

As the Supreme Court Gets Back to Work, Five Big Cases to Watch

In its first full term since the arrival of Justice Kavanaugh, the court could issue a number of blockbuster decisions on divisive issues in an election year.



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WASHINGTON — The Supreme Court returns to the bench on Monday to start a term that will be studded with major cases on gay and transgender rights, immigration, abortion, guns and religion. The rulings will arrive by June, in the midst of an already divisive presidential campaign.

That will thrust a court that has tried to keep a low profile back into the center of public attention. “It’s a very exciting term,” Lisa S. Blatt, a lawyer with Williams & Connolly, said. “Although the court will carry on with a sense of normalcy, it will be hard for them to ignore the polarization in the country on the issues of abortion, L.G.B.T. rights, guns and ‘Dreamers.’”

The spotlight will shine on three justices in particular.

Chief Justice John G. Roberts Jr., who by many measures sits at the court’s ideological center, has been increasingly outspoken in defending the court against charges that it is at bottom a political institution. The court’s rulings in the high-profile cases this term may test that assertion.

Justice Ruth Bader Ginsburg, the 86-year-old leader of the court’s liberal wing, announced this summer that she had been treated for a fourth bout with cancer before starting a demanding speaking tour. Nervous liberals hope that she will remain on the court long enough to allow a Democratic president to name her successor.

Justice Brett M. Kavanaugh, who joined the court last October after exceptionally stormy confirmation hearings, compiled a fairly moderate record last term, voting with President Trump’s other appointee, Justice Neil M. Gorsuch, in divided cases just 53 percent of the time. But studies have shown that there are “freshman effects” on the Supreme Court that do not always predict long-term trends.

The effect of the retirement last year of Justice Anthony M. Kennedy, the court’s longtime swing vote, has not yet been fully felt, as last term’s cases were mostly minor. That will now change, said Sarah Harrington, a lawyer with Goldstein & Russell. “After a relatively quiet term last year, this term is shaping up to include some politically sensitive issues,” she said.

Here are five cases to watch.

Does a Landmark Civil Rights Law Protect Gay and Transgender People?

On Tuesday, the court will hear two hours of argument on the momentous question of whether a landmark federal civil rights law protects gay men, lesbians and transgender people from employment discrimination.

In most of the country, job discrimination based on sexual orientation and gender identity is lawful. The justices will decide whether the federal law, Title VII of the Civil Rights Act of 1964, offers nationwide protection.

If the answer is yes, the consequences would be enormous, said Paul M. Smith, who argued a landmark 2003 gay rights case and now teaches at Georgetown.

“It would be huge in the L.G.B.T. community to have protection in the private sector from employment discrimination, which is pretty much a rampant problem to this day,” he said.

The cases before the court — *Bostock v. Clayton County*, No. 17-1618; *Altitude Express v. Zarda*, No. 17-1623; and *R.G. & J.R. Funeral Homes v. Equal Employment Opportunity Commission*, No. 18-107 — were brought by two gay men and a transgender woman who said they were fired for unlawful reasons.

The question for the justices is whether the language of the 1964 law, which bars sex discrimination, also applies to sexual orientation and gender identity. The employers and the Trump administration argue that the lawmakers who voted for the law did not intend such broad coverage. The workers say that it is impossible to discriminate against gay and transgender people without taking into account their sex.

The justices' approaches to the cases may scramble some of their usual commitments, since conservatives are generally more apt to look at the words of a law in isolation and liberals more likely to take account of Congress's purposes in enacting legislation.

Can the Trump Administration Strip Protection from 'Dreamers'?

In November, the court will consider the fate of the nearly 800,000 immigrants known as "Dreamers" who were brought to the United States as children.

In 2012, President Barack Obama created a program to shield them from deportation, and to allow them to work. After Mr. Trump took office, he announced that he would wind down the program, saying it was unlawful.

Lower courts have so far blocked the attempt to rescind the program, Deferred Action for Childhood Arrivals, or DACA, ruling that the justifications the Trump administration has offered were inadequate.

A decision for the administration could take two forms: one narrow and the other more consequential. A narrow decision would say that presidents are allowed to change policy. A broader one would say that the program was unlawful to begin with, meaning that only Congress, and not a future president, could reinstate it.

Will the Court Restrict Abortion Rights?

The court announced on Friday that it will hear an abortion case challenging a Louisiana law that its opponents say would leave the state with only one doctor in a single clinic authorized to provide abortions.

In February, the court granted a last-minute request from abortion providers to block the law while they pursued the appeal in the case, *Gee v. June Medical Services*, No. 18-1460.

That interim ruling featured an unusual 5-to-4 coalition, with Chief Justice Roberts joining the court's liberals to form a majority. The chief justice's vote puzzled some observers, as he had dissented in a 2016 decision upholding an essentially identical Texas law.

The Louisiana law, which was enacted in 2014, requires doctors performing abortions to have admitting privileges at nearby hospitals. The law's opponents say it imposes the sort of "undue burden" barred by a 1992 decision, *Planned Parenthood v. Casey*, making access to abortion more difficult without protecting women's health. Its supporters say that admitting privileges are an important credential.

How the chief justice approaches the Louisiana case could illuminate his commitment to respecting precedents, said Pratik A. Shah, a lawyer with Akin Gump Strauss Hauer & Feld. "It will answer questions about how strong the chief justice's institutionalist bent is," he said. "That is going to be a telling case."

Other abortion cases are likely to follow, because several state legislatures have recently enacted laws that seem calculated to try to force the Supreme Court to consider overruling *Roe v. Wade*, the 1973 decision that established a constitutional right to abortion. Mr. Trump has vowed to appoint justices who will vote to overrule the decision.

Will the Court Expand Second Amendment Rights?

In December, the court is scheduled to hear its first Second Amendment case in almost a decade, *New York State Rifle and Pistol Association v. City of New York*, No. 18-280. But it is not clear that the argument will take place.

When the court agreed to decide the case in January, it seemed poised to issue a significant decision on the scope of the right to bear arms. That prospect alarmed gun control proponents, who urged New York officials to repeal the challenged regulation.

The city did so in July, and state lawmakers enacted a law that appears to make it impossible for city officials to change their minds. That would seem to make the case moot.

The regulation, which appeared to be unique in the nation, had allowed residents with so-called premises licenses to take their guns to one of seven shooting ranges in the city. But it prohibited them from taking their guns to second homes and shooting ranges outside the city, even when the guns were unloaded and locked in containers separate from ammunition.

The challengers have urged the justices to hear the case even so, saying that some elements of the revised law remain problematic and that the justices should not encourage litigation gamesmanship.

Should the court decide the case on the merits, its ruling could transform Second Amendment jurisprudence, said Irv Gornstein, the executive director of Georgetown's Supreme Court Institute. "A broad ruling would obviously have immense importance," he said.

The justices, he added, may take account of recent mass shooting in deciding whether to go forward.

“The court is going to have to decide this question of mootness against the backdrop of several recent highly-publicized episodes of gun violence and heated debate between the two parties about solutions to gun violence,” Professor Gornstein said. “For some, this is a reason to dig in and plunge ahead to decide the case. For others, sitting this one out may be an inviting prospect.”

Can States Bar Aid for Religious Schools?

The court will also decide whether Montana can exclude religious schools from a state scholarship program.

Montana’s constitution, like those of many other states, bars the use of government money to aid religious groups. Three mothers who sought scholarships from the state program to send their children to a Christian school sued, saying the state constitution violated provisions of the United States Constitution on religious freedom and equal protection.

The Montana Supreme Court rejected the challenge and shut down the entire scholarship program.

The case, *Espinoza v. Montana Department of Revenue*, No. 18-1195, will give the United States Supreme Court an opportunity to explore the limits of its 2017 decision in *Trinity Lutheran Church v. Comer*. That decision said Missouri could not exclude religious institutions from a state program to make playgrounds safer even though the state’s Constitution called for strict separation of church and state.