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 From the Los Angeles Times

Key Souter cases on Supreme Court

The justice moved in a liberal direction over his 18-year tenure.
 By Carol J. Williams

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During an 18-year tenure on the Supreme Court, Justice David H. Souter migrated from conservative to moderate to liberal, leaving opinions across the political spectrum on divisive issues like abortion, property rights and the separation of church and state.

Planned Parenthood vs. Casey (1992)

In a bitter 5-4 vote upholding *Roe vs. Wade* and a woman's right to seek an abortion, Souter was one of three authors for the majority who outlined a new standard for determining whether an "undue burden" was imposed by state regulations requiring a married woman to inform her husband of her intent.

Souter, veering from his early propensity to vote with the high court's conservatives, wrote that to obstruct a woman's choice with state requirements for notification and informed consent would amount to "surrender to political pressure," and that overturning a watershed decision like *Roe vs. Wade* would "subvert the court's legitimacy beyond any serious question."

"Some progressive colleagues thought he'd be an avatar of the right, that he would change reproductive freedom," said Simon Lazarus of the Federal Rights Project, adding that he attributed Souter's independence to his roots in the more moderate Republican community of the Northeast.

New London vs. Kelo (2005)

When the city of New London, Conn., used its eminent domain authority to seize private property to sell to developers in hopes of spurring economic revival, Souter sided with the court's liberal faction in the 5-4 ruling.

Although it was Justice John Paul Stevens who wrote the opinion justifying the land transfer as a qualified "public use" of private real estate under the Takings Clause of the 5th Amendment, opponents of the seizure turned their wrath on Souter.

New Hampshire libertarians waged a fruitless campaign to seize the justice's "blighted" home in Weare, N.H., via eminent domain to build a "Lost Liberty Hotel" and "Just Desserts Cafe."

Souter's departure from traditional conservative values, such as property rights, made him a "stealth justice" who seldom voted with fellow Republican appointees, said Ilya Shapiro, a fellow at the Center for Constitutional Studies and editor of the Cato Institute's *Supreme Court Review*.

McCreary County vs. ACLU (2005)

In the American Civil Liberties Union challenge to three Kentucky counties that displayed framed copies of the Ten Commandments in courthouses and public schools, Souter wrote the opinion for the 5-4 majority holding that the displays violated the 1st Amendment prohibition against laws "respecting an establishment of religion."

Their purpose had been to advance religion, and in each of the displays an observer would have concluded that the government was endorsing religion, Souter wrote.

"This was a very important case and one that came along at a time when there wasn't very much coherence in Establishment Clause law," said Ian Millhiser of the National Senior Citizens Law Center. "Souter did a good deal to come up with a workable standard" for determining what was appropriate cultural exhibition versus state-sponsored promotion.

Souter also voted with the majority in *Lee vs. Weisman* (1992), an Establishment Clause case in which a Rhode Island school's inclusion of clergy and prayers at official school ceremonies was judged to be a violation.

Bush vs. Gore (2000)

Though he was among the four in the minority in the decision giving George W. Bush the presidency by suspending recount of the Florida vote, the case and its political overtones were reported to have haunted Souter and contributed to his desire to leave Washington and the high court.

In his 2007 biography of the justices, "The Nine," legal analyst Jeffrey Toobin wrote that Souter was tempted to resign after what he saw as a crudely partisan vote by his fellow justices.

"At the urging of a handful of close friends, he decided to stay on, but his attitude toward the court was never the same," wrote Toobin. "There were times when David Souter thought of *Bush vs. Gore* and wept."

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