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HEADLINE: Baseball drug case could head to Supreme Court

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BODY:

NEW YORK - A new Obama administration appointee will decide whether to take the baseball drug list case to the Supreme Court.

The Major League Baseball Players Association won a 9-2 decision Wednesday from the 9th U.S. Circuit Court of Appeals, which ruled federal agents illegally seized the urine samples of 104 players who allegedly tested positive in 2003. The agents were entitled only to the samples to the 10 players named on the initial search warrant, the court said.

Former Harvard Law School Dean Elena Kagan, confirmed as Solicitor General by the Senate in March, will make the final decision whether to ask the Supreme Court to review the case, Justice Department spokeswoman Beverly Lumpkin said Thursday.

"The 9th Circuit is not one of the Supreme Court's favorite circuits. It is probably one of the most liberal circuits in the country," said Pace Law School professor Bennett Gershman, a former assistant district attorney and assistant attorney general in New York. "I think there's a good chance if it goes to the Supreme Court, the Supreme Court is going to reverse."

Supreme Court rules set a 90-day timeframe for filing a petition, with the clock starting when Wednesday's decision formally is entered into the record. At least four Supreme Court justices must decide to accept the case.

Chief Justice John G. Roberts Jr., and Justices Antonin Scalia, Clarence Thomas and Samuel A. Alito Jr. often adopt an expansive view of government power, while Justices John Paul Stevens, Ruth Bader Ginsburg, Stephen G. Breyer put more emphasis on personal rights, a position taken by Sonia Sotomayor on lower courts before she was elevated to the Supreme Court this month. As often is the case, Justice Anthony M. Kennedy could be the swing vote.

But the baseball drug dispute might fall outside the norm.

"I don't think this is a case that necessarily breaks down along liberal and conservative lines," said players' association lawyer Steve Fehr, brother of the union leader. "I would think a lot of people who are truly conservative would applaud the results. And I think a lot of people who are truly conservative would

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not want a rule under which, armed with a search warrant that allows it to seek records for 10 individuals, the government could obtain, you know, thousands of records."

Harvard Law School Professor Lawrence H. Tribe had hoped the court would rule for the players' association.

"I think that Chief Judge (Alex) Kozinski sensibly accommodated the many competing concerns that made this such a troubling case," he said.

Maurice Suh, a lawyer for cyclist Floyd Landis, said athletes in all sports should be troubled by the government's conduct in this case.

"When something like this occurs, it doesn't do any good to law-enforcement agencies or to the efforts of anti-doping authorities," he said.

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