

# The Washington Times

## Supreme Court likely to extend term to decide remaining cases

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With more than a dozen Supreme Court decisions still pending before the session is scheduled to close at the end of the month, it is looking more and more likely the term will be extended into July — a rare occurrence for the justices.

The COVID-19 pandemic delayed the court's spring oral argument schedule, prompting the justices to conduct proceedings via teleconferences, postpone some cases and hear at least 10 oral arguments in May, a month typically reserved for writing opinions.

There are some whoppers the justices are mulling, too, including whether Congress can get its hands on President Trump's financial records.

"I fully expect some of the decisions to spill into July," said Josh Blackman, a professor at South Texas College of Law.

It is not impossible for the 14 cases left to be decided by the traditional July 1 close. But there also is no rule against extending the term.

"The justices don't have any place to go this year," said Illya Shapiro, director of the Cato Institute's Center for Constitutional Studies, noting the coronavirus shutdown that has put a crimp in many Americans' summer vacation plans.

Some of the most eyed cases still pending include challenges on the power of congressional subpoenas, restrictions on abortion providers and tests to the limits of religious liberty.

### Trump's finances

In a group of cases (Trump v. Mazars USA, LLP, Trump v. Deutsche Bank AG and Trump v. Vance), the high court will have to decide if President Trump's financial records can be obtained from a third party, like his accounting firm, by members of Congress or in a state criminal probe while the president is in office.

During oral arguments last month, the Supreme Court appeared divided along ideological lines when scrutinizing House Democrats' demand for the documents. Lawmakers subpoenaed eight years of the president's records in April 2019, ahead of the formal impeachment probe last year.

The split on the conservative-leaning court would appear to bode well for Mr. Trump, but Chief Justice John G. Roberts Jr., a Bush appointee, remains a wild card in the legal battle that could affect the election ahead of November.

However, justices from both ideological wings of the court expressed skepticism about the Trump legal team's claim that the president had immunity from a separate subpoena issued in a New York court criminal probe seeking the same financial records.

### Abortion rights

In *Russo v. June Medical Services LLC*, the high court is considering whether Louisiana is violating constitutional rights of pregnant people by requiring doctors performing abortions to have admitting privileges at nearby hospitals. The state said the law is to protect patients' health in case of emergencies but abortion providers said it impinges on the right to access reproductive and abortion services.

Justices Neil M. Gorsuch and Brett M. Kavanaugh were not on the court in 2016 when the justices last grappled with hospital admitting privileges and requirements for medical professionals administering abortions in Texas. The court found the state law went too far.

This time, the pair of Trump appointees help create a conservative majority on the high court for its second go at those types of restrictions imposed by a Louisiana law.

### Presidential power

In *Seila Law LLC v. Consumer Financial Protection Bureau*, the justices are deciding whether the Consumer Financial Protection Bureau created during the Obama administration violates the Constitution's separation of powers since it is an independent agency headed by a single director unaccountable to the president.

The Trump administration argues the president should be able to terminate an agency head at will, not only for cause. The current director cannot be replaced without an underlying reason until 2023 under the law that authorized the bureau.

Created in 2010 by Congress through the Dodd-Frank Wall Street Reform and Consumer Protection Act in response to the 2008 financial crisis, the CFPB aims to tighten controls on the financial sector. It enforces nearly 20 consumer protection laws.

### Faithless electors

The court, in *Chiafalo v. Washington* and *Colorado Department of State v. Baca*, is weighing challenges to state laws requiring electors to follow the will of their state's voters. The justices voiced concerns during oral arguments about the chaos that could ensue if Electoral College's presidential electors could go rogue.

The concerns signaled a high bar set by the justices for a Democrat-allied movement to chip away at the Electoral College system. The conservative and liberal wings of the court both were skeptical about siding with the faithless electors, who want to rely on their personal preference when making the final decision about who occupies the White House.

One of the cases stems from the Washington Supreme Court upholding fines against three of the state's 2016 presidential electors who violated a law by not casting their votes for Hillary Clinton and Tim Kaine, the Democratic ticket that won the popular vote in the state.

The three faithless electors cast their votes for former Secretary of State Colin Powell, a Republican. They hoped it would persuade GOP electors to abandon Donald Trump and install a moderate Republican as president.

The three Powell voters challenged Washington's law as a violation of the Constitution, noting the 10th U.S. Circuit Court of Appeals ruled in a similar case out of Colorado that individuals "are free to vote as they choose" in the Electoral College.

Religion on the job

In *Our Lady of Guadalupe v. Morrissey-Berru* and *St. James School v. Biel*, the justices are deciding whether courts can adjudicate workplace discrimination claims involving a religious employer when the employee carries out religious functions.

The cases test whether religious employers can freely select their ministerial employees.

Contraceptive coverage

In *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, the Supreme Court heard challenges to the Trump administration's exemption for religious organizations, which excludes them from providing contraceptives under the Affordable Care Act.

Under the previous administration, churches were exempt from providing healthcare coverage that runs contrary to their teaching. But in October 2017, the Trump administration further expanded exemptions from the contraceptive mandate to include a broad range of entities with sincerely held religious or moral objections to contraceptives.

The Little Sisters of the Poor and the Trump administration sought the high court's review after a lower court sided with states challenging the expansion and issued a nationwide injunction.

Church, state and schools

In *Espinoza v. Montana Department of Revenue*, the Montana Supreme Court struck down a state scholarship program for disadvantaged children to go to the school of their choice because some of the funds could go to religious schools.

The case tests whether barring a general state program from religious institutions violates the Constitution's Equal Protection Clause.