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## Roberts Pulls Supreme Court to the Right Step by Step

By ADAM LIPTAK

WASHINGTON — Viewed in isolation, the Supreme Court term that just ended had elements of modesty. The court declined to do away with affirmative action, gave Congress another shot at salvaging the Voting Rights Act and refused to find a constitutional right to same-sex marriage.

But glancing at an end-of term snapshot can be misleading. The more meaningful way to look at the court is as a movie, one starring Chief Justice John G. Roberts Jr. as a canny strategist with a tough side, and his eyes on the horizon. He is just 58 and is likely to lead the court for another two decades or more.

Chief Justice Roberts has proved adept at persuading the court's more liberal justices to join compromise opinions, allowing him to cite their concessions years later as the basis for closely divided and deeply polarizing conservative victories.

His patient and methodical approach has allowed him to establish a robustly conservative record while ranking second only to Justice Anthony Kennedy as the justice most frequently in the majority.

"This court takes the long view," said Kannon K. Shanmugam, a lawyer with Williams & Connolly in Washington. "It proceeds in incremental steps."

On Tuesday, when the court struck down a part of the Voting Rights Act, Chief Justice Roberts harvested seeds he had planted four years before. In his 2009 opinion, writing for eight justices, he allowed the Voting Rights Act to stand. But the price he exacted from the court's liberal wing was language quoted in Tuesday's decision that seems likely to ensure the demise of the law's centerpiece, Section 5, which requires federal oversight of states with a history of discrimination.

The chief justice helped plant new seeds on Monday, when seven justices, including two liberals, agreed to sign an opinion that over time could restrict race-conscious admissions plans at colleges and universities. Only the senior member of the court's liberal wing, Justice Ruth Bader Ginsburg, filed a dissent.

Last year, in the second-biggest surprise of his decision upholding President Obama's health care law, Chief Justice Roberts persuaded two liberal justices to join the part of his opinion allowing states to opt out of the law's expansion of Medicaid. That ruling has added significant complications to the rollout of the law.

Only the justices know their motives and arrangements, but there is a pattern here. The price of victory today for liberals in the Roberts court can be pain tomorrow.

There is more to the court's docket than the blockbusters that land in June. The term was as contentious as it was consequential, with almost 30 percent of the cases decided by five-justice majorities, compared with an average of 22 percent in recent years. (The statistics come from [Scotusblog](#), which produced [54 pages of data](#) within hours of the conclusion of the term.)

In lower-profile cases, the court's rulings continued to be good for business interests and bad for the Obama administration.

"We shouldn't lose sight of the court cementing its legacy as the most pro-business court in the modern era," said [Lee Epstein](#), who teaches law and political science at the University of Southern California and helped write [a recent study](#) of the Roberts court's business rulings.

The U. S. Chamber of Commerce had another successful year. The court cut back on class actions, favored arbitration and made it harder to sue the makers of dangerous drugs and employers accused of workplace discrimination.

"Anyone doubting that the most important story of the Roberts court is its business rulings has not been paying enough attention," said [Doug Kendall](#), president of the [Constitutional Accountability Center](#), a liberal group. "This term's 5-4 rulings, all favoring the chamber, move the law sharply to the right and to the great detriment of consumers, employees, and other Americans trying to get their day in court."

[Kate Comerford Todd](#), a lawyer with [the chamber's litigation unit](#), said the group's victories were routine and warranted.

"In the business cases in which the chamber filed this term," she said, "we did not see the court make new law. Instead, the court largely reaffirmed its prior decisions and rejected new attempts by the plaintiffs' bar to contort federal law and procedures to suit their purposes."

The Obama administration's victory in persuading the court to strike down the Defense of Marriage Act, or DOMA, was a repeat triumph for Solicitor General Donald B. Verrilli Jr., who also prevailed a year ago in the health care case. But his office's overall track record before the justices is weak.

"While some cases defy easy categorization," said [Adam Winkler](#), a law professor at the University of California, Los Angeles, "it's clear the administration had a tough time this year at the high court. The solicitor general usually wins nearly 70 percent of cases in which he is a party. This year, he won only 39 percent of those cases."

"Obama's poor overall record," Professor Winkler added, "is largely due to philosophical differences with the court's conservative majority."

The most closely divided cases featured classic ideological splits almost 70 percent of the time, with Justice Kennedy joining either the court's four liberals or its four conservatives. In ten of those cases, he leaned right. In six, he leaned left.

At the same time, 49 percent of the court's cases were unanimous, compared with an average of 43 percent in recent years. That was so in major [patent cases](#), where the court was authentically united, and in one [limiting human rights lawsuits](#) against corporations accused of complicity in human rights abuses abroad, where the justices were divided over the scope of the decision.

The odd mix of discord and harmony was in keeping with the difficulty of making collective sense of the run of major decisions this week.

"The bitter divisions, and doctrinal incoherence of the term as a whole, were in full display the moment [Justice Scalia](#) began reading his DOMA dissent, where he attacked the majority for ignoring 'our respected co-ordinate branches, the Congress and presidency of the United States' and stripping 'the power of the people to govern themselves,'" said [Neal K. Katyal](#), a former acting solicitor general in the Obama administration who is now with Hogan Lovells in Washington.

"As everyone in the courtroom knew," Mr. Katyal continued, "that was, of course, exactly what Justice Scalia had just done the day before by voting to strike down the landmark Voting Rights Act, one of the crown jewels of the civil rights movement."

Justice Scalia made another point in his dissent on Wednesday, saying the majority opinion meant that state bans on same-sex marriage are also doomed. That sort of prediction was completely at odds with the chief justice's approach, and he filed his own dissent. State bans, he said, are a different issue and for another day.

[Vikram D. Amar](#), a law professor at the University of California, Davis, said the differing tactics of the two conservative justices were telling.

"If you want to influence future cases, you point out the limited nature of today's holding," he said. "If you want to gain rhetorical points today, you exaggerate the effects of the holding."

Justice Scalia is an outlier on the current court. He is a man in a hurry who would rather score points than make plans.

In 2007, for instance, when Chief Justice Roberts [took a calculated step](#) toward limiting campaign finance regulation, Justice Scalia accused him [in a concurrence](#) of effectively overruling a major precedent "without saying so."

"This faux judicial restraint is judicial obfuscation," Justice Scalia said.

Three years later, building on the 2007 decision, the court issued its decision in [Citizens United](#), allowing unlimited corporate spending in elections. The chief justice had moved slower than Justice Scalia had wanted, but he got there.

In the last term, the court issued 73 signed decisions in argued cases, in line with recent terms and about half the number the court routinely issued two decades ago. Justice Kennedy was in the majority 83 percent of the time in divided cases, trailed by Chief Justice Roberts at 73 percent. Justice Scalia brought up the rear, at 58 percent.

Those statistics demonstrate that Justice Kennedy's vote continues to be the most valuable one. But he is 76 and is building his legacy, notably with Wednesday's major gay rights decision.

Chief Justice Roberts may have a different agenda, and his methodical assault on the Voting Rights Act is perhaps the most vivid illustration of his approach.

The decision issued on Tuesday nominally returned the fate of the law to Congress, but the chances that it will act are remote. As a practical matter, the key provision of the law is very likely dead.

In the decision, Chief Justice Roberts repeatedly quoted from his 2009 opinion. He took pains to note that eight members of the court, including its four liberals, had already agreed that "things have changed in the South" and that the voting law seemed at odds with principles of federalism and "equal sovereignty" among the states.

The liberal justices, he suggested, had joined him four years ago in building a time bomb with a very long fuse.