

CouncilorPignatelliStatement:

Executive Councilor Debora Pignatelli:

July 10, 2019

I believe the most important vote an Executive Councilor can make is one to confirm a nominee to our Supreme Court. I took this very seriously. I have read everything and have listened to everyone. Taking it all into consideration, I cannot support this nomination.

In the past 23 years, democratic governors have appointed conservative judges. I have supported them, including the retiring Chief Justice, in 2010. We voted for balance on our highest court. In contrast, Governor Sununu, so far, has shown no such inclination. To the contrary, it is obvious he is trying to pack the court with very conservative justices.

The federal courts seem to be shifting more decisions to our country's state courts. Two weeks ago, the United States Supreme Court refused to correct the worrisome partisan gerrymandering that is distorting our political system. Our own Supreme Court will likely have to rule on that issue as well as voting rights, gun safety, healthcare, women's health issues, funding for education, taxpayer funding of parochial schools, and other critical issues. All of these are very important to me.

In two short years, the Governor disbanded the non-partisan Judicial Screening Committee used for twenty years by prior

governors. He has appointed two conservative Justices, at least one of whom was very politically active. Now he wants to place a third one so that there would be a 4 to 1 imbalance. New Hampshire is not a 4 to 1 state. I think 25 years of political elections prove that.

I have no doubt that a Governor Sununu would replace Justice Hicks on his retirement in three years with another very conservative person, making it a clean sweep, 5 to 0. Some have argued that the Council has created a litmus test but that is untrue unless the test is balance on the Court with people who are not political partisan activists.

I know Governor Sununu defeated a highly qualified previous nominee of Governor Hassan to our Superior Court. I did not agree with his rationale, just as he won't with mine this time.

In this case, the Governor has made his nomination without any communication with the majority Democratic Council. Based on my 4 previous terms, that is unusual. That is not the New Hampshire way. Councilor Cryans tried to discuss the nomination in advance with the Governor, but there was no room for negotiation. He had decided.

This appointee would be the third Justice in the last two years who has never worn a robe - has never served on our Circuit or Superior Court. We have had good Supreme Court justices who had no trial prior court experience, and though it is not mandatory, it does add to the qualifications and allows us to examine a record of a nominee's written rulings.

I am not questioning Attorney MacDonald's skills as a lawyer. What concerns me the most, though, is that he has an extensive history as a very conservative political partisan. That gives me no comfort on how he would interpret our state constitution on the momentous legal questions I mentioned and on many more. And, that is by no means limited to the choice issue, as some have suggested in newspaper editorials. For instance, he has already shown his hand on the issue of taxpayer funding of religious schools. Some see me as a partisan, but I face the voters every two years and am not nominated for the state's most important appointment to age 70. I have voted for conservatives to our Supreme Court but never for a partisan activist.

We have, again, extended a hand to the Governor to work with him to fill this vacancy and the position of Chief Justice. In fact, I have shared information on an excellent candidate who would have bipartisan support and could easily be confirmed by the Council. I hope the Governor will work with us.

We all want a highly qualified person with unquestioned ethics. That is the bare minimum. But I am seeking more – a court balanced on the political-philosophical spectrum from liberal to conservative. And, wouldn't it be nice to have gender balance as well? Only then will we get the best decisions - because then all views and values will be reflected in those important court decisions that will govern lives in New Hampshire for years to come.