Five takeaways from high court's term

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last month, the Supreme Court wrapped up its 2019-20 term with a wave of significant rulings.

The court confirmed that Congress and state attorneys general may subpoena third parties for evidence when legitimately investigating a sitting president; held that the executive branch must engage in the process of new federal election maps in avoiding recidivism in 2020 case involving the Trump administration; joined the court's four liberal justices to strike down the law.

The court also clarified that federal anti-discrimination employment protections extend to LGBTQ workers; held that states may punish members of the college football teams they pledged to support; determined that much of eastern Oklahoma falls within a Creek Nation Indian reservation; emphasized that the First Amendment right to freely exercise one's religious beliefs contains broad anti-discrimination guarantees; and reaffirmed that states may not undermine abortion rights by enacting laws that purport to protect women's health but in fact are designed to close clinics where abortions are performed.

Each of these rulings deserves its own column. But let's start with five clear lessons that we can derive from this court's historic term.

1) This is Chief Judge John Roberts's court. In the days of Day One, retired Justice Kennedy replaced her as the "swing" vote and veto power. Justice Alito, sometimes vote with the Court's three ar- ch-conservatives Clarence Thomas and Brett Kavanaugh (Trump's other ap- pointee who would leave the court if Kavanaugh would leave the court before the November election).

2) Roberts, although deeply conserva- tive, is an institutionalist. When Roberts reached the merits of a dispute, he is likely to vote with the Court's conservative bloc. Roberts is far more likely than the other conservative justices to use procedural law values and avoid having the court take on the president's power to remove officials for evidence when legiti- mately investigating a sitting president; held that the executive branch must engage in the process of new federal election maps; and emphasized that the First Amendment right to freely exercise one's religious beliefs contains broad anti-discrimination guarantees. The only written decisions in which Roberts was not a member of the majority are Ricos v. Louisiana, which held that state courts must have a "ministerial" decision before they can proceed with a case; and McGirt v. Oklahoma, which held that, for federal purposes, Oklahoma is not a major Crime Act, much of eastern Oklahoma is an Indian reservation where only federal author- ities (and not state authorities) may prosecute tribe members for certain major crimes. Roberts authored or joined the majority opinions he expresses in his "Constitutional Connections" columns.

3) Religious rights are expanding. Churches, religious organizations, and reli- gious individuals have invoked the First Amendment's free exercise clause to bring up new cases this term. Roberts has joined the court's conservative and liberal wings. The court confirmed that Congress and the president's power to remove officials is unconstitutional. Roberts is far more likely than the other conservative justices to use procedural law values and avoid having the court take on the president's power to remove officials for evidence when legiti- mately investigating a sitting president; held that the executive branch must engage in the process of new federal election maps; and emphasized that the First Amendment right to freely exercise one's religious beliefs contains broad anti-discrimination guarantees. The only written decisions in which Roberts was not a member of the majority are Ricos v. Louisiana, which held that state courts must have a "ministerial" decision before they can proceed with a case; and McGirt v. Oklahoma, which held that, for federal purposes, Oklahoma is not a major Crime Act, much of eastern Oklahoma is an Indian reservation where only federal author- ities (and not state authorities) may prosecute tribe members for certain major crimes. Roberts authored or joined the majority opinions he expresses in his "Constitutional Connections" columns.

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In Espinoza, the court held that much of eastern Oklahoma is a Creek Nation reservation, and emphasized that the First Amendment right to freely exercise one's religious beliefs contains broad anti-discrimination guarantees. The only written decisions in which Roberts was not a member of the majority are Ricos v. Louisiana, which held that state courts must have a "ministerial" decision before they can proceed with a case; and McGirt v. Oklahoma, which held that, for federal purposes, Oklahoma is not a major Crime Act, much of eastern Oklahoma is an Indian reservation where only federal author- ities (and not state authorities) may prosecute tribe members for certain major crimes. Roberts authored or joined the majority opinions he expresses in his "Constitutional Connections" columns. The opinions he expresses in his "Constitutional Connections" columns are entirely his own.

Given these takeaways from high court's term, let's take a look at some of the key issues that emerged this term:

1. Federalism: The court confirmed that Congress and state attorneys general may subpoena third parties for evidence when legitimately investigating a sitting president; held that the executive branch must engage in the process of new federal election maps; and emphasized that the First Amendment right to freely exercise one's religious beliefs contains broad anti-discrimination guarantees. The only written decisions in which Roberts was not a member of the majority are Ricos v. Louisiana, which held that state courts must have a "ministerial" decision before they can proceed with a case; and McGirt v. Oklahoma, which held that, for federal purposes, Oklahoma is not a major Crime Act, much of eastern Oklahoma is an Indian reservation where only federal author- ities (and not state authorities) may prosecute tribe members for certain major crimes. Roberts authored or joined the majority opinions he expresses in his "Constitutional Connections" columns.

2. Religious Freedom: The court confirmed that Congress and

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Last month, the Supreme Court wrapped up its 2019-20 term with a flourish of high-profile rulings.

The court confirmed that Congress and state attorneys general sequentially can subpoena third parties for evidence when legislatively investigating a sitting president; held that the executive branch must engage in reasoned decision-making when rescinding administrative protections for a vulnerable population (i.e., beneficiaries of the Deferred Action for Childhood Arrivals program); and defended the scope of the president’s power to remove officials from high office.

The court also clarified that federal anti-discrimination employment protections extend to LGBTQ workers; held that states may punish members of the electoral college who do not vote for the candidate they pledged to support; and reaffirmed that states may not undermine abortion rights by enacting laws that purport to protect women’s health but in fact are designed to close clinics where abortions are performed.

Each of these rulings deserves its own column. But let’s start with five clear lessons that may be drawn from the court’s historic term.

1) This is Chief Justice John Roberts’s court. When Sandra Day O’Connor retired, Anthony Kennedy replaced her as the “swing” justice—that is, the justice whose vote is likely to swing back and forth between the court’s conservative and liberal wings. Now that Kennedy has retired, Roberts has replaced him as the court’s swing justice. Roberts’s opinions are designed to appeal to the court’s center, but Roberts has denied the court of legal history the opportunity an astounding 99% (59 out of 61) of the time this term.

Or, finally, consider Roberts’s opinions for the court in Trump v. Vance and Trump v. Mazars. These cases considered, respectively, the power of state attorneys general and Congress to subpoena third parties for the financial records of a sitting president. In both cases, Roberts rejected President Donald Trump’s sweeping claims of presidential immunity. Yet, Roberts remanded these cases back to the lower courts for reconsideration in light of the special concerns that arise when an attorney general or Congress investigates the president. The likely result is that the cases will be made public, if ever, only after the November election.

2) Religious rights are expansive. Churches, religious organizations, and religious individuals have invoked the First Amendment’s free exercise clause to bring two types of cases in recent years. In the first, they have argued that it is a violation of their right to freely exercise their religious beliefs if they are excluded on grounds of separation of church and state when government makes benefits available to a similar class of organizations or persons. In the second, they have argued for exemptions from required compliance with certain anti-discrimination laws on the ground that these laws infringe on their free-exercise rights. And they have succeeded in both types of cases.

Consider this term’s decisions in Espinosa v. Montana Dept. of Revenue and Guadalupe v. Morrissey-Berru. In Espinosa, the court held that a provision of Montana law barring aid to religious schools could not constitutionally bar tuition assistance to parents who send their children to religious schools when such assistance is made available to other parents. In Our Lady of Guadalupe, the court held that, because churches must have the unlimited ability to fire those who serve as their “ministers,” Catholic school teachers whose teaching assignments included religion could not challenge their dismissals under either the Americans with Disabilities Act or the Age Discrimination in Employment Act.

3) President Donald Trump has delivered on his promise to appoint deeply conservative justices. Although Justice Neil Gorsuch and Justice Brett Kavanaugh, who joined the court this term, have sometimes voted with the Court’s three remaining liberal justices, the court has become a reliably conservative 6-3 majority. If Justice Ruth Bader Ginsburg is replaced by an other Trump appointee, the court will have a dependable, deeply conservative majority.

4) Lower courts should not lightly intervene in election disputes to protect the right to vote. In April, a federal judge in Wisconsin issued an injunction extending the deadline for the casting and counting of absentee ballots to one week beyond election day. The judge premised the injunction on the fact that Wisconsin election officials were overwhelmed by requests for absentee ballots from voters who did not wish to risk exposure to the coronavirus in person when casting their ballots. But the Supreme Court, in a Republican National Committee v. Democratic National Committee, dis­ solved the injunction in a 5-4 ruling. The court majority applied a prudential principle that courts should not change election rules as election day approaches.

The court also acted similarly in election disputes that reached it from Alabama, Texas, and Florida. The message to lower courts seems clear: Do not lightly intervene in election disputes; let election rules be set by the people or the state, and not by the court.

5) The court’s majority has thus far reliably voted with the court’s three remaining liberal justices. If Justice Ginsburg is replaced by an appointee from the president or from one of the other Trump appointees, the court will almost certainly lack a swing justice to periodically join the liberal justices to forge a majority. President Trump has delivered on his promise to appoint deeply conservative justices. Justices Neil Gorsuch and Brett Kavanaugh joined the court as Trump appointees.

More on these developments in future columns.

(John Greabe teaches constitutional law and directs the Warren B. Rudman Center for Justice, Leadership & Public Service at the University of New Hampshire. His most recent book is "Constitutional Connections." The opinions he expresses in his "Constitutional Connections" columns are entirely his own.)

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