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Justice Kennedy, Defender of Liberty and Freedom, Is a Lifetime Achiever

Kennedy, 82, who retired earlier this year, will be honored at The American Lawyer Industry Awards on Dec. 5.

By Tony Mauro | November 20, 2018

Justice Anthony Kennedy, who shaped the U.S. Supreme Court's approach to LGBT rights and was a staunch proponent of individual liberty, will be honored next month by The American Lawyer with a Lifetime Achievement Award.

Kennedy, 82, retired July 31 after more than 30 years on the Supreme Court. On Dec. 5, he will join fellow honorees Cesar Alvarez, A.B. Culvahouse Jr., Jamie

Gorelick, Eric Holder, Mary Ann Hynes and Richard Riley at The American Lawyer Industry Awards in New York.



Justice Anthony Kennedy in 2015. Photo by Diego M. Radzinski/ALM.

During his tenure, Kennedy's jurisprudence displayed his strong belief in liberty protected by the Fourteenth Amendment's due process clause and his concern for the dignity of the individual. He also prided himself as a champion of the First Amendment.

"He leaves behind an imposing body of judicial opinions to guide our future deliberations," Chief Justice John Roberts Jr. wrote in a Harvard Law Review tribute to Kennedy. "Judges, lawyers and scholars who study those writings will discern behind the words an individual of integrity, insight and decency."

Kennedy will probably be best remembered for the opinions he wrote advancing the rights of gays and lesbians: *Romer v. Evans* (1996), which struck down a Colorado constitutional amendment denying LGBT people the right to bring certain discrimination claims; *Lawrence v. Texas* (2003), invalidating criminal laws against sodomy; *United States v. Windsor* (2013), striking down the definition of marriage as between a man and a woman in the federal Defense of Marriage Act; and the landmark *Obergefell v. Hodges* (2015), recognizing the marriage rights of same-sex couples.

After the *Windsor* decision, Cornell Law School professor Michael Dorf, a former Kennedy clerk, proclaimed that the justice would go down in history as "the first gay justice," in the same sense that Bill Clinton was labeled "the first black president."

On and off the bench, Kennedy also spoke out against solitary confinement and overcrowding in prisons and in favor of ending capital punishment for juveniles. He was also a frequent champion and ambassador of the rule of law around the world—a role that Roberts has said Kennedy will continue in retirement.

Justice Neil Gorsuch, who clerked for Kennedy in 1993 and 1994, said, "The Supreme Court has lost one of the most consequential justices in its history." When Gorsuch joined the court in 2017, it was the first time in history that a justice and his former law clerk served together.

Kennedy did not like being labeled as the court's "swing justice," but it is undeniable that he often cast the decisive vote in hot-button and high-profile cases.

He had a mixed record on abortion, approving restrictions in some cases, but in 1992 he played a key role in reaffirming *Roe v. Wade*, the court's landmark 1973 abortion decision. More recently, he also voted to strike down state regulations restricting the operation of abortion clinics. In 2016, for the first time, he wrote an opinion upholding affirmative action in a case involving the admissions policy of the University of Texas. In spite of his liberal-leaning votes in some cases, Kennedy was generally viewed as a conservative during his time on the high court.

In 1987, President Ronald Reagan nominated Kennedy to replace Justice Lewis Powell Jr., who retired in June of that year. After the Senate defeated the Robert Bork nomination in October, Reagan picked Judge Douglas Ginsburg of the U.S. Court of Appeals for the D.C. Circuit. But Ginsburg withdrew his name in November after admitting to using marijuana. Four days later, Reagan turned to Kennedy, who was a judge on the Ninth Circuit.

Kennedy was unanimously confirmed, 97-0, Feb. 3, 1988. He was the longest-serving justice on the Roberts court. When asked in 2005 how he would like to be remembered, Kennedy said: "Somebody who's decent and honest and fair, and who's absolutely committed to the proposition that freedom is America's gift to the rest of the world."

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