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Tester Sided with 75% of Montanans on Gorsuch Vote

A Newspaper Column by Evan Barrett

April 7, 2017

Montana's two US Senators were split on the vote that last Friday confirmed Neil Gorsuch as the next lifetime member of the US Supreme Court. Senior Senator Jon Tester voted against the successful nominee, citing, among other things, Gorsuch's propensity to judge cases in a way that empowers corporations over individuals. Specifically Tester said he believed that Gorsuch supports the massive intrusion of corporations into our election processes, a political disaster that has allowed almost unmeasurable corporate influence since the Supreme Court's "Citizens United" decision was handed down. That Supreme Court decision effectively made corporations "citizens" and ruled that their money was Constitutional "free speech." Senator Tester's opposition to Gorsuch based on these concerns was consistent with the position held by 75% of Montanans when they voted on those very questions on a ballot issue election here in 2012.

On the other hand, when Junior Senator Steve Daines backed President Trump's nominee he made a statement from the Senate floor where, among other things, he ironically said that "most importantly, the American people deserve nine members on the Supreme Court." That "most important" rationale rings hollow given Senator Daines' shameful obstructionism over the last 380+ days while the Supreme Court was saddled with only eight justices because of highly-partisan political reasons.

Perhaps Senator Daines has banked on Montanans forgetting that getting the court back up to nine members was not the most important thing to him last year as he joined that highly-partisan effort that not only denied a Judiciary Committee hearing to President Obama's nominee Merrick Garland, but also resulted in all Republican senators, including Daines, refusing to personally meet and talk with the well-qualified nominee. The refusal to even consider Merrick Garland broke the record for not acting on a nominee way back on July 26, 2016. As Daines maintained his record-setting obstructionism on Merrick Garland since that date, he has been silent about that "most important" issue of the American people deserving "nine members on the Supreme Court." That conveniently becoming important to Senator Daines now is the kind of hypocritical flip-flop that turns people off about politicians.

Senator Tester, in contrast, did not hide behind unconscionable delaying tactics like Daines did with Merrick Garland. In Montana fashion, he held a personal meeting with Gorsuch, supported Gorsuch getting a committee hearing and participated in the up-or-down confirmation vote. Tester's reasons for voting against Gorsuch were clear. He was "deeply concerned that dark money will continue to drown out the voices and votes of citizens... [saying that] over the years, Judge Gorsuch gave corporations the same Constitutional rights as a nurse from Plentywood, a teacher from Kalispell, or a farmer from Fort Benton." Tester said, "When it comes to the letter of the law, he [Gorsuch] believes corporations are people."

Further, Senator Tester said that “according to [one of] Judge Gorsuch’s opinion[s] ...he believes campaign contributions deserve First Amendment [free speech] protections... [adding that] Montanans know: money is not speech.” Senator Tester said: “I am concerned that if Judge Gorsuch is confirmed, our future will be shaped with dark money...”

Those very issues were addressed directly in 2012 by Montana voters when, by an overwhelming 75% margin, they approved Initiative 166. Specifically Montana voters held “that corporations are not human beings with constitutional rights and that each such [state or federal] elected and appointed official [was] charged to act to prohibit... corporations from making contributions to or expenditures on the campaigns of candidates or ballot issues.” That people’s directive included Senator Daines and Daines’ vote for Gorsuch seems to violate that directive.

By their 75% vote the people of Montana said they regarded:

- “money as property, not speech;”
- Constitutional rights as “rights of human beings, not rights of corporations;” and
- “immense aggregation of [corporate] wealth ... [as] corrosive and distorting when used to advance the political interests of corporations.”

Senator Tester is to be commended for following the course laid out clearly at the ballot box by 75% of Montanans. Senator Daines, in contrast, has chosen to ignore that 75%, ignore their specific directives about this important issue, and has sided with President Trump, GOP Senate leader Mitch McConnell and the corporate elite over the people of Montana.

Evan Barrett, who lives in historic Uptown Butte, recently retired after 47 years at the top level of Montana economic development, government, politics and education. He is an award-winning producer of Montana history films who continues to write columns and record commentaries, and occasionally teach Montana history.

(700 words in the body)