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## **ALL IN for January 31, 2017**

MSNBC ALL IN with CHRIS HAYES 8:00 PM EST

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**Highlight:** President Donald Trump is going to perform one of the most solemn constitutional duties assigned to the President of the United States, nominating a Justice of the Supreme Court; President Trump has nominated Neil **Gorsuch** from Colorado to be the Supreme Court Justice

## **Body**

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CHRIS MATTHEWS, MSNBC HARDBALL HOST: Thank you, Gene Robins (ph), and well-said and understated, Ed Brookover. That's HARDBALL for now. Thanks for being with us. Big news right now. Stay with us, Donald Trump is about to announce the appointment of the Supreme Court Associate Justice, and Chris Hayes picks our coverage up right now.

CHRIS HAYES, MSNBC ALL IN HOST: Good evening from New York, I'm Chris Hayes. And minutes from now, Donald Trump will perform one of the most solemn constitutional duties assigned to the President of the United States nominating a Justice to the U.S. Supreme Court. Now, borrowing from his previous career as a reality T.V. host, the President has narrowed the list of candidates down to two finalists. Both were allegedly summoned to the White House today to ensure maximum secrecy, although we're now learning that both men did not go to Washington tonight. It will be the second time a President has nominated someone to fill this particular seat on the court after the sudden death of Justice Antonin Scalia exactly 352 days ago.

Senate republicans vowed to block anyone President Barack Obama chose to succeed him back then, and that's exactly what they did, refusing to hold a single confirmation hearing for President Obama's Supreme Court nominee Judge Merrick Garland. It worked, and now, there's a republican in the White House. Joining me now from the east room of the White House where President Trump will announce his choice momentarily, NBC NEWS National Correspondent Peter Alexander. And Peter, give me a sense of what it's like in there.

PETER ALEXANDER, NBC NEWS NATIONAL CORRESPONDENT: Chris, we just got the two-minute warning about a moment ago, the teleprompter is set. It says remarks for SCOTUS were prepared for them to scroll up and make this big reveal. This room is filled with republicans right now, the leadership is here. Also, Donald Trump's inner circle, Steve Bannon, Reince Priebus, Kellyanne Conway, all in this room. And in addition, what's notable is his two adult sons Don, Jr., and Eric Trump are also in this room. This is an announcement that has been - that has been heavily filled with suspense. Remember when the announcement of the Vice-Presidential pick back in the day

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came out? We found out on Thursday who it would be, but it got delayed to Friday, to Saturday, until it was announced. They've been much more disciplined this time around.

HAYES: All right, and we will now listen to the President of the United States introduce his first Supreme Court pick to fill the seat of Antonin Scalia. This is the second individual who will be nominated for that seat. The first, Merrick Garland, who never got a hearing. Let's take a listen to the President.

DONALD TRUMP, PRESIDENT OF THE UNITED STATES OF AMERICA: Thank you. Thank you very much. Thank you. Thank you very much, ladies and gentlemen. 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 promised to select someone who respects our laws and is representative of our constitution, and who loves our constitution, and someone who will interpret them as written.

This may be the most transparent judicial selection process in history. Months ago as a candidate, I publicly presented a list of brilliant and accomplished people to the American electorate, and pledged to make my choice from among that list. Millions of voters said this was the single most important issue to them when they voted for me for President. 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.

Today - thank you. Today, I'm 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 and I would like to ask Judge Gorsuch and his wonderful wife Louise to please step forward. Please, Louise, Judge. Here they come. Here they come. So was that a surprise? Was it? I have always felt that after the defense of our nation the most important decision a President of the United States can make is the appointment of a Supreme Court Justice. Depending on their age, a Justice can be active for 50 years and his or her decisions can last a century or more and can often be permanent.

I took the task of this nomination very seriously. I have selected an individual whose qualities define really, and I mean, closely define what we're looking for. Judge Gorsuch has outstanding legal skills, a brilliant mind, tremendous discipline and has earned bipartisan support. When he was nominated to the Tenth Circuit Court of Appeals, he was confirmed unanimously. Also - that's unanimous. Can you believe that nowadays with what's going on? Does that happen anymore? Does it happen? I think it's going to happen maybe again.

Also with us tonight is Maureen Scalia, a woman loved by her husband and deeply respected by all. I am so happy she is with us. Where is Maureen? Please stand up. Thank you, Maureen. Thank you, Maureen. She is really the ultimate representative of the late great Justice Antonin Scalia, whose image and genius was in my mind throughout the decision-making process. Not only are we looking at the writings of the nominee and I studied them closely, but he is said to be among the finest and most brilliant often times the writings of any judge for a long, long time and his academic credential, something very important to me and that education has always been a priority are as good as I have ever seen. He received his undergraduate degree from Columbia with honors. He then received his law degree from Harvard, also with honors, where he was a Truman scholar.

After Harvard he received his doctorate at Oxford where he attended as a Marshall scholar, one of the top academic honors anywhere in the world. After law school, he clerked on the Supreme Court for both Justices Byron White and Anthony Kennedy. It is an extraordinary resume, as good as it gets. Judge Gorsuch was born and raised in Colorado and was taught the value of independence, hard work, and public service. While in law school, he demonstrated a commitment to helping the less fortunate. He worked in both Harvard prison legal assistance projects and Harvard defenders program. Brilliance being assured, I studied every aspect of his life, he could have had any job at any law firm for any amount of money, but what he wanted to do with his career was to be a judge, to write decisions and to make an impact by upholding our laws and our constitution.

The qualifications of Judge Gorsuch are beyond dispute. He's the man of our country and a man who our country really needs and needs badly to ensure the rule of law and the rule of justice. I would like to thank senate leadership. I only hope that both democrats and republicans can come together for once for the good of the country.

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Congratulations to you and your family. May God bless you, may God bless our glorious nation. Judge Gorsuch, the podium, sir, is yours.

NEIL GORSUCH, SUPREME COURT JUSTICE NOMINEE: Thank you. Mr. President, thank you very much. Mr. President, Mr. Vice President, you and your team have shown me great courtesy in this process. And you've entrusted me with the most solemn assignment. Standing here in a house of history and acutely aware of my own imperfections, I pledge that if I'm confirmed, I would do all my powers permit to be a faithful servant of the constitution and laws of this great country.

For the last decade, I've worked as a federal judge in a court that spans six western states. Serving about 20 percent of the continental United States and about 18 million people. The men and women I've worked with at every level in our circuit are an inspiration to me. I've watched them fearlessly tending to the rule of law, enforcing the promises of our constitution and living out daily their judicial oaths to administer justice equally to rich and poor alike. Following the law as they find it, and without respect to their personal political beliefs, I think of them tonight.

Of course, the Supreme Court's work is vital not just to a region of the country but to the whole. Vital to the protection of people's liberties under law and the continuity of our constitution, the greatest charter of human liberty the world has ever known. The towering judges that have served in this particular seat of the Supreme Court, including Antonin Scalia and Robert Jackson are much in my mind at this moment. Justice Scalia was a lion of the law. Agree or disagree with him, all of his colleagues on the bench cherished his wisdom and his humor, and like them, I miss him. I began my legal career working for Byron White, the last Coloradan to serve on the Supreme Court, and the only justice to lead the NFL in rushing. He was one of the smartest and most courageous men I've ever known.

When Justice White retired he gave me the chance to work for Justice Kennedy as well. Justice Kennedy was incredibly welcoming and gracious. And like Justice White, he taught me so much. I am forever grateful. And if you've ever met Judge David Sentelle, you'll know just how lucky I was to land a clerkship with him right out of school. Thank you. These judges brought me up in the law. Truly, I would not be here without them. Today is as much their day as it is mine. In the balance of my professional life, I've had the privilege of working as a practicing lawyer and teacher. I've enjoyed wonderful colleagues whose support means so much to me at this moment, as it has year in and year out. Practicing in the trial work trenches of the law, I saw, too, that when we judges down our robes, it doesn't make us any smarter, but it does serve as a reminder of what's expected of us; Impartiality and independence, collegiality and courage.

As this process now moves to the senate, I look forward with speaking with members from both sides of the aisle to answering their questions and hearing their concerns. I consider the United States senate the greatest deliberative body in the world, and I respect the important role the constitution affords in the confirmation of our judges. I respect, too, 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. I am so thankful tonight for my family, my friends, and my faith. These are the things that keep me grounded at life's peaks and that sustain me in its valleys. To Louise, my incredible wife and companion of 20 years, my cherished daughters who are watching on T.V. and all my family and friends, I cannot thank you enough for your love and for your prayers. I could not attempt this without you. Mr. President, I am honored and I am humbled. Thank you very much.

HAYES: All right, that is the east room of the White house where President Trump has just announced his nominee for the vacancy on the Supreme Court left by the death of Antonin Scalia nearly a year ago. Judge Neil Gorsuch of the Tenth Circuit, he's an appellate judge, he's young, he's 49 years old. And here to talk a bit more about the selection, I'm joined by now by MSNBC Chief Legal Correspondent Ari Melber, my friend and colleague, host of "HARDBALL" Chris Matthews.

And Ari, let me start with you for a bit of a rundown. This is someone who, you know, been sort of dividing things that Trump has done in the first ten days into - only Trump and you could have seen something like this from

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President Rubio or Cruz. Which category - seems to me Gorsuch isn't that latter category. This is someone who in any republican administration probably would have been near the top of the list.

ARI MELBER, MSNBC CHIEF LEGAL CORRESPONDENT: I think that's right. That is true both on substance and on style. There's a saying in legal circles "don't believe the hype" and there was a ton of hype in the run up to this event. Don't believe it. I think what we just witnessed was a very traditional rollout of a Supreme Court name. The President's remarks were brief, especially for this President. The judge's remarks were brief and elegant and broad but we didn't learn anything, you're not supposed to.

As for who is Judge Gorsuch, this is someone who is on the right of center in conservative legal thought but is also seen as an intellectual and a thinker. He's pro-gun rights, he is pro-religious freedom, to the point of being very skeptical of ObamaCare and its treatment of both religious adherence and also religious companies.

HAYES: He was - he was on - he wrote a concurring opinion in the Hobby Lobby Case when it came through his circuit, which is one of the more - one of the more controversial cases he has been around. He has not been around as many as perhaps other judges that were being considered.

MELBER: Right, which is what makes him so attractive to conservatives in addition to his young age. You are looking at a sterling conservative jurist who could at 49 be on the court for 30, 35 years. Think about that. But in Hobby Lobby he became very animated in that and the little sisters of the poor case basically writing very dramatically, judges say they only deal with the facts in front of them but when you read their opinions you can usually tell what they care more about. And I would say that his legal reasoning in that case was elegant, strong, and well-supported but his animating principle was not about the people who didn't have health care or trying to get it or people who can't afford it, a lot of the problems we talk about in the health care debate. He was saying he was very worried the government was going to make people, who are very religious about contraception, break their own rules and that would be wrong.

A couple other highlights, you know, he's been very pro-police in cases alleging police brutality. That's not unusual among judges in either party, according to appointments, but it's notable in a time when we've talked about a lot about policing in the last year. He is pro rights in the context of unreasonable searches. He has been skeptical of some executive power. I know you know a lot about Chevron deference. It's a term most of the people don't know but we're going to hear a lot about because in the coming months, he is basically said, he's concerned the government has too much power at the agency level. You think about a week where we've talked about how does DHS use their abuse authority? He's actually been skeptical of that. But the headline, Scalia, he's given tribute to him. He says the Scalia way is the correct way.

HAYES: All right, Ari Melber, thank you for that. Still with me is Chris Matthews. And Chris, you know, this to me is - this is - this all seems very transactional to me in this sense. It always seemed to me that it was very clear almost - the President talked about transparent. It was a transparent kind of bargain in which Donald Trump has said at least, and look, I don't really feel strongly or invested in this area. I know you guys - meaning the institutional Republican Party - really care. So just basically give me some names and I'll give you what you want and basically that's what we saw tonight.

MATTHEWS: Well, that's true. I think of the social issues position. I mean, he's - no one really believes that deep down Donald Trump is pro-life in terms of the law, in terms of banning abortion, for example, but I did think that a lot of it has been channeling Scalia. I thought that Judge Gorsuch sounded like Scalia talking about I like the law, I don't like to have the kind of decision reinterpreted like we did with the - with the - in the case of Kansas - the first case back in '54 and all the other cases since about public school have prayer and abortion rights and the Lawrence case, a lot of those are landmark cases that involve looking and finding something in the constitution in terms of our rights that wasn't seen before, it was inherent but it was there.

I think this is going to come down, Chris, to a sad denouement. I think it's going to take 60 votes to get this approved and I think the republicans will have their rank-and-file 52 votes will be there. But I don't think the democrats are going to give them a single vote which means this will go to a filibuster and then - and I hate to cut to

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the chase but I will - it's going to be up to Mitch McConnell. He's going to have to choose between something he deeply believes in. He really believes in as an Institutionalism in the senate.

The need to make the senate different than the house, to have a filibuster requirement of 60 votes that keeps it from being too extreme in either direction, requiring cabinet members for example. Everybody has to go through the 60-vote requirement, that threshold. He's not going to give that away easily. Trump says he will but I don't think Mitch McConnell will, so in the end it's going to be Mitch McConnell making a decision.

Do I give up the filibuster rule which requires 60 votes to get something through? If that means giving up something I believe in, though it's just for Trump to get his first nominee through. I don't think he'll do it. I think Mitch McConnell will hold fast and say it's going to be 60 votes. This fellow is probably a good guy, very much like Antonin Scalia, a good person, whatever you think of him politically and ideologically. And I don't think it's going to get through because I don't think - I don't think they'll going to get 60 votes because I don't think they'll get a single democratic vote, Chris. Not a one.

HAYES: Yes. I --

MATTHEWS: Because this country is so polarized now. And you know it as well as I do. Look at the DeVos nomination for education secretary. You can just see united party fronts on this kind of vote, these ideological votes.

HAYES: I think that's a - that's a - that's a great point. I basically think that the tenor of things. The New York Times, too ran a piece today with some sort of behind-the-scenes questioning of democrats about whether they were going to apply the filibuster or not. But I think you're right and I think particularly once interest groups and grass-roots organizers begin to mobilize. I mean, right now, there are - as we're speaking there's a few hundred possibly a thousand people outside Chuck Schumer's home in Brooklyn --

MATTHEWS: Yes, exactly.

HAYES: -- with bullhorns and signs basically saying "Do not give anyone, no matter who, a single vote." That is the demand that's being made upon democratic politicians right now.

MATTHEWS: And you can hear their choices changing sometimes overnight. Schumer will go, we know he's a deal maker, you know he's a governing party democrat. He's not a protester, he's a guy who believes in government and getting deals through and passing legislation and that always requires tradeoff. And yet you sense him every once in a while signaling to the progressive wing of the party, the more left of the party which is very active now and agitated that I'm warning you, I want to obey your thinking here.

HAYES: Right.

MATTHEWS: It is a very difficult time for the opposition but I think you're right, the progressive side has got the upper hand right now and they're basically warning moderates like Joe Manchin and people like that and Heitkamp, be careful because we want to be a strong opposition here.

HAYES: Right. It's a great point and we should - we should note that the filibuster Harry Reid basically has gotten rid of the filibuster for cabinet nominees and also for lower court judges but preserved it, crucially to your point, which I think is key here to understand just how monumental it will be. Even though he got rid of the filibuster threshold for those other nominees, it was preserved for the Supreme Court. And so if Mitch McConnell were to be the one to sort of strike that, that would be the kind of last straw. It would be hard to imagine any filibuster after that is going to last very long.

MATTHEWS: Right. We still have the filibuster for legislation except for reconciliation. But by the way, the key thing here is the guy is 49, and **Gorsuch**, again, he's probably a good guy like Scalia was. I really liked the company of Scalia. He's a very family minded good guy and his - and his way of looking at life generally if it's not the court. But for 49, that means he will be on the court for 30 years, that mean the life of anybody in politics today, their political career, they will have to answer for this guy.

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Can you imagine, a democrat, I don't care if you're from Alaska or you're from North Dakota, wherever you're from, you're going to have to answer for almost a true lifetime multigenerational career on the court. Every ruling this guy Gorsuch makes is a decisive vote in, in any way influences your belief about citizens united, about abortion rights, about gay equal marriage, equality of marriage, anyone of these issues to care about. Gun rights, every time he votes the wrong way it going to be on you. So I'm just - I'm not encouraging these guys to think left and think future but they are damn well going to do it.

HAYES: That's right.

MATTHEWS: They're thinking about their own futures and you don't want to have on your belt a notch that says "I voted for Gorsuch, I'm proud of it." That's not going to be. So I think it's 52 votes maximum. We're going to have a real fight here. A real fight over that 60-vote threshold.

HAYES: All right, Chris Matthews, thank you for sticking around. I appreciate it. I'm going to go now to Hallie Jackson who has with her, I believe Senator Lindsey Graham. Hallie.

HALLIE JACKSON, NBC NEWS WHITE HOUSE CORRESPONDENT: He's threatening to do a joint interview if we don't get to him now. So here we go. Senator, talk to me a little bit. Thank you for joining us here. You just watched obviously Judge Neil Gorsuch be revealed in sort of classic Donald -

LINDSEY GRAHAM, UNITED STATES SENATOR FROM SOUTH CAROLINA: Yes, dramatic fashion.

JACKSON: Did you think it was suspenseful and dramatic.

GRAHAM: Yes, pretty much though. It's hard to keep things secret but a great choice. I don't think anybody can argue with the guy's qualifications.

JACKSON: Tell me about your - so you think obviously he's qualified. But what happens next given the battle that he surely faces in the senate?

GRAHAM: Well, he's going to get confirmed, it's just a matter of when and how. To my democratic friends I voted for Sotomayor and Kagan, because I thought they were qualified. This whole thing about Merrick Garland, I don't buy it. If I thought it was unfair I would have done something different. In the last year of the Presidency, the nominating process was already afoot so we all said wait to the next President. Most people thought it was going to be Clinton including me and I didn't vote for Trump but he deserves this pick and he's going to get confirmed. He'd be a great justice.

JACKSON: Do you support a nuclear option if it were to come to that in the senate?

GRAHAM: It would be sad to me if we have to go that route with a man like this but he's going to get confirmed. You know I've took a lot of crap voting for Obama's judges. I thought they were qualified. I've tried to be fair to everybody as the best I know how to be. I didn't think Garland should have been picked in the last year of Obama's term after we'd started the primary process, so if that's the argument it's very unpersuasive. This President won, he deserves the right to pick qualified people and this is one of the most qualified people I've ever met so time will tell.

JACKSON: And did you know - and forgive me for not knowing this prior to this Senator Graham, since we just sort of found out at the same time. Did you have you had a relationship with Neil Gorsuch prior to today?

GRAHAM: Yes, I'm mucho happy about this pick.

JACKSON: And were you notified about it? Were you in the loop before today?

GRAHAM: No, I found out about 45 minutes before it happened but Neil worked in the Department of Justice and we worked on detainee issues in the Bush administration and he was a real fair broker on the detainee treatment act when we were trying to outlaw waterboarding, and this guy is a very reasoned person. He was a good steady

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hand during an emotional time so I actually know him. I've seen him in action and I think he's got the perfect disposition and I don't say anybody could say he's not qualified.

JACKSON: And apologies for folks walking in front of the camera here while we're doing this after you. Of course, before I let you go Senator, I've got to ask you about the other sort of big story that is happening, which is obviously last night the firing of acting Attorney General Sally Yates. There are some questions given other things that have happened in the administration over the last 24 hours about how President Trump tolerates dissent and differing opinions in his administration. Is that troubling to you?

GRAHAM: Well, I don't fault him for asking her to leave if she couldn't do her job. She was going to leave anyway. She was an Obama pick, so at the end of the day my problem with the executive order is it's too broad. So I've been a big critic of the executive order but he has the right to have people in his administration that he picks. She wasn't picked by him.

JACKSON: He's been critical of you in the past. Does he take your advice now?

GRAHAM: I don't know, but they're learning the ropes. I got a call about an executive order on cyber security. I'm here tonight. I really want to help this President but I'm not afraid to say I disagree. If I have any charm, it's being me. And the executive order, I support the idea of a time out in these seven countries but the way they did it, they took people who already had a visa, green card holders and basically turned their life upside down. That's not right and it's going to get fixed.

JACKSON: Senator Lindsey Graham, thank you so much for joining us live amidst the sort of hustle and bustle of the east room here in the White House. Guys, back to you.

HAYES: Thank you, Hallie. All right, joining me now, Congressman Mo Brooks, republican from Alabama. And Congressman, you're an individual who is - who is - who describe yourself as pro-life and the President did something that a lot of - a lot of candidate haven't done before which the President announced multiple times a litmus test for this justice, that they would be an opponent of abortion, they would be pro-life. He said it about five or six times. Sir, are you confident that this nominee meets that litmus test?

MO BROOKS, UNITED STATES CONGRESSMAN FROM ALABAMA: Well, first, my preference initially was Bill Pryor from state of Alabama but not getting Bill Pryor, I'm very happy with Judge Gorsuch. Everything I've read about him is that he's highly qualified make an excellent individual. With respect to the abortion issue, I want a judge on the Supreme Court who is going to read the constitution and apply the constitution and not try to create law that is not in the constitution and I think that's where the pro-life issue comes into play because if you properly read the constitution then you naturally fall down on the pro-life side of that particular issue and I believe Judge Gorsuch is right there where he should be.

HAYES: Respectfully, Congressman, I do think that everyone thinks that if you properly read the constitution you come to their conclusion.

BROOKS: What am I supposed to respond to that in some fashion? I mean, that's a truism.

HAYES: Well, I mean I just, the point being that - the point being that this promise here was explicit, right. I mean, the promise was made on the campaign trail, was made explicitly by the President and folks like yourself and I think there are people obviously in the - in the - in the pro-life movement who are nervous, right. They were nervous about Souter. They're frustrated about what happened to David Souter. There's always this worry that you're going to get someone who's going to be the person that gives you the vote on overturning (INAUDIBLE) and then it slips out of your hands. And my sense is that the President and people around have done everything in their power to communicate to folks like yourself, who care deeply about this issue that that won't be the case this time.

BROOKS: Well, let's be clear. I want someone who read the constitution and apply it as is written looking at the original intent of the founders of this country or over the centuries the people who wrote the amendments to the constitution. Similarly, I want a judge, now a justice, who will look at the law as it was written, look at the



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congressional testimony to help interpret the law and apply it as it was intended. And if a law needs to be changed, then it ought to be done through the republic way of doing things, and that's through congress, the lawmaker. The judges and the Supreme Court, they are supposed to be the applicators of the law with the executive branch being the administrators of the law, so we can agree or disagree on the abortion issue. I am pro-life and I believe that those justices who are pro-life reason well, but ultimately it comes down to who was elected president of the United States and who has the right to nominate people. And in this particular instance under the constitution you have Donald Trump who is now the president of the United States and he is keeping a campaign promise. And I'm very proud of him for having done so.

HAYES: All right, Congressman Mo Brooks, appreciate your time tonight, sir.

BROOKS: Thank you, Chris.

HAYES: All right, joining me now is Danielle Gray. Danielle Gray is someone who knows a thing or two about this whole process. She is former senior adviser to Barack Obama. She worked on judicial nominations when the president, the former president nominated Elena Kagan, Sonya Sotomayor to the Supreme Court. And you also, I want to start here, you also clerked for Merrick Garland.

What -- do you think he's watching this right now? And what is this like for him?

DANIELLE GRAY, FRM. SENIOR ADVISER TO BARACK OBAMA: I hope he is not watching it. This is -- in some sense what we saw tonight is very traditional, you know, an East Room announcement of a Supreme Court Justice. The president's supporters in the crowd cheering.

But I think it's important to remember that what happened here is not normal or usual at all. And the vacancy that Judge Gorsuch is being nominated to fill arose in February of last year. So we're talking about over a year ago. We're talking about a process where you had an indisputably qualified nominee wait over 300 days, not receive the decency of courtesy visits from everyone, not receive the hearing that is ordinarily afforded to nominees and so in many ways tonight it looks very similar to what we've seen in past announcements but this is not a formal situation.

HAYES: Well, I think there's a relationship between that and this nomination, obviously a direct one, but I think also in the calculation of all this, right? So, there's some similarities between Merrick Garland and Gorsuch in this respect: they're the kinds of people that get nominated to be on the Supreme Court. When people say they're qualified, these are individuals with sterling academic credentials. They have the best clerkships. They are -- their legal reasoning and writing is admired across the aisle. I think that's fair to characterization for Gorsuch and for Garland.

GRAY: Absolutely.

HAYES: And at a certain point that didn't matter with Garland. The calculation was made that Republicans essentially invented an eighth-year rule to block it and it seems to present a precedent for Democrats to basically use that as OK, this is -- basically all bets are off.

GRAY: Yeah, listen I think that the -- Judge Gorsuch certainly that has traditional markers of a Supreme Court nominee -- the ivy league education. I think a lot of people thought that the president would look for someone who maybe went to a state law school or some school that was outside of the Ivy League. The fancy clerkships. The corporate law firm partnership. I mean, in many ways he resembles Chief Justice Roberts. He resembles Chief Judge Garland, but I think a lot of what this process is really going to be about is sort of moving beyond some of those superficial markers of credentials and really taking a hard look and with this particular nominee there are things to look at.

He's been a judge for over a decade. He's written a range of opinions. You mentioned some of his opinions on women's health that will receive some scrutiny. He's written a book about physician-assisted suicide and I think people will probably read that closely to see if they can gather what he thinks about issues like a woman's right to choose.

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But most notably the thing that keeps coming up when people are talking about him is that he is in the mold of Justice Scalia, and that is because he has written. He's given a number of speeches where he's talked about his approach to the constitution, how he goes about interpreting it. And I think that is going to be something people take a close look at.

HAYES: You made one point I want to just return to this, which is this is a president who in his first 11 days has conducted himself quite differently than past presidents have. There's been this kind of total upending of things. Total disruption. Not using the interagency process. Putting his political adviser on the National Security Council, issuing the succession of executive orders, doing things in new ways that have reverberated.

Everything about this was done in the most traditional way. It was almost as if it was outsourced to the establishment in terms of the person who ran against that establishment to basically be like I know this is a big thing for you guys on the establishment, go get an establishment pick and I'll put him on the court.

GRAY: Well, you know, I the president, he said tonight, he made no -- had no reservations about advertising that fact tonight. It was unprecedented what he did during the campaign in terms of saying I'm going to develop a list. I'm going to work with the Federalist Society and the Heritage Foundation. I'm going to publicize it. And I'm going to let you hold me to account for picking from that list.

And I think it's been well publicized this process for him he's had a lot of outside assistance.

HAYES: My understanding, from the people I've talked to, is that it has largely been run by the Federalist Society and folks outside it who have been essentially the channel from the beginning, from the campaign, for the process.

GRAY: Yeah. I mean, the president said during his campaign, you know, to the extent he had criteria he said that he did not want somebody who was weak, that was a quote. He was highly critical of Chief Justice Roberts and his decision to uphold the Affordable Care Act. And he made very clear that he thought this was something that was important to his voters. And I think part of the test for Democrats going forward is to determine, you know, is Judge Gorsuch the kind of nominee that's going to believe in limits on presidential power and executive power? And I'm sure that will be a topic in the hearings.

HAYES: All right, Danielle Gray, thank you very much for your time tonight.

GRAY: Thanks for having me.

HAYES: We appreciate it.

All right, we're getting reaction tonight from the nomination that just happened of Judge Neil Gorsuch to the Supreme Court.

Senator Patrick Leahy, who of course is on the Senate Judiciary Committee releasing a statement that reads in part "in light of the unconstitutional actions of our new president in just his first week, the senate owes the American people a thorough unsparing examination of this nomination. I hope President Trump would work in a bipartisan way to pick a mainstream nominee like Merrick Garland and bring the country together. Instead, he outsourced this process to far right interest groups. This is no way to treat a co-equal branch of government or to protect the independence of our federal judiciary."

Joining me now, Senator Debbie Stabenow of Michigan, who along with her Democratic colleagues on the Senate Finance Committee is boycotting the confirmation hearings for Tom Price as HHS secretary and Steve Mnuchin as Treasury Secretary.

And I want to ask you about that, but first I want to start with this pick because the two relate.

Senator Claire McCaskill, your colleagues, said we should have a full confirmation hearing process and a vote on any nominee for the Supreme Court, which would seem to preclude a filibuster.

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Are you precluding the filibuster?

SEN. DEBBIE STABENOW, (D) MICHIGAN: Well, no, Chris. I mean, first of all, let's start with the fact that all of President Obama's Supreme Court nominees were voted in with over 60 votes. And so from my standpoint we need to have a 60-vote threshold just to make sure the person is mainstream. This is the highest court in the land. It affects every man, woman, child, working people, every community that I represent, every family in Michigan. So I want to see a 60-vote threshold, because I think that's what it deserves.

HAYES: So, I want to be clear. A 60-vote threshold, is you are saying it should be filibustered as a matter of principle, because the heightened threshold essentially will ensure the level of scrutiny you think necessary for the stakes of a seat like this.

STABENOW: When we change the rules, or had to change the rules in order to make sure the president actually got his cabinet, because of all of the obstruction going on, we purposefully did not change the threshold for the highest court in the land, the Supreme Court, because this is the place where people need to come together, you need to have a mainstream pick, this is about somebody who is going to uphold the constitution and not be ideologically extreme one way or the other. And you do that with 60 votes. So that's where I'm coming from.

I have great concerns about this nominee. I'll listen. I'll meet with him. The cases I've seen that he has ruled on I'm very concerned about, but I think the biggest thing is that it needs to be a coming together. And you do that with 60 votes.

HAYES: Now, you and your colleagues today. There is a remarkable moment in the finance committee today, two nominees, Steve Mnuchin and Tom Price - - Tom Price for HHS, who is a member of the House of Representatives, also a doctor, and Steve Mnuchin who is at Goldman Sachs and then a hedge fund and for Treasury. You and your colleagues essentially boycotted the committee vote for those two individuals. I'm getting this correctly.

There was tremendous frustration expressed by Chair Orrin Hatch who I -- and I think I'm getting this right -- used the word idiots to refer to what was happening? Or idiotic?

STABENOW: Not sure.

HAYES: What happened?

STABENOW: Well, Chris, late last night we had new information that was revealed through a Wall Street Journal article that when Tom Price came before our committee we already were concerned because he had bought stock in health care companies, in medical device companies and so on while also putting in legislation to help those companies, but when we asked him he said he had not gotten any special treatment. He had bought the stock at the same price as everybody else, fair market value.

Last night the company that sold him the stock said not true. He got a special deal. We believe he ought to have to come back to the committee and respond to them. The same thing with Mr. Mnuchin, there were a number of situations, including when we ask about the fact that his bank was one of the largest foreclosure -- they call them foreclosure king back during the height of the financial crisis, the housing crisis, he said they did not do what's called robo signing, where you don't read any of the papers, you just -- auto-pen, sign everything.

And over the weekend, there was a major story in Ohio that in fact in Ohio they can prove now that they were doing what was illegal. In fact, some judges said that they would not allow the foreclosures to go through. And there's more.

HAYES: So you have outstanding testimony from both these nominees said to you in the hearing room in which they denied things which later reporting has shown that denial was inaccurate. It was not true.

STABENOW: exactly.

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HAYES: And my understanding is you're boycotting pending new testimony for them to clarify what seems to be a pretty big discrepancy between what they told you to your faces and what we know the facts to be.

STABENOW: Absolutely. I mean, at some point it has to matter, right? I mean, these two nominees, Treasury Secretary, not only the whole economy and housing, but Social Security, you could go on and on. Tom Price, Medicare, Social Security, Health care, all of those things, it has to matter. They have to tell the truth. The truth matters. And so we said we've had it. We want them to come back and have to tell us the truth.

HAYES: Senator Debbie Stabenow. Thank you for your time tonight, appreciate it.

STABENOW: Thanks.

HAYES: All right, we're getting reaction to this. You saw essentially large I think unanimously acclamation for this election from the Republican side. We're getting reaction from the Democrats, strong words tonight from Senate Minority Leader Chuck Schumer on the president's nomination of Neil Gorsuch, the Supreme Court, charging the new administration as, quote, "violated our core values, challenged the separation of powers and tested the very fabric of our constitution in an unprecedented fashion." Senator Schumer released a statement that read in part, "the Senate must insist upon 60 votes for any Supreme Court nominee, a bar that was met by each of President Obama's nominees. The burden is on Judge Neil Gorsuch to prove himself to be within the legal mainstream and in this new era," interesting, "willing to vigorously defend the constitution from the abuses of the executive branch and protect the constitutionally enshrined rights of all Americans. Given his record, I have serious doubts about Judge Gorsuch's ability to meet this standard."

Joining me now from the steps of the Supreme Court, NBC News Capitol Hill correspondent Kelly O'Donnell. And Kelly, what's the scene like outside the court tonight?

KELLY O'DONNELL, NBC NEWS CAPITOL HILL CORRESPONDENT: Well, good to be with you, Chris. What has been here since before the announcement was made by President Trump and there have been two waves of protesters. At first, just moments after Neil Gorsuch's name was announced, there were a small group of demonstrators who were praying and were advocating for the overturning of Roe V. Wade. There was some real sparring back and forth verbally from that group and then another group that's come in.

So now we have a lot of supporters of trying to see this nomination somehow defeated. They're upset about President Trump. We'll just give them a moment, give you a sense of the sort of cadence of what's happening here.

CROWD: Hey, hey, ho, ho, Gorsuch has got to go.

O'DONNELL: And, Chris, you may notice that in addition to people coming out to express their own views, there are some pre-prepared signs that have Neil Gorsuch's name and those were ready to go.

Also the resist sort of hashtag that has become a big part of the progressive movement since Donald Trump was sworn into office.

So I've been out on the steps of the Supreme Court for a couple different demonstrations in recent days, and this one is smaller in size, it's also late in the evening. But they have definitely a heart for what they are saying and there has been a continuous chanting, singing, praying, expression of people's views, which is do compete out here on the steps of the Supreme Court since this announcement came through.

So there were a couple times where it got tense, but not beyond what is the normal expression of people's views. But at this point it is predominated by opponents of Donald Trump and those who are concerned about this addition to the court -- Chris.

HAYES: All right, Kelly O'Donnell, thank you very much.

Joining me now to discuss tonight's announcement as well as the rule of law in the Trump administration, John Dean, former White House counsel to President Richard Nixon.

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And John, I wanted to have you on because tonight's announcement comes in the context of sort of a remarkable several days in which the president issued an executive order without consultation of an interagency process, he overruled one of the relevant agencies on sort of interpretation of that order. He's been struck down or enjoined at least by four different federal judges using fairly harsh language, and then the acting attorney general, Sally Yates, said she would not enforce this executive order because she was not persuaded it was legal.

He fired her. And this is the statement from the White House, and I want to get your reaction to it, "the acting attorney general Sally Yates has betrayed the Department of Justice by refusing to enforce a legal order designed to protect the citizens of the U.S. This order was approved as to form and legality by the Department of Justice office of legal counsel. Ms. Yates is an Obama administration appointee who is weak on borders and very weak on illegal immigration."

Have you ever heard a statement like that out of the White House?

JOHN DEAN, FRM. WHITE HOUSE COUNSEL TO RICHARD NIXON: No. Never. It's the most extraordinary statement, particularly someone -- removing somebody from a post.

Typically, they're sent off with just either no statement or a quiet statement of -- that doesn't try to attack them.

I've never seen an attack statement like this coming out -- it's more like a bunch of tweets that have been tossed together rather than the dignity that typically follows a White House statement.

HAYES: You know, we've been thinking about -- it seems the me the few days have been a sort of a beginning of a stress test for American constitutional institutions and limits on the executive and whether those limits will be adhered to. And there's a few different places you can imagine those limits happening -- the article three federal judiciary with the Supreme Court likely to see this executive order possibly before Gorsuch even gets a hearing or a vote.

Another place is the Department of Justice. And people last night were talking about the famous Saturday night massacre when you were -- during your time, when you were White House Counsel to Nixon in which Nixon essentially discharged Archibald Cox for defiance, abolishes the Watergate task force.

Do you think that's a fair comparison to what happened?

DEAN: Well, it's very different. What it is is Trump's firing of the attorney general here is very Nixonian in style. The substance is very different from what happened back in October of '73 when that happened. And what happened is that Nixon was in a lot of trouble. He didn't want the special prosecutor to go forward and seek more tapes. I at that time had agreed to cooperate with Cox and help him with the prosecution so I followed this very closely and it was very dramatic at the time. It was almost one of those things when every broadcast was interrupted and you could find of listen to hear if there were boots marching in the street. It was very spooky.

This is just a stylistic very abrupt...

HAYES: And yet there is a kind of principle here which we're going to see which is that under the constitution the Department of Justice is part of the executive in some sort of constitutional sense you might imagine there are some who argue the president can tell them to do whatever it wants. But what has developed is this kind of independence. And I thought this moment between Jeff Sessions and Sally Yates at her confirmation hearing spoke to that. I'd love to get your response to it if you think the view that Sessions outlines here should be the view that Sessions himself takes as AG if we he's confirmed and if Democrats and everyone else. Take a listen.

(BEGIN VIDEO CLIP)

SEN. JEFF SESSIONS, (R) ALABAMA: Do you think the attorney general has a responsibility to say no to the president if he asks for something that's improper? If the views the president wants to execute are unlawful should the attorney general or the deputy attorney general say no?

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SALLY YATES: Senator, I believe that the attorney general or the deputy attorney general has an obligation to follow the law and the constitution and to give their independent legal advice to the president.

(END VIDEO CLIP)

HAYES: What do you make of that?

DEAN: That's the answer he wanted to hear. The question is whether he would answer the question himself the same way.

He will not forget his language. He'll be reminded of it many times when he is in the attorney general's office and has to make these kinds of decisions.

What he's got to have is at least the independence to say no to the president, to tell him when he's wrong. John Mitchell, who was the attorney general who got in such a bunch of trouble didn't have that. Elliot Richardson, when asked to fire Archibald Cox because he made an agreement with the Senate that he wouldn't do so except for cause, honored his word and as a matter of principle wouldn't do so.

Here I don't think Sessions has made any agreement with the Senate that he will be independent. They might want to bring him back and get that kind of pledge out of him.

HAYES: That's a very interesting idea. I think there are some Democrats trying to make that happen. John Dean, as always, a pleasure, sir, thanks for your time tonight.

DEAN: Thank you, Chris.

HAYES: All right, joining me now in studio in New York State, Attorney General Eric Schneiderman whose office is joining the ACLU in a lawsuit against the executive order, the travel ban from seven Muslim majority countries, the freezing of all refugees, the ending of Syrian refugees.

States are another place that there's some sort of binding constraint possibly on what the executive does. Why are you joining this lawsuit?

ERIC SCHNEIDERMAN, ATTORNEY GENERAL NEW YORK STATES: Well, we're joining it because the executive order is flagrantly unconstitutional.

HAYES: Do you really think that? You think it's obviously unconstitutional? You don't think it's a close call?

SCHNEIDERMAN: And not only do I think that, but 16 attorneys general representing 130 million Americans signed on to the strongest statement I've seen in recent memory saying "we believe this is unconstitutional. It will be struck down. And we are committing ourselves to protecting innocent people essentially caught in the crossfire between now and that ultimate ruling which we believe will come."

Four federal district courts in four different states have looked at it, every one of them has issued some form of a stay finding one way or the other that there were likely some constitutional infirmity.

There are different provisions of this executive order that offend different parts of the constitution, and as it works its way through the court we'll have a chance to talk about the fact that it doesn't follow the due process clause. It violates the establishment cause by favoring one religion over another. It is constitutionally offensive.

But the way it was rolled out without consultation with any of the agencies that had to enforce it, the cavalier way it was done reflects such a flagrant disregard for the constitution and the rule of law that it really does give pause to all of us.

But Sally Yates was right, all four judges that looked at it were right, my 16 colleagues and I are right. This is not a constitutional executive order. And the fact that they didn't consult with any of the experts on it shows in the drafting of the order.

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HAYES: Do you think -- are you confident at this moment as we sort of -- that the courts can function in their sort of traditional role?

SCHNEIDERMAN: So far so good. I mean each of the court has heard it and they addressed different parts of the order and have been very, very firm about it. There are stays in issue. I immediately wrote to the Department of Homeland Security.

Because, look, in New York we have a huge immigrant population. I mean, this doesn't just hurt immigrants in New York, this hurts all New Yorkers. We have health care institutions, institutions of higher learning and tech companies and finance companies that very much depend on immigrants.

So, it's of particular concern to us, and so far the courts have ruled. We contacted immediately -- my office contacted the Department of Homeland Security and customs and border protection and we got a response from them immediately. They said they were complying with the court orders. They weren't going to detain anyone at New York airports anymore.

HAYES: That's interesting. You heard -- they specifically told you that and affirmed that?

SCHNEIDERMAN: Absolutely. They got right in touch with us. They consulted with the U.S. attorneys in the eastern district of New York, who are professional lawyers. This is not a matter of liberal versus conservative, this is a matter of those of us who respect the rule of law and those who do not. It is a different political framework.

HAYES: Well, I must point out the same thing I pointed out to Congressman Mo Brooks was that everyone thinks that their reading of the law is the correct one.

SCHNEIDERMAN: Well, I think on this one I don't see it as much of a close call. This is a very diverse group of judges and there are AGs in this group who come from very different states, come from southern states, western states. It is pretty clear to us that this order does not provide due process. It violates the separation of church and state and that it was just hastily crafted and thrown out in a way that shows a disrespect for the constitutional structure.

HAYES: Right, Eric Schneiderman, attorney general of New York State, thanks for being with me.

SCHNEIDERMAN: Thank you.

HAYES: We are back with more after this very short break. Do not go anywhere.

HAYES: Joining me now, Olivia Nuzzi, she's the Washington correspondent for New York Magazine, and former Republican congressman David Jolly of Florida.

And Mr. Jolly, let me start with you. You know, it strikes me that there's essentially this kind of bargain that's been made. David Brooks describing it as Faustian today in The New York Times. The Supreme Court Justice is where you see it most sort of transparently, but on a lot of things which is a lot of Republicans say we don't think this guy has the temperament to be president. We don't particularly respect him as a person. We don't even agree with him on a lot of things, but we are going to get what we want. We're going to get some tax reform and tax cuts. We're going to get our Supreme Court justice. We're going to repeal Obamacare. And so if he acts maniacally in certain respects that's OK. We'll take the deal. What do you think of that?

DAVID JOLLY, FRM. REPUBLICAN CONGRESSMAN: Well, let's look at the cards that Chuck Schumer holds. Listen, this is Neil Gorsuch's night. And he was very gracious and humble, much like Merrick Garland was.

But the honest truth is this is now a political battle. Listen, the substance is not in debate. The justice -- the nominee has been affirmed unanimously by the Senate in the past. Frankly, he won't drift the court much further to the right. He is replacing Justice Scalia. This is now a political battle. And unfortunately, I think Donald Trump might just be leading Gorsuch into the political lion's den and the luckiest man in the political world tonight might be Judge Hardeman who is the runner-up who might be in waiting should this all go down.

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HAYES: Wait a second, you think the odds are that he won't be confirmed?

JOLLY: Listen, if you're Chuck Schumer you are looking to lay the gauntlet down. You need a win for your base, right, and this is the ultimate win. And frankly there is some payback over what happened with Merrick Garland. Merrick Garland should have been a hearing and a vote and if Republicans wanted to vote him down they should have done so, but they should have had the process work.

I don't think Chuck Schumer is going to work with Mitch McConnell on this. And I would hope the Senate doesn't do the nuclear option. Let this play out. Because guess what? Hardeman is just as good. And so the left needs to decide are they going to try to sink this nominee and have Hardeman? Which one do they want?

HAYES: Olivia, to David's point here, I mean, I think people aren't quite understanding the level of pressure that is going to be brought to bear, that is being brought to bear. There's hundreds of people outside Chuck Schumer's house now. That doesn't normally happen, right, to block.

And there's almost this sort of sense in which the Garland obstruction means, like, god is dead and all is permitted, right, that there's no rules anymore.

OLIVIA NUZZI, NEW YORK MAGAZINE: Right. Well, I think the left is very frustrated. And you could see why. I don't think the Democrats in congress have been really strong enough in opposing Donald Trump's nominees so far. I mean, look at what happened with Ben Carson.

You have people like Elizabeth Warren or Sherrod Brown voting him through. And I think people are very frustrated.

HAYES: And they got a huge amount of backlash over that.

NUZZI: Absolutely. And I think, you know, the people on the left would say rightfully so. And so they're taking to the streets to protest the executive orders. They're very frustrated right now. I think they're going to want them to put up a fight.

HAYES: David, what do you think about this sort of citizen mobilization. Take a listen to what David Bratt in Virginia said about how many citizens are, and I'm quoting him, "up in his grill."

(BEGIN VIDEO CLIP)

DAVID BRATT: Since Obamacare, and these issues have come up, the women are in my grill no matter where I go. And they come up "when's your next town hall?" And believe me it's not to give positive input.

(END VIDEO CLIP)

HAYES: What affect does that kind of -- the switch boards being overwhelmed, the constant protests, what does that affect does that have on a member?

JOLLY: You know, Chris, it's a good point. And listen, to be fair, the left already planned the protest tonight for 9:00 at the Supreme Court not knowing who the nominee was, right.

HAYES: Rhat's right, yes.

JOLLY: At some point this has to come to an end. And we have to be one country, because I'll tell you the most important thing -- and I'm a Republican who has deep concerns about our current president -- we need an independent judiciary. And so we need the cooler heads of the Article I authority of the Senate to prevail on this one and decide let's get through this.

If it is not tonight's nominee, we will find another. But at some point, we've got to rise above the politics or we drift into dangerous territory.

HAYES: That argument is not going to persuade a lot of Democrats, I think.



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NUZZI: NO. And I disagree completely as a citizen of this country. This is what we do, we protest when we disagree with things. And I don't think there's any reason for people to be told to come together and support this if they don't believe in it.

HAYES: And we also...

JOLLY: I'm not suggesting support tonight's nominee, but don't plan the protest before you know who the nominee is.

HAYES: And that is where we are, right, we are at the point of sort of transparent obstruction...

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