



Contentious cases await Trump's U.S. high court nominee Gorsuch

Lawrence Hurley

April 5, 2017

If confirmed as expected this week by the U.S. Senate, President Donald Trump's Supreme Court nominee would join his new fellow justices in time to act on divisive cases concerning religion, guns and big business, underscoring Neil Gorsuch's importance as the fifth conservative on a nine-justice court.

The Senate's Republican leaders have pledged to confirm the Colorado-based appeals court judge on Friday. His first official task after being sworn in would come at an April 13 private meeting among the justices to discuss taking various appeals from lower courts.

There are appeals pending on expanding gun rights to include carrying concealed firearms in public, state voting restrictions critics say are aimed at reducing minority turnout, and allowing business owners to object on religious grounds to serving gay couples. All three could lead to landmark rulings if taken up.

On April 17, the justices will begin hearing a new round of oral arguments, including a closely watched case on the separation of church and state focusing on whether a Missouri church was improperly denied state funds. The court is nearing the end of its current term, which runs from October to June.

Gorsuch also would play a key role in important cases the justices already have agreed to hear in their next term, including a bid by employers to prevent workers from bringing class action claims, a goal of big business.

The court has been divided between four conservatives and four liberals since the February 2016 death of conservative Justice Antonin Scalia.

Major issues before the court highlight the significance of Gorsuch filling Scalia's seat and restoring the court's 5-4 conservative majority. Senate Republicans paved the way for Trump to replace Scalia by refusing last year to consider Democratic former President Barack Obama's

nomination of appellate judge Merrick Garland to fill the vacancy. That would have given the court a liberal majority for the first time in decades.

Legal experts suspect a conservative majority on the court could motivate conservative lawyers to bring cases in a hope that five justices will back abortion restrictions, oppose political spending limits, and favor wider gun and religious rights.

Justice Anthony Kennedy, a conservative who sometimes sides with the four liberals, will remain the court's swing vote. Most experts expect Gorsuch to be more aligned with the court's two most stalwart conservatives, Samuel Alito and Clarence Thomas.

"There's no reason to think he will be anything other than extremely conservative," said Chicago-Kent College of Law professor Carolyn Shapiro.

PENDING APPEALS

With four votes needed to take up a case at the private meetings, each justice is important. Among pending appeals the court is likely to act on in the coming weeks is a case in which activists have asked the justices to rule for the first time that the U.S. Constitution's Second Amendment, which protects the right to bear arms, extends to carrying firearms outside the home.

In another case, the court could decide whether to revive voter-identification and other restrictions in North Carolina blocked by a lower court. The justices also could hear a Christian baker's religious claim that he should not be forced to sell a cake to a gay couple.

Conservative justices generally take expansive views of gun and religious rights and may back state laws whose Republican backers say are intended to prevent voter fraud.

On April 19, the court will hear a religious rights case in which a church contends Missouri violated the Constitution's guarantee of religious freedom by denying it funds for a playground project due to a state ban on aid to religious organizations.

Gorsuch has ruled several times in favor of expansive religious rights during his decade as a judge.

"Given Gorsuch's solicitude for religious liberty, his joining the court can only help the church," said Ilya Shapiro, a lawyer with the libertarian Cato Institute think tank.

There are several cases the court has already heard but has not yet decided in which Gorsuch could play a role. The court has the option of hearing fresh arguments, with Gorsuch in a position to cast a potential deciding vote.

One such case is a bid by Miami to revive lawsuits accusing major banks of predatory mortgage lending to black and Hispanic home buyers.

Another concerns whether the family of a Mexican teenager can sue a U.S. Border Patrol agent who fatally shot the 15-year-old from across the border in Texas.

Longer term, an issue likely to return to the court is a conservative-backed challenge that could weaken organized labor. The court was expected to deny unions a vital source of cash last year. But after Scalia died, it issued a 4-4 ruling leaving in place a lower court's decision favoring unions.

The court is also likely to weigh in on whether transgender students are protected under a federal law prohibiting sex discrimination in education. The court took up that question last fall but in March sent the case back to a lower court without resolving the main legal question.