

USSC Nominee Gorsuch and Free Speech Issues

Supreme Court nominee Neil Gorsuch, a federal appeals court judge, is expected to face intense scrutiny over the politically incendiary topics of abortion and gun rights during confirmation hearings. However, Dallas media lawyer **Shannon Teicher** of Jackson Walker LLP suggests that the nominee's record on the First Amendment is also vitally important given the new administration's already strained relationship with the press.

In an article posted by **Androvett Legal Media and Marketing**, Teicher says she is "cautiously optimistic that he would be favorable on free speech issues before the court."

"There is not a lot of case history involving Judge Gorsuch related to First Amendment issues, but it is important to look at what there is to find," says Teicher. She points to *Bustos v. A&E Networks*, a case in which a prison inmate sued for defamation because he only *affiliated* with a gang but was not a *member*, as A&E had reported. Serving on the 10th Circuit Appeals Court, Gorsuch ruled that A&E's statement was substantially true and affirmed dismissal of the lawsuit. In doing so, he explored the historical importance of truth as a defense and called it a "First Amendment imperative."

However in an earlier decision, "Judge Gorsuch offered an interesting concurrence in *Mink v. Knox*, in which the court ruled a college student's parody of a professor was protected speech." Judge Gorsuch noted the U.S. Supreme Court had not yet ruled on whether parody is actionable when the plaintiff is neither a public figure nor the speech a matter of public concern. He believed "reasonable minds can and do differ" on the issue, so that it was best to avoid such "thickets."

Citing an opinion by then-Judge John Roberts of the D.C. Circuit (now Chief Justice of the Supreme Court), Gorsuch said he would only decide what is necessary and nothing more.

“Such careful parsing may well be a preview of the type of measured approach Judge Gorsuch would take if confirmed to the U.S. Supreme Court,” says Teicher.

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