

November 15, 2016



## The Trump List

### Donald Trump's List of Potential Supreme Court Nominees: Profiles for Nominees Announced on September 23, 2016

Senator Mike Lee (R-Utah) (Note: Sen. Lee [has reportedly taken himself out of the running](#))

**Age:** 45

**College/University:** Brigham Young University, B.S. Political Science

**School of Law:** BYU's J. Reuben Clark Law School, J.D.

As part of the Tea Party uprising of 2010, Mike Lee challenged an incumbent Republican to win his current Senate seat. Before his Senate run, his legal career included a clerkship for Judge Dee Benson for the District of Utah and two clerkships for Judge (and then Justice) Alito on the Third Circuit and the Supreme Court. He also spent time as an assistant U.S. attorney and in private practice. Now a member of the Senate Judiciary Committee, Lee often speaks about the role of judges and his own judicial philosophy, and even published a book on the topic, *Our Lost Constitution: The Willful Subversion of America's Founding Document*.

Lee's views of the Constitution are radically conservative, even when compared with the record of his former boss Justice Alito. Like D.C. Circuit Judge Janice Rogers Brown, Lee is part of an emerging right-wing legal movement to restore the "[Lochner era](#)" and use the Constitution as pretext to roll back progress made on economic and social rights throughout the 20th century. As Jeffrey Rosen wrote in *The New Yorker*, "Lee offer[s] glimpses of a truly radical vision of the U.S. Constitution, one that sees the document as divinely inspired and views much of what the federal government currently does as unconstitutional."<sup>1</sup> Rosen further observed: "He embraced 'nullification,' the idea that states have the right—and indeed the duty—to disregard federal laws . . . that they say are unconstitutional," including, for example, the Affordable Care Act.

As *Right Wing Watch* [documented](#),<sup>2</sup> in Lee's view, the following list of statutes and government programs are unconstitutional:

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<sup>1</sup> Jeffrey Rosen, *Radical Constitutionalism*, *The New Yorker* (Nov. 26, 2010), <http://www.nytimes.com/2010/11/28/magazine/28FOB-idealab-t.html>.

<sup>2</sup> Peter Montgomery, *What would it look like if Ted Cruz put his pal Mike Lee on the Supreme Court?*, *Right Wing Watch* (March 21, 2016), <http://www.rightwingwatch.org/taxonomy/term/3491>.

- Social Security
- Medicare/Medicaid
- Child labor law
- Minimum wage laws
- Disaster relief
- Food stamps
- Violence Against Women Act

Lee has also said that “[t]he Constitution says nothing that can plausibly be read” to provide for a right to abortion, and wrote an entire book, *Why John Roberts was Wrong About Healthcare*, to explain why the Affordable Care should have been struck down.

Senator Lee’s campaign bragged that he “fought the ACLU in its efforts to have access to the Main Street Plaza in Salt Lake City.”<sup>3</sup> Of course, it was not the ACLU that wanted access to the pedestrian plaza, but the ACLU’s clients: the National Organization for Women, a nuclear dis-armament group, and two churches.<sup>4</sup> Each of the groups was denied access following the plaza’s sale from Salt Lake City to the Mormon Church. Following the sale, the ACLU sued the city for failing to enforce an easement it retained as a public forum, thereby allowing the Mormon Church to stop unwanted pamphleteering and protesting. The Tenth Circuit sided with the activist groups and required the city to enforce its easement.<sup>5</sup> As a judge, Lee could be expected to engage in similar cherry-picking regarding who gets the protection of the First Amendment.

**Neil M. Gorsuch, Tenth Circuit Court of Appeals** (see our earlier report on Judge Gorsuch [here](#))

**Age:** 49

**College/University:** Columbia University, B.A.; University of Oxford, Ph.D. Legal Philosophy

**School of Law:** Harvard Law School, J.D.

Neil Gorsuch was appointed by George W. Bush to the Tenth Circuit in 2006 at the age of 38. On the Tenth Circuit, Gorsuch joined Judge Tymkovich’s opinion in *Hobby Lobby v. Sebelius*, holding that for-profit corporations are persons exercising religion for purposes of the Religious Freedom Restoration Act, and allowing them to assert religious objections to laws that protect their employees’ legal rights.<sup>6</sup>

Before joining the bench, Gorsuch worked on large anti-trust, class action and securities litigation in private practice. He also served as Principal Deputy to the Associate Attorney General at the U.S. Department of Justice before his judicial appointment.

Judge Gorsuch wrote several pieces in academic journals and the popular press before joining the bench. In a *National Review Online* op-ed published shortly before he became a Department of Justice official, Gorsuch attacked “American liberals” for what he said was an over-reliance on

<sup>3</sup> About Mike, (accessed Mar. 30, 2016) <https://www.leeforsenate.com/about-mike/>.

<sup>4</sup> *ACLU sues Salt Lake City over Main Street plaza access*, FIRST AMENDMENT CENTER (Aug. 8, 2003) <http://www.firstamendmentcenter.org/aclu-sues-salt-lake-city-over-main-street-plaza-access>.

<sup>5</sup> *Id.*

<sup>6</sup> 723 F.3d 1114, 1128 ( 10<sup>th</sup> Cir. June 27, 2013).

constitutional litigation.<sup>7</sup> He asserted that liberals’ “overweening addiction to the courtroom” negatively affects public policy by aggrandizing the courts and consequently dampening “social experimentation” by the legislative branches.<sup>8</sup> As a result, he argued, reliance on constitutional litigation has led to the politicization of the judiciary and the judicial selection process. Gorsuch also predicted that the “Left’s alliance with trial lawyers and its dependence on constitutional litigation to achieve its social goals risks political atrophy,” which will ultimately invite “permanent-minority status for the Democratic party.”<sup>9</sup> Gorsuch concluded that the country would be much better off if liberals “kick[ed] their addiction to constitutional litigation” and attempted to “win elections rather than lawsuits.”<sup>10</sup> Gorsuch was not similarly critical of constitutional litigation, initiated by conservative groups, aimed at invalidating public policies like land use and environmental regulation, campaign finance reform, affirmative action, and gun control.

In another article, which discussed a securities fraud class action he handled for the national Chamber of Commerce as amicus, Gorsuch launched into an attack on plaintiffs’ lawyers for using such cases as vehicles for “free ride[s] to fast riches.” He concluded that that they involve “frivolous claims ... [that] impose[] an enormous toll on the economy, affecting virtually every public corporation in America at one time or another and costing business billions of dollars in settlements every year.”<sup>11</sup>

**Timothy M. Tymkovich, Tenth Circuit Court of Appeals** (see our earlier report on Judge Tymkovich [here](#))

**Age:** 60

**College/University:** Colorado College, B.A.

**School of Law:** University of Colorado School of Law, J.D.

Timothy Tymkovich was nominated by President Bush to a seat on the Tenth Circuit Court of Appeals from Colorado, and was confirmed by the Senate in a 58-41 vote on April 1, 2003. Tymkovich’s notable opinions on the Tenth Circuit include *Hobby Lobby v. Sebelius*, holding that for-profit corporations are persons exercising religion freedom for purposes of the Religious Freedom Restoration Act, and allowing them to assert religious objections to laws that protect their employees’ legal rights.<sup>12</sup> Judge Tymkovich also upheld the constitutionality of the Stolen Valor Act, a federal law criminalizing false statements about having a military medal, holding that the First Amendment does not protect “false statements of fact ... except to the extent necessary to protect more valuable speech.”<sup>13</sup> The U.S. Supreme Court found the Stolen Valor Act unconstitutional later that year.<sup>14</sup>

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<sup>7</sup> Neil Gorsuch, *Liberals’ n’ Lawsuits*, NATIONAL REVIEW, Feb. 7, 2005 (available at <http://www.nationalreview.com/comment/gorsuch200502070742.asp>).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Neil M. Gorsuch and Paul B. Matey, *No Loss, No Gain*, LEGAL TIMES, Jan. 31, 2005.

<sup>12</sup> 723 F.3d 1114, 1128 (10<sup>th</sup> Cir. June 27, 2013).

<sup>13</sup> *United States v. Strandlof*, 667 F.3d 1146 (10<sup>th</sup> Cir. January 27, 2012).

<sup>14</sup> *United States v. Alvarez*, 132 S.Ct. 2537 (2012).

Tymkovich has advanced a number of controversial positions throughout his career. He argued that Colorado could properly deny Medicaid funding to poor women for abortions to terminate pregnancies that resulted from rape or incest. He asserted that local ordinances that prohibited discrimination on the basis of sexual orientation conferred “special rights” on LGBTQ people. He opposed Denver’s efforts to restrict assault weapons.

Tymkovich did not simply take these positions as a zealous advocate for his clients; rather, they reveal his own ultra-conservative personal ideology. Without regard to the waste of state resources, he pressed the Medicaid funding case all the way to the Supreme Court, where his petition for review was unanimously rejected, in the face of clear precedent and unanimous rejection of his position by lower courts. In response to the Supreme Court ruling in *Romer v. Evans* that rejected his position on gay rights ordinances,<sup>15</sup> Tymkovich penned a one-sided law review article in which he made clear that the state’s position was in accord with his own personal views.<sup>16</sup> He and his co-authors concluded the article by claiming that the decision in *Romer* “is merely another example of *ad hoc*, activist jurisprudence without constitutional mooring. If the test of an independent judiciary lies in its response to difficult political decisions, *Romer* is cause for great uneasiness about the health of self-government.”<sup>17</sup>

Before his judicial appointment, Tymkovich vigorously advocated for positions contrary to the civil and reproductive rights of women. In *Hern v. Beye*,<sup>18</sup> Tymkovich and the state zealously advocated in defense of a provision denying state funding to poor women seeking abortions for pregnancies resulting from rape or incest, and aggressively pursued appeals despite a unanimity of authority against the state’s position. In *Roberts v. Colorado State Board of Agriculture*,<sup>19</sup> Tymkovich and the state appealed to the Tenth Circuit and the U.S. Supreme Court a trial court’s plain ruling that Colorado State University had violated Title IX.

## **Robert Young, Supreme Court of Michigan**

**Age:** 65

**College/University:** Harvard College (with honors)

**School of Law:** Harvard Law School, J.D.

Robert Young was appointed to the Michigan Supreme Court by former Republican Governor John Engler in 1999. He was elected and re-elected to eight-year terms on the court in 2002 and 2010, respectively. He was voted chief justice by his colleagues in January 2011. Before serving on the Michigan Supreme Court, Young spent 25 years in private practice at Dickinson, Wright, Moon, Van Dusen & Freeman and three years as general counsel at AAA Michigan. He then served on the state’s intermediate court of appeals for 5 years before ascending to the state’s highest court. Young is a graduate of Harvard College and Harvard Law School.

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<sup>15</sup> 517 U.S. 620 (1996).

<sup>16</sup> Timothy Tymkovich, John Daniel Dailey, and Paul Farley, “*A Tale of Three Theories: Reason and Prejudice in the Battle Over Amendment 2*,” 68 U. Colo. L. Rev. 1997.

<sup>17</sup> *Id.* at 333.

<sup>18</sup> 1994 U.S. Dist. LEXIS 6895, *aff’d*, 57 F.3d 906 (10<sup>th</sup> Cir. 1995), *cert denied*, 516 U.S. 1011 (1995).

<sup>19</sup> 998 F.2d 824 (10<sup>th</sup> Cir. 1993), *cert denied*, 510 U.S. 1004 (1993).

In 2007, Young authored an opinion upholding the state's voter photo identification law, holding that requiring voters to present photo identification before casting a ballot "is a reasonable, nondiscriminatory restriction designed to preserve the purity of elections and to prevent abuses of the electoral franchise."<sup>20</sup> The Michigan law requiring registered voters to present photo identification before voting had first been enacted in 1996, but the state Attorney General refused to enforce the law on equal protection grounds.<sup>21</sup> After the state legislature enacted a similar law in 2005, it asked the state supreme court to issue an advisory opinion on its constitutionality.

Two of Young's colleagues dissented from his opinion upholding the law, arguing that "today's decision ...endorses misguided legislation that significantly impairs the fundamental right of thousands of our citizens to vote" and that "those most severely prejudiced by today's decision are the impoverished and disadvantaged." Justice Marilyn Kelly ended her dissent by stating "history will judge us harshly for joining those states that have limited the precious constitutional right to vote."<sup>22</sup>

Young also wrote an opinion limiting the ability of environmental groups to stop corporations from inflicting environmental harm. In *Michigan Citizens for Water Conservation v. Nestle Water NA, Inc.*, Michigan Citizens for Water Conservation (MCWC) sued Nestle under the Michigan Environmental Protection Act (MEPA) to stop it from extracting water from 139 acres in Mecosta County in Michigan. MCWC argued that Nestle's pumping of water, at up to 400 gallons per minute, would irreparably harm the local environment. Over the dissent of three colleagues, Young ruled that only citizens with "particularized injuries" could sue under MEPA. The Michigan League of Conservation Voters noted the adverse effect the ruling would have on the state: "The majority's ruling to eliminate the ability of any citizen to protect the natural resources of the state severely weakens environmental protection in Michigan."

## **Charles Canady, Supreme Court of Florida**

**Age:** 62

**College/University:** Haverford College

**School of Law:** Yale Law School, J.D.

Charles Canady was appointed to the Florida Supreme Court by Governor Charlie Crist in 2008. He grew up in Florida before earning his B.A. from Haverford College and his J.D. from Yale University. Following his graduation from law school, Canady entered private practice at law firm Holland & Knight, where he worked from 1979 until 1982 before moving onto the firm Lane, Trohn, et al from 1983-1992. Canady also entered politics during this period and served in the Florida House of Representatives as a Republican from 1984-1990. He lost his bid for U.S. Congress in 1990 but captured a seat in 1992.

In his years as a Congressman and a judge, Canady has developed a long and ignominious history of supporting radical conservative causes. Canady is credited with popularizing the scientifically-dubious term partial-birth abortion. In 1995, he authored a bill severely limiting a woman's right to

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<sup>20</sup> *In Re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 740 N.W. 2d 444, 469 (Mich. 2007).

<sup>21</sup>

<sup>22</sup>

abortion. The bill passed both houses of Congress, but was vetoed by President Clinton. While in Congress, Canady co-managed the impeachment proceedings against President Clinton. Canady also voted for the Defense of Marriage Act (banning marriage of same-sex couples for federal law purposes). In addition, he opposed President Clinton's attempt to expand healthcare coverage, supported numerous financial deregulation bills, and consistently voted against strengthening gun regulations.

Upon his departure from Congress, Canady took a job as Governor Jeb Bush's general counsel. In 2002, Bush appointed him to Florida's Second District Court of Appeals, and six years later Governor Charlie Crist elevated him to the Florida Supreme Court. In a highly publicized recent case, Canady voted to uphold the death sentence of Timothy Hurst. When the case was appealed to the U.S. Supreme Court, even Chief Justice Roberts, Justice Scalia, and Justice Thomas found that imposing the death penalty on Hurst was unconstitutional because of Florida's arcane sentencing laws.

### **Margaret A. Ryan, U.S. Court of Appeals for the Armed Forces**

**Age:** 52

**College/University:** Knox College, B.A.

**School of Law:** University of Notre Dame Law School, J.D.

Margaret Ryan was appointed to the United States Court of Appeals for the Armed Forces by President George W. Bush in 2006. Born in Chicago, Illinois, Ryan graduated from Knox College in 1985. Ryan was an active duty marine from 1988 to 1992, and was in Saudi Arabia during Operation Desert Storm. In 1992, she enrolled at Notre Dame Law School, and she graduated three years later with a J.D. *summa cum laude*. From 1995-1999, she returned to active duty, serving as a judge advocate. Upon the completion of her military duty, Ryan clerked for Judge J. Michael Luttig of the Fourth Circuit (2000-2001) and Justice Clarence Thomas of the Supreme Court (2001-2002).

After her clerkships, Ryan worked as a litigation partner at the law firm Bartlit, Beck, Palenchar, and Scott from 2002 to 2004 and then later Wiley, Rein, and Fielding from 2004 to 2006. In 2006, President Bush nominated her to Court of Appeals for the Armed Forces and she was approved by the entire Senate in a voice vote. In a FOIA lawsuit brought by the Center for Constitutional Rights regarding Bradley Manning's court martial, Ryan questioned the army's refusal to be transparent.

### **Edward M. Mansfield, Iowa Supreme Court**

**Age:** 60

**College/University:** Harvard College

**School of Law:** Yale Law School, J.D.

Edward Mansfield was appointed to the Iowa Supreme Court by Governor Terry Branstad in 2011. He earned his B.A. from Harvard University and his J.D. from Yale Law School. Following his graduation from law school, he clerked for Judge Patrick E. Higginbotham on the U.S. Court of Appeals for the Fifth Circuit. After his clerkship, Mansfield worked in private practice for over 20

years before being appointed to the Iowa Court of Appeals in 2009. He has also served as an adjunct professor at Drake University Law School since 1997.

### **Keith R. Blackwell, Supreme Court of Georgia**

**Age:** 42

**College/University:** University of Georgia, B.A. Political Science

**School of Law:** University of Georgia School of Law, J.D.

Keith Blackwell was appointed by Republican Governor Nathan Deal to the Georgia Supreme Court in 2012. He subsequently won election to a full term on the court in 2014. Blackwell received his B.A. and J.D. from the University of Georgia. Immediately after law school, he clerked for Judge J.L. Edmondson of the U.S. Court of Appeals for the Eleventh Circuit. Blackwell then practiced law at Alston & Bird LLP before serving as an Assistant District Attorney in Cobb County. He returned to private practice at Parker, Hudson, Rainer & Dobbs LLP before being appointed to the Georgia Court of Appeals by Republican Governor Sonny Perdue in 2010. He is a member of the Federalist Society's Board of Advisors for the Atlanta Chapter and previously served as chapter president.

### **Amul Thapar, U.S. District Court for the Eastern District of Kentucky**

**Age:** 47

**College/University:** Boston College, B.S.

**School of Law:** University of California, Berkeley- Boalt Hall School of Law, J.D.

Amul Thapar was nominated by President George W. Bush in 2007 to serve as District Court judge for the Eastern District of Kentucky. Born in Detroit, Thapar earned his B.S. from Boston College and his J.D. from Boalt Hall School of Law at the University of California, Berkeley. He clerked for Judge S. Arthur Spiegel of the Southern District of Ohio and Judge Nathaniel Jones of the 6<sup>th</sup> Circuit. Thapar then spent two years at Williams & Connolly, and another year at Squire Sanders. Between his two law firm jobs, Thapar was the General Counsel of Equalfooting.com.

Thapar worked as an Assistant United States Attorney in the District of D.C. and the Southern District of Ohio before becoming the U.S. Attorney for the Eastern District of Kentucky in 2006. On May 24, 2007, President George W. Bush nominated Thapar to a judgeship for the Eastern District of Kentucky and he was confirmed by the Senate. Thapar became the first person of South Asian descent to serve as an Article III federal court judge.

On the bench, Thapar's most notable cases have been several high profile criminal trials. In one recent case, a mother attempted to obtain heroin for her adult daughter, but actually gave her daughter an even stronger drug called fentanyl. The woman's daughter died as a result, and Thapar sentenced the mother to 18 years. In another bizarre criminal case, Thapar sentenced an 84-year-old nun to three years in prison for breaking into a nuclear facility. The nun encouraged a tough sentence, telling Thapar, "Please have no leniency on me...to remain in prison for the rest of my life would be the greatest honor you could give me." Thapar urged that citizens should make use of the political system to express protest or dissent, rather than breaking the law.

## **Federico Moreno, U.S. District Court for the Southern District of Florida**

**Age:** 64

**College/University:** University of Notre Dame, B.A.

**School of Law:** University of Miami Law School, J.D.

Federico Moreno was nominated to the United States District Court for the District of Southern Florida by President George H.W. Bush in 1990. Born in Caracas, Venezuela, Moreno moved to the United States at the age of 12. He attended Notre Dame University for his undergraduate degree and earned his J.D. at the University of Miami Law School in 1978. After a year in private practice, Moreno joined the federal public defender's office for three years, before reentering the private sector.

In 1986, Moreno was appointed a Miami-Dade County Court Judge by Governor Bob Graham. A year later, he was elevated to Florida Circuit Judge, where he served for three years. On June 5<sup>th</sup>, 1990 President Bush nominated and the Senate approved Moreno for a judgeship in the District of Miami.

Judge Moreno has issued several notable rulings. He has ordered the federal government to pay \$900,000 to six innocent people who were caught up and tortured in a U.S.-led drug sting in Honduras. In 2006, he determined that the U.S. government wrongly returned 15 Cubans who were stranded on part of an abandoned bridge on the Florida Keys, concluding that they should be able to stay in the United States. He oversaw a lawsuit involving 700,000 physicians suing insurance companies, and ultimately ruled in favor of the doctors.

From 2007-2014, Moreno served as Chief Judge for the Southern District of Florida.