

Robert Gehrke: This woman deserves to be a Utah judge, and Senate Republicans are blocking her

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By Robert Gehrke

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This may or may not shock, but lawyers can be hyper-competitive, to the point that they'll almost always talk trash on other lawyers.

So it's rare when you find one who is so universally well-regarded for her intellect, honesty and dedication to the law as Margaret Plane.

Over the past several years, Plane had been in the running for various judicial appointments, including being a finalist to fill a Utah Supreme Court vacancy, but never got the nod until last month, when [Gov. Gary Herbert nominated her to the Utah Court of Appeals](#). She is, without a doubt, eminently qualified — and I would go so far as to say much more qualified than many who currently wear the robe.

But the Republican Senate will not even give her a hearing.

When the agenda for the last batch of judicial confirmation hearings was released Wednesday, five of Herbert's final judicial selections were included. Plane was not.

"Margaret Plane is an exceptionally qualified attorney and an honorable person," the governor's office said in a statement. "We cannot imagine why the Senate would not schedule a hearing for her, and we encourage them to do so as soon as possible."

Barring a last-minute come-to-their-senses reversal, the nomination will expire at the end of Herbert's term, which is just a few weeks away.

Herm Olsen, the past president of the Utah Bar Association, was disappointed with the Senate's inaction.

Olsen got to know Plane when his son-in-law had returned from the Iraq War and, to honor his friends still there and those who had died, [decided he was going to walk from the Idaho border to the Arizona border in 28 days](#) — symbolizing the number of Utahns killed in the war to that point.

But the Utah Department of Transportation told him he would need a parade permit and a million-dollar insurance policy and, if he didn't get it, he could be arrested. Olsen contacted Plane, who at the time was working for the American Civil Liberties Union.

"She was nice and professional, but she was firm and said, 'If you try to intervene or impose restrictions which are inappropriate, we'll bring this matter to court,'" Olsen told me Thursday. The Transportation Department backed down immediately and his son completed every step of the journey.

"It was quite a feat," Olsen said, "but it frankly wouldn't have been possible without Margaret's intervention."

In the years since, Olsen got to know her better as she served as an American Bar Association commissioner. She served as Salt Lake City attorney under two mayors and currently holds that position for Park City. She recently was honored as the lawyer of the year by the Women Lawyers of Utah and has been a mentor to many.

"She is simply top-notch," Olsen said.

But she doesn't warrant a hearing in the eyes of Republican senators.



Sen. Todd Weiler, the chairman of the Judicial Confirmation Committee, would not comment about why she was left off the agenda, aside from saying: “The Utah Senate takes its advice and consent role very seriously.”

Perhaps Plane simply became a victim of the COVID-19 power struggle between the governor and the Legislature.

More than that, I’m told, there were concerns she was too liberal, representing entities that have clashed with the conservative Legislature — not surprising given that it is her job to vigorously represent her clients.

The problem with rejecting Plane based on her supposed political views is that it is explicitly prohibited by the Utah Constitution.

Here’s what the constitution says (and pay attention to the last part, especially if you are a Republican senator): “Selection of judges shall be based solely upon consideration of fitness for office, [without regard to any partisan political consideration.](#)”

Utah generally has a conservative judiciary. Herbert is a Republican and he is not going to nominate radical leftists. But, throughout his tenure, [the governor’s nominations have been outstanding, high-quality lawyers from professionally diverse backgrounds.](#)

That’s due partly to Utah’s rigorous screening process which has been called the model for the rest of the states.

Because nominees are so well-vetted by the time they are sent to the Senate, they routinely sail through. [The last appeals court judge rejected by the Senate was Robert Hilder in 2008](#) during Gov. Jon Huntsman’s administration, who drew the ire of senators because of a ruling in a gun case.

Of the 108 judicial nominees Herbert sent to the Senate since 2009, I’ve only been able to identify four who have met any measure of resistance.

- In 2012, 10 Republican senators [voted against the Su Chon’s nomination to the 3rd District bench](#);
- In 2013, the Senate [refused to vote on Catherine Conklin’s nomination to the 2nd District](#);
- In 2017, two Republican senators [voted no on Camille Neider’s 2nd District nomination](#);

Now Plane is the fourth. (One other judge was withdrawn over a technical issue.) It can not be considered a mere coincidence that every one of these nominees is a woman.

“Those people making those decisions need to get past their own short-sighted prejudices,” Olsen said.

“She is fair, she is thoughtful and it’s really kind of an embarrassment when state leadership will let their perception of perhaps partisan politics interfere with their obligation to approve the nomination of a wonderfully qualified lady.”

Gov.-elect Spencer Cox could renominate Plane after he takes office and I hope he does, although I also wouldn’t be surprised if she says, “No thanks.”

We have seen federal judgeships turned into political patronage positions, depending more on who you know than what you know.

By giving a qualified lawyer like Plane the Merrick Garland treatment — President Barack Obama’s Supreme Court nominee who was denied a Senate hearing — the Utah Senate is moving us down that path.

It sends a chilling message to future lawyers, particularly female lawyers, who might seek a spot on the bench: If you don’t pass the purity test, don’t bother applying. That’s not how we’ve done things in Utah in the past, and it is a disservice to our judiciary and to our state.