



new hampshire
WOMEN'S FOUNDATION

When We Evaluate Judicial Nominations, Gender Equality Belongs On the Docket

Every day our state courts hear cases that have a major impact on the lives and rights of women and girls. As our state Supreme Court justices interpret our state laws and Constitution, they are responsible for establishing and enforcing rights and freedoms that apply to all of us. In future years NH state courts will likely be called upon to decide the scope and meaning of many crucial legal protections for women and girls, such as the right to privacy, to access education, to equal opportunities in the workplace, and to access a full range of reproductive health care, including safe, legal abortion.

Many of the key legal protections upon which women have relied for decades under the federal Constitution are now at great risk as the composition of the U.S. Supreme Court has shifted towards justices hostile to individual rights, including reproductive freedom, voting rights, and protection from discrimination on the basis of sex. Any future U.S. Supreme Court decisions which undermine or erode these rights will trigger a greater focus on our state laws and Constitution as sources of legal authority to maintain these protections here in New Hampshire. We are facing an environment where cases impacting decades of progress made toward gender equality for women and girls could land on the docket of the New Hampshire Supreme Court on the not so distant horizon.

With so much at stake, the nomination process for any state court judge, but especially the Chief Justice, must provide ample opportunity for elected officials, civic groups, and concerned members of the public to raise questions and concerns about the fitness and philosophy of judicial nominees. All of our state courts must be served by judges who reflect our state's diversity and who recognize our state's long history of upholding individual freedoms. The recent nomination of Attorney General Gordon MacDonald to become Chief Justice of the NH Supreme Court must be evaluated with these circumstances and criteria in mind.

During the confirmation process it is incumbent upon our Executive Councilors to examine whether judicial nominees have an identified or implicit bias toward any issue or group of individuals, but especially toward those who have historically faced discrimination based on race, sex, gender, disability, or membership in any other protected class. Access to reproductive health care, including abortion, is a cornerstone of both gender equality and personal freedom for women, and asking a judicial nominee about his or her past involvement in restricting such rights helps evaluate his or her fitness to serve all citizens equally.

We commend those Executive Councilors that questioned the nominee's lived experiences and philosophy with respect to rights and issues that uniquely impact women at the hearing for General MacDonald on June 26th. However, we are disappointed by attempts by some of our colleagues in the legal community to characterize these inquiries as partisan hysteria and dismiss them as out of place in our state's judicial nomination process. We reject allegations by some that this line of questioning represents "Washington-style" politics. Regrettably, these accusations echo all too familiar tactics used to quash women's voices or undermine those leaders who speak up on behalf of women's needs.

Certainly no one would deny the appropriateness of rigorously questioning a judicial nominee who had taken past positions that were racist or anti-Semitic, and expecting clear answers which disavow or repudiate these affiliations. Such behavior, even if in the distant past, would likely be (and certainly should be) disqualifying for a contemporary nominee. But somehow asking questions and urging careful consideration of a nominee's past affiliation with and advocacy for positions that undermine and limit women's autonomy and equality are deemed partisan or off-limits. We respectfully disagree.

At the New Hampshire Women's Foundation we are committed to advancing opportunity and equality for women and girls across New Hampshire. At the Planned Parenthood New Hampshire Action Fund we are committed to advocating for Granite Staters to have access to the full range of reproductive health care, including safe, legal abortion. Together we share a commitment to elevating the status of gender equality and reproductive freedom in the public arena including the judicial nomination process. It is critical that women's voices are heard and respected in our governmental processes and the court of public opinion to ensure that our most basic rights and freedoms are protected and that the clock is not turned back on decades of progress for women and girls.

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