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Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

Fox News Network TUCKER CARLSON TONIGHT 7:00 PM EST

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Body

TUCKER CARLSON, FOX NEWS HOST, "TUCKER CARLSON TONIGHT": And a FOX News alert, President Trump selected Judge Neil **Gorsuch** of the Tenth Circuit Court of Appeals to fill Antonin Scalia's sit on the Supreme Court. Senator Ted Cruz will give us his reaction in just a minute.

Good evening. And welcome to TUCKER CARLSON TONIGHT. Also tonight, President Trump's temporary ban on refugees, one illegal immigrant who was opposed to it is here to state his case. But first, back to the nomination of Judge **Gorsuch**. Less than an hour ago, President Trump had this to say.

(BEGIN VIDEO CLIP)

PRES. DONALD TRUMP (R), UNITED STATES: Today, I am keeping another promise to the American people by nominating Judge Neil **Gorsuch** of the United States Supreme Court to be of the United States Supreme Court.

NEIL **GORSUCH**, JUDGE, UNITED STATES COURT OF APPEALS: I respect to the fact that in our legal order, it is for Congress and not the courts to write new laws. It is the role of judges to apply, not alter the work of the people's representatives. A judge who likes every outcome he reaches is very likely a bad judge. Stretching for results he prefers rather than those the law demands.

(END VIDEO CLIP)

CARLSON: Well, even before these announcements, Senator Ted Cruz of Texas vowed that he would get this nominee confirmed by whatever means necessary to get him to the Senate. Does Judge **Gorsuch** lived up to Ted Cruz's expectations?

Senator Cruz was there for the announcement and he joins us tonight from the White House. Senator, thanks a lot for coming on.

SEN. TED CRUZ (R), TEXAS: Tucker, great to be with you.

CARLSON: Thank you.

CRUZ: And congrats on the new show by the way. And all the success you've enjoyed.

CARLSON: Well, I appreciate that. If you've been elected president, is this the judge you would have chosen for the Supreme Court?

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

CRUZ: Well, I'll tell you, I think Judge Gorsuch is a home run. I'm very, very happy. During the campaign, President Trump promised the American people if he was elected, he would nominate a principled constitutionalist to replace Justice Scalia. And tonight, President Trump kept his word, he honored that commitment tonight with a big, big deal.

CARLSON: Did you know this was coming or are you involved in vetting him?

CRUZ: Well, you know, it's remarkable, Tucker, this is been, you know, I think the most transparent process we've ever seen for a Supreme Court nominee. Last year, during the election, Donald Trump put out a list of 21 nominees and he made an ironclad commitment he would nominate from that list. So, we all had the opportunity to vet those 21.

CARLSON: Right.

CRUZ: The voters knew about it in Election Day. And indeed, in the weeks that had proceeded this, the White House and the President have been actively consulting with members of the Senate, asking for our advice and consent. And I think Judge Gorsuch's record, he's spent a decade on the Court of Appeals being faithful to the constitution, following the law demonstrating judicial humility and not legislating from the bench. And I think that's exactly what the President promised the American people, to what we expect in a Supreme Court justice.

CARLSON: Will he get through the Senate?

CRUZ: I believe he will. You know, a decade ago Judge Gorsuch was nominated the Court of Appeals and he was confirmed by voice vote which means not a single Democrats spoke up in opposition to him --

CARLSON: Right.

CRUZ: -- and the question I would asked of Senate Democrats now is what has changed? What has changed a decade ago, you were willing to confirm him into the Court of Appeals? And the only thing that's changed is, he has a decade of an exemplary record. You know something he said to Judge Gorsuch was very important. Any judge that agrees with the outcome of every case he decides is probably a bad judge. You know, a judge's job is not to pick which litigate you like better or pick which outcome or policy you like, it is to follow the law. And I've spent this week and last week reading many of Judge Gorsuch's opinions and I think it reflects exactly that humility and fidelity to law that that makes him a worthy successor to Justice Scalia.

CARLSON: So, you are advocating for him on the merit, which is great.

CRUZ: Yes.

CARLSON: But it's a political -- I hate to ask you a political question but I think it is meaningful. How exactly is it going to get to the Senate? Or what is the scenario for that do you think?

CRUZ: Well, I believe he will be confirmed. I think on the record, his academic record, his background, he is extraordinary. You know, he is a graduate of Columbia Harvard Law School. And he was a law clerk to Byron White --

CARLSON: Right.

CRUZ: -- who John F. Kennedy's only Supreme Court nomination.

CARLSON: Right.

CRUZ: He was a Democrat himself, Byron White. And Judge Gorsuch's record is such that that he has demonstrated the intelligence, the humility, the faithfulness to the law. That I think Republicans are going to vote for him but I also hope and believe a number of Democrats will as well. Those who are willing to confirm him ten years ago, I hope that they will make the same decision now.

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

CARLSON: Enough that he won't have to get through on a simple majority.

CRUZ: Well, we will see if Democrats decide they want to try to filibuster this nomination. I hope they do not. I think that would be a mistake for them to do so. But I will tell you this, Tucker. One way or another, I believe the Senate will confirm Judge Gorsuch to the court, the Democrats are not going to succeed in filibustering this nomination.

CARLSON: Right.

CRUZ: And President Trump is going to meet his promise to the American people. This election was really a referendum on what kind of justice should replace Justice Scalia and the Senate is going to help President Trump meet his commitment to the American people to have a principled constitutionalist on the Supreme Court.

CARLSON: One way or another. Message received on that. So, if he is or as you say, when he is confirmed and joins to Supreme Court, what practical difference will it make? Can you name a couple decisions pending before the court and how you think he'll role on them?

CRUZ: Well, the justice he is replacing is Justice Antonin Scalia who is truly a lion of the law. Was an extraordinary conservative, someone I knew and respected personally. And I believe that Judge Gorsuch is likely to follow in the pattern of Justice Scalia. Following the law, vigorously defending the bill of rights. Our fundamental liberties, whether religious liberty, whether the Second Amendment, whether our basic rights protected under the constitution.

CARLSON: Right.

CRUZ: And so, what that means is, it will maintain the balance of power on the Supreme Court. If Hillary Clinton had been elected and a liberal judicial activist had been put on the court, we would have lost much of our fundamental religious liberties. We would have lost or at least our Second Amendment rights to keep in bear arms, would have been greatly in periled.

Principles of federalism would have been in danger. I believe based on his record, Judge Gorsuch will respect federalism and separation of powers that were reflected in the constitution. And, you know, I will tell you a quick story Tucker that I just shared with Judge Gorsuch, when Antonin Scalia was nominated to Court of Appeals, and the FBI was doing the background check, Scalia got a call from his family priest back in New Jersey. And the priest said Nino, the FBI called and they are asking questions about you but do not worry, I did not tell them anything.

(LAUGHTER)

CARLSON: That's pretty good. So, I think a lot of conservatives, certainly ones who voted for you in the primary, but even ones who didn't look to you as a good judge of judges. And so, just to be totally clear, Judge Gorsuch has your seal of approval. This is someone who you conceivably would have chosen, had you been elected.

CRUZ: Absolutely, and I would say that. And then I took the time to read a number of his opinions and really to ask the question. For anyone to succeed Antonin Scalia as an enormous responsibility.

CARLSON: Right.

CRUZ: And I think has demonstrated record on the Court of Appeals, provides a proven record to suggest he will do that. My advice to the President in the White House was look for a proven record. Do not roll the dice, do not let someone say trust me but look for a proven record because the stakes are too high for us to take a chance. I think that's exactly what President Trump did here, is he looked for a proven record and he kept his commitment to the American people.

CARLSON: So, my last question is, Democrats are going to say and I'm sure they already are, that sounds a crazy point, that before, President Obama put up Merrick Garland, he had a right to do that constitutionally and

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

Republicans refused to allow that to put forth. Why should we play ball with this? I mean, if that's the new standard, we don't you're your guy, we're not even moving on it. What would you say to that?

CRUZ: Right. You are right, that's the argument many Democrats will make.

CARLSON: Yes.

CRUZ: I think they're fundamentally different circumstances. When Justice Scalia passed away, he passed away last year right in the middle of the presidential election. For 80 years, the Senate has never confirmed a Supreme Court vacancy that occurred in the presidential year.

CARLSON: Right.

CRUZ: And what the Republican majority in the Senate said, before any nominee was made, before Merrick Garland was nominated, the Republican majority quite rightly said, we are going to leave this choice to the American people. It's a presidential election, this seat is enormously consequential and so the voters, we the people can decide which direction the Supreme Court is going to go. And this selection I believe was in many ways, a referendum on the court. There were few of any issues, more important on the ballot than that question. And the American people overwhelmingly chose a principled constitutionalist who will be faithful to the constitution and the bill of rights versus a liberal judicial activist which is what Hillary Clinton promised us she would appoint.

CARLSON: That's an interesting point. Senator Cruz, thank you so much for joining us tonight.

CRUZ: Thank you, Tucker. Good to be with you.

CARLSON: Thanks.

Well, activists on the left are planning to protest President Trump's choice well before it was actually made, before there was any name. Now a great pulsating blob of humanity has gathered on the steps of the Supreme Court here in Washington to denounce Judge Gorsuch and demand his rejection.

Marge Baker is a spokeswoman for People For The American Way and she joins us from the steps of the Supreme Court where she is protesting as we speak. Marge, thanks a lot for coming on.

MARGE BAKER, PEOPLE FOR THE AMERICAN WAY: Thank you so much for having me. And I really appreciate the opportunity to speak to you and your viewers. It's great to be here.

CARLSON: Well, thanks. I am glad to hear from you. So, you've been planning this for some time. I got the press release. And you didn't know who the President's pick was going to be. But you believe it was going to be, quote, "extreme." If it had been, I don't know, someone on the left, if Michael Moore had been the nominee, would you still be protesting because he was Trump's choice?

BAKER: We determined, we looked at the list of proposed nominees that Trump gave us, and we did our thorough research. And we were really concerned about any of those nominees. So, we were not out here to protest anyone, we were out here to protest someone who is chosen from that list. About which we had real concerns. I mean, the decision, the reason we are here tonight is because it makes a big big difference to the American people, who fills this lifetime seat on the Supreme Court.

CARLSON: Right.

BAKER: And we do need somebody who respects the constitution and the law and understands that they are there to protect all Americans, not just the powerful and the wealthy and the corporations. And unfortunately, Neil Gorsuch is not the right man for this job.

CARLSON: So, tell me why. And I think a lot of people share your view. I mean, a lot of people voted frankly for Donald Trump because they were suspicious of big money and corporations. You know, you can judge whether

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

they should have or not but they did. So, a lot of people share your concern about people in power. What specifically about this nominee makes you believe he is unacceptable? What is he done that you don't like?

BAKER: Part of his record shows that he is a friend of Wall Street, that he makes it difficult for folks, people who were injured by corporate wrongdoing to hold those corporations accountable. And that means consumers, and workers and women who are discriminated against in the workplace, and people who want clean air and clean water. So, we have real concerns about his record. And real concerns about whether he will have the independence and judicial temperament to be a justice for all the people. Not justice of the wealthy and powerful.

CARLSON: Right. So, if I can just press you a little bit, to be specific on that, you said you're concerned that he is a friend of Wall Street, I think is a -- used, and that he is insensitive to women and workers.

BAKER: Right.

CARLSON: Why do you believe that? I mean, what specific decisions are you referring to?

BAKER: Well, let's take the Hobby Lobby case for example. You may know this case.

CARLSON: Yes.

BAKER: Came out of the Tenth Circuit, came out of the panel that Judge Gorsuch sat on. And this was the case that said that corporations are allowed to use religious liberty, their own religious liberty as a reason to discriminate against women in terms of their being able to access contraception coverage. That is a really serious serious concern. For a lot of women. And it's not just that it hurts women but that principle that a corporation can justify its actions based on some false notion that it has religious liberty rights that can be -- can exercise of which can be offended is really, really troubling because it has sweeping around corporations not just for women, sweeping around corporations for LGBTQ people. So, we are concerned about that. We're concerned about --

CARLSON: So, you don't -- I mean, you don't believe that employers ought to be allowed to stand on their religious principles in the way that they act?

BAKER: We don't believe corporations have the ability to exercise religious liberty and have to be interfered with, we don't believe corporations have religious liberty interests that can be offended by someone's access to contraception.

CARLSON: So, I don't believe it was corporations, it was employers. Anybody who hires another person. The question, the root of the Hobby Lobby case was, can you force people to pay for something that violates their religious beliefs? And so, you think the government can force people to do that?

BAKER: The issue is, whether or not corporations, whether or not corporations, a corporate entity. Not an individual. Corporate entity has religious liberties. But there's also real concerns about we need somebody who is fair-minded, right? We need somebody who can be objective. Who can make sure that they have the independence to push back on whatever they need to push back.

CARLSON: Well, I agree but --

BAKER: And let's take for example, the events of this past weekend. There is really serious concerns about whether the Trump administration respected the constitution and even respected the courts.

CARLSON: Okay. If I can just interrupt -- can I bring you back to today's news? Because you are protesting a specific nomination.

BAKER: No, no. We are protesting a nominee and questioning whether that nominee has the independent mind, will be a fair and mutual arbiter and have the independent judgment to be able to make decisions about whether or not that involved protecting the constitutional.

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

CARLSON: I get it.

BAKER: And they're concerned about that. We're concerned about --

CARLSON: And I want to give you a fair hearing but I can't let you filibuster, I'm sorry Marge. I just have to ask you a simple question. What suggested he doesn't have that independence or that fairness? Do you have any evidence of that?

BAKER: If you look at his record that favors Wall Street and corporations, he believes, he makes it very difficult --

CARLSON: But what record? What are you talking about? What specifically?

BAKER: His record as a judge that argues that individuals and entities that want to hold corporations accountable should not and cannot get their day in court to do that.

CARLSON: Can you give me an example of that?

BAKER: His record of the Hobby Lobby case. There is a number of cases where he's argued that people should not have class action remedies, he said that --

CARLSON: Where? Where did he say that?

BAKER: In his judicial record --

CARLSON: he doesn't believe in any class action?

BAKER: There is a real concern about whether he should think, he believes, people should be limited in terms of their ability to access class actions a way as a way in which to hold operations accountable and so it's a really serious concern.

CARLSON: Where did -- I mean, you went to law school, so I know you have the details here. What are they?

BAKER: I'm not going to go through case names for you.

CARLSON: Well, just help us here to understand what you're saying.

BAKER: Go to our website, to People.Org, and you will be able to see cases where he demonstrates that --

CARLSON: Okay. Go to the website. Okay.

BAKER: -- and we have really serious concerns about whether or not he will have the judgment and the --

CARLSON: Right. I got it. I was hoping for some specifics. Last question. I've been through an awful lot of these for the past 25 years, it almost always comes down to calling the nominee a racist. Do you think that he's a racist? Will you be making that case?

BAKER: I really don't understand the question. It comes down to calling the nominee racist. That's not --

CARLSON: I don't think I've seen a Republican nominee for the Supreme Court ever, not called a racist by the people who opposed him on the left. I'm wondering, is there evidence that put this guy --

BAKER: I don't think that's the issue here. Let's --

CARLSON: Okay. Good.

BAKER: The issue here is whether you have somebody who's been nominated to the bench --

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

CARLSON: Right.

BAKER: -- who understands a corporation and the laws of this country are for all of us, not just the powerful and wealthy and the privileged.

CARLSON: I agree with you on that.

BAKER: And that's what we're going to be making the case.

CARLSON: Okay.

BAKER: And that's what we're going to be making the case. We think that is what the American people want to see in their justice and we do not believe that Neil Gorsuch fits that bill.

CARLSON: Yes. I agree with the first part. I don't think you quite made the case here but maybe you will.

BAKER: We will be making that case.

CARLSON: Okay.

BAKER: This is day one. We will be making that case and we believe that we will see support on both Democratic and --

CARLSON: I hope you're not pre-emptively judging here, Marge, because I sent you maybe, but we will have you back when you have a full case to display to our viewers. Thanks a lot.

BAKER: I am not preemptively judging it all.

CARLSON: Okay. I hope not.

BAKER: We are serious about this. And we believe that the American people understand that this is not a justice for all the people.

CARLSON: Okay. Thanks.

BAKER: Okay.

CARLSON: Marge Baker, thanks for joining us.

(BEGIN VIDEO CLIP)

PRES. DONALD TRUMP (R), UNITED STATES: When Justice Scalia passed away suddenly last February, I made a promise to the American people. If I were elected president, I would find the very best judge in the country for the Supreme Court. I am a man of my word. I will do as I say. Something that the American people have been asking for from Washington for a very, very long time.

(END VIDEO CLIP)

CARLSON: Well, for 29 years, Judge Antonin Scalia was the anchor of conservative jurisprudence in America. But Scalia has been gone for close to a year now and now the President has chosen Neil Gorsuch to carry on his legacy. Can he be counted upon to do that?

Joining us now with his thoughts is former New Jersey Superior court judge, FOX News senior legal contributor and our friend, Judge Andrew Napolitano. Judge, it's great to see you. What do you make of this?

JUDGE ANDREW NAPOLITANO, FOX NEWS SENIOR JUDICIAL ANALYST: Well, I'm ecstatic over this, Tucker. He is probably the most worthy jurist in the country to fill the shoes of Antonin Scalia for a couple of reasons. One is

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

a healthy skepticism about the ability of the government to regulate the economy and regulate our personal lives. I'm so sorry that your prior guest really didn't know what she was talking about. She should welcome somebody like Neil Gorsuch because he interpreted the First Amendment to mean what it says.

Congress shall make no law interfering with the free exercise of religion. Whether it is a mom and pop operation or a corporation or a bigger corporation, you are exactly right. The government cannot force you to give a benefit to your employee when the giving of that benefit violates your religious beliefs and when the employee can get the benefit elsewhere. And the Supreme Court upheld that decision of Judge Gorsuch.

So, that is the small picture that I am happy about. The big picture is Judge Gorsuch as you know, Tucker, you and I have talked about this, embraces the idea of originalism which simply means the meaning of the constitution was fixed at the time it was ratified and it has only been changed each time it was amended, 27 times.

CARLSON: Right.

NAPOLITANO: And if it's going to be changed again, the states have to amend it. The court can't amend it. So, it's not what Justice Ginsburg thinks it is --

CARLSON: Right.

NAPOLITANO: A living breathing document the changes when the politicians need to change.

CARLSON: What's interesting is that originalists tend to take a pretty dim view of executive orders because the constitution of course specifies if the Congress makes the laws, not the executive. And I wonder since the last several presidents have relied pretty heavily on them including this one, if their implications on that.

NAPOLITANO: Well, there would be implications on that if the executive orders are paint amount to making the law.

CARLSON: Right.

NAPOLITANO: For example, when Barack Obama issued a series of executive orders. There are actually 24 of them, affecting immigration, a trial judge in Texas ruled this is not the President telling the Department of Homeland Security how to enforce the law, this is the President changing the law in a way that the Congress specifically rejected.

CARLSON: That's right.

NAPOLITANO: That was repelled by the United States Court of Appeals for the Fifth Circuit and then the Supreme Court split on a four to four tie, which basically upheld what the Fifth Circuit said. What President Trump is doing so far not only is everything that he promised he would be doing but within the contours of the law telling the people who work for him in the executive branch and how he wants them to exercise their discretion.

CARLSON: Interesting. So, I should just say to our viewers, I know that you've met with the President a couple of times recently. You probably talked about this. I know there are also people in the administration who wanted to take you. So, you have a pretty good advantage on this. What do you think this new justice, if confirmed, will make of some of the key cases coming before the court in the next year?

NAPOLITANO: Okay. There are some very interesting cases coming before the court. And Tucker, they are coming in April. Very significant. That is two months from now. If Chuck Schumer can delay this nomination confirmation, until May or June, he will deny Judge Gorsuch's fingerprints on these cases and they are profound. One. Can the Department of Education force every school in the land that accepts federal funds, which is literally every school to reconstruct their bathrooms for transgendered students?

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

Two, if a state decides to take -- you are not going to believe this, old automobile tires and turn them into a parking lot, can a Catholic Church use the parking lot for students to play a game of whiffle ball on? And the court below, it said no, that violates the First Amendment.

CARLSON: Yes.

NAPOLITANO: It is a conspicuous aid to religion.

CARLSON: Sounds like theocracy to me.

NAPOLITANO: Yes. So, these are two, you know, controversial issues that will come right before the court. Three, very, very excessive in my view and I suspect yours, overreaching by the Environmental Protection Administration. There are four environmental protection challenges where the EPA won below. So, if there's a four to four tie because Judge Gorsuch is not confirmed, then the EPA will prevail. If Judge Gorsuch gets to hear it, then he will be the dispositive vote.

CARLSON: And you think on all of those decisions -- it's pretty clear I think what the traditional conservative view would be that he would rule on that side.

NAPOLITANO: I do. I think you take a traditional conservative view and add in a healthy Scalia like dose of skepticism about the government and you equal Neil Gorsuch.

CARLSON: So, let me just ask you a broader more rhetorical question. We watch an awful lot of Supreme Court justices come and some go. I don't think I've seen one become more conservative, more committed to original intent during his or her time in the court, they all seem to become more activist. A lot of them do. Have you ever seen anyone move in the other direction?

NAPOLITANO: Well, the only one that moved in the other direction, if he moved it all was Justice Scalia. There is a tendency for people to become more activists. Here is a kind of activism that I would like to see, a constitutional activism, and activism that says to the government, wait a minute, Congress shall make no law means no law. You're not going to get us to fudge on this one. In that area, I think you'll going to find Judge Gorsuch not moving, solid as a rock just as he was or has been on the Circuit Court.

CARLSON: Judge Napolitano, what a great explanation. Thanks a lot for that.

NAPOLITANO: Pleasure to be with you, Tucker. All the best.

CARLSON: Thank you.

NAPOLITANO: When we come back, we will continue our coverage of this breaking news. And it is a big deal. Many Democrats said in advance, they'd oppose whomever Trump picked, no matter what. One of those Democrats will state his case for that position. He joins us in just a minute.

(BEGIN VIDEO CLIP)

TRUMP: I have always felt that after the defense of our nation, the most important decision a president of United States can make is the appointment of a Supreme Court justice.

GORSUCH: Standing here in a house of history, and acutely aware of my own imperfections, I pledged that if I'm confirmed, I will do all my powers permit to be a faithful servant on the constitutional laws of this great country.

(END VIDEO CLIP)

CARLSON: Well, the news of the moment may be of the season, President Trump's selection of Judge Gorsuch and the reaction to it. We go back to the steps of the Supreme Court for more.

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

We are joined by FOX News Supreme Court reporter and all around legal expert Shannon Bream. Shannon, what is your reaction?

SHANNON BREAM, FOX NEWS SUPREME COURT REPORTER: Hey, Tucker. Listen, I do not know if you can hear them, but there have been protests here all night. They are pretty loud. They are gathering and getting to be a bigger crowd. They may come over here because they seemed to be very fond of the live TV cameras tonight. They are very spirited and you know how you have the little name tag when you go to something and says, hello, my name is, and there is sort of a line that fill in. Well, they had signs tonight that said, oppose, and then they had a little place to write in so they've all written in Gorsuch in markers.

And they're sitting over here chanting filibuster. They're not happy. They are yelling about impeaching President Trump. So clearly these are people who were not going to be happy about any picked that they got. But listen, something I know that you will like about him is that he likes to fly fish. And so maybe you guys can do a special friend zone, you with the nominee to the Supreme Court. He is an interesting guy. He likes to hunt, fish, he is an outdoorsman in Colorado.

CARLSON: I know.

BREAM: He is a very serious jurist, so as you know as well, he is somebody who's clerked here at the court, he would, if he is confirmed, serve on the bench alongside his former boss as a fellow justice, Justice Anthony Kennedy. That is an interesting set up. But he is been very, very faithful to what he views it as a correct viewpoint. Which is, you adhere to the law, you do not do anything outside of that whether you like the result or not.

I want to read you a little bit of one of his opinions. Cordova versus City of Albuquerque. He said our job is interpreting the constitution and that document isn't some inkblot on which litigants may project their hopes and dreams, but it carefully drafted text. The judges are charge wit applying according to its original public meaning. If a party wishes to claim a Constitutional right, it is incumbent on him to tell us where it lies, not to assume or stipulate with the other side that it must be in there someplace. Such a lot about what judges have to do what is right, regardless of their personal feelings or personal political party happen to be is somebody who sailed through his last confirmation, there is no objection to him. He is unanimously well qualified by the American bar association, not exactly a right-leaning organization. So he got a very strong resume to head in that confirmation battle and the president had to know that.

TUCKER CARLSON, FOX NEWS HOST: Episcopalian flies fisher. Doesn't mean he will be a great Supreme Court justice, but I think we will all agree that is a fine start. Shannon thanks a lot. Even before the president announced his selection of Judge Gorsuch, Democrats in congress were saying they plan to resist his confirmation to the end. One of those is California Congressman Eric Swalwell, a member of the house who played no role in the specifically in the confirmation process. But two days ago he was calling for Democrats to resist the pick which he characterized as extremist. Immediately after the pick, he tweeted quote. America needs to know where their Judge Gorsuch will show more respect for women, Muslims and voters and the president nomination him. Congressman Swalwell joins us now from the studio. Congressman thanks a lot for joining us.

ERIC SWALWELL, CALIFORNIA CONGRESSMAN: Thanks for having me in the Studio, Tucker.

CARLSON: A little weird to call a guy extremist before you know who he is.

SWALWELL: Well it's a practice with Donald Trump's extremist views. Whether it is on women, whether it is on Muslims, whether it is on voting rights and so what Americans want to know right now is if this nominee is going to show more respect for women, more respect for Muslims and more respect for voting rights than the president nominated.

CARLSON: I mean, but it sounds like you think you know the answer already.

SWALWELL: No, I think this nominee deserves the hearing that Justice Garland never got, right?

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

CARLSON: That is fair, but you were saying -- I don't think it's a crazy point but what you are just saying the other day that you need to resist? Before you know anything about the guy, his background, his decisions that he has written, anything about him, just a generic guy, you resist.

SWALWELL: We need to resist President Trump's extreme views. And so right now, we need to know whether Justice Gorsuch, whether he believes that the government belongs in a woman's doctor's office when she is making a decision about her health care. Whether the government belongs in the patient's bedside, which is terminally ill, he has written a lot about opposing the right to die for terminally ill patients. People want to know.

CARLSON: He actually hasn't ruled on any abortion cases, but he did write in a book of ethics this. I just want to know if you agree with this or not and I am quoting and directly. All human beings are intrinsically valuable and the intentional picking of human life by private person is always wrong. Do you believe that?

SWALWELL: All human beings are intrinsically valuable. However (inaudible) said that a woman has the right to make a decision about her own healthcare.

CARLSON: Ok. Wait, I'm asking to assess what he said here. Not about Roby Wave, this is a general statement. You agree that all human beings are intrinsically valuable? And the second part is intentional taking of human life by private person is always wrong. Do you agree or not?

SWALWELL: Two of the most personal decisions a person can make, is a woman with her doctor about her own body, a person who is terminally ill about whether they want to die in peace. He has chosen that the government should intervene.

CARLSON: You didn't answer my question. The intentional taking of human life by private persons is always wrong. Now, if you cannot agree on that.

SWALWELL: The constitution says.

CARLSON: What do you think? I am not talking about women's right, I mean, the intentional taking of human life by private persons. That is what he said. And I just want to know if you agree with that statement or not?

SWALWELL: What he has shown in his legal career --

CARLSON: Are you really afraid to say the intentional taking of human life is wrong?

SWALWELL: No, of course not. You are prosecuted for intentionally taking life.

CARLSON: But you won't agree with this, because you are afraid of the abortion lobby. Come on.

SWALWELL: A woman has a right to make her own decision about her own health care.

CARLSON: Do think it is the taking of a human life, abortion?

SWALWELL: I think that right now in viability, before viability, woman should be able to make her own decision, after viability in the case of her own psychological health, in a case of rape, incest she should also be able --

CARLSON: Is that taking human life?

SWALWELL: That is a woman's personal decisions.

CARLSON: So, what do you think? I am not asking about the decision, I mean isn't human life or not? What do you think?

SWALWELL: She is terminating something that she does not want and that is her own choice.

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

CARLSON: Ok, but do you think it is human life?

SWALWELL: I think at viability, a baby should be decided by the woman. She is the one who has to have it.

CARLSON: You brought it up, that is why I am pressing you. But do you think before viability to take human life or something else?

SWALWELL: I think it is not viable yet Tucker, the courts should decide as the woman's decision.

CARLSON: You are not answering my question. Now will I ever I suspect, but you should, because it is a basic question, I think.

Ok. Here is what you wrote. I hate to do the gotcha. It's kind of my job. March 16th you wrote and I am quoting.

SWALWELL: 2016?

CARLSON: 2016. Yes, with serious national security issues before the president, nothing would come for our enemies more than to not confirm the Supreme Court nominee. #Doyourjob.

SWALWELL: Yes. Merrick Garland. He was the mainstream on me.

CARLSON: Right.

SWALWELL: He should have gotten at least a hearing, don't you think?

CARLSON: I actually kind of think so, yes. I kind of do think that. I am for hearings. But to think it I would comfort our enemies if the senate does not seek that?

SWALWELL: You should judge hearing too?

CARLSON: Yes. But do you think that it would comfort our enemies, if the senate does seat this judge. And we have an opening in the court.

SWALWELL: If the senate does not give a judge a hearing, yes. I think that to you would comfort enemies.

CARLSON: That is not what you wrote. You didn't say give them a hearing. You said nothing would comfort our enemies more than to not confirm him. And you feel away about this guy or just totally it is only situational? It is only Democrats.

SWALWELL: A mainstream judge and the jury are still out. Give me 160 characters.

CARLSON: What do you think our enemies think of this? I mean if Democrats gone and say, no, I am against him.

SWALWELL: I think Americans think that this president has the thinnest margin, one that is thinner than a skin than any president in recent history. He lost the popular vote, about 3 million votes, so he should at least get 68 votes in the senate. President Obama had 60 more electoral votes in his first term, won the popular vote and his first nominee. She has 68 votes in the senate. That is a good (inaudible).

CARLSON: I mean, I got what you are saying, it makes kind of sense but if you think about it, it doesn't, it kind of falls apart. President Clinton never got 50 percent of the popular vote. The majority of the country didn't vote for her.

SWALWELL: But he won it.

CARLSON: Trump won.

SWALWELL: he didn't win the popular vote.

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

CARLSON: But he won the election, and it is actually it's not, the election is not based on, you know (inaudible) it is a moral question. Clinton never got to 50 percent and there are people who said oh, he is not legitimate. I always thought that was so stupid. He won the election so why doesn't the same standard applied to Trump, because you don't like Trump, I guess, right?

SWALWELL: I think it's about mandates, I think if you don't overwhelmingly win back the popular vote, as President Obama did, he is still put a consensus candidate forward (inaudible).

CARLSON: So there are degrees of victories? I don't remember this on the manual, is there in a constitution like, you are the president, but you are really president if you win more? What is the standard?

SWALWELL: I think our country right now could use a consensus candidate. He deserves that hearing and we need that. Answer this question about what he feels about patients, how he feels about voting rights.

CARLSON: Do you really think, I mean let's be real, if someone is opposed to abortion, if someone believes the taking of human life, a lot of people do, if you think it is actually killing somebody, you are not for being legal, it doesn't make any sense, ok, rationally. That doesn't mean you are against women. A lot of people feel that way. I know a lot of women don't think abortion should be real, because they think it's murder. Are they against women? Let's be real.

SWALWELL: It is a personal view. A lot of my people at my church at home at Livermore California they hold an opposing view to me.

CARLSON: Are they against women?

SWALWELL: He is a judge, and if he can't follow the law and he wants to overturn a law that says a woman can make her own healthcare decisions that is a problem. He is going to have to answer.

CARLSON: What do you mean follow, we are turning all kinds of laws, ever since united, and you are overturning that.

SWALWELL: Through the constitutional process.

CARLSON: But what if this judge, the constitutional process was for overturning (inaudible). All of the sudden he is some kind of moral criminal?

SWALWELL: He is supposed to be not an activist judge but someone that follows the law. I hope he does.

CARLSON: If he was for overturning Citizens United, he would have been an activist judge before the people, right?

SWALWELL: He can hold his own personal opinion, but he has to carry out the president that is already been set. That said the woman right to choose should not be precedent.

CARLSON: I am just trying to be consistent here for fun. So you think it is wrong to try to overturn Roe v. Wade but it is totally ok to try to overturn Citizens United, why is that?

SWALWELL: If you go through the constitution process.

CARLSON: Ok. But on both sides, if you go through the constitutional process, it is ok to overturn Roe v. Wade to go to the constitutional process.

SWALWELL: They can try and they will fail, because the majority of people in this country don't believe in that.

CARLSON: That would be ok, right? I am trying, I'm trying so hard. I am not even a lawyer. That is funny. Ok. Last question, the so-called nuclear option on the filibuster and I think most people agree. It is good to have some.

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

SWALWELL: Unfortunate name.

CARLSON: Yes it is an unfortunate name, the filibuster is there for a reason, and it try to convince just more than your party to get on a big decision, like confirming Supreme Court Justice. So Democrats when they say, even before anyone has been nominated, we are against this and we are going to fight this no matter what. What they are really saying, the republican says we dare you to get rid of the filibuster. Do really want to go there? Is it worth it?

SWALWELL: I am not going to speak for the senators. I think he deserves a hearing. And if he cannot receive at least 68 votes or let say two-thirds, the Democrats are probably wrong.

CARLSON: You know what is going to happen. When people behave and an unreasonable way, you said Republicans were unreasonable with Merrick Garland, ok fine, I think that is, you know, they were. But continuing to be unreasonable and saying we think your nominee is an extremist or hates women or hates Muslims, even before we know his name, is in that kind of accelerating the cycle of stupidity and extremism that is really hurting us?

SWALWELL: I will give this nominee a chance. I want to learn more.

CARLSON: But you attacked him before you even knew he was.

SWALWELL: I attacked President Trump who has exercised nothing but extremism.

CARLSON: We have to resist this guy.

SWALWELL: No, we have to resist President Trump's extreme agenda. If this individual wants to interfere with woman's right to choose and overturn Roe V. Wade then that should be resisted.

CARLSON: Is there a law on the Democratic side that you have to stick to the talking points this closely?

SWALWELL: No.

CARLSON: Its abortion, I mean, what is wrong with that? It is about abortion. It is not about women rights. It is about the procedure and some people think it is immoral, and some people don't. So I just call it that.

SWALWELL: I would ask a woman. I don't think she views it as harshly as you do.

CARLSON: A lot of women do.

SWALWELL: Is a personal decision.

CARLSON: Can't we just call it what it is?

SWALWELL: We should call it the rule of law.

CARLSON: You said the other day that the President Trumps temporary ban, 188 ban, for visa holders from seven countries coming here was quote, immoral. How was it immoral?

SWALWELL: You know refugees helped our country is much as our country has helped refugees.

CARLSON: Really? Tell specifically how?

SWALWELL: Sure, my Chief of Staff is a refugee. He came over here from Vietnam on raft. He started as an intern, first his family goes to college.

CARLSON: One of the (inaudible) thinks your Governor Jerry Browne tried to keep them at California, in 1976. I was there. Here's the point, the United States has the right to determine who comes here, right? So it would be fair

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

and it certainly is within the context of American history for a president to say we have reasons for not wanting a lot of people to come to this country now. That is not an immoral thing to say, is it?

SWALWELL: But it is a religious test, because the only exceptions are for religious minorities. Of those seven countries, there no religious minority that is not --

CARLSON: I don't really understand a lot of arguments that I am hearing in the political sphere recently, but one of that is most confusing is this is outrageous, because he did not include Saudi Arabia, Egypt, and Jordan. Ok? On the other side, it is a Muslim ban. So the biggest Arab countries is Egypt, Saudi Arabia has a lot of Muslims in it. If he doesn't ban people up from those countries, how can it be a Muslim ban?

SWALWELL: The refugees are coming from the seven countries.

CARLSON: but sure, but he didn't ban anybody from Saudi Arabia which is the central country in Islam.

SWALWELL: I will focus on who we ban. And there are no Muslims who are minorities. So they would never be allowed to come over, under the one exception that he carved out. That is only benefiting people who are not Muslims. It's a ban on Muslims.

CARLSON: Is not a ban of Muslims, because Saudi's can still come. And Malaysian's (inaudible).

CARLSON: A cleaner and more accurate way to say is the citizens of that country. It's not a Muslim ban. They are banning people based on the fact that their Muslims, they are banning base on their country of origin.

SWALWELL: tucker we are less safe, because.

CARLSON: Wait, hold on. You are calling a Muslim ban. I just want you to see that is not really a fair thing to say.

SWALWELL: No it is a Muslim ban. We are less safe, because so many of our allies have taken on refugees. We need them to fight terrorism. If they do not see us as a team player, they are not going to cooperate. And this inspires the enemy, by the way. This feeds the myth and they will use this to recruit and that Americans hates Muslims and we don't.

CARLSON: I bet ISIS is going to be mad. They may want to start suicide bombings after this. Let me ask you this thought. How do you think, you mention other countries are allies, taking in refugees, how do you think the refugees taken into Germany have affected Germany? Did a good thing for Germany?

SWALWELL: look, we have intensive vetting here.

CARLSON: No, but I just want to know, ok, what about France?

SWALWELL: Let's talk about Jordan. Jordan has been a relatively safe place. They have taken in millions of refugees, a meeting with the king tomorrow. They are in an upward glide.

CARLSON: Jordan has to explode, because their refugee is a safe place.

SWALWELL: It is refugees are overwhelming.

CARLSON: Are you really arguing that Jordan is better because of refugees?

SWALWELL: No I am arguing that Jordan is better because of its king leadership, but he depend on United States to be a faithful partner in that.

CARLSON: Yes. We should help Jordan, I agree. Absolutely it is important.

SWALWELL: If we are saying no refugees, just go to Jordan, why would Jordan want --

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

CARLSON: I am asking you a more relevant question is Jordan has been destabilized for refugees. They have been in disaster for Germany. They have been in disaster for France. They have been in disaster for Holland. They have been in disaster for Scandinavia, specifically Sweden. If they have been a disaster for all these other countries, why do we want that?

SWALWELL: Because we all have a part to play. We should vet them.

(CROSSTALK)

CARLSON: Why would we want to do it?

SWALWELL: I think our vetting so far has been pretty good.

CARLSON: Why would you want it? I want you to burn your hand, I got medical care. I don't want to burn my hand. I am not going to put hand on the stove.

SWALWELL: I think screen refugee, we should open up our country to them just us other have, because if we don't, it is a very selfish thing and alienates us from the people and the countries that we need to fight terrorism with.

CARLSON: But those countries.

SWALWELL: Short sided.

CARLSON: Sort sided? For 50 years they've taken in refugees in those countries and it has hurt those countries. Why would we not want a piece of that? You look at Germany and you say I want that? Sweden, great job, I want a little of that here. Do you really think that?

SWALWELL: Again I would argue our screening process is the tightest of anyone that I have looked at. I think we can take more as long as we're screening them correctly. And it would help our allies in this fight. Right now, they are looking at us and saying the United States, they are not really in it for anyone but themselves. And that is going to make us less (inaudible).

CARLSON: I just want to make sure they respect us, Congressman, great to see you.

SWALWELL: You too. Thanks for having me on.

CARLSON: As we said yesterday, President Trump fired acting Attorney General Sally Yates, for refusing to defend his immigration order, her replacement Dana Boente says he will. Meanwhile the American remains in meltdown, moment lawsuits appearing all over the country, Jose Antonio Vargas is a journalist, the founder of a pro-illegal immigrant organization, he himself also an illegal immigrant, brought over from the Philippines at the age of 12, he is a critic on Trump's immigration orders and he joins us now from Mountain View in California. Great to see you tonight, thank you for coming on.

JOSE ANTONIO VARGAS, FOUNDER AND CEO DEFINE AMERICA: Thank you for having me. Actually I am a (inaudible) which is where I grew up. This is where I came from the Philippines when I was 12.

CARLSON: In Mountain View? Very nice town, good for you, good choice of town so, you came over at 12, I was thinking about that, what would happen if I showed up in the Philippines as a noncitizen, there illegally and started saying hey, Philippines, I hate your immigration policy and by the way, I think you are racist for not liking me. And I think maybe I will file some lawsuits and be quiet and accept my illegal presence. How would they response to me do you think?

VARGAS: First of all, I was 12 so I'm not sure I would be asking those questions, the decision was made for me. When it was really interesting as you probably know is the relationship between the Philippines and the United States -- the Philippines was a protectorate of the United States with Puerto Rico. That is why theirs is more than 4

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes on Protester Outside Supreme Court

million Filipinos in the United States. We are the second largest Asia- American group in this country. It is an interesting relationship.

CARLSON: It is and a very old one and a very noble one also.

VARGAS: I have to say by the way, as a 12-year-old, I'm not sure I would ask those questions. It wasn't not on my own decision to come here.

CARLSON: Of course it wasn't, but you are not 12 now. You are saying the United States does not have a right to say you are not allowed to be here.

VARGAS: The country has a right to define and defend its borders. Any country has a right to do that. At the same time, we have the right to ask harder questions of ourselves about, why are people even coming here? Tucker, do you think I came to this country so you could beat me up and call me illegal criminal on national television?

CARLSON: I could hardly beat you up.

VARGAS: But when you called me illegal, when you call people criminals, words matter here.

CARLSON: I believe that.

VARGAS: How do you legalize people you called illegal? You don't, you call them illegal. End of conversation.

CARLSON: Is not the end of the conversation. By the way, I mean, look, you are arguing something that contradicts itself. You are saying a country has a right to have laws about who can be here and who cannot but you are simultaneously arguing people that are illegal here should not be referred to as being here illegally or illegal.

VARGAS: Being here illegally, being here without documentation and authorization is a civil offense, and not criminal.

CARLSON: Ok, whatever it is against the law. What's your point?

VARGAS: Tucker almost half of the people here illegally, actually came legally and overstayed their visa, right?

CARLSON: Ok...

VARGAS: We didn't cross the Mexican border. These are facts, Tucker. The problem is you don't actually operate in facts.

CARLSON: I am not contesting -- no name-calling here.

VARGAS: I'm not calling you names. I operate in facts. There is a difference between the two.

CARLSON: Yes. I could tell. Stop that. My question to you, what does that have to do with anything? You're not answering my question is, which is if a country has a right to determine who is here and under what circumstances, what are you arguing about? What is the argument if you are here illegally, what am I missing?

VARGAS: Why am I here? Why do people come here? What are the root causes of my migration? What does the foreign policy have to do with migration patterns? These are the harder questions.

CARLSON: I get your argument. This is the new argument. America has no moral standing to say people can't come here because we have done so many bad things that we deserve illegal immigration.

VARGAS: I'm not going to fall into this hole. We must be fully aware of our own history. I got that statement from the African union was really interesting. Slaves have to build America but we can't accept refugees?

CARLSON: You claim to be of journalist, maybe you can explain -- since you are in the explaining business --

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

(CROSSTALK)

VARGAS: I actually won part of a Pulitzer so I actually am a journalist.

CARLSON: Tell me why, because the United States had slavery, a grave sin. It doesn't have the right to say no to refugees? Unpack that.

VARGAS: I absolutely agree with you that a country has a right to define and defend its borders. Why are people here? That was forced migration of people.

CARLSON: What is your point? I don't understand. That is bad we had slavery, I agree, that is bad.

VARGAS: Tucker you are confused because you don't deal with context. If you're confused because I don't think you even realize the whole history of this country.

CARLSON: I know something about it. Tell me why it is significant. What are you saying I guess is the point? I want to hear a rational argument from you.

VARGAS: There are reasons why people are coming here. Yes, the country has a right to defined and defend its borders but we need to ask the harder questions. Why are they even coming here, Tucker?

(CROSSTALK)

CARLSON: What does that mean? We don't have a right to tell them not to come?

VARGAS: Tucker, here's one answer. You put a sign up that says keep out, in 10 yards, what you say? Job wanted. It is addicted to cheap labor, always has been. While you try to criminalize these people, what do you do to all these American employers who are addicted to cheap labor?

CARLSON: You're absolutely right about that. But there are American citizens that are not benefiting by that. But because employers -- we have to have it?

VARGAS: You are talking to an undocumented employer who hires people.

(CROSSTALK)

CARLSON: We are out of time. You are definitely bragging.

VARGAS: I am stating the facts.

CARLSON: Facts, fact bomb. Thanks Jose. Up ahead, we continue our live coverage of Trumps Supreme Court pick. Neil **Gorsuch**, is he the right pick? His former Harvard classmate joins us next.

CARLSON: Most of the country is just meeting Judge Neil **Gorsuch** for the first time tonight. What is he likely next Supreme Court Justice likes as a person and for that we go to someone who has known him for a long time, at least 25 years? Norman Eisen is a former U.S. Ambassador to the Czech Republic and served as President Obama's ethics czar, in his first term as a lawyer and was **Gorsuch**'s classmate at Harvard Law School class of 1991. In fact they both graduated alongside President Obama. And he joins us now. Ambassador that was an amazing class you had at Harvard. What was he like?

NORMAN EISEN, FRIEND OF JUDGE NEIL **GORSUCH**: Tucker, thanks for having me, he is very much like what you saw tonight from the White House. Intelligent, well-spoken, kind, dignified, he is a terrific guy.

CARLSON: Did you know he went to school, I mean there is 500 people in the class, all impressive, did he stand out as someone especially impressive?

Trump Nominates Neil Gorsuch to Supreme Court; Protesters Gather Outside Supreme Court; Tucker Takes
on Protester Outside Supreme Court

EISEN: He was one of a group of conservatives, even then, that was a time at Harvard Law School of strong partisan sentiment in the legal ideology. It kind of foreshadowed the situation in the beltway today, Tucker. He was one of those conservatives. I got along well with all of them. There were some who like me were a little louder in their views, mine liberal. We debate. It's soft-spoken, very penetrating questions, smart and listened to the answers. That was very, very impressive.

CARLSON: I know that former President Obama was involved in politics or at least in debating legal ideology at Harvard Law School. Did they ever interact?

EISEN: You are testing my memory now. The three of us must have been in classes together at some point, but I don't remember any specific interaction.

CARLSON: So as a liberal who has been in and around politics his whole life, when you look at this, does he seem like this nomination -- does Gorsuch seem like someone out of the mainstream to you?

EISEN: Tucker, he doesn't seem out of the conservative mainstream. He is in that Kennedy mold, he clerk for Kennedy. The trends have swung a little to the right, so he somewhat to the right of that, but within the conservative mainstream, normally this would be a slam dunk nomination as his previous confirmation was to the circuit, but the overhang of Garland which has left many of us better, myself included, Merrick Garland no less intelligent, no less descent, no less deserving of a seat on that court. And the resistance to Garland will create some storm clouds for Judge Gorsuch.

CARLSON: I believe that, both kinds of victims of this at the moment, I think.

EISEN: In both cases.

CARLSON: Ambassador it is great to see you.

EISEN: Thanks Tucker.

CARLSON: We will be covering this tomorrow night. We will see you then at 9:00, "Hannity" up next. Have a great night.

SEAN HANNITY, FOX NEWS HOST: And thanks, Tucker.

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