Daniel Domenico

Potential SCOTUS Nominee, U.S. Court of Appeals for the Tenth Circuit

COURT
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AFJ OPPOSES

Introduction

Daniel Domenico was born in Boulder, Colorado in 1972. He received a B.A. from Georgetown University in 1995 and a J.D. from the University of Virginia School of Law in 2000. After graduating law school, Domenico worked as an associate at Hogan & Hartson (now Hogan Lovells) for three years. In 2003, Domenico clerked for the judge he has now been nominated to replace, Judge Timothy Tymkovich of the U.S. Court of Appeals for the Tenth Circuit. Following his clerkship, Domenico served as legal counsel for John Thune's (R-SD) Senate campaign. He then briefly worked as a special assistant to the solicitor for the U.S. Department of the Interior. Domenico returned to Colorado in 2006 to serve as solicitor general. He left the Colorado Department of Law in 2015 to start his own law firm, Kittredge LLC. In May 2019, President Trump appointed Domenico to be a judge on the U.S. District Court for the District of Colorado. He became chief judge of that court in March 2026. On May 11, 2026, Trump nominated Domenico to the U.S. Court of Appeals for the Tenth Circuit.

Before he became a federal judge, Domenico often focused on ideologically biased work. This work included working for Republican Senate Majority Leader Thune's campaign and clerking for controversial Judge Tymkovich. Tymkovich's circuit court dissent in *303 Creative v. Elenis* featured heavily in the Supreme Court's decision to reverse the Tenth Circuit's ruling that allowed a Christian web designer to refuse to create websites for same-sex weddings notwithstanding Colorado's non-discrimination law. In his relatively short tenure as a federal judge, Domenico has also authored a litany of deeply concerning opinions, including ones that advanced extreme arguments to unfairly benefit religious-based institutions, severely restrict undocumented immigrants' rights, and prioritize the interests of big banks and insurance companies over everyday people. If confirmed as a federal circuit court judge, Domenico would have free reign to force his extreme beliefs on the millions of people who live in the Tenth Circuit.

Consistently Favors Religious-Based Institutions

As a judge, Domenico has consistently advanced an extreme interpretation of the First Amendment's Free Exercise Clause that heavily favors religious-based institutions, even when these institutions have discriminatory policies.

Darren Patterson Christian Academy v. Roy

In 2022, the Colorado legislature created the Universal Pre-K Program ("UPK") aimed at providing a dedicated source of funding for universal preschool in Colorado. One of the requirements for any school participating in the UPK was that it complied with Colorado's anti-discrimination laws, including laws prohibiting discrimination based on an individual's sexual orientation or gender identity. Darren Patterson Christian Academy ("DPCA"), a private religious preschool, chose to participate in the UPK. However, when it enrolled in the UPK, DPCA had several policies in place that seemed to violate Colorado's anti-discrimination laws. These policies included teachings that there are "two unique, immutable sexes," "sexual activity outside of Biblical marriage" is wrong, and marriage is a "sexually exclusive" union between a man and a woman. DPCA also mandated that all employees be "born-again Christians" and required that individuals use the bathrooms and pronouns that correspond with their sex assigned at birth, not gender identity.

Despite having received more than $30,000 in funding from the state without any threat of expulsion from the UPK, DPCA filed suit seeking a preliminary injunction based on fear of future enforcement of the anti-discrimination laws. DPCA argued that Colorado was violating its Free Exercise rights by refusing to exempt it from the anti-discrimination requirements of the UPK. Colorado argued that DPCA had no standing because there was no imminent threat of injury. Domenico granted the preliminary injunction request, holding that DPCA "credibly feared enforcement" because it "arguably violated" the UPK's anti-discrimination provisions. Domenico was unpersuaded by Colorado's assertion that it would not even investigate DPCA's policies unless it received a complaint. Domenico went even further by finding that DPCA would likely succeed on the merits of its First Amendment claims.

Domenico's opinion followed the disturbing trend of federal courts continuing to expand private religious schools' Free Exercise rights. This trend has forced states to include religious-based schools in any education funding programs, even if these schools implement bigoted policies that discriminate against the LGBTQ+ community.

Bella Health & Wellness v. Weiser

In 2023, Colorado enacted a law aimed at regulating so-called "abortion pill reversal" treatments. Major medical organizations, including the American College of Obstetricians and Gynecologists, have stated that the safety and effectiveness of abortion pill reversal are not supported by reliable scientific evidence. In response, Colorado became the first state in the country to prohibit licensed medical professionals from providing, prescribing, administering, or advertising abortion pill reversal treatments unless state medical boards determined the practice constituted a generally accepted standard of care. The law also classified advertising such treatments as a deceptive trade practice.

Bella Health & Wellness, a Catholic health care clinic that describes itself as a "life-affirming" medical practice, immediately challenged the law. The clinic argued that providing abortion pill reversal treatments was part of its religious mission, and therefore Colorado's new law violated its rights under the First Amendment. Colorado

Darren Patterson Christian Academy v. Roy (continued)

defended the law as a legitimate exercise of its authority to regulate medical practices and protect patients from treatments that state lawmakers viewed as unsupported by scientific evidence.

Domenico granted a preliminary injunction preventing Colorado from enforcing the law against Bella Health and similarly situated providers. In granting the injunction, Domenico concluded that Bella Health's Free Exercise claims were likely to succeed. Despite the law's general applicability to both secular and religiously-affiliated centers, Domenico argued that Colorado's legislature designed the law to mostly target religious-based clinics. Based on this argument, Domenico found that the law substantially burdened Bella Health's religious exercise by preventing it from providing a treatment that its providers believed was required by their faith. Further, he determined that Colorado had not demonstrated a sufficiently compelling interest to justify the burden imposed on the clinic's religious practices. Domenico also blocked enforcement of provisions that treated advertising abortion pill reversal services as deceptive conduct.

Rather than deferring to Colorado's judgment that abortion pill reversal lacked sufficient scientific support to qualify as an accepted medical practice, Domenico once again provided religiously affiliated entities with very expansive Free Exercise rights and diminished the state's ability to properly regulate medical treatment. His ruling allowed providers to continue offering and promoting a controversial treatment that lawmakers had concluded posed serious risks to patients. More broadly, this decision illustrates how Free Exercise jurisprudence is increasingly being used to limit states' ability to enforce generally applicable health care regulations when those regulations conflict with the religious beliefs of some health care providers.

Denver Bible Church v. Azar

During the peak of the COVID-19 pandemic in 2020, Colorado implemented a series of public health orders designed to slow the spread of the virus. Among other restrictions, Colorado imposed capacity limits on indoor worship services and required congregants to wear face coverings while attending religious gatherings. The restrictions were part of Colorado's broadly applicable effort to limit large indoor gatherings, which public health officials identified as a significant source of viral transmission.

Denver Bible Church and Community Baptist Church challenged these restrictions, arguing that the state's orders violated their members' Free Exercise rights. The churches claimed that the limits interfered with their members' ability to worship in accordance with their religious beliefs and treated religious gatherings less favorably than certain secular activities. Colorado defended the public health orders as neutral measures adopted to address an unprecedented public health emergency. State officials argued that the restrictions were based on scientific evidence concerning the heightened risks associated with prolonged indoor gatherings and were necessary to protect public health.

***Denver Bible Church v. Azar* (continued)**

Domenico granted a preliminary injunction preventing Colorado from enforcing its occupancy limits and mask requirements against the churches. He concluded that the restrictions likely violated the plaintiffs' Free Exercise rights. Domenico reasoned that Colorado's public health orders were not generally applicable because they exempted a variety of secular activities that the state deemed "critical." Consequently, Domenico found that the state could not impose stricter attendance limits on houses of worship while allowing "comparable" secular institutions to operate without similar occupancy limits. He also objected to the state's mask mandate because it contained exemptions for activities such as eating at restaurants, receiving personal services, and exercising, but did not provide similar accommodations for religious worship.

Domenico's opinion ignored the obvious differences in intended function between the specified secular establishments and churches. The ruling also drew criticism from several religious leaders within Colorado who argued the public health orders protected their congregants' health without restricting their ability to worship. Domenico's decision contributed to a broader trend of federal courts viewing pandemic-related public health orders through the lens of religious liberty and aggressively using the Free Exercise Clause to invalidate these orders.

Regularly Restricts Immigrants' Rights

In a series of immigration-related habeas corpus decisions, Domenico consistently rejected efforts by detained noncitizens to secure greater procedural protections and relief from prolonged detention, instead granting ICE broad authority to detain noncitizens indefinitely.

Singh v. Blanche and ***Valle-Rodriguez v. Blanche***

Earlier this year, Domenico denied petitions for writs of habeas corpus filed by two noncitizens who challenged their continued detention by ICE without an individualized bond hearing. By the time their cases reached Domenico's court, both individuals had been detained for months without receiving a bond hearing. The petitioners were detained under the federal statute requiring mandatory detention during removal proceedings of noncitizens who are "seeking admission." Soon after Trump took office again in 2025, his administration began arguing that this mandatory detention statute should also extend to undocumented immigrants who have been in the United States for a long period of time. However, the petitioners argued that noncitizens who are already present in the United States before their detainment are not "seeking admission" for purposes of the statute, and therefore the petitioners' prolonged detention without an opportunity to appear before a neutral decisionmaker violated the Due Process Clause of the Fifth Amendment. In rejecting both petitions, Domenico sided with the Trump administration's interpretation of the mandatory detention statute and significantly expanded which noncitizens qualified as "seeking admission." Under Domenico's expanded interpretation of the statute, both petitioners were subject to mandatory detention, and therefore the Constitution did not mandate that they receive bond hearings, regardless of the length of their detention.

Singh v. Blanche and ***Valle-Rodriguez v. Blanche*** **(continued)**

Notably, a majority of federal judges across the country disagree with Domenico's (and the administration's) interpretation of who qualifies as "seeking admission." Even more distressingly, Domenico is the only federal judge in the District of Colorado to side with the administration's expansive interpretation. As a result of Domenico's extreme views on this issue, both petitioners were denied the chance to seek their release at a bond hearing, an opportunity they both would have received if any other Colorado federal judge had been assigned to their cases.

Basri v. Barr

During the early stages of the COVID-19 pandemic, Khalid Basri, a noncitizen detained by ICE in Colorado, filed a petition for writ of habeas corpus challenging both his continued detention and the conditions of his confinement. Basri argued that the facility's inability to adequately manage COVID-19 created unconstitutional conditions of confinement warranting his immediate release.

Despite evidence showing that prisoners faced a greatly increased risk of contracting and dying of COVID-19 due to their confinement, Domenico denied Basri's petition. Domenico held that Basri's COVID-19-related claims were not cognizable under habeas because they challenged conditions of confinement rather than the fact or duration of custody. Accordingly, Domenico reasoned that habeas relief was unavailable, and the only relief, if any, available to Basri would be under civil rights law.

Domenico's decision reflects an inflexible distinction between habeas corpus and conditions-of-confinement claims, even during the pandemic when some courts were more receptive to emergency release theories. The ruling also shows Domenico's willingness to rely solely on procedural issues to dismiss cases, even when the petitioner's life was at risk, and his claims were meritorious.

Denver Public Schools v. Noem

In 2025, Denver Public Schools (DPS) filed suit against the Department of Homeland Security (DHS) after the Trump administration rescinded the long-standing "Protected Areas Policy," which had restricted immigration enforcement actions in designated areas such as schools. DPS argued that the rescission was arbitrary and capricious under the Administrative Procedure Act and violated the Freedom of Information Act. DPS also asserted that the new policy raised constitutional concerns about the impact of immigration enforcement on student attendance, safety, and school operations.

DPS filed an emergency motion for a temporary restraining order and a preliminary injunction, asking the court to block implementation of the policy change while the litigation proceeded. Domenico denied both of DPS's requests for immediate relief. His ruling allowed the administration's new policy to go into effect, granting ICE discretion to conduct dangerous and traumatizing enforcement actions on school grounds. Once again, Domenico showed

***Denver Public Schools v. Noem* (continued)**

extreme deference to ICE and the administration's draconian and unprecedented immigration policies.

Sides with Big Banks and Insurance Companies

During his time on the bench, Domenico has been favorable to big banks and insurance companies through narrow statutory interpretations that limit consumer and plaintiff protections.

National Association of Industrial Bankers v. Weiser

In 2024, several trade associations representing state-chartered banks challenged Colorado's newly enacted "rate opt-out" law, which sought to limit the interest rates that out-of-state banks could charge on loans made to Colorado residents. The Depository Institutions Deregulation and Monetary Control Act (DIDMCA) allows state-chartered banks to "export" the interest-rate caps of the state where the bank is located when lending to borrowers who live in a different state, even if the exported caps exceed the rates legally permitted by the borrower's state. However, DIDMCA allows a state to opt out of this provision for any loans "made in" the opt-out state. Colorado passed legislation interpreting its opt-out broadly to apply to any loans made to Colorado borrowers, even when the lending bank was located elsewhere. The plaintiffs argued that this exceeded the scope of DIDMCA, which they contended limits the opt-out to loans made by banks physically located within Colorado.

Domenico granted the trade associations' preliminary injunction request, holding that for purposes of DIDMCA's opt-out provision, a loan is "made in" the state where the lender is located and performs the lending functions, not the state where the borrower resides. Under this interpretation, Colorado could not apply its lower interest-rate caps to loans issued by out-of-state banks to Colorado consumers. Colorado immediately appealed Domenico's controversial decision, and the Tenth Circuit later reversed his ruling, instead adopting Colorado's view that DIDMCA's opt-out language extends to any loans made to in-state borrowers.

Catalano v. Allstate Indemnity Co.

In 2023, Michael Catalano filed suit against Allstate Indemnity Company after it denied coverage for structural damage to his rental property in Denver. The dispute arose after construction activity near the property allegedly caused vibrations that damaged the building's floors and foundation. Catalano argued that the loss was "sudden and accidental" within the meaning of his insurance policy because the damage appeared to occur abruptly once it became visible. He also asserted that the policy's "earth movement" exclusion did not apply because the vibrations were man-made. Conversely, Allstate contended that the damage resulted from gradual deterioration and ongoing external forces and therefore fell outside the scope of coverage.

Catalano v. Allstate Indemnity Co. (continued)

Domenico ruled in favor of Allstate, holding that the loss was not “sudden” as required by the policy. Domenico adopted an extremely narrow interpretation of the “sudden” damage requirement, rejecting Catalano’s argument that the damage should be treated as sudden because it became apparent all at once. Domenico also accepted Allstate’s position that the damage was attributable to gradual, ongoing causes rather than a discrete event, and therefore did not trigger coverage under the policy language. On appeal, however, a Tenth Circuit panel unanimously reversed Domenico’s decision, holding that Domenico had construed the term “sudden” too narrowly by focusing exclusively on temporal duration rather than the possibility of discrete triggering events within a broader course of conduct.