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Supreme Court nominee Neil Gorsuch: A troubling record on human rights

As a federal appellate judge, in his private practice and in his published writings, Neil Gorsuch has shown how he might rule on the Supreme Court on key issues involving civil rights, women's rights, workers' rights, LGBTQ rights and the rights of people with disabilities. The pattern is troubling. In his confirmation hearings, the Senate should ask Gorsuch the hard questions about this track record:

Gorsuch acted to deny American women the right to contraceptive coverage. In his concurrence in *Hobby Lobby Stores, Inc. v. Sebelius*, the 2013 case involving the Affordable Care Act's contraception mandate that ultimately went up to the Supreme Court, Gorsuch acted to deny American women the right to contraceptive coverage by allowing certain for-profit, secular companies to exclude contraceptive coverage from their employer-sponsored health insurance plans.¹

Gorsuch sided repeatedly with employers who denied disability and pension benefits. In a ruling denying benefits to a cancer patient and bone-marrow transplant recipient, Gorsuch wrote that the disability rights law in question did not exist to "turn employers into safety net providers for those who cannot work."² In other rulings, he denied benefits to a worker who suffered a spinal injury on the job,³ to an employee with a debilitating abdominal disease who needed immediate access to a bathroom on the job,⁴ and to a patient with pulmonary and coronary disease.⁵ Gorsuch also ruled against workers 66 percent of the time in employment discrimination cases.⁶

Gorsuch has argued for putting the rights of corporations over the health and safety of American workers. Gorsuch's dissent in *TransAm Trucking, Inc. v. Administrative Review Board* showed a callous disregard for a worker's health and safety. This case involved a truck driver who was transporting cargo through Illinois when the brakes on his trailer froze due to subzero temperatures. After waiting several hours for a repair truck to arrive, the heat in the cab went out and he began to experience serious health problems due to the cold, so he unhitched his truck from the trailer and drove away. He was terminated for abandoning the trailer. Gorsuch's dissenting opinion would have upheld that firing. He wrote: "It might be fair to ask whether [the employer's] decision was a wise or kind one. But it's not our job to answer questions like that."⁷ In *Compass Environmental, Inc. v. OSHRC*, an excavator operator died on the job after being electrocuted by an overhead power line at a surface mine site. The Occupational Safety and Health Review Commission found a serious violation of safety regulations and imposed a \$5,550 fine on the employer, which the employer appealed. While the majority of the court upheld the commission's findings, Gorsuch dissented, contending that this case was yet another example of administrative agencies wielding "remarkable powers."⁸

Gorsuch's academic mentor at Oxford University, legal scholar John Finnis, is an avowed homophobe. Finnis has condemned homosexuality and same-sex marriage, writing, "A life involving homosexual conduct is bad even for anyone unfortunate enough to have innate or quasi innate homosexual inclinations."⁹ Finnis has compared same-sex lovemaking to bestiality,¹⁰ and his writings were included in amicus briefs supporting California's anti-gay-marriage Proposition 8. As *The Guardian* has noted, "[Finnis'] work also served as the underpinnings for several states' argument to the supreme court in favor of banning gay marriage."¹¹ Yet Gorsuch has maintained close ties with Finnis, who is thanked for "kind support" through "draft after draft" in the acknowledgements to Gorsuch's 2006 book opposing assisted suicide.¹² In 2011, Gorsuch called Finnis "a great scholar" at "a time when legal giants roamed among Oxford's spires."¹³

Gorsuch has criticized the use of the courts to move a progressive agenda, writing in a 2005 article, "There's no doubt that constitutional lawsuits have secured critical civil-rights victories, with the desegregation cases culminating in *Brown*

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v. Board of Education topping the list. But rather than use the judiciary for extraordinary cases ... 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 on everything from gay marriage to assisted suicide to the use of vouchers for private-school education.”¹³

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- 3 *Lucas v. Liberty Life Assurance Co.*, www.bloomberglaw.com/public/desktop/document/Lucas_v_Liberty_Life_Assurance_Co_of_Boston_444_Fed_Appx_243_52_E?1485444635.
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- 7 *TransAm Trucking, Inc. v. Administrative Review Board*, www.ca10.uscourts.gov/opinions/15/15-9504.pdf.
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