

# A New Conservative Lion? President Trump Announces His Supreme Court Pick

With Maureen Scalia, widow of the late Associate Justice Antonin Scalia seated next to Vice President Mike Pence in the East Room of the White House, President Donald Trump announced his choice to replace the high court's "conservative lion."

And, true to his word, the president nominated a man who is very much in the mold of the jurist he will replace: 10th Circuit Court of Appeals Judge Neil Gorsuch. The graduate of Columbia, Harvard and Oxford has clerked for D.C. Court of Appeals Judge David B. Sentelle and Supreme Court Associate Justices Byron R. White and Anthony Kennedy.

"Judge Gorsuch has a superb intellect, an unparalleled legal education and a commitment to interpreting the Constitution according to its text," Trump said. "He will make an incredible justice as soon as the Senate confirms him."

He also served in the Department of Justice as the principal deputy to the associate attorney general and acting associate attorney general in the George W. Bush administration. The White House issued the following statement about the nomination:

Neil M. Gorsuch has served for over a decade as a federal judge on the U.S. Court of Appeals for the Tenth Circuit, building a nationally respected and distinguished judicial record and reputation.

Judge Gorsuch is a brilliant jurist with an outstanding intellect and a clear, incisive writing style. He is universally respected for his integrity, fairness and decency. And he understands the role of judges is to

interpret the law, not impose their own policy preferences, priorities or ideologies.

Judge Gorsuch is a native Westerner and avid outdoorsman. He spent his childhood in Colorado and chose to return west to raise his family. He enjoys fishing, hiking and skiing. And he and his wife care for animals, including a horse, in the small barn at their home. As a young man, he delivered papers and worked as a front desk clerk at a Howard Johnson to make extra money.

Judge Gorsuch has an impressive range of professional experience.

Judge Gorsuch was confirmed by the U.S. Senate without opposition on July 20, 2006, to the U.S. Court of Appeals for the Tenth Circuit. Indeed, 11 current Democrat Senators—including Minority Leader Schumer, Sen. Leahy and Sen. Feinstein—and 20 current Republican Senators were in office when Judge Gorsuch was confirmed by voice vote, without opposition. He received a “unanimously well-qualified” rating by the American Bar Association.

Prior to serving on the court, Judge Gorsuch had extensive trial and appellate litigation experience as a practicing attorney and then served his country the Department of Justice as the Principal Deputy Associate Attorney General in 2005. In that position, he assisted in managing major aspects of the department’s work in areas such as constitutional law, counterterrorism, environmental regulation and civil rights.

Judge Gorsuch worked as an associate and partner at the law firm of Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC from 1995 to 2005.

Judge Gorsuch’s academic credentials are impeccable.

Judge Gorsuch attended Harvard Law School as a Harry Truman

Scholar and graduated with honors in 1991. He graduated with honors from Columbia University in 1988, where he was elected to Phi Beta Kappa. After law school, he attended Oxford University as a Marshall Scholar, and he received his Doctorate in Philosophy in 2004.

He clerked for Justice Byron White and Justice Kennedy of Supreme Court of the United States and Judge David Sentelle of the United States Court of Appeals for the D.C. Circuit.

Judge Gorsuch is a “judge’s judge” who decides cases based on the law, not personal policy preferences. He is not afraid to reach results contrary to his own policy views.

Echoing a common theme of Justice Scalia’s jurisprudence, Judge Gorsuch once wrote that “a judge who likes every result he reaches is very likely a bad judge, reaching for results he prefers rather than those the law compels.”

Evangelicals are likely to celebrate Gorsuch’s nomination other reasons. As the SCOTUSBlog puts it:

Some of the most high-profile cases in which Gorsuch has cast a vote have involved the religion clauses of the Constitution (those prohibiting the establishment of religion and creating a right to free exercise), as well as congressional statutes expanding protection for religious adherents (known as RFRA and RLUIPA). Followers of the Supreme Court will recognize two recent cases in which Gorsuch participated on the 10th Circuit, *Hobby Lobby Stores v. Sebelius* and *Little Sisters of the Poor Home for the Aged v. Burwell*. In *Hobby Lobby*, Gorsuch wrote a concurrence in the en banc 10th Circuit that sided with the company and its owners. He stressed the need to accept these parties’ own conceptions regarding the requirements of their faith, and held (among other things) that they were likely to prevail on claims that the contraception mandate in the Affordable Care Act substantially burdened their religious exercise in

violation of RFRA. This position was largely vindicated in the subsequent decision by the Supreme Court. Thereafter, in *Little Sisters of the Poor*, Gorsuch joined a group of 10th Circuit judges who dissented from denial of rehearing en banc when a panel of the court of appeals ruled against the *Little Sisters* on their RFRA claims about the same ACA mandate. There, again, the point was that the 10th Circuit had shown insufficient deference to the *Little Sisters'* own articulation of the tenets of their religious beliefs. That position, too, was at least partially vindicated by the Supreme Court when it decided that the *Little Sisters'* religious beliefs probably could be accommodated while still affording full and equal contraceptive coverage to their employees, and directed the parties and courts to consider such a solution on remand. Simply put, in cases that closely divided his court and the Supreme Court, Gorsuch has shown himself to be an ardent defender of religious liberties and pluralistic accommodations for religious adherents.

Gorsuch has also written or joined opinions—again, largely vindicated by the Supreme Court—that have criticized doctrines that limit religious expression in public spaces. In *Summum v. Pleasant Grove City*, in 2007, Gorsuch joined a dissent from denial of rehearing en banc in a case in which the 10th Circuit had limited the ability of the government to display a donated Ten Commandments monument in a public park without accepting all other offers of donated monuments. The subsequent Supreme Court decision reversing the 10th Circuit largely adopted the reasoning of that dissent. Gorsuch also has a pair of dissenting opinions in which he criticizes the “reasonable observer” test for establishment clause cases as far too likely to find impermissible endorsements of religion by the government when none was intended, and thus to prevent religious adherents from reasonably participating in public life. These cases are *American Atheists Inc. v. Davenport*, in 2010, and *Green v. Haskell County Board of Commissioners*, in

2009. The common thread in these cases is one that matters very deeply to conservatives: a sense that the government can permit public displays of religion –and can accommodate deeply held religious views–without either violating the religion clauses of the Constitution or destroying the effectiveness of government programs that occasionally run into religious objections. In his 2009 concurrence in *Pleasant Grove City, Utah v. Summum*, Scalia articulated very similar views. Gorsuch's opinions on these issues are quite thoughtful and demonstrate that he would be a natural successor to Scalia in adopting a pro-religion conception of the establishment clause.

Republican National Committee Chairwoman Ronna McDaniel released the following statement supporting Neil Gorsuch's nomination to the Supreme Court:

Neil Gorsuch is a mainstream conservative choice who fulfills President Trump's promise to the American people to appoint a justice who represents their views. In this past presidential election, the American people gave their support to President Trump in large part because he vowed to appoint a justice in the mold of the great Justice Scalia. Neil Gorsuch's sterling track record of faithfully interpreting the Constitution, protecting individual rights and ensuring limited government is complemented by his discerning approach to every case and a high personal integrity. Democrats who plan on obstructing President Trump's choice are only scheming to deprive the American people of their rightful voice on the nation's highest court. Americans are clearly in support of this thoughtful and qualified choice, and it's time for Democrats to honor the will of the people so the Supreme Court can once again have nine justices.

Democrats had promised to block any nominee Trump announced. Based on the DNC's official statement, it seems they intend to follow through:

Judicial scholars are worried that Gorsuch could be even more extreme than Scalia. Americans deserve a better Supreme Court justice.

Gorsuch said he was looking forward to meeting with congressional leaders from both parties. Following the nomination announcement, he said:

Mr. President, Mr. Vice President, you and your team have shown me great courtesy and you have entrusted me with the most solemn assignment. Standing here in the House of History, aware of my own imperfections.

If I'm confirmed, I will do all that my powers permit to enforce the Constitution and laws of this country.

For the last decade, I worked as a federal judge at a court that spanned six western states, serving 18 million people. The men and women I have worked with are an inspiration to me. I have watched them fearlessly tending to the rule of law, enforcing the promises of our Constitution and living out daily the judicial oaths to administer justice equally without respect to their personal political beliefs ...

The judges that have served in this particular seat of the Supreme Court, including Antonin Scalia and Robert Jackson, are much in my mind at this point. Justice Scalia was a lion of the law. Disagree or agree with him, all of the colleagues on the bench shared his wisdom and humor. Like them, I miss him.

I began my legal career working for Byron White, the last Coloradan to serve on the Supreme Court and the only justice to lead the NFL in rushing. He was one of the smartest and most courageous men I have known.

He gave me the chance to work for Justice Kennedy as well. He was incredibly welcoming and gracious. He taught me so much. I'm forever grateful. If you have ever met him, you

would know how lucky I was to land a clerkship with him right out of school.

These judges brought me up in the law. Truly, I would not be here without them. Today is as much their day as it is mine.

In the balance of my personal life, I have had the privilege of working as a practicing lawyer and teacher. I enjoyed wonderful colleagues who support me at this moment ... I saw that when judges don our robes, it does not make us any smarter, but it is a reminder of what is expected of us: impartiality, independence, collegiality and courage.

As this process moves to the Senate, I look forward to speaking with members from both sides of the aisle, answering the questions and hearing their concerns. I consider the U.S. Senate the greatest deliberative body in the world, and I respect the important role the Constitution affords it in the confirmation of our judges.

I respect that in our legal order, it is Congress—not the courts—that write new laws. Judges are to apply—not alter—the work of the people’s representatives. A judge who likes every outcome is very likely a bad judge., stretching for results he prefers, rather than those the law demands.

I am so thankful tonight for my family, my friends and my faith. These are the things that keep me grounded and has sustained me. To Louise, my incredible wife and companion of 20 years, my cherished daughters watching on TV and all of my family and friends, I cannot thank you enough—your love and your prayers—I could not attempt this without you.

Mr. President, I’m honored and I’m humbled. Thank you very much. {eoa}