

Appellate Lawyer of the Week: Gregory Garre, Latham & Watkins

BY TONY MAURO

Arguing two Supreme Court cases eight days apart requires “a lot of preparation and a lot of praying,” says Gregory Garre, head of Latham & Watkins’ Supreme Court and appellate practice.

Whatever it takes, it worked this past term for Garre, the former George W. Bush administration solicitor general. Garre won both cases he argued in April: *Monsanto Corp. v. Geertson Seed Farms* and *Christian Legal Society v. Martinez*.

Christian Legal was handed down on June 28, and has been viewed as one of the top cases of the term. It was a surprise victory for his client, Leo Martinez, dean of the University of California Hastings College of the Law and for university anti-discrimination policies.

And it was hard fought. Justices gave Garre a hard time over factual issues in the case, but he held on tenaciously to his view – and the Court majority agreed. His insistence that the law school was being even-handed in enforcing an “all comers” policy — requiring recognized student groups to accept anyone as members – helped the Court analyze it as viewpoint-neutral, rather than anti-religion. “It was an extremely challenging argument,” said Garre, a former clerk to Chief Justice William Rehnquist. “The Court was frustrated about having to resolve the factual issues.”

Among Garre’s toughest questioners was Chief Justice John Roberts Jr., who was a mentor to Garre during their days at Hogan & Hartson in the 1990s before Garre went to the SG’s office for the



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first time. Garre was not fazed. “He’s the chief justice, and he has always treated me as any other advocate.”

Garre, 45, also shrugs off curiosity about why he represented Hastings which, to the extent that the case was ideological, advanced the “liberal” position. Justice Ruth Bader Ginsburg, joined by the liberal justices and Anthony Kennedy, gave Garre his win. “We were contacted by the school, and we represented them as vigorously as possible,” Garre said. “That’s what lawyers do when they represent their clients.”

The *Monsanto* case had its own challenges, exposing Garre to new areas of technology and business; it involved regulation of genetically modified crops. He traveled to *Monsanto* offices in St. Louis to talk to its scientists about the technical issues. “It went all the way back to the birds and the bees,” said Garre, a graduate of George Washington University Law School. “It called to mind high school biology” which, he allowed, was not his strongest subject.

In both cases, Garre credits the Latham appellate team for helping him, notably Maureen Mahoney (his predecessor as appellate practice chair) and J. Scott Ballenger – who argued two Supreme Court cases himself this term – and Lori Alvino McGill, Richard Bress, Phil Perry, and Drew Ensign, among others.

Next term Garre is handling cases for the state of Alaska in an Indian tribal jurisdiction dispute and for a death row inmate. Paired with this term’s representation of a major corporation and a state university, the client mix is just what Garre was hoping for when he joined Latham in 2009. “One of the things I took away from working with John Roberts is to have a varied practice,” Garre said.

Garre has taken on other high-profile projects as well lately. On July 1 he testified before the Senate Judiciary Committee in favor of Elena Kagan for the Supreme Court, asserting that her tenure as SG is good training for the high court.

And on July 9, Garre will fill in for Theodore Olson for the Federalist Society’s annual review of the Supreme Court term. Olson’s pull-no-punches style has made it a popular event. But Garre, by nature, is more circumspect, making it yet another challenging assignment in a very busy year.

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