

## Small D.C. Law Firm Maps Defense, Offense Plays Against Trump

By Marcia Coyle

January 23, 2017

The public interest mission of Deepak Gupta's law firm in Washington is reflected in its three U.S. Supreme Court arguments this term—and it's the same mission that has drawn the small firm into the first significant suit against President Donald Trump and alleged conflicts of interest.

When he launched his firm in 2012, Gupta wanted to build a premier Supreme Court and appellate boutique for plaintiffs and public interest clients. He had left the Consumer Financial Protection Bureau, where he was the agency's first appellate lawyer. His firm today has five lawyers who are principals, one of counsel and a 2016-17 fellow.

That goal has not changed, Gupta said. But it has expanded.

"It's a new world and not the world we expected," said Gupta of Gupta Wessler.

Gupta was on the legal team that on Monday filed an "emoluments clause" challenge against Trump that alleges the president's business interests are creating "countless conflicts of interest, as well as unprecedented influence by foreign governments." The legal team includes Harvard Law School's Laurence Tribe; Erwin Chemerinsky, dean of the University of California Irvine School of Law; Fordham University School of Law's Zephyr Teachout; and Citizens for Responsibility and Ethics in Washington board chairman Norman Eisen and vice chair Richard Painter.

"I've been thinking about the emoluments clause, like a lot of people, since the election," Gupta said in an interview Monday. "It's not a clause I focused



Deepak Gupta of Gupta Wessler.

on before Donald Trump. And really, I was fortunate enough to connect up with this group of extraordinary lawyers working on the case. From my perspective, I can't think of any legal work more important right now."

That's not to say the firm's Supreme Court and other appellate cases will take a backseat.

On Jan. 10, Gupta argued one of the firm's three high court cases this term—*Expressions Hair Design v. Schneiderman*, a First Amendment challenge to New York's "no surcharge" law for credit card purchases. Gupta represents the merchants who sued over the surcharge.

In a February argument, Gupta's firm is counsel of record for the family of Sergio Hernandez, a Mexican teenager who was shot to death by a U.S. Border Patrol agent. The case, *Hernandez v. Mesa*, raises questions about immunity and the reach of constitutional protections.

And in March, the firm's third case goes before the justices—*Coventry Health Care of Missouri v. Nevils*. The case asks whether insurance contracts between the federal government and private companies preempt state laws barring insurers from bringing repayment claims against tort victims.

Gupta said his firm is busy in other courts and that he is considering hiring more lawyers.

"My goal has never been to have the biggest firm we can have. It's really important at a firm like ours that everyone shares our values," he said. "You just can't put out an ad and know that's going to be the case."

The firm's model, he said, was based on a recognition that there was a business niche that the market wasn't meeting. The Supreme Court and appellate practices at Big Law firms were meeting the needs of large corporate clients, he said, but there was a void on the plaintiff side for classes of consumers or workers.

"I knew there was a real need out there and I had a gut feeling it could work as a model," he said. "I asked a ton of people if it could work and they couldn't tell me. I just had to quit my job to find out."

Gupta described opening the boutique as a "scary" decision. "My wife is an artist and failure was not an option," he said.

Besides appellate work, the firm's lawyers also work with clients and co-counsel on constitutional and regulatory challenges and consult on litigation strategy. They represent three nonprofits in a class action in Washington challenging PACER fees and are they are working with Everytown for Gun Safety on litigation and policy issues.

Gupta said the firm's model makes it "well positioned" to take on the Trump lawsuit and related issues.

"There is a list being explored, for example—the domestic emoluments clause hasn't gotten as much attention as it deserves," he said. "We need to think through the properties and interests Trump has around the country and what kind of entanglements he has with state governments."

Gupta also suggested litigation under the Freedom of Information Act to discover what Trump owns and to whom he owes money, and "a lot of regulatory litigation." On the latter, he said, the Trump administration may choose not to defend certain federal regulations. That will raise legal questions about whether, and when, private organizations can stand in the shoes to the federal government to defend them.

"There was this period from February 2016 to the election where it just looked like this whole new progressive world was opening up," Gupta said. "There was going to be a progressive [Supreme] court. We've lost that chance. It has been a really rude awakening. But we're used to playing defense, and this [Trump suit] today is defense with some offense."

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