Five takeaways from high court's term

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five takeaways from high court's term

last month, the Supreme Court wrapped up its 2019-20 term with a flurry 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 genuine good-faith decision-making in rescinding administrative protections for a vulnerable population (i.e., beneficiaries of the Deferred Action for Children (DACA) program); and defined 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 voted for candidates they pledged to support; determined that much of eastern Oklahoma falls within a Creek Nation Indian reservation; emphasized that the First Amendment right to free exercise of a religion's 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 we can draw from the court's historic term.

1) This is Chief Judge John Roberts's 10th term. On a Day O'Connor retired, Anthony Kennedy replaced her as the "swing" justice. Roberts has the unlimited ability to fire those who would like to swing back and forth between the court's conservative and liberal wings. Now, the president who nominated him has replaced him as the court's swing justice. Roberts authored or joined the majority opinions in five clear victories.

The only written decisions in which Roberts was not a member of the majority were Ramos v. Louisiana, which held that state's two race- and gender-imbalanced juries violate the constitutional equal protection clause; and McGirt v. Oklahoma, which held that, for collateral attacks, the state's Major Crimes Act, much of eastern Oklahoma is an Indian reservation where only federal authorities (and not state authorities) may prosecute tribe members for certain major crimes.

2) Roberts, although deeply conserva

3) Religious rights are expanding. Church, religious organizations, and religious individuals have invoked the First Amendment's free exercise clause to bring two types of legal claims. In the first, they have argued that it is a violation of their right to freely exercise their religious beliefs if the laws are excessively burdensome. In the second, they have argued for exemptions from required compliance with certain anti-discrimination laws on the ground that these laws intrude on their religious exercise of their religion. And they have succeeded in both types of cases.

Consider this term's decisions in Espinosa v. Montana, where the court struck down a law denying children of undocumented immigrants access to public education; and the parents of these children argued that federal anti-discrimination laws to LGBTQ workers; and the aforementioned McGirt, which held that much of eastern Oklahoma is a Creek Nation reservation), he and Justice Brett Kavanaugh (another Trump appointee) have shown that the court, when it comes to receiving public interest. The length limit is 250 words, and all letters

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LETTERS POLICY

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John Greabe
Constitutional Connections

fundamental administrative law principles by failing to provide reasoned explanations for their actions. Neither opinion held that the administration was pursuing an unlawful end; both held that the means used to achieve their ends were reasonable.

Consistently, Roberts has joined the court's four liberal justices to strike down the administration's efforts to add a citizenship question to the 2019 case involving the Trump administration's actions to rescind administrative protections for children. Roberts authorized or joined the majority in the 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 involve yourselves in election disputes on the ground that state officials are failing to sufficiently protect voting rights.

If Justice Ginsburg is replaced by another Trump appointee, the court will have a dependable, deeply conservative majority. The court recently announced that Justice Ruth Bader Ginsburg, who is 87, has been prescribed home-care treatment of cancer. If Justice Ginsburg leaves the court and President Trump succeeds in appointing a replacement, 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 nominating judges with a fifth deeply conservative vote even if Chief Justice Roberts were to continue to vote with the Court's three remaining liberal justices.

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 School of Law, Durham.)
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L ast month, the Supreme Court wrapped up its 2019-20 term with a flurry of significant rulings.

The court confirmed that Congress and state attorneys general sequentially subpoenaed third parties for evidence when legislation studied investigating a sitting president; held that the executive branch must engage in reason decision-making when revising administrative protections for a vulnerable population (i.e., beneficiaries of the Deferred Action for Childhood Arrivals (DACA) 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; determined that much of eastern Oklahoma is an Indian reservation where only federal authorities (and not state authorities) may punish members of the electoral college who do not vote for the candidate they pledged to support; and affirmed 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 each of 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—i.e., the justice most 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 opinion an astounding 97% (59 out of 61) of the time this term.

2) Roberts, although deeply conservative, sometimes votes with the Court's three relatively liberal justices. Although Justice Neil Gorsuch recently joined 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 involve yourself in election disputes. Nor should you look to the court majority to provide strong guidance on how to handle such disputes.

3) Religious rights are expanding. Church, 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 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 intrude 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 in church-related religion could not challenge their dismissals under either the Americans with Disabilities Act or the Age Discrimination in Employment Act.

4) Church-state lines remain clear. Church and the religious stand on largely equal footing with all others when it comes to receiving public benefits. But they are exempted from certain generally applicable laws when applying for those benefits. The court majority applied a prudential principle that courts should not change election rules as election day approaches.

5) 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.

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fundamental administrative law principles by failing to provide reasonable explanations for their actions. Neither opinion held that the administration was pursuing an unlawful end; both held that the means used to adopt the policy change were unlawful.

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.

Justices Roberts and Kavanaugh investigated the president. The likely result is that the record will be made public, if ever, only after the November election.

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