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## **Questions surround start of new Supreme Court term**

**How will Sonia Sotomayor vote? Is John Paul Stevens soon to retire? Will John Roberts and Samuel Alito be more unabashedly conservative? The term begins Monday.**

By [Warren Richey](#) | *Staff writer of The Christian Science Monitor*

WASHINGTON

Transition is the word that perhaps best describes the US Supreme Court's 2009-10 term set to begin Monday.

The coming year offers an opportunity for court watchers to more clearly define the character of the emerging Roberts Court during Chief Justice John Roberts's fifth term on the bench. And it presents a chance far superior to the wishy-washy Senate confirmation hearings to finally learn something of the real Sonia Sotomayor, the high court's newest justice.

Will she be a liberal stalwart or a sometimes ally to the conservatives? If so, in which cases?

The term already includes potential blockbuster cases examining the applicability of Second Amendment gun rights to state and local governments, campaign-finance regulations, life sentences for juveniles, and whether Congress violated the separation of powers when it created an independent accounting oversight board.

The court's options will reveal more than just legal winners and losers. How these disputes are analyzed and decided by the justices will offer legal scholars important clues about the evolving dynamics within the nation's highest court.

In addition to the arrival of a new justice, Justice John Paul Stevens's decision to hire only one law clerk (instead of the usual four) for the 2010-11 term has sparked speculation that he intends to leave the court in June.

Among key trends to watch will be whether Chief Justice Roberts and Justice Samuel Alito decide to put an unabashedly conservative stamp on the high court by joining their conservative colleagues to boldly overturn liberal legal precedents despite earlier pledges of a preference for judicial minimalism.

The broad internal dynamics at the Supreme Court are well established, with four liberal justices and four conservative justices. In the middle, often wielding a tiebreaking fifth vote, is Justice Anthony Kennedy, who leans conservative but sometimes swings to the liberal side in big, high-profile cases.

The arrival of Justice Sotomayor is not expected to significantly change this internal dynamic. Analysts say she should fit comfortably into the liberal wing and is expected to vote in ways similar to David Souter, the justice she replaced.

But she is not Souter. That has some liberals worried and some conservatives hopeful. Early in her legal career, Sotomayor worked as a prosecutor in New York City and later as a federal trial judge. Thus she knows intimately the challenges facing law enforcement officials.

When the high court hears a major case this term on whether police must give precise Miranda warnings before interrogating suspects, court watchers will want to see which Sotomayor votes in the case. Will it be the Latina civil rights activist concerned with defendants' rights, or the former big-city prosecutor concerned with helping the system fight crime and protect victims?

Thomas Goldstein, a lawyer who has often argued before the Supreme Court, says the departure of Mr. Souter and potential retirement of Justice Stevens could result in the court being nudged to the right. This is because their liberal replacements may not command the same respect that allowed Stevens and Souter to sometimes persuade Justice Kennedy to swing to the left.

"When that relationship is broken and you introduce somebody new into the equation, they can't possibly be as persuasive," Mr. Goldstein said in a recent panel discussion at the Cato Institute. "I think the ironic effect of new appointments replacing Justices Stevens and Souter will be to see the court gravitate to the right."

On Roberts and Justice Alito, analysts are awaiting the court's decision in a potential landmark campaign-finance case heard during a special argument session Sept. 9.

At issue in *Citizens United v. Federal Election Commission* is whether corporations can be barred from spending their treasury money on politically related advertisements during federal election season. The FEC, citing a 2002 campaign-finance law, said yes. *Citizens United*, a conservative nonprofit advocacy group, said the move amounted to government censorship.

Roberts's and Alito's positions in the case are being scrutinized because the justices were confronted with a similar issue in 2006 and refused to join their conservative colleagues in overturning the underlying legal precedents. Now they are being encouraged to take that step again.

Any move to strike down a portion of Congress's 2002 campaign-finance law and an earlier 1990 Supreme Court precedent will be portrayed by liberal critics as a particularly aggressive assertion of power by the high court's conservative wing. And it could be a defining moment for the emerging Roberts Court.

But it won't mean the conservatives will win every big battle at the Supreme Court. With the general 4-to-4 conservative-liberal split on hot-button cases, Kennedy continues to hold the power to decide many of America's most contentious disputes.

One such case involves two Florida teens who are serving life sentences for crimes they committed as

juveniles. At issue in *Graham v. Florida* and *Sullivan v. Florida* is whether the Eighth Amendment's ban on cruel and unusual punishment bars Florida from keeping the young men imprisoned for the rest of their lives without any possibility for parole. At age 13, Joe Sullivan raped and robbed a 72-year-old woman. Terrance Graham committed a series of armed robberies at ages 16 and 17.

Kennedy will probably be the deciding vote in the case. In 2005, he provided the key vote to declare the juvenile death penalty unconstitutional. The question in the case is whether the same reasoning applies in the circumstances of the two Florida teens.

Free speech is also on the court's radar this term. At issue in *US v. Stevens* is whether Congress has the power to ban possession and distribution of images of animal cruelty, such as pit bull fights. A Virginia man was charged under a 1999 federal statute for including footage of a dogfight in Japan (where such fights are legal) in a documentary film he produced and distributed in the US. The central question is whether the First Amendment protects such depictions.

In another Florida case, the justices have agreed to examine a property rights dispute in which owners of seafront property complain that the state used a beach renourishment program to strip them of their legal rights as waterfront property owners.

Under the Florida plan, sand was pumped onto the beach and the state claimed the new dry land for itself. Private waterfront property suddenly became landlocked.

A state appeals court ruled that the owners were due just compensation from the state, but Florida's Supreme Court upheld the state action.

In *US v. Comstock*, the court will examine a federal law that allows the government to hold alleged sexual predators indefinitely in protective custody once they are deemed to be "sexually dangerous," even after they have served a full criminal sentence.

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