

Cumberland Advisors Market Commentary – Gorsuch & Fake News

At our Camp Kotok gathering in Maine, we often discussed truth and fact checking versus the spreading practice of political lies and fakery. We will have more to say about the gathering. For now here is a case study about truth and lies.

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HOW TO SPOT FAKE NEWS

- CONSIDER THE SOURCE**
Click away from the story to investigate the site, its mission and its contact info.
- READ BEYOND**
Headlines can be outrageous in an effort to get clicks. What's the whole story?
- CHECK THE DATE**
Reposting old news stories doesn't mean they're relevant to current events.
- IS IT A JOKE?**
If it is too outlandish, it might be satire. Research the site and author to be sure.
- CHECK THE AUTHOR**
Do a quick search on the author. Are they credible? Are they real?
- SUPPORTING SOURCES?**
Click on those links. Determine if the info given actually supports the story.
- CHECK YOUR BIASES**
Consider if your own beliefs could affect your judgement.
- ASK THE EXPERTS**
Ask a librarian, or consult a fact-checking site.

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International Federation of Library Associations and Institutions
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Shortly after he was appointed to the Supreme Court in April, 2017, Justice Neil Gorsuch announced that he would not be participating in the court's "cert pool." The pool is a labor-saving device by which justices share their law clerks in an effort to streamline decisions about which cases to hear. The pool has, however, been criticized – by former justice John Paul Stevens, among others – for reducing the number of cases the court takes up.

We applaud Justice Gorsuch for his action (he joins Justice Samuel Alito as the only justices who do not participate in the pool). We wish we could stop this missive right here.

But our purpose in writing today is actually to call attention to a rather devious story circulating on the internet that

conflates Gorsuch's move with a claim that the Supreme Court ruled on the teaching of Sharia law in US schools. The claim goes further, stating that Gorsuch, in his first decision on the court, not only cast the tie-breaking vote but also issued a statement about the decision.

There was no such decision. The claim is false. The Snopes website, on a page titled "Did the Supreme Court Side with Trump on Schools Teaching 'Sharia Law'?", establishes that the court has not considered the matter of Sharia law (source: <https://www.snopes.com/fact-check/sharia-law-trump-schools-supreme-court/>).

Thus, what began as a rather innocuous and complimentary story about Justice Gorsuch morphed into a blatant attempt to disseminate fake news. It is that fakery that has triggered this commentary.

In today's world, people have considerable license to say what they please on the internet. Our First Amendment constitutional rights are very broad. But we should not forget that defense of our right to free speech includes the responsibility we each have to do independent research and to take care when dealing with social media and political websites of all types.

The fake story reached our office in the form of an email to me. Here is the explanation of how this devious behavior went viral: "The Supreme Court and Sharia law: How a fake-news story spreads," <https://www.politico.com/story/2018/05/14/fake-news-story-spreads-576752>).

The originator of the fakery, Christopher Blair, has done a disservice to our nation and made a mockery of our Constitution, which protects us and him. In my opinion he is a scoundrel. He duped many who didn't take the time to verify but instead forwarded his lies to others.

Here is the original text: We are reproducing it verbatim with permission from the author. If you saw it or if it was forwarded to you, please feel free to send my missive in reply. If you know the original source, you can decide for yourself about any action to take. Thank you for caring about the First Amendment and practicing vigilance to protect it.

"THIS IS ONE OF THE MOST ENCOURAGING EVENTS YOU WILL NOT SEE, OR HEAR MUCH ABOUT IN PRINT OR ON TELEVISION...

"Neil Gorsuch has only been on the Supreme Court for a short while. Recently he ignited the fire of liberty and broke 40 years of precedent when he refused to join the SCOTUS 'cert pool.'

"The cert pool was established in 1973 during the early days of the Burger Court, in order to efficiently review the near 8,000 petitions received each term. In practice, the petitions are apportioned among the Court's law clerks, who then circulate a memo to the justices recommending a grant or denial. The obvious problem here is that this gives the power in these 8000 cases to the law clerks instead of the Justices. It also, in theory, allows 3rd parties to unfairly influence a case through the clerks.

"That is NOT how the Supreme Court was designed to operate. Neil Gorsuch just managed to set his foot down in the Supreme Court and say it is NOT okay to pass off judgments to the discretion of legal clerks. This is the kind of story everyone should be hearing or reading in the media, but obviously is not.

"Today the United States Supreme Court issued a direct and final blow to the Islamic Indoctrination of the young in this nation. The full panel of the United States Supreme Court which consists of 9 judges met to decide the fate of Islamic indoctrination in our American public schools. In a

typical 5 X 4 decision, common sense won out, and we have sanity restored to our schools once again.

“The United States Supreme Court was able to hand out this decision banning Sharia Law and Islam from being taught in classrooms because of the tie-breaking vote of the newly appointed Supreme Court Justice Neil Gorsuch.

[Kotok note: The fake news practitioner has just told an outright lie.]

“Gorsuch went on to write about the decision: ‘The government certainly has no business being involved in religion, but this isn’t a government issue or a religious issue. This is about the judicial branch interpreting the laws as they apply to the teaching of religion. We shouldn’t be teaching any religions in the public schools of this country’

[Kotok note: The creator of fake news has had the temerity to put false words in the mouth of a Supreme Court justice. To couch that lie in religious terms is a further affront to the First Amendment.]

“Amen, Justice Gorsuch, Amen!

“Liberals are all about teaching Islam and Sharia Law but they have issues with ‘Under God’ in the pledge of allegiance and ‘In God We Trust’ on our currency.

[Kotok note: The fake news fabrication is now broadened into a liberal versus conservative religious rant.]

“This should have been a unanimous decision, not 5 to 4, but it seems the 4 liberal judges on the Supreme Court don’t care about the Constitution, or our values. Perhaps this is the start of restoring America to its founding glory.

“Thank GOD for our new Supreme Court Justice Neil Gorsuch –

a great selection by President Trump.

"IF YOU WILL, PLEASE PASS THIS ENCOURAGING NEWS ALONG, AS I HAVE DONE"

Dear readers. We try to fact-check everything we write about and offer citations. We avoid forwarded assertions like the deception above. And we scrupulously defend those magical 45 words of the First Amendment. Those words stand between us and tyranny.

Here is the text of the First Amendment, which Justice Gorsuch and his SCOTUS colleagues are sworn to preserve and defend.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

David R. Kotok

Chairman of the Board & Chief Investment Officer

[Email](#) | [Bio](#)

Above graphic derived from IFLA infographic based on FactCheck.org's 2016 article "How to Spot Fake News":
<https://www.ifla.org/publications/node/11174>

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