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What Hath Roberts Wrought?

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Democrats all over America are claiming victory in the Chief Justice Roberts' vote to uphold the constitutionality of the President's health care law. Conservatives all over America are campaigning all the harder for a president and a congress that will overthrow the law in the future.

Thomas Friedman in his New York Times column praises Roberts to skies for putting the country ahead of ideology. Others have seen Roberts as saving "his court" from the appearance of ideological control.

But Roberts is a conservative, and a very smart, forward-looking one at that. What Roberts accomplished on one issue was to enshrine two conservative ideologies -- without the Democrats even noticing while they were cheering. He did this by using the Court's ability to turn metaphors into law. He accomplished this with two votes.

First he was the swing vote that imposed the idea that Health Care Is A Product and set the stage for a possible general principle: The Interstate Commerce Clause governs the buying and selling of products and the government cannot force anyone to people to buy a product (real or metaphorical).

Second, Roberts was the swing vote on the ruling that saved the Affordable Health Care Act by creating a precedent for another metaphorical legal principle: A fee or payment imposed by the government is a tax.

In short, in his votes on one single issue, Roberts single-handedly extended the power of the Court to turn metaphor into law in two conservative directions.

Many important laws, especially in the area of environmental protection, use the interstate commerce clause. The Court in this session held that the EPA cannot keep a property owner from developing, and hence destroying, a wetland on their property. Will the general principle that comes out of the latest Supreme Court decisions be seen to be that the Commerce Clause cannot be used to preserve the environment but only to govern commercial transactions? The Endangered Species Act is based on the Commerce Clause. Will the above principle be used to kill the Endangered Species Act?

Given the conservatives' success in rousing public ire against taxes, will all fees and other government payments be argued to be taxes that should be minimized, eliminated, or not even proposed?
Roberts is no fool. In one stroke, he both protected the Court from charges of ideology and became categorized as a "moderate," while enshrining two metaphor-based legal principles that can be used to promote and implement conservative policy in the future, with devastating broad effects.

We are as happy as other Democrats that the Affordable Care Act has mostly been declared constitutional. But we caution Democrats throughout the country to keep an eye out for conservative uses of the two metaphors that played the central role in the latest Supreme Court rulings -- and for ways to keep them from being extended to impose conservative beliefs and doctrines.