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Supreme Court Decisions in Review (Part 2)

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Abstract

"While the Court generally leaned conservative, there were several important decisions that progressives would herald as well."

Posting about recent Supreme Court decisions from *In All Things* - an online journal for critical reflection on faith, culture, art, and every ordinary-yet-graced square inch of God's creation.

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Supreme Court Decisions in Review (Part 2)

Donald Roth

In the first part of this article series, I reflected on several decisions that were discussed in my video; today we will examine other important cases that were not highlighted, and I will wrap up the series with some reflections on the term as a whole.

Important Cases that didn't make the Video

Appointment Clause Cases: There were a number of cases this term dealing with the extent and limitations on the President's authority to appoint (and remove) officials within the Executive Branch. The most important case among these was ***Seila Law v. Consumer Financial Protection Bureau***. This case was especially important because it raised the potential of dismantling the relatively new CFPB. Ultimately, this did not happen; however, the unique design of the CFPB's leadership was rejected. Specifically, the CFPB is led by a single person appointed by the President for a five year term, and that person cannot be removed except for certain reasons. The Court rejected this last restriction, viewing it as an unconstitutional delegation of Executive power. Instead, the President must be able to remove the Director of the CFPB at will, just like with all other executive agencies headed by a single person.

June Medical Services v. Russo: This case will end up being a historical footnote, but it had the potential to be a blockbuster. It involved challenges to the requirement that Louisiana doctors have admitting privileges at a local hospital in order to perform abortions, a restriction very similar to the one rejected in *Whole Women's Health v. Hellerstedt* in 2016. In fact, the similarities are so striking that many experts wondered if this case was being taken up in order to rewrite the rules from that case, perhaps even striking down the line of precedent running back to *Roe* altogether. Ultimately, Chief

Justice Roberts cast the crucial vote striking down the Louisiana law, and he did so based on his concern for how similar these two cases are and his respect for precedent, the idea that two factually similar cases should have similar results. What was striking is that that Roberts voted this way despite saying that he thought *Hellerstedt* was wrongly decided. Given that four of Roberts' more conservative colleagues signaled their readiness to significantly rethink the way abortion rights are considered, this is an issue that is likely to revisit the Court in coming terms.

New York State Rifle & Pistol Association v. City of New York: This is another case that also could have been much more significant than it ended up being. The case involved highly stringent conditions on certain New York City firearm permits that essentially prevented gun owners from taking their weapons to homes or practice ranges outside of the city. Once the city learned that the Supreme Court was taking this case, they changed their regulations and argued that this meant that there was no live controversy for the Court to decide. By a 6-3 majority, the Court agreed with this logic, dismissing the case. In dissent, Justice Alito pointed out that many states have been creatively interpreting the landmark *DC v. Heller* (2008) and *McDonald v. Chicago* (2010) cases, which made it clear that owning firearms for self-defense is a Constitutional right. A recent lawsuit instituted by New York's Attorney General seeking to dissolve the National Rifle Association only adds credence to Alito's concern that New York City's change of regulations may have been designed to thwart the Court's ability to review State's noncompliance with the precedent set by these cases. Given these developments, I think it likely that we'll see this issue taken up again by the Supreme Court in the near future.

What do we make of this term?

The "so what" of this term obviously varies depending on which issues are most dear to your heart, and there are many important, interesting, or even somewhat humorous (the Court upheld North Carolina's piracy of Frederick Allen's footage of the recovery of Blackbeard's ship) cases that I didn't have space to cover. However, this term provides valuable insight into questions of how we should think about the current makeup of the Court and how it is likely to rule.

Overall, the mainstream media narrative is that this is a very conservative Court. There has been a concerted movement among some Democratic partisans to cast this in such stark and political terms that it justifies "packing" the Court with enough additional justices to nullify the conservative voices. However, this term demonstrated how this narrative is simply untrue.

This term, the Court's decisions ended up aligning with general public opinion most of the time, and this cannot be attributed to the personal calculations of any one justice. While there has been some talk of Chief Justice Roberts as a "swing vote" between four liberals and four conservatives on the Court, this is a reductionist view of the Court's dynamics. In what little space I have left, I'd like to offer what I consider to be a more accurate paradigm of the Court's dynamics.

The Court is anchored by Justices Ginsberg and Sotomayor on the progressive wing, with Justices Thomas and Alito on the conservative side. It's important to note that we should not confuse "progressive" or "conservative" with "Democrat" and "Republican," as the confusion of party politics and judicial philosophy tends to obscure, rather than clarify. Beyond these four, Justices Breyer and Kagan lean generally progressive, but each have issues of concern that draw them away from voting in lock step with that leaning. Similarly, Justices Kavanaugh, Gorsuch, and Roberts all lean conservative, but they are also commonly the fifth vote that sides with the progressive justices in 5-4 decisions. In other words, there are four justices who are relatively predictable, but five have more moderated or complicated judicial philosophies that result in a less uniform vote. This means that the Court *does* lean conservative, but not nearly as strongly or predictably so as commonly asserted.

When it comes to specific justices, this term revealed a few instructive trends. Both Justices Roberts and Kagan departed from their affiliative peers in deference to the issue of precedent. This is not surprising for a Chief Justice, who also typically bears the mantle of thinking about the broader prestige of the Court, but it is important to consider in both cases. Justice Gorsuch also staked out a position as a textualist, that is, someone who will defer to a more grammatical understanding of statutory text over considerations of legislative intent or other factors. While he shares this distinction with the late Antonin Scalia, Gorsuch follows a different path in this way, as his opinion in *Bostock* showed. In that case, Gorsuch rejected the idea of limiting the meaning of the term "sex" to what it meant at the time that Title VII was written. Instead, his reasoning essentially allows the term to evolve with the times, meaning that legislators could pass a law that eventually says something substantially different from what it said when it was passed. I believe that Gorsuch meant to pair this pro-LGBT+ ruling with an expanded concept of religious liberty entailed by the First Amendment, but his opinions formed concurrences, not majority reasoning in both cases that addressed that latter issue this term.

Overall, the brevity of this term did not in any way detract from its significance. While the Court generally leaned conservative, there were several important decisions that progressives would herald as well. With another term just around the corner, and a

number of significant cases on the docket for the upcoming term, it's likely that next June will be another dramatic Supreme Court season, too.