

JUSTICE GORSUCH

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HIGHLIGHTS FROM HIS FIRST YEAR ON THE SUPREME COURT

- ★ *Justice Neil Gorsuch is fulfilling President Trump's promise to appoint someone who would interpret the Constitution the way it was meant to be.*
- ★ *In his first year, Justice Gorsuch has fulfilled his promise to be a fair and independent justice, deciding cases on the basis of the law and the Constitution, not politics or personal feelings.*



JUSTICE GORSUCH'S RECORD IN CASES DECIDED TO DATE BY THE SUPREME COURT IS NOTEWORTHY.

Justice Gorsuch has argued that the First Amendment provides broader protection for religious liberty. In *Trinity Lutheran Church v. Comer*, 137 S. Ct. 2012 (2017), where the Court held that a state cannot deny otherwise available public benefits to a church on account of its religious status, Justices Thomas and Gorsuch joined each other's opinions advocating a more expansive protection of religious freedom. Although the immediate case involved children's safety—the plaintiff church argued it should receive a grant for rubberizing its playground surface—the two justices believed the Court's holding should extend beyond cases involving public safety or health. They did not believe it mattered whether a grant recipient put the money received to religious use.



Justice Gorsuch has argued that the Second Amendment provides broader protection for the right to bear arms in self-defense. In *Peruta v. California*, 137 S. Ct. 1995 (2017), Justice Gorsuch was the only justice to join Justice Thomas' dissent from the Court's decision not to hear a case concerning whether the Second Amendment protects the right to carry firearms in public for self-defense. The dissent recognized that there is such a right and criticized the Ninth Circuit's avoidance of the issue—"limit[ing] its review to whether the Second Amendment protects the right to concealed carry—as opposed to the more general right to public carry." *Id.* at 1997.



Justice Gorsuch has argued for greater recognition of the government’s interest in preserving national security. In *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080 (2017), the Court partially lifted lower court preliminary injunctions that prevented enforcement of the Trump administration’s travel ban—an executive order that among other things barred the entry of foreign nationals from Iran, Libya, Somalia, Sudan, Syria, and Yemen for 90 days. But the Court left the injunctions in place with respect to those “who have a credible claim of a bona fide relationship with a person or entity in the United States.” *Id.* at 2088. Justice Thomas, joined by Justices Gorsuch and Alito, issued a partial dissent, arguing that the preliminary injunctions should have been lifted completely because the administration was likely to succeed on the merits given the weight of “the Government’s interest in preserving national security.” *Id.* at 2090.

Justice Gorsuch has voted with Justice Thomas in all but three of the cases decided by the Court to date.

Two of Justice Gorsuch’s dissents suggest he is among the justices most likely to scrutinize assertions of power by federal agencies.

- Gorsuch issued a dissent from the Court’s decision not to hear *Mathis v. Shulkin*, 137 S. Ct. 1994 (2017), which addressed whether medical evaluators at the Department of Veterans Affairs should be presumed competent to provide expert opinions on medical issues. He questioned how “an administrative agency may manufacture for itself or win from the courts” such a presumption when it has “no basis in the relevant statutes.” *Id.* at 1995.
- In *Garco Construction, Inc. v. Speer*, 2018 U.S. LEXIS 1640 (Mar. 19, 2018), Gorsuch joined Justice Thomas’ dissent lamenting that the Court had passed up “another opportunity” to put an end to *Auer* deference, under which courts must “give ‘controlling weight’ to an agency’s interpretation of its own regulations.” *Id.* at *2. The two justices would have chosen to hear the case to address whether the operative precedents, *Auer v. Robbins*, 519 U.S. 452 (1997), and *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), should be overruled. Their dissent described *Seminole Rock’s* standard of deference as “constitutionally suspect” for improperly ceding judicial power to agencies and “on its last gasp.” 2018 U.S. LEXIS 1640 at **2-3.



IN HIS SPEECHES, JUSTICE GORSUCH HAS CLEARLY AND PERSUASIVELY EXPLAINED HIS COMMITMENT TO TEXTUALISM AND ORIGINALISM.

From his address to the Federalist Society’s Lawyers Convention Annual Dinner (11/16/2017):

- “Tonight I can report, a person can be both a committed originalist and textualist and be confirmed to the Supreme Court of the United States.”
- “Originalism has regained its place at the table of constitutional interpretation, and textualism in the reading of statutes has triumphed. And neither one is going anywhere on my watch.”
- “The duty of a judge is to say what the law is, not what it should be.”

From his speech at Stockton University (1/23/2018): “When I’m interpreting the Constitution, I’m looking at sources that are external to myself. . . . I look to what the Founders understood, what the original public meaning of that document was, and I take great care to pay attention to the words on the page.”

**SIMILARLY, DURING ORAL ARGUMENT, JUSTICE GORSUCH HAS
FOCUSED ATTENTION ON THE TEXT OF THE LAW AND THE
ORIGINAL MEANING OF THE CONSTITUTION.**



During the *Sessions v. Dimaya* argument (10/2/2017), which concerns whether the void-for-vagueness doctrine, which is invoked to strike down unclear criminal laws, can be applied to a civil statute governing an alien's removal from the United States by order of the attorney general, Gorsuch attempted to ground the Court's analysis in constitutional text and principles. He asked counsel for the alien to respond "to the critique that the void-for-vagueness doctrine, as an originalist . . . matter, is just substantive due process and suspect on that basis." Transcript at 50. He also suggested that having different standards for vagueness challenges to civil and criminal laws wasn't in keeping with the Constitution: "And I look at the text of the Constitution, always a good place to start, and the Due Process Clause speaks of the loss of life, liberty, or property. It doesn't draw a civil/criminal line..." Transcript at 12.

During the *Gill v. Whitford* argument (10/3/2017), where the Court has been asked to strike down Wisconsin's redistricting plan on a novel theory that it constitutes impermissible partisan gerrymandering, Gorsuch quipped that "maybe we can just for a second talk about the arcane matter, the Constitution." He then cited the text of the 14th, 15th, 19th, and 26th Amendments and followed, "Aren't those all textual indications in the Constitution itself that maybe we ought to be cautious about stepping in here?" Transcript at 60.

During the *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* argument (12/5/2017), which addressed whether Colorado can use its public accommodations law to compel a baker to create a same-sex wedding cake contrary to his religious beliefs, Justice Gorsuch probed the First Amendment interests implicated by the case. He noted that two of seven members of the relevant Colorado commission that furnished the initial ruling appeared to suggest that if "someone has an issue with the [state] laws impacting his personal belief system, [that individual] has to look at compromising that belief system . . ." Transcript at 55-56. After observing that Colorado ordered the baker "to provide comprehensive training to his staff," Justice Gorsuch asked "why isn't that compelled speech and possibly in violation of his free-exercise rights?" *Id.* at 70.