

Obama gets to choose a judicial legacy

Many expect president to appoint a female liberal to replace retiring Souter on U.S. Supreme Court

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WASHINGTON – From hot-button social issues to high-stakes business disputes, President Barack Obama's replacement for retiring liberal Justice David Souter will allow him to leave his mark on the U.S. Supreme Court – but may not dramatically shift its balance of power.

Legal experts said a new justice named by Obama probably would not change the current close split between the court's conservative and liberal factions, in which conservatives often prevail by a single vote, 5-4.

But the lifetime appointment, Obama's first for the Supreme Court, will create a legacy that could last decades after he leaves the White House, even if he wins another four-year term.

Souter, 69, announced yesterday he intends to retire when the court completes its current term next month.

In a dramatic flourish, Obama interrupted the daily press briefing by his spokesperson, Robert Gibbs, to announce that he had just talked to Souter.

After thanking Souter for his dedicated service, Obama said he will replace him with someone who shares the president's respect for "constitutional values" and hopes to have "him or her" seated on the Supreme Court by the start of the next term in October.

A justice appointed by Obama could conceivably be on the court for many decades, Northwestern University law professor John McGinnis said.

"Obama could appoint someone far more able than Souter. This could help provide greater coherence to liberal constitutional jurisprudence than in the past five decades," he said.

Souter has been a consistent vote among the liberal wing on contentious social issues like abortion, the death penalty, religion and race in America.

He also has voted with the liberals on important business cases, allowing environmental regulation of greenhouse gas emissions and ruling that federal law or regulation does not shield tobacco and drug companies from lawsuits in state court.

Still, Souter has sometimes supported business. He wrote a 2007 ruling requiring detailed allegations for an antitrust lawsuit against companies to go forward.

Souter also wrote the ruling last year that threw out the record \$2.5 billion (U.S.) in punitive damages that Exxon Mobil Corp. had been ordered to pay for the 1989 Exxon Valdez oil spill off Alaska.

The experts said Souter's replacement would face important business issues, including whether to put new constitutional limits on punitive damage awards designed to punish companies for past misconduct.

Obama is widely expected to select a woman to join the one female justice, Ruth Bader Ginsburg, now on the court.

Among those mentioned have been U.S. appeals court judges Sonia Sotomayor and Diane Wood, Michigan Governor Jennifer Granholm, Solicitor General Elena Kagan and Kathleen Sullivan, director of Stanford University's Constitutional Law Center.

"Anybody who gets appointed is unlikely to be significantly different than Souter in the various kinds of cases, including business cases," said **Richard Samp, chief counsel of the conservative Washington Legal Foundation.**

With files from Associated Press

