 4-4 ideological split.

Feinstein said she initially thought that leaving the vacancy open “was really going to be problematic with tie decisions, but I’ve looked at the tie decisions and in a way it’s prevented bad things from happening.”

One of those deadlocked cases involved a challenge by nonunion teachers in California to compulsory union fees that pay for the costs of representing them at the bargaining table, a critical source of funding for unions representing government workers in 23 states. Similar cases are pending in lower federal courts, and Gorsuch, when confirmed, could cast the tie-breaking vote once the issue returned to the Supreme Court.

As the top Democrat on the Senate Judiciary Committee, Feinstein is embarking on what promises to be one of the most intense and consequential periods of her 24-year Senate career. Liked and respected by her Republican colleagues, she has assumed the Democratic helm of the committee at a pivotal moment, when she and many Democrats are appalled at the direction Trump is taking the country.

Although Feinstein is viewed primarily as a centrist, the Trump presidency appears to be pushing her leftward.

But Manuel Miranda, a former top Senate Republican aide, noted that Feinstein votes overwhelmingly with Democrats. And she voted against both of former President George W. Bush's Supreme Court nominees, Chief Justice John Roberts and Samuel Alito.

"She's certainly not going to lead Democrats to moderation, because they're not ready to be led to moderation," Miranda said.

Although Sen. Jeff Sessions, D-Ala., was recommended by the Senate Judiciary Committee on Wednesday for confirmation as Trump's attorney general, Feinstein spearheaded unanimous Democratic opposition against it. And the day before, she issued a powerful denunciation of Sessions, saying she had "no confidence" in his ability to remain independent from Trump as the nation's top law enforcement officer.

Feinstein said Sessions went through a long and thorough vetting and so will Gorsuch.

Despite his credentials, Gorsuch alarms Democrats. Age 49, he could be on the court for decades. In the Scalia mold, he tries to interpret the Constitution's words as they were meant at the time it was enacted.

UC Irvine Law School Dean Erwin Chemerinsky, a prominent liberal legal scholar, said the doctrine could gut protections for women's rights and gay rights, among other things, potentially putting in jeopardy the right to abortion, decided in 1973 in *Roe vs. Wade*, and the right to same-sex marriage under the 2015 decision in *Obergefell vs. Hodges*.

Some voices in the party argue that Democrats should save their firepower for potential future Trump nominations, but Feinstein disagreed.

"This is a lifetime appointment," Feinstein said. "This is as big as it gets."

Feinstein pointed to the more than 50,000 phone calls she has already received on the nomination. "I've been doing this for a long time, and when you get over 30,000 calls in California, you know it's a big issue," Feinstein said.

California Sen. Kamala Harris, also a Democrat, agreed that it will be crucial for her party to thoroughly vet Gorsuch and future nominees.

“It’s very important to review all their writings, their public positions, their qualifications, their life experiences,” Harris said. “We have to do everything we can to get the right person on the court who is not going to be a political hack.”

Carolyn Lochhead is The San Francisco Chronicle’s Washington correspondent. Email: clochhead@sfgchronicle.com Twitter: [@carolynlochhead](https://twitter.com/carolynlochhead)



Carolyn Lochhead

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