

John Paul Stevens's Legacy in Five Cases



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By David A. Graham

It's a funny thing about Justice John Paul Stevens, who announced today he's stepping down. Despite serving on the court for 35 years—that's 12 years longer than this Gaggle's even been alive—many observers agree that he came into his jurisprudential own in the last 10 to 15 years. A few key decisions are likely to be remembered as his most important ones. We called some observers to get their input, and combined their lists to produce this one. Among those contributing ideas: Doug Kendall, president of the progressive Constitutional Accountability Center; Brina Milikowsky, legal counsel at the liberal Alliance for Justice; the liberal People for the American Way; and Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute.

1. ***Hamdan v. Rumsfeld (2006)***: Stevens wrote for the majority in this 5-3 decision, a crucial one for the war on terror. In a blow to the Bush administration and its expansive view on executive powers, the court ruled that there was no basis for military tribunals. That meant the government had to follow U.S. law, including the Geneva Conventions, in trying prisoners held at Guantánamo Bay. Liberals see the decision as a victory for rule of law and checks and balances, but conservatives worry that it handcuffs the government in effectively dealing with the threat posed by terrorists. It's an important case for issues like the trial of Khalid Sheikh Mohammed. Runner-up: *Rasul v. Bush*, a 2004 terror case that determined that federal courts had jurisdiction over detained foreign nationals and set the groundwork for Hamdan.

2. ***Apprendi v. New Jersey (2000)***: Stevens authored the majority opinion in a case with major bearing on sentencing guidelines. After a conviction, a judge extended the sentence for a man convicted on a firearms violation and suspected of having been motivated by hate beyond the statutory minimum. The judge's reasoning: he believed the act was a hate crime. The court ruled that such information could not be used for sentencing unless it had been proven beyond a reasonable doubt in the eyes of a jury. It was a major dent in the armor of federal sentencing guidelines, a consistent target of liberals, and a major milestone in criminal law cases. Although not a visible hot-button issue for the general public, the case "caused a sea change within the criminal justice system," says Milikowsky.

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3. ***Massachusetts v. EPA (2006)***: Noted as a successful coalition builder, Stevens brought Justice Kennedy into the 5-4 majority on a case that gave the EPA the authority to regulate carbon emissions. The state of Massachusetts had petitioned the EPA to regulate the gases, but the agency declined. The majority found that the EPA could not decline and, in doing so, effectively defined carbon dioxide as a pollutant. Both liberals and conservatives see this as enabling a backdoor approach to greenhouse gases if Congress doesn't act—but liberals see it as a useful workaround, while conservatives charge that it improperly allows the executive branch to legislate.

4. ***Gonzalez v. Raich (2005)***: In another tight case (a 6-3) decision, the Stevens-led majority ruled that Congress could ban the cultivation of marijuana, overriding state laws—such as California's—that allowed it. The majority relied upon the Constitution's Commerce Clause because even though it wasn't directly a national commerce issue, the local marijuana market could affect the national one. Shapiro says it "ratified the most expansive use of government power under the Commerce Clause ever." The case has major implications for the present health-care reform debate, because health reform depends on the federal government's powers under the Commerce Clause.

5. ***Chevron v. Natural Resources Defense Council (1984)***: Stevens wrote for an unusual 6-0 majority that upheld and strengthened the doctrine of administrative deference. In essence, that means that the courts should give the benefit of the doubt to government agencies—the courts can examine congressional opinions, but if a congressional delegation of powers to an agency is constitutional, then courts shouldn't intervene unless agencies' decisions are "arbitrary or capricious." It's frequently described as the most cited Supreme Court case in the law today.

Runners-up: *Lawrence v. Texas*, *Tennessee v. Lane*

Stevens is also well known for his dissents. Here are his most famous:

1. ***Citizens United v. FEC (2009)***: In an unusual move, a quivering Stevens read a 90-page dissent from the court's decision on a campaign-finance-law case from the bench. The dissent, which was longer than the majority's, blasted the court for what Stevens saw as an overturning of years of precedent on corporations' political rights.
2. ***Bush v. Gore (2000)***: Stevens criticized the decision related to Florida recounts in the 2000 presidential election. "Time will one day heal the wound to that confidence that will be inflicted by today's decision. One thing, however, is certain. Although we may never know with complete certainty the identity of the winner of this year's Presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as an impartial guardian of the rule of law."