

Boutique Firm Gupta Wessler Takes on Heavy SCOTUS Load

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- Deepak Gupta has emerged as prolific appellate lawyer
- His boutique firm Gupta Wessler will argue three Supreme Court cases this term

By Liz Crampton

(BNA) -- Next week, lawyer Deepak Gupta will stand before the Supreme Court and argue that state laws barring businesses from disclosing credit card swipe fees are a violation of free speech.

The swipe fee case is just one of three that Gupta Wessler, the boutique appellate litigation firm founded by Gupta, 39, a prolific consumer protection lawyer, will argue before the Supreme Court this term (*Expressions Hair Salon v. Schneiderman*, U.S., No. 15-1391).

Gupta created the firm in 2012 after stints at consumer rights advocacy group Public Citizen and the Consumer Financial Protection Bureau with a mission of “protecting the little guy against the big guy.” Past clients include former professional football players, California truck drivers and gun control group Everytown for Gun Safety.

“There's a new problem in every case that we do,” Gupta told Bloomberg BNA. “I get to learn about a completely new area, create a narrative around it. There's an open question in the law and we get to put together a compelling argument and hopefully change law in a way, that if things work out right, actually improve some people's lives.”

Expressions Hair Design Inc. v. Schneiderman

On Jan. 10, Gupta will argue against state laws that allow merchants to charge a higher price to customers who pay by credit card than those who pay in cash — but only if the difference is framed as a cash “discount.”

These restrictions violate merchants' free speech rights because they foreclose their ability to disclose the true cost of credit, Gupta said. He'll represent a class of small merchants challenging N.Y. Gen. Law §518 as unconstitutional. Eric T. Schneiderman, New York's attorney general and the named defendant,

will argue that the state's surcharge prohibition doesn't implicate the First Amendment because it addresses conduct, not speech.

Hernandez v. Mesa

On Feb. 21, Gupta's firm will argue its second case of the SCOTUS term while representing the family of a Mexican teenager fatally shot in Mexico by a border patrol agent standing across the U.S. border.

The U.S. Court of Appeals for the Fifth Circuit held that the agent had qualified immunity — which protects government officials from liability for civil damages — and couldn't be sued, which Gupta's client is challenging.

Coventry Health Care v. Nevils

Later this SCOTUS term, Gupta's law partner Matthew Wessler will represent tort victims fighting insurers' repayment claims.

The question in this case is whether the Federal Employees Health Benefits Act, or FEBHA, which controls the government's offering of health benefits to federal employees, preempts state laws precluding carriers that administer FEBHA plans from seeking subrogation as required by their contracts with the Office of Personnel Management.

“Right Those Perceived Wrongs.”

A graduate of Fordham and Georgetown Law, Deepak learned how to practice law while working in the litigation group of Public Citizen, where he founded the Consumer Justice Project and served as a Supreme Court fellow.

“It was like a sandbox for law,” Gupta said. “You could read about something in the newspaper and think ‘that just seems wrong’ and you could bring a case about it.”

Gupta intended to spend his career at Public Citizen before he was approached to work for the Consumer Financial Protection Bureau at the time of its founding. Sen. Elizabeth Warren (D-Mass.) interviewed Gupta for a senior counsel position and he felt like he couldn't say no.

When Gupta took the CFPB job he knew he didn't want to become a bureaucrat and work there long term. For a year he wore a suit every day and was tied to a Blackberry and spent most of his time in meetings. He prefers jeans.

“I started to feel like there was all this incredibly interesting litigation out there in the world that I was missing out on,” Gupta said. That got him thinking about an idea he had for a long time, which was to start his own practice.

Since its start, the firm based in Washington's Dupont Circle neighborhood has grown to four partners. The lawyers often take over cases that reach the appellate level but also see some cases through from the beginning. Among the practice's rules: don't do discovery and "don't work with people that are not nice," Gupta said.

"There are cases that happen to be high profile because they have a large public interest impact, but some of our stuff is decidedly wonky, unsexy legal issues," he said. "I don't think we look for cases that are going to be in the headlines. We look for cases where we think we're on the right side, where if we win it has a big impact, especially cases where we think we can add some value."

Opposing Gupta in court means you're going to be "faced with the best possible arguments on that side," said lawyer Andrew Pincus, who represented AT&T Mobility in a class action brought by Gupta's clients. That case introduced the lawyers and now, despite working for opposing parties, the two are friends.

"It strikes me how much he believes in the causes of the clients he represents," Pincus told Bloomberg BNA. "We all do as lawyers but I think he really in his heart is a champion for those people. For people who feel they have somehow been victimized by the government, by defendants, he really feels in his heart that it's his calling to right those perceived wrongs."

"Unusual But Not Unprecedented."

It's "unusual but not unprecedented" for a firm as small as Gupta Wessler to take on three SCOTUS cases this term, said Adam Feldman, an active high court watcher who runs the blog Empirical SCOTUS.

Usually, a large firm takes over appeals court cases tried by smaller firms after they're granted review by the Supreme Court, such as when Orrick assumed *Lightfoot v. Cenant Mortgage Corp.* after smaller firm Helmer Friedman successfully filed cert, Feldman said.

"The difference with Deepak and with Gupta Wessler is that the firm is very well known as very strong in consumer rights appeals and they have a lot of Supreme Court experience," he said. "While a small firm may traditionally give way to bigger firms at the Supreme Court level, the firm size is not as consequential as Supreme Court experience and that is exactly what Gupta Wessler has."

Gupta Wessler has no interest in joining the trend of boutique firms getting scooped up by larger firms because it's designed to represent clients that big firms don't, which are primarily consumers seeking appellate litigation, Gupta said. In September, top appellate boutique firm Bancroft PLLC, founded by Viet Dinh, a former U.S. assistant attorney general, was swallowed up by powerhouse

firm Kirkland & Ellis.

“We don't want to represent big corporations,” Gupta said. “If a big corporation comes to us and asks us to represent them, we'll turn them down. We exist because there's a gap.”

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