



## No real surprises from SCOTUS this year



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Although the conventional wisdom is that this year's Supreme Court term offered surprise decisions that gave liberals hope and drove conservatives to distraction, the decisions by the court were consistent with its steady, cautious move to the right.

Although Chief Justice Roberts, and on one occasion Justice Gorsuch, sided with the more liberal justices to make majorities for the outcomes in a few cases, those rulings were on vary narrow grounds.

For example, in *June Medical Services L.L.C. v. Russo*, the headlines were that Chief Justice Roberts sided with the four liberal justices to protect a woman's right to an abortion. Pro-choice supporters should not celebrate quite yet. In *June Medical*, the court reviewed the constitutionality of a Louisiana law that required a physician to have admitting privileges at a local hospital in order to perform abortions. In 2016 the court, in *Whole Woman's Health v. Hellerstedt*, struck down an almost identical Texas law as imposing an undue burden on a woman's right to an abortion. Notably Chief Justice Roberts dissented in that case.

In *June Medical*, Chief Judge Roberts found that he was bound by the decision in *Whole Woman's Health* and voted to strike down the Louisiana law. However, one sentence in his decision should give abortion rights supporters pause. The Chief Justice noted that neither "party [had] asked [the Court] to reassess the constitutional validity" of the standard established for abortion regulations in prior decisions. Accordingly, Roberts found himself assessing a law almost identical to one that the court struck down four years earlier, and even though he voted to uphold the law last time, this time he felt he had to follow that prior ruling. The *June Medical* decision cast little light on whether *Roe v. Wade* will be overturned.

Another decision that had the left celebrating and conservative wringing their hands was the court's invalidating President Trump's move to strike down DACA, an administrative rule that withheld deportation of individuals who had come to the United States illegally

when they were young children. The Court's decision in *Department of Homeland Security v. Regents of the University of California* did not support DACA. It just held that the Trump administration did not comply with the applicable rules when reversing an administrative policy. The Trump administration simple has to go back and give a more thorough reason for its overturning DACA, something it can easily do.

In *Bostock v. Clayton County*, Chief Justice Roberts was joined by Justice Gorsuch in siding with the four liberal judges in holding that the Federal employment anti-discrimination laws cover discrimination against gay and lesbian individuals. Relying on the text of the law that bans employment discrimination on the basis of sex, the court's majority found that the plain meaning of these terms meant that employment discrimination against gay and lesbian individual was prohibited. The decision relying on the express text of a statute is consistent with conservative legal philosophy.

In other cases the court continued to support a Constitutional protection of the exercise of religion. In *Espinoza v. Montana Department of Revenue*, the court overturned a ruling by the Montana Supreme Court that the Montana State Constitutional prohibited tax credits for contributions to scholarship funds used to pay tuition to religious schools. In *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, the court upheld a religious exemption to the Affordable Care Act's requirements regarding contraceptive coverage, and in *Our Lady of Guadalupe School v. Morrissey-Berru* the application of the employment discrimination laws to employees of religious schools was disallowed.

Probably the most significant departure from prior law was the court's decision requiring that the head of the Consumer Financial Protection Bureau be subject to the dismissal by the President. In *Seila Law LLC v. Consumer Financial Protection Bureau* the Supreme Court sided with the Trump administration by distinguishing the CFPB from other agencies like the Federal Trade Commission whose leaders are also isolated from being terminated by the president.

Far from singling a major shift to the left, or even the middle, this year's decision reflect that the Roberts' Court continues to be a very conservative court.

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