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## John Roberts' Empathy

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Chief Justice John Roberts expressed his chagrin that his colleagues declined to take up a Virginia drunk driving case in which the conviction of a drunk driver was thrown out because the arresting officer was acting on a tip, and had not seen the driver actually break the law. "The decision below commands that police officers following a driver reported to be drunk do nothing until they see the driver actually do something unsafe on the road - by which time it may be too late," the Chief Justice wrote in an opinion joined by conservative stalwart Justice Antonin Scalia.

I have no opinion one way or the other whether or not there were sufficient grounds for the Supreme Court to take this case. But, I find Roberts' argument intriguing because it sure sounds like he is expressing empathy for the victims of drunk driving.

Empathy, you will recall, was a bad thing when it was coming out of the mouth of then-nominee, now confirmed Justice Sonia Sotomayor. At least according to conservative groups that opposed her such as Professor Robert George's American Principles Project. But, don't hold your breathe waiting for Professor George to lend his increasingly screechy voice to any effort to denounce this new expression of empathy on the part of the Court. It is not, after all, the principle of the thing, unless the operative principle is the kind of crass partisan politics we associate with hired hands, not tenured professors.

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