

WHAT WILL CHIEF JUSTICE ROBERTS DO?

By Elizabeth Wydra

Thursday, April 25, 2019

National Press club

Remarks as prepared for delivery

Good morning, everyone! Welcome to Constitutional Accountability Center's Sixth Annual "Home Stretch at the Supreme Court."

My name is Elizabeth Wydra, and as President of CAC, I am thrilled that all of you can join us on this spring day, either here in person or on the live stream. It's great to see so many familiar faces this morning, as well as many new ones, both in the audience, as well as on our distinguished panel. For those of you engaging on social media, use the hashtag #CACHomeStretch to follow the conversation.

Let me also thank the National Press Club for their work in hosting this important conversation. We appreciate the excellent staff here for helping us make this event a great one, year after year.

This event is successful, in part, because of where it lands on the Supreme Court calendar. Taking note of the Court's unique rhythms, we wanted to do something different. We wanted to not only look back at high-profile cases already decided during a Term, but also look ahead to cases on the horizon, still awaiting a ruling.

We decided the perfect time to do that would be when the Court begins its "home stretch" to the end of June—the last Thursday in April, the day after the final oral argument of the Term.

This year, with issues such as incorporating a clause of the Eighth Amendment against the states already decided, as well as rulings expected in June on the future of the Census and the constitutionality of partisan gerrymandering, I anticipate another fascinating discussion this morning. And I'm excited that all of you can be a part of it.

Before I turn the stage over to this outstanding panel, I wanted to speak to you briefly about the current period in our country's history, and the Court's place in it.

We gather at a particularly fraught moment. From the current occupant of the White House, we witness threats to the rule of law, the stability of our constitutional democracy, even the practice of common decency to our fellow human beings, on a near-daily basis.

Placing children in cages. Blocking people from entering the country because of their race or religion. Barring transgender people from serving in our military. Attacking the courts and impartial, fair law enforcement. Rigging the process by which the Constitution commands *all persons* in America be counted, and through which votes and government resources are

apportioned and allocated. And all of that is in addition to whatever obstruction of justice and flirting with foreign influence in our election was described in the Mueller Report.

These threats cannot be ignored or set aside—at least not without the American people paying a dear price. The strength of our people, and the institutions built to serve us, instead must confront these challenges, resolve them in favor of the rule of law, and reinforce the bedrock values of our amended Constitution: equality, inclusion, fairness.

Alexander Hamilton [wrote](#) that “The majesty of the national authority must be manifested through the medium of the courts of justice.” Aside from the cherry blossoms earlier this month, there’s been precious little majesty here in Washington these days. And while it’s true that the Supreme Court is rated higher than President Trump or Congress, that’s a bar low enough to skip over. America’s founders set that bar much higher, and for decades the American people believed the Court cleared it with ease. Not anymore.

Try as he might—and some might question whether he is trying hard enough lately—Chief Justice John Roberts is in danger of losing his battle to keep the Court he leads divorced from politics. In fact, actions of the Trump Administration—acquiesced to or supported by the Republican Senate—have made John Roberts’s position more decisive than at any time in his nearly fifteen years on the Court. President Trump, it seems, views the Roberts Court as his potential—literal—“get out of jail free” card—suggesting just yesterday that if he were impeached under the Constitution he would look to the Supreme Court to bail him out.

And while the President continues to not know how the Constitution works, unfortunately Trump is not necessarily wrong to look to the Roberts Court for relief. It has been the place where some of his most outrageous policy actions have been resurrected. At the end of last Term, a majority of the Justices were willing to pretend that Trump’s Muslim travel and refugee ban wasn’t based on anti-Muslim animus despite the president’s clear statements to the contrary. And now this Term it looks possible that a majority of the conservative Justices will again pretend that the Trump Administration’s addition of a citizenship question to the Census is anything other than an attempt to discourage and intimidate immigrants and people of color.

As someone who cares deeply about the institutions of our government, I get the impulse to assume the best in our leaders. I can understand Chief Justice Roberts wanting to believe that this Administration is not flagrantly violating basic rules of good government, willing to lie and deceive the public, the Congress, and the courts. But how gullible do you expect the public to believe you are? The Justices certainly work on exalted ground, but we know you live in the real world like the rest of us. How do you respond to Trump’s repeated comments suggesting he thinks he’s got the Roberts Court in his back pocket?

We need more than ever “the necessary independence of the judicial character,” as Hamilton [put](#) it. The question is, what does Chief Justice Roberts do?

At this historic crossroads, his choice is straightforward. He can turn right, ignoring the [higher percentages](#) of Americans who now see the Court as “too conservative,” and plow ahead with the Republican legal project, giving Trump the rubber stamp he seems to want in his Supreme Court. Or Roberts can look straight ahead, remembering his [caution](#) that “The court has, from time to time, erred and erred greatly. But when it has, it has been because the court yielded to political pressure.” By heeding that caution, which points toward the Constitution’s text, history, and values, he can steer the Court away from the activist conservative extreme and back toward the middle of the road.

None but a few fringe observers of the Court will ever mistake John Roberts for a moderate, much less a liberal. But as battles over the character of our democracy reach the Court—many focusing on President Trump and his administration—the choice between exalting the rule of law and indulging conservative ideology and a lawless president should be a clear one.

And now, I’m thrilled to turn over the stage to Ari Melber of MSNBC, who will introduce our amazing group of panelists and moderate today’s discussion.

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