JOHN ROBERTS FAILS TO DICTATE ANOTHER PRESIDENTIAL OUTCOME, JOHN YOO CRIES

In this post, I suggested the reason Republicans are so angry that John Roberts apparently flipped his vote (note, Barton Gellman reminded today that Ramesh Ponnuru said at Princeton reunion this year that Roberts had flipped before June 1) because they expected the conservative Justices to influence this year's election.

Funny. In his rant declaring John Roberts the next David Souter, John Yoo has this to say:

> Given the advancing age of several of the justices, an Obama second term may see the appointment of up to three new Supreme Court members. A new, solidified liberal majority will easily discard *Sebelius's* limits on the Commerce Clause and expand the taxing power even further. After the Hughes court switch, FDR replaced retiring Justices with a pro-New Deal majority, and the court upheld any and all expansions of federal power over the economy and society. The court did not overturn a piece of legislation under the Commerce Clause for 60 years.

Mind you, he doesn't rule out a Republican (he doesn't name Mitt directly) getting elected. But he does see this in terms of the election, it seems.

But that's not the most interesting passage in Yoo's rant. This was:

> Justice Roberts too may have sacrificed

> the Constitution’s last remaining limits on federal power for very little—a little peace and quiet from attacks during a presidential election year.

The … last … remaining … limits … on … Federal … power.

Yep. John Yoo said that.