

Legal Sidebar

The Essential Neil Gorsuch Reader: What Judge Gorsuch Cases Should You Read?

02/13/2017

Following President Trump’s nomination of Neil Gorsuch to the Supreme Court, Senators have reportedly begun [meeting](#) with the nominee who could succeed Justice Antonin Scalia, as part of the initial phases of determining whether to provide “[Advice and Consent](#)” to the nomination. According to recent [news reports](#), the Senate is anticipated to hold hearings and ultimately vote on Judge Gorsuch’s nomination in the coming weeks and months. Hearings on nominees to the Supreme Court have historically considered the nominee’s previous work experience, with particular focus on any rulings the nominee authored as a judge.

As an earlier [Sidebar posting](#) noted, Judge Gorsuch has a voluminous judicial record, having served on the U.S. Court of Appeals for the Tenth Circuit for more than a decade. According to Judge Gorsuch’s recent [submissions](#) to the Senate Judiciary Committee, he has authored over [eight hundred opinions](#) and participated in approximately [2,750 decisions](#) during his tenure on the Tenth Circuit. This provides an enormous—and perhaps unwieldy—body of law for those interested in learning about Judge Gorsuch’s approach to judging. Federal appellate opinions and votes can be far from dispositive in predicting how federal appellate judges might vote if elevated to the Supreme Court, as many rulings on federal courts of appeals are unanimous, uncontroversial, or all but dictated by precedent. Nonetheless they “offer perhaps the best gauge available for” determining a nominee’s future work as a Supreme Court Justice, as one [scholar](#) of the Supreme Court nomination process has noted. Beyond Judge Gorsuch’s judicial record, the nominee has [authored](#) various publications that could also provide insight into his approaches to various areas of law.

To help Members and committees of Congress and their staff in their ongoing research into Judge Gorsuch’s approach to the law, CRS attorneys have prepared the following tabular listing of notable cases or other written material which could potentially help illuminate Judge Gorsuch’s views on various matters of law. The cases listed include: (1) opinions authored by Judge Gorsuch (designated by an asterisk “*”); (2) opinions that Judge Gorsuch joined; and (3) other key votes that Judge Gorsuch cast during his tenure on the Tenth Circuit (including votes regarding whether to rehear a case *en banc*). The cases are subdivided within the table into certain broad categories (e.g., administrative law). These categories represent fields of law where Judge Gorsuch could, if confirmed, influence the High Court’s approach. (By way of background, CRS Report [R44419](#) outlines key areas of law where Justice Antonin Scalia can be seen to have influenced the Supreme Court’s jurisprudence, including the areas where he provided a fifth and dispositive vote). Cases within each area are listed alphabetically by name. It is important to note that several areas of law where Justice Scalia’s successor could play a role in shaping the Court’s jurisprudence do not factor prominently on the Tenth Circuit’s docket. Examples include international law and national security matters, which tend to arise relatively infrequently on the regional federal courts of appeals.

Area of Law	Key Cases
Administrative law and Executive Power (including standing)	Zen Magnets, LLC v. Consumer Prod. Safety Comm'n , 841 F.3d 1141 (10th Cir. 2016) (review of findings of Consumer Product Safety Commission)

to sue)

- * [Gutierrez-Brizuela v. Lynch](#), 834 F.3d 1142 (10th Cir. 2016) (majority opinion & concurring opinion) (*Chevron* & agency interpretations of statute)
- * [TransAm Trucking, Inc. v. Admin. Review Bd., U.S. Dep't of Labor](#), 833 F.3d 1206 (10th Cir. 2016) (dissenting) (*Chevron* & ambiguity standard)
- * [Caring Hearts Pers. Home Servs., Inc. v. Burwell](#), 824 F.3d 968 (10th Cir. 2016) (Medicare reimbursements & agency interpretations of law)
- * [NLRB v. Cmty. Health Servs.](#), 812 F.3d 768 (10th Cir. 2016) (dissenting) (National Labor Relations Board's backpay rule)
- * [De Niz Robles v. Lynch](#), 803 F.3d 1165 (10th Cir. 2015) (*Chevron* & retroactivity)
- * [Compass Env'tl., Inc. v. Occupational Safety & Health Review Comm'n](#), 663 F.3d 1164 (10th Cir. 2011) (dissenting) (review of Occupational Safety and Health Review Commission Penalty)
- [The Wilderness Soc. v. Kane Cty., Utah](#), 632 F.3d 1162, 1172 (10th Cir. 2011) (concurring) (mootness & standing to sue)
- [S. Utah Wilderness All. v. Office of Surface Mining Reclamation & Enft.](#), 620 F.3d 1227 (10th Cir. 2010) (standing to sue & review of agency permitting decision)

Capital Punishment

- [The Estate of Lockett by & through Lockett v. Fallin](#), 841 F.3d 1098 (10th Cir. 2016) (Eighth Amendment & method of execution challenge)
- [Warner v. Gross](#), 776 F.3d 721 (10th Cir. 2015) (Eighth Amendment & method of execution challenge)
- * [Eizember v. Trammel](#), 803 F.3d 1129 (10th Cir. 2015) (jury bias & application of *Wainwright v. Witt*)
- * [Williams v. Trammel](#), 782 F.3d 1184 (10th Cir. 2015) (concurring) (death penalty & felony murder)
- * [Hooks v. Workman](#), 689 F.3d 1148 (10th Cir. 2012) (dissenting) (right to counsel in post-conviction *Atkins* proceeding)

Civil Liability

- * [Hammond v. Stamps.com, Inc.](#), 844 F.3d 909 (10th Cir. 2016) (Class Action Fairness Act)
- * [Ragab v. Howard](#), 841 F.3d 1134 (10th Cir. 2016) (dissenting) (arbitration clauses)
- * [Cook v. Rockwell Int'l Corp.](#), 790 F.3d 1088 (10th Cir. 2015) (preemption & Price Anderson Act)
- * [Caplinger v. Medtronic, Inc.](#), 784 F.3d 1335 (10th Cir. 2015) (preemption & medical device law)
- * [Howard v. Ferrellgas Partners, L.P.](#), 748 F.3d 975 (10th Cir. 2014)

(Federal Arbitration Act & class actions)

* [Chelsea Family Pharmacy, PLLC v. Medco Health Sols., Inc.](#), 567 F.3d 1191 (10th Cir. 2009) (concurring) (arbitration clauses)

* Neil M. Gorsuch & Paul B. Matey, [Settlements in Securities Fraud Class Actions: Improving Investor Protection](#), Washington Legal Foundation Critical Legal Issues, Working Paper Series No. 128 (Apr. 2005)

Civil Rights

* [Walton v. Powell](#), 821 F.3d 1204 (10th Cir. 2016) (*McDonnell Douglas* test)

* [Hwang v. Kansas State University](#), 753 F.3d 1159 (10th Cir. 2014) (Rehabilitation Act)

* [Almond v. Unified Sch. Dist. No. 501](#), 665 F.3d 1174 (10th Cir. 2011) (Age Discrimination Employment Act & Ledbetter Act)

[Kastl v. Maricopa Cty. Cmty. Coll. Dist.](#), 325 F. App'x 492 (9th Cir. 2009) (transgender discrimination & Title VII)

* [Orr v. City of Albuquerque](#), 531 F.3d 1210 (10th Cir. 2008) (Pregnancy Discrimination Act)

Constitutional Law (generally)

* [Cordova v. City of Albuquerque](#), 816 F.3d 645 (10th Cir. 2016) (concurring) (constitutional torts & malicious prosecution claims)

* [Kerr v. Hickenlooper](#), 759 F.3d 1186 (10th Cir. 2014) (dissenting from the denial of rehearing en banc) (Political Question Doctrine)

* Neil M. Gorsuch, [Of Lions and Bears, Judges and Legislators, and the Legacy of Justice Scalia](#), 66 Case W. Res. L. Rev. 905 (2016)

* Neil M. Gorsuch, [Liberals 'N' Lawsuits](#), Nat'l Review Online (Feb. 7, 2005)

Criminal Law & Procedure

* [United States v. Ackerman](#), 831 F.3d 1292 (10th Cir. 2016) (Fourth Amendment, private searches, & third party doctrine)

* [A.M. v. Holmes](#), 830 F.3d 1123 (10th Cir. 2016) (dissenting) (qualified immunity & excessive force)

* [United States v. Carloss](#), 818 F.3d 988 (10th Cir. 2016) (dissenting) (Fourth Amendment and scope of the implied consent doctrine)

[Pauly v. White](#), 817 F.3d 715 (10th Cir. 2016) (joins dissent from the denial of rehearing en banc) (police use of force)

* [United States v. Krueger](#), 809 F.3d 1109 (10th Cir. 2015) (concurring) (Rule 41 & magistrates' power to issue warrants)

* [Feinberg v. Comm'r of Internal Revenue](#), 808 F.3d 813 (10th Cir. 2015) (Fifth Amendment self-incrimination right & marijuana dispensaries)

- * [United States v. Nichols](#), 784 F.3d 666 (10th Cir. 2015) (dissenting from the denial of rehearing en banc) (Non-delegation Doctrine & criminal law)
- * [United States v. Rentz](#), 777 F.3d 1105 (10th Cir. 2015) (en banc) (interpretation of 18 U.S.C. § 924(c)(1)(A))
- * [United States v. Nicholson](#), 721 F.3d 1236 (10th Cir. 2013) (dissenting) (exclusionary rule & mistakes of law)
- * [United States v. Dutton](#), 509 F. App'x 815 (2013) (dissenting) (exclusionary rule & good faith exception)
- * [United States v. Games-Perez](#), 667 F.3d 1136 (10th Cir. 2012) (concurring); [United States v. Games-Perez](#), 695 F.3d 1104 (10th Cir. 2012) (dissenting from the denial of rehearing en banc) (interpretation of 18 U.S.C. § 924(a)(2))
- * [Fisher v. City of Las Cruces](#), 584 F.3d 888 (10th Cir. 2012) (police use of force)
- * [Williams v. Jones](#), 571 F.3d 1086 (10th Cir. 2009) (dissenting); [Williams v. Jones](#), 583 F.3d 1254, 1256 (10th Cir. 2009) (dissenting from the denial of rehearing en banc) (Sixth Amendment Right to Counsel & plea bargains)
- * [Cortez v. McCauley](#), 478 F.3d 1108 (10th Cir. 2007) (police use of force)

Environmental Law

- [Asarco, LLC v. Noranda Mining, Inc.](#), 844 F.3d 1201 (10th Cir. 2017) (Superfund liability)
- * [Energy & Env't Legal Inst. v. Epel](#), 793 F.3d 1169 (10th Cir. 2015) (Colorado Renewable Energy Law & Dormant Commerce Clause)
- [WildEarth Guardians v. EPA](#), 759 F.3d 1196 (10th Cir. 2014) (review of EPA federal implementation plan for regional haze)
- * [United States v. Magnesium Corp. of Am.](#), 616 F.3d 1129 (10th Cir. 2010) (EPA & regulation of mineral processing waste)
- * [Hydro Res., Inc. v. EPA](#), 608 F.3d 1131 (10th Cir. 2010) (en banc) (Safe Drinking Water Act & Indian law)

Federalism & States' Rights

- * [Energy & Env't Legal Inst. v. Epel](#), 793 F.3d 1169 (10th Cir. 2015) (Colorado Renewable Energy Law & Dormant Commerce Clause)
- * [Direct Mktg. Ass'n v. Brohl](#), 735 F.3d 904 (10th Cir. 2013) (concurring); [Direct Mktg. Ass'n v. Brohl](#), 814 F.3d 1129 (10th Cir. 2016) (Colorado tax law & Dormant Commerce Clause)
- [United States v. Carel](#), 668 F.3d 1211 (10th Cir. 2011) (Sex Offender Registration And Notification Act & Commerce Clause)

* [Wilson v. Workman](#), 577 F.3d 1284 (10th Cir. 2009) (Antiterrorism and Effective Death Penalty Act & state court proceedings)

Freedom of Religion

[Little Sisters of the Poor Home for the Aged, Denver, Colo. v. Burwell](#), 799 F.3d 1315 (10th Cir. 2015) (joined dissent from the denial of rehearing en banc) (Religious Freedom Restoration Act (RFRA) & contraceptive coverage requirement accommodation under the Affordable Care Act (ACA))

* [Yellowbear v. Lampert](#), 741 F.3d 48 (10th Cir. 2014) (Religious Land Use and Institutionalized Persons Act (RLUIPA))

* [Hobby Lobby Stores, Inc. v. Sebelius](#), 723 F.3d 1114 (10th Cir. 2013) (concurring) (RFRA & contraceptive coverage requirement under the ACA)

* [Am. Atheists, Inc. v. Duncan](#), 637 F.3d 1095 (10th Cir. 2010) (dissenting from the denial of rehearing en banc) (Establishment Clause & religious displays)

* [United States v. Quaintance](#), 608 F.3d 717 (10th Cir. 2010) (RFRA & sincerity of beliefs)

* [Abdulhaseeb v. Calbone](#), 600 F.3d 1301 (10th Cir. 2010) (concurring) (RLUIPA)

* [Green v. Haskell Cty. Bd. of Comm'rs](#), 574 F.3d 1235 (10th Cir. 2009)

(dissenting from the denial of rehearing en banc) (Establishment Clause and religious displays)

[Sumnum v. Pleasant Grove City](#), 499 F.3d 1170 (10th Cir. 2007) (joined dissent from the denial of rehearing en banc) (Government Speech, Establishment Clause, & religious displays)

Freedom of Speech (including campaign finance)

* [Walton v. Powell](#), 821 F.3d 1204 (10th Cir. 2016) (First Amendment retaliation)

* [Riddle v. Hickenlooper](#), 742 F.3d 922, 930 (10th Cir. 2014) (concurring) (contribution limits)

* [Bustos v. A&E Television Networks](#), 646 F.3d 762 (10th Cir. 2011) (defamation & First Amendment)

* [Mink v. Knox](#), 613 F.3d 995, 1012 (10th Cir. 2010) (concurring) (defamation & First Amendment)

* [Abilene Retail # 30, Inc. v. Bd. of Comm'rs](#), 508 F.3d 958 (10th Cir. 2007) (dissenting from the denial of rehearing en banc) (secondary effects doctrine)

* [Van Deelen v. Johnson](#), 497 F.3d 1151 (10th Cir. 2007) (public employees & right to petition)

* [Casey v. W. Las Vegas Ind. Sch. Dist.](#), 473 F.3d 1323 (10th Cir. 2007)

(public employee speech)

Right to Keep & Bear Arms (including firearms regulations)

- * [United States v. Rentz](#), 777 F.3d 1105 (10th Cir. 2015) (en banc) (interpretation of 18 U.S.C. § 924(c)(1)(A))
- * [United States v. Games-Perez](#), 667 F.3d 1136 (10th Cir. 2012) (concurring); [United States v. Games-Perez](#), 695 F.3d 1104 (10th Cir. 2012) (dissenting from the denial of rehearing en banc) (interpretation of 18 U.S.C. § 924(a)(2))
- [United States v. Nolan](#), 342 F. App'x 368 (10th Cir. 2009) (Second Amendment & felons)

Substantive Due Process/Fundamental Rights (including reproductive rights, right to die)

- * [Browder v. City of Albuquerque](#), 787 F. 3d 1076 (10th Cir. 2015) (substantive due process & constitutional torts)
- * [Planned Parenthood Ass'n of Utah v. Herbert](#), 839 F.3d 1301 (10th Cir. 2016) (dissented from denial of rehearing en banc) (state funding of Planned Parenthood & appellate review of factual record)
- * Neil M. Gorsuch, [The Right to Assisted Suicide and Euthanasia](#), 23 Harv. J.L. & Pub. Pol'y 599 (2000)
- * Neil M. Gorsuch, [The Future of Assisted Suicide and Euthanasia](#) (2009)

In addition to this tabular listing, CRS attorneys are working on a more comprehensive listing of all Judge Gorsuch's cases, as well as a report that analyzes key opinions by him. The latter report, in particular, is intended as a companion to the [report](#) on Justice Scalia and his influence on the Court. CRS attorneys can also provide briefings or author memoranda on specific opinions by Judge Gorsuch or areas of law. For further assistance, please contact CRS's coordinators on this project, Jeanne Dennis (jdennis@crs.loc.gov, x7-5812), Michael Garcia, (mgarcia@crs.loc.gov, x7-3873), or Andrew Nolan (anolan@crs.loc.gov, x7-0602).

Posted at 02/13/2017 09:00 PM