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# DAILY WIRE

## The ‘Swing Vote’: Roberts’ Reported Siding With Liberal Wing On Roe Reversal Part Of Pattern

Greg Wilson

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If Chief Justice John Roberts ends up siding with the Supreme Court’s liberal wing against striking down *Roe v. Wade* when the official decision comes down, it will only be the latest example of the George W. Bush appointee disappointing conservatives.

Roberts reportedly did not concur with the five conservative justices in signing Justice Samuel Alito’s draft opinion on *Dobbs v. Jackson Women’s Health Organization*, which was leaked by Politico Monday night. The decision, if made official, would reverse the landmark 1973 decision guaranteeing the federal right to abortion. Without Roberts’ vote, it would likely carry by a 5-4 vote.

“He has voted with the progressive wing on abortion, immigration and Title VII, and has established himself as the high court’s swing vote,” Heritage Foundation Senior Legal Fellow Sarah Parshall Perry told The Daily Wire.

Perry cautioned that it remains to be seen where Roberts will come down in the court’s final ruling, but said the Chief Justice hinted that he is looking for a compromise during oral arguments months ago that would uphold a narrower version of *Roe*.

A Roberts’ absence from the expected majority opinion won’t come as a surprise to SCOTUS observers.

Roberts, who was appointed in 2005, first drew the ire of conservatives seven years later, when he cast the deciding vote to uphold President Obama’s signature health insurance reform law, the Affordable Care Act. His majority opinion in the case, *NFIB v. Sibelius*, held that the penalty imposed by the law for not getting health insurance was a tax, and thus within the power of Congress to levy.

In 2016, Roberts helped hand the Obama administration a huge win when he sided with the liberal wing and refused to block an Environmental Protection Agency regulation limiting emissions of mercury and other toxic pollutants from coal-fired power plants. Conservatives blamed the ruling for the shutdown of coal-fired plans, loss of jobs, and raise of energy costs.

In 2020, Roberts again sided with the court’s liberal wing to uphold Obama’s Deferred Action for Childhood Arrivals (DACA), or “Dreamers” act. The program had been created by Obama eight years earlier after Congress refused to pass the Democrats’ plan to grant amnesty to so-called “Dreamers” — illegal aliens brought into the U.S. while minors. President Trump rescinded the program and gave Congress six months to find a compromise, but they didn’t.

The Trump administration argued before the high court that Obama had lacked the constitutional authority to enact DACA, hoping a victory would force Democrats to work out a deal. Roberts, who wrote the majority opinion ruling against Trump, conceded the point, but said the Trump administration “had failed to provide enough consideration about what would happen to the 700,000 people who had registered for the DACA program.”

“John Roberts again postures as a Solomon who will save our institutions from political controversy and accountability,” Sen. Tom Cotton, R-Ark., said in a statement following the ruling. “If the Chief Justice believes his political judgment is so exquisite, I invite him to resign, travel to Iowa, and get elected. I suspect voters will find his strange views no more compelling than do the principled justices on the Court.”

Also in 2020, Roberts partially dissented from a major decision that allowed to stand a Texas law that bans abortion after six weeks.

In 2021, Roberts sided with the majority in refusing to hear a high-profile case concerning whether a transgender student was entitled to use the bathroom of his choice at school. The decision, to which Justices Alito and Thomas objected, left in place a lower court’s ruling in favor of the child and was seen as a victory for LGBTQ advocates.

And earlier this year, joined the court’s liberal wing to criticize the conservative majority’s handling of so-called emergency requests that critics call the “shadow docket.” He joined the liberal dissent against the emergency order temporarily reinstating a Trump-era Clean Water Act rule which cut some federal protections for streams and wetlands.

The court typically requires a showing of “irreparable harm” to issue an emergency order, but Roberts and the liberal wing accused the conservatives of using the emergency docket “not for emergencies at all,” as Justice Elena Kagan wrote.

Roberts, who has voted with the conservative wing more often than not, bristles at suggestions that politics affect the court’s work. In 2018, when then-President Trump described a lower court judge who had ruled against a Trump asylum policy as “an Obama judge,” Roberts issued a rare rebuke.

“We do not have Obama judges or Trump judges, Bush judges or Clinton judges,” Roberts said in a statement. “What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.”

An analysis by the Harvard Law Review found Roberts sided with liberal Associate Justice Stephen Breyer 66% of the time in the 2020 term and with conservative Associate Justice Clarence Thomas 65% of the time.

“I don’t think what we’ve seen so far is early evidence of Roberts moving to the left or evolving,” Ilya Shapiro of the Cato Institute recently told the Constitutional Accountability Center. “Nor is it Roberts becoming moderate like [former Justice Anthony] Kennedy, the true swing vote. It’s just Roberts trying to use his power at the margins with procedural things to shape what kinds of decisions the court ultimately does rule on.”