

ANALYSIS

Obama's pick to not shift Court direction

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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 US Supreme Court - but may not dramatically shift its balance of power. A new justice named by Obama, a Democrat who praised the court's liberals during his presidential campaign, probably would not change the current close split between the court's conservative and liberal factions, legal experts said, in which conservatives often prevail by a single vote, 5-4.

But the lifetime appointment, Obama's first for the Supreme Court, would create a judicial legacy that could last decades after he leaves the White House, even if he wins another four-year term. 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, 69, announced on Friday he intends to retire when the court completes its current term next month. He 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 in punitive damages that Exxon Mobil Corp had been ordered to pay for the 1989

Exxon Valdez oil spill off Alaska, the nation's worst spill. 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.

Our general preference is for judges who follow what is written in the law and who do not make up new rights," said Quentin Riegel, vice president for litigation at the National Association of Manufacturers. He hoped Obama would appoint someone with experience in business cases, similar to John Roberts whom then-President George W Bush appointed as chief justice in 2005. Bush also named conservative Justice Samuel Alito.

Obama is widely expected to select a woman to join the only one female justice, Ruth Bader Ginsburg, now on the court. Among those mentioned have been US 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 Washington Legal Foundation**, a conservative public interest law center. - Reuters