



Trump's Supreme Court Pick Neil Gorsuch: An "Originalist"

Calling 10th Circuit Court of Appeals Judge Neil Gorsuch a man whose "qualifications are beyond dispute" with "an extraordinary résumé as good as it gets," President Donald Trump announced Gorsuch as his pick Tuesday night to replace the late Justice Antonin Scalia on the U.S. Supreme Court.



Gorsuch (shown) promised that, if confirmed, he would be a "faithful servant of the Constitution and laws of this great country." Calling the U.S. Constitution the "greatest charter of human liberties" ever conceived on Earth, he told a prime time national television audience that he saw the judge's role to apply that Constitution to cases that come before him.

In a 2005 speech, Gorsuch said judges should strive "to apply the law as it is, focusing backward, not forward, and looking to text, structure, and history to decide what a reasonable reader at the time of the events in question would have understood what the law to be — not to decide cases based on their own moral convictions or the policy consequences they believe might serve society best."

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Yet some judges do decide cases based on their own personal beliefs. In an article published by *National Review*, Gorsuch charged, "American liberals have become addicted to the courtroom, relying on judges and lawyers rather than elected leaders and the ballot box, as the primary means of effecting their social agenda." He cited examples such as same-sex "marriage," school vouchers, and assisted suicide.

Trump noted that, other than the defense of the country, the most important single action that a president can take is the selection of a member of the Supreme Court. That is why he put forward a list of 21 names during the presidential campaign from which he would make this critical pick, and this could have been the difference in the past election. Exit polls from the presidential election indicated that the selection of a justice on the Supreme Court was the number one reason in how Trump voters said they made their presidential choice. Senator Ted Cruz (R-Texas) said, "In many ways," the presidential election was a "referendum on a Supreme Court pick."

Many Democrats in the Senate have indicated that they were going to oppose *any* nominee put forward by Trump — partly as "payback" for the Republicans not even giving a hearing to President Barack Obama's nominee Merrick Garland. But in the case of Gorsuch, they recognize that, at 49 years of age, he can be expected to sit on the bench for a generation.

Cruz called the selection "a home run," and admitted to Fox News' Tucker Carlson that Gorsuch was someone he would have been pleased to nominate, had he won the election. Cruz added that the Trump



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administration has been seeking advice from senators on various candidates for the past few weeks, and said that Gorsuch has a “decade of exemplary record” of issuing “opinions [that] reflect humility and fidelity to the law.”

Senator Mike Lee (R-Utah) also expressed great satisfaction at the pick. “I really like Judge Gorsuch,” he said, adding that Gorsuch is an extremely well prepared judge who not only “reads all the briefs” but also reads all the cases cited in the briefs.

Jonathan Turley, a constitutional law professor, said Gorsuch has an “absolutely impeccable résumé.”

But Turley warned that we can expect a terrific fight against Gorsuch. Fox News commentator Charles Krauthammer said he believed the “muskets will fire within minutes” of the announcement.

Turley recalled how the Reagan White House in 1987 failed to respond to those early shots when Judge Robert Bork was nominated. Senator Edward Kennedy (D-Mass.) went to the floor of the Senate immediately and began attacking Bork. After that brutal confirmation battle spawned the word “borked” to describe savage attacks upon a nominee, it was followed by the infamous smear campaign against the nomination of Clarence Thomas in 1991. Turley believes, however, that Republicans have “learned” from this, and are prepared for any similar such attacks against Gorsuch.

In the center of this expected storm will be Trump’s nominee, Neil McGill Gorsuch. If confirmed, he will be the only Protestant Christian (an Episcopalian) on the court, where he will join five Roman Catholics and three Jews. Presently, Gorsuch is an appellate court judge on the 10th Circuit Court of Appeals.

Gorsuch is an “originalist,” who believes that a judge should interpret and apply the Constitution and the law as intended by the lawgivers. University of Denver law professor Justin Marceau recently told the *Denver Post* Gorsuch is “the most natural successor to Justice Antonin Scalia,” and like Scalia, he is an “ardent textualist,” which means he believes the actual text of the Constitution should guide the rulings of a judge.

And like Scalia, Gorsuch does not believe his own personal policy preferences should supersede the Constitution and the law. Even if it hurts criminal prosecutions, the Constitution dictates that defendants should be afforded all due processes found in the Constitution.

The so-called Chevron doctrine is one area in which Gorsuch departs from agreement with Scalia, however. This is the practice in which courts allow the federal agencies to broadly interpret law and make regulations. While Scalia tended to defer to the Chevron doctrine, Gorsuch has been highly critical — calling it a “behemoth” that has brought about a concentration of “federal power in a way that seems more than a little difficult to square with the Constitution of the framers’ design.”

While Gorsuch has no real record on the issue of abortion to give the Senate an idea as to how he might approach cases challenging *Roe v. Wade*, he has written a book critical of the practice of assisted suicide. In the 2006 book *The Future of Assisted Suicide and Euthanasia*, Gorsuch’s position was described by the Princeton Press as that human life is intrinsically valuable and that “intentional killing is always wrong.”

Gorsuch sided with Christian employers and religious organizations in the cases of *Little Sisters of the Poor* and *Burwell v. Hobby Lobby Stores, Inc.* that employers should not be forced to provide insurance coverage for contraceptives, on the grounds of religious liberty. He wrote, “The [Affordable Care Act] mandate requires them to violate their religious faith by forcing them to lend an impermissible degree of assistance to conduct whath their religion teaches them to be gravely wrong.”



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He also argued in the 2007 case *Summum v. Pleasant Grove City* that the display of a Ten Commandments monument did not then additionally obligate a city government to display other offered monuments.

Gorsuch is the son of Anne Gorsuch Burford, a conservative states' rights advocate who was the first female to lead the Environmental Protection Agency (EPA) during the Reagan administration. A native of Colorado, Gorsuch graduated from Columbia, earning his law degree from Harvard in 1991. In 2006, he was nominated by President George W. Bush to a seat on the 10th Circuit Court of Appeals, and was confirmed without a dissenting vote.

He is not expected to win without opposition this time. Democrat Senator Jeff Merkley (D-Ore.), for example, has already announced his opposition. "This is a stolen seat. This is the first time a Senate majority has stolen a seat," he declared, adding, "we will use every lever in our power to stop this." Merkley's reference was to the Republican Senate's refusal to hold a vote on President Barack Obama's nominee, Merrick Garland.

Republicans, on the other hand, appear just as determined to confirm Gorsuch. Senator Lee said, "We are going to get this nominee confirmed." Senator Cruz said that the "nuclear option" should remain on the table. This so-called nuclear option means that if Democrats choose to filibuster the nomination (60 votes would be needed to end the filibuster and have a vote), then the Republicans use a simple majority to change the 60-vote threshold in the Senate rules for ending filibusters.

Republicans had not even attempted to filibuster either of Obama's Supreme Court picks. But then, in 2013, then-Democrat Majority Leader Harry Reid used the "nuclear option" to get some of President Obama's federal judge nominations approved. At the time, he said doing so was just "common sense." Senator Mitch McConnell (R-Ky.) told Reid he might soon "regret" this action because the day could come when Republicans have both a Senate majority and a Republican president. And this day, McConnell told Reid, could come "sooner than you think."

That day came less than four years later, when President Trump stepped forward in the East Room of the White House and announced his nomination of Judge Gorsuch to the Supreme Court.

Steve Byas is a professor of history and government at Randall University in Moore, Oklahoma. He is the author of the book History's Greatest Libels, one chapter of which is devoted to the smear campaign the Left launched upon Judge Clarence Thomas, in an effort to block his confirmation to the U.S. Supreme Court in 1991.

Photo of Judge Neil Gorsuch: AP Images



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