



With abortion ruling, Roberts reasserts his role and Supreme Court's independence

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Every Supreme Court decision seems to confirm Chief Justice John G. Roberts Jr.'s pivotal role at the center of the court, and Monday's ruling on abortion showed that restrictions on a woman's right to the procedure for now will go only as far as the chief justice allows.

In a remarkable stretch of decisions over the past two weeks, Roberts has dismayed conservatives and the Trump administration by finding that federal anti-discrimination law protects gay, bisexual and transgender workers and stopping the president from ending the federal program that protects undocumented immigrants brought here as children.

In Monday's decision, he said the court's allegiance to honoring its past decisions meant striking down a Louisiana law almost identical to one from Texas that the court said in 2016 was unconstitutional. The twist is that Roberts was a dissenter then.

Supreme Court strikes down restrictive Louisiana abortion law that would have closed clinics

The votes do not mean that Roberts, nominated by President George W. Bush, has had an ideological conversion. But they do serve as a reminder of his 2018 rejoinder to President Trump that "we do not have Obama judges or Trump judges, Bush judges or Clinton judges."

Roberts's admirers speculate he was turned off by the attempt to have the court's 2016 decision overturned because the court's membership had changed with Trump's two appointments.

Too soon, said Richard Lazarus, a Harvard law professor who has known Roberts since law school days and who has taught summer courses with the chief justice.

“The chief’s clear message is that is not how justices do their work,” Lazarus said in an email. “It is a shot across the bow at presidential candidates who campaign with lists of nominees based on the assumption that, if confirmed, they will of course necessarily vote based on the preferences of the majority who supported that candidate.”

Trump has no patience for legal intricacies. The Supreme Court is all about them.

Roberts has sought to defend the court’s independence, and his votes often seem intended to keep the court from moving too quickly to the right, even if that is where he is more comfortable.

“I find it hard to explain his body of work without some theory that he’s playing a long political game,” said Daniel Epps, a law professor at Washington University in St. Louis. “He wants to push the law to the right, but is extremely careful not to do things that will make the court too much of a political focal point, and thus hurt its ability to shape the law longer-term.”

It seems beyond dispute that Roberts is now the justice in the center, the role that retired justice Anthony M. Kennedy once played. And, like Kennedy, Roberts is finding the middle can be a lonely place.

No other justice joined his opinion Monday, and his position brought little praise. Liberals searched his words with suspicion; conservatives expressed exasperation.

“What a disappointment Chief Justice John Roberts has turned out to be,” said Penny Vance, president of the conservative Concerned Women for America.

Louise Melling, deputy legal director for the American Civil Liberties Union, praised the outcome but indicated it was a small favor.

“How perverse that things are such we dance over the court not overruling a precedent from just four years ago,” she said in a tweet.

That precedent, Roberts wrote, is what shaped his position in the current case.

“The legal doctrine of stare decisis requires us, absent special circumstances, to treat like cases alike,” Roberts wrote in concurring with the decision. “The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore Louisiana’s law cannot stand under our precedents.”

Supreme Court strikes down Texas abortion clinic restrictions

Ilya Shapiro of the libertarian Cato Institute was another who thought Roberts was sending a message, but not in a good way.

He said that Roberts was applying a “capricious” application of stare decisis and that overturning previous decisions had not stood in his way in other cases, such as *Citizens United v. Federal Election Commission*, which opened unlimited election spending by corporations and unions.

“But a very recent 5-4 decision in which he dissented apparently carries more weight,” Shapiro wrote in a statement. “Maybe Roberts ought to stop playing 87-dimensional chess and just call the legal balls and strikes.”

Epps, the Washington University professor, said the court’s other conservative justices don’t have the same incentives for compromise as Roberts does, or the same inclinations. “They vote for the outcome they prefer in each case as it comes, as I read them,” he said.

Carol Sanger, a law professor at Columbia who closely follows abortion jurisprudence, said Roberts’s opinion was a “civics lesson.” But in giving abortion rights activists a win, he took a little back, she said.

He rejected the liberals’ approach of weighing the burdens and benefits of restrictions in deciding whether a law is legal, she said, something that had been helpful for those fighting restrictions.

And Roberts noted that this case did not call on the court to reconsider its cases that established and then reinforced the constitutional right to abortion.

“I don’t think he was inviting one,” Sanger said of the passage. “I don’t think he wants to offer an invitation yet.”

The sharp divisions in the decision provide motivation to both sides of the issue. Democrats pointed out the closeness of the win, and the importance of the coming presidential election. Two of the justices in the majority — Ruth Bader Ginsburg and Stephen G. Breyer — are in their 80s.

Abortion opponents vowed to redouble their efforts.

Marjorie Dannenfelser, president of the antiabortion Susan B. Anthony List, called the decision a “bitter disappointment.”

“Today’s ruling reinforces just how important Supreme Court judges are to advancing the pro-life cause,” she said in a statement. “It is imperative that we reelect President Trump and our pro-life majority in the U.S. Senate so we can further restore the judiciary, most especially the Supreme Court.”

Lazarus, the Harvard professor, said he found Roberts’s decision to be the opposite of that.

“What I expect put the chief off is the idea of one political party — and again it could have been either one — so overtly trying to manipulate the court as if the justices were partisan legislators,” Lazarus wrote in the email.

“Here, the notion that as soon as they replace Kennedy off the court, they will go right back to the court and confidently expect that the vote will be different. As would be fair to expect if the court were a legislature.”