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The Roberts Court: An Unconventional 2020 U.S. Supreme Court Term

Monica Castillejos-Aragón,

J.S.D and LL.M, The University of California, Berkeley, School of Law; LL.B, ITAM Department of Law, Mexico, Program Manager - Rule of Law, KAS New York

With confirmation hearings for Judge Amy Coney Barrett underway three weeks ahead of the US elections, this analysis of the 2020 session of the United States Supreme Court highlights that Chief Justice John G Roberts aims to uphold the role of the Supreme Court as a fair and unbiased umpire.

The 2020 Supreme Court

"While many advocates on the left and right would like a Court that promotes their agenda, I do not want that and neither do the American people. What we must have, what our legal system demands, is a fair and unbiased umpire, one who calls the game according to the existing rules and does so competently and honestly every day. This is the American ideal of law."
Chief Justice Roberts[1]

Understanding the US Supreme Court qualifies as a complex endeavor, as Professor Laurence Tribe claims. "With a hand in nearly every major issues of our time, from privacy and affirmative action to gun rights and health care, the Court is inescapable." For Tribe, the judicial complexity relies on, among other factors, whether justices are achieving what the Constitution requires or justice demands[2]. Such complex endeavors have played out in this 2020 term in a critical time for the United States: An upcoming high-stake presidential election; an imminent judicial appointment to the country's highest judiciary after the passing of Justice Ruth Bader Ginsburg on September 18, 2020, and the compelling call on the Supreme Court to take up and decide, what the American legal profession calls "blockbuster" cases, including questions on abortion, immigration, employment discrimination, religion, the president's financial records, and additional questions on separation of powers[3]. All in times of an unprecedented global crisis because of the Covid-19 outbreak, and turbulent partisanship.

The 2020 Supreme Court is unconventional for various institutional and legal reasons. From an institutional perspective, the Court only decided 63 cases, which is the fewest number of cases reviewed since 1862 at the time of the Civil War. For the second time in history, the Court cancelled the March and April 2020 oral arguments calendars. The last time the Supreme Court proceeded similarly was in October 1918 during the Spanish flu outbreak[4]. The Court also held telephonic arguments and allowed the public to access live-broadcast oral argument sessions for the very first time. Most of the liberal opinions prevailed, particularly in highly contested cases. However, there is a common agreement among commentators, of what distinguished this term with others was the consolidation of the so-called "Roberts' Court." [5]

As discussed later in this article, Chief Justice John G. Roberts, unexpectedly, voted with the liberal majority in 96% of all the cases decided; dissented only twice in this term, and wrote the opinions of the most contested cases reviewed this year. "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," Liptak explains[6]. The Supreme Court's rules establish that when the Chief Justice votes with the majority, he would usually assign who writes the opinion. In this unique term, John G. Roberts elected to write the judicial opinions in landmark cases. His judicial opinions triggered different reactions from members of the Republican party to the extent they labelled him a "disappointment" for his critical and defining vote on many key issues[7].

From a legal standpoint, the 2020 Supreme Court term revived long-standing discussions rooted in the legal culture of this country. First, it addressed the notion of the judicial philosophy of the Supreme Court justices, and how such philosophy would, ultimately, impact the independence of one of the most powerful judiciaries in western democracies. Second, the strong deference to the *stare decisis*, or theory of precedent to decide highly controversial cases. Both debates will be elaborated further on.

Finally, this article prospectively discusses another recent development of the Supreme Court in 2020 in relation to the nomination of Judge Amy Coney Barret. Particularly, on the decisive role that Chief Justice John Roberts will play calling on to arbiter and preserve landmark Supreme Court decisions, as well as tipping the balance given the Court's foreseeable transition to a decidedly conservative majority.

Why does the idea of judicial philosophy matter to understand this Supreme Court term?

To understand the correlation between the notion of judicial philosophy and judicial independence, it is necessary to briefly refer to substantial portions of the judicial appointment process in the United States. On September 12, 2005, for example, during Judge John G. Roberts' confirmation hearing for his appointment as Chief Justice of the Supreme Court, members of the Senate Judicial Committee questioned the Committee's role, especially when inquiring about the candidate's political ideology. The notion of judicial philosophy is distinguished from political ideology. How judges interpret the Constitution's abstract principles will depend on two kinds of convictions: their ideological and their procedural convictions, including their opinion about the proper role of courts within the American political system. Together, these convictions define a judicial philosophy.[8]

At the beginning of the session, Senator Arlen Specter noted that "these hearings ought to be in substantive fact and in perception for all Americans, that all Americans can feel confident that the Committee and the full Senate has done its job. [...] I have expressed my personal view that it is not appropriate to ask a question about how the nominee would vote on a specific case, and I take that position because of the key importance of independence, that there ought not to be commitments or promises made by a nominee to secure confirmation."[9] However, both Democrats and Republicans recognize the right and the obligation to ask about the nominees' judicial philosophy. "Our proper role this is week is to determine whether Judge Roberts has the character, the legal ability and the judicial philosophy to fulfill his responsibilities." Republican Senator John Kyl told Judge Roberts[10].

A similar debate occurred with the recent confirmations of Judge Neil Gorsuch and Judge Brett Kavanaugh to the Supreme Court in 2017 and 2018. President Trump intended to cement a solid conservative majority on the bench. "As a deep believer in the rule of law, Judge Gorsuch will serve the American people with distinction as he continues to faithfully and vigorously defend our Constitution," the President said in 2017.[11] While presenting Judge Kavanaugh at the White House, the President described him as "one of the finest and sharpest legal minds in our time," and declared him a jurist who would set aside his political views and apply the Constitution "as written."[12]

The framers of the US Constitution shared a commitment to judicial independence and provided for federal judges to have proper measures of independence from the executive and legislative branches. The Constitution guaranteed that judges would serve "during good behavior" and would be protected from discretionary removal by a President who opposed their judicial philosophy, as well as from congressional retaliation against unpopular decisions. The principle of judicial independence, in fact, has always been a core political value in the United States.

Alexander Hamilton, for example, raised the need for a steady, upright, and impartial administration of the laws. "The complete independence of the courts of justice is peculiarly essential in a limited Constitution," Hamilton said in the Federalist 78.[13] When the Supreme Court issues opinions in which the justices argue over what the Constitution means and what role they should play in giving it life, they should do so impartially despite real, potential, or proffers of favor. Hamilton's proposition would, for example, enable judges to protect individual rights even in the face of popular opposition.

The idea of judicial philosophy becomes crucial to understanding the 2020 term. It has become the parameter, as presented in the hearings, to determine the degree of independence and absence of external influences on major cases, especially from the conservative wing of the Supreme Court.

The current Covid-19 crisis has represented an opportunity to test Hamilton's account. In the past moths, there has been much expectation on how the recently appointed conservative justices would vote on high profile cases brought before the Court. Scholarly data reveals that no two justices appointed by the same President have disagreed more in their first term together[14]. For instance, as Adam Feldman observes "Overall, [Justices Gorsuch and Kavanaugh] agreed about 70% of the time. In contrast, Justices Sonia Sotomayor, and Elena Kagan, both appointed by President Barack Obama, agreed more than 96% of the time in their first term. Chief Justice John Roberts agreed with Justice Samuel Alito, a fellow George W. Bush appointee, more than 90% of the time."[15] However, both Gorsuch and Kavanaugh departed from that trend and demonstrated that they do not share similar views when it comes to interpreting the law.

It is worth noting that some legal experts also reckoned that there were clear judicial trends to interpreting certain aspects of the law that, perhaps, would predominate in the following years. Epstein, Martin, and Quinn, for example, observed, "Judge Gorsuch, a federal appeals court judge in Denver, would be a reliable conservative, "voting to limit gay rights, uphold restrictions on abortion and invalidate affirmative action programs."

- **Employment Discrimination and LGBTQ rights**

Justice Gorsuch unexpectedly challenged the previous research, asserted his independence, and led the way on one of the most far-reaching LGBTQ rights rulings in the Court's history, protecting gay and transgender people from workplace discrimination.[16] In *Bostock v. Clayton County, Georgia*, the Supreme Court decided whether an employer can fire someone simply for being homosexual or transgender.[17] The majority said that the answer was clear. Justice Gorsuch led a 6–to–3 majority in declaring that gay and transgender workers are protected by Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, religion, national origin, and sex[18]. His ruling was joined by the Court's four liberals –Justices Ginsburg, Breyer, Sotomayor, and Kagan, and Chief Justice John G. Roberts Jr.

In this ruling, Justice Gorsuch wrote that "When sex plays a necessary and undisguisable role in the decision; that is exactly what Title VII forbids."[19]

- **Presidential Immunity for Subpoenas**

A similar trend occurred in two cases reviewing the scope of the presidential immunity of subpoenas. Justices Gorsuch and Kavanaugh adopted different views from the conservative wing of the Court. The first case that the Supreme Court decided was *Trump v. Vance*. In this case, the President argued that the Supremacy Clause gives a sitting President absolute immunity from state criminal subpoenas because compliance with those subpoenas would categorically impair a President's performance of his Article II functions[20]. The majority held that "no one doubts that Article II guarantees the independence of the Executive Branch." However, the majority noted that in the judicial system, "the public has a right to everyman's evidence." Since the earliest days of the Republic, "every man" has included the President of the United States. The President contended that the subpoena was unenforceable, but the Supreme Court granted certiorari to decide whether Article II and the Supremacy Clause

categorically precluded or required a heightened standard for the issuance of a state criminal subpoena to a sitting President. And finally, the majority concluded that "Two hundred years ago, a great jurist of our Court established that no citizen, not even the President, is categorically above the common duty to produce evidence when called upon in a criminal proceeding. We reaffirm that principle today and hold that the President is neither absolutely immune from state criminal subpoenas seeking his private papers nor entitled to a heightened standard of need."[21] In early precedents, the Supreme Court had established that Presidents may be subpoenaed during a federal criminal proceeding.[22] In 2020, the Court also extended that ruling to state criminal proceedings.

The second case decided in this area was *Trump v. Mazars USA, LLP*. In April 2019, three committees of the U. S. House of Representatives issued four subpoenas seeking information about the finances of the President, his children, and affiliated businesses. The House asserted that the financial information would guide legislative reform in areas ranging from money laundering and terrorism to foreign involvement in U. S. elections. The Court assessed whether the asserted legislative purpose warrants the significant step of involving the President and his papers. "'[Occasion[s] for constitutional confrontation between the two branches should be avoided whenever possible," the majority said.[23]Also, the majority noted nonetheless that "while we certainly recognize Congress's important interests in obtaining information through appropriate inquiries, those interests are not sufficiently powerful to justify access to the President's personal papers when other sources could provide Congress the information it needs."

Chief Justice Roberts wrote for the majority opinions in both cases, and both were decided by 7 to 2 votes. The Court's four liberal justices voted with him, as well as Justices Gorsuch and Kavanaugh, who also formulated concurring opinions. In summary, the Supreme Court blocked the House Democrats from accessing the President's financial records but ruled that the President is not immune from a subpoena for his financial documents from a New York prosecutor.

The Roberts Court and the Theory of Precedent

Courts in the United States operate on the principle of *stare decisis* (or the theory of precedent), which holds the idea that like cases should be decided alike. During his confirmation hearing, Chief Justice Roberts said that "judges have to have the humility to recognize that they operate within a system of precedent shaped by other judges equally striving to live up to the judicial oath [...]"[24] This principle provided a unique opportunity for Chief Justice Roberts to protect the image of the Court by invoking the theory of precedent as a mechanism to uphold the American values incorporated in landmark Supreme Court decisions, and which directly impact the rights of minority groups in this country.

The most relevant opinions can be summarized as such:

- **Abortion Rights**

In *June Medical Services LLC v. Russo*, the Supreme Court reviewed Louisiana's Act 620. This Act was identical to a law passed in Texas in 2016 (*Whole Woman's Health v. Hellerstedt)*. The Louisiana Act required any doctor who performs abortions to hold "active admitting privileges at a hospital . . . located not further than thirty miles from the location at which the abortion is performed or induced," and defined "active admitting privileges" as being "a

member in good standing" of the hospital's "medical staff . . . with the ability to admit a patient and to provide diagnostic and surgical services to such patient." Five abortion clinics and four abortion providers challenged Act 620 before it took effect. The plaintiffs argued that the Act was unconstitutional because it imposed an undue burden on the right of their patients to obtain an abortion. The Supreme Court concluded that the law, in fact, possessed a "substantial obstacle" to women seeking an abortion, and consequently imposed an "undue burden" on a woman's constitutional right to choose to have an abortion. The majority concluded that Act 620 violated the US Constitution, and the State arguments were unconvincing.[25]

June Medical Services was deemed a direct attack on the milestone 1973 decision *Roe v. Wade*. Louisiana authorities argued that the regulation was necessary for public health and safety, and that it did not place an undue burden on women. During the oral hearing, the litigant also argued that "this was a case about respect for precedents", which some commentators considered to be a statement particularly targeted Chief Justice Roberts[26]. As mentioned earlier, in 2016, an identical law had passed in Texas. However, the Supreme Court composition was different. Justice Kennedy was still at the Supreme Court, and the liberal majority struck down the Texan law.

In 2020, there was a perfect formula to overturn *Roe v. Wade*: Chief Justice Roberts had dissented in *Whole Woman's Health v. Hellerstedt* and raised concerns about the possibility of overturning the 1973 decision. This would greatly undermine women's rights and years of advocacy work and progress in this area. Also, *June Medical Services* would be the first abortion case that Justices Gorsuch and Kavanaugh would review, with a prevailing conservative majority in the Court.

Unpredictably, Chief Justice Roberts, wrote a concurring opinion, joining the liberal majority to strike down the Act. To support his vote, Chief Justice Roberts alluded to the dissent in *Whole Woman's Health* and noted that he continued to believe that the case had been wrongly decided.

Yet, he also expressed that the question in *June Medical Services* was not whether *Whole Woman's Health* was right or wrong, but whether to adhere to it in deciding the present case. "The legal doctrine of *stare decisis* requires us, absent special circumstances, to treat like cases alike. The Louisiana law imposes a burden on access to abortion just as severe as that imposed by the Texas law, for the same reasons. Therefore, Louisiana's law cannot stand under our precedents." "*Stare decisis* ("to stand by things decided") is the legal term for fidelity to precedent."[27]

* Free Exercise of Religion

Conversely, an area of law where the conservative views consistently prevailed was in regard to religion. The majority also remained consistent with precedents. This term, though, the Supreme Court greatly expanded the interpretation of the free exercise of religion.

The first example is *Espinoza et al. v. Montana Department of Revenue et al*[28]. The Montana Legislature had established a program that would grant tax credits to those who donate to organizations that award scholarships for private school tuition. The Montana Department of Revenue promulgated "Rule 1," which prohibited families from using the scholarships at religious schools. Three mothers who were blocked by "Rule 1" from using scholarship funds for their children's tuition at Stillwater Christian School sued the Department in state court,

alleging that the Rule discriminated on the basis of their religious views, and the religious nature of the school they had chosen. The Montana Supreme Court found that the law violated the Montana State Constitution. Notwithstanding, the case reached to the Supreme Court. Similarly, to the Federal Constitution, Montana's Constitution prohibits state aid to religion. The question presented in this case was whether the Free Exercise Clause of the United States Constitution barred that application of the no-aid provision.

In a 5-4 decision, the Supreme Court reversed Montana's Supreme Court decision. Chief Justice Roberts wrote the majority opinion. Justices Gorsuch and Thomas wrote a concurring opinion. Justice Alito separately wrote a concurring opinion. Justices Ginsburg, Breyer, Sotomayor, and Kagan dissented. Chief Justice Roberts noted that "the Free Exercise Clause, which applies to the States under the Fourteenth Amendment, "protects religious observers against unequal treatment" and against "laws that impose special disabilities based on religious status." And whenever the government denies funding to religious institutions, the government must meet the strict scrutiny test, which is the highest standard of review applied by the Supreme Court, and the hardest standard to meet. "Individuals are forced only to choose between forgoing state aid or pursuing some aspect of their faith. The government does not put a gun to the head, only a thumb on the scale. But, as so many of our cases explain, the Free Exercise Clause does not easily tolerate either; any discrimination against religious exercise must meet the demands of strict scrutiny," the majority said.

In *Espinoza*, Chief Justice Roberts also referred to a precedent decided three years earlier (*Trinity Lutheran Church of Columbia, Inc. v. Comer*), which also involved potential state aid to schools. In 2017, the Supreme Court had declared the law was unconstitutional, and established that "when the government provides aid to secular public or private schools, it must meet strict scrutiny."

Another similar decision was *Our Lady of Guadalupe School v. Morrissey Beru*.[29] The case involved two elementary school teachers at catholic schools. Both lost their jobs. One with breast cancer lost her job because of her disability. The other was a teacher who suffered age discrimination and was replaced by a younger teacher.

They sued for employment discrimination. The Supreme Court ruled 7 to 2 that parochial schools cannot be sued for employment discrimination for the choices they make on who will be their teachers. This case also referred to a precedent decided in 2012 (*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*), and the majority held that religious schools could not be liable for their choices they make about who might be their ministers. In *Our Lady of Guadalupe*, the Supreme Court extended its interpretation from ministers to teachers. Based on precedents, the Supreme Court continued expanding the free exercise of religion and narrowed the scope of the Establishment Clause[30].

* **Deferred Action for Childhood Arrivals (DACA)**

In June 2017, following a change in Presidential administrations, the Department of Homeland Security (DHS) rescinded the Deferred Action for Parents of American (DAPA), citing, among other reasons, an ongoing suit by Texas and new policy priorities. In September 2017, the Attorney General advised the Acting Secretary of Homeland Security that Deferred Action for Childhood Arrivals (DACA) shared DAPA's legal flaws and should also be rescinded. The next day, former Secretary Duke acted on that advice. Several groups of plaintiffs challenged the Secretary's decision to rescind DACA, claiming that (1) it was

arbitrary and capricious in violation of the Administrative Procedure Act (APA) and (2) infringed the equal protection guarantee of the Fifth Amendment's Due Process Clause.

Within days, the Acting Secretary's rescission announcement, multiple groups of plaintiffs ranging from individual DACA recipients and states to the Regents of the University of California and the National Association for the Advancement of Colored People (NAACP) challenged her decision in the U. S. District Courts for the Northern District of California[31].

In *Department of Homeland Security v. Regents of the University of California* the dispute before the Court was not whether DHS may rescind DACA, since all parties agreed that it may[32]. Rather, whether the rescission was arbitrary and capricious. Chief Justice Roberts, who had emerged as a semiregular swing justice on the court, wrote, once again, that the majority concluded that the decision to phase out the program was unlawful because it did not consider all the options to rein in the program and failed to account for the interests of those who relied on it[33]. To support that argument, the majority did not look at what former DHS Secretary had expressed in the memorandum, but on "what it was not said there", which should be considered one of the salient factors in deciding this case. Chief Justice Roberts also raised a distinction between differing deportation and conferring eligibility for benefits. The majority claimed that the Texan litigation only focused on conferring eligibility for benefits, but it did not undercut the Department's ability to defer deportation. Former DHS Secretary's failure to engage such distinction turned, according to the majority, the rescission arbitrary and capricious.

An Unbiased Umpire

On September 18, 2020, Justice Ruth Bader Ginsburg, the leading advocate of women rights in the United States, died. Her passing opened another opportunity for President Trump to appoint a third justice to the Supreme Court. On September 26th, one day after laying in repose at both the Supreme Court building and the State Capitol, President Trump announced the nomination of Judge Amy Coney Barret.

To understand the implication of this nomination, it is worth reviewing the political context under which a similar debate developed under the Obama administration. Justice Antonin Scalia, a leader of a conservative wing of the Supreme Court, was found dead in Texas in February 2016. Justice Scalia was a leading advocate of originalism –the constitutional theory that seeks to interpret and apply the understanding of the framers, who drafted and ratified the US Constitution[34].

An identical scenario is presented today. Justice Scalia's passing gave President Barak Obama a third opportunity to nominate a Supreme Court justice, aiming to strengthen the liberal and progressive wing of the American highest judiciary. During his administration, President Obama had nominated Justices Sonia Sotomayor and Elena Kagan in 2009 and 2010. And on March 16, 2016, he nominated Judge Merrick Garland to fill the seat of Justice Scalia. This nomination created tensions and rivalry between the Republican and Democratic parties. From a Republican point of view, the appointment of another liberal justice at the Supreme Court would completely block any attempt to include a more conservative view into the judicial decision-making process, a devastating effect on the Republican party's ideals on how the US Constitution should be interpreted. From a democratic perspective, the appointment of Judge Merrick Garland, long considered a prime prospect for the highest court, would ensure continuity and the protection of rights and liberties, including equally before the law.

The Republican Senate blocked any attempt to hold a hearing for Judge Garland to appear before the Senate Judicial Committee. In fact, eleven Republican members of the Committee signed a letter expressing they had no intention of consenting to any nominee from President Obama. And no proceedings of any kind were held on Judge Garland. The history of the judicial appointments in the United States is characterized for being contentious, with hard-hitting debates and contested votes, but it had never occurred to ignore a judicial nominee entirely, as if no vacancy existed. Indeed, there was no precedent for such an action since the period around the Civil War and Reconstruction," as Ron Elvin describes[35].

On February 23, 2016, Senator Mitch McConnell noted "Well, this is his [President Obama] moment. He has every right to nominate someone, even if doing so will inevitably plunge our Nation into another bitter and unavoidable struggle. That certainly is his right. Even if he never expects that nominee to be confirmed, but rather to wield as an election cudgel, he certainly has the right to do that."[36] In fact, in his statements, Senator McConnell argued that the Democrats had at least contemplated a similar tactic back in 1992, when Joe Biden, then chairman of the Senate Judiciary Committee, had urged President George H.W. Bush to withhold any nominees to the high court until the end of the "political season". Republican senators also claimed that American people should have a voice in the selection of their next Supreme Court justice, and no vacancy should be filled until there is a new President. Under similar arguments, the Republican Senate blocked indefinitely a hearing for Judge Merrick Garland. According to Ron Elvin, Justice Scalia's vacancy "became a powerful motivator for conservative voters in the fall. Many saw a vote for President Trump to keep Scalia's seat away from the liberals and give the appointment to someone who promised to name anti-abortion justices supportive of Second Amendment gun rights."[37] A similar scenario could play out in November 2020.

Paradoxically, in the past weeks, the majority Republican Senate abandoned the rule they advocated for in 2016 and will not wait until a new President is elected on the upcoming November 3, 2020 Presidential Election.
Moreover, the Senate Judiciary Chairman announced that Judge Amy Coney Barrett's confirmation hearing would begin on October 12 and noted that Judge Barrett would clear a committee vote by October 26, 2020. The Senate is aiming for the quickest confirmation in modern history. "No Supreme Court nominee has ever been confirmed after the month of July during a presidential election year." Wagner and Hayes describe[38].

What is at stake here? During Judge Barrett's nomination, she stated that "I clerked for Justice Scalia more than 20 years ago, but the lessons I learned still resonate. His judicial philosophy is mine, too. A judge must apply the law as written. Judges are not policymakers, and they must be resolute in setting aside any policy views they might hold."[39]
Unquestionably, the new composition of the Court would bring further challenges for Chief Justice Roberts, especially when it comes to safeguarding the rights and liberties of the American people, in cases regarding women's rights, LGBTQ rights, and the overall health care coverage and the Affordable Care Act championed during the Obama Administration –to mention a few of them.

However, the rights of people would not be the only stake. As the Supreme Court umpire, as he called himself in 2005, Chief Justice Roberts would need to "call the ball fair or foul, it is in or it is out,"[40] particularly if the Supreme Court needs to review the outcome of the presidential election, as President Trump recently predicted and suggested,[41]and as the Court did in the 2000 highly controversial *Bush v. Gore* decision[42].

Conclusion

In 2020, Chief Justice Roberts aimed to maintain consistency in the Court. He followed the doctrine of *stare decisis* to protect and respect the legitimate expectations of those who live under the law, as he alluded in 2005 before the Senate Judicial Committee: "Hamilton, in Federalist No. 78 said that, "To avoid an arbitrary discretion in the judges, they need to be bound down by rules and precedents. So even that far back, the Founders appreciated the role of precedent in promoting evenhandedness, predictability, stability, the appearance of integrity in the judicial process," Chief Justice Roberts said.[43] Roberts' adherence to *stare decisis* also ensured the legitimacy of the judicial process by permitting society to presume that American principles are founded in the law, rather than political or individual interests.

In 2005, Senator Arlen had considered the appointment of John Roberts to the Supreme Court as an opportunity: "Beyond [his] potential voice for change and consensus, [his] vote will be critical on many key issues, such as Congressional power, Presidential authority, civil rights, including voting rights and affirmative action, defendants' rights, prayer, many decisions for the future, and perhaps institutional changes in the Court, looking for the day when the Court may be televised."[44]

In 2020, John G. Roberts played a pivotal role and consolidated his "Court" in a highly controversial Supreme Court term. Nevertheless, and taking into consideration the short and long hauls, Chief Justice Roberts will be confronted with other major challenges which will require the assumption of his umpire role and will compel him to balance his own conservative views *vis-à-vis* the rights and liberties of the American people.

[1] *Confirmation Hearing on the Nomination of John G. Roberts, Jr., to be Chief Justice of the United States*, p 43.
[2] Laurence Tribe and Joshua Matz, *Uncertain Justice. The Roberts Court and The Constitution* (New York: Henry Holt, 2014),
[3] Erwin Chemerinsky, 10th Annual Supreme Court Term Review, University of California, Irvine on July 23, 2020.
[4] Mark Walsh, *Outbreaks of Decease have shuttered the Supreme Court going back more than two centuries*, ABA Journal, March 19, 2020; Erwin Chemerinsky, *Chemerinsky: It's going to be an unusual May in the Supreme Court*, ABA Journal, April 29, 2020;
[5] Erwin Chemerinsky, 10th Annual Supreme Court Term Review, University of California, Irvine on July 23, 2020.
[6] Adam Liptak, *John G. Roberts was already the Chief. But now it is his Court*, The New York Times, June 30, 2020.
[7] John Wagner, *Pence calls Chief Justice John Roberts a 'disappointment to conservatives*, The Washington Post, August 6, 2020.
[8] Christopher L. Eisgruber, *The Next Justice. Repairing the Supreme Court Appointment Process* (New Jersey: Princeton Press, 2007), 98-99.
[9] Opening Statement of Honorable Arlen Specter, as U.S Senator from the State of Pennsylvania, on Monday, September 12, 2005 at the *Confirmation Hearing on the Nomination of John G. Roberts, Jr., to be Chief Justice of the United States*. P. 3.
[10] Idem, p. 33.
[11] Adam Liptak, *Neil Gorsuch Confirmed by Senate as Supreme Court Justice*, New York Times, April 7, 2017.
[12] Mark Landler and Maggie Haberman, *"Brett Kavanaugh Is Trump's Pick for Supreme Court"*, New York Times, July 9, 2018.
[13] Alexander Hamilton, *Federalist No. 78*, in *The Federalist*, ed. George W. Carey and James McClellan (Indianapolis, IN: Liberty Fund, 2001).
[14] Robert Barnes, *They're not the "wonder twins": Gorsuch, Kavanaugh shift the Supreme Court, but there are striking*, The Washington Post, June 29, 2019.
[15] Tucker Higgings, *Trump's first Supreme Court justices split in first term together*, CNBC, June 29, 2019.
[16] Michael D. Shear, *Gorsuch, Conservative Favorite Appointed by Trump, Leads Way on Landmark Decision*, New York Times, June 15, 2020.
[17] Bostock v. Clayton County, Georgia, 140 S.Ct. ___ (June 15, 2020)
[18] Idem.
[19] Idem, p. 2.
[20] Idem., at 10.
[21] Ibid., p 21.
[22] United States v. Burr, 25 F. Cas. 30 (No. 14,692d) (CC Va. 1807) (Marshall, Cir. J.)
[23] Cheney v. United States Dist. Court for D. C., 542 U. S. 367, 389–390 (2004) (quoting Nixon, 418 U. S., at 692).
[24] *Confirmation Hearing on the Nomination of John G. Roberts, Jr., to be Chief Justice of the United States*, p 67.
[25] June Medical Services LLC v. Russo, 140 S.Ct.___ (June 29, 2020).
[26] Ariane de Vogue, 10th Annual Supreme Court Term Review, University of California, Irvine on July 23, 2020.
[27] June Medical Services LLC v. Russo, 140 S.Ct.___ (June 29, 2020) at 2.
[28] Espinoza v. Mont. Dep't of Rev., 140 S.Ct. ___ (2020).
[29] Our Lady of Guadalupe School v. Morrissey Beru, 140 S.Ct.___ (2020).
[30] Erwin Chemerinsky, 10th Annual Supreme Court Term Review, University of California, Irvine on July 23, 2020.
[31] Regents, No. 18–587, the Eastern District of New York (*Batalla Vidal*, No. 18–589), and the District of Columbia (NAACP, No. 18–588).
[32] Department of Homeland Security v. Regents of the University of California, 140 S.Ct. ___(June 19, 2020).
[33] Josh Gerstein and Rebecca Rainey, *Supreme Court rejects Trump effort to end DACA*, Politico, June 18, 2020.
[34] Adam Liptak, *Antonin Scalia, Justice on the Supreme Court, Dies at 79*, New York Times, February 13, 2016.

[35] Ron Elvin, *What Happened with Merrick Garland In 2016 And Why It Matters Now*, NPR, June 29, 2018.
[36] Congressional Record, *Proceedings and Debates of the 114th Congress, Second Session*, Vol. 162, No. 28, Washington, Tuesday, February 23, 2016.
[37] Idem.
[38] Meg Wagner and Mike Hayes, *The Latest on the 2020 election and the SCOTUS battle*, CNN, September 29, 2020.
[39] *Full Transcript: Read Judge Amy Coney Barrett's Remarks*, New York Times, September 26, 2020.
[40] *Confirmation Hearing on the Nomination of John G. Roberts, Jr., to be Chief Justice of the United States*, p. 58.
[41] Josh Wingrove, *Trump Talks up need for full Court as he Casts Doubt on Election,* Bloomberg, September 23, 2020.
[42] Bush v. Gore, 531 U.S. 98 (2000).
[43] *Confirmation Hearing on the Nomination of John G. Roberts, Jr., to be Chief Justice of the United States*, p. 142.
[44] Idem, p. 3-4.

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