

ELEMENTS OF JUDICIAL STYLE: A QUANTITATIVE GUIDE TO NEIL GORSUCH’S OPINION WRITING

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Judicial style and rhetoric are objects of perennial and often intense concern. Innumerable books, scholarly and popular articles, and blog posts are devoted to the topic. Current discussions of judicial writing often feature Neil Gorsuch’s opinions. Despite the fervor around Gorsuch’s style and rhetoric, there have been no attempts to systematically quantify his stylistic proclivities. This Article presents results from a quantitative study of almost all published majority opinions that the Tenth Circuit Court of Appeals issued during Gorsuch’s tenure there. Through analyses of extensive stylistic data, I illuminate Gorsuch’s stylistic fingerprint, revealing, in quantitative terms, how Gorsuch has achieved the stylistic effect that has impressed many observers. Moreover, I analyze Gorsuch’s stylistic drift over the past decade, revealing trends that might give us a sense of what to expect from the Justice’s writing going forward. I find that Gorsuch’s writing style is remarkably informal and unconventional compared to his Tenth Circuit peers. Moreover, Gorsuch’s opinions have a lot in common with short stories. His opinions are often suspenseful, withholding the legal conclusion until the end. He also employs a broad vocabulary and uses the passive voice sparingly. Regardless of the merit of Gorsuch’s writing style, it has captivated many readers, among both the public and the legal community. This Article pinpoints, in kind and degree, some of the properties that make Gorsuch’s writing stand out—properties that have helped form his reputation as a jurist.

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INTRODUCTION

Justice Neil Gorsuch served on the Tenth Circuit Court of Appeals for over a decade before joining the United States Supreme Court. During that time, he authored some 175 published majority opinions out of a total of over 3000 issued by the Tenth Circuit. Gorsuch has written comparatively little for the Supreme Court, but his federal circuit court opinions offer rich material for analyzing his writing style, which is distinct and striking on multiple dimensions. This Article presents results from a quantitative study of almost all published majority opinions issued by the Tenth Circuit during Gorsuch's tenure there from 2006 to 2017.

My study shows that Gorsuch's writing style is remarkably informal compared to that of his Tenth Circuit peers. He avoids technical terms, embraces contractions, and often begins sentences with short conjunctions. Moreover, Gorsuch's opinions tend to resemble short stories. His opinions are often suspenseful, saving the legal conclusion for the end, which is unusual for today's opinions. He also employs a wide-ranging vocabulary and uses the passive voice sparingly. Overall, Gorsuch's writing style conforms in large part to the guidance of legal writing experts, who urge judges to write accessible, engaging, and even entertaining opinions.

Gorsuch's writing has attracted extensive attention from diverse sources. Many observers praise Gorsuch's writing style, noting its informality, brevity, boldness, and literary "flair" as strengths.¹ For

¹ See, e.g., *Justice Gorsuch Shows Writing Flair in First Opinion from Supreme Court Bench*, FOX NEWS (June 12, 2017), <http://www.foxnews.com/politics/2017/06/12/justice-gorsuch-shows-writing-flare-in-first-opinion-from-supreme-court-bench.html> [hereinafter *Gorsuch Shows Writing Flair*] (claiming that Gorsuch's first Supreme Court opinion "exhibit[ed] his famed flair for writing"); see also Adam Liptak, *In Judge Neil Gorsuch, an Echo of Scalia in Philosophy and Style*, N.Y. TIMES (Jan. 31, 2017), <https://www.nytimes.com/2017/01/31/us/politics/neil-gorsuch-supreme-court-nominee.html> (praising Gorsuch's writing style as "vivid," "lively," and "accessible," and likening it to Justice Scalia's); Joe Palazzolo, *Supreme Court Nominee Takes Legal Writing to Next Level*, WALL STREET J. (Jan. 31, 2017, 8:26 PM), <https://www.wsj.com/articles/supreme-court-nominee-takes-legal-writing-to-next-level-1485912410?mod=e2tw> (asserting that judicial opinions "are rarely a pleasure to read, but . . . Gorsuch . . . has elevated them to a form of wry nonfiction"); David G. Savage, *In His First Supreme Court Opinion, Gorsuch Shows Writing Flair, Strict Interpretation of Law*, L.A. TIMES (June 12, 2017), <http://www.latimes.com/politics/la-na-pol-gorsuch-first-opinion-20170612-story.html> (observing that Gorsuch's writing style "has been praised for its clarity and avoidance of the usual legalese"); *Supreme Court Nominee Neil Gorsuch's Writing Described as "Breezy"*, CBS NEWS (Mar. 8, 2017, 4:10 PM), <http://www.cbsnews.com/news/supreme-court-nominee-neil-gorsuch-writing-style-breezy-clever/> [hereinafter *Gorsuch's Writing Described as "Breezy"*] (describing Gorsuch's stylistic merits and proclaiming that "you don't have to agree with his opinions as a judge on the 10th U.S. Circuit

example, Eric Citron reports that Gorsuch “is celebrated as a . . . particularly incisive legal writer, with a flair that matches—or at least evokes—that of [Scalia].”² Some commentators, however, have described Gorsuch’s early Supreme Court writing as “self-conscious,” “condescending,” “irksome,” and even “exhausting.”³

Previous analyses of Gorsuch’s writing style have proceeded qualitatively and at the individual case level.⁴ As far as I know, despite the fervor around Gorsuch’s style, there have been no attempts to systematically quantify his stylistic proclivities. Through analyses of extensive stylistic data, I illuminate Gorsuch’s stylistic fingerprint, revealing, in quantitative terms, how Gorsuch has achieved the stylistic effect that has impressed many observers. Moreover, I analyze Gorsuch’s stylistic drift over the past decade, revealing trends that might give us a sense of what to expect from the Justice’s writing going forward. In Part I, I review the literature on judicial writing style and motivate my selection of stylistic elements to measure. In Part II, I explain my methodology and present the empirical results.

I

ELEMENTS OF JUDICIAL STYLE

Judicial style and rhetoric are objects of perennial and often intense concern. Innumerable books, scholarly and popular articles, and blog posts are devoted to the topic. Many recent contributions to this literature feature Gorsuch’s writing.⁵ According to Ross Guberman, lawyer and author of

Court of Appeals . . . to appreciate the final product”).

² Eric Citron, *Potential Nominee Profile: Neil Gorsuch*, SCOTUSBLOG (Jan. 13, 2017, 12:53 PM), <http://www.scotusblog.com/2017/01/potential-nominee-profile-neil-gorsuch/>.

³ See Mark Joseph Stern, *Neil Gorsuch Is a Terrible Writer*, SLATE (Jan. 23, 2018, 6:06 PM), <https://slate.com/news-and-politics/2018/01/neil-gorsuch-is-a-terrible-writer.html> (asserting that “Gorsuch is supposed to be a good writer” and was in fact a good writer as a circuit judge, but that his writing has deteriorated since he joined the Supreme Court “into a glop of cutesy idioms, pointless metaphors, and garbled diction that’s exhausting to read and impossible to take seriously”); see also Tony Mauro, *Latest Rap on Gorsuch: He’s a Rotten Writer*, NAT’L L.J. (Jan. 26, 2018), <https://www.law.com/nationallawjournal/sites/nationallawjournal/2018/01/26/the-latest-rap-on-gorsuch-hes-a-rotten-writer/> (observing that complaints about Gorsuch’s Supreme Court writing represent “a low blow for a [J]justice who has long been praised for his prose”).

⁴ See, e.g., Greg Johnson, *Is Neil Gorsuch a Good Role Model for Legal Writers? Yes and No*, 43 VT. B.J., Fall 2017, at 27, 27 (discussing the merits of Gorsuch’s writing by analyzing excerpts from his opinions); Stern, *supra* note 3 (critiquing Gorsuch’s writing with an in-depth analysis of one dissenting opinion).

⁵ See, e.g., Ross Guberman, *Judge Gorsuch Is a Gifted Writer. He’s a Great Writer. But Is He a “Great Writer”?* Part One: Four Gifts, LEGAL WRITING PRO (Feb. 7, 2017), <https://www.legalwritingpro.com/blog/judge-gorsuch-gifts/> (focusing on Gorsuch’s opinions in a multi-part blog post about writing style); Johnson, *supra* note 4, at 27 (focusing on Gorsuch’s stylistic merits and defects in a bar journal article about legal writing); Wayne Schiess, *Justice Gorsuch’s First Opinion Shows His Style*, LEGIBLE (June 20, 2017),

several books on legal writing:

Ever since President Trump nominated Judge Neil Gorsuch for the U.S. Supreme Court, the judge's writing style has prompted almost as much talk as his presumed views on *Roe v. Wade*. For Gorsuch's supporters, many of whom have long lobbied me to tout his gifts, he's a modern-day Justice Jackson, the Shakespeare of the bench, and the heir apparent to Justice Scalia . . .⁶

Guberman further suggests that, “[u]nlike, say, Judge Merrick Garland, whose writing is excellent but rather ordinary, . . . Gorsuch appears to strive to be a Great Writer, not just a great opinion writer.”⁷ As I will demonstrate in the sections that follow, Gorsuch's writing appears to align well with the prevailing model of strong judicial writing.

Commentators generally agree that opinions should be accessible, resolute, and engaging. More specifically, legal writing experts urge judges to avoid technical language and the passive voice; to write as concisely, simply, and decisively as possible; to use varied and lively vocabulary; and to adopt a narrative style. I sorted these considerations into three categories—accessibility and informality, confidence and resolution, and aesthetic and entertainment value—which I discuss in turn in Sections A, B, and C of this Part.

A. *Accessibility and Informality*

Commentators have recognized Gorsuch's writing for its accessibility and informality. Guberman describes the style of both Justice Elena Kagan and the late Justice Antonin Scalia as “chatty” and likens Gorsuch's writing to theirs, noting his “fondness for storytelling, contractions, and one-word sentences.”⁸ The Justice's style has also been described as highly readable: “breezy,” “down-to-earth,” “practical,” and “understandable.”⁹

Guberman notes Gorsuch's “relentless[]” use of contractions, as well as his tendency to begin sentences with short conjunctions such as “but,” “and,” and “so.”¹⁰ Bryan Garner, another acclaimed legal writing expert,

<http://sites.utexas.edu/legalwriting/2017/06/20/justice-gorsuchs-first-opinion-shows-his-style/> (analyzing the writing style of Gorsuch's first Supreme Court opinion). For more detail, see *supra* notes 1–3 and accompanying text.

⁶ Guberman, *supra* note 5.

⁷ *Id.*

⁸ Ross Guberman, *Gorsuch Is a Gifted Writer. He's a Great Writer. But Is He a "Great Writer"?* Part Two: Five Weak Spots, LEGAL WRITING PRO (Feb. 14, 2017), <https://www.legalwritingpro.com/blog/judge-gorsuch-the-writer-part-2/>. Guberman elsewhere endorses a “conversational style.” ROSS GUBERMAN, POINT TAKEN: HOW TO WRITE LIKE THE WORLD'S BEST JUDGES 163–64 (2015).

⁹ *Gorsuch's Writing Described as "Breezy," supra* note 1 (quoting from an interview with Bryan Garner).

¹⁰ Ross Guberman, *Gorsuch's Writing Style: A Cheat Sheet*, LEGAL WRITING PRO (Feb. 7,

advises writers to break with the convention against beginning sentences with short conjunctions.¹¹ Experts advise judges to use plain language and avoid legal jargon, especially Latinisms. According to Guberman, among the words and practices that judges most dislike reading are “appellant,” “appellee,” “arguendo,” “inter alia,” and “Latin in general.”¹² Garner reports that, “the trend today is toward plain language and away from the stuffiness and jargon-laced prose that characterized so much legal writing in the past”; this is “a welcome trend,” he says, “and one that writing coaches universally encourage.”¹³

Again like Scalia, Kagan, and other jurists who have achieved acclaim for their writing abilities, Gorsuch is a plain-language writer, a quality that many commentators have endorsed. For example, in a piece for *The New York Times* that preceded Gorsuch’s appointment to the Supreme Court, Adam Liptak describes Gorsuch as “a lively and accessible writer,” likening his style to Scalia’s.¹⁴ Liptak exemplifies the point with an excerpt from a libel opinion:

Can you win damages in a defamation suit for being called a member of the Aryan Brotherhood prison gang on cable television when, as it happens, you have merely conspired with the Brotherhood in a criminal enterprise? . . . The answer is no. While the statement may cause you a world of trouble, while it may not be precisely true, it is substantially true. And that is enough to call an end to this litigation as a matter of law.¹⁵

2017), <https://www.legalwritingpro.com/blog/gorsuch-style-cheat-sheet/>. There is no evidence that Guberman counted the occurrence of these terms; my quantitative study corroborates his claim that Gorsuch starts a relatively large proportion of his sentences with succinct conjunctions.

¹¹ See BRIAN A. GARNER, *THE REDBOOK: A MANUAL ON LEGAL STYLE* 212 (3d ed. 2013) (recommending conjunctions such as “but,” “yet,” “and,” “or,” and “so” at the beginning of sentences “when appropriate” and suggesting that the norm against this move “is an empty superstition”) (quoting Kingsley Amis).

¹² See Ross Guberman, *Judges Speak Out Behind Closed Doors: How Your Briefs Might Bug Them, and How You Can Make Them Smile Instead*, LEGAL WRITING PRO (June 26, 2017), <https://www.legalwritingpro.com/blog/judges-speak-out/> (listing results from a survey of judges’ preferences). Consistent with Guberman’s claim, the Judicial Writing Manual produced by the Federal Judicial Center instructs judges that “names should be used consistently throughout,” explaining that “[t]he use of legal descriptions, such as ‘appellant’ and ‘appellee,’ tends to be confusing, especially in multi-party cases.” FED. JUDICIAL CTR., *JUDICIAL WRITING MANUAL: A POCKET GUIDE FOR JUDGES* 14 (2d ed. 2013).

¹³ GARNER, *supra* note 11, at 215; see also RUGGERO J. ALDISERT, *OPINION WRITING* 223 (2d ed. 2009) (advising judges to use plain English and not to overwrite their opinions); JOYCE J. GEORGE, *JUDICIAL OPINION WRITING HANDBOOK* 24–25 (4th ed. 2000) (recommending that judges refrain from “us[ing] Latin words or phrases unless they are unavoidable,” and that judges “[u]se common words” and avoid legalese); Gerald Lebovits et al., *Ethical Judicial Opinion Writing*, 21 GEO. J. LEGAL ETHICS 237, 259 (2008) (asserting that “[l]egalese has no place in judicial opinions”).

¹⁴ Liptak, *supra* note 1.

¹⁵ *Id.* (quoting *Bustos v. A & E Television Networks*, 646 F.3d 762, 762 (10th Cir. 2011)).

Liptak noted the absence of “throat-clearing and jargon that characterize[] many judicial opinions.”¹⁶ Gorsuch’s first opinion for the Supreme Court opened with common language, relatable imagery, and even a dose of alliteration: “Disruptive dinnertime calls, downright deceit and more besides drew Congress’s eye to the debt collection industry.”¹⁷ A *Los Angeles Times* article about the opinion observed that his writing style “has been praised for its clarity and avoidance of the usual legalese.”¹⁸

However, Gorsuch’s early Supreme Court writing has received mixed reviews. Professor Daniel Epps prompted a recent trend on Twitter—*#GorsuchStyle*—where academics and other legal professionals mock the Justice’s tendency to over-explain obvious points.¹⁹ Some commentators have attempted to defend Gorsuch’s style from this line of attack, arguing that if Gorsuch seems pedantic at times, it is only because “he is trying to make sure the law is accessible to all Americans.”²⁰ According to the chief counsel of the Judicial Crisis Network, critics “are picking up on . . . [Gorsuch’s effort] to make sure his opinions are accessible to the average person, not just the lawyers in the case[, which is] great”²¹

The legal writing literature encourages judges to cite authorities sparingly, which is consistent with the push for informal prose. For example, Guberman notes the contrast between an informal, personal style, which “breezes along like an essay, with scant authorities,” and a formal style “wooden and riddled with strings of citations.”²² He “admit[s] a bias in favor of personal writing . . . because that’s what students, lawyers and the public all appear to prefer.”²³ The English judge Lord Denning,

¹⁶ *Id.*

¹⁷ *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1720 (2017).

¹⁸ Savage, *supra* note 1.

¹⁹ See *#GorsuchStyle*, TWITTER, <https://twitter.com/hashtag/GorsuchStyle?src=hash&lang=en> (last visited Apr. 8, 2018); see also Amanda Whiting, *Law Twitter Is Having a Fun Time Mocking Neil Gorsuch’s Writing Style*, WASHINGTONIAN (Mar. 21, 2018), <https://www.washingtonian.com/2018/03/21/law-twitter-is-having-a-fun-time-mocking-neil-gorsuchs-writing-style/> (discussing the rise of *#GorsuchStyle*).

²⁰ Melissa Quinn, *Neil Gorsuch Thrills Conservatives in First Year on Supreme Court*, WASH. EXAMINER (Apr. 10, 2018, 12:01 AM), <https://www.washingtonexaminer.com/policy/courts/neil-gorsuch-thrills-conservatives-in-first-year-on-supreme-court> (paraphrasing Carrie Severino, chief counsel of the Judicial Crisis Network). Citron has likewise praised Gorsuch for “exceptionally clear” writing, noting that “it is always plain exactly what he thinks and why.” Citron, *supra* note 2.

²¹ Quinn, *supra* note 20 (quoting Carrie Severino, chief counsel of the Judicial Crisis Network). Jamil Jaffer, Director of the National Security Law & Policy Program at the Antonin Scalia Law School at George Mason University, also defends Gorsuch’s writing from recent criticism. *Id.* (quoting Jamil Jaffer to dismiss as “[t]otally ridiculous” the idea that “when [Gorsuch] got to the Supreme Court . . . [he] somehow [became] a terrible writer”).

²² GUBERMAN, *supra* note 8, at xxii.

²³ *Id.* at xxv; see also *id.* at 36 (featuring an excerpt from an opinion by Judge Benjamin Goldgar and noting with approval that Goldgar uses “no citations, no defined terms”).

celebrated by legal writing professionals, attested that he never refers to authorities “at much length” and “avoid[s] all reference to pleadings and orders,” since “[t]hey are mere lawyer’s stuff.”²⁴ As I will show in Part II, Gorsuch not only embraces informal markers such as contractions, but also cites authority sparingly.

B. Confidence and Resolution

In addition to accessibility and informality, the prevailing view on judicial writing seems to favor confidence and resolution. Legal writing experts encourage judges to write decisive and authoritative opinions. For example, Joyce George suggests that “hesitancy” does not make for “good jurisprudence” and opinions should be “clear, short, and direct.”²⁵

Writing experts both within and beyond the legal sphere associate the active voice with a powerful, commanding writing style.²⁶ In the classic writing manual *The Elements of Style*, William Strunk Jr. and E.B. White argue that the active voice is typically “bold[er]” and “more direct and vigorous than the passive.”²⁷ According to Strunk and White, “[t]he habitual use of the active voice . . . makes for forcible writing[,] . . . in writing of any kind.”²⁸ Active voice, and possibly other qualities associated with boldness and decisiveness, might also make for clearer opinions.

Another problem with the passive voice is that it tends to make a piece longer than necessary. “A sentence should contain no unnecessary words,” say Strunk and White, “a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts.”²⁹ According to Garner, verbosity “dulls the prose, which becomes a little heavier and slower and (typically) less clear.”³⁰ All else equal, a brief opinion might come across as more definitive than a longer one, since more words can suggest that the decision was less obvious, that it required more extensive deliberation and justification.

On the other hand, repeating points and including strengthening language might help convey certainty and confidence. Adverbs that express certainty, such as “clearly,” “surely,” and “obviously,” might create the

²⁴ *Id.* at 162 (quoting Lord Denning).

²⁵ GEORGE, *supra* note 13, at 26, 28. Gerald Lebovits and Lucero Ramirez Hidalgo counsel judicial clerks to “[b]e definitive, not cowardly or tentative” in their opinion writing. Gerald Lebovits & Lucero Ramirez Hidalgo, *Advice to Law Clerks: How to Draft Your First Judicial Opinion*, 36 WESTCHESTER B.J., Spring/Summer 2009, at 29, 35.

²⁶ See, e.g., GEORGE, *supra* note 13, at 296 (advising writers that “active voice makes the message stronger, clearer, and shorter”); GUBERMAN, *supra* note 8, at 36 (advocating “strong, active verbs”).

²⁷ WILLIAM STRUNK & E.B. WHITE, *THE ELEMENTS OF STYLE* 18 (4th ed. 2000).

²⁸ *Id.*

²⁹ *Id.* at 23.

³⁰ GARNER, *supra* note 11, at 360.

impression of decisiveness and confidence, and help establish authority. However, some commentators criticize these qualifiers as vacuous and even deceptive.³¹ Gorsuch's opinions are full of qualifiers expressing certainty or confidence—which might contribute to what some critics have described as an over-confident and condescending tone.³²

C. *Aesthetic and Entertainment Value*

Many of the judges most celebrated for their opinion writing adopt a literary style, employing rich and varied diction and a narrative form. Some legal scholars equate diversity of vocabulary with great writing.³³ Adam Chilton, Kevin Jiang, and Eric Posner studied a sample of Supreme Court opinions to reveal that the “great [J]ustices,” among them Antonin Scalia, Oliver Wendell Holmes, and Robert Jackson, exhibited hugely diverse vocabularies in their opinions. Moreover, Chilton and coauthors suggest that “verbal acuity and intellectual depth go hand and hand.”³⁴

Guberman encourages judges to write their opinions in the style of stories, with “strong dramatic arc[s].”³⁵ Jurists who have been recognized for their narrative skill include Oliver Wendell Holmes, Benjamin Cardozo, Learned Hand, Lord Denning, Richard Posner, and Elena Kagan.³⁶ A judge skilled in the narrative form might, for example, save the legal conclusion for the end of the opinion, since “starting with the punchline rather spoils the story.”³⁷ By contemporary standards at least, reserving the disposition

³¹ See, e.g., BRADLEY G. CLARY & PAMELA LYSAGHT, SUCCESSFUL LEGAL ANALYSIS AND WRITING: THE FUNDAMENTALS 102 (2d ed. 2006) (urging writers to “[p]articularly avoid exaggeration through conclusory modifiers such as ‘clearly,’ ‘plainly,’ ‘very,’ ‘obviously’ . . . and the like”); Neil Daniel, *Writing Tips*, 1 PERSP. TEACHING LEGAL RES. & WRITING 87 (1993) (suggesting that, “writing without [intensifiers] is stronger than writing with them”).

³² See, e.g., Mark Sherman, *Gorsuch Establishes Conservative Cred in 1st Year on Court*, AP (Nov. 25, 2017), <https://www.apnews.com/3a94dad88b1e42dfb20723d8a273b16b> (reporting on Daniel Epps's view of Gorsuch's style generally).

³³ See, e.g., Adam Chilton, Kevin Jiang & Eric Posner, *Rappers v. Scotus: Who Uses a Bigger Vocabulary, Jay Z or Scalia?*, SLATE (June 12, 2014, 7:49 AM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2014/06/supreme_court_and_rappers_who_uses_a_bigger_vocabulary_jay_z_or_scalia.html (measuring vocabulary size of rap artists and Supreme Court Justices, and suggesting that the larger the vocabulary the better the writing).

³⁴ *Id.*

³⁵ GUBERMAN, *supra* note 8, at 162.

³⁶ See, e.g., RANDY D. GORDON, REHUMANIZING LAW: A THEORY OF LAW AND DEMOCRACY 20 (2011) (claiming that Cardozo and Denning “wrote with what might be called a literary flourish”); GUBERMAN, *supra* note 8, at 14–15 (highlighting Posner's narrative style); Richard A. Posner, *Judges' Writing Styles (And Do They Matter?)*, 62 U. CHI. L. REV. 1421, 1433 & n.21 (1995) (comparing the narrative stylings of Cardozo and Learned Hand); Laura Krugman Ray, *Doctrinal Conversation: Justice Kagan's Supreme Court Opinions*, 89 IND. L.J. SUPPLEMENT 1, 6 (2012) (discussing narrative in Kagan's opinions).

³⁷ Posner, *supra* note 36, at 1437.

in this way is rather unusual; on the Tenth Circuit, the vast majority of opinions include a statement of affirmance or reversal (or the like) in the opening paragraphs.³⁸ However, sometimes judges refrain from offering a clear statement of the disposition at the outset. Law professor Simon Stern likens suspenseful opinions to detective fiction, observing that “[j]udges’ use of this approach, even if only in a minority of cases, is a remarkable testament to the appeal of a narrative structure that urges the reader to follow the logical pattern as it unfolds, rather than presenting the result as a *fait accompli* at the beginning.”³⁹

Gorsuch’s narrative style has caught the attention of many readers.⁴⁰ Guberman points out that “[l]egal reporters . . . gush about everything from Gorsuch’s ‘playful, witty dissents’ to his factual accounts that read like ‘wry nonfiction.’”⁴¹ He draws attention to Gorsuch’s dissent in a case about a teenager who was arrested for fake burping in class:

If a seventh grader starts trading fake burps for laughs in gym class, what’s a teacher to do? Order extra laps? Detention? A trip to the principal’s office? Maybe. But then again, maybe that’s too old school. Maybe today you call a police officer. And maybe today the officer decides that, instead of just escorting the now compliant thirteen year old [sic] to the principal’s office, an arrest would be a better idea. So out come the handcuffs and off goes the child to juvenile detention.⁴²

Gorsuch often makes space for storytelling in his opinions, even if it takes him away from the main point of the case. For example, consider his opening in *Western World Insurance Co. v. Markel American Insurance Co.*,⁴³ a case concerning a summary judgment motion in an insurance dispute:

Haunted houses may be full of ghosts, goblins, and guillotines, but it’s

³⁸ See *infra* Figures 13 & 14.

³⁹ Simon Stern, *Detecting Doctrines: The Case Method and the Detective Story*, 23 YALE J.L. & HUMAN. 339, 342 (2011).

⁴⁰ See, e.g., *Gorsuch Shows Writing Flair*, *supra* note 1 (commenting on Gorsuch’s ability to “hook the reader” in the openings of his opinions); *Gorsuch’s Writing Described as “Breezy,” supra* note 1 (quoting Ross Guberman on Gorsuch’s narrative style); Guberman, *supra* note 5 (suggesting that “[f]ew judges have Gorsuch’s talent for weaving compelling narrative lines”); Bruce Petrie, *Gorsuch Art*, GRAYDON.LAW (Feb. 2, 2017), <https://graydon.law/gorsuch-art/> (“Judge Gorsuch’s writing art makes his opinions not only a legal narrative, but a literary one, a welcome departure from the norm of legal writing.”).

⁴¹ Guberman, *supra* note 5 (first quoting Cristina Violante, *The 4 Wittiest Dissents by Gorsuch*, LAW360 (Feb. 1, 2017, 10:33 PM), <https://www.law360.com/insurance/articles/887202/the-4-wittiest-dissents-by-gorsuch>, then quoting Palazzolo, *supra* note 1); see also Citron, *supra* note 2 (asserting that “Gorsuch’s opinions are . . . routinely entertaining; he is an unusual pleasure to read”).

⁴² Guberman, *supra* note 5 (quoting *A.M. v. Holmes*, 830 F.3d 1123, 1169 (10th Cir. 2016) (Gorsuch, J., dissenting), *cert. denied sub nom. A.M. ex rel. F.M. v. Acosta*, 137 S. Ct. 2151 (2017)).

⁴³ 677 F.3d 1266 (10th Cir. 2012).

their more prosaic features that pose the real danger. Tyler Hodges found that out when an evening shift working the ticket booth ended with him plummeting down an elevator shaft. But as these things go, this case no longer involves Mr. Hodges. Years ago he recovered from his injuries, received a settlement, and moved on. This lingering specter of a lawsuit concerns only two insurance companies and who must foot the bill. . . .

The problems began at the front door of the Bricktown Haunted House in Oklahoma City. There Mr. Hodges was working the twilight hours checking tickets as guests entered. When the flashlight he used began flickering and then died, he ventured inside in search of a replacement. To navigate his way through the inky gloom, Mr. Hodges used the light of his cell phone. But when an actor complained that the light dampened the otherworldly atmosphere, Mr. Hodges turned it off and stumbled along as best he could. . . . When he reached the elevator, Mr. Hodges lifted the wooden gate across the entrance and stepped in. But because of the brooding darkness, Mr. Hodges couldn't see that the elevator was on a floor above him and he crashed 20 feet down the empty elevator shaft.⁴⁴

It is unclear why we need all these details about Mr. Hodges and Bricktown Haunted House. As Gorsuch makes clear, Mr. Hodges has “moved on.”⁴⁵ However, the haunted house employee's accident makes for a good story, one that Gorsuch, it seems, could not resist telling.

Gorsuch seems to prefer using the proper names of litigants, rather than referring to them by generic, technical terms such as “appellant.” His opinions also incorporate many vivid, concrete details, even when they are extraneous to resolving the dispute. As the literary critic James Wood observes in a book about fiction writing, “specificity in itself [is] satisfying . . . and we expect such satisfaction from literature. We want names and numbers.”⁴⁶ Gorsuch's opinions are satisfying in some of the same ways that fiction is satisfying and for some of the same reasons. The opening sentence from another of Gorsuch's opinions—*Browder v. City of Albuquerque*—reads like the beginning of an elementary short story: “Adam Casaus was going nowhere fast.”⁴⁷ As experienced consumers of narrative, we can tell just from those first few words that Adam Casaus's journey to nowhere is not going to end well and that he is probably to blame.

The majority of the examples in Guberman's judicial writing

⁴⁴ *Id.* at 1267–68.

⁴⁵ *Id.* at 1267.

⁴⁶ JAMES WOOD, *HOW FICTION WORKS* 48 (2008).

⁴⁷ 787 F.3d 1076, 1077 (10th Cir. 2015).

guidebook employ narrative to a similar effect.⁴⁸ And he repeatedly urges judges to incorporate narrative in their opinions.⁴⁹ Describing a Lord Denning opinion about a barmaid, Guberman argues that the case “is justly famous as an example of superb legal analysis, precisely because Denning adopts and maintains an authentic voice, becoming the story’s narrator instead of merely parroting back the facts in the record.”⁵⁰ Guberman encourages judges “to play storyteller.”⁵¹

My empirical results suggest that, across multiple metrics, Gorsuch’s writing conforms to the prevailing expert views on how judges ought to write. Moreover, my comparative analysis of Gorsuch and his peers on the Tenth Circuit shows that he was a stylistic outlier on that court. In addition, my trend analysis reveals how Gorsuch’s writing has evolved over the past several years, which might provide an indication of the direction his writing will take going forward.

II EMPIRICAL RESULTS

In this Part, I present results from my empirical study of Tenth Circuit opinions. My database of 3008 opinions is composed of almost all published majority opinions issued by the Tenth Circuit during Gorsuch’s tenure there from 2006 to 2017.⁵² Gorsuch wrote 175 of these and the twenty-four other judges who overlapped with him on the Tenth Circuit wrote the rest.⁵³ Male judges wrote 83% of the opinions in my set;

⁴⁸ See, e.g., GUBERMAN, *supra* note 8, at 15–16, 21, 33, 43–44 (identifying examples of judicial opinions with narrative elements).

⁴⁹ *Id.* at xxiii–xxiv, 44, 67, 71, 247; see also Stephanie Mencimer, *Sonia Sotomayor’s Prose Problem*, MOTHER JONES (June 3, 2009, 6:06 PM), <http://www.motherjones.com/politics/2009/06/sonia-sotomayors-prose-problem> (criticizing Justice Sotomayor’s writing for lacking the “smart narratives employed by the federal judiciary’s brightest lights”).

⁵⁰ GUBERMAN, *supra* note 8, at 72.

⁵¹ *Id.*

⁵² For the purposes of this study I analyzed majority opinions exclusively. When writing majority opinions, judges are under pressure to accommodate the preferences of their peers, and they construct their opinions with extensive input from those peers. Accordingly, we should expect the most stylistic conformity in majority opinions. See, e.g., Frank B. Cross & James W. Pennebaker, *The Language of the Roberts Court*, 4 MICH. ST. L. REV. 853, 877 (2014) (suggesting that the “act of writing a majority opinion may have a moderating effect for [J]ustices,” and quoting Cardozo’s observation that the majority opinion author is “cautious, timid, fearful of the vivid word, the heightened phrase” (quoting JUDGES ON JUDGING: VIEWS FROM THE BENCH 46 (David M. O’Brien ed., 1997))). I would expect that Gorsuch’s style in dissenting and concurring opinions is even more distinctive than his majority opinion style, but I save exploration of that topic for another day.

⁵³ Gorsuch was confirmed to the Tenth Circuit Court of Appeals on July 20, 2006 and to the Supreme Court on April 7, 2017. My dataset includes opinions from April 9, 2006 to April 7, 2017. I made an effort to capture all Tenth Circuit Court of Appeals opinions that were published in the Federal Reporter, Third Series (F.3d). I removed from my database all opinions with fewer

appointees of Republican Presidents wrote 61%; white judges wrote 90%. As for the topical breakdown, 42% can be classified as criminal law cases, 10% as civil rights, 9% as private law, 27% as public law, and 12% as finance.⁵⁴

I wrote a series of computer algorithms to detect the following attributes in the text data: informality, reliance on authority, references to litigants by technical term (“defendant” or “appellant” for example), references to people (“Mr. Hodges,” for example), readability, opinion length, ratio of passive voice, use of intensifiers and hedges, lexical diversity, and suspense.⁵⁵ I collected numerical data on these stylistic attributes for each opinion, typically in the form of occurrences per word (for example, number of citations to statutes and cases per word). I then calculated judge averages and conducted comparative analyses. My analyses are limited to descriptive statistics for two reasons. First, my purpose here is mainly to compare Gorsuch’s writing to that of his peers on the Tenth Circuit during the ten-and-a-half years he served as a federal appellate judge. Inferential statistics are unnecessary for that task.⁵⁶ Second,

than two hundred words and all opinions that extend over two or more Westlaw screens (such opinions are generally more than thirty-five pages long, which is abnormal for the Tenth Circuit). This meant removing about the shortest one percent and longest one percent of opinions from my original set. I also made an effort to remove per curiam opinions and opinions marked as “memoranda,” as well as opinions by district court judges and non-Tenth Circuit appellate judges.

⁵⁴ This represents a rough and approximate topic breakdown only. I constructed the umbrella topics from the more granular topics that Westlaw assigned to the cases (such as “products liability” and “veterans”).

⁵⁵ For this purpose, I used the Python programming language and the natural language processing packages spaCy and Textacy. For information on these tools, see *Industrial-Strength Natural Language Processing in Python*, SPACY, <https://spacy.io/> (last visited June 3, 2018), and *Textacy 0.6.0: Higher-Level Text Processing, Built on spaCy*, PYPI, <https://pypi.python.org/pypi/textacy> (last visited June 18, 2018). I should note that natural language processing is an inexact science, and my computer code for detecting each of these attributes is inevitably both over- and under-inclusive. Nevertheless, test cases and spot checks suggest that my code does a reasonably good job of estimating the textual features. Moreover, researchers in multiple disciplines (and increasingly in legal studies) rely on the same methods to draw conclusions about textual data. See, e.g., Rachael K. Hinkle et al., *A Positive Theory and Empirical Analysis of Strategic Word Choice in District Court Opinions*, 4 J. LEGAL ANALYSIS 407, 429 n.18 (2012) (using Python with regular expressions to clean opinion data and to detect terms of interest); Stephen M. Johnson, *The Changing Discourse of the Supreme Court*, 12 U. N.H. L. REV. 29, 49 (2014) (using the Flesch-Kincaid algorithm to measure the readability of judicial opinions); Donald A. Szlosek & Jonathan M. Ferretti, *Using Machine Learning and Natural Language Processing Algorithms to Automate the Evaluation of Clinical Decision Support in Electronic Medical Record Systems*, 4 EGEMS, no. 3, 2016, at 1, 4, 10 (using the Python programming language and the spaCy package for analysis of electronic medical records); Zeerak Waseem, *Are You a Racist or Am I Seeing Things? Annotator Influence on Hate Speech Detection on Twitter*, in ASS’N FOR COMPUTATION LINGUISTICS, PROCEEDINGS OF 2016 EMNLP WORKSHOP ON NATURAL LANGUAGE PROCESSING AND COMPUTATIONAL SOCIAL SCIENCE 138, 140 (2016) (using the Python package spaCy to detect parts of speech).

⁵⁶ This is because the point of statistical tests of significance is to determine whether findings reasonably generalize from a sample of a population to the greater population. In the study I

although my database includes over 3000 opinions, they are distributed among a relatively small set of judges (twenty-five). Accordingly, I have limited power to detect statistically significant differences between groups.⁵⁷ In the subsections that follow, I report my empirical findings on Gorsuch's writing style as compared to his Tenth Circuit peers. I discuss in turn informality and accessibility, confidence and resolution, and entertainment and aesthetic value.

A. *Measures of Informality and Accessibility*

Gorsuch's style is considerably less formal and conventional than average, which likely makes his opinions seem more down-to-earth and less legalistic than other opinions—qualities that might increase his appeal and enable him to reach a wider audience. I constructed an informality scale by combining number of contractions per word and number of sentences starting with short conjunctions (“and,” “but,” “so,” “or,” “nor,” and “yet”) per word, and subtracting number of foreign words per word. I take the former two variables as indicators of an informal style. The purpose of detecting foreign words is to approximate relative frequency of Latin, which I take as an indicator of formality.⁵⁸ The contraction and conjunction variables are highly positively correlated,⁵⁹ and each is

present here, the sample is coextensive with the population. Statistical tests would be useful if I had drawn a random sample of Gorsuch and non-Gorsuch opinions and then wanted to generalize from that sample to the universe of all opinions during Gorsuch's tenure on the Tenth Circuit. Instead, I collected all opinions of interest in that universe. See DAVID FREEDMAN ET AL., STATISTICS 555–56 (4th ed. 2007) (explaining that tests of significance are inappropriate when the data is drawn from the whole population).

⁵⁷ One possible method to use would be a mixed model with judge random effects, given the hierarchical structure of the data (both the ANOVA and t-test assume independence of observations, which is violated in this context). However, the unbalanced nature of the data and small number of “clusters” or level-two units (judges) pose problems for fitting mixed models. See, e.g., A. Colin Cameron & Douglas L. Miller, *A Practitioner's Guide to Cluster-Robust Inference*, 50 J. HUM. RESOURCES 317, 340–42 (2015) (explaining the problems of fitting mixed models to data with few and unbalanced clusters); *Sample Sizes for Multilevel Models*, CTR. FOR MULTILEVEL MODELLING, UNIV. OF BRISTOL (last visited June 3, 2018), <http://www.bristol.ac.uk/cmm/learning/multilevel-models/samples.html> (noting limitations of mixed models for fitting data with few clusters). In the main body of this essay I present data on ranges and means; these descriptive statistics, while informative, reveal only part of the story. We might also be interested in the extent to which Gorsuch and the other judges vary around their means for each of the style variables. Summary descriptive statistics including standard deviations can be found in Appendix Table 1.

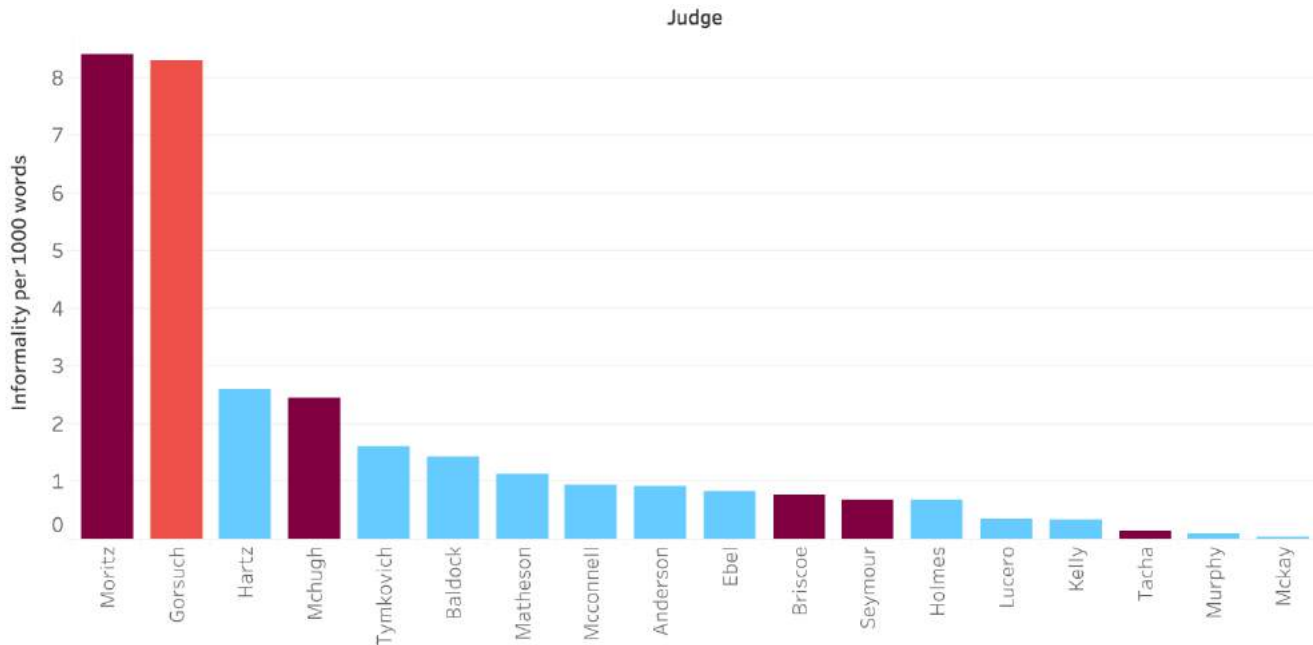
⁵⁸ I used spaCy's foreign language detector to identify foreign words. See *supra* note 55. A series of spot checks revealed that this tool is considerably over- and under-inclusive. Nevertheless, it seems to suffice as an indicator of relative frequency of Latin. Moreover, as a robustness check I conducted independent tests of Latin use based on Wikipedia's list of legal Latin terms. The results of those tests aligned with the foreign word results. Gorsuch's opinions score comparatively low on both foreign words and Latin usage.

⁵⁹ Contractions and short conjunctions at the start of sentences: $r = 0.575$.

negatively correlated with the foreign word variable,⁶⁰ which supports my theory that the former two features run together and that the latter is indicative of an alternative stylistic approach.

Figure 1 illustrates how the judges line up in terms of informality. They range from 0 to 8.4 per 1000 words with a mean of 1.7. Gorsuch's informality score of 8.3 is the second highest of the judges.⁶¹ Figure 2 shows that Gorsuch's informality started off close to normal but rose steadily during his tenure on the Tenth Circuit.⁶²

FIGURE 1. AVERAGE INFORMALITY ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE⁶³



Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

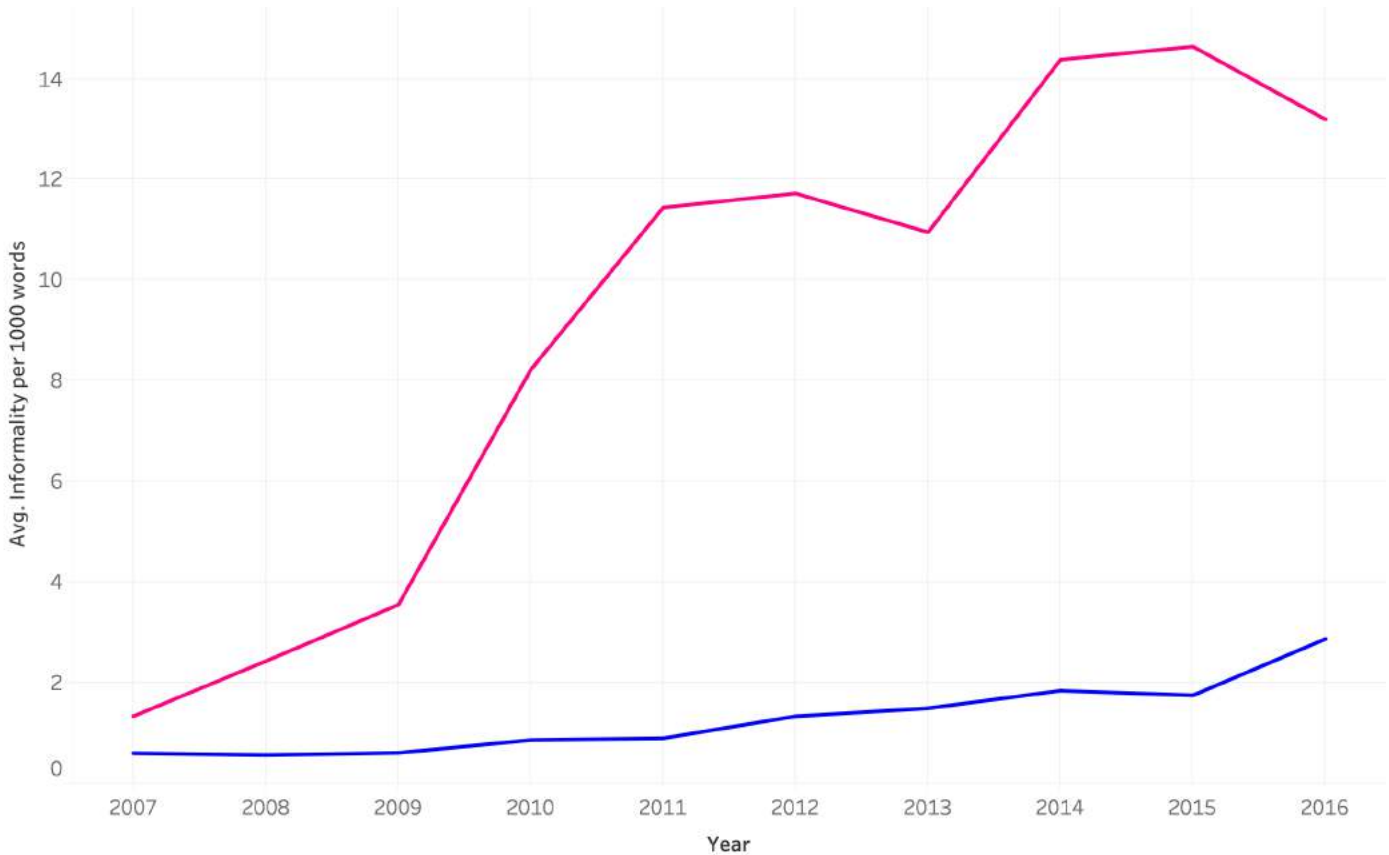
⁶⁰ Foreign words and contractions: $r = -0.066$. Foreign words and short conjunctions at the start of sentences: $r = -0.090$.

⁶¹ If we break the informality scale into its component parts, Gorsuch scores relatively high compared to the group average on each of the informal indicators and relatively low on the formal indicators. Gorsuch averages 3.9 contractions per 1000 words, whereas the group average is 0.8. He averages 4.9 short conjunctions at the start of sentences per 1000 words, which is the highest of all judges (group average = 1.5). He averages 0.4 foreign words per 1000 words, whereas the group averages 0.7.

⁶² For the purposes of my trend analyses, I excluded the years that bookend Gorsuch's career on the Tenth Circuit (2006 and 2017), because Gorsuch wrote very few opinions in these years.

⁶³ All female judges are included in the figure, but only male judges for whom I have at least 100 opinions. The same goes for all subsequent bar graphs. This is just to economize on space.

FIGURE 2. TRENDS IN AVERAGE INFORMALITY ON THE TENTH CIRCUIT COURT OF APPEALS

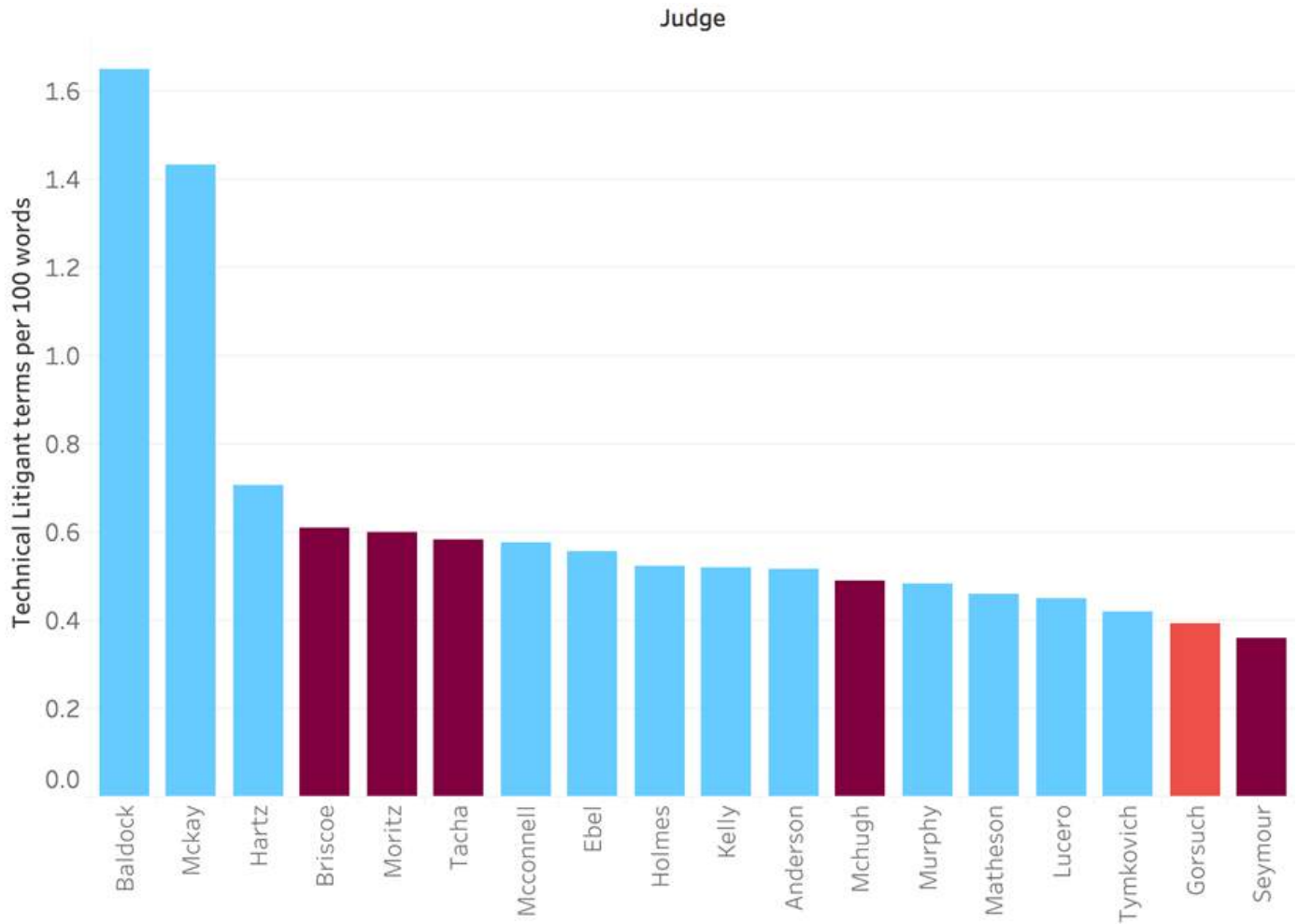


Blue represents all opinions; pink represents Gorsuch's opinions.

Figure 3 shows the frequency with which the judges use technical terms (such as “appellant”) to refer to litigants. Gorsuch uses these terms relatively infrequently, which likely also contributes to the accessibility of his opinions.⁶⁴ His use of these terms decreased during his tenure on the Tenth Circuit.

⁶⁴ I also estimated references to people in general, using spaCy's Named Entity Recognition function. *See supra* note 55. My results suggest that Gorsuch refers to people in general at a rate just below average (Gorsuch's mean is 2.5 persons per one hundred words, whereas the mean among all judges is 2.6). I do not have a theory for why this is. The finding seems out of keeping with his narrative style and the way in which his opinions seem often to revolve around characters. I suspect that Gorsuch refers to litigants by their proper names more frequently than other judges, but I was not able to test for this specifically.

FIGURE 3. AVERAGE USE OF TECHNICAL TERMS FOR LITIGANTS ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE

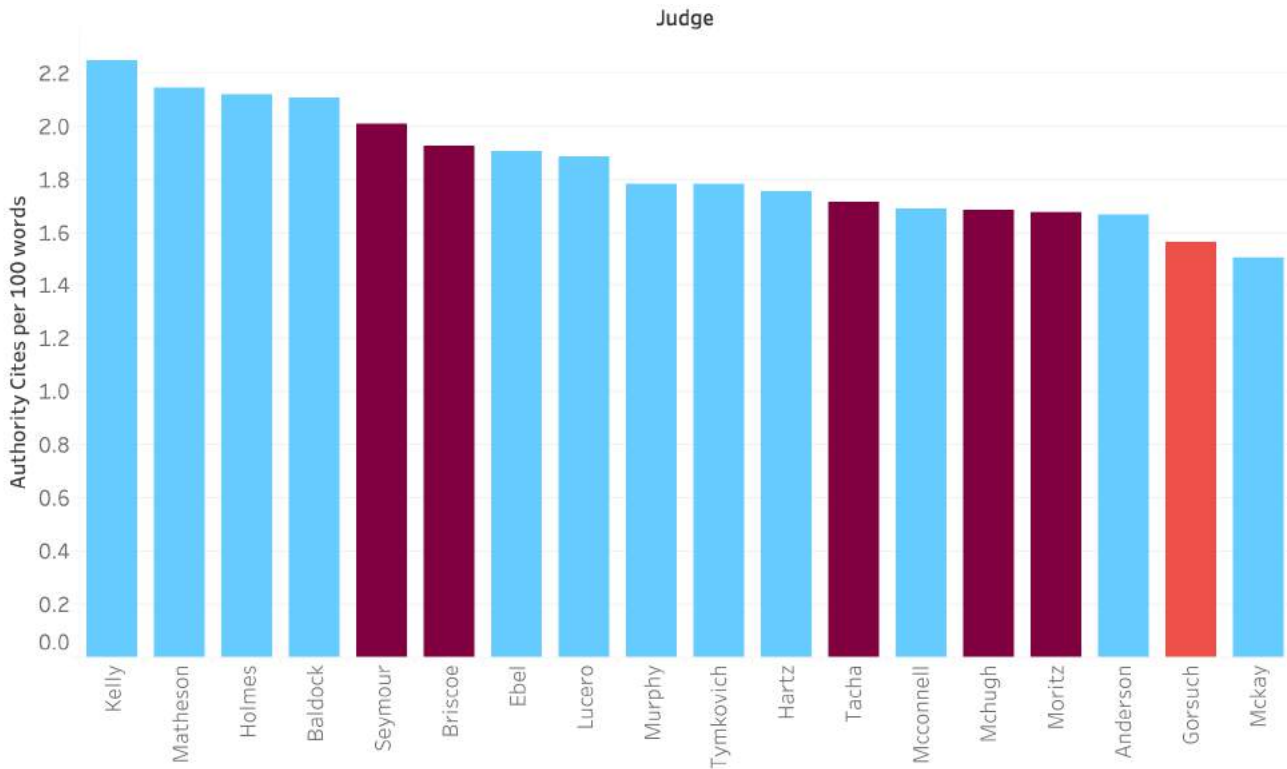


Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

We might expect citations to legal authorities to be negatively correlated with informality. My data support that hypothesis: Reliance on legal authority is negatively correlated with conjunctions at the start of sentences ($r = -0.074$) as well as contractions ($r = -0.131$), and positively correlated with the use of foreign language ($r = 0.125$). Figure 4 represents judge means for frequency of citations to authority, including citations to both cases and legislation (and constitutions). Gorsuch's opinions average

1.6 citations for every 100 words, which is on the low end of reliance on authority.⁶⁵ The judges range from an opinion average of 1.4 to 2.2 citations per 100 words, with a mean of 1.8. Gorsuch's relatively low score on this measure further supports the idea that he writes legalistically minimalist opinions. It might also suggest confidence and nerve. My data indicated no clear upward or downward trend for reliance on authority (neither for Gorsuch nor for the court overall).

FIGURE 4. AVERAGE CITATIONS TO LEGAL AUTHORITY ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



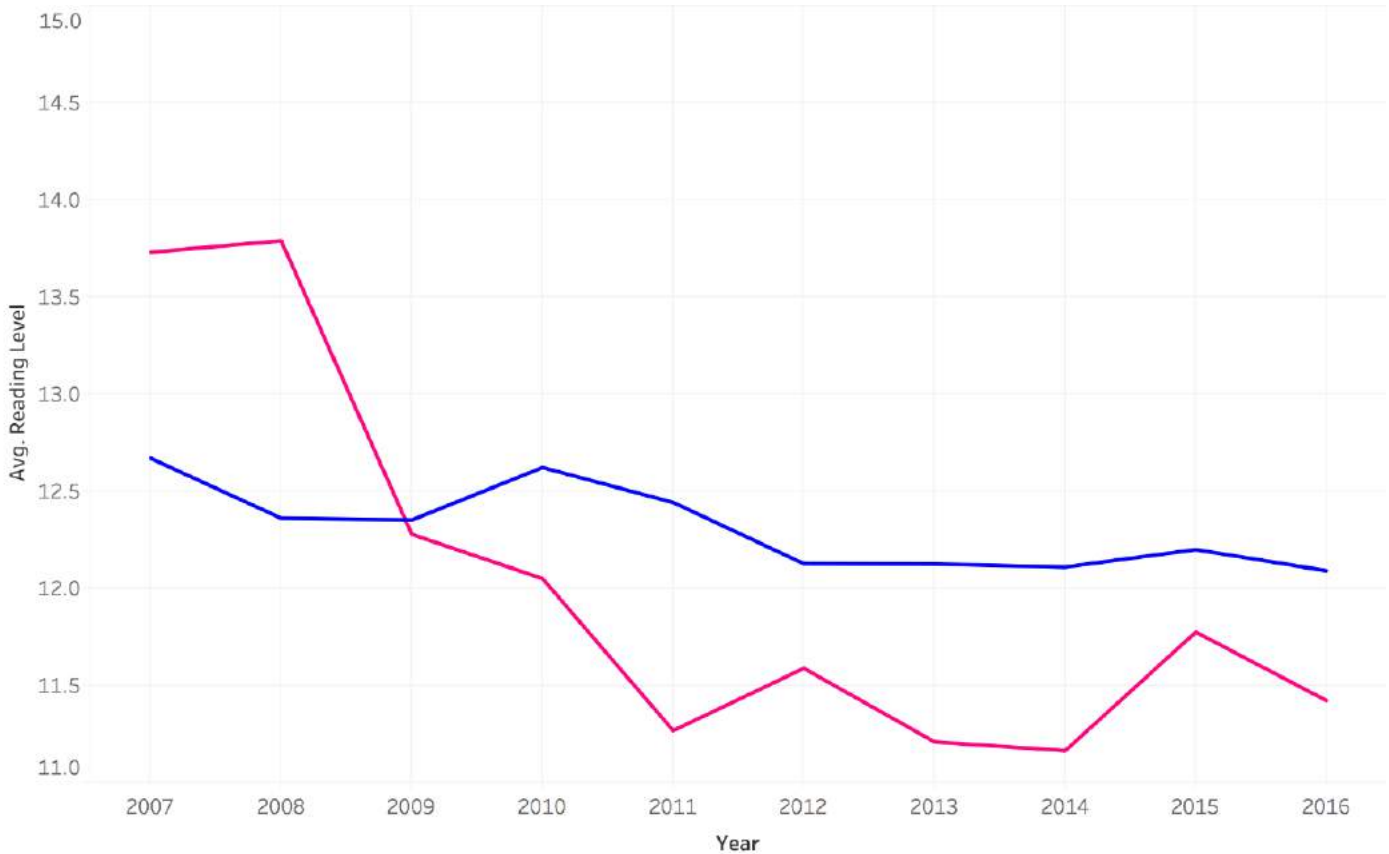
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

⁶⁵ I used regular expressions in Python to detect citations to authorities. My matching patterns follow judicial conventions for citing cases and legislation, but are likely over- and under-inclusive. We might suspect Gorsuch to cite legislation and constitutions more than average, given his commitment to textualism, even if he cites judicial decisions less than average. However, Gorsuch cites both cases and legislation less frequently than average, and the gap between Gorsuch and the average for legislation is greater than that for cases.

I measured opinion readability using the Flesch-Kincaid Grade Level Scale. The Flesch-Kincaid Scale represents a common formula for measuring reading ease.⁶⁶ Scores correspond to grade levels based on the U.S. school system. For example, a text with a score of twelve would be readily accessible to grade twelve students. Readability among the judges in my set ranges from 10.8 to 13.9, with a mean of 12.4. Gorsuch's grade level, at 12.2, is a little below average. Figure 5 shows that the reading grade level of Gorsuch's opinions decreased dramatically over the course of his judicial career on the Tenth Circuit, from a high of 13.7 in his early years to around 11.5 in his late years.

⁶⁶ See, e.g., FREDERICK M. HART & HUNTER M. BRELAND, DEFINING LEGAL WRITING: AN EMPIRICAL ANALYSIS OF THE LEGAL MEMORANDUM, LAW SCH. ADMISSION COUNCIL RESEARCH REPORT SERIES 27 (1994) (using readability grade level indexes to compare legal memoranda written by first-year law students); Keith Carlson et al., *A Quantitative Analysis of Writing Style on the U.S. Supreme Court*, 93 WASH. U. L. REV. 1461, 1481 (2016) (using the Flesch-Kincaid Grade Level Scale to compare U.S. Supreme Court majority and dissenting opinions); James Hartley, Eric Sotito & James Pennebaker, *Style and Substance in Psychology: Are Influential Articles More Readable than Less Influential Ones?*, 32 SOC. STUD. SCI. 321, 323–24 (2002) (using the Flesch Reading Ease score to compare the readability of more and less influential scientific articles). The Flesch-Kincaid grade-level formula takes into account sentence length and syllables per word, as follows: $0.39 \times (\text{words/sentences}) + 11.8 \times (\text{syllables/words}) - 15.59$. Some researchers have questioned the efficacy of formulas such as this one. See, e.g., John C. Begeny & Diana J. Greene, *Can Readability Formulas Be Used to Successfully Gauge Difficulty of Reading Materials?*, 51 PSYCHOL. SCHS. 198, 199–201 (2014) (questioning whether readability formulas produce accurate results by comparing the readability score of a text to students' actual oral reading fluency rates). I used spaCy's implementation of the Flesch-Kincaid Scale. See *supra* note 56.

FIGURE 5. TRENDS IN READING LEVEL ON THE TENTH CIRCUIT COURT OF APPEALS



Blue represents all opinions; pink represents Gorsuch's opinions.

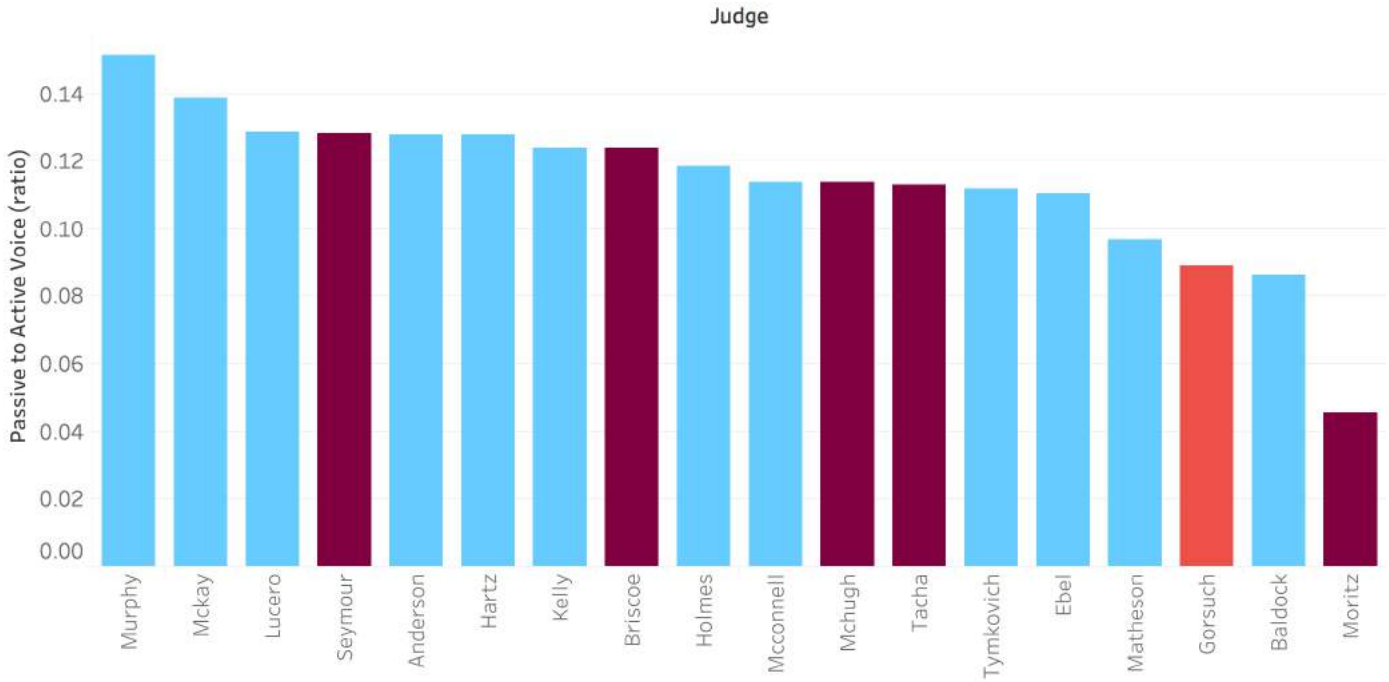
B. Measures of Confidence and Resolution

Gorsuch uses the passive voice sparingly. Proportion of passive to active voice per opinion ranges from 0.046 for the most actively voiced judge to 0.158 for the most passively voiced judge.⁶⁷ Gorsuch comes in at 0.089, higher than only two other judges on the court. Figure 6 shows how the judges compare on use of passive voice. As illustrated in Figure 7, Gorsuch's use of passive voice has dropped steeply over the course of his

⁶⁷ To estimate passive and active voice I used spaCy's dependency parser, which is designed to detect passive and active subjects. See *supra* note 55. For example, the sentence "Ivy wrote the letter" contains one active subject ("Ivy") and no passive subjects. "The letter was written by Ivy" contains one passive subject ("letter") and no actives. A text containing only these two sentences would receive a passive-to-active score of one (1/1).

judicial career. The high proportion of active voice might make Gorsuch's opinions come across as more definite and direct. Moreover, his affinity for the active voice likely adds clarity to his opinions and helps keep them concise.⁶⁸ Readers are likely to appreciate the relative brevity of Gorsuch's opinions, which average 4101 words, 261 words shorter than the judge average.⁶⁹

FIGURE 6. AVERAGE RATIO OF PASSIVE VOICE ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE

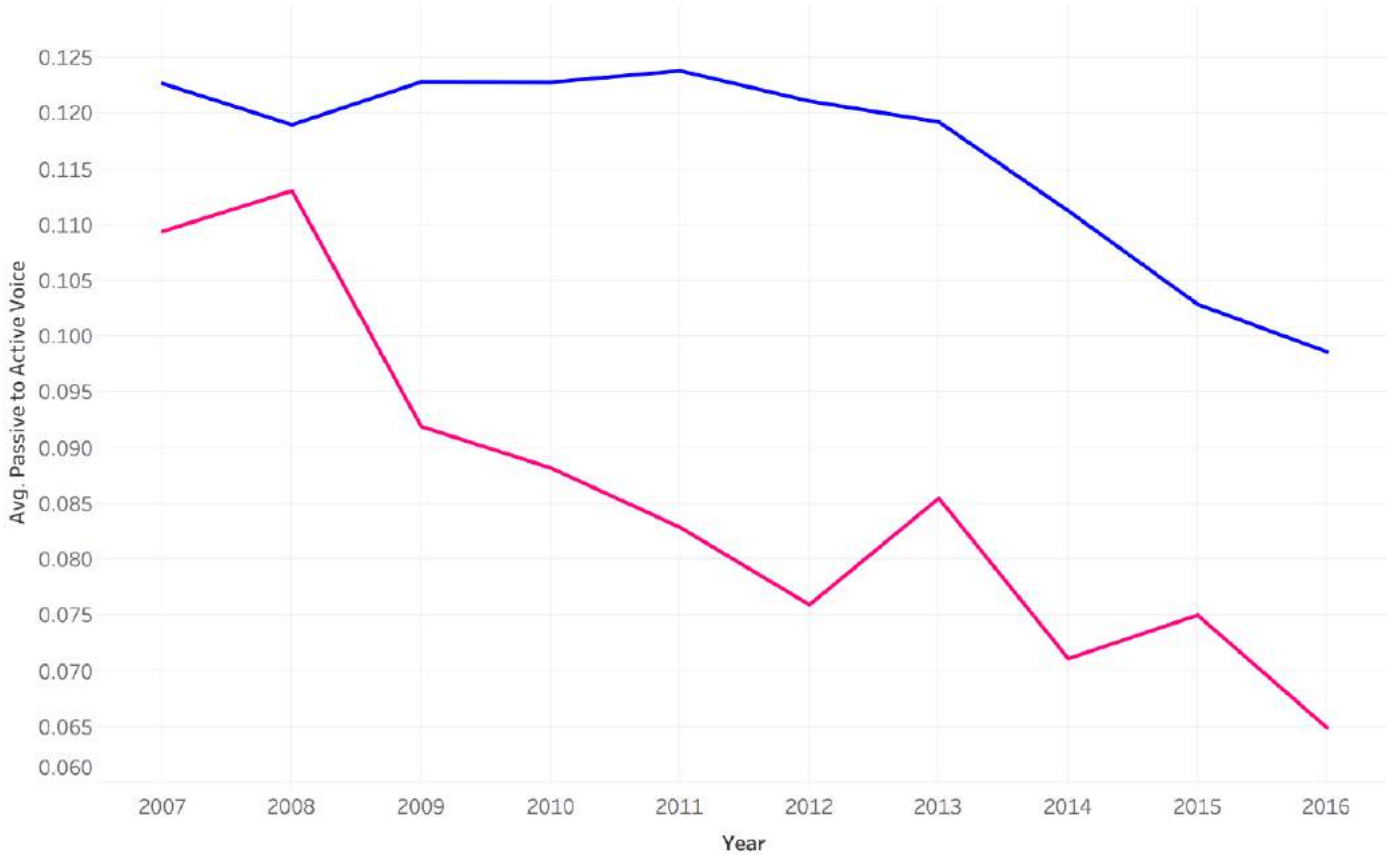


Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

⁶⁸ See *supra* Section I.B.

⁶⁹ My data revealed no clear trend in Gorsuch's opinion length. For the Tenth Circuit as a whole from 2007 to 2016, average opinion length varied between about 4000 and 5000 words, with an upward trend overall.

FIGURE 7. TRENDS IN PASSIVE VOICE ON THE TENTH CIRCUIT COURT OF APPEALS



Blue represents all opinions; pink represents Gorsuch's opinions.

Given his reputation for self-assuredness and over-confidence, we might expect Gorsuch's opinions to contain more terms of certainty or "intensifiers" (such as "clearly" and "surely") than other judges' opinions. My results show that Gorsuch does indeed employ terms of this type far more frequently than his peer judges.⁷⁰ However, I also tested for the use of

⁷⁰ My dictionary of intensifiers is adapted from and builds off lists used in previous studies. See, e.g., Hinkle et al., *supra* note 55, at 429 (using a dictionary of the following words: especially, quintessential, literally, very, extremely, par excellence, in essence, exceedingly, extraordinarily, decidedly, supremely, remarkably, truly, clearly, plainly, obvious(ly), undeniable(ly), indispute(ably), doubtless); Lance N. Long & William F. Christensen, *Clearly, Using Intensifiers Is Very Bad—Or Is It?*, 45 IDAHO L. REV. 171, 181 (2008) (using a dictionary of the following terms: very, obviously, clearly, patently, absolutely, really, plainly, undoubtedly, certainly, totally, simply, wholly); Lance N. Long & William F. Christensen, *When Justices*

terms that would seem to express the opposite tone—terms of hesitancy, tentativeness, or speculation (sometimes called “hedgies”), such as “possibly” and “maybe.”⁷¹ It turns out that Gorsuch also employs this type of term at a far greater than average rate. He might have a proclivity for qualifiers in general. On average, Gorsuch’s opinions contain 3.4 certainty terms and 5.7 tentative terms for every 1000 words. The Tenth Circuit judges average 1.6 intensifiers and 2.8 hedges for every 1000 words.

Female judges cluster on the lower ends of the spectrum for both intensifiers and hedges. The average number of intensifiers per 1000 words for female opinions is 1.4, compared to 1.7 for male opinions. The average number of hedges for female opinions per 1000 words is 2.5, compared to three for male opinions. Studies of gendered language outside the legal context suggest that women use more hedges than men and also that hedges indicate a low-power communication style.⁷² To the extent that we think judicial writing reflects language use in other contexts, we should be surprised to learn that female-authored opinions contain fewer hedges than male-authored opinions. Perhaps the difference represents a disproportionate effort on the part of female judges to write in a more direct, less qualified fashion, to counteract gender stereotypes. Another

(*Subconsciously*) *Attack: The Theory of Argumentative Threat and the Supreme Court*, 91 OR. L. REV. 933, 948 (2013) (same). My complete dictionary is composed of the following eighteen terms: doubtless(), indisputabl(), undeniabl(), plainly, undoubtedly, decidedly, certainly, expressly, simply, never, to be sure, surely, of course, naturally, rightly, undoubtedly, obviously, clearly (but excluding the phrase “clearly erroneous”). I made an effort to exclude terms that could easily be negated with surrounding words (for example, “not especially” and “not very”). Nevertheless, the dictionary method is inevitably under- and over-inclusive, and can only serve as a rough approximation for expressions of certainty and hesitancy.

⁷¹ With my dictionary of hedges I attempted to capture terms that indicate reluctance to make an absolute claim. The dictionary is made up of the following fifteen terms: unclear(), suppos(), seem(), considerably, hardly, usually, in general, generally, perhaps, may, maybe, might, possibl(), pretty, probabl() (but excluding the phrase “probable cause”). My research turned up fewer relevant studies examining hedges, but Hinkle and coauthors did search for hedges in addition to intensifiers; their list includes the following terms: would, may, could, might, indicate, suggest, propose, predict, assume, speculate, believe, imply, estimate, calculate, appear, seem, attempt, seek. See Hinkle et al., *supra* note 55, at 428. Several of these terms (for example, “seek” and “calculate”) do not seem to me to be indicative of hesitancy or tentativeness in judicial opinions, so I did not include them in my list.

⁷² See Faye Crosby & Linda Nyquist, *The Female Register: An Empirical Study of Lakoff’s Hypotheses*, 6 LANGUAGE & SOC’Y 313, 314–20 (1977) (reporting study results that suggest females use more hedging language than males); Lawrence A. Hosman & Susan A. Siltanen, *Powerful and Powerless Language Forms: Their Consequences for Impression Formation, Attributions of Control of Self and Control of Others, Cognitive Responses, and Message Memory*, 25 J. LANGUAGE & SOC. PSYCHOL. 33, 42–44 (2006) (finding that intensifiers convey power and hedges convey powerlessness); Campbell Leaper & Rachael D. Robnett, *Women Are More Likely than Men to Use Tentative Language, Aren’t They? A Meta-Analysis Testing for Gender Differences and Moderators*, 35 PSYCHOL. WOMEN Q. 129, 139 (2011) (reporting study results suggesting that women use more tentative speech than men but that the difference is small and not pervasive).

possibility, which could help explain the paucity of both intensifiers and hedges among female opinions, is that female judges are more meticulous in choosing their words and weeding out filler words.⁷³

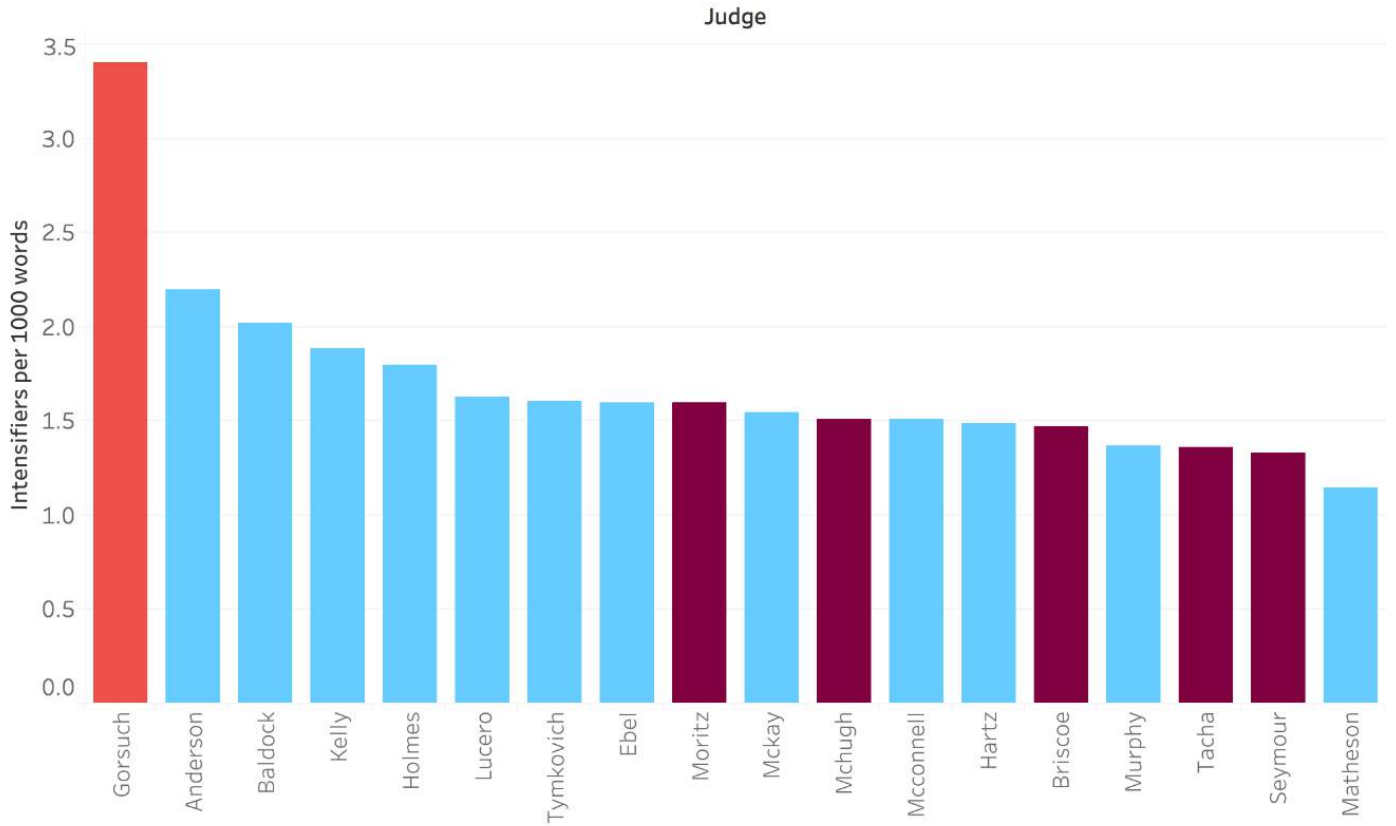
Figures 8 and 9 show how the judges compare in their use of intensifiers and hedges, respectively. As shown in Figures 10 and 11, Gorsuch's use of both intensifiers and hedges increased precipitously over the course of his career as an appellate judge.

I suspect that certainty qualifiers are more salient to the human reader; statements qualified with terms such as “surely” or “obviously” can come across as obnoxious or condescending. However, “possibly” or “might” are softer; they tend to blend in more. Consequently, readers might be more likely to notice Gorsuch's extraordinary use of intensifiers than his extraordinary use of hedges. And this might help explain why some observers have perceived his tone as more arrogant and condescending than hesitant and humble.⁷⁴ The numbers suggest that when it comes to word choice, Gorsuch expresses reservation even more often than he expresses certainty. Although legal writing authorities caution against the use of adverbs, which are often superfluous to an argument, the use of qualifying language lends a conversational, casual tone to writing. Think of how often qualifiers such as “really” and “very” appear in everyday conversations. Gorsuch's use of adverbs might help him create an informal, colloquial style.

⁷³ It is beyond my scope here to explore gender or other demographic differences in detail, and we should be wary of generalizing about female judges from this data, given the small sample. While I do not have a sufficient number of female judges in my set to draw any firm conclusions about gender differences, the data are suggestive of such differences. My dataset includes even less racial diversity than gender diversity. The Tenth Circuit has been incredibly homogenous throughout its history, with only two non-white judges ever serving on the court (according to demographic data collected by the Federal Judicial Center). See *Biographical Directory of Article III Federal Judges, 1789-Present*, FED. JUDICIAL CTR., <https://www.fjc.gov/history/judges/search/advanced-search> (last visited June 3, 2018). I take up questions about demographic differences in style in ongoing research.

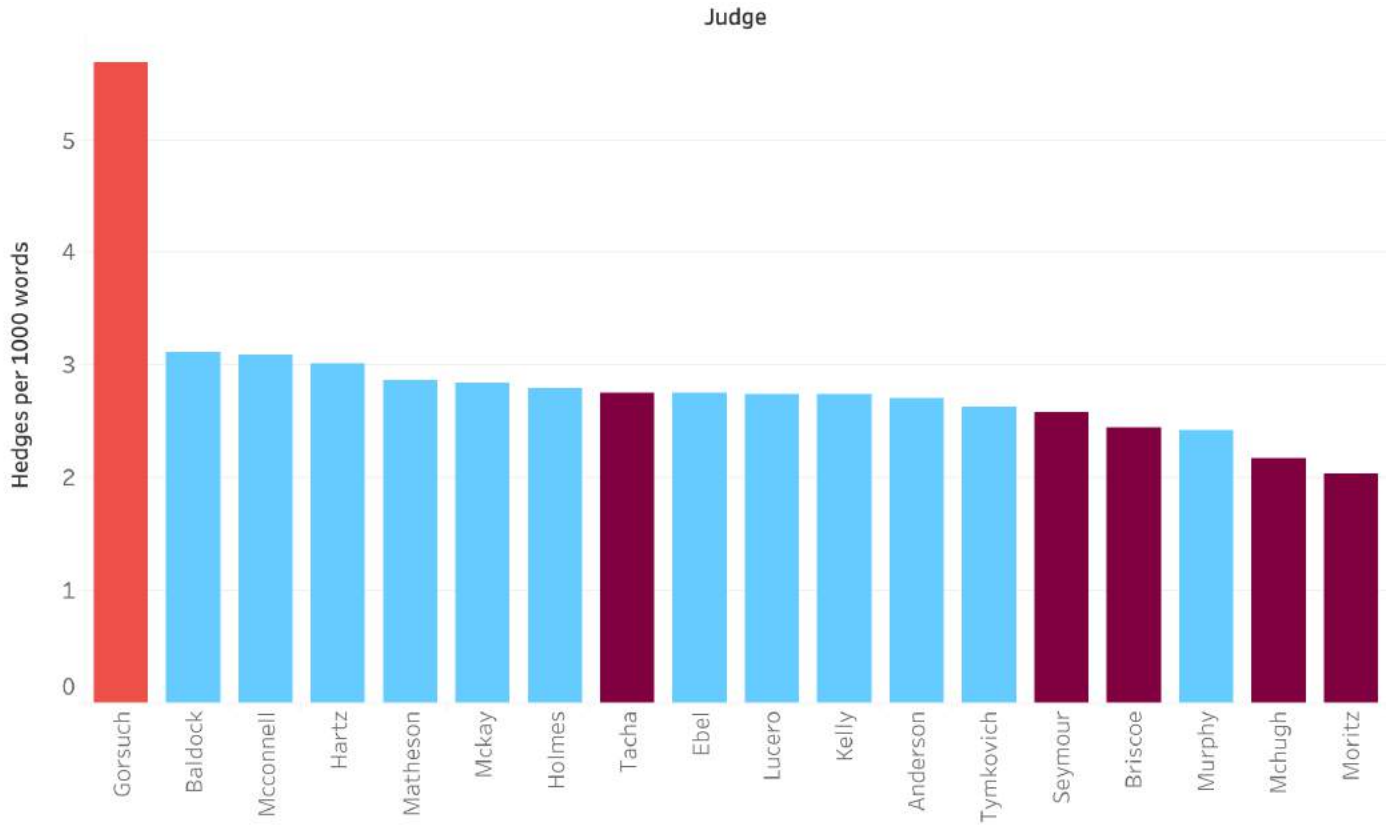
⁷⁴ See, e.g., Linda Greenhouse, *Trump's Life-Tenured Judicial Avatar*, N.Y. TIMES (July 6, 2017), <https://www.nytimes.com/2017/07/06/opinion/gorsuch-trump-supreme-court.html> (criticizing Gorsuch's lack of “diffidence”); Stern, *supra* note 3 (observing that “Gorsuch has a habit of lecturing his colleagues in the most condescending tone possible”).

FIGURE 8. AVERAGE USE OF INTENSIFIERS ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



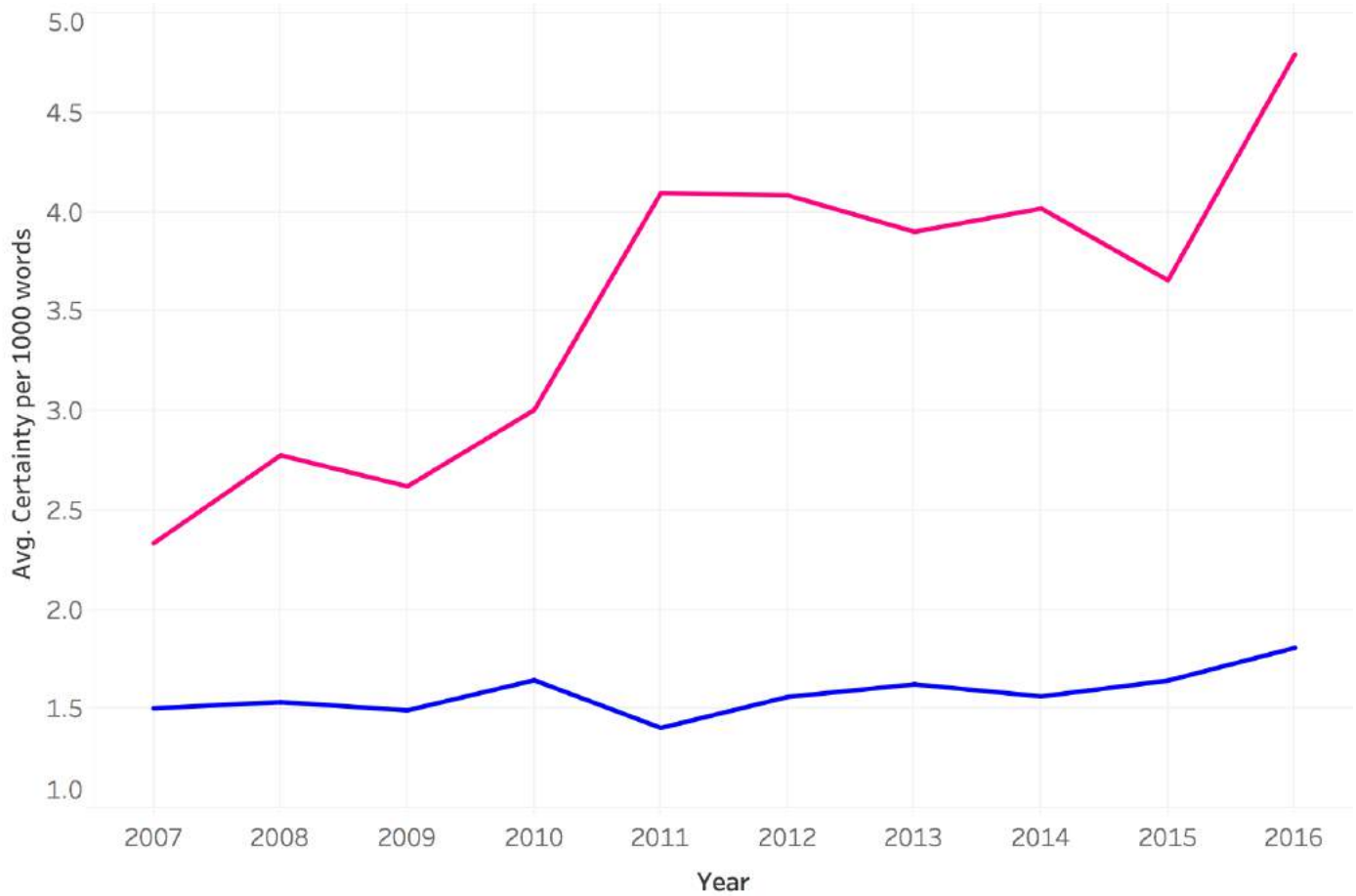
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 9. AVERAGE USE OF HEDGES ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



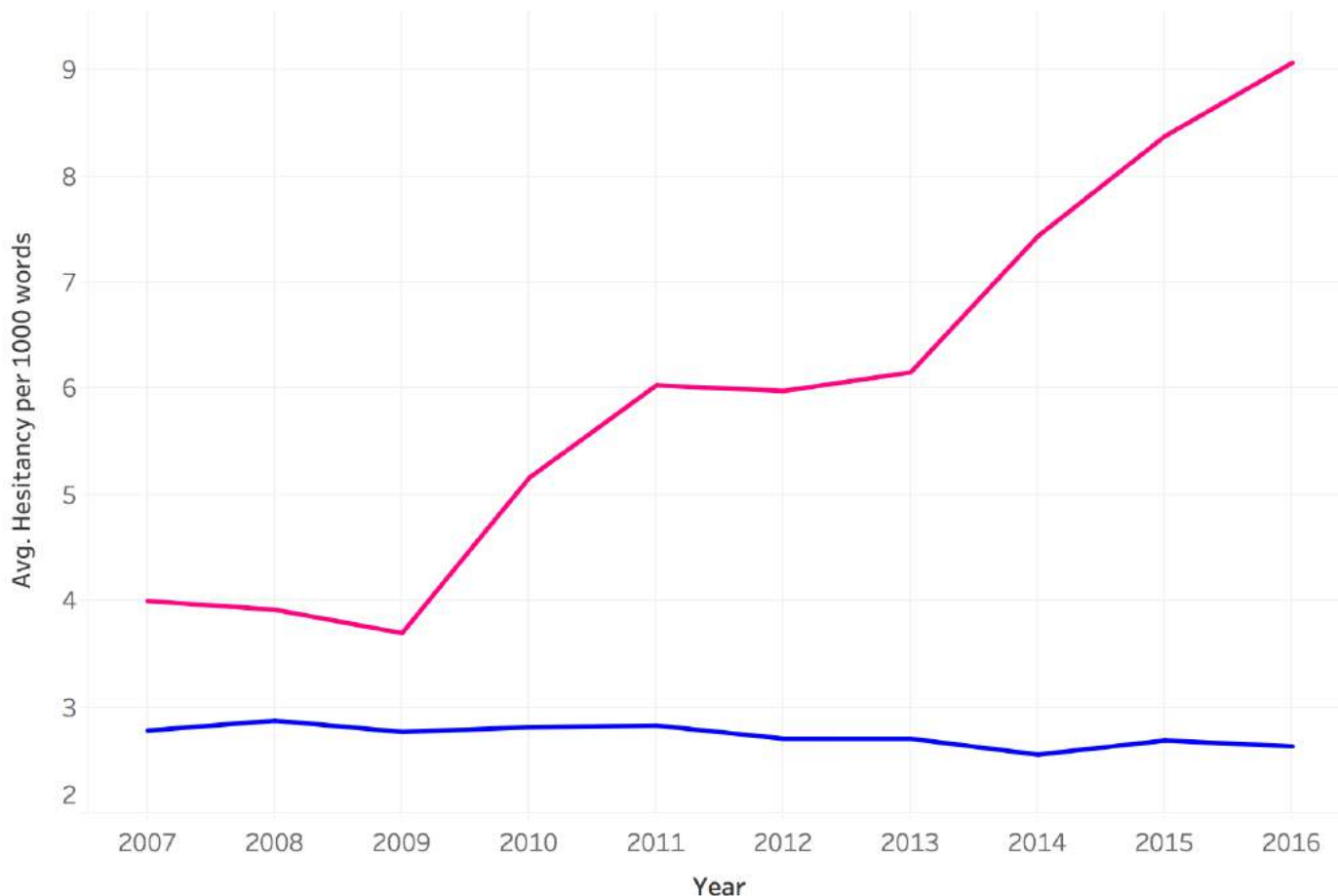
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 10. TRENDS IN INTENSIFYING LANGUAGE ON THE TENTH CIRCUIT COURT OF APPEALS



Blue represents all opinions; pink represents Gorsuch's opinions.

FIGURE 11. TRENDS IN HEDGING LANGUAGE ON THE TENTH CIRCUIT COURT OF APPEALS



Blue represents all opinions; pink represents Gorsuch's opinions.

C. Measures of Aesthetic and Entertainment Value

Lexical diversity, or vocabulary richness, lends a literary quality to writing and has been associated with intellect.⁷⁵ Chilton and coauthors use lexical diversity to measure “verbal acuity,” noting that this measure “showcases the kind of great writing that Holmes did”—writing that seems more suited to great literature than legal discourse.⁷⁶ Their example, “[t]he

⁷⁵ See *supra* notes 33–34 and accompanying text.

⁷⁶ Chilton, Jiang & Posner, *supra* note 33.

common law is not a brooding omnipresence in the sky,”⁷⁷ sounds a lot like Gorsuch in his celebrated *Western World* opinion, where he depicts an “otherworldly atmosphere,” “inky gloom,” and “brooding darkness.”⁷⁸

To measure vocabulary range, I used the “type-token” ratio, which is a standard method in computational linguistics for estimating variation in diction.⁷⁹ The ratio represents the number of unique words as a proportion of total words. The higher the ratio for a given text, the more diverse its diction. I measured lexical diversity at the unit of the opinion, and then computed an average for each judge.

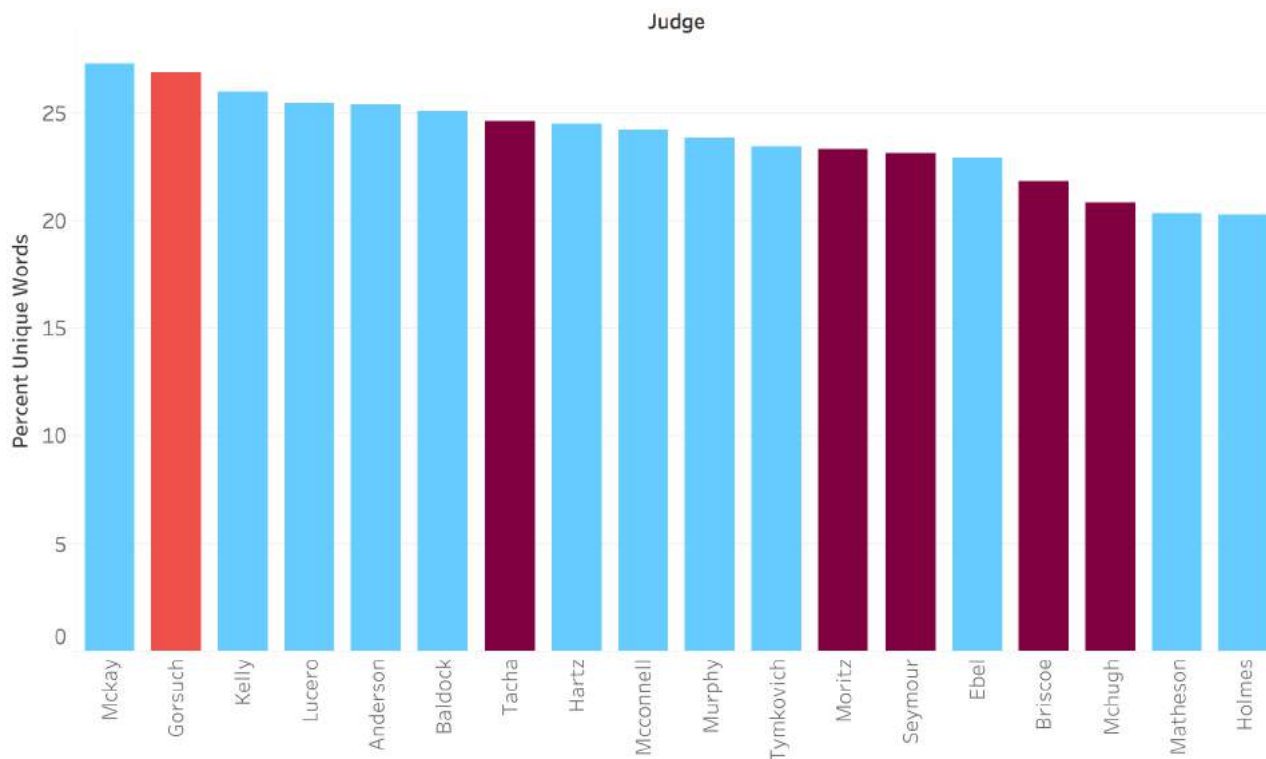
Gorsuch uses a relatively wide-ranging vocabulary. The Tenth Circuit judges range from 0.20 to 0.27 on lexical diversity. Gorsuch scores a 0.27, meaning that, on average, his opinions contain twenty-seven unique words for every hundred words. Gorsuch’s range of vocabulary per opinion has increased over time. Figure 12 illustrates judge means for lexical diversity.

⁷⁷ *Id.* (quoting *S. Pac. Co. v. Jensen*, 244 U.S. 205, 222 (1917) (Holmes, J., dissenting)).

⁷⁸ *W. World Ins. Co. v. Markel Am. Ins. Co.*, 677 F.3d 1266, 1268 (10th Cir. 2012). For positive commentary on the opinion, see Debra Cassens Weiss, *Gorsuch Writes Reader-Grabbing Opinions with Fact Summaries that Are ‘A Form of Wry Nonfiction,’* A.B.A. J. (Feb. 1, 2017, 9:43 AM), http://www.abajournal.com/news/article/gorsuch_writes_reader_grabbing_opinions_with_fact_summaries_that_are_a_form (noting that “[Gorsuch’s] opinions strive for accessibility, and they begin with recitations of facts that grab the reader,” and quoting his *Western World* opinion); *Gorsuch’s Writing Described as ‘Breezy,’* *supra* note 1 (reviewing Gorsuch’s writing favorably and noting that Gorsuch “referenced ghosts and goblins in a lawsuit over injuries suffered at a haunted house”).

⁷⁹ See, e.g., Steven Bird et al., *Natural Language Processing with Python*, NLTK BOOK, <http://www.nltk.org/book/ch01.html#counting-vocabulary> (last visited June 20, 2018) (explaining how to use the type-token ratio to measure “lexical richness” or “diversity”).

FIGURE 12. AVERAGE LEXICAL DIVERSITY ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

As others have observed, while suspense is a key ingredient in narrative forms of entertainment such as novels and films, people enjoy suspense in a variety of other contexts as well, including sports, gambling, news, and political races.⁸⁰ Consumers of judicial opinions might also appreciate suspense. Simon Stern points out that some opinions exhibit a “suspense-oriented structure” and moreover that casebook editors tend to splice opinions in a way that makes them more suspenseful, even though a “deliberate effort to cultivate this effect in a judgment would normally be regarded as irreverent.”⁸¹ Gorsuch’s writing suggests that he recognizes the

⁸⁰ See, e.g., Jeffrey Ely et al., *Suspense and Surprise*, 125 J. POL. ECON. 215, 215–16 (2015) (suggesting that “sports events,” news stories, gambling, and “the political process” all contain elements of enjoyable suspense).

⁸¹ Stern, *supra* note 39, at 342 n.11.

value of suspense in judicial opinions.

In many if not most federal opinions, we see a statement of affirmance or reversal (or the like) in the opening lines.⁸² The opinions then proceed to explain how the judges arrived at their conclusions. However, Gorsuch often seems to withhold a clear statement of the judgment until the end of his opinions. After reviewing numerous Tenth Circuit cases, I determined that if the opinion discloses the disposition upfront, we typically see the words “affirm” or “reverse” (or the like) within the first four hundred words.⁸³ Accordingly, I marked all opinions that do not contain one of these words in the first four hundred words as suspenseful.

Overall, my algorithm marked 13% of the opinions in my set as suspenseful. The average percent of suspenseful opinions per judge is twelve. The judges range from 0% to 51%, with Gorsuch coming in at 42%. Figure 13 illustrates the proportion of suspenseful opinions per judge. The female judges cluster on the low end of suspense. Only 3.4% of female-authored opinions are suspenseful, compared to 14.5% of male-authored opinions.⁸⁴ While suspense on the Tenth Circuit overall has remained relatively constant over the past ten years, my results suggest that Gorsuch’s proclivity for suspense has increased sharply. Between 2010 and 2012 in particular, he began writing suspenseful opinions at a much higher rate than before. Figure 14 illustrates these trends. In the second half of his Tenth Circuit career (from 2012 to 2017), about 74% of Gorsuch’s opinions took the suspenseful form. His tendency toward suspense might contribute to the narrative effect of his opinions and to the popularity of his writing as well.⁸⁵

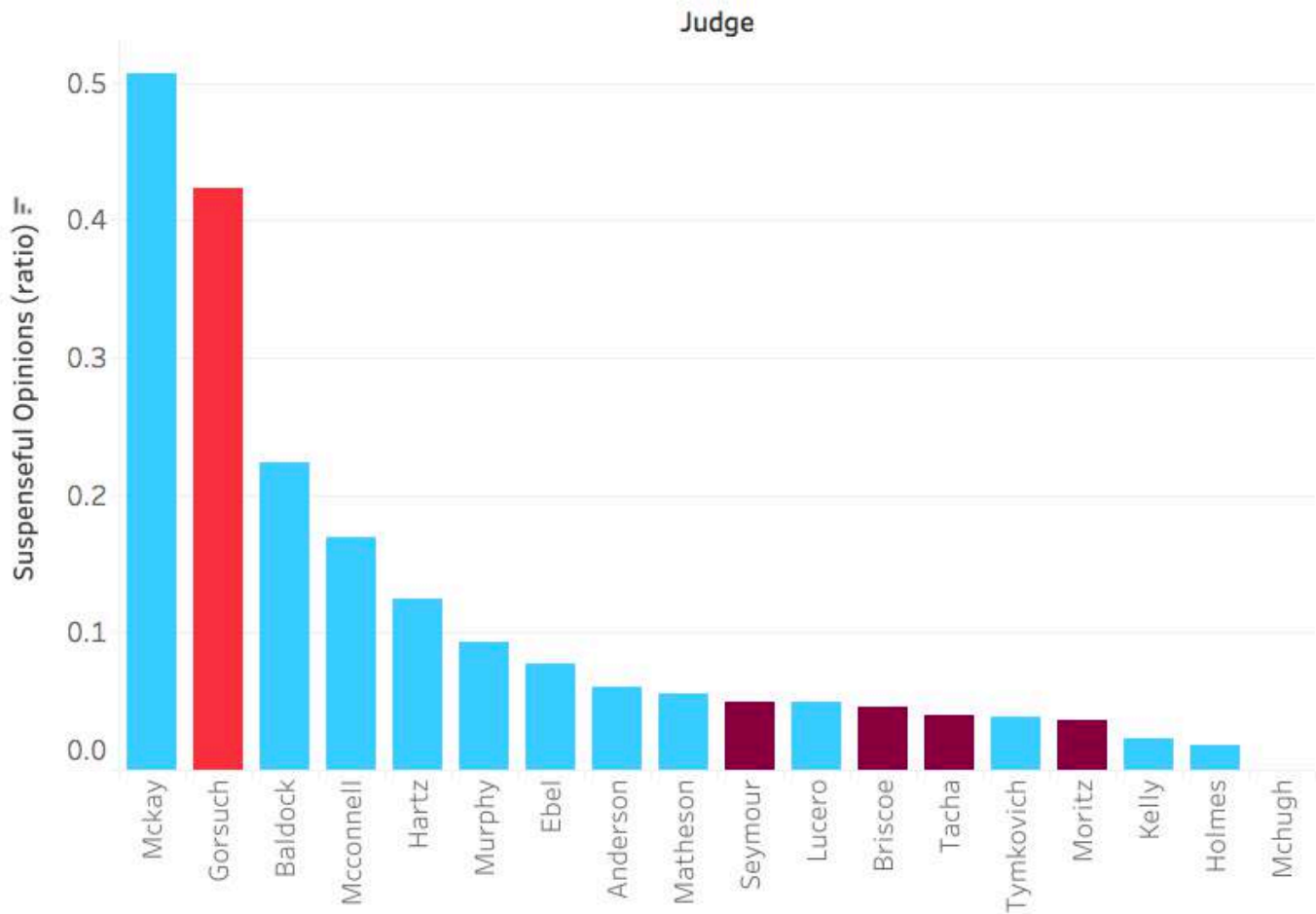
⁸² My own impression is that federal appellate opinions typically disclose the disposition early on; however, I have not tested that claim quantitatively, and it is possible that the norm is specific to the Tenth Circuit. According to Stern, opinions often follow the conventional “principle of legal writing that demands a full outline of the argument in advance, [but] it is nonetheless common to see courts flout this principle, . . . waiting to announce the result until the analysis is complete.” *Id.* at 341–42.

⁸³ I searched for any of the following terms: “dismiss(es),” “reverse(s),” “affirm(s),” “remand(s),” “vacate(s),” “deny(ies),” “grant(s).” However, an opinion might reveal the outcome upfront using unconventional language. In that event, my detector would inaccurately mark the opinion as suspenseful.

⁸⁴ It is beyond the scope of my efforts here to explore whether this represents a systematic gender difference, and if so what its causes and implications might be. I suspect, however, that writing literary and lively opinions that flout conventional principles of legal writing could feel (and in fact be) risky for judges who are members of groups that have been systematically excluded from positions of power such as judgeships.

⁸⁵ However, given the way that opinions are presented on Westlaw and other platforms, with synopses and headnotes preceding the opinion text, Gorsuch’s opinion suspense is likely lost on most readers.

FIGURE 13. RATIO OF SUSPENSEFUL OPINIONS TO TOTAL OPINIONS ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 14. SUSPENSE TRENDS ON THE TENTH CIRCUIT COURT OF APPEALS



Blue represents all opinions; pink represents Gorsuch's opinions.

CONCLUSION

Scholars, legal professionals, and journalists alike typically analyze opinion style qualitatively, drawing on a small number of opinions and relying on common sense or popular aesthetic sensibility to support claims about an opinion's stylistic virtues or vices.⁸⁶ However, traditional methods for analyzing style are inherently limited in their ability to detect large-scale stylistic patterns, the magnitude of stylistic differences between individuals or groups, and stylistic trends over time. Moreover, humans often perceive patterns where they do not exist and overlook patterns where they do exist. For example, observers have perceived Gorsuch's rhetoric as unusually bold and confident. However, my quantitative results suggest

⁸⁶ See, e.g., GARNER, *supra* note 11 (offering writing advice to comport with qualitative aesthetic preferences); GUBERMAN, *supra* note 8 (analyzing judicial opinions qualitatively to derive rules for good legal writing); Posner, *supra* note 36, at 1421 (drawing on examples of good writing to "sketch the two fundamental judicial styles").

that Gorsuch's opinions also contain an abnormal degree of uncertainty or hesitancy.

I extracted key elements of judicial style from the literature on judicial writing and used these to measure the style of Gorsuch's Tenth Circuit opinions alongside those of his fellow judges. The numbers suggest that Gorsuch's writing stands out on multiple dimensions. Moreover, on most dimensions Gorsuch's opinion style grew increasingly distinct during his tenure on the Tenth Circuit. Notably, his readability increased substantially, his use of passive voice decreased dramatically, his use of both certainty and hesitancy qualifiers increased precipitously, and his opinions increasingly displayed elements of suspense. Rather than converging with norms, his stylistic idiosyncrasies have intensified, perhaps because of the attention—largely positive during his Tenth Circuit days at least—that he has received for his writing style.

I found that Gorsuch does exceedingly well according to the standards of good writing that legal writing authorities espouse. Moreover, his writing has become progressively stronger by these standards over the past decade. Regardless of its merit, Gorsuch's writing has captured the attention of the media and legal community. Through quantitative analyses of various stylistic data, I was able to pinpoint and quantify some of the properties that make Gorsuch's writing stand out—properties that have enabled the Justice to attract broad and engaged audiences. I believe that Gorsuch's writing style has been instrumental to his success. Whether this style will work on the Supreme Court and how the Justice might develop it to meet the demands of his new role are open questions.

APPENDIX TABLE 1. SUMMARY STATISTICS FOR STYLE VARIABLES BY JUDGE

Judge		Wrds. Ct.	Lex. Div.	Auth. Cites per wrd.	Inform. per wrd.	Persons per wrd.	Litigant terms per wrd.	Intens. per wrd.	Hedg. per wrd.	Pass. to Act. Voice	Rdg. Lev.
Anderson <i>n</i> = 33	μ	3729	.25	.0166	.0009	.025	.0052	.00219	.00271	.128	12.6
	σ	1752	.04	.0053	.0016	.010	.0051	.00153	.00146	.044	1.46
Bacharach <i>n</i> = 76	μ	3953	.23	.0178	.0030	.030	.0045	.00145	.00175	.089	10.8
	σ	2330	.05	.0077	.0018	.016	.0044	.00125	.00124	.033	1.12
Baldock <i>n</i> = 112	μ	3858	.25	.0211	.0014	.019	.0165	.00202	.00312	.086	12.5
	σ	2643	.05	.0077	.0026	.011	.0135	.00129	.00173	.037	1.51
Briscoe <i>n</i> = 219	μ	5453	.22	.0193	.0008	.027	.0061	.00147	.00245	.124	12.8
	σ	4013	.05	.0070	.0019	.015	.0066	.00109	.00122	.041	1.41
Brorby	μ	3065	.26	.0185	.0005	.026	.0039	.00135	.00257	.125	13.8

<i>n</i> = 21	σ	1859	.06	.0066	.0016	.018	.0050	.00118	.00134	.060	1.67
Ebel	μ	4502	.23	.0191	.0008	.027	.0056	.00160	.00275	.110	13.0
<i>n</i> = 208	σ	2181	.05	.0067	.0014	.014	.0051	.00101	.00136	.045	1.36
Gorsuch	μ	4101	.27	.0156	.0083	.025	.0039	.00340	.00569	.089	12.2
<i>n</i> = 175	σ	2093	.054	.0054	.0058	.012	.0045	.00150	.00268	.032	1.58
Hartz	μ	4375	.25	.0175	.0026	.022	.0071	.00149	.00301	.128	11.8
<i>n</i> = 312	σ	2685	.05	.0066	.0022	.011	.0070	.00095	.00143	.042	1.38
Henry	μ	5472	.22	.0204	.0001	.028	.0038	.00162	.00320	.104	12.5
<i>n</i> = 64	σ	2939	.05	.0064	.0008	.012	.0033	.00109	.00121	.038	1.09
Holloway	μ	4109	.23	.0152	.0009	.026	.0084	.00181	.00279	.139	12.9
<i>n</i> = 53	σ	1758	.04	.0076	.0013	.016	.0069	.00134	.00163	.039	1.29
Holmes	μ	7059	.20	.0212	.0007	.027	.0052	.00180	.00279	.118	12.5
<i>n</i> = 112	σ	3219	.05	.0060	.0013	.011	.0049	.00146	.00103	.036	1.11

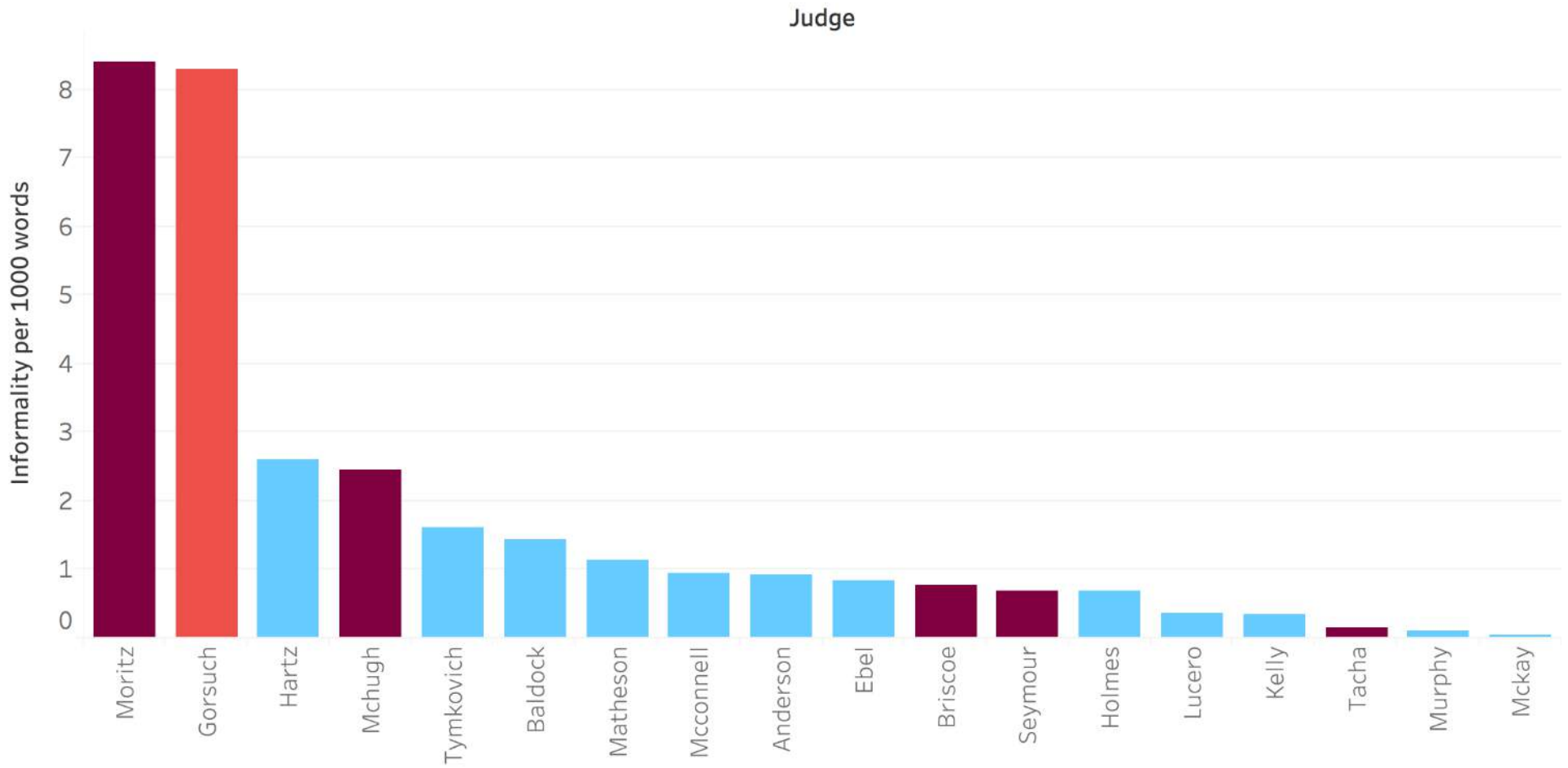
Kelly <i>n</i> = 216	μ	3382	.26	.0225	.0003	.033	.0052	.00189	.00274	.124	11.3
	σ	1772	.05	.0070	.0016	.014	.0055	.00150	.00146	.050	1.50
Lucero <i>n</i> = 182	μ	4094	.25	.0189	.0004	.024	.0045	.00163	.00275	.129	12.4
	σ	2445	.05	.0070	.0030	.013	.0047	.00118	.00135	.048	1.19
Matheson <i>n</i> = 109	μ	5801	.20	.0215	.0011	.033	.0046	.00114	.00287	.097	11.6
	σ	2699	.04	.0068	.0019	.015	.0052	.00114	.00127	.033	1.29
McConnell <i>n</i> = 117	μ	4708	.24	.0169	.0009	.028	.0058	.00151	.00310	.114	12.0
	σ	2911	.05	.0062	.0015	.012	.0046	.00092	.00126	.038	1.16
McHugh <i>n</i> = 47	μ	5840	.21	.0168	.0024	.025	.0049	.00151	.00217	.114	13.5
	σ	2803	.05	.0073	.0018	.013	.0060	.00970	.00095	.039	1.28
McKay <i>n</i> = 143	μ	2961	.27	.0150	.0000	.018	.0143	.00155	.00285	.139	13.3
	σ	1713	.06	.0070	.0015	.012	.0122	.00124	.00173	.058	1.65
Moritz	μ	3893	.23	.0168	.0084	.030	.0060	.00159	.00203	.046	12.7

<i>n</i> = 28	σ	2015	.04	.0061	.0048	.015	.0082	.00104	.00088	.021	1.68
Murphy <i>n</i> = 160	μ	3986	.24	.0178	.0001	.024	.0048	.00137	.00242	.152	13.0
	σ	2210	.05	.0081	.0017	.014	.0059	.00121	.00119	.080	1.40
O'Brien <i>n</i> = 90	μ	3906	.26	.0190	.0010	.025	.0035	.00145	.00289	.128	11.8
	σ	2600	.05	.0067	.0023	.012	.0031	.00112	.00148	.051	1.29
Phillips <i>n</i> = 39	μ	5286	.23	.0186	.0038	.033	.0046	.00189	.00245	.054	11.8
	σ	3225	.06	.0069	.0031	.017	.0037	.00133	.00101	.024	1.30
Porfilio <i>n</i> = 9	μ	2795	.27	.0141	.0010	.024	.0034	.00101	.00318	.158	12.1
	σ	979	.05	.0036	.0011	.011	.0055	.00087	.00123	.071	1.66
Seymour <i>n</i> = 100	μ	4814	.23	.0201	.0007	.028	.0036	.00133	.00259	.128	12.3
	σ	2848	.04	.0056	.0016	.010	.0037	.00099	.00122	.041	1.23
Tacha <i>n</i> = 123	μ	3457	.25	.0172	.0001	.026	.0058	.00136	.00276	.113	13.0
	σ	1899	.04	.0063	.0014	.013	.0053	.00096	.00148	.048	1.43

Tymkovich	μ	4452	.23	.0178	.0016	.023	.0042	.00161	.00263	.112	12.3
<i>n</i> = 260	σ	2104	.04	.0065	.0016	.012	.0044	.00122	.00132	.046	1.11

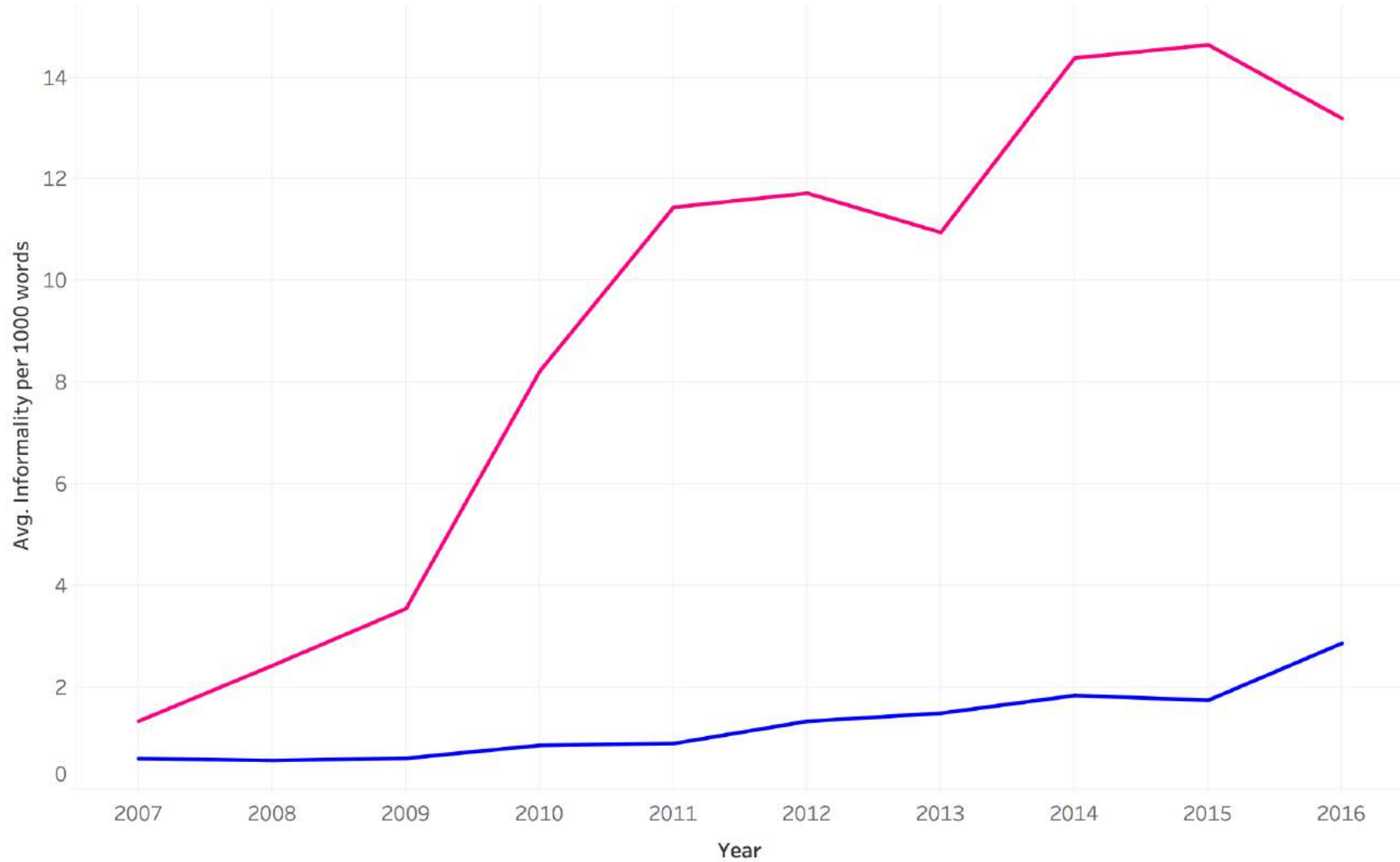
APPENDIX 2. ALL FIGURES

FIGURE 1. AVERAGE INFORMALITY ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



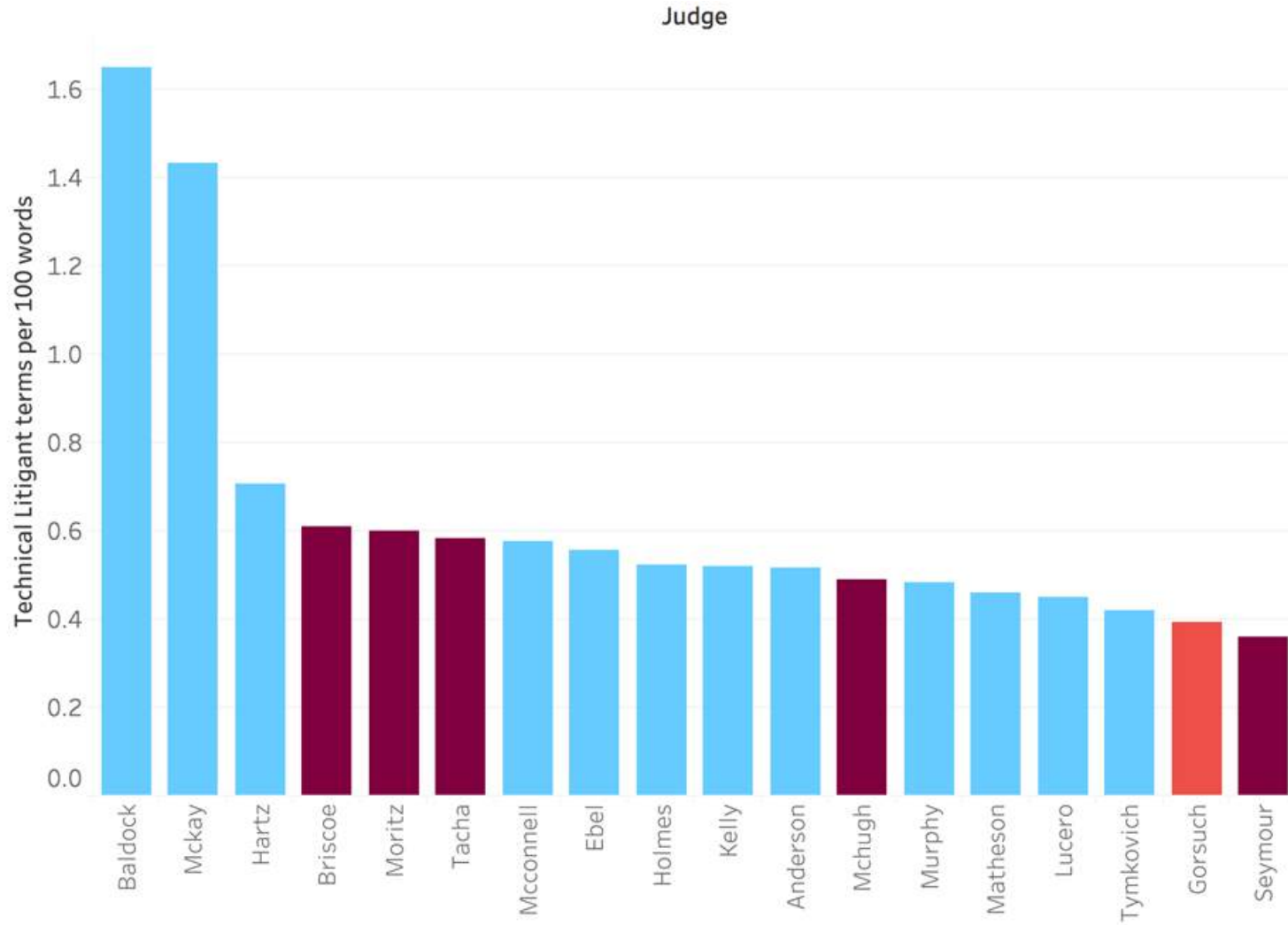
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 2. TRENDS IN AVERAGE INFORMALITY ON THE TENTH CIRCUIT COURT OF APPEALS



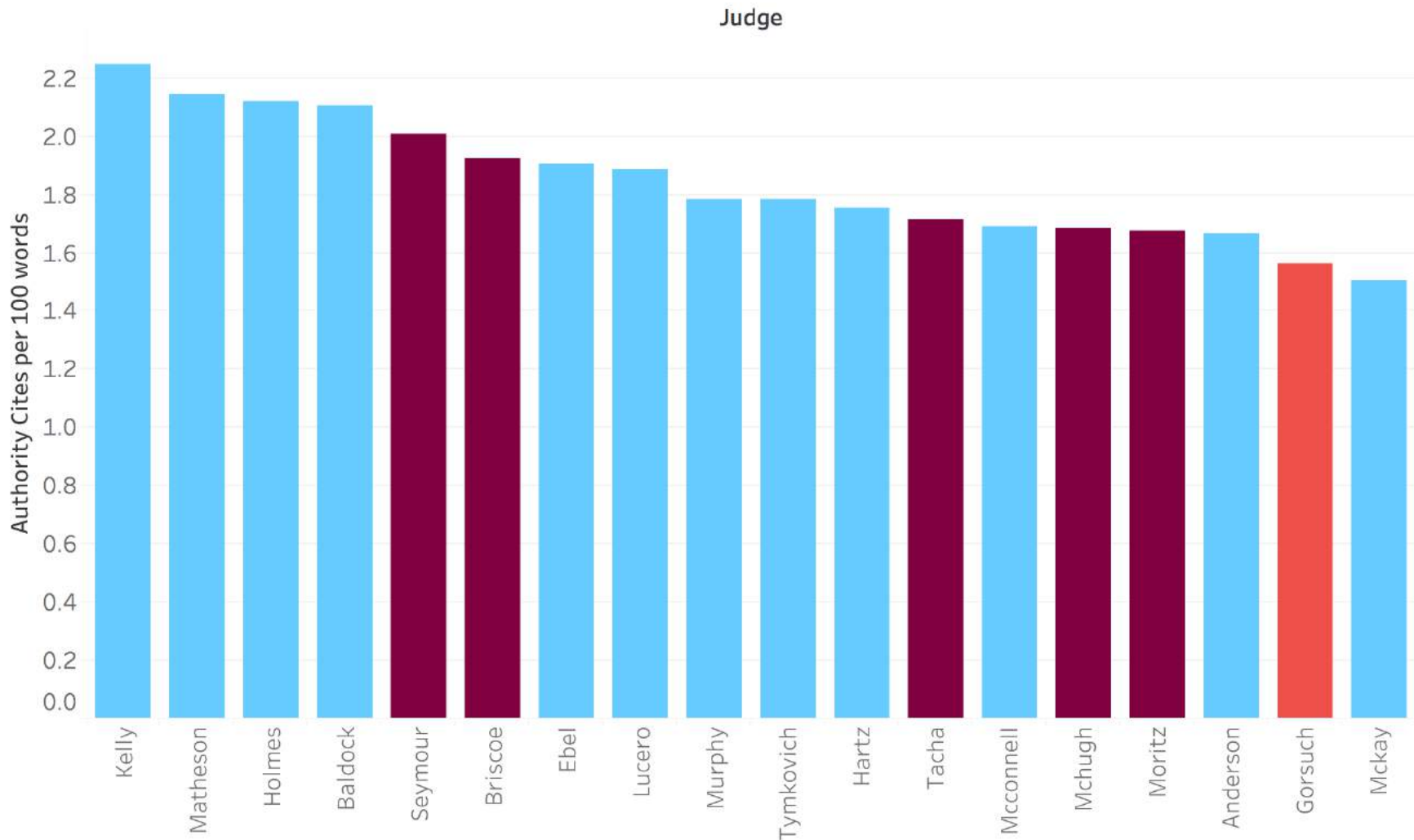
Blue represents all opinions; pink represents Gorsuch's opinions.

FIGURE 3. AVERAGE USE OF TECHNICAL TERMS FOR LITIGANTS ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



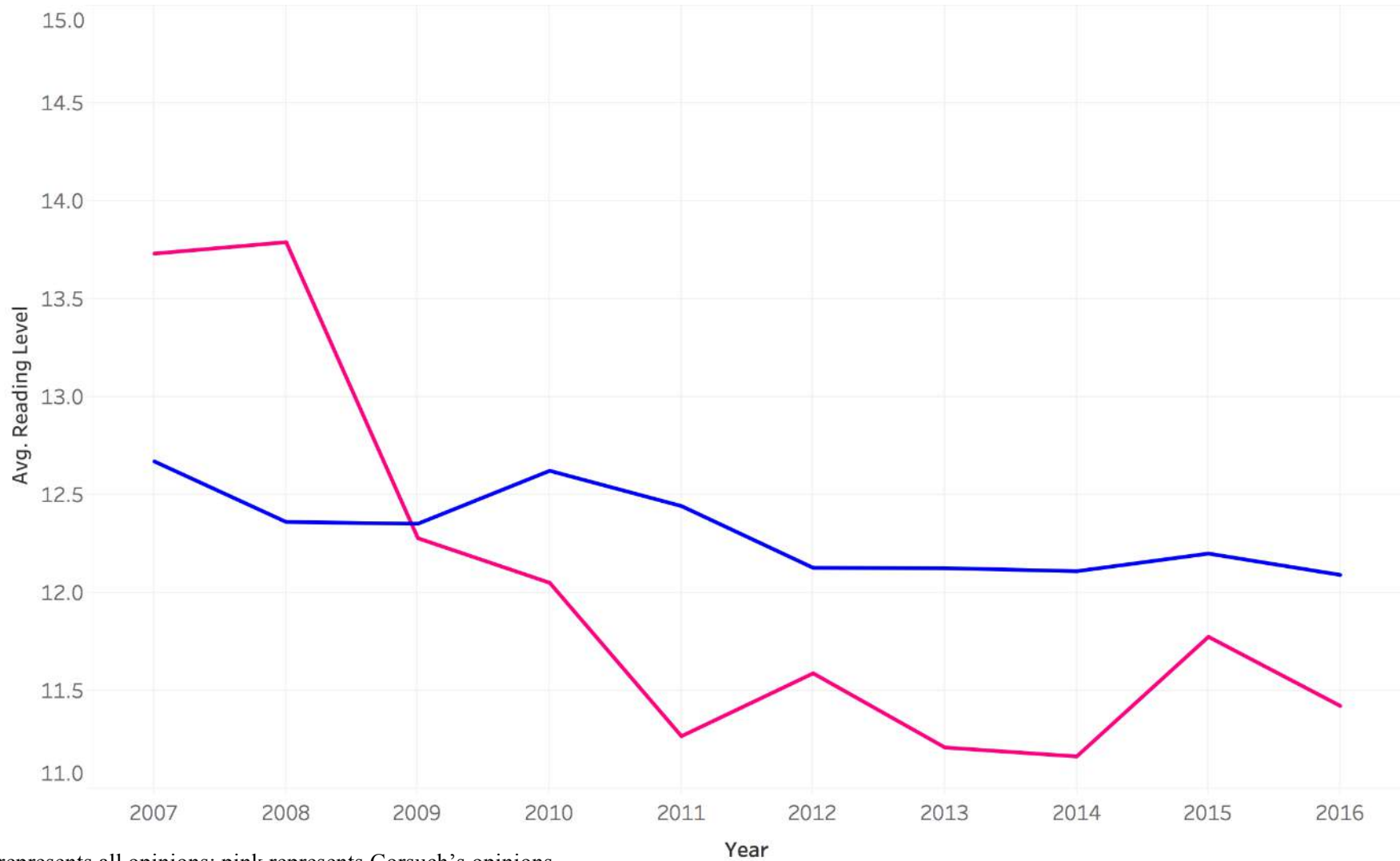
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 4. AVERAGE CITATIONS TO LEGAL AUTHORITY ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



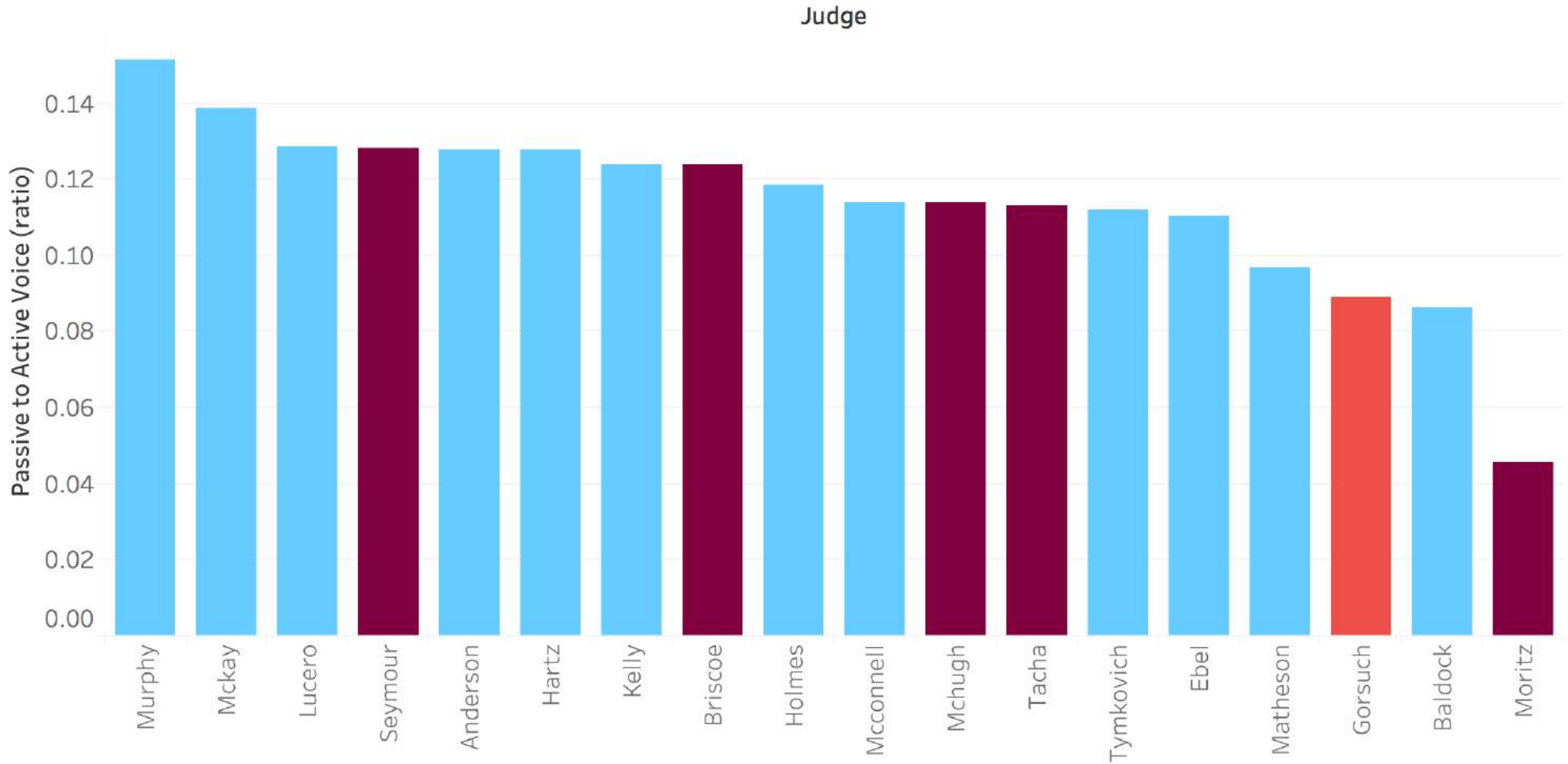
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 5. TRENDS IN READING LEVEL ON THE TENTH CIRCUIT COURT OF APPEALS



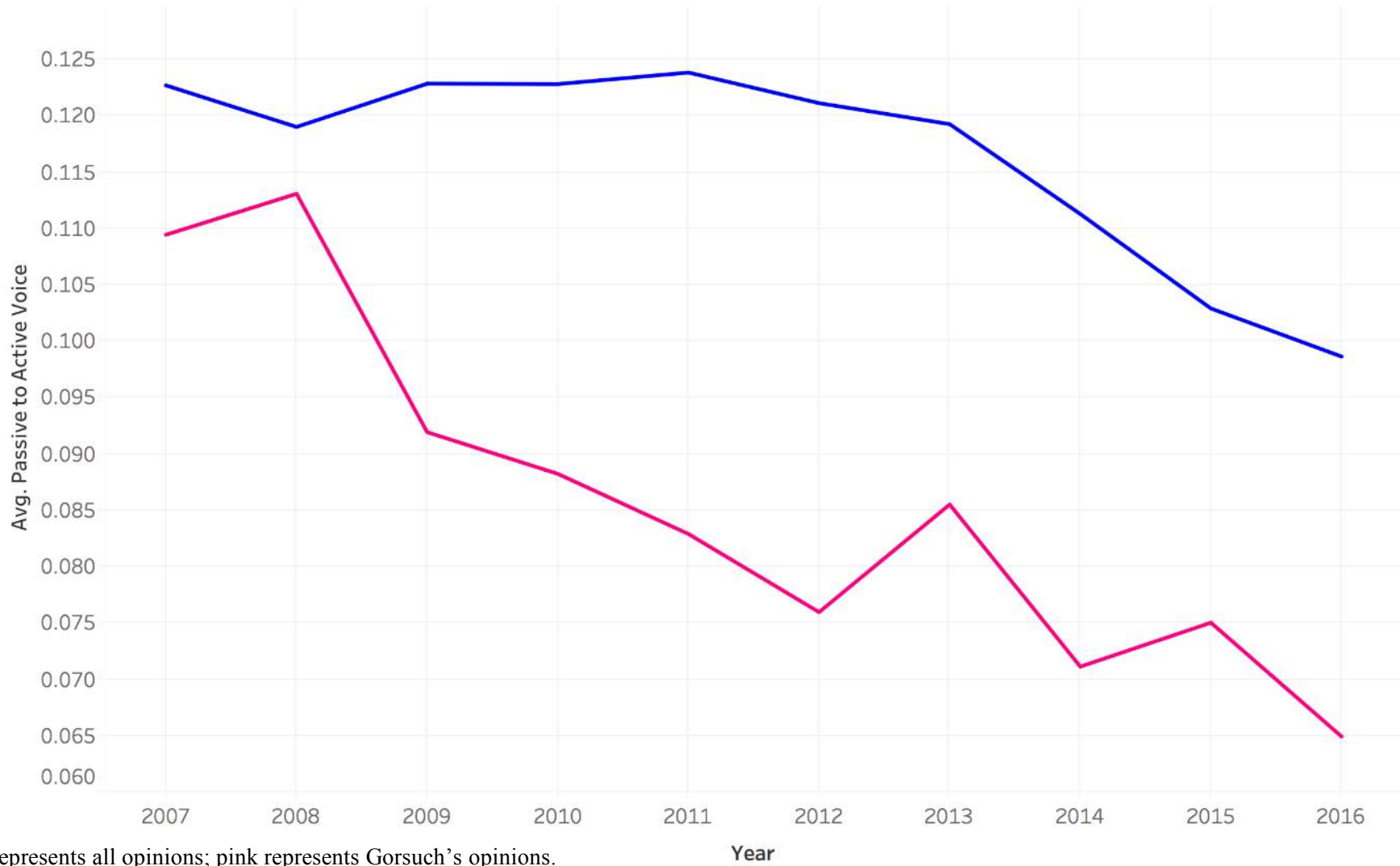
Blue represents all opinions; pink represents Gorsuch's opinions.

FIGURE 6. AVERAGE RATIO OF PASSIVE VOICE ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



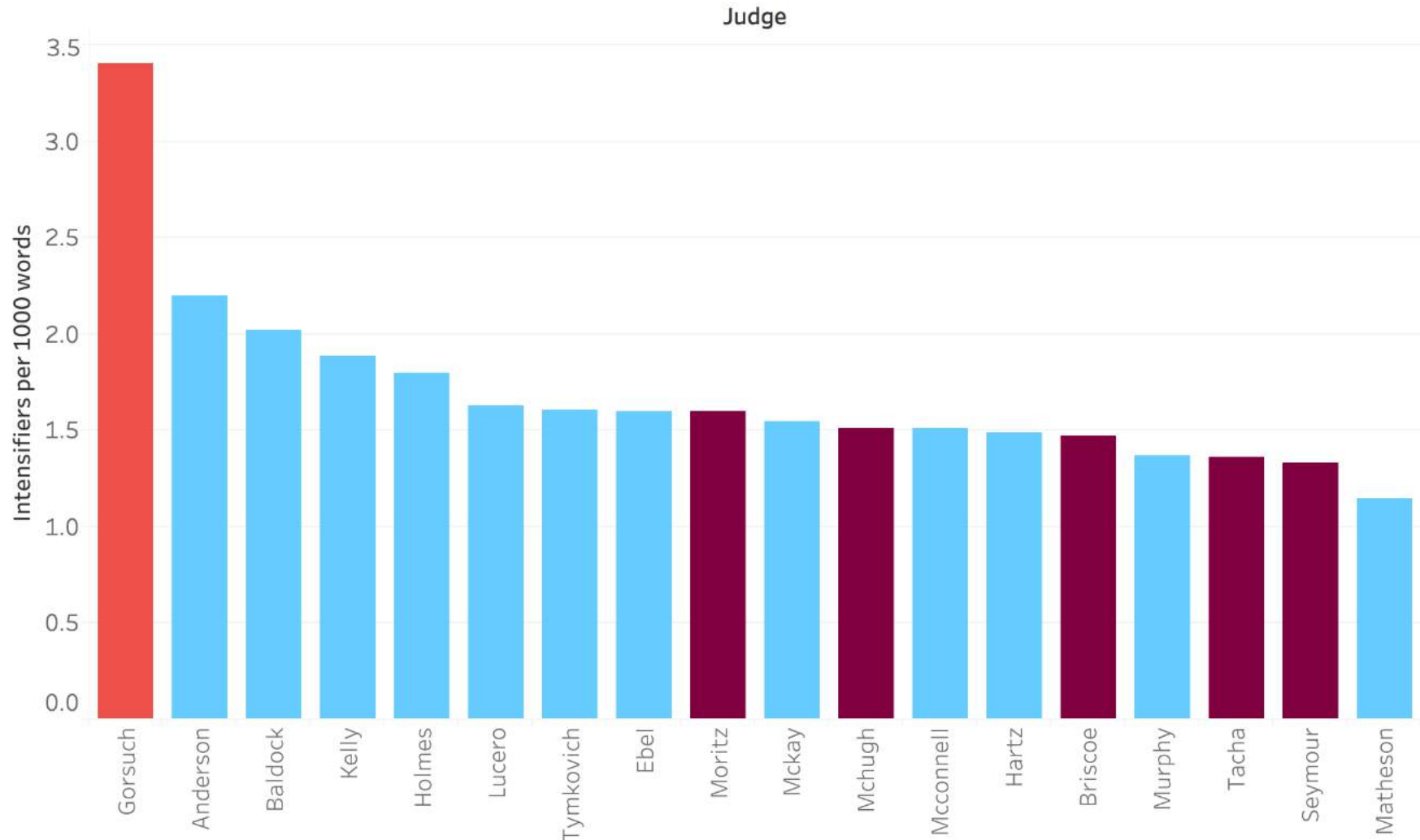
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 7. TRENDS IN PASSIVE VOICE ON THE TENTH CIRCUIT COURT OF APPEALS



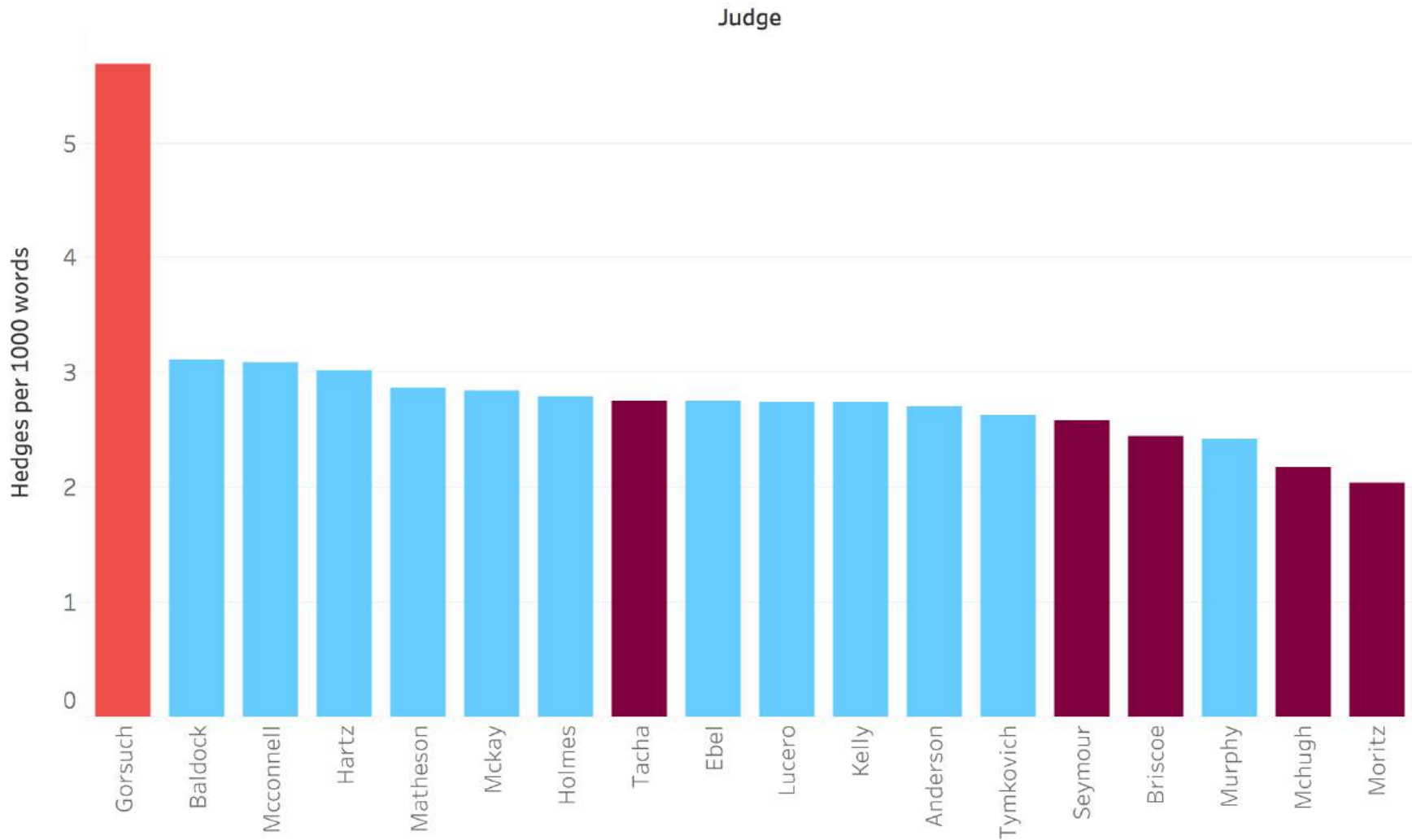
Blue represents all opinions; pink represents Gorsuch's opinions.

FIGURE 8. AVERAGE USE OF INTENSIFIERS ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



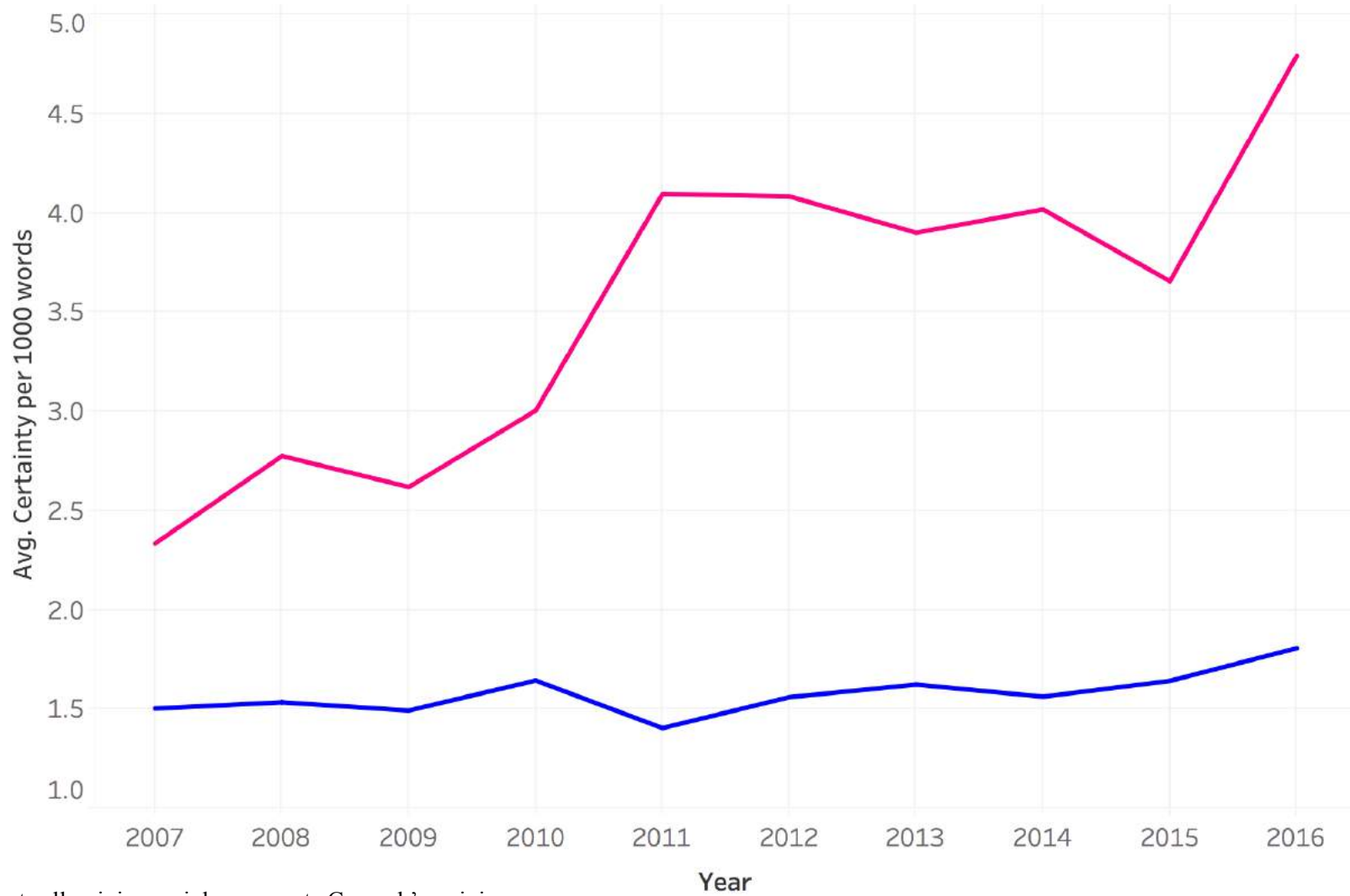
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 9. AVERAGE USE OF HEDGES ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



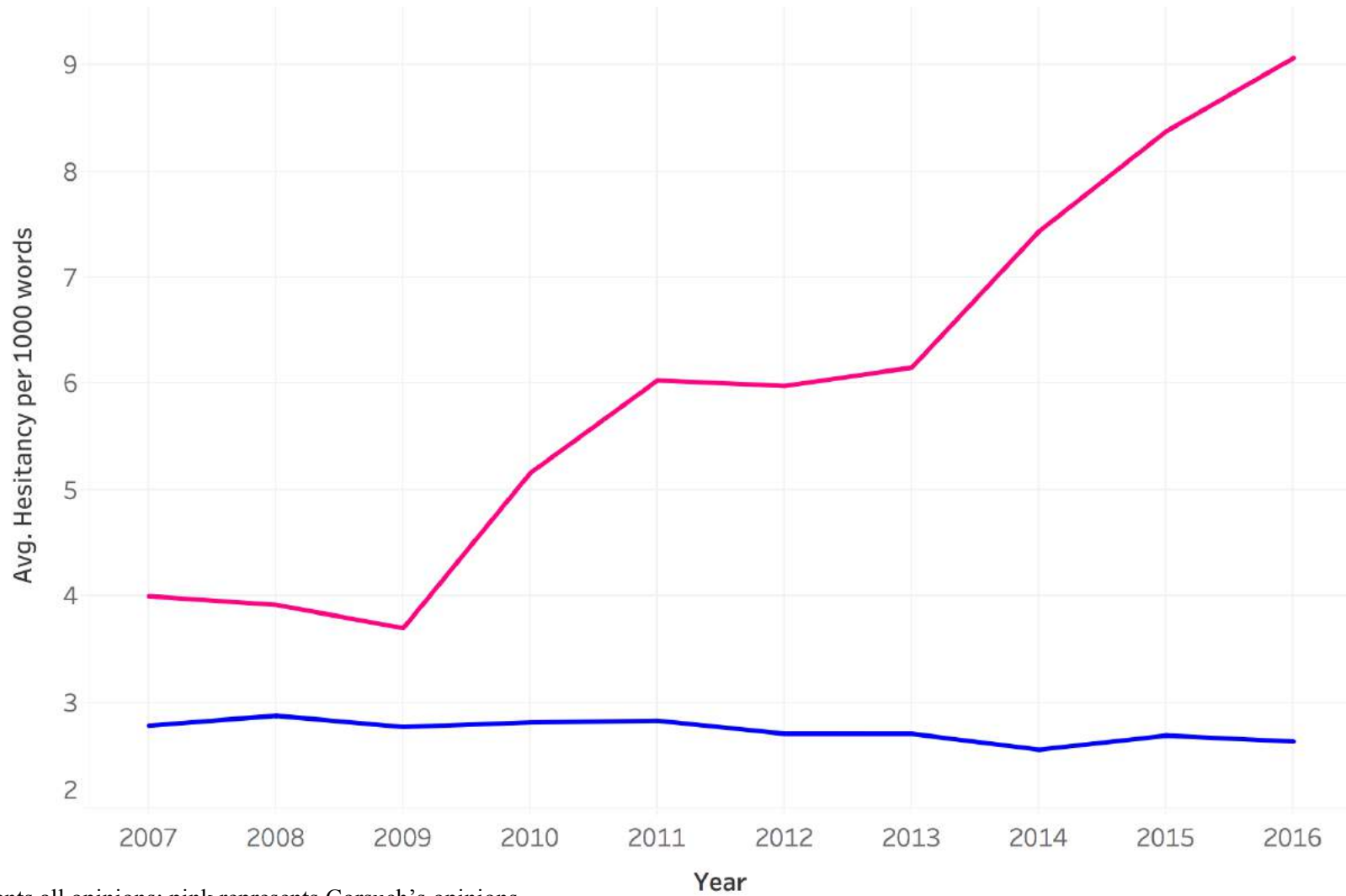
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 10. TRENDS IN INTENSIFYING LANGUAGE ON THE TENTH CIRCUIT COURT OF APPEALS



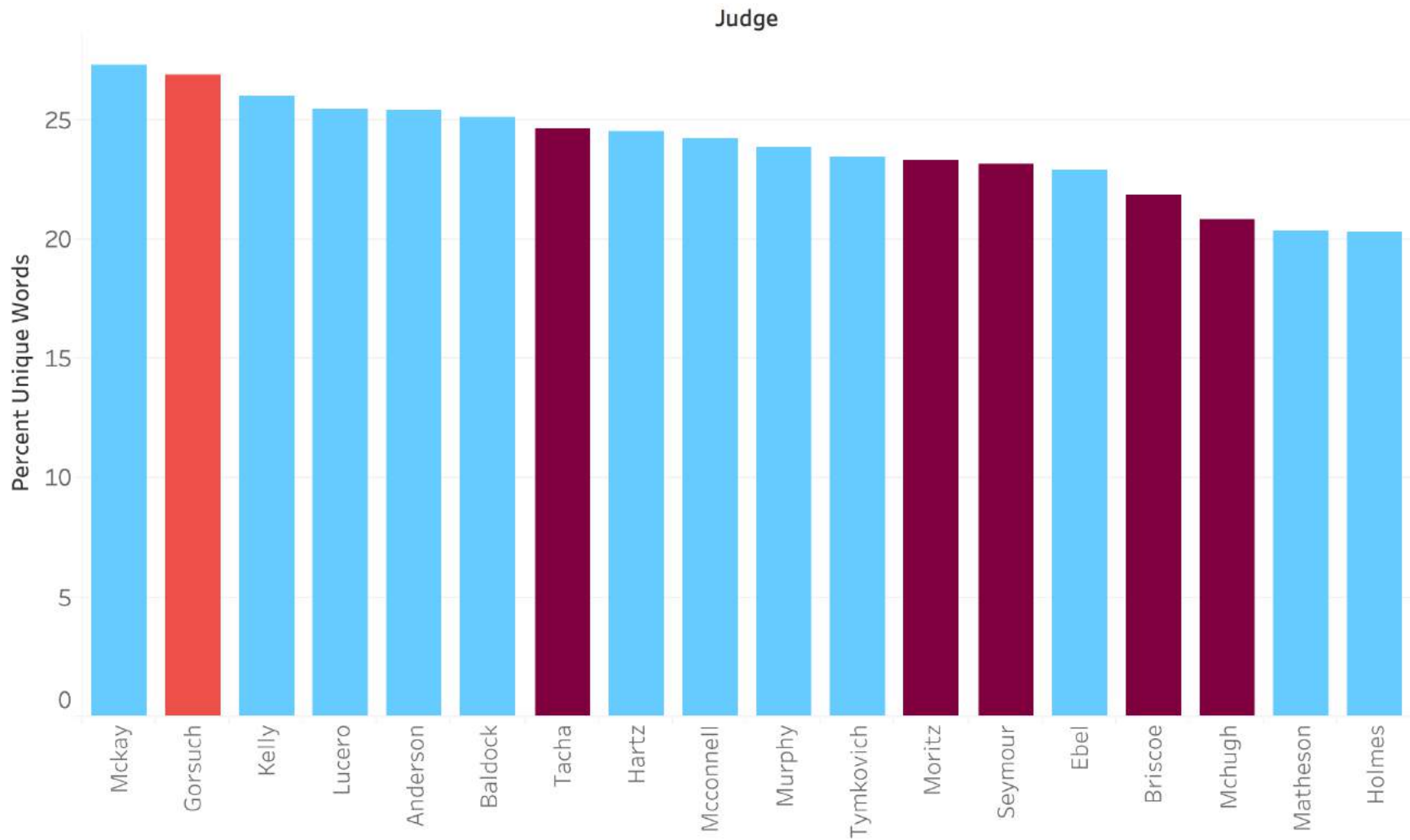
Blue represents all opinions; pink represents Gorsuch's opinions.

FIGURE 11. TRENDS IN HEDGING LANGUAGE ON THE TENTH CIRCUIT COURT OF APPEALS



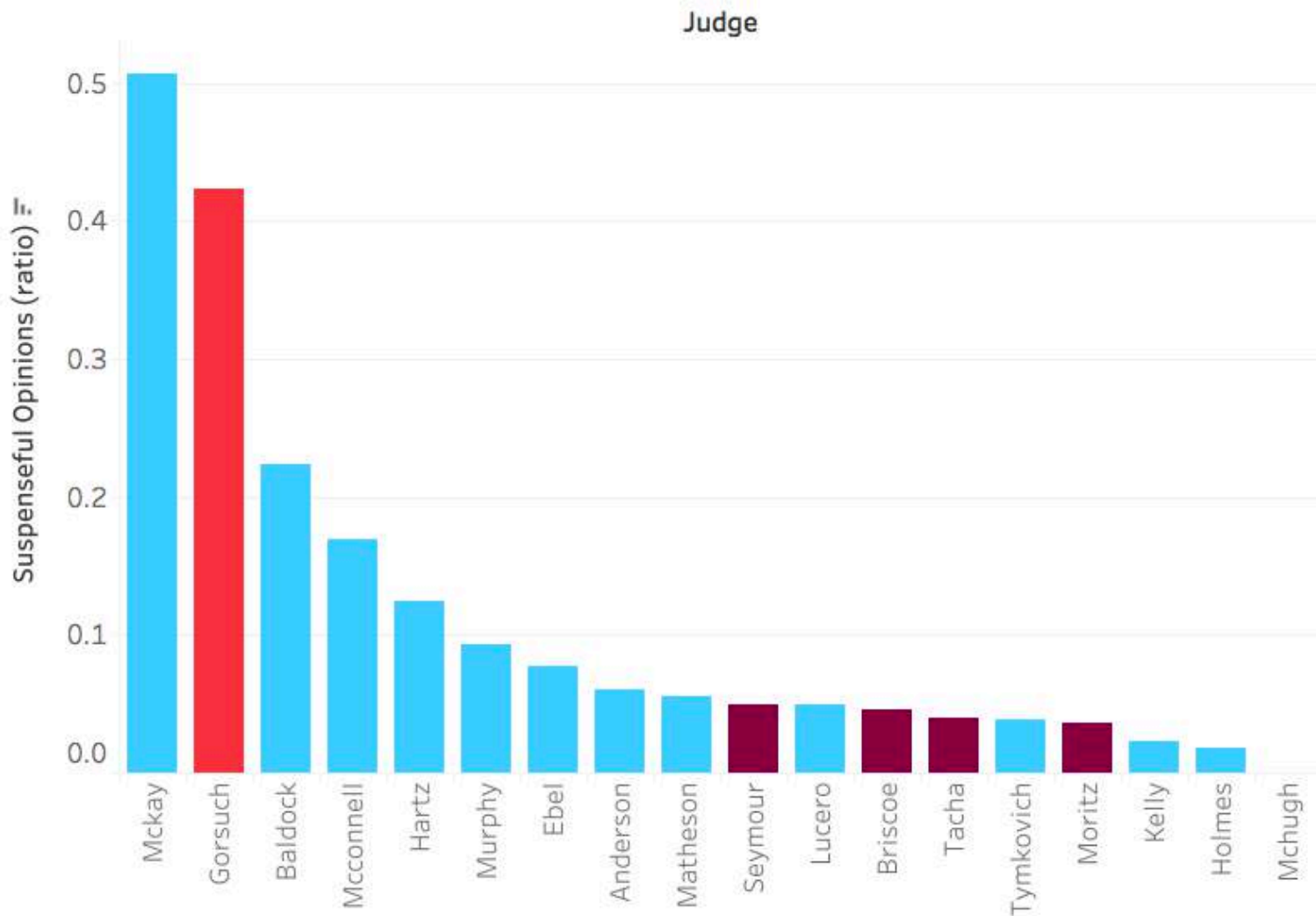
Blue represents all opinions; pink represents Gorsuch's opinions.

FIGURE 12. AVERAGE LEXICAL DIVERSITY ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



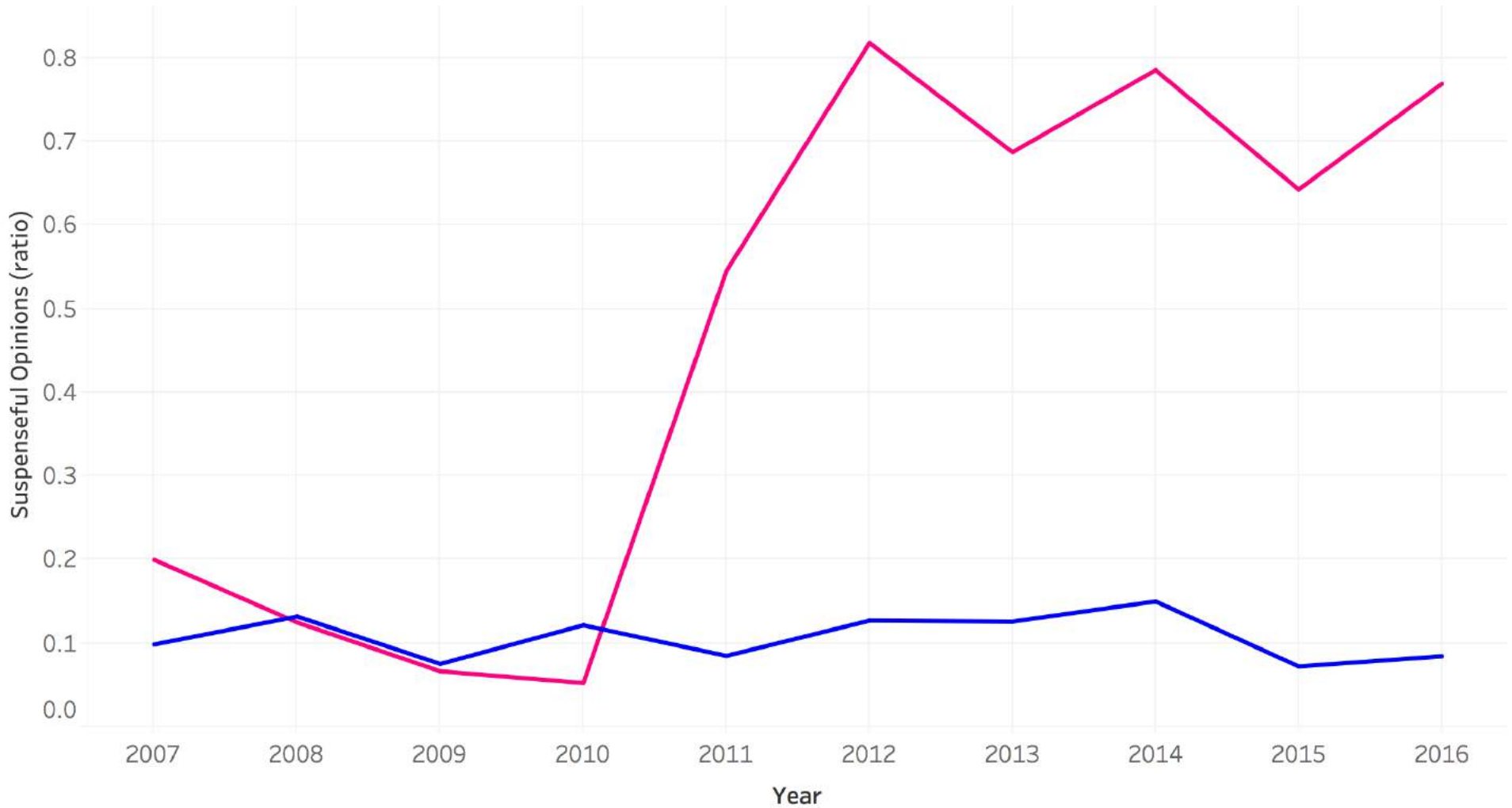
Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 13. RATIO OF SUSPENSEFUL OPINIONS TO TOTAL OPINIONS ON THE TENTH CIRCUIT COURT OF APPEALS BY JUDGE



Blue represents male judges (except Gorsuch, in red); maroon represents female judges.

FIGURE 14. SUSPENSE TRENDS ON THE TENTH CIRCUIT COURT OF APPEALS



Blue represents all opinions; pink represents Gorsuch's opinions.