



Gorsuch effect will be on full display at start of Supreme Court's new term

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Justice Neil Gorsuch's influence on the Supreme Court's deliberations will be evident immediately when oral arguments start Monday.

October brings the first full term on the high court for Gorsuch, and the first two days of oral arguments include a pair of immigration cases scheduled for reargument. The two cases, *Sessions v. Dimaya* and *Jennings v. Rodriguez*, were argued before Gorsuch joined the high court, which suggests the justices could be deadlocked and in need of the newest justice's input.

The two immigration cases provide Gorsuch an opportunity to shape the boundaries of future immigration policy crafted by the president who appointed him, Donald Trump. *Sessions v. Dimaya* raises the question of whether the Immigration and Nationality Act's "crime of violence" provision is unconstitutionally vague, and *Jennings v. Rodriguez* involves whether illegal immigrants, including those with criminal records, are entitled to bond hearings.

Gorsuch is poised to return the high court to its status quo in key upcoming controversies, such as the case, *Janus v. American Federation of State, County, and Municipal Employees*, granted by the high court on Thursday involving a new challenge to public-sector union fees in Illinois.

In 2016, the Supreme Court looked likely to overturn a precedent that said public-sector employees who do not belong to a union can be forced to pay a fee that covers the union's costs in negotiating the contract that applies to all employees. But the high court split 4-4 in deciding the case soon after Justice Antonin Scalia's death. Gorsuch's presence may indicate that the justices want another chance to overturn the existing precedent.

Gorsuch's addition to the high court could return the ideological balance of power to the status quo in cases such as *Janus* but could create new factions and differing internal dynamics on other cases involving Americans' fundamental rights. Court-watchers are keeping an eye on how Gorsuch, a former law clerk to Justice Anthony Kennedy, affects his old boss' decision-making.

Ilya Shapiro, a senior fellow at the libertarian-leaning Cato Institute, said he expects Gorsuch to have a "better and more influential" relationship with Kennedy than Scalia did, but it remains to be seen. Shapiro pointed to the *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission* conflict as one that could reveal how Gorsuch and Kennedy are interacting.

In *Masterpiece*, the high court will look to determine the constitutionality of Colorado's public

accommodations law forcing cake baker Jack Phillips to make a cake for a gay marriage, which would have made Phillips create speech that defies his religious beliefs.

Shapiro said he will be watching closely to see "if indeed Kennedy writes the majority opinion, would Gorsuch sign onto that or would he write separately to talk about a broader conception of speech protection or a broader conception of religious protection or some other theory that he has about these tensions between rights or government regulatory structures?"

Former solicitor general Gregory Garre said this month at George Washington University that one new justice yields an "entirely new court" that often "behaves in weird ways." Garre wondered if Gorsuch's presence might push Kennedy to the ideological left this term in a manner similar to how Garre thought Thomas' appointment moved former Justice Sandra Day O'Connor left.

But Gorsuch's jurisprudence may affect a different justice's thinking more than Kennedy: Chief Justice John Roberts.

Any writing Gorsuch does on the outcome of *Masterpiece* could reveal more about his relationship with Roberts. Shapiro said Roberts would rather Kennedy author the majority opinion in *Masterpiece* than leave the decision to the high court's ideological Right.

Gorsuch wrote a concurring opinion in the last term's hallmark religious liberty controversy, *Trinity Lutheran*, that bucked Roberts. Gorsuch joined the majority, but he disagreed with a portion of the Roberts-written opinion.

The newest justice also appeared at odds with Roberts last term over an opinion regarding an Arkansas birth certificate law. Gorsuch penned a dissent — joined by Justices Samuel Alito and Clarence Thomas — from the high court's per curiam opinion rendering an Arkansas birth certificate law unconstitutional following the justices' legalization of same-sex marriage. A per curiam opinion means it was delivered on behalf of the entire court rather than signed by an individual justice who wrote the opinion. Since Roberts did not dissent, it's clear he and Gorsuch shared different views on the case.

Court watchers will be looking to see if the court divides into thirds, with Gorsuch on the ideological right and Kennedy and Roberts vacillating nearer the center, on crucial issues.

The newest justice's remarks before a conservative group in Washington Thursday revealed he may value the importance of developing bonds with his new colleagues wherever possible. Gorsuch praised Kennedy and Justice Ruth Bader Ginsburg, the two justices whose potential exits from the high court generate the most buzz among court-watchers, in his remarks at the Trump Hotel. Gorsuch also spoke favorably of Thomas and Scalia, while preaching a message of civility.

"As Justice Kennedy likes to point out, the word 'civics' springs from the Latin word that was also the same root for 'civility,' and both civics and civility are essential elements of civilization. Just consider the First Amendment's guarantee of free speech, free press, free assembly," Gorsuch said Thursday. "To be worthy of our First Amendment freedoms, we have to all adopt certain civil habits that enable others to enjoy them as well. When it comes to the First Amendment, that means tolerating those who don't agree with us or those whose ideas upset us."