

October Term 2023

In a Volatile Term, a Fractured Supreme Court Remade America

Amid signs of dysfunction and disarray, Chief Justice John Roberts reasserted his authority, while the influence of Justices Clarence Thomas and Samuel Alito waned.



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By Adam Liptak Graphics by Alicia Parlapiano

Reporting from Washington

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Former President Donald J. Trump had a very good year at the Supreme Court. On Monday, the court ruled that he is substantially immune from prosecution on charges that he tried to subvert the 2020 election. On Friday, the court cast doubt on two of the four charges against him in what remains of that prosecution. And in March, the justices allowed him to seek another term despite a constitutional provision barring insurrectionists from holding office.

Administrative agencies had a horrible term. In three 6-to-3 rulings along ideological lines, the court's conservative supermajority erased a foundational precedent that had required courts to defer to agency expertise, dramatically

lengthened the time available to challenge agencies' actions and torpedoed the administrative tribunals in which the Securities and Exchange Commission brings enforcement actions.

The court itself had a volatile term, taking on a stunning array of major disputes and assuming a commanding role in shaping American society and democracy. If the justices felt chastened by the backlash over their 2022 abortion decision, the persistent questions about their ethical standards and the drop in their public approval, there were only glimmers of restraint, notably in ducking two abortion cases in an election year.

The court was divided 6 to 3 along partisan lines not only in Monday's decision on Mr. Trump's immunity and the three cases on agency power, but also in a run of major cases on homelessness, voting rights, guns and public corruption.

An unusually high proportion of divided decisions in argued cases — more than two-thirds — were decided by 6-to-3 votes. But only half of those decisions featured the most common split, with the six Republican appointees in the majority and the three Democratic ones in dissent.

The justices reached unanimous or lopsided rulings in other major cases, including ones letting abortion pills remain widely available, allowing the government to disarm domestic abusers, restoring Mr. Trump to the Colorado ballot, endorsing the National Rifle Association's First Amendment rights and rejecting a challenge to the Consumer Financial Protection Bureau.

Irv Gornstein, the executive director of Georgetown's Supreme Court Institute, said the court's liberals by some measures had a good term.

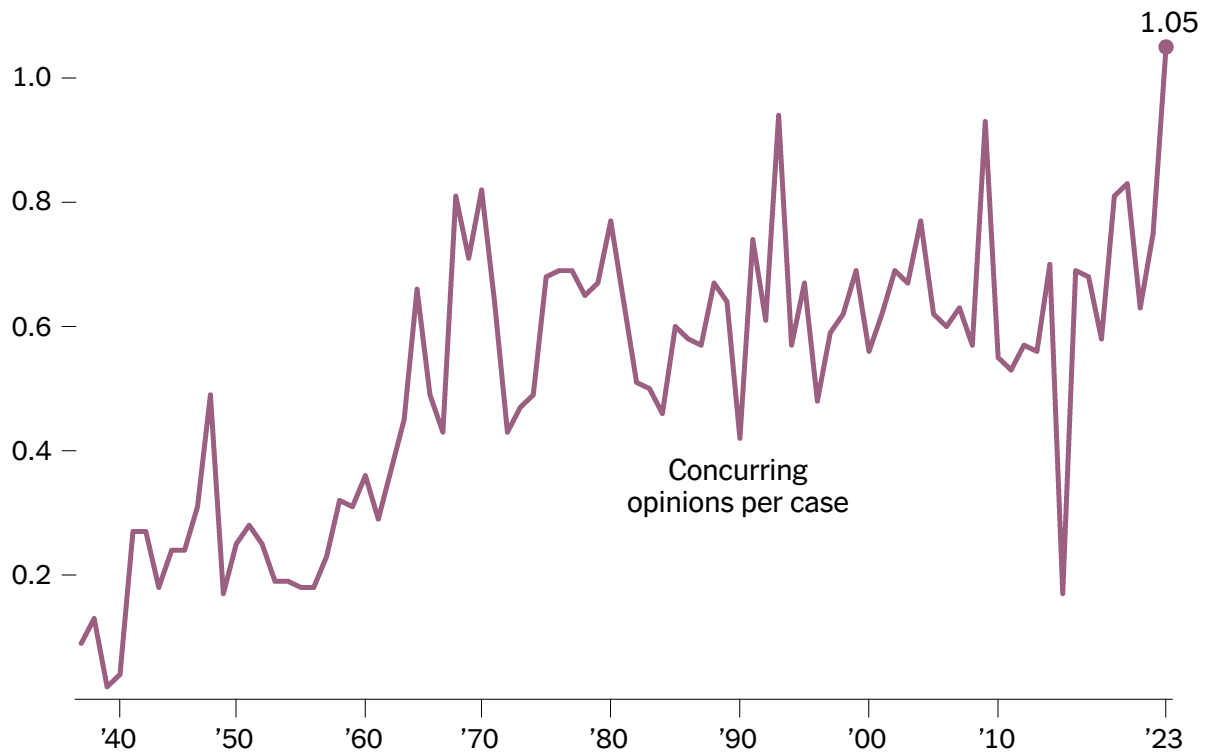
"But most of those wins are an artifact of so many cases coming from the law-free Fifth Circuit," he said, referring to the federal appeals court based in New Orleans. "The judges in that circuit seem to have some kind of competition to see who can write the most precedent-twisting, common-sense-defying decision."

Pamela Karlan, a law professor at Stanford, agreed, saying that "the Fifth Circuit is making the Supreme Court seem more moderate than it is."

Even when the justices agreed, though, they very often could not find consensus on the rationale. Indeed, they issued concurring opinions at a record rate, the highest since at least 1937 and probably ever. Some of those opinions revealed fractures on the right, particularly on the role history should play in constitutional interpretation.

A Lack of Consensus in Agreement

The rate of concurring opinions — more than one per case — hit a record high.



Source: Analysis by Lee Epstein and Andrew D. Martin, Washington University in St. Louis; and Michael Nelson, Penn State; using the Supreme Court Database. • Years reflect the start of terms. • The New York Times

Gregory G. Garre, a lawyer with Latham & Watkins who served as U.S. solicitor general in the administration of George W. Bush, said that “there are signs of dysfunction” among the justices.

“The court is taking an extraordinarily small number of cases,” he said, “and taking an extraordinarily long time to decide them. And the justices are writing more and more individual opinions to express their own views. This is especially pronounced on the right side of the court and has to create some friction among the justices.”

There was a sense of disarray as the term ended. On Wednesday, the court briefly posted and then promptly withdrew an abortion decision that would not be formally issued until the next day.

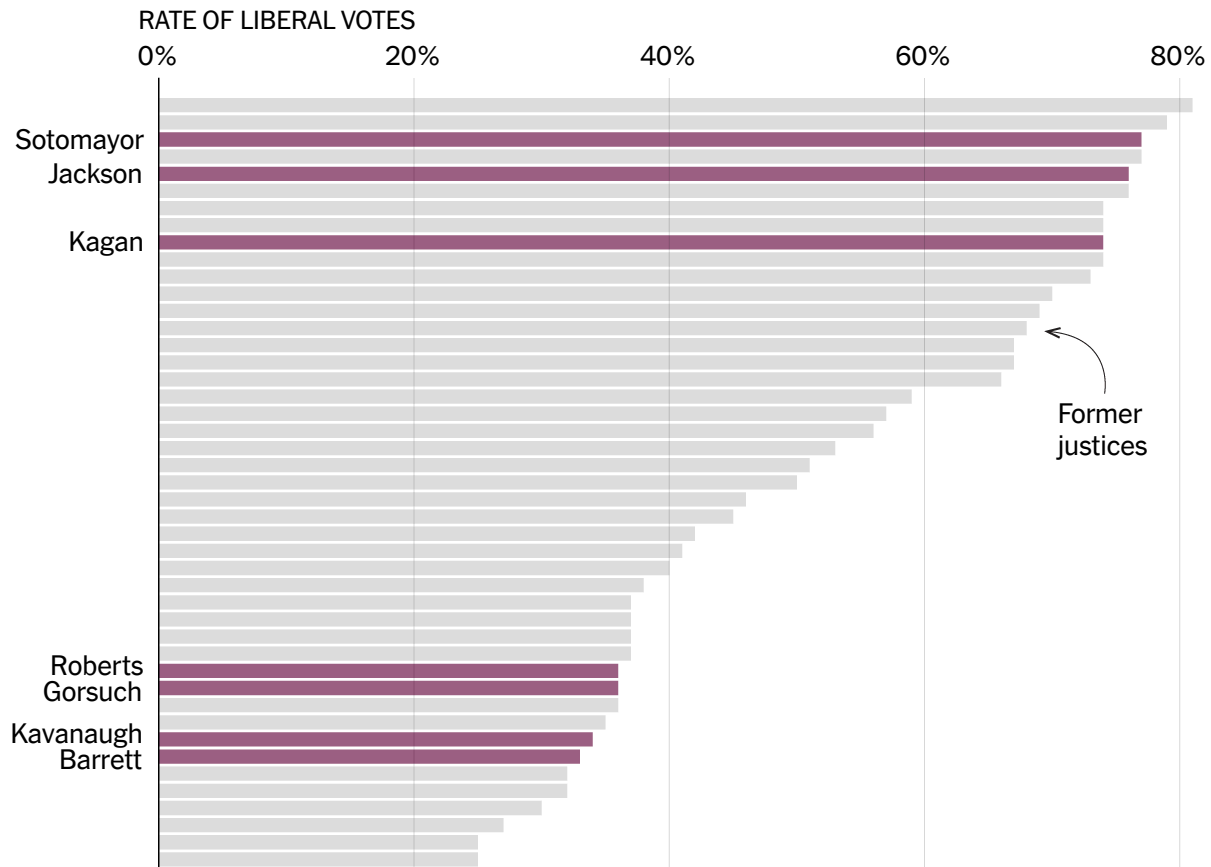
On Thursday, it made 13 separate corrections to four sets of opinions. In one of them, blocking a Biden administration plan to combat air pollution, Justice Neil M. Gorsuch had repeatedly referred to nitrogen oxide as nitrous oxide.

That confusion, Professor Karlan said, “would be just funny (in a laughing-gas sort of way) if the court weren’t simultaneously kneecapping expert agencies that do know the difference.”

A look at how individual justices voted in divided cases issued after oral arguments brings trends at the court into sharp relief, according to data compiled and analyzed by Lee Epstein and Andrew D. Martin, both of Washington University in St. Louis, and Michael J. Nelson of Penn State.

A Highly Polarized Court

Some of the current justices are among the most conservative and most liberal in recent history. Each bar represents the rate at which each justice since 1937 voted for a liberal result.



Alito
Thomas

Source: Analysis by Lee Epstein and Andrew D. Martin, Washington University in St. Louis; and Michael Nelson, Penn State; using the Supreme Court Database. • Votes in divided cases. • The New York Times

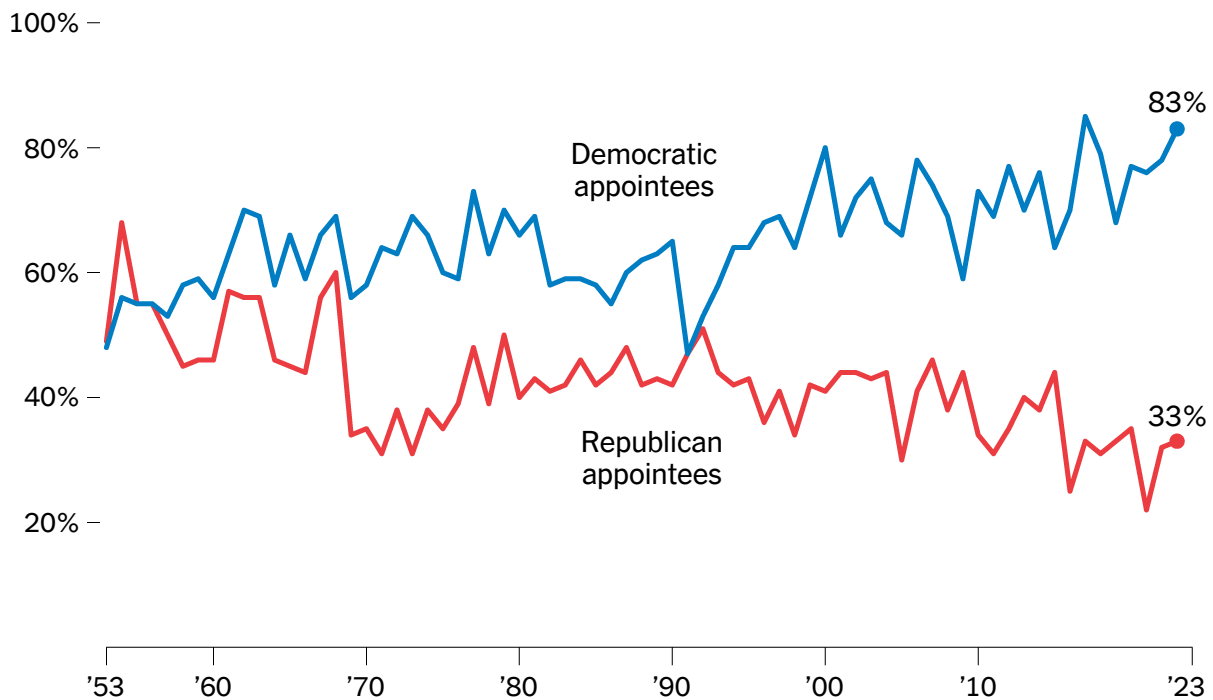
By that measure, the court is extraordinarily polarized. Two of the four most conservative justices to serve since 1937 are on the current court: Justices Clarence Thomas and Samuel A. Alito Jr. (The others were Chief Justices William H. Rehnquist and Warren E. Burger.)

In that same time span, two of the five most liberal justices are currently sitting: Justices Sonia Sotomayor and Ketanji Brown Jackson. (The others were Justices Thurgood Marshall, William J. Brennan Jr. and William O. Douglas.)

Overall, in divided cases argued in the last term, Democratic appointees voted for a liberal result 83 percent of the time and Republican ones 33 percent of the time — a 50 percentage point gap.

The Court's Partisan Gap

How often each of the court's ideological blocs voted for a liberal result.



Source: Analysis by Lee Epstein and Andrew D. Martin, Washington University in St. Louis; and Michael Nelson, Penn State; using the Supreme Court Database. • Votes in divided cases. Years reflect the start of terms. • The New York Times

Chief Justice John G. Roberts Jr.'s leadership of the court was called into question in 2022 by his lonely concurring opinion in *Dobbs v. Jackson Women's Health Organization*, one in which he failed to persuade any of his five conservative colleagues to join him in restricting but not eliminating the constitutional rights to abortion.

Two years later, things are looking up for the chief justice. He assigned himself an unusually large proportion of the term's majority opinions in the biggest cases, including the ones on Mr. Trump's immunity from prosecution, the Jan. 6 prosecutions, the Second Amendment, the Chevron doctrine and administrative tribunals.

The chief justice was in the majority in divided cases 94 percent of the time, more than any other member of the court and tying his own record in the term that ended in 2020. No other chief justice since at least 1953 has been in the majority as often.

But it is Justice Brett M. Kavanaugh who has been setting the pace over time. Since he joined the court in 2018, he has been in the majority 89 percent of the time, a higher rate than any justice since at least 1953.

It was not long ago that some heralded Justice Thomas as the court's true leader, but this term's data rebuts that idea. He was, for instance, in the majority in divided cases just 63 percent of the time.

Last term, Justice Alito was part of the pair most likely to disagree, voting with Justice Elena Kagan just 21 percent of the time. This term, Justice Thomas was part of both pairs most likely to disagree, voting with Justices Sotomayor and Kagan just 9 percent of the time.

At the other end of the spectrum, the two justices most likely to vote together were members of the court's liberal wing, Justices Kagan and Sotomayor, at 94 percent.

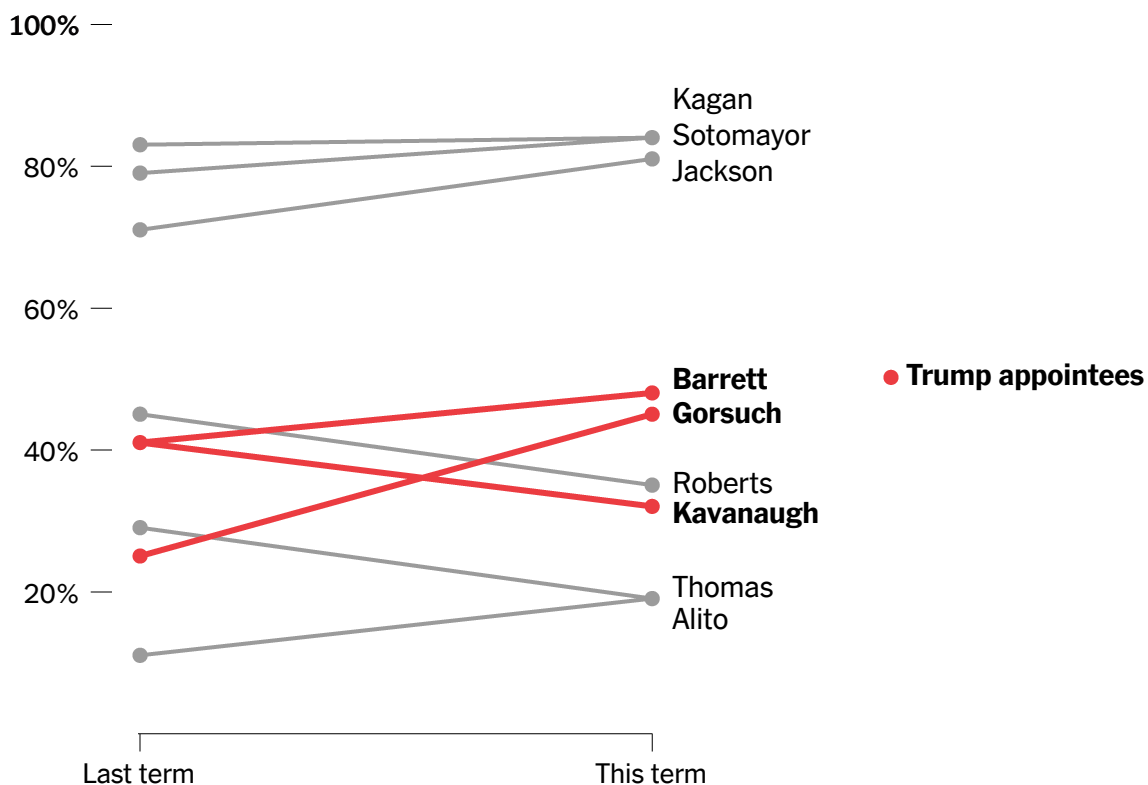
A look at the three justices most apt to vote together in divided cases confirms two bits of conventional wisdom and dispels a third. The court's three liberals — Justices Sotomayor, Kagan and Jackson — voted together 81 percent of the time,

more than any other combination of three justices. They were trailed by three Republican appointees often said to represent the court's middle — Chief Justice Roberts and Justices Kavanaugh and Amy Coney Barrett — at 75 percent.

But agreement among the remaining three justices, who are often lumped together as the court's hard-right wing — Justices Thomas, Alito and Gorsuch — was much lower, at 59 percent. That refutes the story of a 3-3-3 court and highlights Justice Gorsuch's independence.

Trump Justices Are Not the Court's Most Conservative

How often each justice voted for a liberal result.



Source: Analysis by Lee Epstein and Andrew D. Martin, Washington University in St. Louis; and Michael Nelson, Penn State; using the Supreme Court Database. • Votes in divided cases. • The New York Times

Indeed, he voted for liberal results in divided cases 45 percent of the time, often siding against the government and in favor of powerless litigants. Since he joined the court in 2017, he has voted for the government just 35 percent of the time, the lowest rate of any member of the court.

When Justices Thomas and Alito were both in the majority in divided cases, Justice Gorsuch voted with them less often than any other member of the court's conservative wing.

Put another way, none of the three members of the court appointed by Mr. Trump are as conservative as Justices Thomas and Alito.

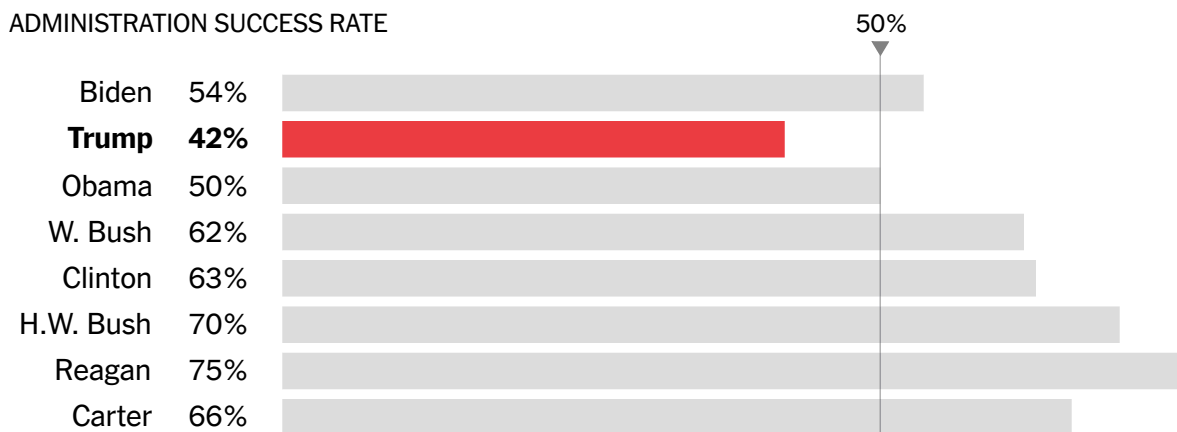
Justice Barrett, the third Trump appointee, is particularly worth watching, Professor Epstein said. "Some indicators show that Barrett — though still way more conservative than her predecessor, Ruth Bader Ginsburg — is moving somewhat to the left," she said. "This term she overtook Roberts as the Republican appointee casting the highest percentage of liberal votes in divided cases."

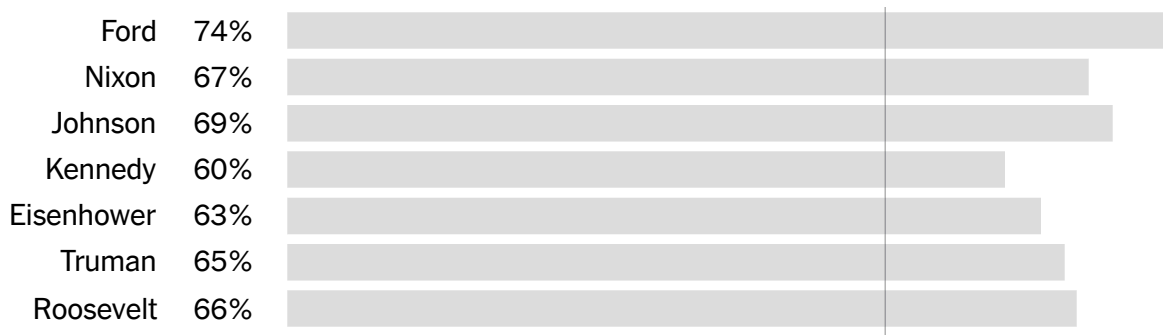
Mr. Trump has expressed disappointment with his choices, and he may be inclined to nominate more extreme justices, perhaps drawing from the Fifth Circuit, should he gain another term. The four oldest members of the court are Justice Thomas, 76; Justice Alito, 74; Justice Sotomayor, 70; and Chief Justice Roberts, 69.

While Mr. Trump was president, his administration did quite poorly in the Supreme Court in signed decisions in orally argued cases in which the United States, an executive department, an independent agency or the president himself was a party, prevailing only 42 percent of the time, the lowest rate since at least Franklin D. Roosevelt's administration. The Biden administration, by contrast, has been on the winning side 54 percent of the time.

The Trump Administration Has Fared Poorly

The former president won personal victories at the court this term, but his administration has had the lowest success rate in the modern era.





Source: Analysis by Lee Epstein and Andrew D. Martin, Washington University in St. Louis; and Michael Nelson, Penn State; using the Supreme Court Database. • The New York Times

The term that ended on Monday was studded with more potential blockbusters than any in recent memory. The court defused a few of them, but the term ended with a series of earth-rattling explosions.

When the justices return in October, they will face what is, for now at least, a more usual docket. Among the cases the court has agreed to decide are ones on transgender care for minors and so-called ghost guns.

There is little reason to think the court will find consensus in those cases.

Mr. Garre said the quarrels among the justices, and particularly the conservative ones, called to mind a remark ascribed to Justice Oliver Wendell Holmes Jr., who is said to have compared the Supreme Court to “nine scorpions in a bottle.”

“Chief Justice Rehnquist once described the job of chief as akin to herding cats,” Mr. Garre said. “To pick up on Holmes’s saying, maybe the better analogy these days is herding scorpions.”

Adam Liptak covers the Supreme Court and writes Sidebar, a column on legal developments. A graduate of Yale Law School, he practiced law for 14 years before joining The Times in 2002. More about Adam Liptak

Alicia Parlapiano is a Times reporter covering government policy and politics, primarily using data and charts. More about Alicia Parlapiano

How the Supreme Court Ruled in the Major Cases of 2024

By Adam Liptak, Abbie VanSickle and Alicia Parlapiano Updated July 1

On the last day of its term, the Supreme Court ruled that former President Donald J. Trump is partly immune from prosecution on charges that he used his office to try to subvert the 2020 election, returning the case to the lower courts for additional analysis.

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[Disinformation on Social Media 6-3](#) ▼

[Rights of Social Media Platforms 9-0](#) ▼

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No Supreme Court term in recent memory has featured so many cases with the potential to transform American society.

The court decided that Mr. Trump can stay on the ballot and that an abortion pill will remain widely available. It overturned a foundational precedent on the power of federal agencies and

rejected a central element to a settlement for those affected by the opioid crisis.

In recent years, some of the court's biggest decisions have been out of step with public opinion. Researchers at Harvard, Stanford and the University of Texas conducted a survey in March to help explore whether that gap persists.

Immunity for Former Presidents

Trump v. United States

6-3 ruling on July 1

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Roberts



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

The Supreme Court ruled that former President Donald J. Trump is partly immune from prosecution on charges that he plotted to subvert the 2020 election. The justices returned the case to the lower courts for additional analysis, saying that the president may be prosecuted for private conduct, but not official acts.

Is there a major precedent involved?

There are at least two. In 1974, in *United States v. Nixon*, the Supreme Court unanimously ruled that President Richard M. Nixon, then still in office, had to comply

with a subpoena seeking tapes of his conversations, rejecting his claims of executive privilege.

But in 1982, in *Nixon v. Fitzgerald*, a closely divided court ruled that Nixon, by then out of office, was absolutely immune from civil lawsuits “for acts within the ‘outer perimeter’ of his official responsibility.”

Are there recent rulings on the subject?

In 2020, the Supreme Court ruled by a 7-to-2 vote in *Trump v. Vance* that Mr. Trump had no absolute right to block the release of his financial records in a criminal investigation. “No citizen, not even the president, is categorically above the common duty to produce evidence when called upon in a criminal proceeding,” Chief Justice John G. Roberts Jr. wrote for the majority.

What was at stake?

The court’s decision amounts to a major statement on the scope of presidential power. It may effectively delay Mr. Trump’s trial for his attempts to overturn his 2020 loss at the polls.

Where does the public stand?

Think former presidents **are not immune** from criminal prosecution for actions they took while president

Think former presidents **are immune**



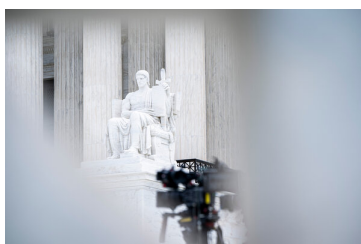
Source: SCOTUSPoll

More on the issue



To Justify His Immunity Defense, Trump Flips the Prosecution Script

April 23, 2024



Conservative Justices Take Argument Over Trump’s Immunity in Unexpected Direction

April 26, 2024

Social Media Platforms' First Amendment Rights

Moody v. NetChoice; NetChoice v. Paxton

9-0 ruling on July 1

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Roberts



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

By returning the cases to lower courts, the Supreme Court left in limbo challenges to laws in Florida and Texas that curb the power of social media companies to moderate content.

The laws' supporters argue that the measures are needed to combat perceived censorship of conservative views on issues like the coronavirus pandemic and claims of election fraud. Critics of the laws say the First Amendment prevents the government from telling private companies whether and how to disseminate speech.

Is there a major precedent involved?

There are at least two. In 1974, in *Miami Herald v. Tornillo*, the Supreme Court struck down a Florida law that would have allowed politicians a "right to reply" to newspaper articles critical of them.

In 1980, in *Pruneyard Shopping Center v. Robins*, the court said a state constitutional provision that required private shopping centers to allow expressive activities on their property did not violate the centers' First Amendment rights.

Are there recent rulings on the subject?

In 2022, in the Texas case, the Supreme Court temporarily blocked that state's law while the appeal moved forward. The vote was 5 to 4, with an unusual coalition in dissent.

What was at stake?

The cases arrived garbed in politics, as they concern laws aimed at protecting conservative speech. But the larger question the cases present transcended ideology. It is whether tech platforms have free speech rights to make editorial judgments — for now, the court ducked making any major statement on the issue.

Where does the public stand?

Think states **cannot** prevent social media companies from censoring speech

Think states **should be able** to prevent censoring



Source: SCOTUSPoll

More on the issue



Supreme Court to Decide How the First Amendment Applies to Social Media

Feb. 25, 2024

Obstruction Charges for Jan. 6 Assault

Fischer v. United States

6-3 ruling on June 28

Liberal bloc



Sotomayor

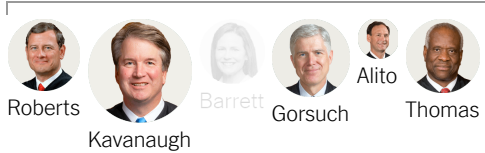


Jackson



Kagan

Conservative bloc



The Supreme Court sided with a rioter involved in the Capitol attack on Jan. 6, 2021, ruling that prosecutors may not use a federal obstruction statute to charge him.

Is there a major precedent involved?

In a series of decisions, the court has narrowed the reach of federal criminal laws aimed at public corruption and white-collar crime.

Are there recent rulings on the subject?

In 2015, the Supreme Court limited the sweep of the statute at issue in the case, the Sarbanes-Oxley Act of 2002. Justice Ruth Bader Ginsburg, writing for four of the justices in the majority, warned against cutting the law “loose from its financial-fraud mooring” in a case that involved a Florida fisherman who had thrown undersized fish into the Gulf of Mexico.

What was at stake?

The case has the potential to affect the federal case against former President Donald J. Trump for plotting to subvert the 2020 election, as well as hundreds of other Jan. 6 prosecutions. But the decision’s precise effect on those other cases was not immediately clear.

Where does the public stand?

Think the events at the U.S. Capitol on Jan. 6, 2021, were **criminal**

Think the events were **not criminal**



Source: SCOTUSPoll

More on the issue



Supreme Court's Review of Jan. 6 Charge Has Already Freed Some Rioters

April 16, 2024

Power of Federal Agencies

Loper Bright Enterprises v. Raimondo; Relentless v. Department of Commerce

6-3 ruling on June 28

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Roberts



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

The court reduced the power of federal agencies by overruling a foundational 1984 precedent. That ruling, *Chevron v. Natural Resources Defense Council*, required courts to defer to agencies' reasonable interpretations of ambiguous statutes.

Is there a major precedent involved?

Yes. *Chevron* is one of the most cited cases in American law.

Are there recent rulings on the subject?

Chevron fell out of favor at the Supreme Court in recent years, with several justices criticizing it. The court, which had invoked Chevron at least 70 times to decide cases, has not done so since 2016.

“The question is less whether this court should overrule Chevron,” Paul D. Clement, one of the lawyers for the challengers, told the justices, “and more whether it should let lower courts and citizens in on the news.”

What was at stake?

The decision threatens regulations on the environment, health care, consumer safety, nuclear energy, government benefit programs and guns. It also shifts power from agencies to Congress and to judges.

Where does the public stand?

Courts **should defer** to administrative agencies when laws are unclear

Courts **should not defer** to agencies



Source: SCOTUSPoll

More on the issue



A Fight Over a Fishing Regulation Could Help Tear Down the Administrative State

Jan. 15, 2024



A Potentially Huge Supreme Court Case Has a Hidden Conservative Backer

Jan. 16, 2024

Restrictions on the Homeless

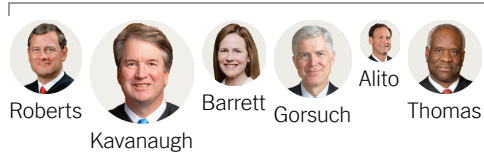
City of Grants Pass v. Johnson

6-3 ruling on June 28

Liberal bloc



Conservative bloc



The Supreme Court upheld ordinances in Oregon aimed at preventing homeless people from sleeping and camping outside, ruling that they did not violate the Eighth Amendment's prohibition on cruel and unusual punishment.

Is there a major precedent involved?

Yes. The argument by the homeless plaintiffs rested heavily on a 1962 decision, *Robinson v. California*, in which the Supreme Court ruled that laws criminalizing a person for being addicted to narcotics violated the Eighth Amendment. The plaintiffs argued that homelessness, like drug addiction, is a state of being that cannot be punished.

Are there recent rulings on the subject?

In 2018, an appeals court ruled in *Martin v. Boise* that Boise, Idaho, had infringed on the constitutional rights of homeless people by making it a crime to sleep outside, even when they had nowhere else to go.

What was at stake?

The case is likely to have major ramifications on how far cities, particularly in the West, can go to clear homeless people from streets and other public spaces.

Where does the public stand?

Think banning homeless people from camping outside even when local shelters are full **violates** the Constitution

Think it **does not violate** the Constitution

58%

42%

Source: SCOTUSPoll

More on the issue



The Town at the Center of a Supreme Court Battle Over Homelessness

April 20, 2024



Homelessness Case Draws Unusual Alliances: Conservatives and California Democrats

April 22, 2024

Emergency Abortion Care

Moyle v. United States

Dismissed June 27

In a brief, unsigned opinion, the Supreme Court dismissed a case about emergency abortions in Idaho, temporarily allowing women to receive an abortion when their health is at risk. The decision reinstates a lower-court ruling that paused the state's near-total ban on abortion.

Is there a major precedent involved?

The case is another reminder that the court has not been able to leave the question of abortion to states, as it promised in overturning *Roe v. Wade* after nearly half a century.

Are there recent rulings on the subject?

There are several court battles about various aspects of state abortion bans, including a fight in Texas over the federal law at issue in the case, the Emergency Medical Treatment and Labor Act.

What was at stake?

It was the first time the Supreme Court considered a state law criminalizing abortion since it overturned *Roe v. Wade*. A broad decision in the case could have affected more than a dozen states that have enacted similar restrictions.

Where does the public stand?

Think Idaho hospitals **must provide** abortions in medical emergencies

Think they are **not allowed**



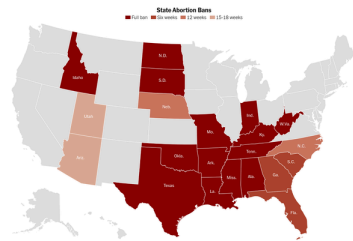
Source: SCOTUSPoll

More on the issue



What to Know About the Federal Law at the Heart of the Latest Supreme Court Abortion Case

Jan. 18, 2024



Tracking Abortion Bans Across the Country

May 24, 2022

Opioids Settlement

Harrington v. Purdue Pharma

5-4 ruling on June 27



Sotomayor

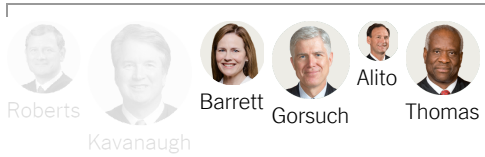


Jackson



Kagan

Conservative bloc



The Supreme Court ruled that members of the wealthy Sackler family could not be shielded from civil lawsuits over their role in the opioid crisis as part of a bankruptcy settlement that would channel billions of dollars to victims and their families.

Is there a major precedent involved?

The case was the first time the Supreme Court addressed whether a bankruptcy plan could be structured to give civil legal immunity to a third party, without the consent of all potential claimholders. The legal maneuver under scrutiny has become increasingly popular in bankruptcy settlements.

Are there recent rulings on the subject?

No, but the Supreme Court paused the Purdue Pharma deal until it reviewed the plan.

What was at stake?

The decision jeopardizes a carefully negotiated deal that promised up to \$6 billion toward states and others who have waited for years for some kind of settlement. More broadly, the case could have implications for similar agreements insulating a third party from liability.

Where does the public stand?

Think the Sackler family **should not** keep immunity from future lawsuits

Think family **should** keep immunity



Source: SCOTUSPoll

More on the issue



Judge Overturns Purdue Pharma's Opioid Settlement

Dec. 16, 2021



Fate of Billions for Opioid Victims From Sacklers Rests With Supreme Court

Dec. 3, 2023

Cross-State Air Pollution

Ohio v. Environmental Protection Agency

5-4 ruling on June 27

Liberal bloc



Sotomayor

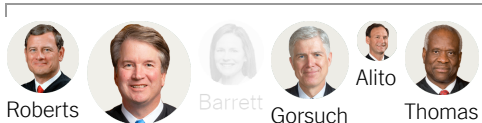


Jackson



Kagan

Conservative bloc



Roberts

Kavanaugh

Barrett

Gorsuch

Alito

Thomas

The Supreme Court temporarily stopped the Biden administration's "good neighbor" plan, which requires factories and power plants in Western and Midwestern states to cut air pollution that drifts into Eastern states.

Is there a major precedent involved?

In 2014, in *Environmental Protection Agency v. EME Homer City Generation*, the Supreme Court ruled that an E.P.A. regulation intended to curb cross-state pollution was permissible.

Are there recent rulings on the subject?

In just the past two terms, the court has limited the E.P.A.'s authority to address climate change and water pollution.

What was at stake?

The ruling was another blow to the Biden administration's efforts to protect the environment. Prevailing winds carry emissions of nitrogen oxide toward Eastern states with fewer industrial sites. The pollutant causes smog and is linked to asthma, lung disease and premature death.

More on the issue



E.P.A. Tells Dozens of States to Clean Up Their Smokestacks

March 15, 2023

Administrative Courts

Securities and Exchange Commission v. Jarkesy

6-3 ruling on June 27

Liberal bloc



Sotomayor

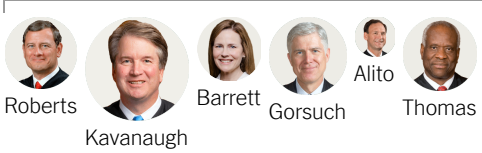


Jackson



Kagan

Conservative bloc



The Supreme Court ruled that the Securities and Exchange Commission’s in-house administrative courts are unlawful.

Is there a major precedent involved?

In *Atlas Roofing v. Occupational Safety and Health Review Commission* in 1977, the Supreme Court rejected a challenge to an agency’s tribunals, saying they could hear enforcement actions seeking to vindicate public rights.

Are there recent rulings on the subject?

In 2018, in *Lucia v. Securities and Exchange Commission*, the Supreme Court ruled that in-house judges at the agency had been deciding cases without constitutional authorization.

What was at stake?

The ruling against the S.E.C. may not only require it to file cases in federal court but could also imperil administrative tribunals at many other agencies, including the Federal Trade Commission, the Internal Revenue Service, the Environmental Protection Agency, the Social Security Administration and the National Labor Relations Board.

Where does the public stand?

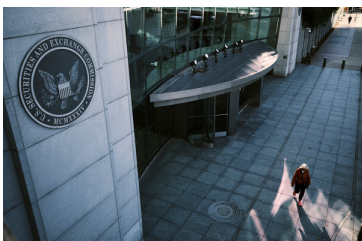
Think federal agencies bringing actions in administrative proceedings rather than in federal courts is **not constitutional**

Think it is **constitutional**



Source: SCOTUSPoll

More on the issue



Supreme Court Seems Wary of In-House S.E.C. Tribunals

Nov. 29, 2023

Disinformation on Social Media

Murthy v. Missouri

6-3 ruling on June 26

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Roberts



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

The Supreme Court handed the Biden administration a major practical victory, rejecting a challenge to its contacts with social media platforms to combat what administration officials said was misinformation.

Is there a major precedent involved?

Yes. In *Bantam Books v. Sullivan* in 1963, the Supreme Court ruled that informal and indirect efforts by the government to suppress speech can violate the First Amendment.

Are there recent rulings on the subject?

The Supreme Court also considered a case that raised similar issues, *National Rifle Association v. Vullo*, when it ruled that the National Rifle Association may pursue a First Amendment claim against a New York state official who had encouraged companies to stop doing business with it.

What was at stake?

The ruling left fundamental legal questions — on the role of the First Amendment in the internet era — for another day.

Where does the public stand?

Think federal officials urging private companies to block or remove users **violates** the First Amendment

Think it does not **violate** the First Amendment



Source: SCOTUSPoll

More on the issue



Ruling Puts Social Media at Crossroads of Disinformation and Free Speech

July 5, 2023

Second Amendment Rights of Domestic Abusers

United States v. Rahimi

8-1 ruling on June 21

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Roberts



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

The Supreme Court ruled that a federal law that makes it a crime for people subject to domestic violence restraining orders to own guns does not violate the Second Amendment.

Is there a major precedent involved?

Yes. In 2022, in *New York State Rifle & Pistol Association v. Bruen*, the court struck down a New York law that put strict limits on carrying guns outside the home. The decision established a new legal standard, one that required judges to assess restrictions on gun rights by turning to early American history as a guide.

Are there recent rulings on the subject?

Lower courts have struck down federal laws prohibiting people who have been convicted of felonies or who use drugs from owning guns.

What was at stake?

It is the court's first statement on the scope of a major ruling it issued in 2022. That earlier decision, *Bruen*, vastly expanded gun rights and has left lower courts in turmoil as they struggle to hunt down references to obscure or since-forgotten regulations.

Where does the public stand?

Think barring domestic abusers from possessing firearms **does not violate** their Second Amendment rights

Think it **violates** their rights



Source: SCOTUSPoll

More on the issue



In the Gun Law Fights of 2023, a Need for Experts on the Weapons of 1791

March 14, 2023



Gun Law Before Court Is Most Often Used as a Deterrent

Nov. 7, 2023

Bump Stocks for Guns

Garland v. Cargill

6-3 ruling on June 14

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Roberts



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

The Supreme Court ruled that the Trump administration overstepped its bounds by enacting a ban on bump stocks, gun attachments that increase a semiautomatic weapon's rate of fire to hundreds of bullets per minute.

Is there a major precedent involved?

Instead of bringing a Second Amendment challenge, the case was aimed at curtailing the power of administrative agencies, in this instance, the Bureau of Alcohol, Tobacco, Firearms and Explosives.

Are there recent rulings on the subject?

The case involved how to interpret a federal law that banned machine guns, the National Firearms Act of 1934. The definition was broadened by the Gun Control Act of 1968 to include parts that can be used to convert a weapon into a machine gun. At issue was whether bump stocks fell within those definitions. Federal appeals courts split on the issue.

What was at stake?

The decision did away with one of the few efforts at gun control that gained political traction after the Las Vegas massacre in 2017.

More on the issue



What Is a Bump Stock and How Does It Work?

Oct. 4, 2017

Abortion Pills

Food and Drug Administration v. Alliance for Hippocratic Medicine

9-0 ruling on June 13

Liberal bloc



Sotomayor

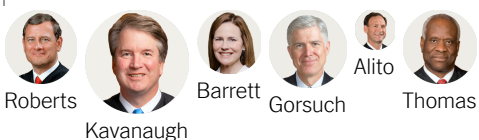


Jackson



Kagan

Conservative bloc



Roberts

Kavanaugh

Barrett

Gorsuch

Alito

Thomas

The Supreme Court upheld recent F.D.A. guidelines for distributing a commonly used abortion pill by mail and telemedicine, finding that the plaintiffs did not have standing to

sue.

Is there a major precedent involved?

The case is one of two on abortion that the court considered after it eliminated the constitutional right to abortion in 2022 in *Dobbs v. Jackson Women’s Health Organization*.

Are there recent rulings on the subject?

In 2023, the Supreme Court temporarily blocked efforts to severely curb access to the pill, mifepristone, as an appeal moved forward. Justices Clarence Thomas and Samuel A. Alito Jr. publicly noted that they would have allowed steps seeking to limit the availability of the pill, and Justice Alito wrote a dissent.

What was at stake?

The ruling ensures, for now, full access to the drug, which is used in the majority of abortions in the United States. But it does not unravel restrictions on the pill in more than a dozen states that have passed near-total abortion bans since the court overturned *Roe v. Wade*.

Where does the public stand?

Think the F.D.A.’s approval of mifepristone should **not be revoked**

Think the approval should **be revoked**



Source: SCOTUSPoll

More on the issue



How Common Is Medication Abortion?

March 26, 2024

N.R.A. and the First Amendment

National Rifle Association of America v. Vullo

9-0 ruling on May 30



Sotomayor



Jackson



Kagan



Roberts



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

The Supreme Court ruled that the National Rifle Association may pursue a lawsuit against a New York State official who the group says violated the First Amendment by trying to persuade companies not to do business with it after the school shooting in Parkland, Fla.

Is there a major precedent involved?

As in *Murthy v. Missouri*, the case implicated the 1963 decision *Bantam Books v. Sullivan*, in which the Supreme Court ruled that informal and indirect efforts by the government to suppress speech can violate the First Amendment.

Are there recent rulings on the subject?

The case is one of two centering on when government advocacy edges into violating free speech rights. The other, *Murthy v. Missouri*, concerned the Biden administration's dealings with social media companies.

What was at stake?

The case focused on when persuasion by government officials crosses into coercion. Although a government official is permitted to “share her views freely and criticize particular beliefs,” Justice Sonia Sotomayor wrote in a unanimous opinion, that official may not “use the power of the state to punish or suppress disfavored expression.”

Where does the public stand?

Think the state regulator's behavior **violates** the N.R.A.'s First Amendment rights

Think it **does not violate** the N.R.A.'s rights

53%

47%

Source: SCOTUSPoll

More on the issue



The A.C.L.U. Has a New Client: The National Rifle Association

Dec. 9, 2023

Racial Gerrymandering

Alexander v. South Carolina State Conference of the N.A.A.C.P.

6-3 ruling on May 23

Liberal bloc



Sotomayor

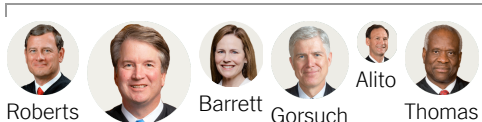


Jackson



Kagan

Conservative bloc



Roberts

Kavanaugh

Barrett

Gorsuch

Alito

Thomas

The Supreme Court cleared the way for South Carolina to keep using a congressional map that had been deemed an unconstitutional racial gerrymander, reversing a lower-court ruling that said the map resulted in the “bleaching of African American voters” from a district.

Is there a major precedent involved?

Yes. A series of Supreme Court decisions say that making race the predominant factor in drawing voting districts violates the Constitution.

Are there recent rulings on the subject?

The case is superficially similar to one from Alabama in which the court ruled last year that state lawmakers had diluted the power of Black voters in drawing a congressional voting map. But the two cases involve distinct legal principles.

The Alabama case was governed by the Voting Rights Act, the landmark civil rights statute, and the one from South Carolina by the Constitution's equal protection clause.

What was at stake?

The decision makes it harder to challenge voting maps as racial gerrymanders when lawmakers say their goal in drawing them was to secure a partisan advantage.

The ruling sent the case back to the lower court. But because the Supreme Court did not resolve the case sooner, the contested map will be used in the 2024 election. The new boundaries helped make the district in question a Republican stronghold.

Where does the public stand?

Think these changes to the districts are **unconstitutional**

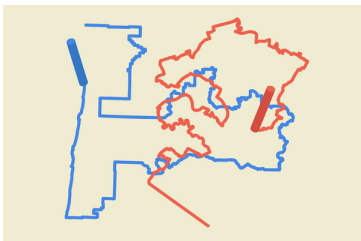
Think they are **constitutional**

67%

33%

Source: SCOTUSPoll

More on the issue



How Maps Reshape American Politics

Nov. 7, 2021



Nancy Mace's District Moved Right. Then She Helped Oust McCarthy.

Oct. 11, 2023

Agency Funding

Consumer Financial Protection Bureau v. Community Financial Services Association of America

7-2 ruling on May 16

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Roberts



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

The court ruled that the way Congress funds a consumer watchdog does not violate the appropriations clause of the Constitution.

Is there a major precedent involved?

There is no precedent squarely on point.

Are there recent rulings on the subject?

In 2020, the Supreme Court ruled that a different part of the law creating the consumer bureau was unconstitutional, saying that Congress could not insulate the bureau's director from presidential oversight.

What was at stake?

A ruling against the bureau, created as part of the 2010 Dodd-Frank Act after the financial crisis, could have cast doubt on every regulation and enforcement action it took in the dozen years of its existence. That includes agency rules — and punishments against companies that flout them — involving mortgages, credit cards, consumer loans and banking.

Where does the public stand?

Think this agency funding structure is **unconstitutional**

Think it is **constitutional**



Source: SCOTUSPoll

More on the issue



Wall Street's Most Hated Regulator Faces a Fundamental Threat

Oct. 1, 2023

Trump's Ballot Eligibility

Trump v. Anderson

9-0 ruling on March 4

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Thomas



Kavanaugh



Barrett



Gorsuch



Alito



Thomas

The Supreme Court ruled that states may not bar former President Donald J. Trump from running for another term, rejecting a challenge from Colorado under Section 3 of the 14th Amendment, which prohibits insurrectionists from holding office.

Is there a major precedent involved?

No. The Supreme Court had never before considered the scope of Section 3. The unsigned majority opinion relied in part on an 1869 decision from Chief Justice Salmon P. Chase. But that was, a dissent from the court's three liberal members said, "a nonprecedential, lower-court opinion by a single justice in his capacity as a circuit judge."

Are there recent rulings on the subject?

No. The Colorado Supreme Court's decision in December disqualifying Mr. Trump from the state's primary ballot acknowledged that "we travel in uncharted territory."

What was at stake?

A decision that Mr. Trump was ineligible to hold office would have been a political earthquake altering the course of American history.

Where does the public stand?

Think Trump **is eligible** to run in 2024

Think Trump **is not eligible**



Source: SCOTUSPoll

More on the issue

MAJORITY OPINION
The Constitution empowers Congress to prescribe how those determinations should be made. **The relevant provision is Section 5, which enables Congress, subject of course to judicial review, to pass "appropriate legislation to enforce" the Fourteenth Amendment.** Or as Senator Howard put it at the time the Amendment was framed, Section 5 "casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment...

LIBERAL JUSTICES CONCERNING OPINION
Similarly, nothing else in the rest of the Fourteenth Amendment supports the majority's view. Section 5 gives Congress the "power to enforce (the Amendment) by appropriate legislation." **Repealed legislation of one kind.**

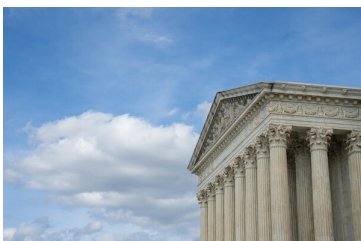
NOW
If it is not necessary to decide more to dispose of a case, then it is necessary not to decide more."
Dobbs v. Jackson Women's Health Organization, 597 U. S. 215, 348 (2022) (ROBERTS, C. J., concurring in judgment) **That fundamental principle of judicial restraint is precisely as old as the Republic.**

MAJORITY OPINION
Because **the Constitution makes Congress, rather than the States, responsible** for enforcing Section 3 against federal officers and candidates, we reverse.

MAJORITY OPINION
Nothing in the Constitution requires that we **include such claims** — arriving at any time in different times, up to and perhaps beyond the inauguration.

Highlights of the Supreme Court's Opinions on Trump's Ballot Eligibility

March 4, 2024



In Trump Cases, Supreme Court Cannot Avoid Politics

March 5, 2024

Polling data is based on a survey conducted online by YouGov from March 18 to 25 using a representative sample of 2,218 American adults. It comes from the SCOTUSPoll project by Stephen Jessee, University of Texas at Austin; Neil Malhotra, Stanford University; and Maya Sen, Harvard University. Numbers may not add to 100 percent because of rounding. Question wording and responses broken down by political party are available [here](#).

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