



For Immediate Release  
Thursday, March 16, 2017

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**NAACP Legal Defense Fund Releases Comprehensive Report on the Civil Rights Record of Judge Neil M. Gorsuch, Nominee for the Supreme Court of the United States**

*LDF Opposes Gorsuch Confirmation and Requests a Delay of his Confirmation Hearing*

With confirmation hearings for Supreme Court nominee and Tenth Circuit Court of Appeals Judge Neil Gorsuch set to begin next week, the NAACP Legal Defense and Educational Fund, Inc. (LDF) has released an in-depth [report](#) analyzing his civil rights record. Based on the report's comprehensive analysis, LDF opposes Judge Gorsuch to the Supreme Court. Our opposition to his confirmation is based on our review of the available judicial record. However, Judge Gorsuch's overall record is, unfortunately, incomplete. Thus, we also request that the committee delay Judge Gorsuch's confirmation hearing to allow sufficient time to review and consider outstanding documents from the period in which Judge Gorsuch served at the Department of Justice, which may reveal additional matters that should be examined by the Senate Judiciary Committee in advance of any hearing.

"LDF is committed to protecting the central role courts play in the enforcement of our nation's civil rights laws and the Constitution's guarantee of equal protection, and our extensive report is an integral part of this process," said Sherrilyn Ifill, President and Director-Counsel of LDF. "Judge Gorsuch's ten-year record of judicial decision-making offers no clear demonstration that he understands the importance of courts in vindicating the rights of those most dependent on the promise of equal justice under law. To the contrary, his record reflects a propensity toward minimizing equality protections across various areas. For these reasons, LDF must oppose the confirmation of Judge Gorsuch to the United States Supreme Court."

We do not reach this conclusion lightly. In fact, LDF does not take a position on every Supreme Court nominee. However, a hard and careful review of Judge Gorsuch's record raises serious concern about how he will approach cases involving civil rights issues of great import to the communities we serve. Without question, the findings also suggest that he is deeply ideological and conservative. Across different issues, including when race is directly and indirectly implicated, Judge Gorsuch has regularly favored the interests of the privileged and powerful—whether the government, corporations, or wealthy individuals—at the expense of equality and inclusion.

While serving on the bench, Judge Gorsuch has expressly praised the legal philosophy of Justice Antonin Scalia, whose opinions took a hostile position toward civil rights issues, including Justice Scalia's adherence to a judicial philosophy—originalism—which by its very nature and in practice, has embraced a cramped view of the civil rights of racial minorities and other marginalized individuals. In fact, we have found Judge Gorsuch's record mirrors and, in some areas, may exceed, the conservatism of Justice

Scalia, most prominently in his opposition to the longstanding Supreme Court precedent on the role of federal agencies.

Specifically, the report lays out LDF's research and concerns in the following areas:

- a. **Administrative Law** – Judge Gorsuch opposes the well-established legal doctrine that requires courts to defer to agency rulemaking authority in cases of ambiguous statutory interpretation, and favors doctrines that restrict Congress's ability to delegate authority to agencies. If adopted, his views would reduce regulatory authority and weaken federal agencies, which would mean fewer and weaker protections for workers, the environment, consumers, and public health. A number of key civil rights statutes, including Title VII, Title IX, the ADA, the ADEA, and the Fair Housing Act depend on agency rulemaking for their full enforcement. In an environment of deregulation, the resulting harms to the environment, public health, and worker safety would be disproportionately felt by African Americans and other people of color.
- b. **Access to Justice** – A restrictive approach to access to justice in federal courts is an important and overlooked aspect of Judge Gorsuch's record, with powerful implications for civil rights claimants. The threshold question of whether civil rights claimants can fully present their claims to a judge and jury touches all of LDF's core practice areas and a wide swathe of civil rights issues. Judge Gorsuch has been highly critical of some who rely on the courts to protect equal rights, writing that "American liberals have become addicted to the courtroom," improperly using constitutional litigation to "effect [their social agenda] on everything from gay marriage to assisted suicide to the use of vouchers for private-school education."
- c. **Capital Punishment and Criminal Justice** – Judge Gorsuch has been doggedly opposed to granting relief to prisoners facing execution, an approach that runs directly counter to LDF's long history of challenging the constitutionality of capital punishment in the Supreme Court. Judge Gorsuch also has a troubling record in other civil rights contexts—especially in the realm of policing and civil suits that challenge the constitutionality of police conduct.
- d. **Employment Discrimination** – Judge Gorsuch has often ruled against claims of employment discrimination, harassment, and retaliation. And by concurring in *Hobby Lobby, Inc. v. Sebelius*, Judge Gorsuch breathed new life into the long-discredited notion that personal religious beliefs can justify discrimination against others—reasoning that has had profound and dangerous consequences in the realm of employment discrimination and other areas.
- e. **Education** – A case which raises concerns both on disability rights and access to justice is *A.F. ex rel Christina B. v. Espanola Public Schools* in which Judge Gorsuch held that a student could not pursue claims under the Americans with Disabilities Act and the Rehabilitation Act because her mother had already settled her IDEA claims during mediation, and reaching settlement at that stage was a failure to exhaust all administrative paths to relief.
- f. **LGBTQ Equality** – In *Kastl v. Maricopa County Community College District*, Judge Gorsuch, sitting by designation on the Ninth Circuit, joined a panel opinion against a transgender

woman who sought to use the restroom in her workplace in accordance with her gender identity on the grounds that her employer had legitimate, nondiscriminatory “safety reasons” for banning the women from the bathroom. This generalized fear of transgender persons echoes the sort of factually baseless arguments made against transgender equality in recent filings before the Supreme Court and historically against various racial groups.

There remain outstanding questions about Judge Gorsuch’s record, including issues that he hasn’t addressed as a judge, and his work as Principal Deputy Associate Attorney General at the Department of Justice. Access to information about Judge Gorsuch’s tenure at DOJ has been limited. DOJ did not respond to the Judiciary Committee’s bipartisan request for material until it produced 144,000 pages of documents on March 8. And even that production has proven incomplete, as Ranking Member Dianne Feinstein described in a March 14 letter requesting additional material related to Judge Gorsuch’s work at DOJ. LDF believes the committee should delay Judge Gorsuch’s hearing so that it may fully review the documents that were just produced and receive the additional documents described in Senator Feinstein’s letter.

With the release of this report, LDF reminds the Senate that a strong and independent judiciary is critical to the functioning and legitimacy of our democratic government and the rule of law and urges the Senate to fulfill its Constitutional responsibility to thoroughly examine the complete record of Judge Gorsuch.

Read our full [report](#).

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*Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation’s first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.*