

October Term 2019

The Supreme Court Aligned With Public Opinion in Most Major Cases This Term

By [Adam Liptak](#) and [Alicia Parlapiano](#) Updated July 9, 2020

In the Supreme Court's first full term since the arrival of Justice Brett M. Kavanaugh [shifted it to the right](#), the justices confronted an unusually potent mix of political and social issues in the middle of both a presidential election year and a public health crisis.

[A recent survey](#) from researchers at Harvard, Stanford and the University of Texas suggests that the public aligns with the court's major decisions this term. A notable exception: The court ruled that the president may for now block disclosure of his financial records to Congress, but 61 percent of Americans do not believe he should be able to do so.

7-2

DECIDED
JULY 9

Presidential Power

In [Trump v. Mazars USA](#), the court ruled that Mr. Trump may for now block disclosure of his financial records to House committees.

LIBERAL BLOC

CONSERVATIVE BLOC



Sotomayor



Ginsburg



Kagan



Breyer



Roberts



Kavanaugh



Alito

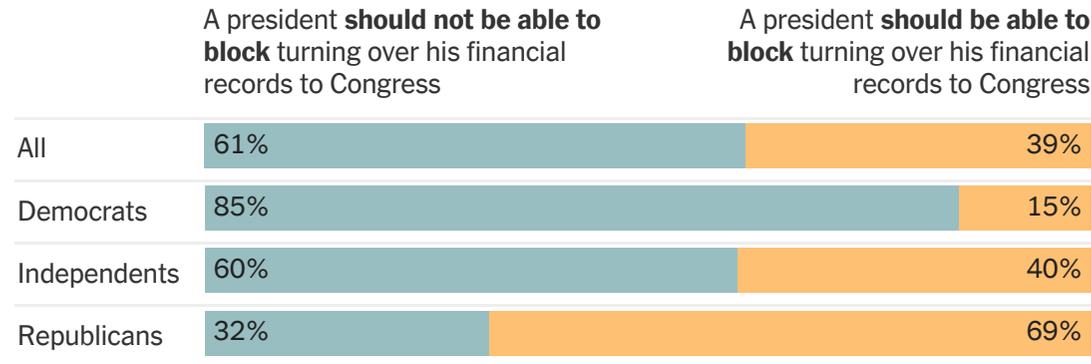


Gorsuch



Thomas

Where the public stands



Question wording: A congressional committee has requested records related to President Trump's taxes and finances from his activities prior to becoming president from his accounting firm and other companies. Some people believe that a president should be able to block such companies from turning over his financial records to congressional committees. Other people believe that the companies must comply with the congressional committee's request. What do you think? | Source: SCOTUSPoll

7-2

DECIDED
JULY 9

Presidential Power

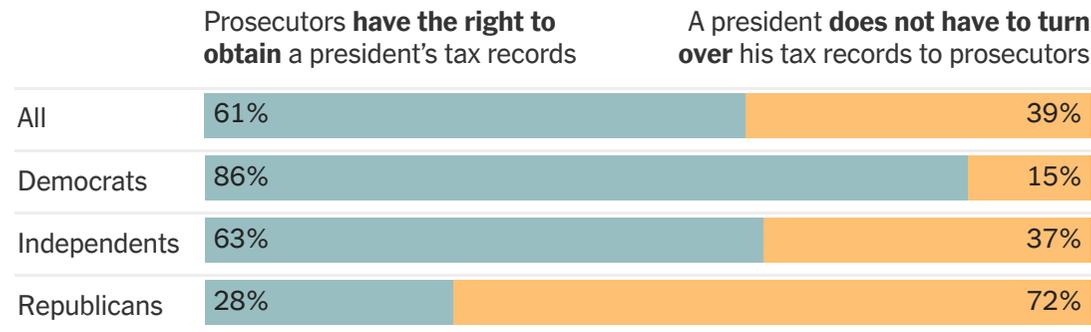
In [Trump v. Vance](#), the court ruled that Mr. Trump cannot block disclosure of his financial records to New York prosecutors.

LIBERAL BLOC

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Where the public stands



Question wording: New York state prosecutors are conducting a criminal investigation of President Trump. They have requested financial records related to Mr. Trump's taxes and finances from his activities prior to becoming president from his accounting firm and other companies. Some people believe that New York state prosecutors have the right to obtain a president's tax records. Others believe that a president does not have to turn over his tax records to state prosecutors. What do you think? | Source: SCOTUSPoll

5-4
DECIDED
JULY 9

Native Americans

In [McGirt v. Oklahoma](#), the court ruled that much of eastern Oklahoma is an Indian reservation.

LIBERAL BLOC

CONSERVATIVE BLOC



Sotomayor



Ginsburg



Kagan



Breyer



Roberts



Kavanaugh



Alito



Gorsuch



Thomas

7-2

DECIDED
JULY 8

Contraception

In [Little Sisters of the Poor v. Pennsylvania](#), the court ruled that the Trump administration can allow employers to deny contraception coverage to female workers on religious or moral grounds.

LIBERAL BLOC

CONSERVATIVE BLOC



Sotomayor



Ginsburg



Kagan



Breyer



Roberts



Kavanaugh



Alito

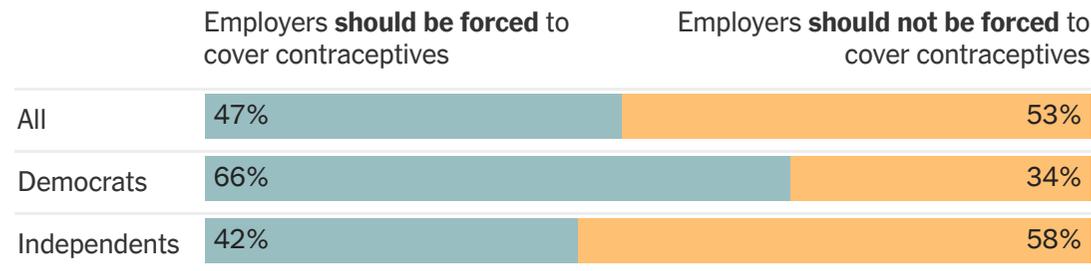


Gorsuch



Thomas

Where the public stands





Question wording: The Affordable Care Act requires that health insurance plans for women include coverage for contraceptives (birth control), but the Trump administration recently passed regulations that greatly expanded exceptions to this mandate to include exemptions on the basis of religious or “moral” objections. Some people think that employers should not be forced to cover contraceptives if they express either a religious or a “moral” objection. Other people think that these employers should be forced to cover contraceptives. What do you think? | Source: SCOTUSPoll

7-2

DECIDED
JULY 8

Religious Employers

In [Our Lady of Guadalupe School v. Morrissey-Berru](#), the court ruled that employment discrimination laws do not apply to teachers at religious schools.

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Sotomayor



Ginsburg



Kagan



Breyer



Roberts



Kavanaugh



Alito



Gorsuch



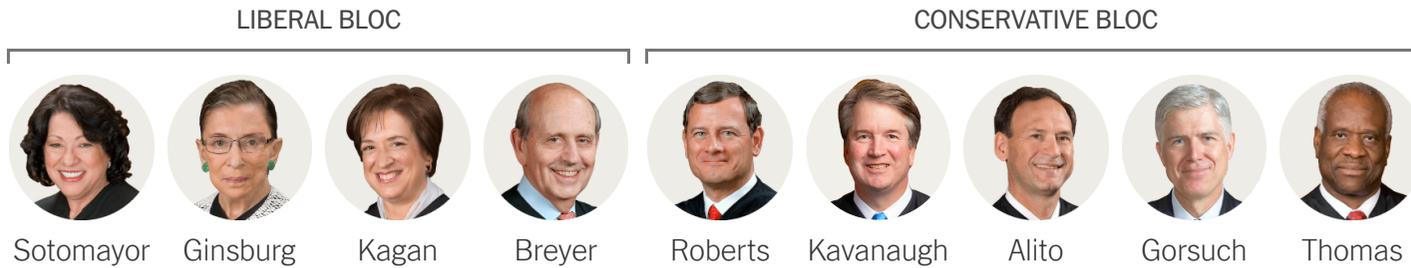
Thomas

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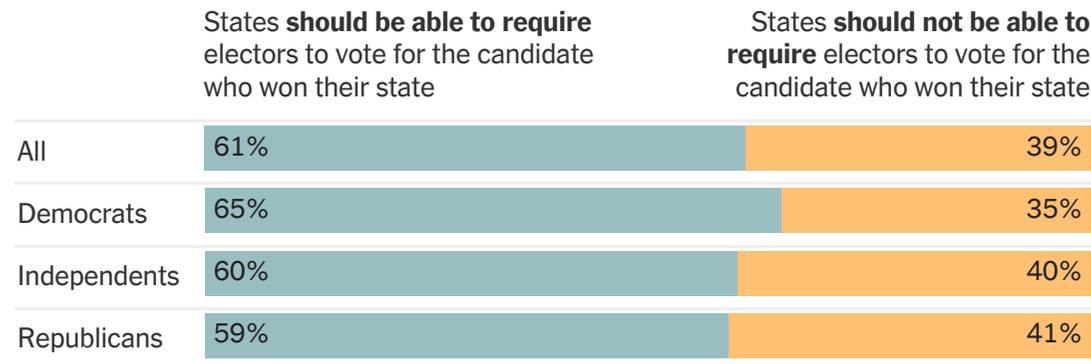
DECIDED
JULY 6

Electoral College

In [Chiafalo v. Washington](#), the court ruled that states may require members of the Electoral College to vote for the candidates they had pledged to support.



Where the public stands



Question wording: In the U.S., the president is chosen by the Electoral College, comprised of “electors” from all 50 states and the District of Columbia. Some people think that states should be able to require Electoral College electors to vote for the person who won the majority of votes in the state and not some other person. However, some people think that electors should be able to vote for whomever they want. What do you think? | Source: SCOTUSPoll

5-4

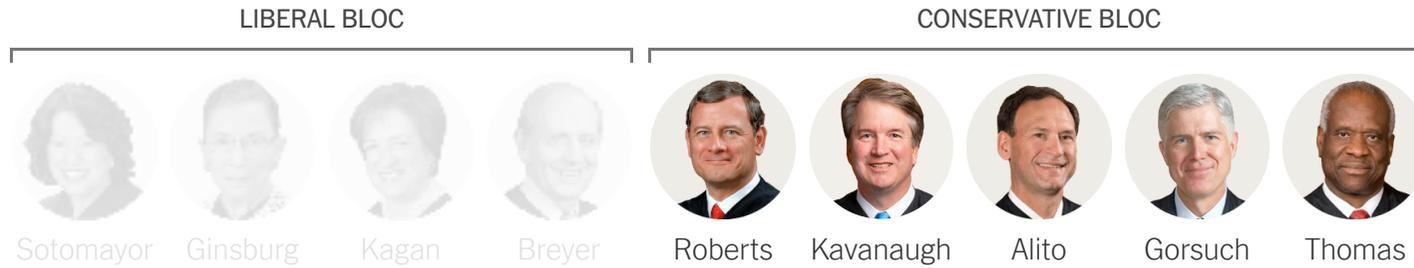
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Church and State

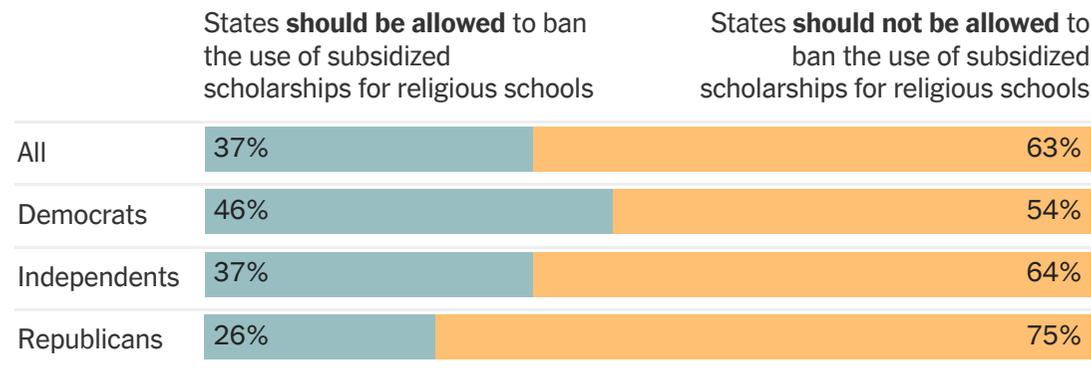
In [Espinoza v. Montana Department of Revenue](#), the court ruled that states may not exclude religious schools from programs that provide scholarships

JUNE 30

to students attending private schools.



Where the public stands



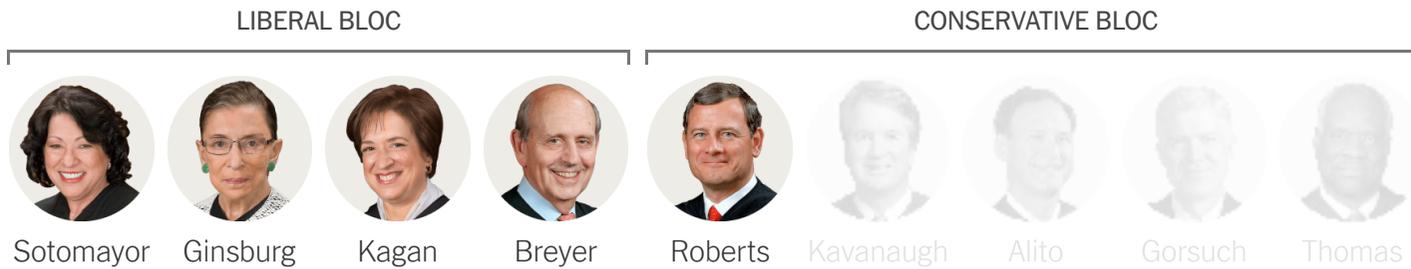
Question wording: The state of Montana has banned students from using taxpayer-subsidized scholarships to attend religious schools. Some people think this rule is an acceptable restriction. Other people think this rule violates people’s constitutional rights. What do you think? | Source: SCOTUSPoll

5-4

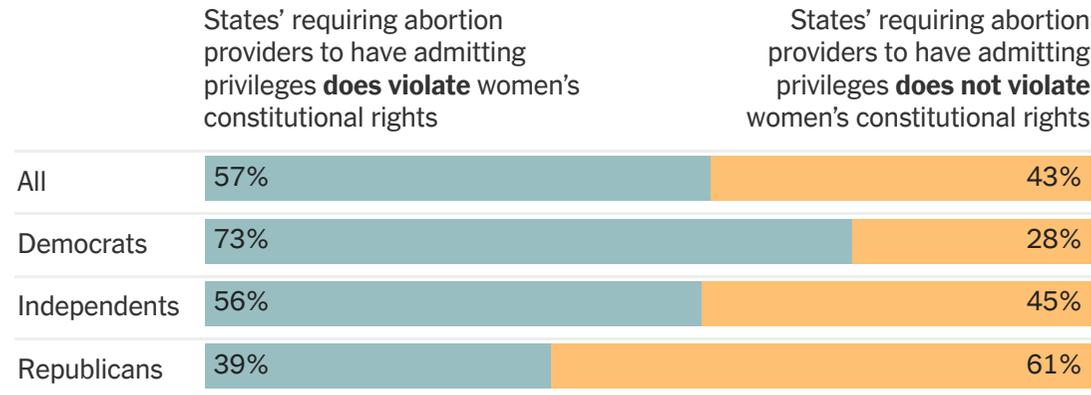
Abortion

In [June Medical Services v. Russo](#), the court ruled that a Louisiana law violated the Constitution when it required doctors performing abortions to have admitting privileges at nearby hospitals.

DECIDED
JUNE 29



Where the public stands



Question wording: Louisiana passed a law requiring abortion providers to be able to send patients to nearby hospitals, a practice known as “admitting privileges.” This law would mean that all abortion providers in the state except for one would be forced to close. Some people believe that Louisiana’s law violates women’s constitutional rights. Other people believe that the law does not violate women’s constitutional rights. What do you think? | Source: SCOTUSPoll

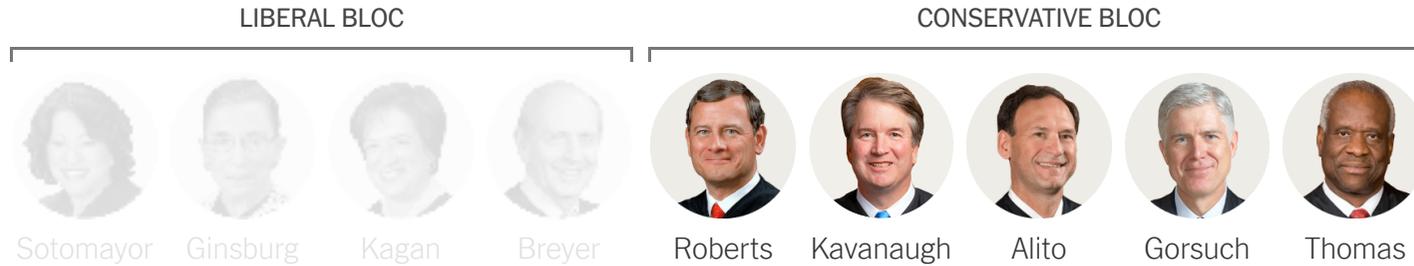
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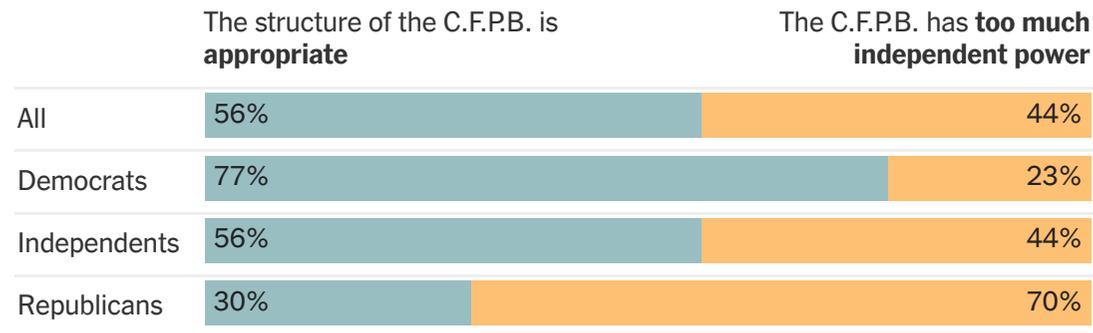
Independent Agencies

In [Seila Law LLC v. Consumer Financial Protection Bureau](#), the court ruled

that the president may fire the director of the Consumer Financial Protection Bureau without cause.



Where the public stands

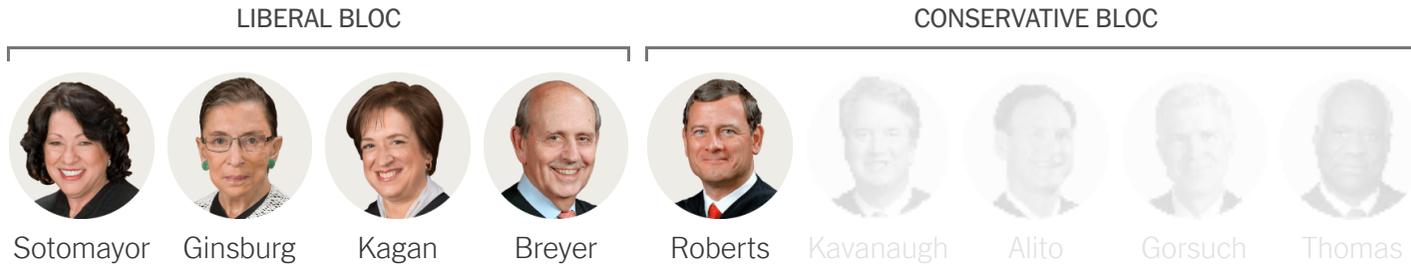


Question wording: In 2010, Congress established the Consumer Financial Protection Bureau (C.F.P.B.) as an independent consumer protection agency. In doing so, Congress severely limited the president's ability to remove the agency's director. Some people think the structure of the C.F.P.B. is appropriate. Others disagree and believe that this gave the C.F.P.B. too much independent power, since it is very difficult for the president to remove the agency's director. What do you think? | Source: SCOTUSPoll

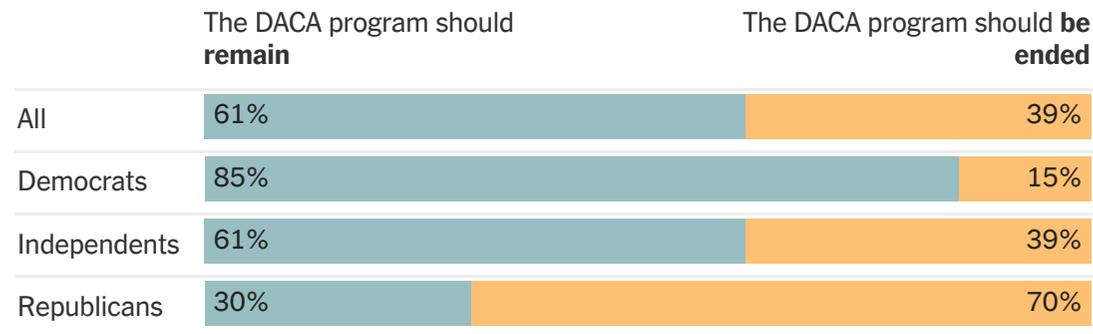
Immigration

In [Department of Homeland Security v. Regents of the University of](#)

[California](#), the court ruled that the Trump administration could not immediately shut down DACA, a program that shields about 700,000 young immigrants known as Dreamers from deportation and allows them to work.



Where the public stands

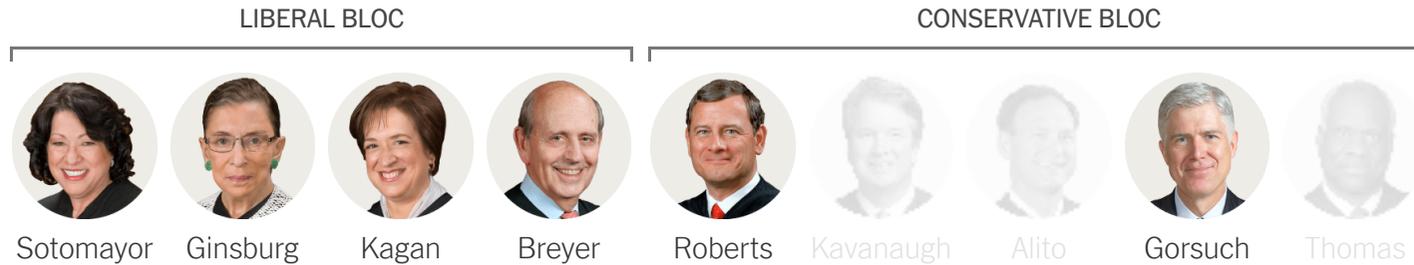


Question wording: Deferred Action for Childhood Arrivals (DACA) was created by President Obama to protect undocumented immigrants who have lived in the U.S. since childhood from deportation. President Trump wants the Department of Homeland Security to end DACA. What do you think? | Source: SCOTUSPoll

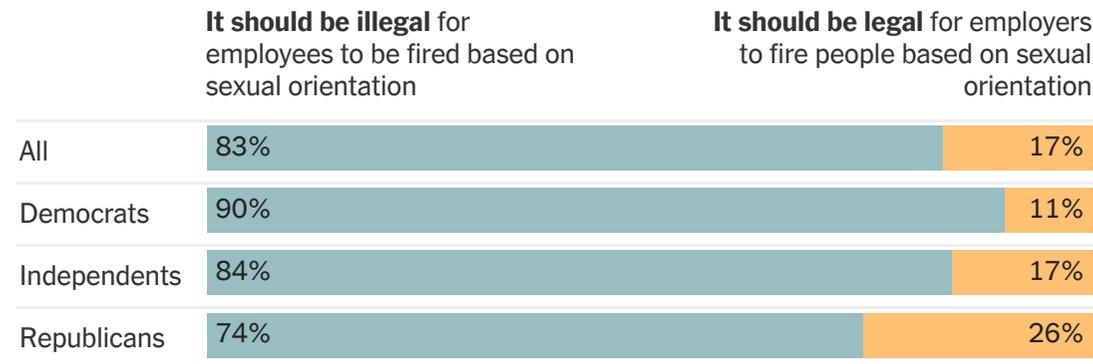
Gay and Transgender Rights

6-3
DECIDED
JUNE 15

The court ruled that the Civil Rights Act of 1964 [protects gay and transgender workers](#) from workplace discrimination. The court considered two cases concerning gay rights, *Bostock v. Clayton* and *Altitude Express v. Zarda*, and one case concerning transgender rights, *R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission*.



Where the public stands



Question wording: Some people believe that it should be illegal for employees to be fired based on their sexual orientation because it is discrimination on the basis of sex. Other people think that it should be legal because it is not discrimination on the basis of sex. What do you think? | Source: SCOTUSPoll

It should be illegal for employees to be fired for being transgender

It should be legal for employees to be fired for being transgender



Question wording: Some people believe that it should be illegal for employees to be fired for being transgender because it is discrimination on the basis of sex. Other people think that it should be legal because it is not discrimination on the basis of sex. What do you think? | Source: SCOTUSPoll

6-3

DECIDED
APRIL 20

Juries

In [Ramos v. Louisiana](#), the court ruled that the Constitution requires unanimous jury verdicts to convict defendants of serious crimes.

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CONSERVATIVE BLOC



Sotomayor



Ginsburg



Kagan



Breyer



Roberts



Kavanaugh



Alito



Gorsuch



Thomas

9-0

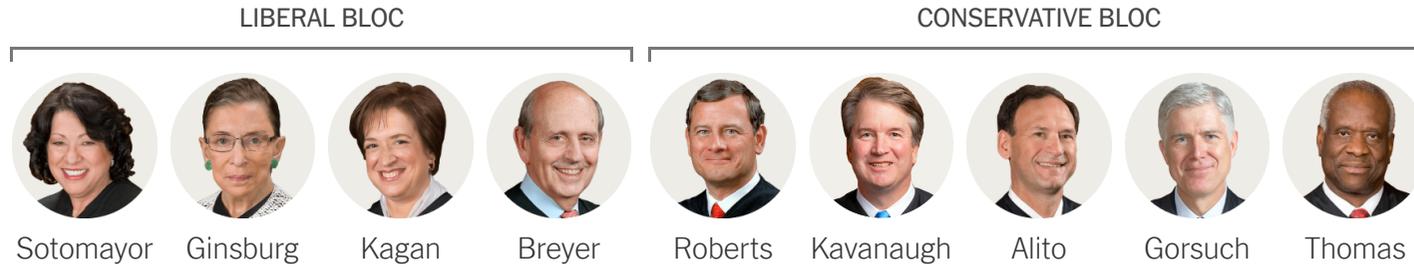
Public Corruption

In [Kelly v. United States](#), the court overturned the convictions of two associates of Chris Christie, the former governor of New Jersey, in the

DECIDED

MAY 7

Bridgegate scandal.



Polling data comes from the SCOTUSPoll project by Stephen Jessee, University of Texas at Austin; Neil Malhotra, Stanford Graduate School of Business; and Maya Sen, Harvard Kennedy School. It is based on a survey conducted online by YouGov from April 29 to May 12 using a representative sample of 2,000 American adults. The survey has a margin of error of 2.2 pct. pts.

Correction: July 9, 2020

An earlier version of this graphic misstated how two of the justices voted in two cases: Trump v. Mazars and Trump v. Vance. In both rulings, it was Justice Gorsuch who voted with the majority and Justice Alito who dissented, not the other way around.



A Blockbuster Turn to the Center Led by a Chief Justice at Center Stage

Doling out victories to both sides, the court led by Chief Justice John Roberts seemed to strive to avoid charges of partisanship.



Chief Justice John G. Roberts Jr. dissented only twice the entire term. Credit...T.J. Kirkpatrick for The New York Times

Adam Liptak, *The New York Times* National Edition, July 11, 2020, A13.

WASHINGTON — In an era of stark partisan polarization, Chief Justice John G. Roberts Jr. steered the Supreme Court toward the middle, doling out victories to both left and right in the most consequential term in recent memory.

The term, which ended Thursday, included rulings that will be taught to law students for generations — on [presidential power](#) and on [the rights of gay and transgender workers](#). The court [turned back an effort](#) to narrow abortion rights, and it [protected young immigrants known as Dreamers](#).

It expanded [the role of religion in public life](#), and it cut back on [the power of independent agencies](#). It took steps [to prevent chaos](#) when the Electoral College meets after the presidential election. And it handed Native Americans [their biggest legal victory](#) in decades.

A term that included just two or three such decisions would stand out. The term that just ended was a buffet of blockbusters.

It was also the term in which Chief Justice Roberts emerged as the member of the court at its ideological center, his vote the crucial one in closely divided cases, [a role no chief justice has played since 1937](#). He was in the majority in all but one of the term's 5-to-4 or 5-to-3 decisions.

But the chief justice was not alone in guiding the court toward the center: The percentage of 5-to-4 rulings dropped to a little more than 20, down from an average of 30 in the previous two terms.

Several major decisions were decided by 7-to-2 votes, including ones on [subpoenas for President Trump's financial records](#) and [the rights of religious employers](#). In some ways, the most prominent losers this term were the members of the court on its far right (Justices Clarence Thomas and Samuel A. Alito Jr.) and far left (Justices Ruth Bader Ginsburg and Sonia Sotomayor). They were the least likely to be in the majority in divided cases.

Chief Justice Roberts, 65, is a work in progress.

“This is the term where those of us who thought we understood John Roberts came to understand that we didn't,” said [Irv Gornstein](#), the executive director of Georgetown's Supreme Court Institute. “I know some are already spinning out theories to explain how his votes fit into a coherent judicial philosophy. But as it was happening, it was one shock after another.”

In [a two-week stretch last month](#), for instance, Chief Justice Roberts voted with the court's four-member liberal wing in cases on [abortion](#), [the Dreamers](#) and [job protections for L.G.B.T.Q. workers](#).

The trend is clear, said [Lee Epstein](#), a law professor and political scientist at Washington University in St. Louis. “He is drifting left at a statistically significant rate — and at a rate roughly resembling Souter's liberal turn in the 1990s,” she said.

Justice David H. Souter, who was appointed in 1990 by President George Bush, soon emerged over his two decades on the court as a leading member of its liberal wing, much to the distress of his conservative sponsors.

Chief Justice Roberts dissented only twice in the entire term, in cases on [unanimous juries](#) and [Native American jurisdiction over eastern Oklahoma](#). Put another way, he was in the majority in divided decisions at a higher rate than any chief justice since at least 1953. That and other conclusions in this article are drawn from [data compiled](#) by Professor Epstein, [Andrew D. Martin](#) of Washington University and [Kevin Quinn](#) of the University of Michigan.

The chief justice was in the majority in divided cases 94 percent of the time, trailed by Mr. Trump's two appointees: Justice Brett M. Kavanaugh, who voted with the majority 89 percent of the time, and Justice Neil M. Gorsuch, who voted with it 83 percent of the

time. Together, Professor Epstein said, those three justices make up the “soft middle” of the court.

In divided cases, the chief justice voted with Justice Kavanaugh 89 percent of the time, and Justice Gorsuch 77 percent.

Other rates of agreement were more striking. Chief Justice Roberts voted with Justice Elena Kagan, a member of the court’s liberal wing, 69 percent of the time. By contrast, he voted with Justice Alito 63 percent of the time — the same rate as with Justice Stephen G. Breyer, another liberal. And the chief justice voted with Justice Thomas just 54 percent of the time.

Over all, Chief Justice Roberts’s rate of agreement with Democratic appointees was 61 percent, up from 44 percent in the previous term.

Mr. Trump has had a bad run at the court over his time in office, becoming the first president since Franklin D. Roosevelt whose administration lost more cases than it won.

The result was that a court dominated by five Republican appointees, including two named by Mr. Trump, disappointed conservatives at a notable rate. “This term spectacularly frustrated the conservative ambition to transform the Supreme Court into the G.O.P.’s lap dog,” said [Justin Driver](#), a law professor at Yale.

The court did its work in the middle of a pandemic, [hearing arguments by telephone](#) and allowing live audio coverage, both firsts. It typically ends its term in late June, but this year it issued its last decisions in July, which has not happened since 1996.

The court [postponed arguments in 10 cases](#) to the term that starts in October, and it decided just 53 argued cases with signed opinions, the smallest number since the 1860s. During the Spanish flu epidemic in the term that started in 1918, the court [also postponed arguments](#) but nonetheless decided 163 cases, or more than three times as many as the current court.

It was hardly a uniformly liberal term. Eight of the 12 closely divided cases featured the classic lineup, with the five Republican appointees in the majority. In two, on abortion and immigration, Chief Justice Roberts voted with the four Democratic appointees. In one, on Native American rights, Justice Gorsuch voted with them. (In the last 5-to-4 decision, in [a copyright case](#), the alliances were scrambled.)

Justice Gorsuch drew fire from the right for his majority opinion in [Bostock v. Clayton County, Ga.](#), ruling that a landmark federal civil rights law protects L.G.B.T.Q. workers. The court’s four-member liberal wing and the chief justice joined his opinion in the 6-to-3 decision.

The [retirement in 2018 of Justice Anthony M. Kennedy](#), who wrote the majority opinions in all four of the earlier landmark gay rights decisions, had made that outcome uncertain.

“With Justice Kennedy’s departure, some court watchers justifiably feared that the movement toward accepting gay equality would stall, or perhaps even be reversed,” Professor Driver said. “Instead, in a historic decision, the court redoubled its egalitarian efforts and even afforded protection to the trans community. Until quite recently, such a decision would have been unfathomable.”

Justice Gorsuch’s opinion employed textualism, the mode of statutory interpretation that looks to the words of the law under consideration rather than the intentions of the lawmakers who voted for it.

Professor Gornstein said the reaction from the right was telling.

“Rather than celebrating the opinion as the high-water mark for textualism,” he said, “the conservative reaction has been to excoriate Justice Gorsuch as a betrayer of the conservative cause, leading to this question: Do conservatives want a justice who will follow the judicial method favored by conservatives, or do they want a justice who uses all the tools available to reach conservative policy results?”

[Sarah Harrington](#), a Supreme Court specialist with Goldstein & Russell, said Chief Justice Roberts has exerted a moderating influence on colleagues inclined to lurch right.

“I think we can expect that he will oversee a general shift toward more conservative rulings over time,” she said, “but he continues to pump the brake on that shift, adhering for now to recent precedent and requiring the federal government to follow administrative-law rules in order to implement its conservative policy agenda.”

An example of adherence to recent precedent was the chief justice’s vote in the 5-to-4 decision to strike down a Louisiana law on the ground that the court had invalidated the identical law from Texas just four years before.

An example of requiring the government to follow administrative law principles was Chief Justice Roberts’s majority opinion in a 5-to-4 decision rejecting the Trump administration’s justifications for trying to shut down a program protecting the Dreamers.

The court was exceptionally active in cases involving religious institutions, siding with them three times in a row. The court ruled that state programs supporting private schools [must include religious ones](#), that the Trump administration could allow employers with religious objections [to deny contraception coverage](#) to female workers and that [employment discrimination laws do not apply](#) to many teachers at religious schools.

Not all of the court’s actions are reflected in data on argued cases. The justices have also ruled on a series of emergency applications, some prompted by the pandemic. Chief Justice Roberts joined the court’s four liberals, for instance, in [a 5-to-4 order rejecting a California church’s challenge](#) to the state’s shutdown policies.

But he twice joined his conservative colleagues in similar orders making it harder to vote in [Wisconsin](#) and [Texas](#). “When it comes to state efforts to suppress the vote,” Professor Gornstein said, “the chief continues to vote in lock step with the rest of the right.”

Over all, though, Professor Epstein said, the court has provided a welcome contrast to the partisan turmoil around the nation.

“This term, most justices — and Roberts, in particular — modeled centrist, nonpartisan behavior for the country,” she said. “The data show a decline in 5-4 decisions, more agreement across party lines and a roughly 50-50 split in liberal and conservative decisions. The big cases, too, went ‘one for you, one for me,’ which may help bolster the court’s legitimacy.”

Alicia Parlapiano contributed reporting.

A Conservative Court and Trump's Own Appointees Declare Their Independence

The Supreme Court's dismissal of President Trump's claims of immunity was a reminder that institutional prerogatives still matter in Washington, even in a time of extreme partisanship.



On Thursday, the Supreme Court categorically dismissed President Trump's claim to "absolute immunity" against investigators seeking his tax returns .Credit...Samuel Corum for The New York Times

Peter Baker, *The New York Times* Online Edition. Published July 9, 2020;
Updated July 10, 2020.

WASHINGTON — At his [campaign rally last month](#) in Tulsa, Okla., [President Trump](#) ranked his Supreme Court appointments among his biggest achievements. “Two great Supreme Court judges!” he boasted. “So, we have two justices of the Supreme Court, Justice Gorsuch, Justice Kavanaugh, they’re great. They are — they’re great.”

He might not have felt so warmly on Thursday after Justices Neil M. Gorsuch and Brett M. Kavanaugh categorically dismissed his claim to “absolute immunity” from investigators seeking his tax returns. [In a pair of far-reaching rulings](#), Mr. Trump's two appointees joined a unanimous conclusion that the president went too far by pronouncing himself exempt from legal scrutiny.

The forceful decisions represented a declaration of independence not only by Mr. Trump's own justices but by the Supreme Court as an institution, asserting itself as an equal branch of government in the Trump era. No matter how often Mr. Trump insists that he has complete authority in this instance or that, the justices made clear on Thursday that there were in fact limits, just as they did in landmark executive power cases involving Presidents Richard M. Nixon and Bill Clinton.

That a conservative court including two of his own appointees would so decisively slap down a Republican president's expansive claim of constitutional power served as a reminder that institutional prerogatives still matter in Washington, even in a time of extreme partisanship. The court remains broadly conservative on important issues like religious freedom, but in cases on [gay rights](#), [immigration](#), [abortion](#) and now executive power, it has defied the president repeatedly in recent weeks.

By forging a unanimous consensus on Mr. Trump's immunity claim, [Chief Justice John G. Roberts Jr.](#) seemed to underline the point he made two years ago when he rebuked Mr. Trump by saying there were no "[Obama judges or Trump judges.](#)" Even on the overall votes on the two cases, both decided 7 to 2, he brought together four liberals and three conservatives, echoing the firm lines drawn by the court against other overreaching presidents.

"The truth is, President Trump's arguments for immunity were so sweeping that it was almost impossible for any justice to really embrace them," said Tom Goldstein, a prominent Supreme Court litigator and the publisher of [Scotusblog](#), a website that tracks the court.

Still, the justices cut Mr. Trump a break by sending the two cases back to lower courts to consider the merits of the subpoenas according to standards set by the court, additional litigation that will most likely keep his tax returns shielded from public view through the general election on Nov. 3.

Many legal experts predicted that Mr. Trump ultimately could still stave off congressional demands for his returns because the justices in *Trump v. Mazars USA* seemed dubious about their legitimacy and put the onus on the House to justify its need for the documents. But experts said Mr. Trump was likely to eventually lose the effort to block a New York prosecutor because the justices in *Trump v. Vance* put the burden on the president to come up with a compelling rationale for why the returns should not be turned over.

The president lashed out on Twitter minutes after the court's rulings, once again presenting himself as a victim. "This is all a political prosecution," [Mr. Trump wrote](#). "I won the Mueller Witch Hunt, and others, and now I have to keep fighting in a politically corrupt New York. Not fair to this Presidency or Administration!" "Courts in the past have given 'broad deference,'" [he added](#). "BUT NOT ME!"

In fact, Mr. Trump was the one seeking special treatment. Every president since Jimmy Carter has voluntarily released his tax returns, but Mr. Trump has refused since 2015 when he began running for the White House and said he was being audited. While he promised to make them public once the audit was over, he never has.

Five years later, the White House said on Thursday that he was still being audited but did not identify which years of tax returns were being reviewed. Once in office, every sitting president's returns are audited automatically, so if that remains his standard, he presumably will never release them voluntarily.

Similarly, Mr. Trump was seeking court protection beyond that enjoyed by any other president, claiming "absolute immunity."

That flew in the face of the principles set by the court when Mr. Nixon in 1974 lost his bid to shield tape recordings that implicated him in the Watergate cover-up. In that case, [U.S. v. Nixon](#), the court ruled against the president 8 to 0, including three of his appointees, Chief Justice [Warren E. Burger](#) and Justices [Harry A. Blackmun](#) and [Lewis F. Powell Jr.](#) A fourth appointee, Justice [William H. Rehnquist](#), recused himself because he had served in Mr. Nixon's Justice Department.

Twenty-three years later, the court [rebuffed Mr. Clinton's](#) immunity claim while in office against a sexual harassment lawsuit brought by Paula Jones, a former Arkansas state worker. Both of Mr. Clinton's appointees, Justices Ruth Bader Ginsburg and Stephen G. Breyer, rejected his position in the 9-to-0 decision in that case, [Clinton v. Jones](#).

Like his predecessors, Mr. Trump was unhappy with the rulings, although aides sought to calm him by assuring him that he could continue fighting in lower courts. But he expressed deep anger at Justices Gorsuch and Kavanaugh, seeing their votes as a betrayal, according to a person familiar with his reaction.

But the two justices only followed in the footsteps of their predecessors by rejecting the president who put them on the court. While each of them has generally sided with Mr. Trump since taking office, in this case they drew a line. Neither is personally close to Mr. Trump nor is either thought to be much of an admirer of the president, so some saw the decision as a way to distance themselves.

"My guess is their feeling about him is, 'We intend to be on this court long after he is a bad memory, and if his administration is about to come crashing down, we might as well have been people who weren't willing to completely blow up the Constitution for him,'" said Richard Primus, a constitutional scholar at the University of Michigan Law School, adding that they would do so only if they also saw it as "the right legal answer."

Mike Davis, who as a congressional aide helped confirm both of Mr. Trump's justices and now [leads the Article III Project](#) to support his other judicial nominees, said the president should not be too disappointed in his appointees.

"I would say, 'Mr. President, you appointed judges, not puppets, and they're going to follow the law and it doesn't matter who appointed them,'" Mr. Davis said. "Despite perceived setbacks here and there, President Trump's transformation of the federal judiciary is his biggest accomplishment."

Kayleigh McEnany, the White House press secretary, said she did not ask Mr. Trump specifically for his reaction to the position taken by Justices Gorsuch and Kavanaugh, but insisted that "his justices did not rule against him."

Like the president's other aides, she focused on the fact that the court sent the cases back to lower courts for further proceedings with standards for Mr. Trump to meet if he wants to avoid subpoenas, and she cited cautions in the ruling against fishing expeditions. "That language made it pretty clear that this was a win for the president," Ms. McEnany said. "The justices did not rule against him."

In a concurrence in the New York case, joined by Justice Gorsuch, Justice Kavanaugh flatly dismissed Mr. Trump's constitutional argument. "In our system of government, as this court has often stated, no one is above the law," he wrote. "That principle applies, of course, to a president."

But he added that "a court may not proceed against a president as it would against an ordinary litigant," and so state prosecutors must still justify their demands for documents like his tax returns. He said he would apply the same standard articulated in the Nixon case, that prosecutors have to provide a "demonstrated, specific need" for the information, a formulation that Chief Justice Roberts did not adopt in his majority opinion.

Justice Kavanaugh's position perhaps should not come as much of a surprise. While known as an advocate of executive authority, he expressed reverence for the Nixon ruling during his confirmation hearings in 2018, calling it "one of the greatest moments in American judicial history."

"I would say all the people who opposed Kavanaugh on the grounds that he somehow believed in an imperial presidency and thought the president is above the law ought to reconsider and apologize for how incorrectly they read his past," said Carrie Campbell Severino, the president of the Judicial Crisis Network, a group that supports conservative judicial nominees. "This is totally consistent with what he's said before."

Liberal activists, however, were hardly rushing to give him much credit. "The claim of absolute immunity was too far out there to endorse with a straight face," said Brian Fallon, the executive director of Demand Justice, a progressive group fighting Mr. Trump's judicial nominations. "It is hardly reassurance about the types of justices that Kavanaugh and Gorsuch are."

Justices Gorsuch and Kavanaugh have been supportive of the Trump administration, but not across the board. Justice Kavanaugh has voted for the position espoused by the administration 67.6 percent of the time, making him the second-most reliable ally behind Justice Samuel A. Alito Jr., according to figures compiled by Adam Feldman, a statistician for Scotusblog. Justice Gorsuch has agreed with the administration's point of view 56.1 percent of the time, making him fifth, behind Justice Clarence Thomas and Chief Justice Roberts.

Justice Gorsuch has [broken with Mr. Trump](#) other times in recent weeks. He wrote the majority opinion last month establishing that [federal civil rights law bars workplace discrimination against L.G.B.T. workers](#), and he wrote [another majority opinion released on Thursday](#) ruling that much of eastern Oklahoma falls within an Indian reservation.

Mr. Trump has attacked Chief Justice Roberts for his [votes against the president's positions](#) in recent weeks, but not his own appointees up until now. Ms. McEnany said some of the rulings of recent weeks bolster the president's determination to remake the judiciary. "We need more conservative justices on the court," she said. "That's been the big takeaway."

Maggie Haberman contributed reporting from New York.

A Chief Justice With the Power Of a Swing Vote

Chief Justice Roberts has replaced Justice Anthony M. Kennedy as the member of the Supreme Court at its ideological center, and his vote is now the crucial one in closely divided cases.



Chief Justice John G. Roberts Jr. in February before the president's State of the Union address at the Capitol. Credit...Pool photo by Leah Millis

Adam Liptak, *The New York Times* National Edition, July 1, 2020, A1, A16.

WASHINGTON — In a series of stunning decisions over the past two weeks, Chief Justice John G. Roberts Jr. has voted to [expand L.G.B.T.Q. rights](#), [protect the young immigrants known as Dreamers](#) and [strike down a Louisiana abortion law](#). In all three decisions, he voted with the court's four-member liberal wing.

On Tuesday, he joined his usual conservative allies in a 5-to-4 ruling that [bolstered religious schools](#).

The decisions may be hard to reconcile as a matter of brute politics. But they underscored the larger truth about Chief Justice Roberts: 15 years into his tenure, he now wields a level of influence that has sent experts hunting for historical comparisons.

“Roberts is not only the most powerful player on the court,” said Lee Epstein, a law professor and political scientist at Washington University in St. Louis. “He’s also the most powerful chief justice since at least 1937.”

An incrementalist and an institutionalist, the chief justice generally nudges the court to the right in small steps, with one eye on its prestige and legitimacy. He is impatient with legal shortcuts and, at only 65, can well afford to play the long game.

Taking the place of Justice Anthony M. Kennedy, [who retired in 2018](#), at the court's ideological center, Chief Justice Roberts's vote is now the crucial one in closely divided cases. To be both the chief justice and the swing vote confers extraordinary power.

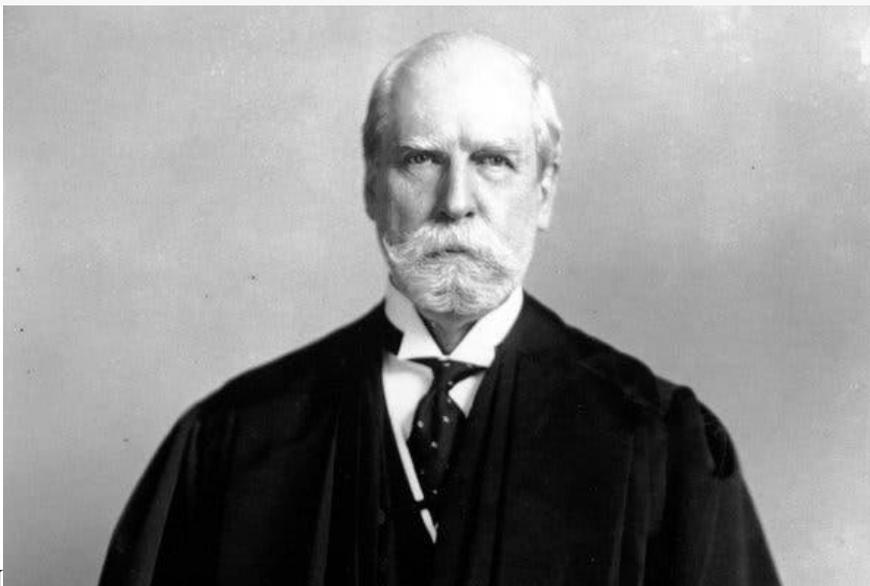
His pivotal role on the court could be fleeting. Were President Trump able to appoint a replacement for Justice Ruth Bader Ginsburg, who is 87, or Justice Stephen G. Breyer, who is 81, the chief justice would almost certainly be outflanked by a conservative majority on his right.

A President Joseph R. Biden Jr., on the other hand, may have fewer opportunities to reshape the court in the short term. Replacing Justices Ginsburg or Breyer with another liberal would not alter the court's ideological balance or the chief justice's influence.

And that would mean Chief Justice Roberts would continue to assign the majority opinion when he is in the majority, which these days is almost always. He uses that power strategically, picking colleagues likely to write broadly or narrowly and saving important decisions for himself.

In his first 14 terms, he was in the majority about 88 percent of the time. So far this term, that number has shot up to 98 percent, Professor Epstein found. "Even more stunning," she said, "is that Roberts voted with the majority in 97 percent of the non-unanimous decisions, compared to his average of 80 percent. This is the best showing by a chief justice since at least the 1953 term."

But this may be the most striking statistic: He has been in the majority in every one of the 11 rulings decided by 5-to-4 or 5-to-3 votes [so far this term](#). No chief justice has been in the majority in every closely divided case over an entire term since Chief Justice Charles Evans Hughes in the term that ended in 1938 — and that was in only four cases.



Chief Justice Charles Evans Hughes in 1933. He faced clashes with President Franklin D. Roosevelt. Credit...Associated Press

Chief Justice Roberts has spoken admiringly of Chief Justice Hughes and his deft management of a clash with President Franklin D. Roosevelt. It arose in 1937, when Roosevelt, unhappy with Supreme Court decisions striking down his New Deal programs, announced a plan to add justices to the court.

“One of the greatest crises facing the Supreme Court since *Marbury v. Madison* was F.D.R.’s court-packing plan,” Chief Justice Roberts said in 2015 at New York University, “and it fell to Hughes to guide a very unpopular Supreme Court through that high-noon showdown against America’s most popular president since George Washington.”

“There are things to learn from it,” Chief Justice Roberts said, and he has seemed to apply those lessons to his relationship with Mr. Trump, who has attacked the very idea of judicial independence.

Chief Justice Roberts was appointed by President George W. Bush in 2005, and he was, back then, thought to be a reliable product of the conservative legal movement. Over the years, he occasionally disappointed his supporters and allies, notably in twice voting to [sustain the Affordable Care Act](#) and in [rejecting the Trump administration’s efforts](#) to add a question on citizenship to the census.

But those disappointments do not compare to the fury that followed the recent decisions. Conservatives said the chief justice has abandoned principle in an effort to protect the court’s reputation — and his own — from accusations that it is a political institution.



Chief Justice Roberts gave a talk on Chief Justice Hughes in 2015 at N.Y.U.Credit. .Richard Perry/The New York Times

“Americans hoping for justice for women and unborn babies were let down again today by John Roberts,” said Senator Tom Cotton, Republican of Arkansas. “The chief justice may believe that he’s protecting the institutional integrity of the court, but in reality, his politicized decision-making only undermines it.”

Conservatives said they suspected the chief justice was acting at least partly based on a distaste for Mr. Trump, who has for years lashed out at federal judges who rule against him and his policies. They cited the chief justice’s majority opinions rejecting the administration’s rationales in the cases on the census and the Dreamers.

A pair of cases concerning Mr. Trump’s efforts to block disclosure of his financial records are among those that remain to be decided by the court this term. They will test Chief Justice Roberts’s leadership, and his votes in them will add important details to the portrait of him that has emerged thus far.

Chief Justice Roberts has tangled with the president before, issuing an extraordinary statement in 2018 after Mr. Trump criticized a ruling from an “Obama judge.”

“We do not have Obama judges or Trump judges, Bush judges or Clinton judges,” the chief justice said. “What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for.”

In other settings, the chief justice has insisted that the justices do not act as partisans. “We don’t work as Democrats or Republicans,” he said in 2016.

Richard J. Lazarus, a law professor at Harvard, said Monday’s abortion decision vindicated Chief Justice Roberts’s statements.

“The chief is sending a broader message to both parties, and this time in this case it is the Republicans who take the hit,” Professor Lazarus said. “But the message would be the same if it were the Democrats and their favored position had lost.”

The message was this, Professor Lazarus said: “You cannot expect us to behave like partisan legislators.”

The abortion case concerned a Louisiana law that was essentially identical to one from Texas that the court had struck down just four years ago, before Mr. Trump appointed two new justices. In dissent in 2016, Chief Justice Roberts had voted to uphold the Texas law.

Professor Lazarus said he suspected the chief justice was offended by the idea that a change in the composition of the court should warrant a different outcome in what was, at bottom, the identical case.

This term, Professor Epstein found, Chief Justice Roberts has voted with liberal and conservative justices at roughly equivalent rates.

“In a day and age of ‘fear and loathing’ between opposing partisans,” she said, “this is pretty extraordinary.”



Chief Justice Roberts was appointed in 2005 by President George W. Bush. Credit Doug Mills/The New York Times

Mike Davis, a former Senate Judiciary Committee counsel who is now head of the conservative Article III Project, said he was puzzled by Chief Justice Roberts's votes.

“The chief rules on these cases in such a way where he believes he is protecting the integrity of the Supreme Court,” Mr. Davis said. “And only the chief understands the method to this madness.”

But he added that the rulings would motivate conservative voters in the coming election to back Mr. Trump and Republican Senate candidates in hopes of cementing a more reliable conservative majority on the court.

“Over the next four years, the president of the United States could appoint four or more justices to the Supreme Court,” Mr. Davis said. “And that is why it is so critically important that conservatives turn out and vote.”

Professor Lazarus said that sort of thinking missed a distinction between politics and law.

“The chief's clear message is that is not how justices do their work,” he said. “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.”

Carl Hulse contributed reporting.