

## WASHINGTON

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# Supreme Court decides hot-button issues in latest term

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**WASHINGTON** - A reshuffled Supreme Court chose during its term ending Thursday to decide cases on narrow grounds that allowed rare unanimity on such contentious issues as abortion, assisted suicide and religious freedom.

New Chief Justice John Roberts sought to make his mark by urging greater agreement among the justices despite their deep divisions over many hot-button issues. In his view, more consensus is likely if such cases are decided on the "narrowest possible grounds."

"Yes, there was more unanimity, and, yes, Justice (Anthony) Kennedy is the new swing vote, having inherited the center from Justice (Sandra Day) O'Connor," said Tom Goldstein, a Harvard and Stanford law professor who has argued 16 high court cases.

The court - in transition for the first time in years - was unanimous in 46 of 82 decisions, slightly more unanimous than before, he said, and it waited until term end for most split decisions. The court produced 10 decisions by 5-4 votes.

Roberts, a former federal appellate judge and Supreme Court advocate, told a lawyers' group the last weeks of heavy lifting made him feel "like the fellow who jumped off the Empire State Building, passed the 50th floor and said, 'So far, so good,' (but) the hard part's coming up."

O'Connor's announcement last July that she would retire once her replacement won Senate confirmation gave President Bush his first chance to name a justice to a Supreme Court. The nine justices had served together 11 terms, a modern record.

Chief Justice William Rehnquist's death over Labor Day led Bush to take the path of least resistance by promoting Roberts to chief justice. Conservative outrage forced Bush to withdraw his subsequent choice of White House counsel Harriet Miers for O'Connor's seat and turn to Judge Samuel Alito, who was finally confirmed in January.

Richard Lazarus, head of Georgetown law school's Supreme Court Institute and a Roberts

friend since their Harvard Law School days, credits Roberts' modesty and judicial restraint with setting a new tone far removed from hard-right ideology.

Kennedy's centrist role on the new court was evident in his role in rebuffing Bush's order that Guantanamo detainees be tried by military tribunals, upholding most of Texas' mid-decade congressional remap, ending the Bush administration attack on Oregon's assisted suicide law, and upholding federal clean water regulations.

"At least until the next vacancy, this is now the Kennedy court," said Duke Law School court watcher Neil Siegel.

Here are key cases in the term just ended:

## WAR ON TERROR

President Bush lacks unilateral power in the war on terror to order alien detainees at the Navy base at Guantanamo Bay, Cuba, tried by military tribunal, the justices ruled 5-3.

Nothing in U.S. law or Geneva Convention gives a U.S. president the authority Bush claimed to deny detainees and their lawyers access to the proceedings and evidence against them, the court ruled in telling Bush nothing prevents him from going back to Congress to seek the authority he says is necessary to prosecute alien terrorist suspects.

Bush responded by promising to work with Congress to insure that detainees get "their day in court."

Roberts sat out the Supreme Court case because he had been a member of the three-judge federal appeals court that voted to uphold Bush's military tribunal order.

## ABORTION

O'Connor, who crafted the court's current test that abortion regulations cannot impose an "undue burden" on the woman, capped 25 years on the Supreme Court with a unanimous ruling that reaffirmed that government restrictions must make exceptions to protect a woman's health as well as life. The decision told lower courts to see if New Hampshire's parental notice law can be read to make an exception in the rare case where a teen needs an immediate abortion to avert health problems.

New Hampshire's 2003 statute makes an exception for a woman's life but not health, as does the federal ban on certain late-term abortion procedures the Supreme Court will take up next term. The court waited until Alito took O'Connor's seat before announcing it will consider the Bush administration's defense of the nationwide ban on so-called "partial-birth" abortions.

O'Connor provided the fifth and deciding vote and Kennedy dissented when the court struck down state bans six years ago.

## STATES' RIGHTS

A unanimous court agreed that Congress validly stripped states of immunity from private lawsuits that charge constitutional violations of the federal Americans With Disabilities Act. The ruling revived the complaint of a wheelchair-bound Georgia inmate who alleged his tiny cell, too small for him to move, amounted to "cruel and unusual punishment" in violation of the Eighth Amendment.

Separately the justices held unanimously that disgruntled state taxpayers cannot go into federal court to contest investment tax breaks. That case threatens to upset the states' ability to use tax sweeteners to lure or keep businesses. A Cincinnati federal appeals court reached the opposite conclusion in invalidating Ohio tax breaks, chilling investment incentives in 45 other states with similar laws.

## VOTING RIGHTS

Former House Republican leader Tom DeLay lost the Supreme Court battle but won the war over mid-decade congressional redistricting he orchestrated in Texas.

Kennedy, writing for a 5-4 majority, threw out part of the 1993 map drawn by the newly Republican Texas Legislature. The court ruled the Legislature violated the Voting Rights Act by removing 100,000 Mexican-American voters to protect the Republican incumbent from a San Antonio congressional district and creating a new Latino district that stretches 300 miles from Austin to the Texas border.

But by a different majority vote, Kennedy rejected Texas Democrats' claim that the remap amounts to an unconstitutional partisan gerrymander and that the mid-decade redistricting whenever a state legislature changes hands is unconstitutional. That holding could export mid-decade partisan redistricting to other states.

Georgia Republicans have already used it to dilute Democratic strength. But Colorado Republicans' 2003 bid to redraw congressional lines ran afoul of the Colorado state constitution.

Separately, the justices rejected Vermont's toughest-in-the nation limits on campaign finances for unconstitutionally "constraining speech" of candidates and voters.

## ASSISTED SUICIDE

The court ruled the Bush administration overreached when it tried to punish doctors who help terminally ill patients carry out Oregon's one-of-a-kind assisted suicide law. Kennedy, writing for the court, said a federal law that forbids illicit use of narcotics doesn't usurp traditional state regulation of medical practice.

John Ashcroft, when he was a senator, failed to persuade Congress to kill the 1994 Oregon law. As Bush attorney general, Ashcroft issued the 2001 directive that claimed the federal Controlled Substances Act forbids physician-assisted suicide.

## FIRST AMENDMENT

Roberts, writing for a unanimous court, said federal anti-drug laws don't trump a New Mexico religious sect's use of a hallucinogen as a sacrament. As in the assisted suicide case, the Bush administration claimed the Controlled Substances Act authorizes it to stop importation of the hallucinogenic tea huasca from Brazil. But in this "high tea" case, Roberts said that Congress and the executive branch "fatally undermined" their argument against huasca by allowing the Native American Church's ritual peyote use.

The court also ruled that:

- Government workers don't have unlimited free-speech rights to go public as whistleblowers with charges of official misconduct.
- Pentagon recruiters are entitled to equal access with other employers to recruit law school students even if doing so violates school policy forbidding bias against homosexuals. Roberts' unanimous opinion said Congress' equal-access requirement "neither limits what law schools may say nor requires them to say anything" about the "don't ask, don't tell" policy that bars openly gay people from serving in the military.

## CAPITAL PUNISHMENT

The justices opened the federal courthouse door to new technological challenges by death-row inmates:

- Voting 9-0, the court said death-row inmates can file last-minute challenges alleging that lethal injections cause a painful death. But the justices left it for a future case to decide if the deadly drugs amount to "cruel and unusual punishment" forbidden by the Eighth Amendment. The American Veterinary Association notes two drugs that state and federal governments use in these lethal cocktails are banned by 11 states for euthanizing animals.
- Voting 5-3, the court said Tennessee death-row inmate Paul House is entitled to a new

hearing on his claim of innocence based on DNA collected in the rape-murder of a neighbor. That evidence was not scientifically available when he was convicted 20 years ago.

## CRIMINAL LAW

The court weakened requirements for lawful searches, holding 5-4 that evidence seized in a home can be introduced at trial even if police armed with a warrant don't carry out their constitutional duty to knock and announce their presence.

Justice Antonin Scalia, writing for the majority, said excluding such evidence amounts to a "get-out-of-jail-free card," but dissenters complained the decision all but voids "knock and announce" rules that can be traced back to 13th-century England.

Separately, a unanimous court said police can enter a house in an emergency even without a warrant or knocking to announce their presence. But voting 5-4, the court said the Fourth Amendment ban on "unreasonable searches" doesn't permit police to conduct a warrantless search of a house if one owner gives permission but another objects.

## ENVIRONMENT

The first major environmental ruling by the Roberts court saw the justices vote 4-1-4 to uphold the power of federal regulators to protect most wetlands from development. But the court said regulators must prove the wetlands have a "substantial nexus" to navigable waterways. The decision is a setback for property-rights advocates who hoped two Bush court appointees would help rein in environmental regulation.

## POCKETBOOK ISSUES

Workers needn't be fired or demoted to sue for retaliation under the Civil Rights Act of 1964, the court held. Less-than-ultimate acts can dissuade a reasonable worker from complaining of job bias, the justices said. The 9-0 ruling upheld a jury verdict for a Memphis woman who was transferred to railroad track work and suspended without pay at Christmastime after she filed a sexual harassment complaint.

The court also ruled that:

- States must work as hard to track down homeowners before selling their house for back taxes as they do to collect the tax.

- Managers of employee-benefit funds may sue to recover health insurance payments to employees who have been reimbursed by a second source. In this case, the employee had been injured in a car wreck and awarded payments by a court.

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