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BODY:

WITH THE JUDICIAL nominations process engulfed in questions of the ideology of potential judges, many observers are rushing to evaluate the just-completed **Supreme Court** term with an avowedly political scorecard. The exercise, it turns out, is largely fruitless. The term had its share of traditional left-right sparring, but the overall output hardly reflects a consistent imposition of will by the five-member conservative majority. Rather, the court's holdings this term are notably eclectic politically. The excesses of the court's conservative majority remain a cause for concern. The court this term continued its unjustified experiment in bolstering the sovereign immunity of states against private suits, this time shielding states from court-like proceedings before federal administrative agencies. It also continued its war against reasonable federal court review of state court convictions -- holding that Virginia could execute a man who had been unknowingly represented at trial by an attorney for his victim. In another case, the court needlessly immunized private prisons against lawsuits by federal inmates alleging violations of their constitutional rights. And it took a bite out of the right of individuals not to incriminate themselves, holding that a state may deprive sex offenders of prison privileges if they refuse to confess to all prior offenses.

But these cases are only part of the story. In the term's most critical cases, the court's conservative bloc either had the better of the argument or suffered defections that enabled the liberal bloc to rule. Sometimes, the justices even agreed in fashions that defied ideological category. The result was a sizable number of valuable decisions.

The court upheld private school vouchers against a church-state challenge, delivering an important affirmation that state experiments that might alleviate the crisis in American education will not be aborted. It also struck down the death penalty for the mentally retarded. It put useful limits on the Americans With Disabilities Act. It delivered to environmentalists one of their most important court victories in recent years, ruling that a temporary moratorium on development around **Lake Tahoe** was not a seizure of private property that required compensation to property holders.

The justices also gave school districts broader latitude to conduct drug testing of students to facilitate treatment. And they issued some important free speech decisions -- affirming the right of Jehovah's Witnesses to canvass door-to-door without seeking government approval

first, for example, and clarifying that states unwise enough to hold elections for judicial offices can't prevent candidates for those offices from speaking their minds about important issues.

The different groupings (and often sub-groupings) of justices bring differing concerns and sensitivities to the table. Some of these sensitivities may be useless -- even dangerous -- for entire classes of cases but valuable for others. The chronic danger is that one faction becomes so dominant that it can drown out -- or force into consistent dissent -- the voices of the other side. But on the Rehnquist court, majorities and alliances continue to shift with no side having a monopoly of wisdom or folly. That fact is worth remembering as the battles over judicial nominations heat up.

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