

The Guardian

John Roberts is now supreme court's swing vote – to conservatives' disdain

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Shortly after the announcement that Chief Justice John Roberts had joined the supreme court liberals on Monday to strike down a Louisiana law restricting abortion rights, conservative legal organizations sent up an alarm.

Roberts, they warned, who also joined the liberal bloc this month in rulings that supported LGBTQ and immigration rights, had once and for all forfeited his conservative credentials.

“Justice Roberts, a so-called ‘conservative’, is clearly no longer running things – it’s now the Kagan court,” said Jessica Anderson, executive director of the conservative Heritage Action for America, referring to liberal justice Elena Kagan.

“The chief justice has repeatedly broken his promise to be a neutral ‘umpire’ and instead too often acts as a ‘politician in robes’,” said the Judicial Watch president, Tom Fitton.

“John Roberts ought to stop playing ‘87-dimensional chess’ and just call the legal balls and strikes, as he promised to do at his confirmation hearings,” wrote Ilya Shapiro, director of constitutional studies at the conservative Cato Institute.

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John Roberts

While the conservative faith in Roberts has been shaky ever since he prevented the court from gutting Barack Obama’s Affordable Care Act in 2015, the balance of his decisions this term may have destroyed that faith for good. Conservatives fear the George W Bush appointee has gone the way of former justice Sandra Day O’Connor, a Ronald Reagan appointee who ended up thwarting attempts to reverse Roe v Wade.

“If Justice Roberts wants to be a politician, he should resign and run for office,” Senator Tom Cotton, an Arkansas Republican, tweeted after a ruling this month to uphold protections for undocumented migrants who arrived in the US as children.

“Judging is not a game,” Ted Cruz, a Texas Republican, said in Senate remarks flagged by USA Today. “It’s not supposed to be a game. But sadly, over recent years more and more, Chief Justice Roberts has been playing games with the court to achieve the policy outcomes he desires.”

Before the court’s current term, Roberts had joined the four liberal justices in a 5-4 decision only five times, lawyer Adam Feldman, who runs the Empirical Scotus website, told Reuters.

In the most recent term, Roberts has been in the majority in all 11 cases in which the court was split 5-4, Feldman found, and in the majority in 52 of 53 total rulings.

“He is clearly the court’s pivot point,” Gillian Metzger, a Columbia Law School professor, told Reuters. “Put simply, it is truly the Roberts court now.”

Legal analysts warned that no one should mistake Roberts for a reborn progressive. The chief justice’s opinion in the Louisiana abortion case was “laden with hints that, in a future case, he is likely to vote to restrict – or even eliminate – the constitutional right to an abortion,” Ian Millhiser wrote at Vox.

In *Citizens United v FEC* (2010), the Roberts court opened political races to a flood of money from anonymous donors with narrow agendas and bottomless pockets. And in perhaps his most infamous ruling, *Shelby County v Holder* (2013), Roberts advanced the unaccountable notion that the US had beaten racial discrimination at the ballot box.

Roberts seems to have a sense of history. But this term doesn’t signal an end to his conservative jurisprudence

Joyce Vance

The Shelby County ruling released counties with histories of voter discrimination from federal oversight imposed by the 1965 Voting Rights Act. Writing on the eve of a new round of aggressive voter suppression efforts by Republicans, Roberts said that “nearly 50 years later, things have changed dramatically” and “the tests and devices that blocked ballot access have been forbidden nationwide for over 40 years”.

“Roberts seems to have a sense of history,” tweeted Joyce Vance, former US attorney for the northern district of Alabama. “It will be called the Roberts court. But this term doesn’t signal an end to his conservative jurisprudence.”

But Roberts has proven sufficiently unpredictable to cause fretting in conservative legal circles, who were further nonplussed that Neil Gorsuch, a supposedly bulletproof conservative appointed by Donald Trump, joined with Roberts this month and wrote the ruling that affirmed anti-discrimination protections for LGBTQ people.

“Chief Justice Roberts and the four liberal members of the court have struck down a law and signaled to abortionists that not only are they exempt from the most basic medical standards and safety requirements, but that the abortion industry’s bottom line is more important than women’s health and safety,” the Heritage Foundation president, Kay C James, said after Monday’s ruling.

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Roberts was credited with being an institutionalist after his ruling on healthcare, which was widely seen as an effort to protect the court itself. In defending the justice system, Roberts has gone so far as to rebuke Trump, bristling at his characterization of a judge who rejected his migrant asylum policy as an “Obama judge”.

“We do not have Obama judges or Trump judges, Bush judges or Clinton judges,” Roberts said in 2018. “What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.”

The chief justice's mild demeanor still seems to mask a mystery. After the abortion ruling, the novelist Curtis Sittenfeld tweeted: "Does one of you want to write the novel about John Roberts' innermost thoughts or should I?"