

Civil Rights Groups Want Supreme Court Vote Postponed

By The Associated Press



Vanita Gupta (l), head of the Leadership Conference on Civil and Human Rights; and Sherrilyn Ifill (r), of the NAACP Legal Defense Fund. (Twitter Photos)

(The AP) - Various civil rights groups are backing calls from Democratic lawmakers to hold off on a vote to confirm Supreme Court Justice Anthony Kennedy's replacement until after the November elections.

Vanita Gupta, head of the Leadership Conference on Civil and Human Rights, says senators need to put country over party and use every tool to stop what she calls President Donald Trump's plan "to take over the Supreme Court for the next 40 years."

Despite the Republican majority, Sherrilyn Ifill of the NAACP Legal Defense Fund says she's confident senators can be persuaded to hold off.

In 2016, Senate Republicans refused to consider then-President Barack Obama's court nominee, Merrick Garland, during the election year, leaving the seat vacant for Trump's nominee of Neil Gorsuch in 2017. At the time, Senate Republican Leader Mitch McConnell said he had blocked

Garland's nomination on grounds 2016 was a presidential election year, and the new president should have the opportunity to pick a justice.

Given that precedent, Senate Minority Leader Chuck Schumer says it would be the "height of hypocrisy" for the Senate now to vote on a new Supreme Court justice before the November midterm elections.

Schumer said June 27 the opening on the court from Justice Anthony Kennedy's retirement is "the most important Supreme Court" vacancy in at least a generation. He said the voices of millions of Americans heading to the polls this fall "deserve to be heard." The court's make up will determine important issues, including reproductive rights.

Justice Roberts May Hold Key Vote as Supreme Court Moves Right

By Mark Sherman | The Associated Press



In this Tuesday, Jan. 30, 2018 file photo, U.S. Supreme Court Chief Justice John Roberts listens as President Donald Trump delivers his first State of the Union address in the House chamber of the U.S. Capitol to a joint session of Congress in Washington. The retirement of Justice Anthony Kennedy means that the conservative Roberts probably will be the justice closest to the court's four liberals, allowing Roberts to control where the court comes down in some of its most contentious cases. (Win McNamee/Pool via AP)

(The AP) - Chief Justice John Roberts is the Supreme Court's new man in the middle. It's just that the middle may have moved well to the right.

The retirement of Justice Anthony Kennedy means Roberts probably will be the conservative justice closest to the court's four liberals, allowing him to control where the panel comes down in some of its most contentious cases.

Roberts will be the justice who determines "how far they go and how fast they go," said Washington lawyer John Elwood.

Kennedy played a similar role for many years — his votes on gay rights, abortion, the death penalty, the environment, voting rights and affirmative action basically determined the outcome of cases on which the court was divided between liberals and conservatives.

Roberts has typically been to Kennedy's right. He did not endorse a constitutional right to marry for same-sex couples. He dissented when the court struck down Texas abortion clinic restrictions in 2016. The chief justice also was in dissent from the court's first major climate change decision in 2007, when it held that the Environmental Protection Agency could regulate emissions of carbon dioxide and other greenhouse gases as air pollutants.

New cases on any of those issues could be before the court soon and, even if Roberts is not prepared to overrule major Supreme Court precedents, he could be in position to cut back on environmental protections as well as gay rights and abortion rights.

Smaller steps might be in keeping with Roberts' preference for avoiding major divides where possible, and attracting votes from both conservatives and liberals.

"Chief Justice Roberts, more than any other justice on the court, believes in narrow rulings that attract broad majorities, answering no more than necessary to resolve a given case," Jonathan Adler, a professor at the Case Western Reserve University School of Law, wrote on the Volokh Conspiracy legal blog.

In one sense, the Supreme Court's immediate future could look a lot like the term that just ended. Roberts seemed firmly in control of a court that overwhelmingly went conservative in divided cases, including upholding President Donald Trump's travel ban, striking a blow at public-sector labor unions, limiting workers' rights to band together to complain about pay and affirming Ohio's aggressive efforts to purge its voting rolls.

Only on one occasion did Roberts join with the liberal justices in a 5-4 decision, a ruling that said police generally must have warrants to get telecommunications companies' records showing where people have used their cellphones.

Twice, though, Roberts was among a larger grouping of justices in cases that skirted the big issue at stake, but that could return to the court. In one case, the justices rejected a lower-court ruling that set limits on redistricting for partisan gain, but without deciding whether limits ever could be imposed. In another, the court ruled in favor of a baker who would not create a wedding cake for a same-sex couple, yet left on the table the question of whether religious objections could be used to avoid complying with anti-discrimination laws that protect LGBT people.

For all his votes on the conservative side of issues, Roberts has had his critics on the right. They include Trump, who

once labeled Roberts "an absolute disaster" for the chief justice's critical vote to uphold the Affordable Care Act in 2012. Trump has not publicly criticized Roberts since he's been president.

The case arose in the middle of the 2012 presidential campaign, in which Barack Obama was seeking re-election and the health care law also known as "Obamacare" was a major issue. Then, as now, the five conservatives were nominees of Republican presidents, while the four liberals were chosen by Democrats.

In the end, Roberts sided with the liberals, a decision some court observers have attributed in part to concern about public perceptions of the court and the chief justice's desire to be seen as above the political fray.

"He's conservative, but he is an institutionalist. He believes deeply in the Supreme Court," said George Washington University law professor Jonathan Turley.

A test of Roberts' ability to set the court's agenda could come on the topic of guns, said UCLA law professor Adam Winkler.

Roberts voted in favor of gun rights in two cases that held that Americans have the right to have guns, at least for self-defense in their homes. But the court has since rejected repeated attempts to expand on the right of gun ownership, in part because Roberts and Kennedy would not join the other conservative justices to take on a new case.

It takes the votes of four justices for the court to agree to review a case. If Kennedy's replacement is a fourth vote for a new case about guns, then Roberts might soon have to weigh in on issues like the right carry a concealed firearm in public or bans on assault weapons, Winkler said.

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