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# John Roberts aborts conservative jurisprudence yet again

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Chief Justice John Roberts has put another shiv in the ribs of judicial conservatives, again abandoning intellectual consistency while doing the bidding of social progressives.

By concurring in a ruling that a Louisiana abortion regulation is unconstitutional, Roberts contradicted his own stance from a case just four years earlier.

In today's case, *June Medical Services v. Russo*, the four consistently liberal judges ruled that Louisiana may not, as a health precaution, require that abortionists possess "admitting privileges" to a nearly hospital in case something goes wrong with the operation. The four generally conservative justices dissented, saying the Fifth Circuit Court of Appeals was correct in ruling that the Louisiana law was constitutionally acceptable.

Roberts, in a separate concurring opinion, broke the tie in the liberals' favor. He did so not because he agreed with his liberal colleagues on substance, but because he was (he said) upholding the doctrine of "stare decisis," roughly meaning "let the it stand as decided." Under stare decisis, if a new case involves the same legal issue as an old one, courts will ordinarily apply the same standard that prevailed in the earlier case. At the Supreme Court level, this sometimes applies *even if a majority of justices now disagree with that ruling.*

In this instance, Roberts said that because the high court had ruled in the 2016 case of *Whole Women's Health v. Hellerstedt* that a nearly identical Texas law was an "undue burden" on abortion rights and thus unconstitutional, therefore the Louisiana law must be invalid as well.

There is no denying that stare decisis is important. Society depends on the stable, consistent interpretation of its laws and the Constitution. Yet there's also no denying that justices are sometimes correct to ignore stare decisis an overturn precedent when the prior decisions are clearly wrong.

The great 1954 anti-segregation case, *Brown v. Board of Education,* involved an explicit rejection of stare decisis, because it specifically (and rightly) overturned the vile, segregationist 1896 decision in *Plessy v. Ferguson.*

Deciding when and how to ignore stare decisis is, well, a judgment call. Still, some principles apply. One common principle is that the longer a decision has remained in place, the stronger the deference it is owed. Yes, sometimes it takes decades to realize error, but generally speaking, society's "reliance interests" grow stronger the longer a ruling has stood. It's easier for the body politic to overturn a new legal understanding than one that has been relied on for decades, with other laws and regulations growing up around it.

Here's where Roberts' intellectual inconsistency is maddening. The *Whole Women's Health* case was decided a mere four years ago. That's not much time for an entire body of state and federal statutes to grow up around it. If it was an erroneous decision then, as he believed at the time, then surely it should be overturned now, before its tentacles reach further and further into regulations and practices. Right?

Just four years ago, Roberts was on the losing side of that case, holding that the Texas law in question should indeed be allowed to stand. So why not stick to his guns and say the same about the Louisiana law at issue in *June Medical Services?*

If Roberts were a stickler for stare decisis, that would be one thing. The simple fact is, he is not. In at least three major cases, he has openly rejected stare decisis by directly over-ruling prior Supreme Court precedent. Those cases were the *Citizen's United campaign-finance case*, the *Janus case on public sector unions*, and the *Knick* case involving private property rights.

Yet when contentious social issues are at play, Roberts is now treating stare decisis as almost sacrosanct. For him, it's a one-way ratchet: Prior court rulings of a purely economic or regulatory nature are fair game for overturning; but once the court has moved "leftward" on an issue such as abortion or transgenderism, Roberts claims his hands are tied even if he thinks the court's initial interpretation was wrong.

Ilya Shapiro, the tremendously respected director of constitutional studies at the Cato Institute, used a series of Tweets to blast "Roberts' capricious application of stare decisis." Shapiro is right. Roberts for ten years hasn't really been doing the law; he's doing what will keep the Supreme Court in good standing with semi-moderate elements of the coastal elites. It's political positioning of the sort courts should not engage in.

"Maybe Roberts ought to stop playing 87-dimensional chess and just call the legal balls and strikes," Shapiro wrote. Exactly.