GENERAL/OVERVIEW

- **The Major Supreme Court Cases of 2024** – The New York Times, by Adam Liptak, Abbie VanSickle and Alicia Parlapiano
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- **The biggest Supreme Court rulings of 2024, and what's left to decide** – The Washington Post by Ann E. Marimow, Nick Mourtoupalas and Tobi Raji
  https://www.washingtonpost.com/politics/2024/supreme-court-cases-abortion-trump-guns/

- **The Supreme Court is going off the rails. It's about to get so much worse**. – Slate by Dalia Lithwick, Mark Joseph Stern and Steve Vladeck
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- **Supreme Court rules on Idaho abortion, EPA, Purdue bankruptcy and SEC cases, leaves Trump immunity for another day** – The Washington Post
  https://www.washingtonpost.com/politics/2024/06/27/supreme-court-decisions-cases-abortion-trump-jan-6/

- **How John Roberts Lost His Court** – The New York Times, by Linda Greenhouse
  https://www.nytimes.com/2024/06/16/opinion/alito-ethics-clarence-thomas.html

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- **Supreme Court Upholds Ban on Sleeping Outdoors in Homelessness Case** – The New York Times, by Abbie VanSickle
  https://www.nytimes.com/2024/06/28/us/politics/supreme-court-homelessness.html

- **Supreme Court rules cities may enforce laws against homeless** encampments – Los Angeles Times, by David G. Savage
  https://www.latimes.com/world-nation/story/2024-06-28/supreme-court-homeless-encampments

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- **Justices strike obstruction charge for Jan. 6 rioter, likely impacting others** – The Washington Post, by Anne E. Marimow and Devlin Barrett
  https://www.washingtonpost.com/politics/2024/06/28/supreme-court-obstruction-jan-6-trump/

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- **Opinion: The mifepristone case should be an easy one for the Supreme Court. But will it be?** – Los Angeles Times, by Erwin Chemerinsky
  https://www.latimes.com/opinion/story/2024-03-26/mifepristone-supreme-court-abortion-oral-arguments

HARRINGTON, UNITED STATES TRUSTEE, REGION 2 V. PURDUE PHARMA L.P. ET AL.

- **Why did Ketanji Brown Jackson just side with Supreme Court conservatives to reject a nationwide opioid settlement?** – San Francisco Chronicle, by Erwin Chemerinsky
  https://www.sfchronicle.com/opinion/openforum/article/supreme-court-purdue-pharma-ketanji-brown-jackson-19543361.php

OHIO ET AL. V. ENVIRONMENTAL PROTECTION AGENCY ET AL.

- **Supreme Court blocks EPA rule to limit air pollution from Midwest states** – Los Angeles Times, by David G. Savage
  https://www.latimes.com/world-nation/story/2024-06-27/supreme-court-blocks-epa-rule-to-limit-air-pollution-from-midwest-states

SNYDER V. UNITED STATES

- **Supreme Court wipes out anti-corruption law that bars officials from taking gifts for past favors** – Los Angeles Times, by David G. Savage
  https://www.latimes.com/world-nation/story/2024-06-26/supreme-court-anti-corruption-law

UNITED STATES V. RAHIMI

- **If we must rely on 'history and tradition' to assess gun laws, does racist history count?** – Los Angeles Times by Kevin Rector
  https://www.latimes.com/california/story/2024-02-07/if-we-must-rely-on-history-and-tradition-to-assess-gun-laws-does-racist-history-count

- **Opinion: By keeping guns away from domestic abusers, the justices set an example for other courts** – Los Angeles Times by Erwin Chemerinsky
  https://www.latimes.com/opinion/story/2024-06-21/rahimi-gun-control-supreme-court-domestic-abuse

- **Clarence Thomas and John Roberts Are at a Fork in the Road** – Thew New York Times, by David French
  https://www.nytimes.com/2024/06/23/opinion/rahimi-clarence-thomas-john-roberts.html

The Major Supreme Court Cases of 2024

By Adam Liptak, Abbie VanSickle and Alicia Parlapiano Updated June 28

In the last stretch of its term, the Supreme Court is poised to issue decisions on federal criminal charges against former President Donald J. Trump and the free speech rights of social media platforms.

Jan. 6 Obstruction Charges **6-3 ruling**
Power of Federal Agencies **6-3**
Restrictions on the Homeless **6-3**
Emergency Abortion Care **Dismissed**
Opioids Settlement **5-4**
Cross-State Air Pollution **5-4**
Administrative Courts **6-3**
Disinformation on Social Media **6-3**
Gun Rights **8-1**
Bump Stocks for Guns **6-3**
Abortion Pills **9-0**
N.R.A. and the First Amendment **9-0**
Racial Gerrymandering **6-3**
Agency Funding **7-2**
Trump's Ballot Eligibility **9-0**
Immunity for Former Presidents
Rights of Social Media Platforms

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

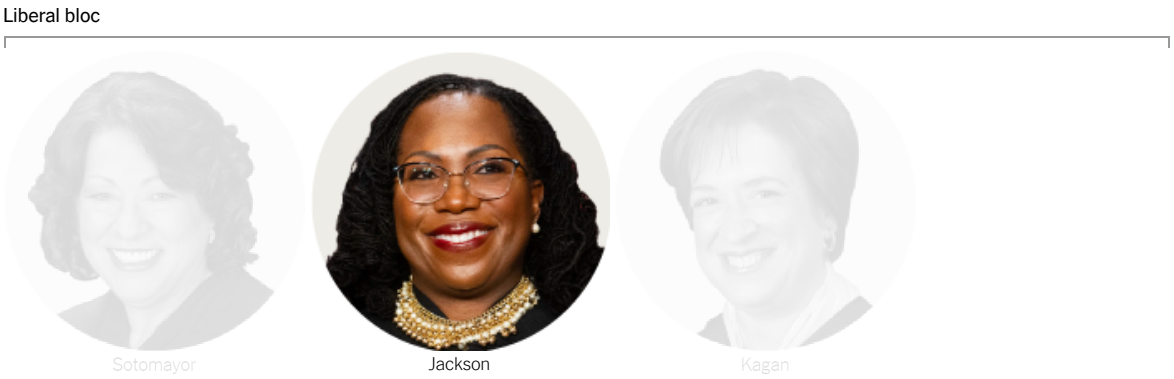
The court has already decided that Mr. Trump can stay on the ballot and that an abortion pill will remain widely available. It overturned a foundational precedent on the power of federal agencies and rejected a central element to a settlement for those affected by the opioid crisis. The remaining rulings are set to come down starting at 10 a.m. on Monday.

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.

Obstruction Charges for Jan. 6 Assault

Fischer v. United States

6-3 ruling on June 28



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.

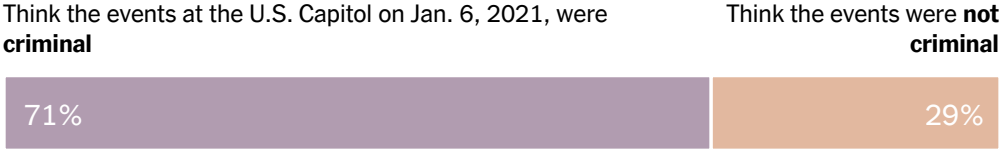
Are there recent rulings on the subject?

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?



Source: SCOTUSPoll

More on the issue

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

April 16, 2024

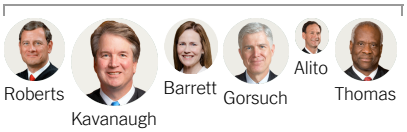
Power of Federal Agencies

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

6-3 ruling on June 28

Liberal bloc

Conservative bloc



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 has fallen out of favor at the Supreme Court in recent years, and several justices have criticized 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

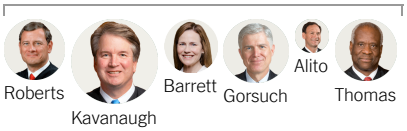
Restrictions on the Homeless

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 rests 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 argue 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?

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 is 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.

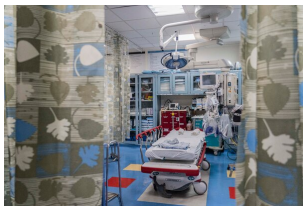
Where does the public stand?

Think Idaho hospitals **must provide** abortions in medical emergencies — 82%

Think they are **not allowed** — 18%

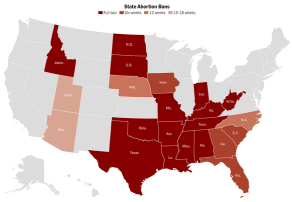
Source: SCOTUSPoll

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

Liberal 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 is 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.

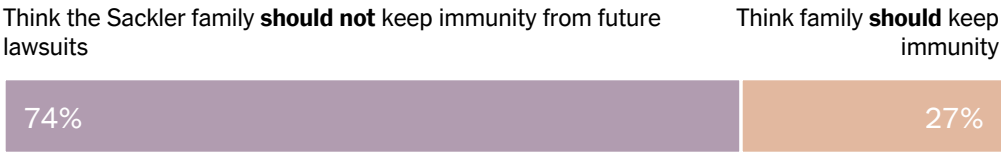
Are there recent rulings on the subject?

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

What was at stake?

The decision all but ensures that the Sacklers will no longer receive immunity from liability in opioid-related lawsuits. It jeopardizes a 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 has implications for similar agreements insulating a third party from liability.

Where does the public stand?



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

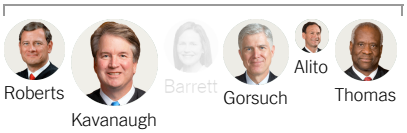
Cross-State Air Pollution

Ohio v. Environmental Protection Agency

5-4 ruling on June 27

Liberal bloc

Conservative bloc



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

Roberts

Kavanaugh

Barrett

Gorsuch

Alito

Thomas

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

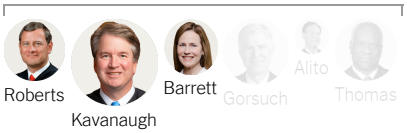
Disinformation on Social Media

Murthy v. Missouri

6-3 ruling on June 26

Liberal bloc

Conservative bloc



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.

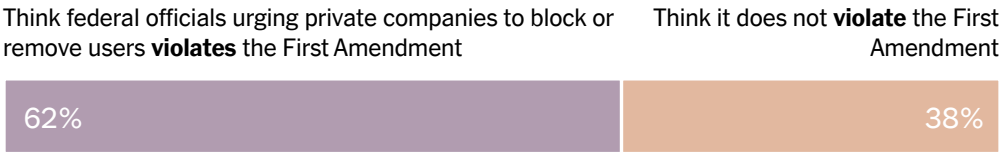
Are there recent rulings on the subject?

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?



Source: SCOTUSPoll

More on the issue

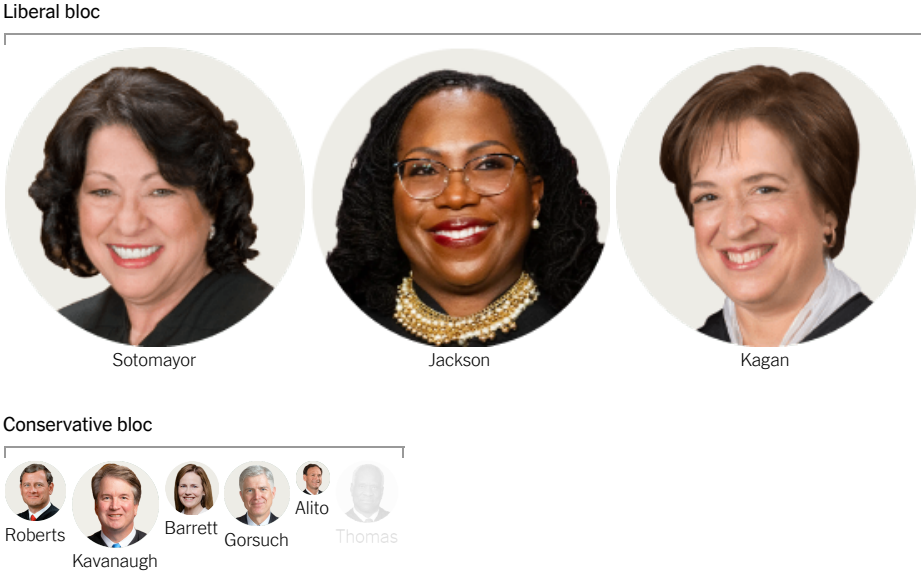
Ruling Puts Social Media at Crossroads of Disinformation and Free Speech

July 5, 2023

Second Amendment Rights of Domestic Abusers

United States v. Rahimi

8-1 ruling on June 21



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.

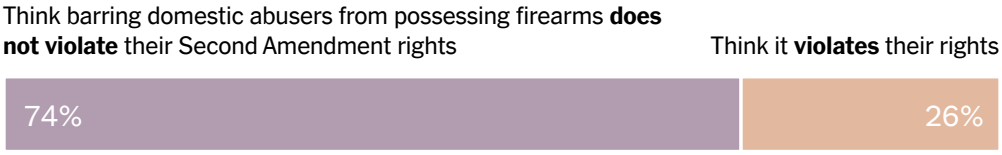
Are there recent rulings on the subject?

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?



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

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?

At first glance, the case looks as if it could be a Second Amendment challenge. But it is instead one of a number of cases 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 involves 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 is whether bump stocks fall within those definitions. Federal appeals courts have split on the issue.

What was at stake?

The decision does 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 centered on abortion after the court 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

Liberal bloc


Sotomayor


Jackson


Kagan

Conservative bloc


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 implicates 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 that will determine when government advocacy edges into violating free speech rights. The other, Murthy v. Missouri, concerns the Biden administration's dealings with social media companies.

What was at stake?

The case centered on when persuasion by government officials crosses into coercion. Although a government official is permitted to “share her views freely and criticize

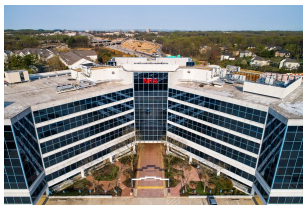
particular beliefs," Justice Sonia Sotomayor wrote in a unanimous opinion, that official may not "use the power of the state to punish or suppress disfavored expression."

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

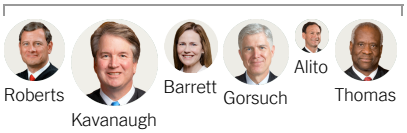
Racial Gerrymandering

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

6-3 ruling on May 23

Liberal bloc

Conservative bloc



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.

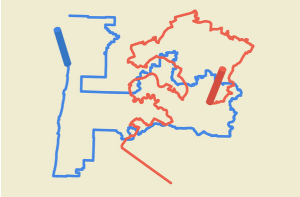
Where does the public stand?

Think these changes to the districts are **unconstitutional** — 67%

Think they are **constitutional** — 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

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?

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


Roberts


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.

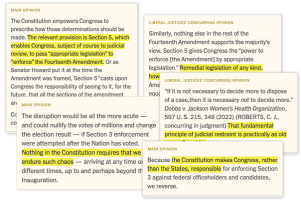
Where does the public stand?

Think Trump **is eligible** to run in 2024 — 53%

Think Trump **is not eligible** — 47%

Source: SCOTUSPoll

More on the issue



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

Immunity for Former Presidents

Trump v. United States

Not yet decided

The Supreme Court will decide whether former President Donald J. Trump is immune from prosecution on charges that he plotted to subvert the 2020 election.

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 is at stake?

The court's decision will determine whether and when Mr. Trump will face 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

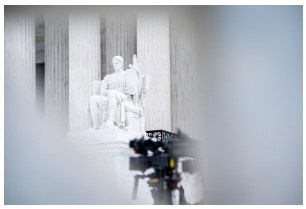
Think former presidents **are immune**

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

Not yet decided

The Supreme Court will decide whether Florida and Texas may prohibit large social media companies from removing posts based on the views they express.

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.

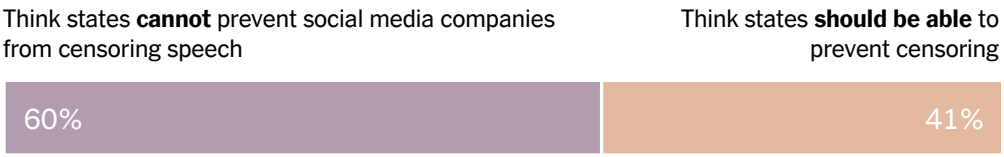
Are there recent rulings on the subject?

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 is at stake?

The cases arrive garbed in politics, as they concern laws aimed at protecting conservative speech. But the larger question the cases present transcends ideology. It is whether tech platforms have free speech rights to make editorial judgments.

Where does the public stand?



Source: SCOTUSPoll

More on the issue

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

Feb. 25, 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.

The biggest Supreme Court rulings of 2024, and what's left to decide

With new rulings coming Friday and Monday, a look at Supreme Court cases on abortion pills, social media, guns, former president Donald Trump and more.

By Ann E. Marimow, Nick Mourtoupalas and Tobi Raji

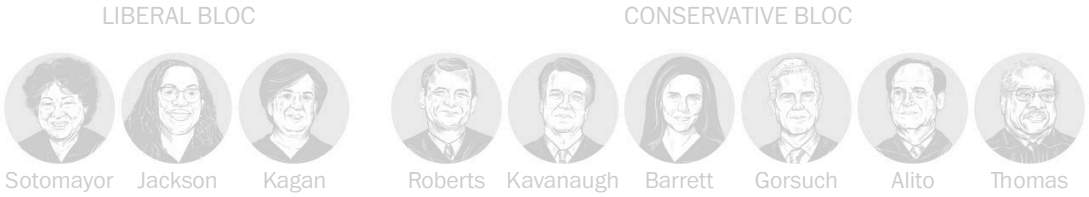
Updated June 27, 2024 at 1:56 p.m. EDT | Published February 26, 2024 at 6:00 a.m. EST

As the Supreme Court nears the end of its term, the justices are at the center of many of the nation's most politically sensitive debates. By early July, the court is poised to announce decisions in cases involving former president Donald Trump's claim that he is immune from prosecution and whether Jan. 6, 2021, rioters were properly charged, as well as cases on homelessness, social media and the power of federal agencies.

The next decisions will be issued Friday, starting at 10 a.m. Eastern time. Here's a look at the biggest cases still to be announced. And below that, the most significant decisions of the term so far.

Prosecuting Trump for trying to block the 2020 election results

Trump v. United States



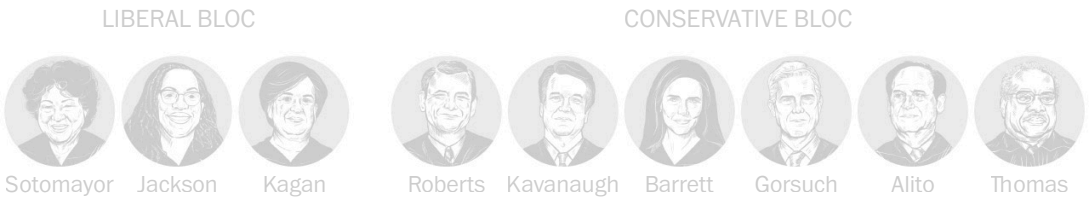
Oral argument: Held April 25.

What's at stake: Whether Trump is immune from prosecution for his alleged efforts to stay in power by overturning Joe Biden's election victory.

Background: Trump's unprecedented claim that presidents cannot be criminally charged for acts they undertook while in the White House will directly impact whether he goes on trial in D.C. on election-obstruction charges. It could also affect his separate trials in Florida and Georgia. At oral argument, the justices appeared ready to say Trump can be prosecuted but rule in a way that requires more pretrial action from lower courts, further delaying his stalled trial in the nation's capital.

Charging Jan. 6 rioters and Trump with obstruction

Fischer v. U.S.



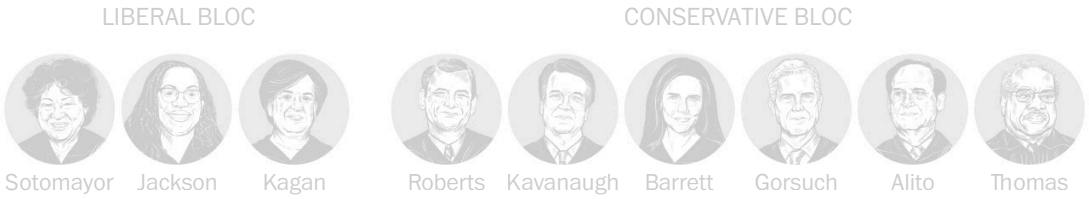
Oral argument: Held April 16.

What's at stake: Whether prosecutors properly charged hundreds of Jan. 6 defendants and Trump using a law that makes it a crime to obstruct or impede an official proceeding — in this case, the disruption of Congress's certification of Biden's 2020 election victory.

Background: The case concerns whether a law written in the wake of the Enron scandal, which involved document-shredding by the company's accountants, can be used to prosecute some of the Jan. 6 rioters. At oral argument, the court appeared deeply divided, with several conservatives quite skeptical of the government's decision to charge participants under the law.

Limits on social media posts

NetChoice, LLC v. Paxton and *Moody v. NetChoice, LLC*



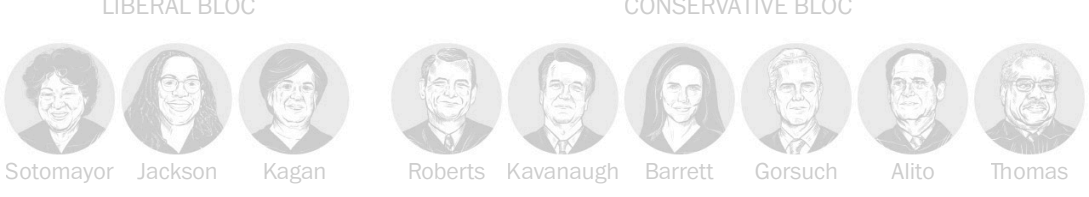
Oral argument: Held Feb. 26.

What's at stake: Whether the First Amendment allows states to restrict social media companies from removing certain political posts or accounts.

Background: At oral argument, justices seemed skeptical that the First Amendment permits state governments to set rules for how social media companies such as Facebook and YouTube curate content. Even as justices expressed concern about the power of the platforms over public debate, a majority appeared likely to block Texas and Florida laws passed in 2021. The court's review of the laws is the highest-profile examination to date of allegations that Silicon Valley companies illegally censor conservative viewpoints.

Power of federal agencies

Loper Bright Enterprises v. Raimondo and *Relentless, Inc. v. Dept. of Commerce*



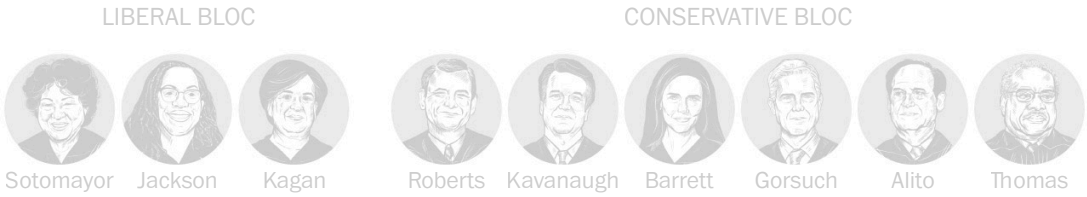
Oral argument: Held Jan. 17.

What's at stake: Whether courts must continue to defer to the reasonable interpretations of agency officials enforcing ambiguous federal statutes. Conservatives concerned about the power of the administrative state want to limit the discretion of agency officials and allow courts to interpret laws regulating the environment, the workplace, public health and financial markets.

Background: The court is being asked to overturn a long-standing precedent that set the framework for evaluating agency action known as "Chevron deference," from a 1984 case, *Chevron U.S.A. v. Natural Resources Defense Council.* While the Supreme Court has not invoked *Chevron* in recent years, lower courts still rely on it. The court's conservative majority seemed inclined during argument to overturn or significantly scale back *Chevron*, which could weaken the government's ability to regulate vast swaths of American life.

Homeless encampments in public spaces

City of Grants Pass, Oregon v. Gloria Johnson



Oral argument: Held April 22.

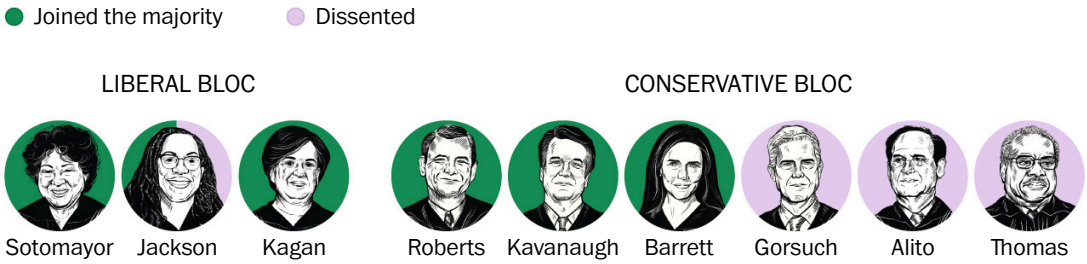
What's at stake: Whether state and local officials can punish homeless individuals for camping and sleeping in public spaces when shelter beds are unavailable.

Background: A lower court declared it unconstitutional to enforce anti-camping laws against homeless individuals when they have nowhere else to sleep. Democratic leaders in cities on the West Coast say the ruling has made it more difficult to address safety and public health risks created by tents and makeshift structures. At oral argument, the justices expressed concern about punishing homeless people for sleeping outside when they have nowhere else to go, while also struggling with how to ensure local and state leaders have flexibility to deal with the growing number of unhoused individuals nationwide.

DECIDED

Emergency room abortions

Idaho v. U.S.



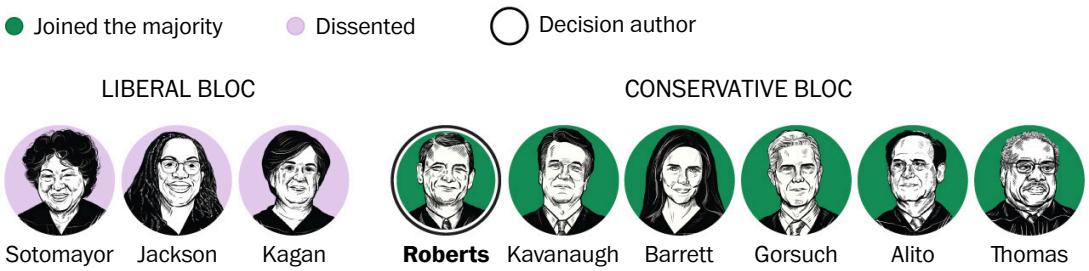
Note: The majority opinion was unsigned. Jackson concurred with the majority and also filed a partial dissent.

What they ruled: While litigation on the issue continues in lower courts, hospitals in Idaho that receive fe
emergency abortion care to stabilize patients — even though the state strictly bans the procedure.

Why it matters: The Biden administration sees this case as one of the few ways it can protect abortion access in states that have banned the procedure since the overturning of *Roe v. Wade* two years ago. Idaho bans abortions unless necessary "to prevent the death of the pregnant woman," while the federal Emergency Medical Treatment and Labor Act, known as EMTALA, requires hospitals to stabilize or transfer patients needing emergency care even if they are not at risk of death. The decision, issued a day after it was prematurely posted on the court's website, is temporary, and does not settle the question of whether the federal law preempts strict state bans.

SEC tribunals

Securities and Exchange Commission v. Jarkesy

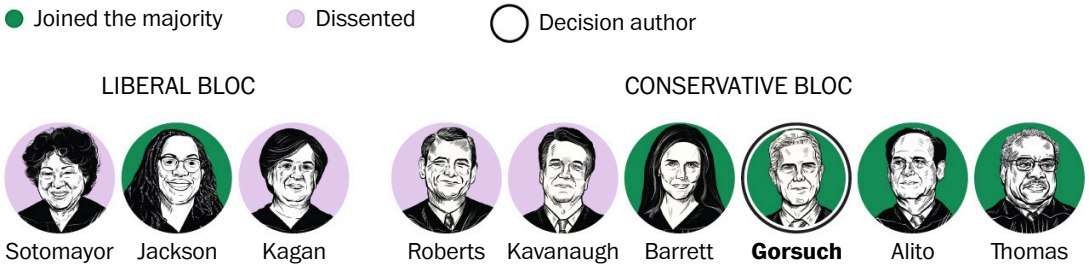


What they ruled: A divided court invalidated the Securities and Exchange Commission's use of in-house legal proceedings to discipline those it believes have committed fraud, saying the reliance on internal tribunals, rather than federal courts, violates the Constitution.

Why it matters: The ruling is the latest example of the court limiting the power of federal agencies and one of several cases this term challenging the power of the executive branch.

Opioid lawsuit settlement

Harrington v. Purdue Pharma

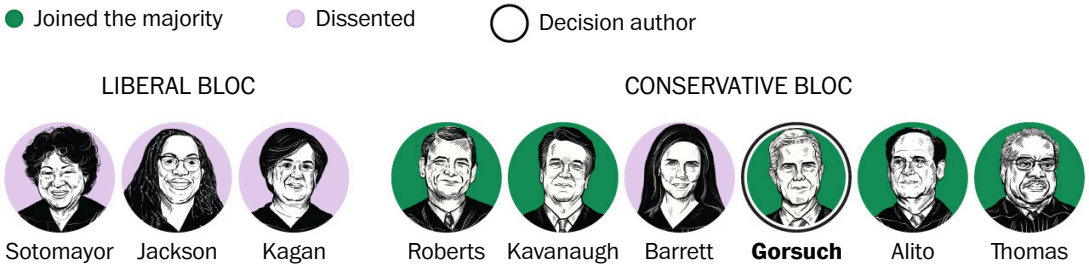


What they ruled: The justices blocked a controversial Purdue Pharma bankruptcy plan that would have provided billions of dollars to address the nation's opioid crisis in exchange for protecting the family that owns the company from future lawsuits. In a 5-4 decision that scrambled ideological lines, the majority found that the plan was invalid because all the affected parties had not been consulted on the deal.

Why it matters: The closely watched fight involving the maker of OxyContin is part of a national reckoning over the role of drugmakers and other companies in the opioid addiction public health crisis. It split relatives of overdose victims and those whose lives were shattered by opioid addiction.

Downwind industrial pollution

Ohio v. EPA, Kinder Morgan Inc. v. EPA, American Forest & Paper Assn. v. EPA, U.S. Steel Corp. v. EPA

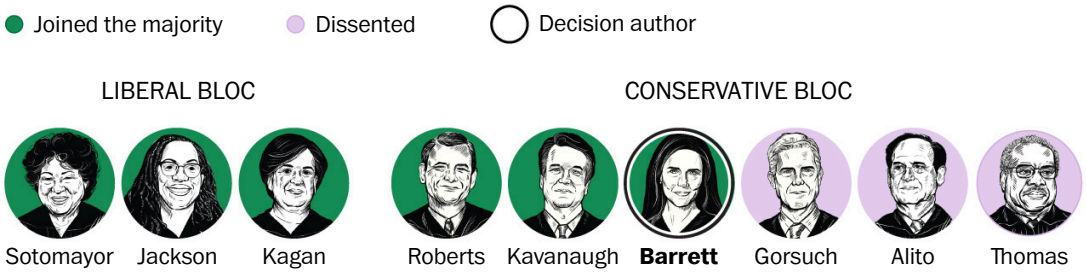


What they ruled: The court ruled 5-4 to pause the Environmental Protection Agency's ambitious "good neighbor" plan as it is challenged in a lower court. The plan would have limited smog-forming pollutants from power plants and other industrial facilities that cause problems for their downwind neighbors in other states.

Why it matters: The decision is the third time in as many years that the court's conservative majority has curbed the EPA's power to regulate pollution. Those challenging the plan called it unworkable, prohibitively expensive and illegal. The EPA disagreed and said the initiative was needed to protect the health of residents in downwind states, particularly the young and elderly.

White House communicating with social media companies on misinformation

Murthy v. Missouri

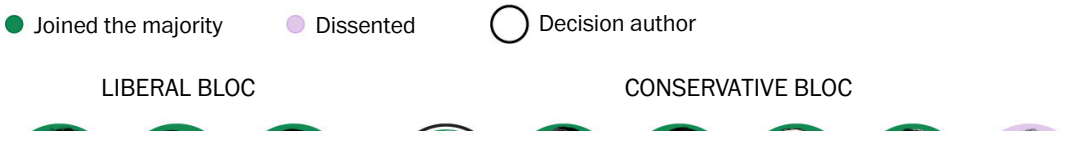


What they ruled: The Supreme Court rejected an effort to sharply limit what the White House can say to social media companies about posts the administration believes contain misinformation. A divided court said the Republican attorneys general in Louisiana and Missouri and individual social media users who brought the challenge did not have legal grounds, or standing, to do so.

Why it matters: The case gave the Supreme Court an opportunity to shape how government officials interact with social media companies and communicate with the public online. The challengers wanted to bar the Biden administration from pressuring social media companies to remove posts from their platforms that the government deems problematic, accusing the administration of violating the First Amendment by operating a sprawling federal "censorship enterprise."

Guns for suspected domestic abusers

U.S. v. Rahimi

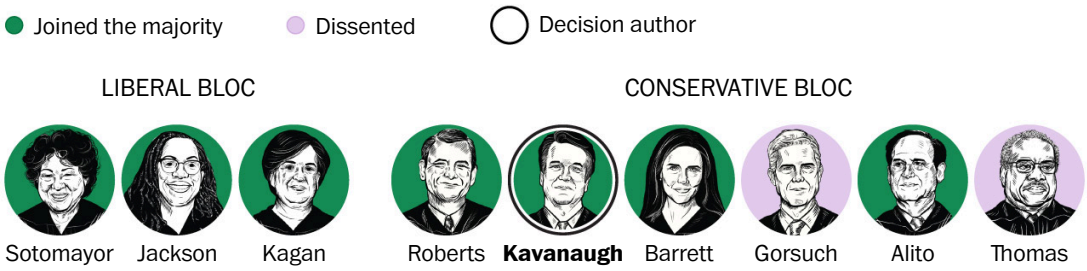


What they ruled: People who are subject to domestic-violence restraining orders can be banned from having firearms.

Why it matters: This is the first major Second Amendment decision since the conservative majority bolstered gun rights in its decision two years ago known as *New York State Rifle & Pistol Association v. Bruen*. The *Bruen* ruling required the government to point to historical analogues when defending laws that place limits on firearms, leading to court challenges against limits on possessing firearms — including the one in this case, which the justices upheld as constitutional.

Trump tax cuts

Moore v. U.S.

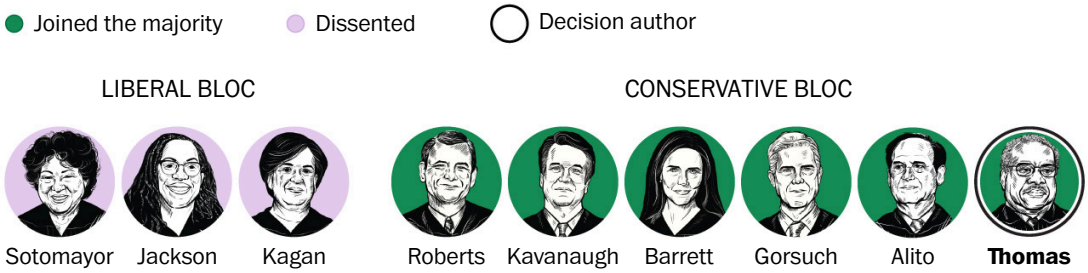


What they ruled: An obscure provision of President Donald Trump's 2017 tax package is constitutional.

Why it matters: In a 7-2 decision, the court upheld a one-time tax on offshore earnings that helped fund the massive tax cut, ruling that it is permitted under Congress's limited powers of taxation. Some viewed the challenge to the tax — brought by a Washington couple who were backed by an anti-regulatory advocacy group — as an effort to preemptively block Congress from creating a wealth tax. Many experts feared that a ruling that the tax was unconstitutional could destabilize the nation's tax system.

Bump stock ban

Garland v. Cargill

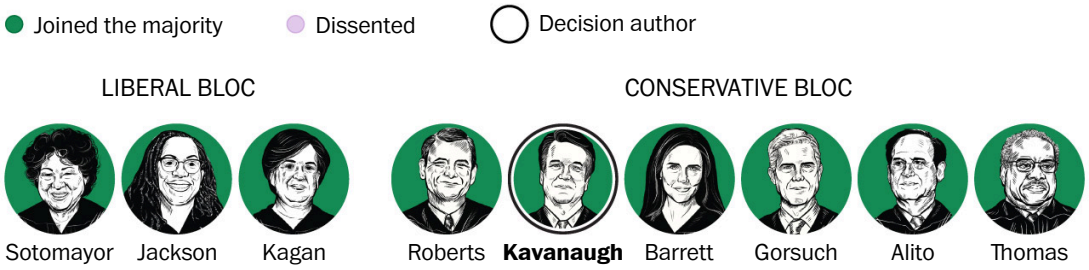


What they ruled: The Supreme Court's conservative majority struck down a federal ban on bump stock devices that allow semiautomatic rifles to fire hundreds of bullets a minute. The majority said bump stocks do not qualify as machine guns under a 1986 law that barred civilians from owning the weapons.

Why it matters: The 6-3 ruling upends one of the few recent efforts by the federal government to address the nation's epidemic of gun violence and continues the conservative majority's record of limiting gun restrictions.

Abortion medication restrictions

FDA v. Alliance for Hippocratic Medicine

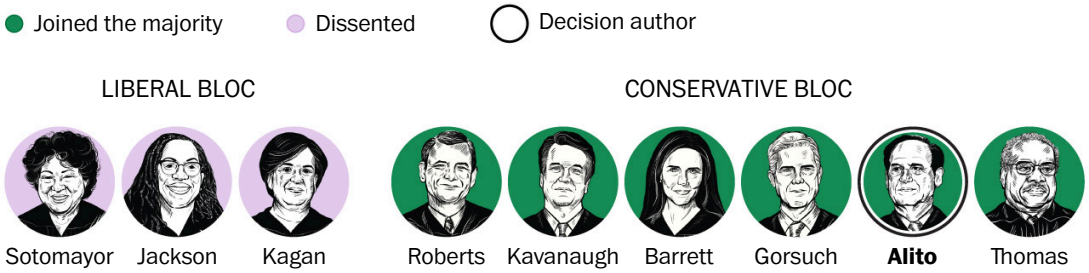


What they ruled: The justices maintained broad access to mifepristone, unanimously reversing a lower court decision that would have made the widely used abortion medication more difficult to obtain. The decision was not on the substance of the case, but a procedural ruling that the challengers did not have legal grounds to bring their lawsuit.

Why it matters: Ever since the high court eliminated the nationwide right to abortion in 2022, medications to terminate pregnancy have increased in importance and become a major target of litigation, in part because the pills can be sent by mail, including to states that have severely limited or banned abortions. The court's decision is unlikely to end efforts to restrict access to the pill, with three states poised to try to quickly revive the challenge. A Republican president could also impose regulations on mifepristone or move to take the drug off the market. Democrats are trying to prevent that possibility by overhauling the Comstock Act, an 1873 federal law that bans sending abortion-related materials through the mail.

Voting maps

Alexander v. South Carolina State Conference of the NAACP

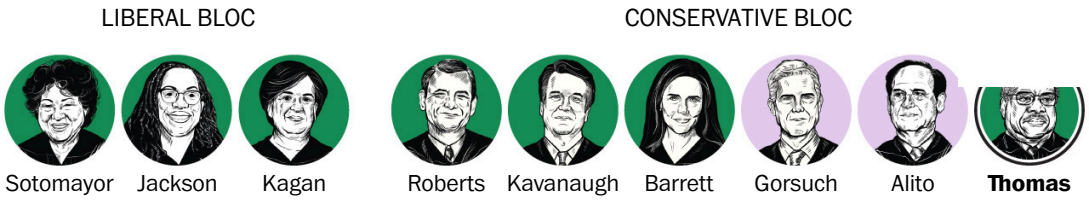


What they ruled: South Carolina is permitted to use a congressional map, created by the GOP-led state legislature, that a lower court said wrongly "exiled" Black voters from one district to another to protect a White Republican incumbent. The court's conservative majority said those challenging the map had not proved it was motivated by race, which would be illegal, rather than by partisan politics, which is legal.

Why it matters: The case is one of several redistricting cases that have been closely watched because the U.S. House is so narrowly divided, and because the outcomes of the legal challenges could affect who controls Congress in the future.

Consumer Financial Protection Bureau

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

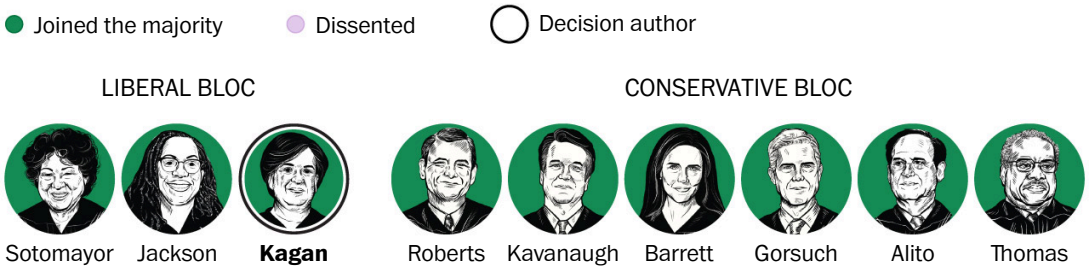


What they ruled: The funding mechanism Congress adopted to ensure the Consumer Financial Protection Bureau's independence is constitutional and does not violate the Constitution's command requiring congressional appropriation of money.

Why it matters: The CFPB case is one of several the high court heard this term that challenge the power of federal agencies. The Biden administration said that a ruling in favor of the challengers would have had implications for the funding of other regulatory agencies, including the Federal Reserve Board, and could even cast doubt on Social Security and payments to the national debt. The CFPB plans to restart its aggressive crackdown on payday lenders and other companies that offer high-cost, short-term loans to poor borrowers.

Employment discrimination

Muldrow v. City of St. Louis

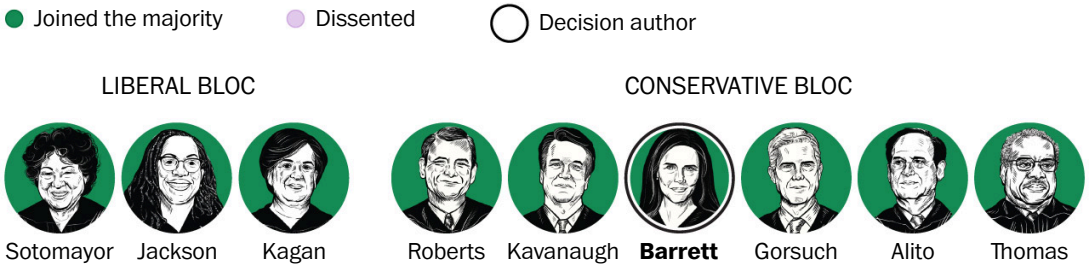


What they ruled: Workers can pursue employment discrimination claims over job transfers without having to show that the involuntary move caused a "significant disadvantage," such as harm to career prospects or a change in salary or rank.

Why it matters: Some lower courts had ruled that employees must show they suffered significant harm from a job transfer to successfully lodge a discrimination complaint under Title VII, a federal civil rights law. In unanimously ruling for a police sergeant in St. Louis who said she was moved to a lesser role because she is a woman, the Supreme Court lowered that bar, saying employees must show only that they experienced some harm. The court's ruling was hailed by conservative activists intent on dismantling diversity, equity and inclusion initiatives that they say discriminate against White people and men.

Blocking critics on social media

O'Connor-Ratcliff v. Garnier and *Lindke v. Freed*

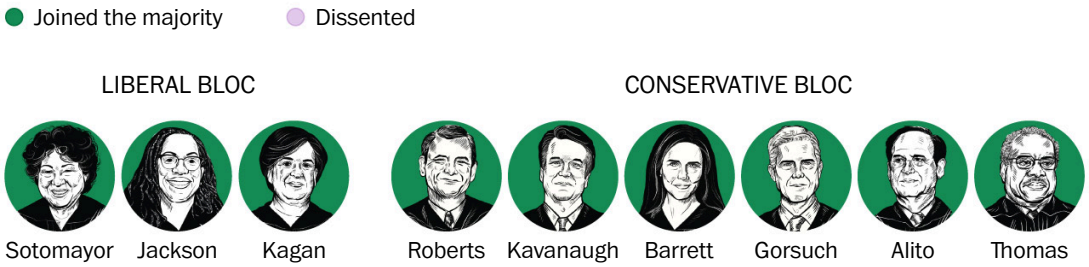


What they ruled: Public officials can be liable for blocking or deleting critics from their social media accou y are acting in an official capacity and with "actual authority" to speak on behalf of the government. In a pair of un said public officials are still private citizens with their own constitutional rights.

Why it matters: The Supreme Court decisions set the rules for interactions between the government and its citizens, who are increasingly relying on popular social media platforms to access public officials and critical community information.

Donald Trump ballot eligibility

Donald Trump v. Norma Anderson



What they ruled: Colorado cannot disqualify Trump from 2024 election ballots because of his actions before and during the Jan. 6, 2021, attack on the Capitol. The justices said the Constitution does not permit a single state to bar a presidential candidate from national office, declaring that such responsibility "rests with Congress and not the states."

Why it matters: Section 3 of the 14th Amendment to the U.S. Constitution was intended to prevent Confederate leaders from returning to positions of power after the Civil War. It has rarely been invoked in modern times. The ruling raises new questions for Congress and the high court, including whether lawmakers could refuse to count electoral votes for Trump if they determine that he committed insurrection during the Capitol attack.

Robert Barnes and Justin Jouvenal contributed to this report. Justice illustrations by Shelly Tan.

JURISPRUDENCE

The Supreme Court Is Going off the Rails. It's About to Get So Much Worse.

BY DAHLIA LITHWICK, MARK JOSEPH STERN, AND STEVE VLADECK

MAY 28, 2024 • 12:43 PM

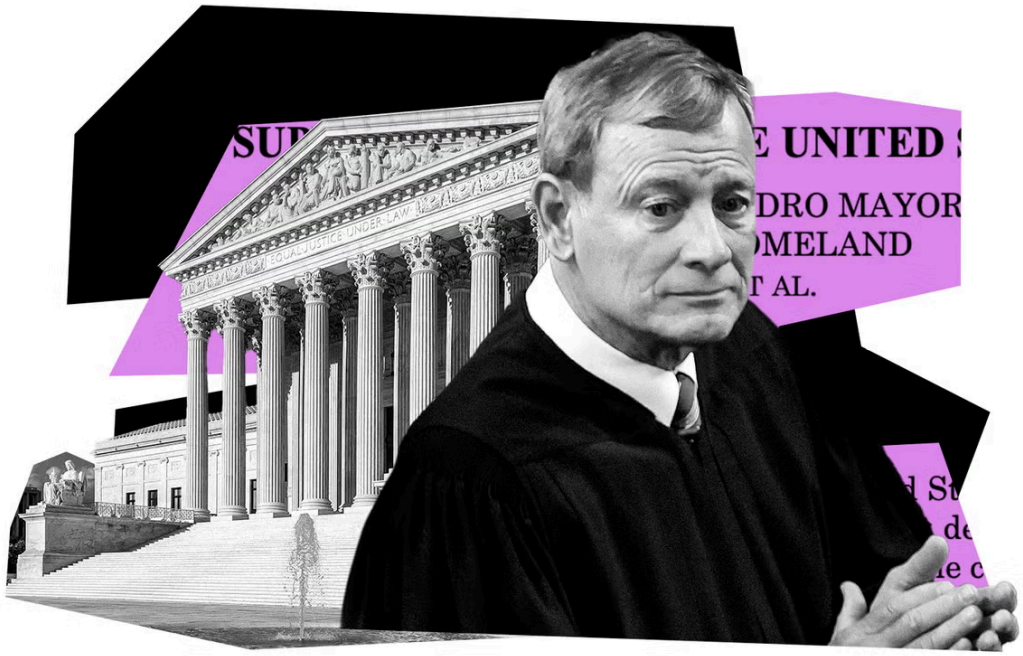
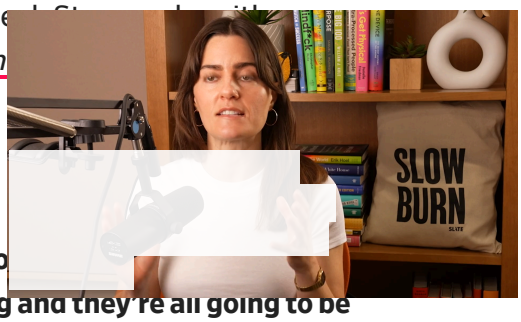


Photo illustration by Slate. Photos by Chip Somodevilla/Getty Images and lucky-photographer/iStock/Getty Images Plus.

The end of the Supreme Court term is already careening off the rails, with a backlog of major cases the justices are madly scrambling to finish before their self-imposed deadline at the end of June. The final weeks of the term have always been crazy, but thanks to a pileup of politically charged blockbusters, this year they're poised to be absolute mayhem. On last week's episode of Amicus, Dahlia Lithwick and Mark Jose
Stephen Vladeck, a Georgetown Law professor and author of *Th*
conversation has been edited and condensed for clarity.



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Dahlia Lithwick: What makes this term different, Steve? And o
is that we have a whole ton of merits decisions that are coming and they're all going to be really important. A bunch are nationally significant. This is not like those terms where

there's four blockbusters in the last two weeks of June. This is an entirely different animal.

Steve Vladeck: It's different in two ways that are going to sound like they're inconsistent, although I think they're coming from the same place. The first way is: The court's actually doing less. We're on track for maybe 58 or 59 merits decisions by the time we go home for the summer and go start crying again. Which will be the fifth term in a row that the court doesn't get to 60 cases. And it hadn't been below 60, before that, since 1864. And so there's a whole universe of cases that has completely disappeared from the Supreme Court's docket.

Yet a remarkably high percentage of what's left are major cases. You've got these major administrative law cases, abortion cases, and social media cases. You've got two major gun cases. Oh, by the way, there are those two small Jan. 6 cases, including one about whether former President Trump can be criminally prosecuted. So depending on how you count, that's about 20 major decisions that the court *has* to get through between now and the end of June. And they're doing three or four a week right now.

We're going to get slammed the last couple of weeks of June with major, controversial decisions. And that's going to pose an especially difficult challenge to the Supreme Court press corps, who has to try to explain all of this to everybody in a their attention.

Mark Joseph Stern: I'm curious why you think this is happening- combined with the increase in really major grants. I am puzzled b justices have different philosophies about grants; there's not one is happening.

Vladeck: So I think two things are going on, and I actually think they are related. First, I think the court is getting a lot of pressure from below, from my dear friends on the 5th Circuit.

Some of this is because the 5th Circuit has just gone completely off the deep end on some of these cases, and the court has to reverse them. That's the *CFPB* case. That's almost certainly going to be the case with the mifepristone case, with *Rahimi,* a big gun case, and probably with *NetChoice*, the social media content-moderation case. So part of it is that the court has the sort of docket where its hand is being forced, and then part of that is the court taking cases it wants to take to mess with the administrative state.

What's remarkable is that the justices are all talking about working harder than they ever have and saying that they're all crazy busy. So it's not like the shrinkage of the docket has freed up time. What they're doing is investing their time in these high-profile cases that take more of their time, more of their energy, when they're going back and forth about these concurrences and dissents. They have so many of these high-profile cases that they just don't have room for the lower-profile stuff.

And the problem will continue into next term. We got to Memorial Day with *eight* cert grants for next year. That's insane.

Lithwick: By Memorial Day, how many cert grants do we usually have, just for point of comparison?

Vladeck: More than 20! And the larger point is that whatever you think of what the court's actually doing in these cases, this rather seismic shift in the nature of its docket is a big deal. It's something we ought to be talking about. Maybe if there were a Congress, or, like, a Senate Judiciary Committee that actually cared about the Supreme Court, they might even think to hold hearings about these shifts in the docket.

Stern: Can I just add one gloss that I think is implicit in your critique, Steve? When they are slammed with all these super high-profile cases under a time limit, the work product suffers. And I think the best example of that so far is *Trump v. Anderson*, the Colorado ballot removal case. That came down in a month because the court actually can act quickly when it wants to, and they wanted to get it out before the Colorado primary.

But after we all read it a couple times, I think it became clear there was this misalignment between the majority and the concurrence. The concurrence was criticizing things that weren't in the majority opinion. The majority opinion was saying things that didn't reflect the concurrence's critique. Then, as we at Slate discovered, the concurrence was in fact originally labeled a dissent before being changed at the last minu
and I feel like that's going to be way worse in the next month as t
these major cases. They're going to get sloppy. And the result wi

Vladeck: Two other things tend to be true when the court rushes
honest, because there's less time to sanitize what they're doing.
mad at each other. And I think this is the problem, because the cc
arbitrary obsession with clearing its decks before the summer recess—which, by the way, is just something they impose on themselves. There's no statute or rule that requires them to do that. So we're in for a shitstorm. And it's not just because of what the court's going to do

in these cases, which is going to be really problematic politically, but just from a matter of the stability of law, it's gonna be ugly.

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Lithwick: You made the point, Steve, that July 1 has become the magic day for at least some justices to jet off to give partisan speeches on someone else's dime. How that's an unforced error and, if it wanted, the court could just decide cases through August. But there are so many other unknowable things, like how the court waits to tell us what the decision days will be, and doesn't tell us in advance which opinions are coming down. So much of this performance of "We can't tell you anything, so just come sit in the room and count boxes with us" is gratuitous and silly.

Vladeck: It's like *The Crown*, right? It's pomp and circumstance because that's how it's always been. It's in those weird, mystical traditions that we believe there's something higher than us and different than us.

Stern: And a lot of it, too, is an arrogant rejection of transparency at even the most basic levels. A refusal to tell the public what's going to happen, so they can maintain maximal latitude for themselves behind the scenes. I think they fear that if they told the public which case is coming out tomorrow, and then there's a sudden switch behind the scenes and it doesn't come out, everyone would know that something happened; the public would know something about deliberations, and for some reason, that's bad. This is a branch that is committed to operating in absolute secrecy.

Lithwick: Can I ask you both a final question? Because it's the one that I now wake up asking myself pretty much every day. Say you're John Roberts; you're the institutionalist guy. You wanted to be John Marshall. You wanted to be remembered as having held this institution together and steered it through the rocky shoals. And now your people are crazy and it's past the tipping point. So what in the world of conceivable interventions could John Roberts, the institutionalist, take?

Stern: I feel like John Roberts, the institutionalist, is missing in a
some time. The chief's questions from the bench in some of thes
been really trollish and hacky. In the *Fisher* case about the Jan. 6
like Thomas and Alito. In the homelessness case, he sounded so l
insensitive.
I worry that the "moderate" John Roberts who appeared intermi
maybe 2023 is gone. I feel like he's just done trying to police his colleagues and he's doing this YOLO court thing that we had previously assumed he was embarrassed by.

Vladeck: I have often found John Roberts to be an enigma, and that's even more so the case this term. Part of me wants to reserve judgment a bit because I think we're going to have a lot of big decisions where maybe he'll restore some of our faith that he actually does care about the institution in ways that are divorced from his ideological goals.

Yet the Colorado ballot removal case is a huge problem, because those are the cases by which chief justices are measured, and there's just no universe in which that's anything but a failure on his part. He was unable to keep the court together. Justice Barrett had to write a separate opinion saying *we could have done this on narrow terms, and you people didn't*.

I also think it's not the Roberts Court anymore, and it hasn't been since the day Justice Ginsburg died. And the reality is that, probably by this time in July, you're going to see lots of pieces about how this is Amy Coney Barrett's court—how Barrett's going to be the real decisive vote in the cases that matter, because she picks up either Roberts or Kavanaugh.

I've said this before and I'll say it again: If Roberts really believed that the institution were on the brink and that some grand gesture was needed, there's exactly one thing he can do that none of the other justices can stop him from doing, and that's resign. Resign in a Democratic presidency with a Democratic-controlled Senate and give the seat to a Democrat. And he's never going to do that.

Supreme Court rules on Idaho abortion, EPA, Purdue bankruptcy and SEC cases, leaves Trump immunity for another day

Updated June 27, 2024 at 12:23 p.m. EDT | Published June 27, 2024 at 9:30 a.m. EDT

The Supreme Court on Thursday issued four significant rulings, including overturning a Purdue Pharma bankruptcy plan that would have provided billions of dollars to help address the nation's opioid crisis in exchange for protecting the family that owns the company from future lawsuits. It also ruled against in-house Securities and Exchange Commission tribunals, blocked an Environmental Protection Agency air-quality initiative while appeals continue and formally issued a decision allowing emergency abortions in Idaho while that case makes its way through the courts. Other decisions, including whether Donald Trump is immune from prosecution in his federal election-interference case, remain to be issued, and the court — which usually winds up its term in June — will continue to issue decisions into July.

Key updates

- It's official: The court's calendar shows that next Monday — July 1 — is an opinion…
- And the fourth ruling of the day is the Idaho emergency-abortion ruling that was inadvertently posted…
- The third decision of the day is from Chief Justice John G. Roberts Jr., on in-house…

Here's what to know:

Other cases still pending include whether it is legal to ban homeless encampments and whether states such as Florida and Texas can restrict social media platforms from removing content.

GUEST ESSAY

How John Roberts Lost His Court

June 16, 2024

By Linda Greenhouse
Ms. Greenhouse, the recipient of a 1998 Pulitzer Prize, reported on the Supreme Court for The Times from 1978 to 2008 and was a contributing Opinion writer from 2009 to 2021.

A self-described documentary filmmaker, trolling a gala dinner for a gotcha moment by engaging Supreme Court justices in conversation and surreptitiously recording their words, arguably scored with Justice Samuel Alito when he told her he shared their stated goal of returning "our country to a place of godliness."

But with Chief Justice John Roberts, the undercover provocateur, Lauren Windsor, struck out. In response to her question about whether the court had an obligation to guide the country "toward a more moral path," the chief justice shot back: "Would you want me to be in charge of putting the nation on a more moral path? That's for people we elect. That's not for lawyers." He went on: "And it's not our job to do that. It's our job to decide the cases as best we can."

Good for Chief Justice Roberts. Still, his admirable response to what he surely assumed was a private query invites a further thought. Deciding cases is indeed the court's job. But deciding cases may not be enough these days, when the Supreme Court has plummeted in public esteem to near-historic lows (41 percent last September, according to Gallup) and every week seems to bring a new challenge to its image of probity and detachment.

It's said with some frequency that Chief Justice Roberts, outflanked by five activist justices to his right, has "lost the court." While that was painfully obvious in the Dobbs case two years ago, when the Alito-led majority ignored his call for restraint and barreled through to a total erasure of the constitutional right to abortion, it's an imprecise assessment.

Approaching his 19th anniversary on the court, the chief justice surely takes satisfaction in having accomplished central elements of his own agenda. His name is on majority opinions that have curbed affirmative action, struck at the heart of the Voting Rights Act and empowered

religious conservatives, all with the support of his conservative colleagues and over vigorous dissenting opinions by the liberal justices.

What he has "lost," rather, isn't control of the court's judicial output, but of something less tangible but no less important: its ability to assure the public that it is functioning as a court where all parties get a fair hearing and where individual justices aren't beholden elsewhere, either financially or politically. In the current toxic atmosphere, that's a heavy lift, dependent on skills other than those that made John Roberts, once among the star Supreme Court lawyers of his generation, a contender for the job President George W. Bush nominated him for in September 2005.

Persuading a majority of the court to rule for one's client is simple compared with persuading a fellow Supreme Court justice to withdraw from a case in which the public has reason to suppose partiality.

I've been asked quite often why Chief Justice Roberts doesn't just instruct Justices Alito and Clarence Thomas, or at least jawbone them, to recuse themselves from the cases on Donald Trump's prosecution arising from the 2020 election and the 2021 attack on the Capitol. Calls for Justice Alito's recusal followed reports in The New York Times recently that flags associated with 2020 election deniers and carried by supporters of President Trump on Jan. 6 were hung at his Virginia home and his New Jersey beach house. Justice Thomas has also faced calls to step aside from those cases, given his wife's open affiliation with the forces of election denial that led to the Jan. 6 riot.

Of course I have no idea what interaction Chief Justice Roberts might have had with his two colleagues on this fraught subject, but I would be surprised to learn that they had any. Last month, in declining a request by two Democratic senators, Richard Durbin and Sheldon Whitehouse, for a meeting "as soon as possible" to discuss what they called the court's "ethics crisis," the chief justice referred to "the practice we have followed for 235 years pursuant to which individual justices decide recusal issues."

As head of the judicial branch — the title is chief justice of the United States, not chief justice of the Supreme Court — a chief justice has many responsibilities, more than 80 of them specified by federal statutes that convey wide-ranging authority. But inside the "conference," the court's term for the nine justices as a collective, real authority depends not on statutes but on qualities of leadership. A member of the court, separately confirmed to a life-tenured position, owes nothing

to any other member. The only meaningful constraint on the justices' interpersonal behavior is horizontal, not vertical. Justices know they can accomplish little unless there are four others willing to go along.

When it comes to a chief justice, respect owed to the office goes only so far. Real respect has to be earned. Chief Justice Warren Burger, who served from 1969 to 1986, never seemed to earn it from colleagues who viewed him as pompous and manipulative. Some apparently found him so exasperating that they leaked unflattering details about the court in general and Burger in particular to the reporters Bob Woodward and Scott Armstrong for their blockbuster best seller, "The Brethren."

His successor, William Rehnquist, had chafed under Chief Justice Burger for 15 years as an associate justice before becoming chief justice in 1986. In important ways, he was Burger's opposite, prized by his colleagues, including those to his left, as a straight shooter who could be counted on to say exactly what he thought. One of his strengths was that far from seeking to cultivate a public image, he didn't seem to care what others thought of him. He once skipped the president's State of the Union address because it conflicted with his painting class at the local recreation center. Far to the right of the court he joined in 1972, he was often a lone dissenter in his early years. As chief justice, although he never abandoned his principles, he was willing to bend if it meant he could speak for a unified court. Of course, as the court became more conservative with the arrival of new Republican-appointed justices, he didn't often have to bend very far. The grief his colleagues expressed when he died in office at age 80 wasn't pro forma. It was real.

I've thought about Chief Justice Rehnquist as criticism of the court has intensified in the last few months. He was a fierce defender of the court's standing and prerogatives, using his year-end "state of the judiciary" report to speak up for judicial independence and call out Congress for enacting legislation with impact on the judiciary without consulting the judicial branch. (Chief Justice Roberts, to his credit, did rebuke President Trump in 2018 for attacking a judge who had ruled against his administration.) We'll never know, obviously, but I think Chief Justice Rehnquist would have drawn on his deep well of capital inside the court and found a way to let Justices Alito and Thomas know that recusal from the Trump immunity case would be highly advisable even if not required. A raised eyebrow might have been sufficient.

John Roberts clerked for Justice Rehnquist when he was an associate justice in the court's 1980 term. While the two are said to have been close, their hard wiring was certainly very different. The current chief justice maintains exquisite control of his public persona, to the extent that it is hard to think of a spontaneous John Roberts act. But some spontaneity is called for now. His

response to the Democratic senators was stiff and formulaic. If there is a blueprint for addressing the issues now swirling around the court, it has eluded a chief justice who might not have acquired the institutional capital to call on in a time of need.

He has relied throughout his career on meticulous preparation. During his years arguing before the court, he famously brought an index card to the lectern on which was written the traditional opening line, “Mr. Chief Justice and may it please the court,” in case his brain froze up on him in the first seconds. I think it is safe to say it never did.

But no amount of preparation could have prepared him for the challenge the court now faces. There is no script to follow when a justice’s spouse has worked to overthrow an election on behalf of a former president whose fate is in the court’s hands. For years, as a lawyer before the court, John Roberts’s audience consisted of nine justices looking down at him from the bench. His record was impressive: 25 wins and only 14 losses. Now his audience, orders of magnitude wider, is an increasingly concerned public looking for reassurance that it’s not the court that is lost.

Linda Greenhouse, the recipient of a 1998 Pulitzer Prize, reported on the Supreme Court for The Times from 1978 to 2008 and was a contributing Opinion writer from 2009 to 2021.

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A version of this article appears in print on , Section A, Page 18 of the New York edition with the headline: How John Roberts Lost His Court

Supreme Court Upholds Ban on Sleeping Outdoors in Homelessness Case

In a case likely to have broad ramifications throughout the West, the court found an Oregon city's penalties did not violate the Constitution's prohibition on "cruel and unusual punishment."

By Abbie VanSickle
Reporting from Washington

June 28, 2024 Updated 10:28 a.m. ET

The Supreme Court on Friday upheld an Oregon city's laws aimed at banning homeless residents from sleeping outdoors, saying they did not violate the Constitution's prohibition on cruel and unusual punishment.

The decision is likely to reverberate beyond Oregon, altering how cities and states in the West police homelessness.

The ruling, by a 6-to-3 vote, split along ideological lines, with Justice Neil M. Gorsuch writing for the majority. The laws, enacted in Grants Pass, Ore., penalize sleeping and camping in public places, including sidewalks, streets and city parks.

In her dissent, Justice Sonia Sotomayor, joined by Justices Elena Kagan and Ketanji Brown Jackson, wrote that the decision would leave society's most vulnerable with fewer protections.

She added that the laws, which impose fines and potential jail time for people "sleeping anywhere in public at any time, including in their cars, if they use as little as a blanket to keep warm or a rolled-up shirt as a pillow," punished people for being homeless.

"That is unconscionable and unconstitutional," Justice Sotomayor wrote. She read her dissent from the bench, a rare move that signals profound disagreement.

The Supreme Court agreed to intervene after an unusual coalition urged the justices to consider the case. State legislators in Republican-led states like Arizona and liberal leaders like Gov. Gavin Newsom of California alike have pointed to a crucial court ruling in 2018 that they say has tied their hands from clearing encampments and managing a growing, and increasingly visible, crisis.

The decision, by the U.S. Court of Appeals for the Ninth Circuit, which covers Western states, first declared it cruel and unusual punishment for cities and states to penalize someone for sleeping outdoors if no shelter beds were available.

In California alone, an estimated 171,000 people are homeless, or nearly one-third of the country's homeless population. There are now 40,000 more people who are homeless in the state than there were six years ago, and tents and encampments are common in many parts of the state.

The dispute arose from Grants Pass, a town of about 40,000 in the foothills of southern Oregon. After residents complained of people sleeping in alleyways and property damage downtown, city leaders enforced a series of local ordinances that banned sleeping in public spaces. The town had no homeless shelter, aside from one run by a religious organization that required, among other rules, attendance at Christian services.

A group of homeless residents sued the city, challenging the ordinances and contending that the local laws essentially criminalized homelessness. The laws, although civil penalties, could eventually lead to jail time, they said.

A federal judge temporarily sided with the homeless plaintiffs, finding the city had no shelter that met the requirement from the 2018 decision.

A divided three-judge panel of the U.S. Circuit Court of Appeals for the Ninth Circuit upheld the lower court and the city appealed, asking the Supreme Court to weigh in.

In Grants Pass, tents and temporary camps continued to line many of the city's public parks, a particular point of tension for residents of a city reliant on tourism dollars. Local law enforcement officials enforced property ordinances but said they could do little else to clear tents from the parks.

In a lengthy and, at times, contentious oral argument in late April, questioning from the justices reflected the complexity of the debate over homelessness.

They wrestled with what lines could be drawn to regulate homelessness — and, crucially, who should make those rules.

Chief Justice John G. Roberts Jr. appeared to encapsulate the views of the conservative wing, suggesting that the matter was an issue best solved by lawmakers and cities and states themselves: "Why would you think that these nine people are the best people to judge and weigh

those policy judgments?”

Justice Elena Kagan, for her part, summed up the stance of the court’s liberal justices, forcefully questioning the city’s argument that homelessness was not a state of being and was therefore not protected by the Constitution.

“Could you criminalize the status of homelessness?” Justice Elena Kagan asked a lawyer for the city, Theane D. Evangelis.

“Well, I don’t think that homelessness is a status like drug addiction,” Ms. Evangelis responded.

“Homelessness is a status,” Justice Kagan replied. “It’s the status of not having a home.”

Abbie VanSickle covers the United States Supreme Court for The Times. She is a lawyer and has an extensive background in investigative reporting. More about Abbie VanSickle

WORLD & NATION

Supreme Court rules cities may enforce laws against homeless encampments

Tents that serve as shelter for homeless people line the sidewalk along Fifth Street in downtown Los Angeles. (Luis Sinco / Los Angeles Times)

By David G. Savage
Staff Writer

June 28, 2024 **Updated** 8:42 AM PT

WASHINGTON — The Supreme Court ruled Friday that cities in California and the West may enforce laws restricting homeless encampments on sidewalks and other public property.

In a 6-3 decision, the justices disagreed with the 9th Circuit Court in San Francisco and ruled it is not "cruel and unusual" punishment for city officials to forbid homeless people from sleeping on the streets or in parks.

“Homelessness is complex,” Justice Neil M. Gorsuch wrote for the court. “Its causes are many. So may be the public policy responses required to address it. At bottom, the question this case presents is whether the 8th Amendment grants federal judges primary responsibility for assessing those causes and devising those responses. It does not.”

Gorsuch said the 8th Amendment “does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this nation’s homelessness policy.”

He was joined by the other conservative justices, while the three liberal justices dissented.

“Sleep is a biological necessity, not a crime,” Justice Sonia Sotomayor said in dissent. “For some people, sleeping outside is their only option. For people with no access to shelter, that punishes them for being homeless. That is unconscionable and unconstitutional. Punishing people for their status is ‘cruel and unusual’ under the 8th Amendment.”

The ruling is a significant victory for city officials in the West and a setback for homeless rights advocates. Since 2018, the advocates had won rulings from the 9th Circuit that held it was unconstitutional to enforce anti-camping laws against people who had no home and nowhere to sleep.

Many city officials said those rulings led to the growth of tent encampments in Los Angeles and most cities on the West Coast. They joined an Oregon city’s appeal to the Supreme Court seeking to clarify their authority over public property.

Nothing in today’s decision requires cities or their police to take stronger enforcement action against homeless people, but it will free some of them to do so.

California Gov. Gavin Newsom hailed the decision: “Today’s ruling by the U.S. Supreme Court provides state and local officials the definitive authority to implement and enforce policies to clear unsafe encampments from our streets. This decision removes the legal ambiguities that have tied the hands of local officials for years and limited their ability to deliver on common-sense measures to protect the safety and well-being of our communities.”

Los Angeles lawyer Theane Evangelis, who represented the Oregon city that had appealed, said the court “delivered urgent relief to the many communities that have struggled to address the growing problem of dangerous encampments.”

Ann Oliva, chief executive of the National Alliance to End Homeless, condemned the decision.

“This decision sets a dangerous precedent that will cause undue harm to people experiencing homelessness and give free reign to local officials who prefer pointless and expensive arrests and imprisonment, rather than real solutions,” she said. “At a time when elected officials need to be focused on long-term, sustainable solutions that are grounded in evidence — including funding the affordable housing and supportive services that their constituents need — this ruling allows leaders to shift the burden to law enforcement. This tactic has consistently failed to reduce homelessness in the past, and it will assuredly fail to reduce homelessness in the future.”

The case before the court arose in Grants Pass, Ore., a city of 38,000 people. It was estimated to have between 50 and 600 people who were homeless and only a few shelters, which lacked space for all of them.

Homeless advocates said the city police were using fines and threats against people who were living on the sidewalks or in their cars. They said the city’s aim was to “banish” these homeless people from the town.

They sued and won before a federal judge who struck down the anti-camping ordinance because the city was essentially punishing people for being homeless.

A divided 9th Circuit agreed by a 2-1 vote. Judge Rosyln Silver said the “city of Grants Pass cannot, consistent with the 8th Amendment, enforce its anti-camping ordinances against homeless persons for the mere act of sleeping outside with rudimentary protection from the elements, or for sleeping in their car at night, when there is no other place in the city for them to go.”

The full 9th Circuit then split 14 to 13 to uphold that ruling.

California Gov. Gavin Newsom and city attorneys from Los Angeles, San Francisco, San Diego and Phoenix were among two dozen government and business groups that urged the high court to hear the appeal in Johnson vs. Grants Pass and overturn the 9th Circuit.

Only once before — and 40 years ago — did a case on homelessness come before the Supreme Court.

A group called the Community for Creative Non-Violence sought a permit in 1982 for a homelessness-awareness demonstration in Lafayette Square across the street from the White House, and their request included a “symbolic tent city” where about 50 people would sleep.

The National Park Service approved the permit to demonstrate, but refused the request for sleeping in the park. The advocates sued, contending the ban on camping violated the 1st Amendment's protection for free speech. They lost before a federal judge, won in the U.S. appeals court and finally lost 7 to 2 in the Supreme Court in 1984.

Writing for the court, Justice Byron White said the 1st Amendment permits reasonable limits on the "time, place and manner" of demonstrations. "We have very little trouble concluding that the Park Service may prohibit overnight sleeping in the parks involved here," he wrote.

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April 25, 2024

David G. Savage

David G. Savage has covered the Supreme Court and legal issues for the Los Angeles Times in the Washington bureau since 1986.

Democracy Dies in Darkness

Justices strike obstruction charge for Jan. 6 rioter, likely impacting others

Hundreds have been charged with felony obstruction, among other counts, for their role in the 2021 attack on the U.S. Capitol

By Ann E. Marimow and Devlin Barrett

Updated June 28, 2024 at 1:15 p.m. EDT | Published June 28, 2024 at 10:51 a.m. EDT

Federal prosecutors improperly charged a Jan. 6 defendant with obstruction, the Supreme Court ruled on Friday, a decision that will likely upend many cases against rioters who disrupted the certification of the 2020 presidential election and which Donald Trump's legal team may use to try to whittle down one of his criminal cases.

Supreme Court 2024 major cases

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After the Jan. 6, 2021 attack on the Capitol, federal prosecutors charged more than 350 participants in the pro-Trump mob with obstructing or impeding an official proceeding. The charge carries a 20-year maximum penalty and is part of a law enacted after the exposure of massive fraud and shredding of documents during the collapse of the energy giant Enron.

Writing for the majority, Chief Justice John G. Roberts Jr. said prosecutors' broad reading of the statute gives them too much discretion to seek a 20-year maximum sentence "for acts Congress saw fit to punish only with far shorter terms of imprisonment."

It wasn't immediately clear what impact that decision may have on the pending case against Trump, the former president and presumptive Republican challenger to President Biden, for allegedly conspiring to obstruct the 2020 election results. Special counsel Jack Smith, who brought the case against Trump, has previously argued that even if the Supreme Court ruled in this direction, the criminal charges against Trump would still stand. Two of the four charges Trump faces are based on the obstruction statute at issue in the court's decision.

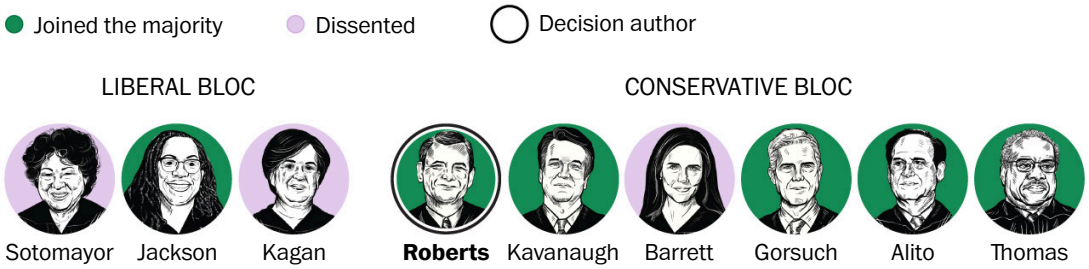
Trump's lawyers have filed a host of legal arguments seeking to get those charges thrown out of court, and it remains to be seen if they will try to use the *Fischer v. United States* decision to further those efforts. A Trump spokesman did not immediately comment on Friday's ruling, but Trump posted "BIG WIN!" on social media shortly after the 6-3 decision was issued.

Attorney General Merrick Garland said he was disappointed with the ruling but insisted it was not a body blow to the overall investigation and prosecution of the riot at the U.S. Capitol.

“January 6 was an unprecedented attack on the cornerstone of our system of government — the peaceful transfer of power from one administration to the next," Garland said in a written statement.

“The vast majority of the more than 1,400 defendants charged for their illegal actions on January 6 will not be affected by this decision,” he added, noting that not a single Jan. 6 defendant was charged solely with the crime at issue in the Fischer case. “For the cases affected by today’s decision, the Department will take appropriate steps to comply with the Court’s ruling.”

How the justices ruled



To use the obstruction statute, Roberts wrote in the decision, prosecutors must establish that a defendant “impaired the availability or integrity” of records, documents or other objects used in an official proceeding.

In dissent, Justice Amy Coney Barrett — joined by Justices Sonia Sotomayor and Elena Kagan — said the court’s reading of the obstruction statute is too limited and requires the majority to do “textual backflips to find some way — *any* way — to narrow the reach” of the law.

Justice Ketanji Brown Jackson, a liberal former public defender, joined the the five conservatives who made up the rest of majority but wrote separately, saying “there is no indication whatsoever that Congress intended to create a sweeping, all-purpose obstruction statute.”

She noted, however, that the charges facing Fischer and other Jan. 6 defendants may still withstand legal challenges if the Justice Department can show in additional court proceedings that they interfered with records or documents used to count electoral votes.

The defendants most likely to be significantly affected by the decision are those for whom the obstruction count was their only felony conviction or charge, with their other counts limited to misdemeanors. About 27 rioters are serving time in prison for only this felony. About 110 more are awaiting trial or sentencing, according to prosecutors. Some rioters who have challenged their sentences based on the argument made in *Fischer* have already been granted early release.

But nearly 80 percent of the 1,400 people charged in the attack on the Capitol were not charged with obstructing the proceeding. Most were charged with trespassing federal property and assaulting or resisting a law enforcement officer. Prosecutors reserved the obstruction charge for defendants accused of knowingly and intentionally attempting to stop Congress from certifying the election and formalizing the transfer of presidential power.

More broadly, the Supreme Court’s decision will affect which tools prosecutors have to charge anyone who tries to disrupt a government proceeding through protest that turns violent. The ruling is consistent with a trend in recent years in which the high court has narrowed prosecutorial discretion in certain criminal cases because of concerns about over-criminalization.

The challenge to the obstruction charge was brought by Joseph W. Fischer, an off-duty Pennsylvania police officer who attended the "Stop the Steal" rally on Jan. 6 and faces other charges in addition to obstruction, including assaulting a federal officer in the police line outside the Capitol.

Defense lawyers said prosecutors overreached by charging rioters with a crime that is limited to conduct that destroys or tampers with evidence sought by investigators. The government's broad application of the statute, the lawyers said, would allow prosecutors to target protesters or lobbyists who disrupt congressional committees.

The Justice Department argued that the violent disruption of the peaceful transfer of power after a presidential election, including attacks on police officers, is no minor interference. Government lawyers pushed back against the idea that using the statute this way would violate the First Amendment, saying there are no examples of prosecutors using the two-decade-old obstruction charge against legitimate protesters exercising their right to free speech.

At issue for the court in *Fischer v. U.S.* was how to interpret the text of a statute Congress amended in 2002 as part of the Sarbanes-Oxley Act, which followed the Enron scandal, and particularly the meaning of the word "otherwise."

The law includes a penalty of up to 20 years in prison for anyone who "corruptly — (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so."

All but one of the 15 judges to rule on the question in a Jan. 6-related case at the D.C. federal courthouse have sided with prosecutors' view that the second clause of the law should be read as a "catchall." Those judges said the rioters who sought to keep Congress from certifying Biden's victory were "otherwise" obstructing that proceeding, even though they were not destroying or concealing documents.

The outlier was U.S. District Judge Carl J. Nichols, a Trump nominee, who sided with Fischer and said the word "otherwise" refers only to other efforts to tamper with or destroy records or documents.

A divided U.S. Court of Appeals for the D.C. Circuit reversed the decision by Nichols, and it is that appeals court opinion that the Supreme Court was reviewing.

Judge Florence Pan — a Biden nominee — said Nichols's decision was too narrow and at odds with the text of the statute. "We cannot assume, and think it unlikely, that Congress used expansive language to address such narrow concerns," she wrote, joined in part by Judge Justin Walker, who was nominated by Trump.

Judge Gregory Katsas — also nominated by Trump — dissented, writing that a broad reading of the obstruction statute, such as the one used by prosecutors against Jan. 6 rioters, would put law-abiding activities like lobbying and protest at risk.

This is a developing story. It will be updated.

Spencer S. Hsu contributed to this report.

OPINION

Opinion: The mifepristone case should be an easy one for the Supreme Court. But will it be?

An abortion rights advocate holds a box of mifepristone pills outside the Supreme Court on Tuesday during oral arguments in the abortion pill case. (Amanda Andrade-Rhoades / Associated Press)

By Erwin Chemerinsky

March 26, 2024 11:04 AM PT

As a matter of law, the case argued Tuesday at the Supreme Court concerning the availability of medicine to induce abortions is easy: The Food and Drug Administration has the authority to make mifepristone available and to later increase its availability. But as the oral arguments in Food and Drug Administration vs. Alliance for Hippocratic Medicine indicated, the outcome is anything but clear.

In 2000, the FDA approved mifepristone as part of a two-drug protocol to induce abortions. Last year, about 63% of all U.S. abortions were medically induced using these drugs rather than being surgically performed.

Medically induced abortions have increased since Roe vs. Wade was overruled in 2022. Especially in states that have prohibited virtually all abortions, the ability of a woman to have an abortion by taking pills, which can be obtained in a number of ways, has taken on enormous importance. Even in states such as California where abortion is legal, “medication abortions” provide a preferable, safe alternative to surgical procedures for many seeking abortions.

OPINION

Calmes: The Supreme Court tackles abortion again. How much will it hurt Republicans in 2024?

March 24, 2024

A conservative antiabortion group brought a challenge to the FDA’s approval of mifepristone. An openly antiabortion federal judge in Texas issued an order stopping the distribution of mifepristone everywhere in the country. As U.S. Solicitor Gen. Elizabeth B. Prelogar pointed out during oral arguments on Tuesday, this was the first time in history that a judge had overturned the FDA’s approval of a drug.

A conservative panel of the U.S. 5th Circuit Court of Appeals said that the judge was wrong in stopping all use of mifepristone after it had been on the market for 23 years, but the appellate court overturned FDA actions that over the years had made the drug more easily available. In 2016, the FDA said that the drug could be used until the 10th week of pregnancy rather than just to the seventh week as initially permitted, reduced the number of required in-person clinical visits from three to one and allowed nonphysician healthcare providers, such as nurse practitioners, to prescribe and dispense mifepristone. It also reduced the dosage from 600 milligrams to 200 milligrams. In 2021, the FDA eliminated the requirement that mifepristone be administered in person; it was the only drug for which there was such a requirement.

POLITICS

Supreme Court justices appear skeptical of Texas doctors’ challenge to abortion pills

March 26, 2024

The 5th Circuit overturned these 2016 and 2021 changes, concluding that they were “arbitrary, capricious, and an abuse of discretion” on the part of the FDA. That decision, if upheld, would make it much harder for those seeking abortions to have access to mifepristone, and it is that ruling that is being reviewed by the Supreme Court.

There are multiple reasons the Supreme Court should find in favor of the FDA and mifepristone. To begin with, no one has standing to bring this lawsuit. In order to sue in federal court, a plaintiff must have personally suffered an injury. But no one is hurt by the FDA’s making mifepristone more easily available.

The primary argument made by Erin M. Hawley, who was representing the plaintiffs, was that doctors who don't want to perform abortions will be required to do so in an emergency when there are complications from the use of mifepristone. But as the solicitor general repeatedly pointed out, under federal law, no doctor is required to perform abortions or prescribe medication that offends their beliefs. Justice Elena Kagan stressed that there was no indication of any doctor with a conscience objection to abortions ever having been forced to perform one because of the FDA rules regarding mifepristone.

SCIENCE & MEDICINE

Q&A: The FDA says the abortion pill mifepristone is safe. Here's the evidence

March 26, 2024

Even if the court stretches the law and finds that the plaintiffs have standing, the case still should be easy to decide in the FDA's favor on its merits. Under the federal Administrative Procedures Act, an agency action should be overturned only if it is "arbitrary, capricious, or an abuse of discretion." This is a legal standard that is very deferential to the agency. In fact, in 2021, Chief Justice John G. Roberts Jr. said, "Courts owe significant deference to the politically accountable entities with the 'background, competence, and expertise to assess public health.' " In light of overwhelming evidence as to the safety of mifepristone, it is impossible to say that the FDA's actions were arbitrary and capricious, no matter the opinion of the 5th Circuit.

One of the most frightening aspects of Tuesday's oral arguments was that both Justices Clarence Thomas and Samuel A. Alito Jr. invoked a statute adopted in 1873, the Comstock Act, which prohibits shipment of obscene materials and contraceptives through the mails or by common carriers. It also forbids shipment of "every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion." The Comstock Act has not been used for over a century, but if the court is willing to apply it now, it is a huge threat to abortions, even in states where it is legal.

WORLD & NATION

Abortion pill usage surged post-Roe. These numbers show the dramatic rise

March 26, 2024

With six justices on the court who both oppose abortion and want to limit the power of federal agencies, it is hard to predict the outcome of the mifepristone case, despite the clarity of the issues. If the court overturns the FDA here, it will open the door to challenges against countless other drugs.

Ultimately, as Justice Ketanji Brown Jackson indicated near the end of the oral arguments, the question is who should decide if a drug is safe and effective, the FDA or the federal courts? Since 1906, the answer,

without exception, has been the FDA and that should remain the law.

Erwin Chemerinsky is a contributing writer to Opinion and the dean of the UC Berkeley School of Law. His latest book is "Worse Than Nothing : The Dangerous Fallacy of Originalism."

More to Read

Opinion: Abortion foes lost Round One on mifepristone. Here's how their fight continues

June 24, 2024

Editorial: Supreme Court keeps medication abortion safe — for now

June 13, 2024

Opinion: What a relief. The Supreme Court did the right thing on mifepristone

June 13, 2024

San Francisco Chronicle

OPINION//OPEN FORUM

Why did Ketanji Brown Jackson just side with Supreme Court conservatives to reject a nationwide opioid settlement?

By Erwin Chemerinsky
June 27, 2024

OxyContin tablets at a pharmacy in Montpelier, Vt. The Supreme Court on Thursday rejected a nationwide settlement with OxyContin maker Purdue Pharma that would have shielded members of the Sackler family who own the company from civil lawsuits over the toll of opioids but also would have provided billions of dollars to combat the opioid epidemic.
Toby Talbot/Associated Press 2013

In overturning a major settlement of opioid litigation, the Supreme Court on Thursday ignored common sense and made it much harder to provide those injured from gaining relief. The court's ruling will prevent a much-needed fund for opioid prevention and treatment and make it very difficult to have settlements in other cases involving large numbers of victims of corporate practices.

Opioids have long been a public health tragedy. It is estimated that from 1999 through 2019 approximately 247,000 people in the United States died from prescription-opioid overdoses. Opioid-involved overdose deaths rose from 49,860 in 2019 to 81,806 in 2022. As the court noted, Purdue Pharma, which made Oxycontin, "sits at the center of these events." It is estimated that from 1996 to 2019, Purdue, then owned by the Sackler family, generated approximately $34 billion in revenue, most of which came from OxyContin sales.

It is estimated that the Sackler family took $11 billion in profits out of the company. In 2019, Purdue Pharma filed for bankruptcy. As part of a settlement in the bankruptcy court, the Sacklers agreed to provide up to $6 billion that could be used to compensate victims of opioids and for prevention and treatment programs. In exchange, the Sacklers would be completely immune from civil liability, which was an enormous benefit because of the huge number of pending and likely future claims against them.

The bankruptcy court approved the settlement, though saying it was a "bitter" result, because of the great public benefit that would come from the $6 billion. But on Thursday, the Supreme Court, in a 5-4 decision, invalidated the settlement and held that the bankruptcy court had no authority to give relief to the Sacklers, who were not part of the bankruptcy proceedings. Justice Neil Gorsuch wrote for the court and stressed that the corporation, Purdue Pharma, had filed for bankruptcy, not the Sacklers.

The federal bankruptcy code broadly authorizes bankruptcy courts to include in their orders "appropriate" relief so long as it is "not inconsistent with the applicable provisions of" the Bankruptcy Code." Yet, the Court's majority said that even this expansive language did not permit the settlement involving the Sacklers, who were not parties to the bankruptcy case.

The Supreme Court's decision will have an immediate and devastating effect on those who would have benefited from the $6 billion fund. It would have provided compensation to over 100,000 victims of the opioid crisis, and the plan also would have provided significant funding for thousands of state and local governments to prevent and treat opioid addiction. For this reason, the settlement was supported by all 50 state attorneys general, a consensus rarely seen on any issue.

The longer-term implications of the court's decision also are dire. As Justice Brett Kavanaugh said in dissent, settlements like this "have enabled substantial and equitable relief to victims in cases ranging from asbestos, Dalkon Shield, and Dow Corning silicone breast implants to the Catholic Church and the Boy Scouts." Simply put, it will be far more difficult to settle mass tort cases — instances where corporate practices have injured a large number of people — without

being able to give relief against those who are not parties in the bankruptcy court proceeding.

The decision had an unusual split among the justices. Justice Gorsuch's majority opinion was joined by Justices Clarence Thomas, Samuel Alito, Amy Coney Barrett and Ketanji Brown Jackson. Justice Kavanaugh's dissent was joined by Chief Justice John Roberts, who rarely dissents, and liberal Justices Sonia Sotomayor and Elena Kagan.

Interestingly, Justice Jackson joined the conservatives in the majority rather than her liberal colleagues. Because she did not write a separate opinion, it is difficult to know why Jackson voted this way. My guess is that it was less about how to read the bankruptcy code, which Gorsuch emphasized, and much more about the difficult question of what is fair in this circumstance.

Although the settlement could cost the Sacklers up to $6 billion, it left them with over $5 billion in profits from OxyContin and it completely protected them from all civil liability in the future. The settlement would leave many victims of the opioid crisis with no redress. It is understandable why Justice Jackson might have felt that this was too "bitter" a result to accept.

Ultimately, the question is whether it was better to take the $6 billion for all the good that it could provide than accept the uncertainty and cost of countless separate lawsuits. And the question is whether it is better to keep open this tool for settlement in other cases where large numbers of people are hurt by corporate abuses. In this context, I think that Justice Jackson and the majority made a serious mistake.

Erwin Chemerinsky is dean at the UC Berkeley School of Law.

June 27, 2024
Erwin Chemerinsky

WORLD & NATION

Supreme Court blocks EPA rule to limit air pollution from Midwest states

A coal-fired power plant in Glenrock, Wyo., is silhouetted against the morning sun. (J. David Ake / Associated Press)

By David G. Savage
Staff Writer

June 27, 2024 7:13 AM PT

WASHINGTON — The Supreme Court on Thursday blocked an interstate air quality rule issued last year by the Biden administration to limit ozone that comes from power plants and industrial sites in the Midwest and sends polluted air drifting toward the East Coast.

The vote was 5-4, with Justice Amy Coney Barrett joining the three liberals in dissent.

The so-called good neighbor rule is part of the Clean Air Act, and the Environmental Protection Agency says it ensures that sources of air pollution in "upwind states" must take steps to reduce it if it is "affecting air quality in downwind states."

In its latest update, the EPA targeted 23 states for more stringent regulation, including California in part.

But before the rule could take effect, it was caught up in legal battle between the Republican-led states and the Democratic administration.

Twelve states, led by Texas, won rulings from U.S. appeals courts reversing the EPA's determination that its air pollution standards were inadequate.

These decisions shielded the states from the new rule.

Undeterred, the EPA pressed ahead to enforce its new rule in the Midwest states that had yet to win exemptions.

The Biden administration argued that a court-ordered "delay would seriously harm the downwind states that suffer from their upwind neighbors' emissions, placing the entire burden of achieving healthy air quality on those states and exposing their residents to public-health risks."

But Ohio, Indiana and West Virginia went directly to the Supreme Court, seeking an order to block the EPA's rule, at least for now.

They said the Clean Air Act gives states "the primary responsibility for assuring air quality" in this country, and they urged the justices to block the "EPA's power grab." They also argued that the EPA's more stringent controls would harm their industries and "destabilize their power grids" by reducing the production of electricity.

Writing for the majority, Justice Neil M. Gorsuch said, "Because the states bear primary responsibility for developing compliance plans, EPA has no authority to question the wisdom of a state's choices of emission limitations."

The unusual legal posture of the case prompted an unusual procedural move by the Supreme Court. Usually, the justices agree to review cases after a federal judge and a U.S. appeals court have ruled on the matter.

But in this instance, the justices agreed to hear arguments and write a decision in the case of Ohio vs. EPA before any lower court had ruled on the new regulation.

California was mostly a bystander in this clean-air fight because the new EPA rule did not affect power plants in the state. It would, however, apply to industrial sites beginning in 2026.

More to Read

In big win for business, Supreme Court dramatically limits rulemaking power of federal agencies

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June 7, 2024

David G. Savage

David G. Savage has covered the Supreme Court and legal issues for the Los Angeles Times in the Washington bureau since 1986.

WORLD & NATION

Supreme Court wipes out anti-corruption law that bars officials from taking gifts for past favors

The U.S. Supreme Court ruled Wednesday that state and local officials may take gifts and payments for steering contracts to grateful patrons. (Associated Press)

By David G. Savage
Staff Writer

June 26, 2024 **Updated** 12:42 PM PT

WASHINGTON — The Supreme Court on Wednesday struck down part of a federal anti-corruption law that makes it a crime for state and local officials to take gifts valued at more than $5,000 from a donor who had previously been awarded lucrative contracts or other government benefits thanks to the efforts of the official.

By a 6-3 vote, the justices overturned the conviction of a former Indiana mayor who asked for and took a $13,000 payment from the owners of a local truck dealership after he helped them win $1.1 million in city contracts for the purchase of garbage trucks.

In ruling for the former mayor, the justices drew a distinction between bribery, which requires proof of an illegal deal, and a gratuity that can be a gift or a reward for a past favor. They said the officials may be charged and prosecuted for bribery, but not for taking money for past favors if there was no proof of an illicit deal.

“The question in this case is whether [the federal law] also makes it a crime for state and local officials to accept gratuities — for example, gift cards, lunches, plaques, books, framed photos or the like — that may be given as a token of appreciation after the official act. The answer is no,” said Justice Brett M. Kavanaugh, writing for the majority.

Despite his reference to token gifts such as lunches and framed photos, the federal law was triggered only by payments of more than $5,000.

But the court’s conservative majority said the law in question was a “bribery statute, not a gratuities law.” Kavanaugh said federal law “leaves it to state and local governments to regulate gratuities to state and local officials.”

Justices Elena Kagan, Sonia Sotomayor and Ketanji Brown Jackson dissented.

“Officials who use their public positions for private gain threaten the integrity of our most important institutions,” Jackson wrote in dissent.

She said the mayor’s “absurd and atextual reading of the statute is one only today’s court could love.”

The law as written “poses no genuine threat to common gift giving,” she said, but it “clearly covers the kind of corrupt (albeit perhaps non-quid pro quo) payment [the mayor] solicited after steering the city contracts to the dealership.”

The ruling could have a broad impact. About 20 million local and state officials are covered by the federal anti-corruption law, including officials at hospitals and universities that receive federal funds.

Justice Department lawyers told the court that for nearly 40 years, the anti-bribery law has been understood to prohibit payments to officials that “rewarded” them for having steered contracts to the donors. But there are few prosecutions that rely entirely on an after-the-fact payment, they said.

The Supreme Court justices have faced heavy criticism recently for accepting undisclosed gifts from wealthy patrons. Justice Clarence Thomas regularly took lavish vacations and private jet flights that were paid for by

Texas billionaire Harlan Crow. Justice Samuel A. Alito Jr. took a fishing trip to Alaska in 2008 aboard a private plane owned by Paul Singer, a hedge fund billionaire.

The high court has long held that criminal laws restricting "illegal gratuities" to federal officials require proof that the gifts were given for a specific "official act," not just because of the official's position.

The Indiana mayor was charged and convicted of taking the $13,000 payment because of his role in helping his patrons win city contracts.

Congress in 1986 extended the federal bribery law to cover officials of state or local agencies that receive federal funds. The measure made it a crime to "corruptly solicit or demand ... or accept ... anything of value of $5,000 or more ... intending to be influenced or rewarded in connection with any business or transaction."

Prosecutors said James Snyder was heavily in debt and behind in paying his taxes when he became mayor of Portage, Ind., in 2012. The city needed new garbage trucks, and the mayor took over the required public bidding. He spoke regularly with two brothers who owned a local truck dealership that also had financial problems, and he designed the bidding process so that only their two new trucks would meet all of its standards. He also arranged to have the city buy an older truck that was on their lot.

Two weeks after the contracts were final, the mayor went to see the two brothers and told them of his financial troubles. They agreed to write him a check for $13,000 for undefined consulting services.

An FBI investigation led to Snyder's indictment, his conviction and a 21-month prison sentence.

The former mayor argued that an after-the-fact gift should not be a crime, but he lost before a federal judge and the U.S. appeals court in Chicago.

The high court agreed to hear his appeal in Snyder vs. U.S. because appeals courts in Boston and New Orleans had limited the law to bribery only and not gratuities that were paid later.

POLITICS

Unanimous Supreme Court overturns New Jersey 'Bridgegate' fraud convictions

May 7, 2020

In recent years, the Supreme Court has repeatedly limited the scope of public corruption laws and often in unanimous rulings. The common theme is that the justices concluded the prosecutions went beyond the law.

Last year, the court was unanimous in overturning the corruption convictions of two New York men who were former aides or donors to then-Gov. Andrew Cuomo, a Democrat. The court noted that one of the defendants convicted of taking illicit payments did not work for the state during that time.

Four years ago, the justices were unanimous in overturning the convictions of two aides to then-New Jersey Gov. Chris Christie, a Republican, who were charged with conspiring to shut down lanes to the George Washington Bridge into New York City. The court said they were wrongly convicted of fraud because they had not sought money or property, which is a key element of a fraud charge.

In 2016, the court overturned the corruption conviction of former Virginia Gov. Bob McDonnell, a Republican. While the governor took $175,000 in gifts from a business promoter, he took no official actions to benefit the donor, the court said.

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Opinion: When does government speech violate the 1st Amendment?

June 26, 2024

Justice Clarence Thomas took more trips paid for by donor Harlan Crow, Senate panel reveals

June 13, 2024

David G. Savage

David G. Savage has covered the Supreme Court and legal issues for the Los Angeles Times in the Washington bureau since 1986.

CALIFORNIA

If we must rely on 'history and tradition' to assess gun laws, does racist history count?

Courts across the country are considering whether old racist laws should be considered part of the nation's legal tradition in challenges to modern gun control measures. Here, Halim Abdullah, left, and cousin Basil Henry, both of San Diego, consider firearms at the San Diego Gun Show. (John Gastaldo/For The Times)

By Kevin Rector
Staff Writer

Feb. 7, 2024 3 AM PT

As attorneys for the state of California prepared recently to defend in federal court a state law requiring background checks for ammunition purchases, they found themselves in an awkward position.

Under a U.S. Supreme Court ruling from 2022, gun control measures are legitimate only if they are deeply rooted in American "history and tradition" or are sufficiently similar to some other centuries-old law. The state lawyers had conducted a deep dive through hundreds of years of American jurisprudence

and identified dozens of historical laws that they felt bolstered the modern law's legitimacy by showing that the government has long limited access to firearms and ammunition.

But there was a problem: Many of the historical laws they found were virulently racist, restricting access to weaponry for enslaved people, Indigenous Americans and other racial minorities.

In the end, the attorneys in California Atty. Gen. Rob Bonta's office decided to push ahead and cite the laws, but with a major caveat.

"The Attorney General in no way condones laws that target certain groups on the basis of race, gender, nationality, or other protected characteristic," they wrote in a footnote to their 2023 filing, "but these laws are part of the history of the Second Amendment and may be relevant to determining the traditions that define its scope, even if they are inconsistent with other constitutional guarantees."

Last week, U.S. District Judge Roger T. Benitez rebuked the state for relying on such racist laws in a decision that tossed out California's ammunition background check law as unconstitutional. Benitez rejected the notion that they might represent a legal tradition to be considered under the high court's new history standard in New York State Rifle & Pistol Assn. vs. Bruen.

CALIFORNIA

Judge rules California background check, anti-importation rules for ammo unconstitutional

Jan. 31, 2024

"These fifty laws identified by the Attorney General constitute a long, embarrassing, disgusting, insidious, reprehensible list of examples of government tyranny towards our own people," Benitez wrote — and such "repugnant historical examples of prejudice and bigotry will not be used to justify the State's current infringement on the constitutional rights of citizens."

On Monday, a three-judge panel of the U.S. 9th Circuit Court of Appeals halted Benitez's decision from taking effect — keeping the ammunition laws in place — while the state appeals.

In the meantime, the question of whether California and litigants in other gun cases nationwide can invoke old, racist laws remains unsettled, and it's unclear whether the Supreme Court will allow such laws to inform the "history and tradition" standard moving forward.

Courts in the U.S. are considering whether old, racist gun laws hold any relevance in modern discussions of the nation's firearm traditions. Here, a sales associate arranges guns at Burbank Ammo & Guns in Burbank, Calif., in 2022. (Jae C. Hong / Associated Press)

In a nation built on chattel slavery and the brutal colonization of Indigenous communities, racist laws are an inescapable part of our legal tradition despite efforts at reform. And that reality is now front and center in cases challenging gun control measures across the country — to the discomfort of nearly everyone involved.

"If we look at 'history and tradition,'" said Adam Winkler, a UCLA law professor who focuses on 2nd Amendment law, "we see a whole bunch of racist gun laws."

Liberal states such as California and other advocates for gun control are in a quandary. They don't want to focus attention on old, racist laws that are anathema to their modern commitments to diversity, equality and justice. But doing so may be their last, best chance at upholding background checks and other gun control measures.

CALIFORNIA

Battle over California's ban on high-capacity ammunition magazines shows a nation divided

Dec. 31, 2023

Conservative jurists and gun rights advocates have strongly backed the Supreme Court's originalist view of 2nd Amendment law, which gives modern deference to the intentions of the nation's founders at the ratification of the Bill of Rights in 1791. They bristle over the fact that many of the laws at the time took for granted the government's right to place limits on at least some people's gun rights.

Scholars say the issue highlights the absurdity of the Supreme Court's position that the legitimacy of any modern gun law should hinge on whether such a regulation might have fit into a centuries-old legal system — especially one so profoundly flawed in other ways. Liberals also scoff at the notion that the authors of the Bill of Rights could have envisioned modern assault rifles.

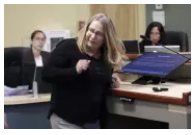
Winkler said the debate "points out the central problem of 2nd Amendment law today: that the government has to rely on ancient laws that were designed for a very different society."

"One of the major concerns around gun laws then was keeping Black people powerless in the face of white supremacy," he said. "Our gun laws today reflect modern concerns, not the concerns of yesterday."

Erwin Chemerinsky, dean of the UC Berkeley School of Law, said the rejection of such racist laws as historical "analogues" under the Bruen test by conservative judges such as Benitez reflects a troubling double standard. Benitez has otherwise embraced Bruen's historical lens, including in recent decisions — also under appeal — that struck down California's bans on assault-style weapons and large-capacity ammunition magazines.

"Judge Benitez looks at history when it supports his position and ignores it (or dismisses it) when it doesn't," Chemerinsky wrote in an email to The Times.

"It is absurd to decide what gun regulations should be allowed based on the law of 1791," he wrote. "But if we are going to do that, we have to accept the awful aspects of the law of 1791."



CALIFORNIA

She wanted to open a gun store. They wanted to shut one down. Local laws got in the way

Dec. 7, 2023

Others say the absurdity lies in the suggestion that unconstitutional, racist laws of the past should hold any legal weight today.

Stephen Halbrook, a conservative author who argues against broad restrictions on the 2nd Amendment, said he is “glad this is being called out” in Benitez’s latest opinion.

“This should never have been an argument,” Halbrook said, arguing that past injustices do not justify modern ones when it comes to people’s constitutional rights.

Some Black gun owners also expressed unease at the idea that old, racist gun laws should be revived in discussions about 2nd Amendment limits.

Rick Archer, 57, of Yorba Linda, is a Black former U.S. Marine who now teaches basic gun safety and concealed-carry training courses in Orange County. He said he views many of California’s modern gun laws as racist, if not in their explicit language then in their origins and their enforcement in communities of color.

As one example, he mentioned the Mulford Act, which banned the open carry of loaded weapons without a permit in California, and was rushed into law by state legislators after members of the Black Panther Party for Self Defense staged an armed protest at the state Capitol in 1967.

Armed members of the Black Panthers Party stand in the corridor of the Capitol in Sacramento, Calif. in 1967. The event spurred state lawmakers to pass gun restrictions. (Walt Zeboski/AP)

Archer said his white neighbors in Yorba Linda today are “armed to the teeth,” and within their rights to be, while many Black people and other racial minorities in some of the most dangerous cities and neighborhoods in the state are precluded from defending themselves with firearms.

Archer said the state, if it was serious about dismantling racism, would be trying to dismantle its vast system of racist gun laws — not trying to uphold them by citing even more explicitly racist laws of the past.

“We’re supposed to be moving forward, not moving backward,” he said. “If you have to go that far back to justify putting limits on our freedoms — especially if you are going back to racist codes — then this is not the progressive, mixed state that I thought we were in.”

CALIFORNIA

Column: Is California ready for more Black people to legally carry guns in public?

June 27, 2022

Jake Charles, an associate professor at Pepperdine Caruso School of Law, has studied and written about the issue of old, racist laws being relevant — or not — under Bruen's "history and tradition" test.

He said he doesn't believe modern gun laws should be upheld or tossed based on a historical test, but since such a test is required under Bruen, it should at least be honest and applied consistently — regardless of whose modern position on guns it bolsters.

Charles noted that much of the discussion of late has centered on racist laws that excluded enslaved people and other racial minorities from possessing weapons, but there were also racist motivations for many old laws that cemented gun rights for white people. Some early Southern laws, for example, required white men to bring guns to church services as a precaution against slave revolts, he said.

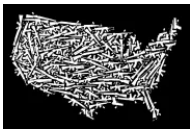
"The expansion of gun rights was often motivated by the same kind of discriminatory rationales that some of the regulations were motivated by," he said. "They were to enforce white supremacy."

Charles said racist laws of centuries past should be viewed skeptically by the courts, but not dismissed wholesale. "Whether or not these laws are unconstitutional, they can tell us something about what kind of scope of government power the founding generation would have thought the legislature had" to restrict gun rights or access, he said.

The so-called abstraction approach to gun law precedent has been applied by judges before, including in a pre-Bruen case by then-Circuit Judge Amy Coney Barrett — who is now a Supreme Court justice, Charles wrote last year in the Stanford Law Review.

Barrett issued a dissenting opinion in the case Kanter v. Barr in which she cited old racist gun laws against enslaved people, Indigenous people and Catholics as clearly unjust, but nonetheless informative — helping to establish a clear tradition of lawmakers restricting access to firearms for people they deemed public threats.

Barrett's approach, Charles wrote, suggested that old racist laws "can provide hints about earlier generations' understanding of legislative power divorced from their concrete application to specific groups."



CALIFORNIA

Buying guns for criminals: Easy, illegal and 'extremely difficult' to stop

Dec. 7, 2023

Charles said the Supreme Court could provide more guidance on the issue in its forthcoming decision in United States vs. Rahimi, where it is considering the constitutionality of laws that prohibit the possession of firearms by people under domestic-violence restraining orders.

However, the court may be limited from tackling the issue in full in the Rahimi case because the U.S. government recently shifted its strategy, dropping references to old, racist laws limiting access to firearms for enslaved people and Indigenous Americans that it had cited in lower courts when it reached the high court.

When Justice Clarence Thomas asked why it did so during oral arguments, Solicitor General Elizabeth Prelogar said the government had decided that such laws spoke to a different issue than the one in Rahimi — in part because "those categories of people were viewed as being not among the people protected by the Second Amendment" at the time the old laws were enforced.

In other words, enslaved and Indigenous people weren't considered citizens — or beneficiaries of the 2nd Amendment's protections. (Benitez cited a similar argument in his recent decision in the ammunition case.)

Charles said the Supreme Court could weigh in further on racist old laws serving as historical analogues in another case called Range vs. Attorney General, which considers whether individuals convicted of felony crimes can be prohibited from possessing firearms.

If it does, Charles said, he will be watching closely to see where Barrett lands — and whether she once again argues for considering old racist laws as relevant history.

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Kevin Rector

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OPINION

Opinion: By keeping guns away from domestic abusers, the justices set an example for other courts

The justices affirmed that the federal government and states can continue to restrain gun rights in some ways. (Brynn Anderson / Associated Press)

By Erwin Chemerinsky

June 21, 2024 10:45 AM PT

The Supreme Court's ruling on Friday finally brought common sense to analyzing gun rights under the 2nd Amendment. It will save lives.

In United States vs. Rahimi, the court in an 8-1 decision upheld the constitutionality of a federal law that makes it a crime for a person under a restraining order in a domestic violence case to have a firearm.

OPINION

Opinion: The Supreme Court went out of its way to ignore common sense on bump stocks

June 14, 2024

The court's holding should be noncontroversial: A person can be prohibited from having a gun "once a court has found that [the individual] represents a credible threat to the physical safety of another." But the implications of this decision are enormous in allowing essential regulation of firearms in the United States.

To put Friday's decision in context, from 1791 until 2008, the Supreme Court never once invalidated any federal, state or local gun regulation. In the handful of decisions about the 2nd Amendment, the court always said that the amendment meant what it says: Americans have a right to have guns for militia service.

OPINION

Opinion: What a relief. The Supreme Court did the right thing on mifepristone

June 13, 2024

But in 2008, in District of Columbia vs. Heller, the court dramatically changed course. In a 5-4 decision, the justices said that the 2nd Amendment protects a right to have handguns in the home for the sake of security.

The court did not return to examining the scope of gun rights for 14 years, until 2022 and New York State Rifle and Pistol Assn. vs. Bruen. In an opinion by Justice Clarence Thomas, the court said that the 2nd Amendment protects a right to have guns outside the home, that the amendment is an "unqualified right" and that gun regulations are constitutional only if they were permissible historically. Thomas suggested that this meant gun laws now had to be of the same type that existed in 1791, when the 2nd Amendment was ratified.

Bruen has led to challenges to every type of gun regulation in the country, causing much confusion in the lower courts. Based on Bruen, the U. S. Court of Appeals for the 5th Circuit declared unconstitutional the federal statute banning gun possession for domestic abusers. The conservative 5th Circuit justices followed Thomas' reasoning: Because such restrictions on possessing guns did not exist in 1791, they are unconstitutional today.

On Friday, the Supreme Court wisely reversed the 5th Circuit. Chief Justice John G. Roberts Jr. wrote for the majority, and only Thomas dissented. The court declared: “When a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may — consistent with the Second Amendment — be banned from possessing firearms while the order is in effect. Since the founding, our Nation’s firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms.”

Upholding this law is, in itself, important. Keeping those under restraining orders in domestic violence cases from having guns will save many lives, especially women’s lives. The Educational Fund to Stop Gun Violence reports that a woman “is five times more likely to be murdered when her abuser has access to a gun.”

The court’s decision is significant, too, in making it much more likely that many other gun regulations will be allowed. Roberts’ majority opinion rejects the view that gun regulations are constitutional only if they are of a type that existed in 1791. He wrote: “Nevertheless, some courts have misunderstood the methodology of our recent 2nd Amendment cases. These precedents were not meant to suggest a law trapped in amber.”

Other conservative justices wrote separately to indicate that the meaning of the 2nd Amendment was not fixed in 1791. Justice Brett Kavanaugh said: “The Court interprets and applies the Constitution by examining text, pre-ratification and post-ratification history, and precedent.” This rejects the originalist view that nothing matters except the original intent behind a constitutional provision.

The Rahimi decision will affect many pending challenges to gun regulations. For example, there is a federal law, and there are laws in almost every state, that prohibit convicted felons from having guns. Hundreds of challenges to these laws have been mounted in the last two years, and lower courts are split as to whether the regulations violate the 2nd Amendment. Now there is a strong basis for upholding them.

There is no doubt that the current conservative majority of the court is supportive of gun rights, as reflected in last week’s decision striking down a federal regulation that outlawed bump stocks, devices that allow a rifle to function like a machine gun. That makes the decision in Rahimi especially important. The 8-1 verdict emphatically upholds the government’s power to regulate guns to protect safety and save innocent lives.

Erwin Chemerinsky is a contributing writer to Opinion and dean of the UC Berkeley School of Law.

DAVID FRENCH

Clarence Thomas and John Roberts Are at a Fork in the Road

June 23, 2024

By David French
Opinion Columnist

Two years ago, when the Supreme Court decided New York State Rifle and Pistol Association Inc. v. Bruen, it created a jurisprudential mess that scrambled American gun laws. On Friday not only did the cleanup begin, but the Supreme Court also cleared the way for one of the most promising legal innovations for preventing gun violence: red flag laws.

The Bruen ruling did two things. First, it rendered a sensible and, in my view, correct decision that the "right of the people to keep and bear arms," as articulated in the Second Amendment, includes a right to bear arms outside the home for self-defense. But the right isn't unlimited. As Justice Brett Kavanaugh wrote in his concurrence in Bruen, the court did not "prohibit states from imposing licensing requirements for carrying a handgun for self-defense" and that "properly interpreted, the Second Amendment allows a 'variety' of gun regulations."

At the same time, the court articulated a "text, history and tradition" test for evaluating gun restrictions in future federal cases. Under this test, gun control measures were constitutional only if the government could demonstrate those restrictions were "consistent with the nation's historical tradition of firearm regulation." That was the most significant element of the Bruen case. Before Bruen, lower courts had struggled to establish a uniform legal test for evaluating gun restrictions, and the Supreme Court hadn't provided any clarity.

Justice Clarence Thomas wrote the majority opinion in a 6-to-3 decision split along ideological lines. He applied the text, history and tradition test by walking through the very complex, often contradictory, history of American gun laws to determine whether New York's restrictions had analogies with the colonial period or the periods after ratification of the Second Amendment and

the Fourteenth Amendment, which applied the Second Amendment to the states. Under a fair reading of Thomas's opinion, lower courts would be hard pressed to uphold any gun restriction unless they could point to an obvious historical match.

Not only was the history messy, but judicial reliance on founding-era legislation suffers from an additional conceptual flaw: State legislatures are hardly stuffed with constitutional scholars. Then and now, our state legislatures are prone to enact wildly unconstitutional legislation.

Our courts exist in part to check legislatures when they go astray. The courts do not rely on legislatures to establish constitutional doctrine. In our divided system of government, legislators are not tasked with interpreting constitutional law. Yes, they should take the Constitution into account when they draft laws, but the laws they draft aren't precedent. They do not and should not bind the courts.

United States v. Rahimi, the case the Supreme Court decided on Friday, is a product of Bruen's confusion. And the outcome is fascinating. Five of the six justices who voted in the majority in Bruen backed away from the clear implications of the decision. Thomas, by contrast, doubled down.

The case involves a man from Texas named Zackey Rahimi who was convicted of violating a federal law that prohibits individuals subject to domestic violence restraining orders from possessing firearms. He had threatened his girlfriend and another woman with a gun, and he was a suspect in a spate of additional shootings. After he threatened his girlfriend, he entered into an agreed domestic violence restraining order prohibiting him from threatening his girlfriend or from contacting her unless they were discussing their child. He promptly violated that order by approaching her home and contacting her on social media.

As Chief Justice John Roberts recounts in his majority opinion, when the police obtained a search warrant of Rahimi's home to investigate the additional shootings, "they discovered a pistol, a rifle, ammunition — and a copy of the restraining order."

Rahimi was indicted on one count of possessing a firearm while subject to a domestic violence restraining order. He challenged the indictment, arguing that Section 922(g)(8), the law he was charged under, violated the Second Amendment. The trial court and the court of appeals initially rejected the argument, but while the Fifth Circuit was considering his petition for a rehearing with the entire court, the Supreme Court decided Bruen.

The appeals court then took a fresh look at his case, applying the Thomas test. It searched for clear historical matches and — unable to find any — held that the government failed "to demonstrate that § 922(g)(8)'s restriction of the Second Amendment right fits within our nation's historical tradition of firearm regulation." If this ruling held, every person subject to a domestic violence restraining order could have immediate access to firearms, assuming no other legal restrictions applied.

Even worse, if the Fifth Circuit's ruling had stood, lawmakers seeking to justify virtually any gun regulation would have to be prepared to find colonial or early-American analogies for their proposed restriction or watch it fail in court. This would have meant that lawmakers facing modern gun violence problems involving modern weapons would have been constrained into essentially colonial and founding-era legal solutions.

In essence, that is the exact reverse of an argument that some gun control proponents make, that the Second Amendment protects only possession of colonial-era weapons. Under the Thomas test, the Second Amendment would permit only colonial-era restrictions.

On Friday, eight justices of the Supreme Court not only ruled against Rahimi. They clarified their approach to text, history and tradition in a way that freed lower courts from the straitjacket of finding precise historical analogies. Roberts declared that "some courts have misunderstood the methodology of our recent Second Amendment cases." The court's precedents "were not meant to suggest a law trapped in amber." Or, as Justice Amy Coney Barrett wrote in her concurrence, "Historical regulations reveal a principle, not a mold."

As a practical matter, this means, as Roberts wrote, that "when a challenged regulation does not precisely match its historical precursors, 'it still may be analogous enough to pass constitutional muster.'" Applying this more flexible framework, the court reached a holding that will echo beyond Rahimi's case: "An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."

That holding is relevant not just to domestic violence restraining orders; it's also relevant to so-called red-flag laws or extreme risk protective orders. Those laws, adopted in 21 states, empower specific individuals (like law enforcement or, in some cases, family members) to petition a court to order a person to surrender his guns if he exhibits dangerous or threatening behavior.

The reason for red-flag laws is clear: Research has demonstrated that mass shooters tend to broadcast violent intentions before they act. A National Institute of Justice-funded study of more than 50 years of mass killings, for example, found that "in most cases" mass shooters "engaged in leaking their plans before opening fire." In 2018 the Republican governor of Arizona, Doug Ducey, commissioned a "Safe Arizona Schools" report, which found that in every one of the most recent and severe school shootings, a red-flag law could have prevented tragedy.

Thomas was the lone dissenter in Rahimi. Five justices wrote their own concurrences, many of them arguing that the Fifth Circuit misunderstood and misapplied Bruen. But Thomas argued that the Fifth Circuit got the analysis right because the founding generation "addressed the same societal problem as §922(g)(8) through the 'materially different means' of surety laws."

Surety laws required a person who was suspected of threatening "future misbehavior" to post a bond, a sum of money that he'd forfeit if he broke the law. If he didn't post a bond, he'd be jailed. But such reliance on a specific, narrow past legislative approach isn't required by originalism. It is, itself, a policy choice.

Barrett put her objections well. "Imposing a test that demands overly specific analogues has serious problems," she wrote. "It forces 21st-century regulations to follow late-18th-century policy choices, giving us 'a law trapped in amber.' And it assumes that founding-era legislatures maximally exercised their power to regulate, thereby adopting a 'use it or lose it' view of legislative authority."

"Such assumptions are flawed," Barrett said, "and originalism does not require them."

But that doesn't mean history is useless. As Roberts wrote in the majority opinion, surety laws help confirm "what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed."

The difference between Roberts and Thomas is clear. Roberts looks to past practice to establish a principle. Thomas looks to past practice as essentially establishing precedent.

Roberts gets it right. When we consider new policies in the present, the acts of the past are instructive but not binding. Modern American lawmakers are not limited by the colonial imagination.

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