Unbalanced: Supreme Court Politics, Chicanery and Corruption

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December 21, 2023

Supreme Court Justices swear to an oath of office that includes a commitment to "not favor rich or poor." This reflects the principle of impartiality and equal justice under the law. Justices pledge to uphold the Constitution and administer justice without showing favoritism based on a person's wealth or social status, underscoring the importance of fairness and the rule of law in the American legal system.

Many people see that judges often act in ways that comfort the comfortable while afflicting the afflicted. Or, more accurately, they make rulings that generously help and provide succor to rich people and corporate CEOs and big investors -- and to religious fundamentalists -- while being stingy with countless millions of Americans, and disrespecting their rights. One might think that such judges regard voters as suckers!

Anyone inclined to doubt this contention, I encourage you to read legal journalist Ian Millhiser's incisive, illuminating and wholly convincing book, *Injustices: The Supreme Court's History of Comforting the Comfortable and Afflicting the Afflicted.*

"Few American institutions have inflicted greater suffering on ordinary people than the Supreme Court of the United States", writes Millhiser. "Since its inception, the justices of the Supreme Court have shaped a nation where children toiled in coal mines, where Americans could be forced into camps because of their race, and where a woman could be sterilized against her will by state law. The Court was the midwife of Jim Crow, the right hand of union busters, and the dead hand of the Confederacy. Nor is the modern Court a vast improvement, with its incursions on voting rights and its willingness to place elections for sale." And it is downright dastardly in its despotic dictates depriving pregnant women of rights to make their own decisions about their health, family and life.

Some sensibly say that Supreme Court decisions are basically either fair, or wrong.

"In *Injustices,* Millhiser argues that the Supreme Court has seized power for itself that rightfully belongs to the people and their elected representatives, and has bent the arc of American history away from justice."

"In this powerful indictment of a venerated institution, Ian Millhiser tells the history of the Supreme Court through the eyes of the everyday people who have suffered the most from it. America ratified three constitutional amendments after the end of the Civil War to provide equal rights to freed slaves, but the justices spent thirty years largely dismantling these amendments. Then they spent the next forty years rewriting them into a shield for the wealthy and the powerful. In the Warren era and the few years following it, progressive justices restored the Constitution's promises of equality, free speech and fair justice for the accused. But, Millhiser contends, that was an historic accident. Indeed, if it weren't for several unpredictable events, *Brown v. Board of Education* could have gone the other way" -- thereby allowing "separate but equal" racial segregation in schools.

Today, the six "conservative" Republican appointees on the high and mighty court were all specifically chosen because of their career-proven predisposition to make rulings that generally tend to comfort the comfortable while afflicting the afflicted -- and for their predisposition to oppose women's right to an abortion.

Far from being impartial arbiters of fairness, conservatives on the high court actually have an agenda. In his 2021 book, *The Agenda: How a Republican Supreme Court Is Reshaping America*, Ian Millhiser exposes this agenda of attacking voting rights, dismantling the federal administrative state, ignoring the separation of church and state, and putting corporations above the law.

It is extraordinary that, in a democracy based on a constitution extolling equality and democratic fairness, laws and the justice system can allow drastic inequalities, injustices and inequities. How, one might wonder, is this achieved?

Supreme Court Justices and other federal court judges often take a circuitous route of twisted reasoning to arrive at legal decisions that comport with their own personal preferred political predispositions. This is known in German as *Umwege* ("detours"; pronounced UM-vee-guh).

Justices interpret laws, analyze precedents and consider various legal routes to reach decisions that align with the Constitution, but are basically consistent with their own political biases. This process involves using rationalizations to achieve partisan goals and arrive at rulings that follow indirect paths to supposedly uphold the law and justice.

The American system of justice has rationalized Jim Crow laws and discrimination against Native Americans and Blacks and other minority groups, despite the clear statements of principles in the U.S. Constitution.

With so many legislative rules of law and judicial decisions made that treat Americans in blatantly inequitable and anti-egalitarian ways, contrary to the clear principles set forth in the Constitution, it behooves us to understand the fluidity of what Rachel Maddow describes as *Umwege* in her book *Prequel - An American Fight Against Fascism.*

Back in the 1930s, German Nazis were highly interested in laws in the United States that gave overarching privileges to Whites over Blacks and Native Americans. Rachel Maddow tells this story in *Prequel,* writing about a German national named Heinrich Krieger who came to the U.S. to attend the University of Arkansas for the express purpose of finding out how to "legally privilege white men as a 'ruling race' in a land in which the written Constitution -- and quite explicitly the Fourteenth Amendment -- guarantees equal protection of the law to all, regardless of skin color."

"For Krieger, the genius of the American legal system was in how it allowed for the circumvention of this obvious contradiction by use of juridical *Umwege*" … which are "secret and twisting passageways of reasoning that led to whatever outcome was politically desirable. Krieger understood this would be a bit of a revelation to legal scholars and practitioners in Germany, where they operated within the limits of civil law -- a mechanical system in which the written statutes and codes were not at all fungible. In the United States, where common law held sway, judges had (and have) more room to maneuver."

"On matters of race, Krieger explained to his Nazi legal cohorts, the American system of justice took all the room it needed. It was a bouillabaisse of 'artificial line-drawing, partly by statute, partly by the courts,' spiced with illogic, arbitrariness, and incoherence."

This devious process had great value for the Nazis, "if you looked at it the right way", writes Rachel Maddow. One German legal scholar had written, "At first glance, U.S. Supreme Court pronouncements appeared exceeding motley, almost confusing, especially to an eye that is unaccustomed to German decisional law." Rachel Maddow elaborates: "But if you allow the *Umwege* to do their work on you, American race law's secret passageways can lead you beyond the strict, narrow limitations of the actual text of the law and into the more expansive vaults of intuition." … "In other words, Americans had found ways -- on matters of race -- to use the law to justify just about anything they wanted to do. Leave the egalitarian, idealistic language on the books, but interpret that language however you need to, to justify any policy that just feels right."

"The Nazis were in love with this idea", because they could, for instance, do anything they wanted to Jews, depriving them of citizenship, civil rights, property, freedom and their lives, "and the law wouldn't get in the way."

In the U.S., laws about Native Americans and immigrants, as well as Jim Crow laws that enforced discriminatory racial segregation, "were all based on one idea: that the 'superior' white race must be walled away and protected

from all others. If everyone in power agrees on that as your tacit starting assumption and also your ultimate goal, you can *Umwege* your way there through almost any picayune black-letter dispute."

Putting German law to the task of achieving Hitler's goal of eliminating Jews, Nazi lawyers and the Reichstag parliament concocted laws that stripped Jews of German citizenship and all political rights.

Diagnosing the Malaise

The Supreme Court has become too powerful, too political, too partisan and too religiously ideological, upsetting the important checks and balances that make our Constitutional democratic republic a trustworthy guarantor of reasonably fair justice, equality and the general welfare, and domestic tranquility, and propitious social cohesion, and individual and collective security -- and the broad blessings of liberty.

The Supreme Court has been fundamentally corrupted by the political nature of Big Money influence in the nomination and confirmation process, and in the ruthless gamesmanship that has resulted in getting a dominating majority of Republican judges placed on the highest court in the land.

This corruption is a result of the success of a decades-long court capture scheme, as explained in detail in my essay *Calamitous Consequences of Success of a Secret Conspiratorial Scheme to Capture the Courts.* This is the pathological outcome of a conspiratorial collaboration of Senate Republicans with the extreme "conservative" Federalist Society and Big Money anti-tax special interest groups, together with help from *Dark Money* fund-raising political operatives and religious fundamentalists.

Republicans "conservatives" have used cunning, evasion, deceit, dishonesty and political intrigue in this decades long Machiavellian effort to gain power and control of the Supreme Court and other federal courts.

The American people deserve good government of the people, by the people and for the people, yet Mitch McConnell and the Federalist Society and Republican politicians have used the corrupting influence of wealthy donors and anonymous *Dark Money* pressure to create an unreasonable imbalance of power vested in nine unelected and unaccountable Justices serving lifelong terms.

Co-conspiring factions have used anti-abortion litmus tests to get a supermajority of shrewd judges placed in the federal judiciary who advocate a right-wing agenda that not only works to take away rights of pregnant women to get an abortion, but also strives to undermine voting rights and facilitate egregiously contorted gerrymandering schemes, and to make fanatically deadly interpretations of the Second Amendment that allow almost anyone to possess and use military-like assault weapons.

The fact of the matter is that conservative judges tend to make rulings that favor rich persons over the poor and profiteering corporate entities over people, and Republicans over Democrats, and men over women, and white people over people of color. This has created a bias in our laws "on steroids", perpetuating socially undesirable injustices, including racial injustices, gender inequities, social inequalities, far-reaching intergenerational injustices, and calamitous environmental harms against people who are poorly represented.

The current Supreme Court, with its 6-3 supermajority of Republican appointees, is not a conservative court; it is a radical court.

Public trust in the judiciary has been drastically diminishing due to the ideological agenda of politically partisan Republicans who are dangerously over-represented on the highest court in the land. This unmerited excessive influence has come about due to the cunning machinations involved in the Republican Big Money-financed conspiratorial Court Capture Scheme, which has been mercilessly waged since the publication of the notorious Powell Memo in 1971. This scheme has been superempowered in the past several decades by treacherous legal activist Leonard Leo and Federalist Society "conservatives".

Grave imbalances of power have developed in the wake of the success of this court capture scheme, which gives ethically deficient Justices too much power -- and far too many opportunities to abuse it.

Influence peddling has taken place by means of lavish gifts and vacations and insider privileges and huge political support given to "conservative" Justices, and also in the very placement of an unrepresentative cabal of ideological

partisans at the pinnacle of power. The majority of these Justices are, in plain sight, acting hubristically to do the bidding of rich people, corporate entities and extreme religious fundamentalists, and are often engaging in biased or ideologically partisan activities rather than fairly serving the common good.

The Supreme Court has seemingly gone rogue. The court's conservatives are flexing their power to impose a hard-right agenda on the country in a succession of precedent-toppling reactionary legal rulings that have already eliminated the constitutional right to abortion and essential reproductive rights of pregnant women, and deprives LGBTQ people of civil rights, and undermines affirmative action programs and torpedoes efforts to cancel onerous student debts and protections under the Clean Water Act. They also have ruled against sensible restrictions on gun rights, despite a lethal epidemic of mass shootings using assault rifles. In so ruling, they have embraced a fanatical interpretation of the Second Amendment, which was written to give citizens the right to keep and bear arms in well-regulated militias "necessary to the security of a free State." Security! -- not extreme insecurity caused by fears of being shot in schools, churches, grocery stores, nightclubs, Las Vegas streets or almost anywhere a deranged shooter chooses. All of these actions are antithetical to the will and well-being of the majority of Americans.

The Supreme Court has become the federal government's most powerful body influencing policymaking and lawmaking. It has achieved this status by unleashing unlimited corporate money in politics and wrongly allowing grotesquely unfair and discriminatory gerrymandering and restrictions on voting rights, and by gutting decades of precedent on abortion rights, civil rights, environmental protections, and the like.

At a time when the Supreme Court and federal appeals courts are in the process of affecting our nations laws on major issues affecting the lives of Americans, Congress must finally act to impose an honorable code of enforceable ethics on the justices, and make sure that they abide by its provisions.

Threats Posed by Tacit or Explicit Collaboration with Authoritarians Abusing Power

Despite the serious consequentiality of the issues discussed at length in this essay, there is a larger context that is even more concerning for the general welfare and the lives of the people. This uber context is the on-going attempts by far-right factions to gain and exert domineering power.

As outlined in my essay *Democracy, and the Problematic and Pathological Perils of "Electoral Autocracies"*, an Authoritarian Playbook is used to establish and perpetuate authoritarian rule. This is accomplished by stifling opposition, controlling information, and consolidating power. In addition to injecting politics into the judicial system, the Authoritarian Playbook typically includes:

1. Centralizing Power. Concentrating power within a single leader or ruling party, often undermining checks and balances and violating the vitally important separation of Church and State.

2. Quashing Dissent. Limiting free speech, controlling media, weaponizing government against opposition parties, and suppressing criticism and efforts to hold them accountable, in order to maintain authority.

3. Manipulating Information. Promoting propaganda, misinformation and disinformation to control narratives and shape public perception and opinion. "Many politicians lie, but authoritarians propagate and amplify falsehoods and conspiracies deliberately and to obscene extents, with abandon and ruthlessness."

4. Torpedoing the independence of regulatory institutions. Politicizing independent institutions and trying to prevent democratic institutions from operating independent of partisan political actors, and maligning tens of thousands of civil servants by accusing them of being part of a conspiratorial "deep state". "Central banking, law enforcement and courts, official statistics, financial accounting and regulation, election administration, intelligence and national security -- all only work properly when appropriately protected from politics. These institutions are ripe targets for capture by autocratic leaders, in whose hands they become weapons against adversaries, shields preventing accountability, or, worst of all, levers of large-scale manipulation and corruption. Because of their potential to cause permanent institutional, legal and economic damage, even early attacks on independent institutions should be treated as a substantial threat."

5. Stoking Fear and Division. Authoritarians exploit societal divisions and instill fear to gain and maintain

control. They use crude and cruel tactics to marginalize vulnerable people and groups, including immigrants and gays, making concerted attacks against them, dehumanizing them, and stoking fear and sowing division to turn people against each other. They take advantage of the knowledge that when people feel more insecure, those who oppose their authority-abusing agenda are easily silenced. Authoritarians do this in order to gain and maintain power through skullduggery and the use of all the insidious strategies involved in *Divide-to-Conquer Roguery.*

6. Engaging in Surveillance. They use widespread surveillance to exert control over people's actions and behaviors.

7. Using Violent Rhetoric and Inciting Political Violence. They threaten and intimidate opponents, and deliberately look the other way from political violence, sometimes encouraging armed militia groups or actively inflaming violence.

8. Demanding Cult-like Obedience to a Supreme Leader. They cultivate images of strength around a leader, often through glorification and a cult of personality. This involves aggrandizing executive power, for authoritarian offensives cannot succeed without the cooperation or acquiescence of legislatures, courts and other institutions that let leaders abuse power and infringe on people's freedoms.

9. Corrupting Elections -- 21st-century authoritarians generally maintain the facade of fair elections while tilting the rules against their opponents by suppressing votes, gerrymandering, compromising election integrity, intimidating opponents, and biasing or even trying to overturn election results.

<u>Judges Acting as Politicians in Robes</u>

Conservative Supreme Court Justices often use "originalist" arguments to arrive at rulings consistent with narrow political and ideological preferences, thereby cunningly acting like politicians in robes. In doing so, they sometimes use contrived and contorted reasoning consistent with ossified opinions and biases, and arrive at convenient rationalizations for preferred outcomes, largely ignoring the larger context of the U.S. Constitution, as so eloquently set forth in its great Preamble.

Understanding the true essence of the Constitution involves not just interpreting the text as it was written more than 230 years ago, but also considering the fundamental purposes, values and principles it embodies, including its commitment to unity, fair-minded justice, equality, freedoms, security and the common welfare of the people.

By framing their rulings on "originalist" interpretations of the Constitution and failing to clearly understand or care about the true bigger picture context of Preamble goals and principles, they engage in "right-wing social engineering." It is not right to try to discern or decipher the framers' original intent at the time of its writing when this shrewd approach does not fully encompass the broader context and spirit of the Constitution.

Strict originalist views overlook the evolving societal needs and the broader context of progress envisioned by the framers. The Preamble dedicates the Constitution to creating "a more perfect Union", suggesting an adaptable and inclusive framework that aims to meet the challenges and evolving needs and circumstances of a changing society.

John Roberts, the chief justice of the U.S. Supreme Court, once said, "I want to assure people that I am committed to making certain that we as a court adhere to the highest standards of conduct." He told this to people at an awards dinner in Washington D.C. This contention that the Justices are trying to hold themselves to the highest standards is ludicrously laughable in light of the many scandals involving John Robert and his wife, and Clarence Thomas and his far-right activist wife Ginni, and Brett Kavanaugh and Samuel Alito.

Jane Roberts, the wife of Chief Justice John Roberts, is a high-powered corporate law recruiter who has been paid millions of dollars in commissions for her work as a legal recruiter by top corporate law firms that argue before the Supreme Court. One of the firms that paid her had argued 125 times before the Supreme Court. John Roberts has not recused himself from any of the cases in which his wife's clients were involved.

"Here's the kicker: Because the Supreme Court has no legally binding code of ethics, not one dime of these payments were even disclosed to the public. We only know about it because a former coworker of Roberts' came forward."

In *Moore v. U.S.*, a case currently before the high court, "the Supreme Court is being asked to give a $350 billion tax windfall to the nation's wealthiest corporations and individuals by declaring a key provision of the 2017 Tax Cuts and Jobs Act unconstitutional. And, scandalously, Chief Justice John Roberts and Justice Samuel Alito personally own stock in 19 companies that could gain nearly $30 billion from a favorable ruling in a case currently before it." Despite this glaring conflict of interest, Roberts and Alito have not recused themselves from the case.

The Supreme Court is already facing a massive public backlash for a growing list of corruption scandals, so this creates real pressure to force Roberts and Alito to recuse. "And if they don't, that will fuel demands for Congress to take action to enact a mandatory code of ethics for the Supreme Court."

Moreover, "In addition, the *Moore v. U.S.* case could result in all wealth taxes being declared unconstitutional, at the same time that proposals like Elizabeth Warren's wealth tax legislation are gaining momentum with the public."

Yet another ethics scandal has rocked the Supreme Court, raising even more questions about the basic integrity and independence of the institution. *The New York Times* uncovered a "donations for access" scandal involving a Supreme Court-affiliated charity that raised millions of dollars from anti-abortion, anti-LGBTQ, and other right wing and corporate interests in efforts to gain access and influence with justices.

Supreme Court Justices have been promising to "seriously study" ethics reform for the last several years, but they have been unable to agree on rules that would require them to disclose donations or recuse themselves from cases in which they have conflicts of interest. Until a new and first-ever code of ethics for Supreme Court Justices was announced on Nov. 13, this looked rather like corruption incarnate! Let's watch closely to see if anything changes.

Appearances of conflicts of interest arise not only by financial holdings that could be affected by outcomes, but also by associations with parties in a case. Transparency, accountability and ethical conduct are severely lacking these days, and this has been a major contributor to the erosion of trust in the judiciary.

"Enough is enough. The Supreme Court can't be trusted to police itself. We must demand that Congress pass the Supreme Court Ethics, Recusal, and Transparency Act, requiring the nation's highest court to follow basic rules of disclosure and recusal." *We the People* must demand that the judicial Establishment be policed.

This Supreme Court has declared war on our most cherished rights, from voting to reproductive freedom, and it seems clear that it cannot be trusted to police itself. That's why Congress must pass legislation that would require the Supreme Court to follow a stronger code of ethics.

It is noteworthy that Justice Brett Kavanaugh attended a Christmas party in December 2022 that was hosted by Matt Schlapp, the right-wing leader of the Conservative Political Action Conference, along with prominent Trump supporters and persons in special interest groups that have matters before the court.

<u>Appearances of Fascism in the U.S. Are Proliferating -- on the Political Right!</u>

A recent Washington Post report details how Trump and his allies plan to use the Department of Justice to go after political rivals if elected in 2024, in the kind of revenge politics one finds in dictatorships. Then, in an interview with the Spanish language news service Univision, Trump doubled down on weaponizing the Department of Justice to attack his opponents.

In a Veterans Day rant in New Hampshire, Trump used the authoritarian playbook tactic of dehumanizing political opponents. He railed against "the radical left thugs that live like vermin within the confines of our country", and added, "The threat from outside forces is far less sinister, dangerous and grave than the threat from within."

Trump has a valid point that there are serious threats to our country from within, but these threats come mostly from his own dictatorial ambitions and MAGA Republicans rather than from Democrats that support the Affordable Care Act, a Green New Deal, bipartisan political reforms, racial justice, more progressively structured taxation, and strong preventative climate action measures like a carbon fee-and-dividend plan.

Trump has always been a sinister master of projection. His eagerness to weaponize the Department of Justice stems from his cultivated sense of victimhood -- his belief that he has been unfairly targeted with all of the numerous indictments against him. Much of the legal jeopardy he faces in actuality stems from his attempts to tear down American democracy and lie maniacally to stay in power despite losing the 2020 election. "In his rage, he promises to escalate. That has been his playbook in business and politics."

"Make the lie big, make it simple, keep saying it, and eventually they will believe it."

— Adolf Hitler

In a speech in Claremont, New Hampshire, and then in his Veterans Day message on social media, former president Trump echoed German Nazis. "In honor of our great Veterans on Veterans Day, we pledge to you that we will root out the Communists, Marxists, Racists, and Radical Left Thugs that live like vermin within the confines of our Country, lie, steal, and cheat on Elections, and will do anything possible, whether legally or illegally, to destroy America, and the American Dream…. Despite the hatred and anger of the Radical Left Lunatics who want to destroy our country, we will MAKE AMERICA GREAT AGAIN."

"The use of language referring to enemies as bugs or rodents has a long history in genocide because it dehumanizes opponents, making it easier to kill them. In the U.S. this concept is most commonly associated with Hitler and the Nazis, who often spoke of Jews as 'vermin' and vowed to exterminate them." And then did kill millions.

There are alarming parallels between past and present-day extremist movements in the United States. The incisive commentator Rachael Maddow explores this reality in her new book *Prequel: An American Fight Against Fascism*, in which she provides a lens through which to view the contemporary American political landscape during a time of growing political unrest, as the country prepares for another election.

Rachael Maddow is known for her unique storytelling ability on her popular eponymous MSNBC show, and in *Prequel,* she delves into the little remembered history of fascism in America during the 1930s and 1940s. The book stemmed from a mountain of research Maddow conducted for her podcast *Ultra*, and it serves as a reminder of nefarious chapters in America's history, especially with Hitler sympathizers during World War II. Maddow also tells the story about the heroic people who prevented the worst outcomes at the hands of far-right fascists, especially those who target marginalized communities, including people of color, women and the LGBTQ community.

It took a worldwide coalition to defeat right-wing authoritarianism during World War II -- with more than 50 million people killed -- but now we see that "it has only been in hibernation. Over the past decade it has infected democratic societies -- including ours. It is as simple as it is terrifying: What we do now will define the future of our country and world," state the folks at Blue Amp Action.

Prequel transports readers back to a crucial period on the edges of the Second World War when American fascists who supported and even lionized Adolf Hitler and the Nazis tried to prevent the U.S. from entering the war on the side of allies opposed to Hitler's world conquering war.

The book traces the efforts of various paramilitary factions whose goal was to unleash domestic terror and create chaos that would provide a pretext for fascists to seize power. Notable personalities, such as the architect Philip Johnson, scouted for an American version of Hitler, favoring Huey Long, a governor of Louisiana and then U.S. senator. Maddow's research reveals the chilling intentions of these factions.

Maddow unveils the disturbing alliances between isolationist members of Congress and fascist ideologues, underlining the extent to which Nazi propaganda found its way into American households.

In a tragic irony, the Republican Party, which led a fierce campaign against communists as a threat to our people and government in the 1950s, has become a subversive threat itself today, with its concerted efforts to overturn elections they lose and with its support of MAGA extremists like the new Speaker of the House, who is almost as guilty as Trump for pushing the big lie about election fraud and trying to illicitly re-install Trump as president.

It is incumbent on people in democracies worldwide to work hard to defend fairness principles and strong

democratic values. "Eternal vigilance is the price of liberty."

The Republican Party has been the pathological scene "of a long slide from the party of Ronald Reagan -- whose 11th commandment was not speaking ill of other Republicans and who envisioned the party as a big tent -- to the extremism, purity tests and chaos of the House Republican conference this year", according to the New York Times Editorial Board.

The U.S. needs a true Conservative Party that is dedicated to helping solve the daunting challenges we face, but what we have with the power of the new Speaker of the House and the right-wing Freedom Caucus and MAGA extremists is a political faction dedicated to spreading chaos in order to prove that democratic government doesn't work -- so that the stage is set for a return to "strong-man" authoritarian rule under Trump. Extremism has reached such a degree today that the Republican Party has become an existential threat to freedom, security, stability and achieving common good goals.

Fortunately, there are honorable activists like those at the ACLU and Blue Amp Action who are dedicated to liberal, open societies, where reason and science are applied to solve our problems; where women's reproductive rights and expansive civil rights -- including voting rights! -- are protected for all. "We fight for these values every day. Speaking up on our platforms, raising the voices and the political prospects of liberal pols and pundits."

Aha! A New Code of Ethics

The Supreme Court finally responded to mounting public pressure over many ethics scandals that have engulfed some of its senior rightwing justices, by publishing its first ever code of ethics, setting out the "rules and principles that guide the conduct of members of the court".

The court issued this ethics code on Nov. 13, 2023 after a series of revelations about undisclosed property deals and luxury travel and other gifts intensified pressure on the justices to adopt one.

Supreme Court Justices asserted that they were adopting this code of ethics because "the absence of a Code has led in recent years to the misunderstanding that the Justices of the Court, unlike all other jurists in this country, regard themselves as unrestricted by any ethical rules." So they issued this new Code to supposedly "dispel this misunderstanding".

"The 14-page document follows months of increasingly sharp criticism of the justices and their failure to apply to themselves basic ethical rules that bind all other judges in the U.S. Even as they released the code, however, the justices maintained their defensive posture with their disingenuous insistence that the furor of recent months had merely been a 'misunderstanding'."

From the point of view of a reasonably objective observer, the new ethics rules make a mockery of true propriety, for the Justices claim that many acts that have the appearance of being egregiously corrupt, as explained in detail below, are merely a "misunderstanding".
The newly published code is signed by all nine justices, and lays out the basic guardrails within which they are expected to behave. The first page states clearly that "a justice should avoid impropriety and the appearance of impropriety in all activities". Well, they must start immediately!

Close public scrutiny of the Justices needs to be made to ensure that they honestly act properly.

In a statement, the justices said they had established the code of conduct "to set out succinctly and gather in one place the ethics rules and principles that guide the conduct of the members of the court." Left unclear was how the rules would be enforced, and the court said that it was still studying how any code would be put into effect.

Revelations of lavish vacations and high-end gifts have cast a light on how few ethics rules have bound the justices, and under the new code, it remains unclear which of those activities would violate the rules — and who would decide.

The code does not place specific restrictions on gifts, travel or real estate deals. But it does caution the justices that they should not take part in outside activities that "detract from the dignity of the justice's office,"

"interfere with the performance of the justice's official duties," "reflect adversely on the justice's impartiality" or "lead to frequent disqualification."

The rules also prohibit justices from allowing "family, social, political, financial or other relationships to influence official conduct or judgment." The document cites examples of when justices must recuse themselves from a case, including when they have a "personal bias" or a financial interest.

One of the main differences between the new code and the one that applies to other federal judges is in its treatment of recusal. In commentary the court issued along with the code, the justices said they must be wary of disqualifying themselves from cases because, unlike judges on lower courts, they cannot be replaced when they do.

"Because of the broad scope of the cases that come before the Supreme Court and the nationwide impact of its decisions," the commentary said, the provision on recusal "should be construed narrowly." Well, it seems likely that conservative Justices will continue to pretend they have no conflicts of interests, and Justices eager to weigh in on issues are unlikely to be recusing themselves from cases even when the appearances of partiality or conflicts of interest are glaring.

Professor Robert Reich called the new ethics code "neither a code nor about ethics", but rather "a pathetic attempt at pacifying the public instead of making justices accountable." He characterized it this way because it has "no enforcement mechanism and no mechanism for the public to lodge complaints of misconduct, or for any outside review of alleged ethical violations." For these reasons, Reich called the new code "public relations pablum."

Robert Reich concluded, "Ultimately, I blame Chief Justice John Roberts. The court's chief justice is supposed to maintain public trust and confidence in the court, but Roberts has done everything possible to avoid a Code of Ethics with teeth. This latest pathetic attempt at pacifying the public will do little to reverse the sharp decline in public confidence in the nation's highest court.

"At his nomination hearing in September 2005, I testified against Roberts becoming the next chief justice", wrote Reich. "I had no confidence in his ability or willingness to put the public interest above the interests of individual justices. Sad to say, I've been proven correct."

Sunshine, as they say, is the best disinfectant. Requiring transparency and openness is a powerful tool for exposing things to the light of public scrutiny that can help eliminate corruption, wrongdoing and unethical behavior. Transparency and public awareness can lead to accountability and better behavior, since officials are less likely to engage in misconduct when their actions are subject to public scrutiny.

The nine justices of the Supreme Court are appointed for life, and despite their virtually unchecked power, policies regarding when they must recuse themselves are inadequate. So are stipulations regarding potential conflicts of interest. Without adequate ethical standards, we've seen the court breach its duty to be impartial and independent repeatedly. Such violations of propriety are almost always done by hypocritical allies of law-and-order conservatives"

The bottom line: The Supreme Court is supposed to be impartial and above influence from special interests, yet today's Justices look increasingly like they don't care about that tenet.

In sports, some coaches like those in Michigan football claim they are "committed to the highest standards of ethics and integrity." This is a stunning contrast to Justices on the Supreme Court, where Republican appointees are demonstrably committed to the lowest standards among all federal judges.

Partisanship Run Amok

The Supreme Court has become tragically anti-democratic and politically partisan in favor of the Republican agenda, and disrespectful of the popular will. "Conservatives" on the high court have allowed excessive influence to Big Money, and also have allowed the Voting Rights Act of 1965 to be eviscerated, and they have given their official blessing to red states to impose far-reaching restrictions on voting rights and engage in extreme gerrymandering.

For four years, Donald Trump and Senate Republicans hijacked our federal judiciary by appointing three right-wing

U.S. Supreme Court justices, 54 appellate circuit court judges, and 174 district court judges. These appointments for life have done serious damage to our fundamental rights -- from our right to vote to the repeal of *Roe v. Wade* reproductive rights to overturning gun safety measures and undermining environmental protections. Also, lower court Trump appointees are a group from which future right-wing Supreme Court justices can be chosen.

Two of the most consequential injustices in American history -- and worst betrayals of democratic fairness -- have resulted from the crusade to succeed in a court capture scheme by far right Republicans. First, the great champion of civil rights Thurgood Marshall, who was the Supreme Court's first African-American justice, was replaced by scheming Republicans with one of the most turncoat judges ever, in the person of the right-wing conservative and ethics deficient Black man Clarence Thomas, whose partisan conservatism has helped corrupt our government by allowing special interests to exert excess influence and gain power through discriminatory gerrymandering.

Prior to his judicial service, Thurgood Marshall was an attorney who fought for civil rights. He led the NAACP Legal Defense and Educational Fund, and was a prominent figure in the movement to end racial segregation in American public schools. He won 29 of the 32 civil rights cases he argued before the Supreme Court, culminating in the Court's landmark 1954 decision in *Brown v. Board of Education,* which rejected the separate but equal doctrine and held segregation in public education to be unconstitutional. President Lyndon Johnson appointed Marshall to the Supreme Court in 1967. A staunch liberal, he often dissented after the Court became increasingly conservative.

Clarence Thomas seems to be having his revenge on liberals for their having opposed his ascendance to the Supreme Court. One of the worst ways he has achieved this is by engaging in a high court lynching of women's reproductive rights by depriving women of the dignity, self-determination and freedom to choose to terminate an unwanted pregnancy by getting a safe and easily available abortion before fetal viability.

Thurgood Marshall's jurisprudence was pragmatic and drew on his real-world experience. His most influential contribution to constitutional doctrine, the "sliding-scale" approach to the Equal Protection Clause, called on courts to apply a flexible balancing test of scrutiny in various cases, depending on the consequentiality of circumstances, instead of a more rigid tier-based analysis.

He favored a robust interpretation protecting First Amendment rights in decisions such as *Stanley v. Georgia,* and he supported abortion rights in *Roe v. Wade* and other cases. Marshall retired from the Supreme Court in 1991 and was replaced by President George H. W. Bush with an ideological opposite, integrity-challenged Clarence Thomas.

The second grave injustice began when Republicans rushed through the nomination of Amy Coney Barrett to a life-long position on the high court to replace the great champion of women's rights and gender equity, Ruth Bader Ginsberg. Barrett is a religious fundamentalist who has little respect for legal precedents protecting women's rights, and is a handmaiden to Christian religious dominion, white supremacism and a perpetuation of male patriarchy.

As a horrible consequence of the success of the Republican court capture scheme, we are losing our country to a far right agenda that is antithetical to expansive and inclusive freedoms, public health and safety, and honorable fairness and reasonable justice. This scheme has incidentally supercharged opportunities for abuses of power, and in addition, helped enable ethical transgressions by the Chief Justice and Clarence Thomas, Samuel Alito and Neil Gorsuch, as explained in detail in this essay. And hardball politics and devious evasions have come to characterize nominations to the Supreme Court, including the scandals that surrounded Clarence Thomas, then Neil Gorsuch, then Brett Kavanaugh, and then Amy Coney Barrett.

<u>More Scandals Involving Conservatives on the High Court</u>

The list of scandals erupting around the Supreme Court is long. Here is a current list of the worst ethics violations revealed so far:

Justice Clarence Thomas has for decades secretly accepted millions of dollars' worth of lavish trips from Republican megadonor Harlan Crow, along with sweetheart real estate deals and tuition for a family member.

According to reporting from ProPublica, Thomas accepted 26 private jet flights and 38 destination vacations -- and disclosed none of them. "Island-hopping on a superyacht. Private jet rides around the world. The undisclosed gifts to Thomas have no known precedent in the modern history of the Supreme Court. 'It's incomprehensible to me that someone would do this,' says one former judge."

Not only has Clarence Thomas neglected to disclose these perks from an influence-cultivating conservative billionaire, but he has also failed to recuse himself in cases before the court where Harlan Crow has had an interest.

As Senator Sheldon Whitehouse, chair of the Judiciary Committee subcommittee overseeing the federal courts, explained it, there is a central challenge: "What you have is billionaires with a demonstrated pattern of trying to influence the Supreme Court through a whole variety of groups by giving donations and participating, who are at the same time also giving enormous, massive, secret gifts to Justices. Just on its face, that merits investigation. And if it happened in any other court in the United States, it would have been investigated. There would have been fact-finding, and there would have been a result and consequences. It's only the Supreme Court that is living outside the bounds of the rules."

Thomas has also failed to recuse himself when he faced other obvious conflicts of interest. In 2000, he joined the majority in *Bush v. Gore,* handing the presidency to George W. Bush while his wife was actively aiding Bush's transition team. In 2012, he participated in the first challenge to the Affordable Care Act, even though his wife was being paid to lobby against it and to seek its repeal. And in 2017, he ruled to uphold Trump's cruel Muslim ban while Ginni Thomas received funding from one of the organizations that urged the court to uphold it.

Clarence's wife Ginni advocated for preventing the peaceful transfer of power while Justice Thomas continued to rule on cases directly related to the insurrection, including Donald Trump's attempt to block the Jan. 6 committee from getting White House records. Thomas was the only justice to side with Trump by dissenting in that case in January 2022.

Ginni Thomas was also a conspirator in the Trump Fake Electors Scheme. As Emma Brown of the *Washington Post* reported, Ginni Thomas wrote to 29 lawmakers in Arizona to press them to overturn President Joe Biden's victory by appointing their own electors rather than the ones the voters had chosen, and she also tried the same thing with lawmakers in Wisconsin.

And Ginni Thomas secretly took tens of thousands of dollars from right-wing superlobbyist Leonard Leo, who played a major role in picking Trump's Supreme Court nominations and building the current right-wing supermajority.

It is a serious problem that a justice's spouse, at the heart of the conservative legal world, not only holds but also has worked assiduously to promote extreme anti-democratic views based on lies about election fraud and conspiracy theories. Ginni Thomas nurtures the falsehood that the left is destroying America. If financial conflicts of interest create the "appearance of impropriety," what is the "appearance" when a justice's wife texts a top government official, as Thomas did with Mark Meadows, that she hopes far-right conspiracies that the "Biden crime family" and others will be imminently arrested for sedition and tried by military tribunals are true?

Ginni Thomas' political activism "is rooted in her belief that more than half of America is out to destroy American exceptionalism. She is nonetheless a sought-after person in a tightly knit, interlocking conservative movement that not only wants to influence the outcome of cases before the high court, but also seeks to change politics and culture through their anonymously financed efforts, like Crowdsourcers."

"The reported donation to Crowdsourcers is merely a drop in the bucket of right-wing influence on the courts. The far-right movement is awash in vast amounts of anonymous donations, which have helped fulfill its publicly stated wish to control the judiciary. Its handpicked jurists are just beginning to carry out its publicly stated mission of rolling back Americans' rights they insist are the product of liberal excesses. The deeper and more vexing obstacle is that the bucket is so immense and so zealously guarded by the GOP that, short of impeaching Thomas, would-be reformers face a daunting, multifaceted task in combating one of the most entrenched and perilous threats to our democracy -- a profoundly corrupted court of last resort."

In one example of how interconnected these actors are, in late 2019 Ginni Thomas hosted a luncheon at the Trump International Hotel at which she gave out awards to conservatives who she said were "the most courageous culture warriors we could identify, doing authentic work on behalf of timeless truths." Among the persons awarded was Mark Meadows, who at the time was still a member of Congress. Thomas praised his work, including that he had "built a very critical relationship with President Trump that continues to yield benefits to all of our ideas and principles."

Since then, Mark Meadows evidenced guilt in October 2023 when he traded a commitment to honestly testify for being given legal immunity in the Georgia federal election subversion RICO case, which is rapidly zeroing in on the mob boss-like actions of the demagogue, devious cult leader, insurrection-inciting coup mastermind and malignant narcissist, Donald J. Trump.

In addition to other apparent malfeasance by Clarence Thomas, a recent Senate inquiry has found that he had up to $267,230 in debt forgiven by a wealthy friend -- "and never reported it on his ethics forms."

Sen. Ron Wyden said in a news release: "Regular Americans don't get wealthy friends to forgive huge amounts of debt so they can buy a second home. Justice Thomas should inform the committee exactly how much debt was forgiven and whether he properly reported the loan forgiveness on his tax returns and paid all taxes owed. I have also directed the committee to share our findings with the Judiciary Committee to evaluate the ethics implications of this disclosure."

It has yet to be revealed if luxury gifts and intimate access to elite conservative circles have impacted Thomas' rulings, but such things appear to be highly unethical. All federal judges are required by law to disclose most gifts. Disturbingly, this is yet another example of Thomas' compromised behavior.

Thomas' numerous conflicts of interest undermine the supposed impartiality of the Supreme Court. Rhode Island Sen. Sheldon Whitehouse said in a statement that the Supreme Court has lost its ethical compass, and called for Chief Justice John Roberts to open an investigation. "It's no wonder that the American people are losing faith in the idea that they can get a fair shake before the nation's highest court when they see a Supreme Court justice openly flouting basic disclosure rules in order to pal around with billionaires in secret," he said.

This year, Whitehouse and others introduced a bill that would strengthen the Supreme Court's rules for disclosure and recusal, among other reforms. In his statement, the senator called for a hearing and vote on the bill. "The Supreme Court urgently needs an enforceable system for holding justices accountable," he said.

Clarence Thomas deserves to be impeached and removed from the Supreme Court because of the corrupt appearance of his activities and influence peddling, which has become so glaring as to make denials preposterous. His judgment in conflicts of interest and failure to ever recuse himself is so unethical as to be completely unacceptable.

Massachusetts Sen. Elizabeth Warren said Americans deserve a judiciary that is "accountable to the rule of law, not wealthy Republican donors." ProPublica's reporting, she added, "is a stark reminder that judges should be held to the highest ethical standards and free from conflicts of interest."

New York Rep. Alexandria Ocasio-Cortez said on Twitter: "This is beyond party or partisanship. This degree of corruption is shocking -- almost cartoonish. Thomas must be impeached."

<u>Public Trust in the Supreme Court Descends to Historic Lows</u>

The public has an increasingly dim view of the Supreme Court after it overturned *Roe v. Wade* last year. Following that ruling, Gallup found that trust in the judicial branch plummeted to an all-time low. Just 47% of U.S. adults said they had "a great deal" or "a fair amount" of trust in the judicial branch of the federal government -- a 20% drop from just two years earlier.

More than ever it appears the criminal justice and judicial system is inextricable from politics in the public's view. That is understandable, given the actions of the actors involved, and it's a consequential problem.

A recent POLITICO/Morning Consult poll revealed that there is now widespread support for reform,

with 75% of voters supporting a binding ethics code for justices, 68% supporting term limits, and 66% who think there should be an age limit for justices.

"Americans are demanding change, and *we can't afford to wait*. The Court is set to hear cases on critical issues, from gun rights for accused domestic abusers to the potential barring of former President Donald Trump from the 2024 ballot. The decisions made will shape our nation for years to come, making the need for reform more urgent than ever."

"The United States is the world's only major constitutional democracy without term limits or a mandatory retirement age for its highest judges. The lifetime tenure granted to Supreme Court justices means that laws affecting hundreds of millions of people can hang on the happenstance of a single elderly citizen's decline (as abortion rights hung on Justice Ruth Bader Ginsburg staying alive)."

Justices should rightly act as impartial judges, and not as lawyers advocating an outcome. Samuel Alito actually acknowledged this fact at his confirmation hearings, but he was being deceitful in light of his subsequent crusade to wield judicial authority to overturn the 49-year-long precedent of allowing women to obtain a legal and safe abortion.

Amy Coney Barrett, who was instrumental in taking away abortion rights from women during the months before a fetus is viable, wrote as a professor in 2013, "If the court's opinions change with its membership, public confidence in the court as an institution might decline. Its members might be seen as partisan rather than impartial and case law as fueled by power rather than reason."

Barrett was right about this, as seen after she helped take away the right for pregnant women to have an abortion, thereby proving once again that power corrupts, and that the integrity of the high court had been seriously diminished when the conservative supermajority had been illegitimately constituted to be unfairly unrepresentative and excessive extreme in political partisanship.

<u>Unconscionable Conflicts of Interest</u>

Investigations into the Justices' finances, ties to billionaires, appearances of conflicts of interest and controversial decisions on issues like abortion have led to this steep decline in public trust in the highest court in the land.

America is a land of opportunity, and power has a remarkable tendency to corrupt, so the powerful are motivated to enrich themselves in improper ways.

The judiciary, to be sure, is not the only branch of government in which consequential corruption exists.

In the executive branch, the parameters of political corruption have become even worse than in the judiciary, for it is becoming dangerous to the very survival of our democracy. Perhaps the most blatant political corruption in U.S. history took place from January 2017 through January 2021, when *We the People* suffered through four years of Corruption Incarnate.

Donald Trump egregiously violated laws with his indulgences in conflicts of interest, such as violating the Emoluments Clause of the US Constitution. And this category of malfeasance (profiting off the presidency) was only tenth on the list of the Top Ten Ways Trump abused power while in office. Here, for posterity is a summary of that list, from CNN's long article on January 24, 2021, *Chronicling Trump's 10 worst abuses of power:*

#1: Subverting the 2020 election
#2: Inciting an insurrection
#3: Abusing the bully pulpit
#4: Politicizing the Justice Department
#5: Obstructing the Mueller investigation
#6: Abusing the pardon power
#7: Engaging in the Ukraine plot and cover-up
#8: Loyalty oaths and personalizing government
#9: Firing whistleblowers and truth-tellers

#10: Profiting off the presidency

Corruption in the Legislative Branch of the Federal Government

Political corruption also takes place in Congress. At the core, institutional bribery of our representatives is built into the current system of campaign financing and lobbying, giving outsized influence to special interests that care more about profits and power and being able to exert improper influence than they do about the public good.

One specific issue of conflicted interests concerns insider trading by members of Congress. With Congresspersons able to hold and trade stocks, conflicts of interest and the use of insider knowledge are sometimes glaring, like when Congress first learned of an incipient pandemic in late January 2020 and members hastily sold stocks to avoid the impending plunge. "The amount of stock trading going on by congressional lawmakers and other political high-ups and their families can really give you the icks," stated Emily Stewart in *Even Congress thinks its members should stop playing the stock market.*

There is overwhelming evidence the public would like their representatives to cool it on the stock trading. A survey by the Program for Public Consultation at the University of Maryland's School of Public Policy … found that 86% of Americans favor prohibiting stock trading of individual companies by members of Congress. There was almost no daylight between Republicans and Democrats on the issue. "This is something that voters care about, and voters have an absolute right to know that their lawmakers and their elected officials are acting in the interests of the public," Marsco said. "The sooner that we come to ground on a consensus bill like this, the better."

Speaking of Institutional Bribery

Conservative Justices, it can be convincingly argued, have been PRE-BRIBED, for they sure as hell would not have gotten their positions of great eminence and power without Leonard Leo and the Federalist Society and the Judicial Crisis Network providing lavish support, along with other conservative groups that include multi-billionaire plutocrat Charles Koch's front group Americans for Prosperity.

Look exactly how the three Trump Justices arrived at their positions of power. Massive amounts of right-wing dark money were involved, and operatives who were part of "a byzantine web … operating with little to no accountability."

As explained in *Behind the dark-money web that put Barrett (and Kavanaugh and Gorsuch) on the Supreme Court,* political operatives have been on a mission of loading up the judicial branch with right-wing Catholics. Amy Coney Barrett is the sixth Catholic on the Supreme Court, having joined John Roberts, Clarence Thomas, Samuel Alito and Brett Kavanaugh (and the more honorably liberal Sonia Sotomayor). Having two-thirds of the Justices on the Supreme Court be Catholic excessively over represents religion and "conservatism" on the high court.

Two of the political operatives highlighted in *Behind the dark-money web that put Barrett (and Kavanaugh and Gorsuch) on the Supreme Court* are members of Opus Dei, "an enigmatic and highly secretive society within the Catholic Church. According to a 2013 investigative report from the liberal group Catholics for Choice, members of Opus Dei 'vehemently oppose legislation that allows divorce or civil marriages, as well as homosexuality and contraception.' Critics have also alleged that the group has internally supported various authoritarian world leaders."

This is reminiscent of the intrigue in Dan Brown's chilling thriller novel *The Da Vinci Code,* in which Opus Dei is threatened by more than just journalists and critics who besiege it saying the organization is a religious cult with luxurious trappings and a suspect spirituality that discriminates against women.

The religious Trump Justices show a blatant disregard for the separation of church and state because they have been chosen in part for their religious dogma-dominated worldviews -- and "the dogma lives loudly within them."

This is a sad state of affairs in "the land of the free and the home of the brave", as Francis Scott Key admiringly called it during the War of 1812, when he wrote what has become the national anthem, "The Star-Spangled Banner".

Noble conceptions and honorable stances once held a much higher regard than in today's Republican gutter

level politics, with its unhinged cult leader who is a despot, bully, violence-threatening demagogue and an immature deeply disturbed malignant narcissist.

Republican Contempt for Democratic Fairness

The Republican Party has become a devious and dishonorably Machiavellian political party, with their ruthlessness and contempt for voters and the majority will, and for democracy itself. This is true not only of Republican Justices on the Supreme Court, but also of Republican politicians in both Congress and in red states.

As Jamelle Bouie wrote in his Nov. 17 article *When It Comes to Disdain for Democracy, Trump Has Company,* "It makes perfect sense to treat Donald Trump as the most immediate threat to the future of American democracy. He has an ambitious plan to turn the office of the presidency into an instrument of 'revenge' against his political enemies and other supposedly undesirable groups."

"But while we keep our eyes on Trump and his allies and enablers, it is important not to lose sight of the fact that anti-democratic attitudes run deep within the Republican Party. In particular, there appears to be a view among many Republicans that the only vote worth respecting is a vote for the party and its interests. A vote against them is a vote that doesn't count."

"This is not a new phenomenon. We saw a version of it on at least two occasions in 2018. In Florida, a nearly two-thirds majority of voters backed a state constitutional amendment to effectively end felon disenfranchisement. The voters of Florida were as clear as voters could possibly be: If you've served your time, you deserve your ballot."

"Rather than heed the voice of the people, Florida Republicans immediately set out to render it moot. They passed and Gov. Ron DeSantis signed a bill that more or less nullified the voter-approved amendment by imposing an almost impossible set of requirements for felons to meet. Specifically, eligible voters had to pay any outstanding fees or fines that were on the books before their rights could be restored -- except there was no central record of those fees or fines, and the state did not have to tell felons what they owed, if anything. You could try to vote, but you risked arrest, conviction and even prison time."

"In Wisconsin the same year, voters put Tony Evers, a Democrat, into the governor's mansion, breaking eight years of Republican control. The Republican-led legislature did not have the power to overturn the election results, but the impenetrable, ultra-gerrymandered majority could use its authority to strip as much power from the governor as possible, blocking, among other things, his ability to withdraw from a state lawsuit against the Affordable Care Act -- one of the things he campaigned on. Wisconsin voters would have their new governor, but he'd be as weak as Republicans could make him."

"It almost goes without saying that we should include the former president's effort to overturn the results of the 2020 presidential election as another example of the willingness of the Republican Party to reject any electoral outcome that doesn't fall in its favor."

Jamelle Bouie goes on to mention the attempt by Wisconsin Republicans to nullify the results of a heated race for a seat on the state Supreme Court. "Voters overwhelmingly backed the more liberal candidate for the seat, Janet Protasiewicz, giving the court the votes needed to overturn the gerrymander that keeps Wisconsin Republicans in power in the legislature even after they lose a majority of votes statewide."

"In response, Wisconsin Republicans floated an effort to impeach the new justice on a trumped-up charge of bias. The party eventually backed down in the face of national outrage -- and the risk that any attempt to remove Protasiewicz might backfire electorally in the future. But the party's reflexive move to attempt to cancel the will of the electorate says everything you need to know about the relationship of the Wisconsin Republican Party to democracy."

"Ohio Republicans seem to share the same attitude toward voters who choose not to back Republican priorities. As in Wisconsin, the Ohio legislature is so gerrymandered in favor of the Republican Party that it would take a once-in-a-century supermajority of Democratic votes to dislodge it from power. Most lawmakers in the state have nothing to fear from voters who might disagree with their actions."

"It was in part because of this gerrymander that abortion rights proponents in the state focused their efforts on a ballot initiative. The Ohio legislature may have been dead set on ending abortion access in the state -- in 2019, the Republican majority passed a so-called heartbeat bill banning abortion after six weeks -- but Ohio voters were not."

"Aware that most of the voters in their state supported abortion rights and unwilling to try to persuade them that an abortion ban was the best policy for the state, Ohio Republicans first tried to rig the game. In August the legislature asked voters to weigh in on a new supermajority requirement for ballot initiatives to amend the state Constitution. If approved, this requirement would have stopped the abortion rights amendment in its tracks."

"The supermajority requirement failed." And then in early November, Ohio voters overwhelmingly chose to write reproductive rights into their state Constitution, repudiating the gerrymandered, anti-choice legislature.

"Or so they thought. But not one full day after the vote, four Republican state representatives announced that they intended to do everything in their power to nullify the amendment and give lawmakers total discretion to ban abortion as they see fit. 'This initiative failed to mention a single, specific law,' their statement reads. 'We will do everything in our power to prevent our laws from being removed upon perception of intent. We were elected to protect the most vulnerable in our state, and we will continue that work.'" (What BS!)

"Notice the language: 'our power' and 'our laws.' There is no awareness here that the people of Ohio are sovereign and that their vote to amend the state Constitution holds greater authority than the judgment of a small group of legislators. This group may not like the fact that Ohioans have declared the Republican abortion ban null and void, but that is democracy. If these lawmakers want to advance their efforts to restrict abortion, they first need to persuade the people."

"To many Republicans, unfortunately, persuasion is anathema. There is no use making an argument, since you might lose. Instead, the game is to create a system in which, heads or tails, you always win."

"That's why Republican-controlled legislatures across the country have embraced partisan gerrymanders so powerful that they undermine the claim to democratic government in the states in question. That's why Republicans in places like North Carolina have adopted novel and dubious legal arguments about state power, the upshot of which is that they concentrate power in the hands of these gerrymandered state legislatures, giving them total authority over elections and electoral outcomes. And that's why, months before voting begins in the Republican presidential nomination contest, much of the party has already embraced a presidential candidate who promises to prosecute and persecute his political opponents."

"One of the basic ideas of democracy is that nothing is final. Defeats can become victories, and victories can become defeats. Governments change, laws change, and most important, the people change. No majority is *the* majority, and there's always the chance that new configurations of groups and interests will produce new outcomes."

"For this to work, however, we -- as citizens -- have to believe it can work. Cultivating this faith is no easy task. We have to have confidence in our ability to talk to one another, to work with one another, to persuade one another. We have to see one another, in some sense, as equals, each of us entitled to a place in this society."

Jamelle Bouie concludes, "It seems to me that too many Republicans have lost that faith."

<u>An Extraordinary Example of How Corrupting Influences Skew Good Governance</u>

After the 2008 financial crisis, responsible people got organized and fought to create a federal agency to protect consumers from a wide range of predatory activity by lenders and other financial services companies.

The Consumer Financial Protection Bureau was created in 2010 as part of the landmark *Dodd–Frank Wall Street Reform and Consumer Protection Act*. It was established specifically because of Big Banks' reckless greed, which had sparked the Great Recession that trapped millions of consumers in mortgages they could not afford. Since then, the bureau has gone after illegal and predatory conduct by banks, credit card companies, mortgage and auto lenders and others -- and recovered billions of dollars for consumers through its enforcement actions.

"But some in Congress want to defang this consumer watchdog by targeting its independent funding and transferring it to the annual appropriations process -- where it will be vulnerable to political shenanigans, Congressional shutdowns, and pressure from the very industry it is designed to protect us from."

Unsurprisingly, "the giant financial institutions were dead set against the creation of an agency whose job it was to get the tricks and traps out of the fine print of financial products. They spent millions lobbying against financial reform and the new consumer agency. It was David-versus-Goliath all the way. But we won."

"The CFPB transformed the market for financial services by placing new rules on mortgages, credit cards, checking accounts, prepaid cards, and payday loans to clean up some of the most predatory practices and knock bad actors out of the industry altogether."

"And since it's been created, this little agency has returned about $16 billion to American consumers who've been cheated. The CFPB is just one example of how government regulations are -- in fact -- a good thing."

But "special interests keep trying to roll back regulations and strangle the CFPB. They don't want anyone looking over their shoulder as they cheat people. Of course they'd rather have free rein to boost their profits" -- even if it means putting the entire U.S. economy at risk.

In the article *America's Trumpiest court just declared an entire federal agency unconstitutional,* the story is told about how three judges appointed by former president Trump to the Fifth Circuit Court of Appeals "handed down an astonishing decision, effectively holding that the Consumer Financial Protection Bureau … is unconstitutional and must be stripped of its enforcement authority."

The Fifth Circuit Court of Appeals ruled -- wrongly -- that the funding structure of the Consumer Financial Protection Bureau is unconstitutional in a "contradictory, incoherent decision that may well be too extreme even for this Supreme Court." A little knowledge of history reveals that the Consumer Financial Protection Bureau was intentionally set up to be funded independently of the congressional "annual appropriations circus", due to the fact that Congress is "far too susceptible to lobbying and campaign cash from Wall Street and other deep-pocketed financial enterprises."

For more than 12 years, "the CFPB has been working exactly as intended -- recovering billions for everyday American consumers and restricting some of the worst impulses of financial companies. But then a trade group for predatory payday lenders came along and challenged the very structure of the CFPB -- even though that structure is intentional and was approved by a majority in both the House and Senate when the agency was created in the first place."

In response, Public Citizen issued this statement: "The Fifth Circuit's dangerously misguided and outrageous decision jeopardizes the most important consumer protection agency created in the last 50 years, along with the rules, guidelines, enforcement actions and consumer education that the Consumer Financial Protection Bureau has issued and undertaken."

"The decision ignores long-established and long-accepted practice of funding financial regulatory agencies, and the prior review of many other courts, in order to decree that the funding mechanism of the CFPB is unconstitutional. If upheld, this decision is a gift to scammers and rip-off artists, payday lenders and Big Banks. If it stands, it will go down as one of the most anti-consumer court rulings in history. It must be reversed."

As a subsequent bank failure crisis showed, it's more important than ever to have strong, independent oversight over our financial system. Yet right now, the *only* watchdog that exists to protect consumers' financial interests is under political and legal attack.

"The 5th U.S. Circuit Court of Appeals has mounted a relentless assault on the federal government's ability to function for a number of years now. After Donald Trump stacked the bench with Federalist Society stalwarts, its new far-right majority attempted to destroy Obamacare, and to overrule the military chain of command, and to paralyze the Biden administration -- in short, to prevent the democratic branches from governing the country."

"Republican attorneys have attempted to dismantle the CFPB from the moment Congress created it in response to the 2008 financial crash. The agency protects consumers against exploitative fraud and deceit in home

mortgages, credit cards, consumer loans, and retail banking. It has taken special interest in payday lenders, which are notorious for issuing predatory loans -- with sky-high interest and hidden fees -- to customers who will never be able to pay them off."

"Predictably, payday lenders fought back, asking the federal courts to block the rule. They were represented by Jones Day, the GOP-aligned law firm whose lawyers flooded the judiciary and executive branch under Trump. Jones Day argued that the new rule exceeded the CFPB's statutory authority. But it also mounted a more ambitious argument: The entire agency, it claimed, is unconstitutional. Why? Because the CFPB is funded independently, rather than relying on an annual appropriation from Congress." It gets its funding from the Federal Reserve – "which, in turn, is primarily funded by interest earned on securities. This independent funding of the CFPB, Jones Day said, violates the constitutional separation of powers, and renders the agency's work illegal."

"At least seven other federal courts have already considered and rejected this argument, and it's easy to see why. Many other financial regulators are funded outside annual appropriations, including the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Housing Finance Agency. If the CFPB's funding is unlawful, then all those agencies are constitutionally suspect, too. But they are not, because, as the Supreme Court has explained, the appropriations clause says "simply that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress." It does *not* require funding to arrive in an annual bill that Congress stamps with the label "appropriations." In the Supreme Court's words, the Constitution merely requires funding to be "authorized by a statute" -- not specifically the annual appropriations bill, but any duly enacted law."

<u>Other Instances of Corruption on the Supreme Court</u>

A shocking report revealed that while Justice Samuel Alito was voting to gut environmental protections, his wife was cutting real estate deals with the fossil fuel industry. Despite this substantial conflict of interest, Alito has not recused himself in cases involving the fossil fuel industry. And he ruled in 2022 to gut the Environmental Protection Agency's ability to regulate fossil fuel emissions, and has repeatedly ruled in favor of the unfettered development of oil and gas pipelines.

The Supreme Court has never had a binding code of ethics, so there has been nothing forcing Alito to recuse himself in these cases, or requiring him to report his wife's real estate deal. This outrageous corruption cannot continue. Congress must hold the Supreme Court accountable, because healthy checks and balances are crucial to a robust democracy that prevents despotism and unnecessary infringements upon civil liberties.

Justice Alito also is far from honorable due to his having fraternized with extreme right groups and individuals that have wheedled their way into his social circle and spent Big Money cultivating favor with him to encourage him to make rulings in favor of right wing political and religious goals.

The leaked decision to overturn *Roe v. Wade* was well in line with activist groups' long-standing protocols to exploit the lack of rules. While the Supreme Court investigated the extraordinary leak in the spring of 2022 of a draft opinion of the decision overturning *Roe v. Wade,* a former anti-abortion leader came forward claiming that another breach occurred in a 2014 landmark case involving contraception and religious rights.

In a letter to Chief Justice John G. Roberts and in interviews with *The New York Times,* Rev. Rob Schenck disclosed that he was told the outcome of the 2014 case weeks before it was announced. "Schenck provided the reporters with contemporary emails suggesting he knew the outcome of the *Hobby Lobby* case ahead of time, and they talked to four people who confirmed that he had confidential information about it before the court handed it down. He used that information to prepare a public relations push ready to go the minute the decision was public." Schenck signed his letter to John Roberts, "Yours in the interest of truth and fairness."

Hobby Lobby is the craft store chain owned by Christian evangelicals that was the winning party in the controversial case that allowed corporations to deny their employees contraceptive health care coverage.

Mr. Schenck's allegation creates an unusual, contentious situation: a minister who spent years at the center of the anti-abortion movement, now turned whistle-blower; a denial by a sitting justice (Samuel Alito, in what to be honest seems like a lie); and an institution that shows little outward sign of getting to the bottom of the recent

leak of the abortion ruling or of following up on Mr. Schenck's allegation.

Justice Alito has denied the allegations. Samuel Alito also secretly took a lavish $100,000 trip to Alaska that was bankrolled by hedge fund tycoon Paul Singer, a megadonor who had business before the court. He also gave a friendly interview to the lawyer arguing *Moore v. United States,* a case involving tax avoidance schemes that could have big advantages for Alito and others who benefit from the current law.

It is deeply unethical for Supreme Court Justices to peddle influence. So it is shocking to learn that Justices have been so slavishly involved with right ring evangelicals and anti-abortion activists and insurrectionists (especially Clarence Thomas and Samuel Alito).

In the Supreme Court's current 9-month term that began on October 2, 2023, the court will weigh three cases involving the funding of administrative agencies, their operations and, most important, the degree of deference that courts should give to agencies when weighing challenges to regulations.

"This is a conservative court, with a majority particularly inclined to be skeptical of government regulation and sympathetic to corporate claims of bureaucratic overreach, so there is ample reason to worry about the additional mischief the justices could do in this area," observed the astute political commentator Ruth Marcus.

There have been far-reaching damaging impacts caused by gerrymandering and voter suppression tactics that conservatives on the Supreme Court have given official sanction to. Just take a look at what's happening in states like Mississippi, Tennessee, North Carolina, Ohio, Wisconsin and Florida. Conservative extremists are advancing dangerous legislation that ignores voters, and doing everything they can to protect their political power.

These anti-democratic tactics, facilitated by gerrymandering in hundreds of congressional districts, denies voters a fair opportunity to make their voices heard.

For his part, Justice Brett Kavanaugh was the subject of 83 ethics complaints before his ascendance to the high court, in addition to credible sexual assault allegations that were never fully investigated. And Justice Amy Coney Barrett refused to recuse herself from a case involving an organization that had spent millions of dollars in support of her confirmation.

Also, Justice Neil Gorsuch sold a vacation home in Colorado for $1.85 million, which "had languished on the market for two years", to the head of a major corporate law firm that regularly argues in front of the Supreme Court." Gorsuch has not recused himself from any of those cases.

<u>The Nefarious Influence of Leonard Leo</u>

The judicial system in the U.S. is much too influenced by dark money -- and that's a bad sign for our democracy.

Leonard Leo is a "cunning genius" who has harnessed Big Money donors, insider influence and bare-knuckle politics to get numerous federal and state judges appointed to positions of judicial power. His goal has been to do the bidding of billionaires, giant corporations and religious fundamentalists, super-empowering them at the expense of the people -- and ramming the rudder of American society to the far right to satisfy an agenda that is antithetical to the common good.

Over the last 30 years, Leonard Leo helped push the Supreme Court nominations of all of the conservative justices now on the court -- Thomas, Roberts, Alito, Gorsuch, Kavanaugh and Coney Barrett -- and built up a massive dark money war chest along the way.

Between 2014 and 2017, Leo helped conservative nonprofits raise $250 million from undisclosed, dark money donors. And since then, he's raised even more -- we're talking about billions of dollars.

Leo's efforts to shape the Supreme Court have clearly had an impact, visible in high profile decisions made by the Supreme Court since Trump managed to appoint three extremely partisan ideological Republicans to the high court.

And then this news hit, as told in the article *How a Secretive Billionaire Handed His Fortune to the Architect of the Right-Wing Takeover of the Courts:* "In the largest known political advocacy donation in U.S. history, industrialist Barre Seid funded a new group run by Federalist Society co-chair Leonard Leo, who guided Trump's

Supreme Court picks and helped end federal abortion rights."

Seid made a $1.65 billion donation to Leonard Leo's new group, the Marble Freedom Trust, in "a landmark in the era of deregulated political spending ushered in by the Supreme Court's 2010 *Citizens United* ruling. That case, along with subsequent changes and weak federal oversight, empowered a tiny group of the super rich in both parties to fund groups that can spend unlimited sums to support candidates and political causes. In the last decade, donations in the millions and sometimes tens of millions of dollars have become common."

"Our reporting sheds additional light on how the two men, one a judicial kingmaker and the other a mysterious but prolific donor to conservative causes, came together to create a political war chest that will likely supercharge efforts to further shift American politics to the right."

"In practical terms, there are few limitations on how Leo's new group, the Marble Freedom Trust, can spend the enormous donation. The structure of the donation allowed Seid to avoid as much as $400 million in taxes." This means that not only did he maximize the amount of money at Leo's disposal, but taxpayers are in effect subsidizing this instance of influence peddling.

"Now, Leo, 56, is positioned to finance his already sprawling network with one of the largest pools of political capital in American history."

"To my knowledge, it is entirely without precedent for a political operative to be given control of such an astonishing amount of money," said Brendan Fischer, a campaign finance lawyer at the nonpartisan watchdog group Documented. "Leonard Leo is already incredibly powerful, and now he is going to have over a billion dollars at his disposal to continue upending our country's institutions."

The Marble Freedom Trust is a so-called dark money group that is not required to publicly disclose its donors. It has wide latitude to spend directly on elections as well as on ideological projects such as funding issue-advocacy groups, think tanks, universities, religious institutions and organizing efforts.

<u>More Appearances of Supreme Court Corruption</u>

According to the latest controversy reported, Justice Clarence Thomas secretly appeared at fundraising events for the Koch brothers' network of powerful right-wing political organizations and hobnobbed with Charles Koch annually at an exclusive all-male resort in Northern California.

Even more damning is that after being wined and dined for years by the Kochs, Thomas flipped his vote on a major legal doctrine called "*Chevron* deference," which the Kochs had lobbied on for years.

No one is above the law. So yesterday, Alexandria Ocasio-Cortez led a letter to the Department of Justice to urge an official investigation into Clarence Thomas. She was joined by Ranking Members Jamie Raskin and Jerry Nadler, and Judiciary Members Ted Lieu and Hank Johnson.

This level of corruption is shocking by any standard of a functioning democracy. A failure to hold Justice Thomas accountable sends a loud, dangerous signal to the full court that his actions are acceptable, and to the public that our democracy is being sacrificed to political expedience.

According to legal experts, Clarence Thomas appears to have violated the Ethics in Government Act of 1978 by failing to disclose years worth of private jet flights, luxury yacht vacations, and VIP sports tickets afforded to him by a circle of ultrawealthy, conservative executives.

Reporting has revealed that Thomas first met many of these wealthy friends <u>after</u> his appointment to the Court. It came about through an exclusive nonprofit to which Thomas gives annual access to the Supreme Court Building for a fundraiser that costs $1,500 or more per person to attend.

This is a tipping point, and inaction will continue to erode and further delegitimize the Supreme Court. As Alexandria Ocasio-Cortez said, "We must go where the facts take us."

The Supreme Court is 'creeping dangerously towards authoritarianism', AOC says. The Congresswoman's comments come days after nation's highest court released a batch of incendiary and far-reaching rulings at the end of June

2023, following up their bombshells in June 2022.

Chevron Deference

Supreme Court justices agreed to hear an arcane case about who pays to monitor whether fishing boats are following federal fishery plans. Very arcane -- but the Court announced it would consider one topic and one topic only in hearing the appeal: Should it overturn the 1984 ruling in *Chevron v. Natural Resources Defense Council?*

"Those who care about the environment, worker safety, and fair markets should feel a chill. This right-wing supermajority has already shown that it is eager to heed the demand of financial interests that did so much to install its members on the Court: find a way to curb the power of regulatory agencies."

The ruling in *Chevron* held that when an expert regulatory agency interprets an ambiguous law reasonably, the courts will not second-guess. It is among the most cited cases in federal courts. Over many decades, it has allowed government to function, while taking seriously notions of judicial restraint. After all, the engineers and economists and scientists of the Food and Drug Administration or the Environmental Protection Agency or the Securities and Exchange Commission … or for that matter, the fisheries agency! … must be capable of acting within the parameters set by Congress without an ideologically nosy judge jumping in. *Chevron* was a favorite of Justice Antonin Scalia. He thought it reflected the proper role for government -- and for unelected justices and judges.

But major industries and the think tanks and lobby groups they back have chafed at this for years. They want to find a way to curb the regulatory state. In the early 20th century, the Supreme Court worked hard to block government from protecting workers, women, children and public safety. Things came to a head in 1937 when President Franklin D. Roosevelt proposed to expand the Court and add new liberal justices. That was the huge "court-packing" fight we hear about often today. Roosevelt lost the battle but won the war: the Court retreated and stopped trying to prevent government from acting. Many libertarians and conservatives have said that was a big mistake. They pine for a "Constitution in exile." For decades, they tried one theory after another to strike down the regulatory state. That regulations were a "taking" under the Fifth Amendment. That Congress could not "delegate" power to agencies. None of their bids really worked. And yet for a long time, deregulation advocates continued to pelt the Court with briefs urging the justices to undo *Chevron*.

A ruling last year began to hem in the regulators. The Court unveiled a new "major questions" doctrine in *West Virginia v. EPA*, the big climate change case from last June. The justices ruled that agencies could not act on a "major question" even if a congressionally enacted statute seems to authorize the agency's action. What that means is vague. But we are already seeing lower court judges using the new doctrine to undo rules they just don't like. "Major" may mean "if a judge with a lifetime appointment, and the Federalist Society on speed dial, doesn't like it."

All of which brings us to a fascinating family drama. "Justice Neil Gorsuch, the brainy and brusque conservative, has sought limits on regulation and has previously urged the Court to reconsider *Chevron*."

The original *Chevron* case came in an era when the EPA itself was consumed with scandal and drama. Anne Gorsuch (Neil's mother!) was its administrator. She was a polarizing political celebrity and a charismatic former Colorado state legislator who was the Reagan administration's second-highest-ranking woman. The *Rocky Mountain News* wrote admiringly, "She could kick a bear to death with her bare feet." In fact, an earlier version of the case was called *NRDC v. Gorsuch*. She was an ardent foe of strong environmental regulation, slashing the agency staff and filling key posts with polluters. Congress held her in contempt for refusing to hand over documents about a corruption-tinged toxic waste program. She resigned. In her memoir, she records the reaction of her teenage son Neil. "You raised me not to be a quitter. Why are you a quitter?" he demanded. "He was really upset," she added.

Now Neil Gorsuch has lifetime tenure and an opportunity to finish what his mother started. In the Court's first term with Gorsuch on the bench, the justices made major rulings on the interests of the fossil fuel industry (in *West Virginia v. EPA*), along with its unpopular absolutist stands on abortion and guns. Then in its second term, it focused on race, voting and democracy. By taking the federal fisheries case, "the Court has signaled it will be back to business -- quite literally. In this case perhaps, and others for sure, we can expect the supermajority of conservative justices to push back against government protections of the environment and public safety. Big

money is at stake. So, perhaps, is family honor."

The Supreme Court Overturns Precedents on Environmental Protections

Sam Sankar wrote in *Environmental Rulings Reveal Supreme Court's Dangerous Ambitions* that the Supreme Court's conservative majority is reshaping how our government works in pursuit of an agenda of sweeping deregulation.

In *Supreme Court Limits E.P.A.'s Power to Address Water Pollution*, the Justices ruled that discharges into some wetlands are not covered by the Clean Water Act, cutting back the power of the Environmental Protection Agency to regulate the nation's wetlands and waterways. This is a setback for the agency's authority to combat pollution.

As Justice Elena Kagan explained in a concurrence joined by Justices Sonia Sotomayor and Ketanji Brown Jackson, this is nothing short of another judicial power grab. Kagan compared the ruling to last term's decision limiting the EPA's ability to combat climate change. "The vice in both instances is the same: the Court's appointment of itself as the national decision-maker on environmental policy."

And why? Not because the law compels it, but because the majority doesn't like the law. "Congress, the majority scolds, has unleashed the EPA to regulate 'swimming pools and puddles,' wreaking untold havoc on 'a staggering array of land-owners,'" Kagan observed. "Surely something has to be done; and who else to do it but this Court? It must rescue property owners from Congress's too-ambitious program of pollution control."

More judicial power-grabbing is to come. In the next term, the Supreme Court will consider whether to ditch the four-decade old practice, known as Chevron deference, of having courts defer to federal agencies' interpretations of the laws they administer when the statutes are ambiguous. If Chevron falls, as seems all but inevitable, courts will be even more firmly in the driver's seat to control policymaking.

This isn't right, and it is also unnecessary. When the court reached out to take *Sackett* (the case on wetlands), the Biden administration was in the midst of rewriting the rules on how the Clean Water Act applied to wetlands. But the majority had its votes. Why wait? Why hold back? That could be the motto of this radical and impatient court.

Environmental advocates asked the court to retain the government's authority to protect and regulate waterways that significantly affect downstream water quality and warned that developers would take advantage of weaker regulations. Under a proposed re-definition of the law that the plaintiffs wanted, about half of all wetlands and roughly 60 percent of streams would no longer be federally protected.

The ruling is the second major environmental decision by the court in about a year. Last term, the court's conservative majority restricted the EPA's authority to curb emissions from power plants.

Ruth Marcus wrote in *Clean water ruling again reveals a radical and impatient court* that "the Supreme Court's decision gutting the Clean Water Act isn't just a disaster for efforts to control pollution, although it's that too. It is yet another illustration of the conservative supermajority's aggressive willingness to rewrite statutes to its liking, abandon precedent and lunge to intercede in disputes that could be easily sidestepped."

This is a court that doesn't like government regulation and it is going to do what it can -- text and precedent be damned -- to neuter it. Thus the majority, in last year's *West Virginia v. EPA*, invented a "major purpose" test to limit the reach of another major environmental law, the Clean Air Act. In this case, it adopts another new test -- when Congress exercises such power "over private property", it must use "exceedingly clear language" — to rewrite the Clean Water Act to its liking.

The Shadow Docket

The Supreme Court sometimes makes emergency orders and decisions without full briefings and oral arguments. These rulings are made on the "shadow docket", typically on urgent or time-sensitive matters that require immediate action before the court. Shadow docket rulings are decided on an expedited basis with minimal public scrutiny.

The high court's supermajority in recent years has made much more frequent use of the shadow docket, for the purpose of advancing a conservative agenda. This casts a dark shadow of illegitimacy on decisions made through

shadowy rulings.

While the concept of the "shadow docket" doesn't align directly with *Umwege,* which refers to indirect or circuitous paths, it does represent a departure from the standard procedures of the Court. By bypassing the usual processes of the Court, the shadow docket often results in significant decisions made without the comprehensive deliberation and relative transparency typical of regular cases.

Since decisions made on this expedited process are contrary to traditional judicial norms, they raise valid concerns about the thoroughness of considerations of legal issues, as well as about transparency and accountability.

Nina Totenberg observed in her article *The Supreme Court and 'The Shadow Docket':* "The title sounds more like a thriller than a legal treatise. *The Shadow Docket: How the Supreme Court uses stealth rulings to amass power and undermine the republic*". And the author of this book, University of Texas law professor Stephen Vladeck, admits the term "shadow docket" is provocative.

Vladeck's book, written so it can be understood by the interested non-lawyer, focuses on a part of the court's work that until six or seven years was mainly viewed as pretty boring. That, however is no longer true, and today the emergency docket has come to be known as the shadow docket, a term coined in 2015 by University of Chicago law professor William Baude.

Justice Samuel Alito hates the term, and gave an hour-long speech in 2021 at Notre Dame, suggesting that journalists and politicians have seized on it to wrongly portray the court as "sneaky," "sinister", and "dangerous." Nonetheless the term has stuck.

Professor Vladeck argues that the court has only itself to blame. "What impelled me to write the book is that over the last six years, we've seen the shadow docket become a lot less boring because the Supreme Court, and especially the conservative majority, has been using unsigned and unexplained orders to a degree and in ways which really have no precedent in the court's history," he said in an interview with NPR.

The shadow docket is the way many cases are decided today -- sometimes hugely consequential cases -- without full briefing or oral argument, and without any written opinion.

These cases are brought to the court by a state, or a company, or a person who has lost in the lower courts, often at an early stage. In these cases, a loser is asking the Supreme Court to block the lower court order while the case proceeds through the lower court appeals process, which typically takes many months. "Most recently, the Supreme Court issued an emergency order blocking lower court decrees that would have made it far more difficult to obtain mifepristone, the pill used in the majority of abortions in the United States today. As is typical in these shadow docket cases, the court issued no written opinion in the case, though Justice Alito, one of the two dissenters, issued an angry explanation for his disagreement with the majority."

Up until relatively recently, these shadow docket actions were quite rare. The statistics tell the story, statistics compiled by Vladeck. During the 16 years of the Bush and Obama administrations, the federal government, the most frequent litigant in the Supreme Court, only asked the justices for emergency relief eight times -- or on average once every two years. The two administrations together got what they wanted in only four of the eight cases, and in all but one of them the court spoke with one voice, and no dissent.

But in the Trump administration, and with a newly energized conservative majority on the court, the picture changed dramatically. In just four years, the Trump Justice Department asked the court for emergency relief an astounding 41 times, and the court actually granted all or part of those requests in 28 of the cases.

In short, not only did the Trump administration aggressively seek to use the emergency docket, often leapfrogging over appeals courts entirely, but it succeeded with the tactic.

"Vladeck cites, for example, the challenge to President Trump's controversial diversion of military construction funds to build his border wall. A federal district court judge, after hearing the case, ruled that the diversion was unconstitutional, and barred the administration from using the money for a different use than Congress authorized. Within weeks the Trump administration went to the Supreme Court with an emergency appeal to block the lower court order, and the justices restored the money diversion by a 5-to-4 vote, with no written opinion for

either the majority or dissent. As professor Vladeck explains, these emergency rulings are supposed to be temporary, to allow the cases to play out through the appeals process in the lower courts, and then possibly to return for full consideration by the Supreme Court later."

"But 'the dirty secret is that later never comes,' he says. 'By the time the border wall case,' or 'all kinds of other challenges to Trump policies make their way back to the Supreme Court, at the far end of the normal litigation process, President Biden is in office and those policies have been discontinued, and the cases are thrown out.'"

That pattern, he says, was repeated over and over again, thus allowing Trump "to carry out policies that lower courts had held to be unlawful because the Supreme Court, through unsigned and unexplained orders" said, in effect, 'Go ahead President Trump, we'll deal with this later.'"

Vladeck's point is not that the Supreme Court was necessarily wrong, but that its unexplained shadow docket rulings today are both "inscrutable, and inconsistent." The patterns that emerge, he maintains, put the court in an "exceptionally unflattering light."

"The more you look at the body of work, the more it looks like the best explanation for when the court is intervening and when it's not, is partisan politics and not neutral substantive legal principles," he contends.

Vladeck points to a speech Justice Amy Coney Barrett gave in 2021, in which she assured the audience that the current court "is not composed of partisan hacks" and urged people to "read the opinions." But as Vladeck observes, "What's remarkable about the shadow docket is that so often the court is handing down rulings with massive impacts in which there's no opinion to read."

Vladeck argues that historically, the way the Supreme Court has conceived of its own legitimacy and its own moral authority is its ability to provide principled rationales for its decision-making.

"We may not agree with the specific principles the justices are articulating" in major abortion or gun rights cases," he says, citing two examples. But at least we have some sense that these decisions are based on legal principles. In contrast, he argues, "The shadow docket has none of that."

"Vladeck agrees there are times when the court quite legitimately must use the emergency docket to deal with emergency situations -- the classic one being a last-minute appeal to stop an execution, or the series of cases involving the Trump travel ban, or the mifepristone cases. But he notes that even conservative Chief Justice John Roberts has sounded the alarm about such frequent use the shadow docket."

"Vladeck points out that Congress is not without power when it comes to such matters. For the first 200 years of the Supreme Court's existence, Congress played an active role in the shape and size of the court's docket, including how the court would handle emergency cases."

"I think the story here is one where Congress progressively got out of the business of checking the court and the court progressively got out of the business of wanting to be checked," he says.

Empathetic Introspection into Clarence Thomas

Thomas had watched the civil rights movement unfold. Martin Luther King and Robert F. Kennedy had recently been assassinated. As revealed in FRONTLINE's documentary film *Clarence and Ginni Thomas: Politics, Power and the Supreme Court*, the Supreme Court justice who is now a stalwart conservative once wrote about his growing anger at racial injustice and his interest in the Black Power movement.

Clarence Thomas received a scholarship to the College of the Holy Cross, a private Catholic college in Massachusetts, where there were fewer than 30 Black students among more than 2,000 white students.

Thomas' former Holy Cross classmates say he was "inspired by the Black Panthers. He dressed like them. He talked like them. He had a beret. He had Army fatigues and he had the Army boots," as Gordon Davis, a former classmate, recalls. Thomas had a poster of Malcolm X in his dorm room, and reportedly boasted that he had read all of the activist's speeches and, at one time, could have quoted some of them by heart.

Thomas was not alone in his frustration with racial injustice at the time. "I had evolved from being hopeful to

being pissed off. A lot of young people in America were pissed off," Orion Douglass, another of Thomas' former classmates, says in a clip. "And they weren't seeking a reconciliation, okay? They were seeking a coup, to change the whole thing."

FRONTLINE's documentary tells the inside story of Clarence and Ginni Thomas' path to power, and includes unique insights into the evolution of Thomas' views on race. From veteran filmmaker Michael Kirk and his team, the documentary examines the couple's stories from formative moments in childhood and defining issues that shaped their lives and ambitions, to their influence over American law and politics and involvements in recent controversies.

The documentary traces how, during an impoverished childhood, Thomas was subjected to racism in the Jim Crow South and was also cruelly taunted by other Black children because of his darker skin color. Thomas repeatedly reinvented himself throughout his life -- including when he entered seminary with a desire to become a priest, and then left, disillusioned by the treatment he experienced as one of only two Black students.

The documentary delves into Thomas' interest in the Black Power movement during the chapter of his life at Holy Cross -- and when his politics started to move away from it. The Black Power movement, which began in the 1960s, aimed to counter white supremacy and systemic racism by emphasizing Black pride and self-reliance. Some groups within the movement embraced Malcolm X's belief that freedom, equality and justice should be pursued "by any means necessary," breaking away from the nonviolent tactics advocated by King and other civil rights leaders.

"I don't know if he had a well-formed political philosophy before he got to Holy Cross. It may be he was simply going along," Glenn Loury, an economist at Brown University, said in a clip. He recalls of that time: "The forces of conformity to a sense of outraged fury, resistance, the throwing off of oppression by any means necessary. It was very seductive."

Thomas' activism culminated in his junior year, when he joined thousands of students from the greater Boston area who congregated in Harvard Square for an anti-war protest. There were many protests across the country at the time, the vast majority of them peaceful.

But that night in Cambridge was an exception. In his memoir, *My Grandfather's Son,* Thomas describes it as "a full-scale riot." News reports at the time said 4,000 students faced off against 2,000 police officers. Thomas writes that officers fired rounds of tear gas into the crowd, but "that didn't deter us, and we kept on rioting well into the night." Nearly 200 people were injured in the protest, and 40 students were arrested.

In the aftermath of the protest, Thomas describes feeling conflicted — about who he was and what he stood for. "I got back to campus at four in the morning, horrified by what I'd just done," he writes in his memoir. "I had let myself be swept up by an angry mob for no good reason other than that I, too, was angry."

Ah, yes, swept up in an angry mob! That moment would prove to be a turning point, and as the documentary goes on to explore, Thomas would set about remaking himself, embarking on a path that would eventually lead to him finding a place in the upper echelon of conservative politics, at the pinnacle of a super empowered Supreme Court.

"I don't think anything about Clarence Thomas is simple," Jane Mayer, co-author of the book *Strange Justice* about Thomas' nomination hearings, says in the documentary. "I mean, he's a bundle of contradictions. And it seems like there's just always so much inner tension within him. Yes, he was radical like his peers, but not as radical. And he broke with them in various ways. And he's always breaking with whatever the dominant political trope is. He says, you know, he's always talking about how he's not going to do what's fashionable. He wants to be different."

For the full story on Thomas' path to the present moment, watch *Clarence and Ginni Thomas: Politics, Power and the Supreme Court.* The documentary was supported by Preserving Democracy, a public media initiative. It is available to watch in full at pbs.org/frontline and in the PBS App.

Two Advance Leaks of Pending Supreme Court Rulings

When the Hobby Lobby case was being considered in 2014, according to Rev. Rob Schenck, the outcome of a case was leaked, and then again in 2022, a draft opinion overturning the constitutional right to abortion was leaked to Politico in the news media, several months before the official ruling was made, setting off a national uproar.

Leaks of Supreme Court decisions are shocking and potentially illegal, "but even more shocking than the revelation that there have been two major leaks from the court -- both of them right-wing opinions authored by Samuel Alito -- was the story the reporters unraveled of the degree to which evangelical activists worked to become close to the justices, especially through participation in the court's historical society, as well as religious events, a plan Schenck called 'Operation Higher Court.' Their goal was to influence the justices quietly (secretly), and it appears to have been at least somewhat successful: in July, Peggy Nienaber, the executive director of Liberty Counsel's D.C. ministry, who worked with Schenck, was caught on a hot mic saying she prayed with certain Supreme Court justices."

Senator Sheldon Whitehouse (D-RI) and Representative Hank Johnson (D-GA) have written to Chief Justice John Roberts to say that if the court is not going to investigate the breaches, lawmakers will.

Illinois Sen. Dick Durbin, who chairs the Senate Judiciary Committee — influential for its role in vetting and confirming Supreme Court nominees — said his panel is calling for an "enforceable code of conduct" for justices. He once promised a vote on ethics reform legislation after a Supreme Court term beset by scandal over relationships between rightwing justices and wealthy donors. "The highest court in the land should not have the lowest ethical standards," Durbin said. "The ProPublica report is a call to action, and the Senate Judiciary Committee will act."

Lawmakers and advocates have long called for codified ethics rules that prohibit the type of behavior uncovered by ProPublica's investigations and others in responsible media outlets.

Chief Justice John Roberts has refused to testify in Congress regarding reports of alleged ethics breaches concerning Justices Clarence Thomas and Samuel Alito, or Neil Gorsuch or Brett Kavanaugh -- or of his own.

In his 2011 year-end-report, Chief Justice Roberts explained that the Court "has had no reason" to adopt a code of ethics, maintaining that the Court's current system is sufficient to maintain the public's trust in the Court's integrity. However, as our nation's political environment has become increasingly polarized, this stance has become more difficult to defend. And Roberts was finally forced to finally work out a weak code of ethics in Nov. 2023.

<u>More Evidence SCOTUS Needs a Proper Code of Conduct</u>

Allegations that Samuel Alito was responsible for leaking a milestone decision in early 2022 made a big splash. But the way the alleged leak came about deserves more attention, because it involved a secret influence campaign by anti-abortion activists targeting conservative Supreme Court Justices. "The story draws into sharp focus the Court's lackluster approach to ethics and shows why both Congress and the Supreme Court itself must act to shore up the Court's legitimacy," Alicia Bannon wrote.

These scandals strike at the heart of the public's faith in the independent judiciary, which is a bedrock principle of democracy. That's why we should demand that the Judiciary Committee subpoena Chief Justice Roberts, and that's another reason why Congress should pass a law specifically stipulating an honorable and enforceable Code of Ethics for Supreme Court Justices.

Justice Alito took to the friendly confines of the Wall Street Journal's opinion section in April 2023 to offer his advisory opinion that Congress has no business regulating the Supreme Court's ethical behavior, saying that "No provision in the Constitution gives them the authority to regulate the Supreme Court — period."

According to the astute political commentator Ruth Marcus, "This is wrong." As Ilya Somin, law professor at the Antonin Scalia Law School at George Mason University stated, "Taken literally, that statement is nonsense. Congress clearly does have power to regulate the Court in a variety of ways." Marcus continues. "Congress has power to set the size of the court, establish its pay, determine its staff and budget, and, with some exceptions, set out the scope of its jurisdiction to decide cases. Congress literally wrote the oath that justices take. The start of the Supreme Court term on the first Monday in October? It's a law."

"But let's assume, charitably, that Alito meant to contain himself to ethics rules. He's still wrong. Since 1948, Congress has required federal judges — including Supreme Court justices — to recuse themselves from deciding cases in which their 'impartiality might reasonably be questioned.' Is that unconstitutional? Since 1978, it has

required federal judges — including justices — to file financial disclosure forms. Is that unconstitutional? (The justices, including Alito, claim that they voluntarily follow those rules.) Since 1989, it has imposed strict limits on outside income and gifts for federal judges — including justices. Is that unconstitutional?"

"Just last year, Congress amended the ethics rules to mandate that federal judges — including justices — promptly disclose their stock transactions. Is that unconstitutional?"

"Why would it be? The Alito argument, such as it is, proves too much. It would mean that Congress could not make it a crime for justices to accept bribes. And why would Congress have power to impose ethics rules on the executive branch but not on the judiciary -- or are those unconstitutional, too?"

"We don't want Congress punishing the court for issuing decisions with which lawmakers disagree. Respect for the separation of powers and the independence of the judiciary counsels caution in this area. But it does not dictate hands off, no matter what Alito might wish."

Voting Rights

Free and fair elections are critical for representative democracy, and they are necessary to ensure that we have good government of the people, by the people and for the people.

The USA has become corrupted by special interests, with voting rigged to allow excessive influence to rich people and gigantic corporate entities and religious extremists, and to politicians and judges and lobbyists that do their bidding and often engage in relentlessly attacks on our democratic process and institutions.

This rigging has gotten insufferable and unacceptable in recent years due to Supreme Court rulings that allow states to enact discriminatory voting restrictions and extreme gerrymanders that cause terribly harmful impacts of polarization. This is exacerbated by the malign influence of manipulative emotion-hijacking media outlets and social media platforms that amplify deceit and false conspiracies and allow repressive rule that perpetuates injustices and undermines the general welfare.

The Trump Republican Party has become instrumental in this woeful outcome that allows male domineering white supremacists and repressive religious American ayatollahs to impose their negative control over the citizenry. Note that when it comes to voter fraud claims, *Trump just makes stuff up*.

MSNBC's Lawrence O'Donnell spoke to Senator Sheldon Whitehouse (D-RI) about his book, *The Scheme: How the Right Wing Used Dark Money to Capture the Supreme Court,* in which he details the decades-long plot by wealthy conservatives to capture federal courts and the United States Supreme Court.

Since John Roberts became Chief Justice in September 2005, the Roberts Court has done more to reduce the voting rights of poor people and Black people while enlarging the voting rights of rich people and corporations "than has any court since Roger Taney was Chief Justice in the early 19th century."

In 2010, Roberts was the moving force behind "*Citizens United v. FEC*," (in which he concurred), finding that corporations are people, entitled to the same First Amendment rights -- and thereby opening the floodgates to big money to corrupt American politics.

In 2013, Roberts wrote for the court's conservative majority in "*Shelby County v. Holder,*" gutting the Voting Rights Act's requirement of prior federal approval for voting changes in states with a history of discrimination. Roberts ignored the detailed record to make his own finding that racial discrimination was no longer a problem in the United States — thereby opening the floodgates to voter-suppression laws across the South and other states with Republican-majority legislatures.

In *Shelby County*, the SCOTUS functionally eliminated the requirement for states with histories of racial discrimination to receive preclearance before passing new election laws. The results have been far-reaching and devastating, with GOP lawmakers across the country scrambling to restrict voting access by closing polling places, purging voter rolls, imposing new identification requirements, and more.

Not only are the number of stories proliferating about the corruption of the Supreme Court by conservatives and court capture schemers, but also these seriously consequential ethics-deficient abuses of influence are resulting in

defiance of the will of the majority of the people, in a rigid pursuit of social, religious, corporate and scandalous governance goals.

The Voting Wars

The problems uncovered during the debacle of the 2000 presidential election persist, and we can expect far more trouble unless we fix the way we run elections.

Recall the Supreme Court scandal surrounding the **2000 presidential election. Less than 500 votes in the** state of Florida separated Republican presidential candidate George W. Bush from his Democratic opponent, Al Gore. The outcome of the election for president rested on Florida's 25 electoral votes, and legal wrangling continued for 36 days. Then, abruptly, one of the most controversial Supreme Court decisions in U.S. history, *Bush v. Gore*, cut short the battle. Since the Florida debacle we have witnessed a partisan war over election rules. Election litigation has skyrocketed, and election time brings out inevitable accusations by political partisans of voter fraud and voter suppression. These allegations have shaken public confidence, as campaigns deploy "armies of lawyers" and the partisan press revs up when elections are expected to be close and the stakes are high.

Richard L. Hasen, a respected authority on election law, chronicles and analyzes the battles over election rules from 2000 to the present. From a nonpartisan standpoint he explores the rising number of election-related lawsuits and charges of voter fraud as well as the decline of public confidence in fair results. He explains why future election disputes will be worse than previous ones -- more acrimonious, more distorted by unsubstantiated allegations, and amplified by social media. No reader will fail to conclude with Hasen that election reform is an urgent priority, one that demands the attention of conscientious citizens and their elected representatives.

Trump Republicans deviously claim they want to establish "voter integrity", but what they really do, especially in states of the South, is to push to gerrymander congressional districts in ways that discriminate against minority voters, and passing many restrictive voting laws. Trump repeatedly warned before and after the 2020 presidential election that it was rigged, but as several commentators and even the Daily Show's Trevor Noah argued, accurately, the real rigging is in partisan gerrymandering and voter suppression laws.

Gerrymandering exacerbates polarization and political extremism. These are highly undesirable characteristics that are inherent in the shrewd and discriminatory process of gerrymandering districts. Gerrymandering is done, by design, so that districts will not have competitive contests. This has given right-wing Republicans unfair and unmerited advantages in many states, especially in the South, and has given us a "chaos caucus" in Congress that very poorly represents the common good.

Power and Minority Rule

"Conservative" Supreme Court Justices find sympathy with contentions that the president should have more power, just as they see no corrupting influence in having Big Money wield dominating influence in our politics -- or flabbergastingly having billionaires give big perks and benefits to the Justices themselves.

It is tragically true that schemers can gain power, nefarious influence, demagogic populist sway and big bucks by stoking resentments, hyping up anger, vitriolic prejudices and hate.

Democrats have won the popular vote in seven out of the last eight presidential elections, but Republicans have nonetheless been able to pick five out of eight Supreme Court justices during that same period, paving the way for wildly unpopular and destructive decisions including *Citizens United* and the decision overturning *Roe v. Wade*." That's not democracy. It's minority rule."

Columnist Jennifer Rubin writes that Republican setbacks such as the disappointing outcomes (to them) of the 2022 midterms and a progressive Democrat winning a crucial Wisconsin Supreme Court seat, and rising support for abortion rights over the past year, suggest that conservatives may have won the battle to stack the courts with ideologues but might be losing the war for public opinion and, ultimately, electoral control.

The more the Supreme Court diverges from overwhelming public sentiment on issues such as abortion, guns and voting rights, the more strength and more allies the progressive movement may gain.

Overturning People's Rights and Freedoms

In June 2022, the Supreme Court overturned *Roe v. Wade* in a ruling that has had cataclysmic impacts on women's rights, reproductive health and the court's own legitimacy.

The dire health consequences of the Supreme Court having overturned *Roe* protections, and of state legislatures banning abortion care, are becoming ever more apparent. Some 18 states, home to more than 25 million women of reproductive age, have banned some or all access to abortion care, with only narrow exceptions that are nearly impossible to qualify for. Already, thousands of people are finding it impossible to obtain a necessary abortion.

"At the Guardian, we have been covering every facet of this story: the unfolding human rights disaster for women denied critical care. The upheaval for doctors now constrained by far-right ideology. The political realignment as voters in even the most conservative states step up to stem the damage."

"This past week alone, we have published more than a dozen stories looking at how much has changed in the last year. Among these are the real-life diary of a Texas woman forced to flee her home state to receive critical care in Colorado. Another story tracks every lawmaker in the country whose vote has restricted abortion access in the last year. Today we're covering protests around the US as the country marks a year without Roe."

When the U.S. Supreme Court took away the constitutional right to abortion at the end of June 2022, the United States became an outlier to the overwhelming global trend toward liberalization of abortion laws and enhanced protections for abortion rights. In recent decades, nearly 60 countries have liberalized their abortion laws. The U.S. is one of only four countries that has regressed on abortion rights since 1994. That is shameful, backwards and wrong!

Justice Ruth Bader Ginsburg made her first oral arguments before the Supreme Court and said, "I ask no favors for my sex. All I ask of our brethren is that they take their feet off our necks." Conservative Justices, heed this request!

Today, we must be greatly aware that opportunity, equality and justice -- the principles which Justice Ginsburg tirelessly worked toward -- are on the ballot, and therefore vote against those who would trample these crucially important values.

Dateline July 1, 2023

Another US Supreme Court session ended on 7/1/23, "one in which the rightwing supermajority crafted by Donald Trump has applied its blueprint for the radical overhaul of vast swathes of American public life to critical new areas, including race and LGBTQ+ rights."

In a repeat of the shockwaves of late June 2022, when they overturned the right to an abortion, the six right-wing justices -- three appointed by Trump -- saved their biggest explosions until last. A 6 to 3 ruling on June 29 barred affirmative action at Harvard and the University of North Carolina, which will affect virtually every selective higher education institution in the US, with potential ramifications far beyond.

The next day, on the last day of the term, "the six conservatives wielded their sword over LGBTQ+ rights. In another 6 to 3 ruling, they slashed to the ground anti-discrimination protections to allow a devout Christian web designer to turn away same-sex couples." And ironically, the *Man cited in Supreme Court LGBTQ rights case says he was never involved.* The man says he has been married to a woman for 15 years and never asked for services from a Christian website designer.

The icing on the conservative cake, also delivered by a 6 to 3 margin, struck down the Biden administration's student debt forgiveness plan. Buried with it were the financial hopes of 40 million Americans.

Those decisions come at the end of a judicial term in which, in other respects, the chief justice John Roberts had made notable efforts to keep the court more attuned to the rest of the nation. In rulings over voting rights and Native American protections he had steered a middle course, much to the relief of progressives who had been expecting the worst.

But it is the booming decisions on race, LGBTQ+ rights and student debt for which the 2022-23 term will most be

remembered. The court's most seismic decisions not only discarded long-held precedent, they also swam against the tide of public opinion. The justices who compose the Trump-created supermajority -- unelected and appointed for life -- are dramatically impacting the lives of millions of Americans in what amounts to minority rule.

"As a reporter working with our democracy team in the US, I feel enormously privileged to be writing for the Guardian at such a crucial moment. At a time when American values are under attack, we see our role as putting the spotlight on how a far-right movement that has been decades in the making is trying to impose its minoritarian ideology over the will of the people -- the Supreme Court being no exception."

Torpedoing Affirmative Action

Supreme Court conservatives overturned another precedent when they ruled against affirmative action at the end of June 2023, deeming race-based affirmative action in college admissions unconstitutional. The conservative majority ruled that universities cannot consider an applicants' race when deciding whether to admit them. The decision means higher-learning institutions will have to overhaul efforts to cultivate a diverse student body.

The great journalist and commentator Dan Rather noted that "The injustices of race in America infuse so many aspects of society. They are the legacy of our often cruel and tortured history. And they still reverberate today."

"We may wish we lived in a society where the color of one's skin and one's ethnic and cultural background didn't matter, where we were solely judged by what Dr. Martin Luther King famously called the 'content of our character.' But we are not there. We've improved, we've learned, we've made progress. But we're not there. Not nearly."

The Supreme Court's ruling largely banning affirmative action for race in college admissions "is based on a fundamental distortion of American reality," wrote Dan Rather. "The court's majority stipulates that the consideration of race as one of many factors in whom a college admits poses a grave constitutional injustice. To be sure, the tool is an imperfect remedy for centuries of systemic racial hatred, exclusion, and violence. But to measure its worth, we can't ignore the history that necessitated it. Or the reality of what persists."

"In America, race has long been a factor, and often the biggest one, for a host of societal considerations — who was allowed freedom, who was viewed equally under the law, whose civil and human rights were respected, where people could live, and who could vote. In all of these cases, Black Americans, Native Americans, and other groups to some extent were the ones who were excluded. That should be the rightful historical framework for any court action."

NBC News noted in *Key civil rights groups blast Supreme Court for sharply curtailing affirmative action,* that NAACP President and Chief Executive Derrick Johnson said in a statement, "Today the Supreme Court has bowed to the personally held beliefs of an extremist minority. We will not allow hate-inspired people in power to turn back the clock and undermine our hard-won victories. The tricks of America's dark past will not be tolerated."

The court's three liberal justices dissented from the decision. Justice Ketanji Brown Jackson, the first Black woman to serve on the court, called out her conservative colleagues in a scathing dissent, calling the decision a "tragedy for us all."

Jackson noted that "Black Americans had always simply wanted the same right to take care of themselves that white Americans had enjoyed, but it had been denied them. She recounted the nation's long history of racial discrimination and excoriated the majority for pretending it didn't exist."

She added, "With let-them-eat-cake obliviousness, the majority pulls the ripcord and announces 'colorblindness for all' by legal fiat. But deeming race irrelevant in law does not make it so in life. And having so detached itself from this country's actual past and present experiences, the Court has now been lured into interfering with the crucial work that … institutions of higher learning are doing to solve America's real-world problems."

Justice Sotomayor, who has publicly praised the impact of affirmative action on her education and career, also said "entrenched racial inequality remains a reality today." She added, "Systemic racism has played a significant role throughout history in education, health care, home ownership, employment and virtually every other facet of life since this nations founding — and it continues to this day, whether or not people choose to see this fact."

The dissenting Justices pointed to the profound racial discrimination that continued after the Civil War and insist

that the law has the power to address that discrimination in order to achieve the equality promised by the Fourteenth Amendment. "The Equal Protection Clause of the Fourteenth Amendment enshrines a guarantee of racial equality," Sotomayor's opinion begins. "The Court long ago concluded that this guarantee can be enforced through race-conscious means in a society that is not, and has never been, colorblind."

Ketanji Brown Jackson wrote in her concurring opinion concerning the case that "Gulf-sized race-based gaps exist with respect to the health, wealth, and well-being of American citizens. They were created in the distant past, but have indisputably been passed down to the present day through the generations. Every moment these gaps persist is a moment in which this great country falls short of actualizing one of its foundational principles -- the 'self-evident' truth that all of us are created equal."

She also pointed out, "No one benefits from ignorance. Although formal race-linked legal barriers are gone, race still matters to the lived experiences of all Americans in innumerable ways, and today's ruling makes things worse, not better."

The Biden administration said in a statement, "Today, the Supreme Court upended decades of precedent that enabled America's colleges and universities to build vibrant diverse environments where students are prepared to lead and learn from one another," warning that "the Court's decision threatens to move the country backwards." In a speech to reporters, Biden called for new standards that take into consideration the adversity -- including poverty -- a student has overcome when selecting among qualified candidates, a system that would work "for everyone … from Appalachia to Atlanta and far beyond."

"While the Court can render a decision, it cannot change what America stands for," he said.

The insightful historian Heather Cox Richardson observed, "If this fight sounds political, it should. It mirrors the current political climate in which right-wing activists reject the idea of systemic racism that the U.S. has acknowledged and addressed in the law since the 1950s. They do not believe that the Fourteenth Amendment supports the civil rights legislation that tries to guarantee equality for historically marginalized populations, and in today's decision the current right-wing majority on the court demonstrated that it is willing to push that political agenda at the expense of settled law. As recently as 2016, the court reaffirmed that affirmative action, used since the 1960s, is constitutional. Today's court just threw that out."

Dan Rather further observed, "In the wake of the decision, many are sharing their personal experiences and examining the legal and social context for affirmative action. Sadly, these powerful real-world considerations were ignored by the court. What we are left with are passionate, erudite, and harrowing testimonials of loss."

"It is not surprising that this court threw aside its own precedent along with an honest assessment of the realities of American society in 2023. After all, the decision's author, Chief Justice John Roberts, also felt that most of the protections of the Voting Rights Act were no longer necessary." And that is seriously damaging our democracy.

"But supporters of affirmative action also have to contend with the fact that the practice, whatever its merits, was unpopular with a majority of the American public. Part of that is due to the forces of privilege and intolerance that made it necessary in the first place. But affirmative action's critics were also able to effectively appeal to notions of fairness, even if their arguments conveniently omitted the full context of both history and the present."

"Ironically, reclaiming the banner of fairness will fall mostly on the populations who have suffered its absence."

"Where does this leave us? Some court watchers believe there will be more chaos as schools scramble to conform to a new reality that remains legally murky. But there is also a challenge for policymakers who care about promoting opportunity for all Americans."

"Perhaps this moment can usher in a new era of commitment and innovation. Let us hope that we will now focus on creating new pathways for those needing to overcome the odds to reach the full measure of their potential. Doing so necessitates a much earlier start than college admissions. It means investment in health and welfare, a renewed commitment to public education, and opportunities for those of every race confronting the hurdles of generational poverty. It means a commitment to diversity that reaches out to those most in need of help and includes them in the decisions of how we allocate American abundance. It means voting reforms. And a commitment to broad

democratic principles. It means action, energy, and resilience for those who have already borne unequal burdens. And it means dedicated allies."

"Affirmative action was a helpful but modest Band-Aid on the deep and persistent wounds of American racism. It is now largely gone. The robustness of our nation requires that a more substantial and sustainable set of remedies take its place."

A subsequent story has thrown a glaring light on legacy admissions to universities, which favor applicants with family times to alumni. The Associated Press observed that this is "affirmative action for white people," pointing out that legacy college admissions are now coming under renewed scrutiny.

"My parents couldn't legally go to LSU," said Ivory Toldson, a Howard University professor and the director of education, innovation and research for the NAACP. "Discrimination is a lot more recent in our history than a lot of people seem to understand." Toldson said there's growing awareness of the irony that preferences for athletes and legacy students are still allowed, while race must be ignored.

Supreme Court Reforms Required

One main reason Americans distrust the Supreme Court is because its opinions appear arbitrary, capricious and partisan. Just look at the *Dobbs* case that reversed *Roe v. Wade* after 49 years of settled law. The majority of Americans disagree with this ruling. And look at the growing body of evidence that billionaires have in effect bribed Justices including Clarence Thomas and Samuel Alito, and that conservative Justices have conflicts of interest, including John Roberts and Clarence Thomas, whose wives have made huge sums of money through their proximity to their spouses.

Robert Reich wrote on June 24, 2023: "What to do to restore trust of the highest court? Congress should enact three reforms."

First, enact a judicial code of ethics. Judges on the highest court should be held to the highest ethical standards. Congress should enact a code of ethics on Supreme Court justices that would: (1) ban justices from receiving personal gifts from political donors and anyone with business before the court, (2) clarify when justices with conflicts of interest should remove themselves from cases, (3) prohibit justices from trading individual stocks, and (4) establish a formal process for investigating misconduct.

Second, term limits should be established for Supreme Court Justices. Article III of the Constitution says judges may "hold their office during good behavior" but does not explicitly give Supreme Court justices lifetime tenure on the highest court -- even though that's become the norm. Term limits would prevent unelected justices from accumulating too much power over the course of their tenure -- and would help defuse what has become an increasingly divisive confirmation process.

And third, Congress should limit Supreme Court terms to 12 or 18 years, after which justices would move to lower courts. As we face a post-*Roe* America where a small group of un-elected people are placing our fundamental rights and freedoms in jeopardy, it would be a good idea to set term limits for every Supreme Court justice in an effort to depoliticize Supreme Court appointments and restore public confidence in an independent judiciary.

Lifetime appointments to the highest court in the land should not be used as political pawns on either side of the aisle. "The American people deserve better."

"The Supreme Court of the United States should be a representative safeguard for our modern democracy that helps prevent overreaches of power by other government bodies for partisan gain. The court should not be reduced to a battlefield of partisanship each time a new appointment needs to be made. Term limits would bring stability to the Supreme Court by making appointments a routine process."

It would also be an excellent idea for the greater good to expand the number of Justices on the high court from 9 to 13 to reflect the heavy and consequential caseload as the country has grown, and to serve to depoliticize the judicial system. These reforms are needed to restore trust in the Supreme Court, which has hit a historic low. One Quinnipiac poll found that only 30 percent of registered voters approve of it.

Passing a proposed Judiciary Act would allow President Biden to appoint FOUR NEW justices, thereby restoring a measure of balance to the Supreme Court.

The Constitution does not limit the Supreme Court to nine justices. In fact, Congress has changed the size of the court seven times. It should do so again in order to remedy the extreme partisanship of today's Supreme Court.

Some may decry this as "court packing," but the real court packing occurred when Senate Republicans refused to even consider a Democratic nominee to the Supreme Court on the fake pretext that it was too close to the 2016 election -- but then confirmed a *Republican* nominee just days before the 2020 election.

Rather than allow Republicans to continue exploiting the system, expanding the Supreme Court would in this sense actually *un*pack the court.

Enacting these reforms won't be easy. Republican politicians and big moneyed interests and religious fundamentalist will fight to keep their control of the Supreme Court. But reforms like these have significant support from the American people, who have lost trust in the court.

"The Supreme Court derives its strength not from the use of force or political power, but from the trust of the people. With neither the sword nor the purse, trust is all it has. It must work on earning this trust."

The Defense of Democracy

"When we try to pick out anything by itself, we find it hitched to everything else."

--- John Muir

Our colonial ancestors courageously declared independence from rule by a King, and after fighting a Revolutionary War for independence, the Founding Fathers honorably created a constitutional republic, "if you can keep it", as Benjamin Franklin put it. They loved liberty and the broad blessings it entailed, and were viscerally well aware that eternal vigilance and strong efforts would be required to protect the people from threats both outside the country and from within.

On our watch in the past decade, our collective national commitment to our democratic republic is faltering, and our allegiance to the flag "and the republic for which it stands, one nation, indivisible, with liberty and justice for all" is threatened by factions and forces that seek special privileges and dominating power and control. The most prominent of these power-abusing factions are rich people and profit-over-principle corporate entities, along with right-wing Christian nationalists intent on decimating the separation between church and state so they can exert imperious and triumphant hegemony over the people in the name of their God and their narrow parochial interests.

Abraham Lincoln declared in his famous Gettysburg Address that the Civil War was a test that would help determine whether the nation, "conceived in Liberty, and dedicated to the proposition that all men are created equal", could endure, and whether it "shall have a new birth of freedom -- and that government of the people, by the people, for the people shall not perish from the earth."

Today, we are facing one of the most consequential tests in our country's history as politics has become critically polarized, and tribal affiliations and misinformation and outright lies twist people's perceptions, and right-wing Supreme Court Justices overturn precedent after precedent, and devious demagogues assault the battlements of our nation's defenses against tyranny.

Thomas Paine declared in his pamphlet *The Crisis,* in December 1778 -- just five months after the Declaration of Independence -- that "These are times that try men's souls." Today, as we are being severely tested again, many are being revealed deficient due to their selfish schemes and diabolical designs and imperious impulses to exert domineering control over the people and their best interests and general welfare.

Mexico Declares It Unconstitutional to Criminalize Abortions

Mexico is more advanced than the USA in one regard. Mexico's Supreme Court ruled in September 2023 that criminalizing abortions is unconstitutional. This ruling has the potential of turning the country into a popular destination for American women seeking abortion access, as abortion bans in Republican-led states proliferate.

Mexico's Supreme Court ruled that the Federal Penal Code's abortion regulations are unconstitutional, including the criminalization of individuals who have abortions and the health-care providers who perform them.

Mexico now joins a growing list of Latin American countries that have liberalized national abortion laws in recent years in response to the Green Wave feminist movement.

"This is huge progress in the recognition of reproductive rights," says María Antonieta Alcalde, director of Ipas Latin America and the Caribbean. "We are very proud to be part of the Green Wave movement that has worked so hard to advance women's rights." Ipas has worked in Mexico since 1995, supporting the state and federal health systems, training abortion providers, building advocates for reproductive rights and educating communities about sexual and reproductive health.

The ruling highlights how Mexico, along with other countries in Latin America, are increasingly recognizing the reproductive autonomy of women, girls and adolescents, and their right to make informed decisions about their own bodies.

"This is a huge and historic victory for Mexico and for the entire region -- one that puts human rights front and center," says Anu Kumar, Ipas president and CEO. "This ruling takes abortion out of the criminal code and returns it to where it belongs -- as a matter of health and rights."

The Supreme Court's ruling will ensure that abortion is legally available in all federal health institutions -- including in every state where abortion remains illegal according to state law (some states had already made abortion legal prior to this federal ruling). Advocates for abortion access will now continue pushing for state-level law change where abortion restrictions persist.

"The court's ruling shows that the path this country must follow in legislative matters is the decriminalization of abortion in each and every Mexican state," Alcalde says. In 2021, the court issued a decision that started moving the country down this path, ruling that one specific state's penal code was unconstitutional for criminalizing abortion -- setting a precedent for all other states and future court cases.

This is a huge step forward -- at the same time the U.S. is going backward.

While many countries are expanding access to abortion services in Latin America and around the world, the United States is rolling back reproductive rights -- most notably with the repeal of *Roe v. Wade.*

"Mexico is now part of a group of countries leading on reproductive freedom, whereas the United States is denying it," Kumar says. "Those of us in the U.S. should look to Mexico and the rest of the Green Wave movement for inspiration."

One tragic consequence of right-wing laws limiting reproductive rights in the U.S is that doctors who handle high-risk pregnancies are leaving states such as Idaho, Oklahoma, Tennessee and Texas because of their restrictive abortion laws, according to a New York Times report.

The report found that many doctors feel unable to provide comprehensive health care under state abortion bans, which frequently carry penalties such as high fines, medical license revocation and prison time yet fail to clarify when "medical emergency" exceptions apply.

More than a dozen of Idaho's labor and delivery doctors will have left or retired by the end of this year, and two of the state's hospitals have closed their labor and delivery units, citing physician shortages. In a recent survey, three-quarters of Oklahoma OB-GYNs indicated a desire to leave the state, according to the report.

The departures create new maternity care deserts (areas that lack any maternity care), damage the states' medical networks and place additional strain on remaining physicians.

Stupidly inflexible laws that severely restrict abortion access are dumb, mean-spirited, despotic and unacceptable, and should be repealed. And those who have pushed to enact them for narrow religious, ideological and partisan political purposes should be thrown out of office in a wave of outrage at this type of sexist, cruelly coercive, empathy-deficient, freedom restricting and despotic oppression.

One Consequence of Forcing Pregnant Women to Carry Every Pregnancy to Term

Melissa Jeltsen stated in *We Are Not Prepared for the Coming Surge of Babies:* "The post-*Roe* rise in births in the U.S. will be concentrated in some of the worst states for infant and maternal health. Plans to improve these outcomes are staggeringly thin."

A typical pregnancy lasts about 40 weeks. After *Roe v. Wade* was reversed, the U.S. arrived at a unique inflection point in the history of reproductive rights: early enough to see the immediate effects of *Dobbs v. Jackson Women's Health Organization* -- closed clinics, a rapidly shifting map of abortion access -- but too soon to measure the rise in babies born to mothers who did not wish to have them. "Many of these babies will be born in states that already have the worst maternal- and child-health outcomes in the nation. Although the existence of these children is the goal of the anti-abortion movement, America is unprepared to adequately care for them and the people who give birth to them."

"Unwanted babies won't be equally distributed among the population; they're likely to be concentrated among the poorest of the poor, in states where the social safety net is frayed to begin with. 'This is really an inequality story about who ends up trapped by distance and poverty, and who doesn't,' Caitlin Knowles Myers, an economics professor at Middlebury College explained."

"It's not hard to prophesize the outcomes for those too constrained by their circumstances to leave their home state for an abortion. Previous research has shown that women who want to terminate a pregnancy but are turned away end up worse off financially than women who receive a wanted abortion. They are more likely to rely on public assistance, struggle to pay for basic living expenses, take on debt, and face eviction. This instability isn't fleeting. For four years after being turned away, they will remain, on average, poorer than those who were able to obtain an abortion."

"Money, of course, is only part of the equation. Pregnancy puts tremendous physical stress on a person's body: People are estimated to be 14 times more likely to die during or after giving birth than from complications from an abortion. And the U.S already has striking racial disparities in maternal-mortality rates, with Black women nearly three times more likely to die from pregnancy-related causes than their white counterparts, according to the CDC. A similar disparity is seen in infant-mortality rates. And, compounding matters, many of the states that have banned abortion -- such as Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas -- also happen to be among the states where mothers and newborns fare the worst. If you look at the six states with the highest maternal-mortality rates in the nation according to the CDC, for example, all of them have outlawed abortion in the past few months. The same goes for the six states with the highest infant-mortality rates."

"Total bans on abortions are already rigid law in Idaho, South Dakota, Texas, Oklahoma, Louisiana, Arkansas, Missouri, Alabama, Mississippi, Tennessee, Kentucky, and West Virginia."

Passions are running high in our hyper-divided democratic republic right now, and it is hard to be objective. This is especially true in the wake of the Supreme Court's having overturned federal protections of women's reproductive rights by striking down the precedence-setting 1973 *Roe v. Wade* decision.

Professor Darren Zook, however, is up to the task of reasoning objectively. He has a doctorate in history from UC Berkeley, and teaches in Political Science. Zook insightfully explains how there are two legal and philosophical camps, one of *textualists,* who make convoluted technical legal arguments that rationalize interpretations of the Constitution grounded in its exact wording as written in 1789, and others who are *contextualists,* and take into account true concerns of fairness and proper governance that have arisen in the 233 years since then, for guidance in informing their decisions.

In this heated debate and the extreme controversy over the revocation of a woman's right to end a pregnancy, one fact seems incontestable. It is a profound injustice to force countless numbers of pregnant women who do not want to have a child (or another child) to carry the fertilized egg for 9 months, no matter what. Think of this in a fuller context of the infinite variety of individual circumstances that pregnant women may be facing, and in light of the fact that 60% of pregnant women who seek abortions are already mothers, and therefore are intimately aware

of the personal costs, obligations, burdens, affordability, financial impacts and risks related to having a bigger family.

Surely, in a country that declared in 1776 that "All men are created equal" -- and taking into account modern feminist societal sensibilities almost 250 years later -- all females should be officially guaranteed reasonable reproductive rights and the respect of enjoying natural rights to make their own personal private medical decisions and the personal freedom of having bodily autonomy and inviolable rights to self-determination in their lives.

This contentious impasse has come about because the Supreme Court has been illegitimately stacked with six of the nine Justices being partisan Republican Justices who are *textualists*.

The 1973 *Roe v. Wade* decision was an eminently contextually fair ruling to women, who have dramatically greater personhood than a sperm-impregnated egg, fertilized by happenstance.

Roe v. Wade rights have suffered a severe blow due to Republican politicians in red states aggressively passing draconian new laws (or enforcing old pre-Roe ones) that force every woman who becomes pregnant -- no matter what the circumstances -- to carry a fertilized egg for nine months. These laws are broadly insensitive to women's natural rights that have pertained ever since females cottoned on to understandings that sex acts with specific males result in offspring that have distinct similarities to the father and the mother of the child, after which realization they became choosier about who to have sex with. This is Original Choice, and right-wing Republican laws today cannot overrule this evolutionary right of choice.

In our overbearing patriarchal system, males want to control women, and defend economic, social and cultural inequities involved, and keep females in a subservient social status, and relegate them to being second-class citizens by forcing every one of them who becomes pregnant to give birth, whether or not they want to.

Understand that there are two kinds of Constitutional rights: enumerated rights and implied rights. All implied rights are derived from Constitutional rights that have been explicitly specified. The right to get an abortion was decided on shaky legal grounds because the Roe decision was made based on an implied Constitutional right derived from the 14th Amendment's privacy clause. It would have been much more securely established if it had been decided based on the 9th Amendment, which reads as follows: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Surely women are people, and forcing every one of them who becomes pregnant to carry the fertilized egg for nine months is almost as surely a denial and disparagement of their rights that should rightly be retained by the people.

The rights of females in health matters and reproductive rights simply should not be dictated by politicians.

The Supreme Court has widely used an "undue burden standard" in American constitutional law, ever since the late 19th century. This concern for undue burdens holds that a legislature cannot make a particular law that is too burdensome or restrictive of one's fundamental rights. A callous abrogation of this law by six Republican Supreme Court Justices with respect to women is cause for reproach, and reversal.

<u>Texas Despotism</u>

Amanda Zurawski, a woman from Austin, Texas was denied abortion care after she experienced preterm pre-labor rupture of membranes at 18 weeks of pregnancy. Only after she was diagnosed with sepsis would doctors perform an emergency abortion, and Zurawski spent the next three days in the ICU fighting for her life. She is now the lead plaintiff in the case *Zurawski v. State of Texas,*

At a U.S. Senate Judiciary Committee hearing, Zurawski appealed to lawmakers to put a stop to abortion bans like Texas's -- "barbaric restrictions that are being passed across the country" and are "having real life implications on real people."

While this case is pending, another pregnant woman named Kate Cox was caught up in the despotic Texas abortion laws. Kate Cox already has two children and wants to have another, but after learning that her fetus has a fatal condition, she petitioned to terminate her pregnancy under the state's "medical emergency" exception. A Texas court agreed to this one exception, but disgraced Attorney General Ken Paxton decided to appeal this decision to

the Texas Supreme Court, stacked with all Republican judges, and they overruled the lower court, forcing Cox to leave the state to get an abortion.

Uncompromising abortion opponents want to expand abortion bans to cover every state, but since they are not getting what they want in imposing their draconian dictates nationally, "all the bilge-wash concerning the Constitution is flushed away."

In attempts to prohibit the sale of the abortion medication mifepristone anywhere, anti-abortion factions are gaming the courts. So they engage in "judge shopping, a demoralizing ploy no matter who engages in it, because it makes a mockery of the rule of law and turns citizens into cynics."

They sought to have a case heard by Judge Matthew Kacsmaryk in Amarillo Texas to undo the FDA's approval of this prescription drug. "When he heard the case, Kacsmaryk was advised -- by the antiabortion plaintiff! -- that no judge in history had undone the FDA's approval of a prescription drug. Undeterred, the Texas tyrant decided to be the first."

"The Justice Department has appealed the ruling. It had little choice, given the usurpation of both executive and legislative authority. Congress has given authority over prescription medicines to the executive branch, not some Panhandle praetor. Now, the U.S. Court of Appeals for the 5th Circuit -- another supposedly conservative institution -- is called on to rebuke the runaway judge and assert the authority of the Constitution even in Amarillo. Otherwise, the job will fall to the Supreme Court."

"Legislating from the bench" has been, for more than 50 years, "the rankest crime known to judicial conservatives, while the original intent of the Founders has been their highest virtue. By trampling over the virtue to wallow in the crime, Kacsmaryk has called the bluff of the entire right-leaning judicial branch: 'Put up, or shut up.'"

Republicans have weaponized red state legislatures and the Supreme Court against the people to severely restrict the rights of voters and of pregnant women, so it is ironic and hypocritical that they obstructed efforts by Democrats to enforce congressional transparency and accountability when Donald Trump violated laws and the Constitution, and committed impeachable offenses, then attempted a coup against Congress.

<u>Abortion Medication</u>

Mifepristone, also known as RU-486, is a medication typically used in combination with misoprostol to bring about a medical abortion during pregnancy and manage early miscarriage. This combination is 97% effective during the first 63 days of pregnancy. It is also almost as effective in the second trimester of pregnancy.

Public health officials note that extensive research both in the U.S. and in Europe has proven the medication is safe and effective. "They warn that a judge's overturning a drug's FDA approval 20 years after the fact could upend the country's entire drug-approval system, as approvals for coronavirus treatments, for example, become plagued by political challenges."

Matthew Kacsmaryk, the judge who ruled on the case to reverse the FDA approval of the abortion drug mifepristone was appointed by Trump -- "and is well known for his right-wing views on abortion and same-sex marriage."

Initially, he kept the hearing over a nationwide ban on the key drug used for medicated abortion off the docket, and in a phone call he asked lawyers not to publicize his hearing, saying he was concerned about safety. Legal observers were outraged at the attack on judicial transparency -- a key part of our justice system -- and Chris Geidner of *LawDork* outlined the many times Kacsmaryk had taken a stand in favor of the "public's right to know."

Far too many of the more than 200 federal judges appointed by Trump have a "passion for infusing the law with their reactionary policy preferences", as a newspaper describes of a Trump-appointed judge on the most conservative federal appeals court in the country, the U.S. Court of Appeals for the Fifth Circuit, which has appellate jurisdiction over district courts in Texas, Louisiana and Mississippi.

Life-tenured federal judges are supposed to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." That, presumably, would require judges to make rulings that are not

based on their personal biases and predisposed political opinions and culture war ambitions.

A ban on mifepristone would not eliminate medication abortions because they can be done solely with misoprostol, but such a ban would require additional doses and have worse side effects on women, such as cramping and bleeding, and it would be effective only 85% of the time rather than 99% when both medications are used.

The extremist, anti-abortion judge Matthew Kacsmaryk was hand-selected by anti-abortion groups that filed a lawsuit with the goal of getting a ruling that orders the FDA to withdraw its approval of a safe medication that has been used for decades.

Any fair judge would reject the attempt to use the court for their political purposes and would throw the case out. In fact, in the hearing the lawyers who brought this lawsuit were forced to admit that there was no case in the history of the U.S. where a judge had ordered a drug off the market. But it seems, unfortunately, that Judge Kacsmaryk wants to validate the claims raised by extremist anti-abortion groups.

"So let's be clear about this: There is absolutely no legal or scientific basis for this lawsuit. Period."

Mifepristone is incredibly safe and effective, with a 99% safety record, used by millions for miscarriage and abortion care, and supported by decades of research.

Banning the use of mifepristone would disproportionately impact young people, people with lower incomes, and people of color, and exacerbate the growing maternal mortality crisis that has fallen hardest on Black women. And it would compound the public health crisis created when *Roe* was overturned.

"There is no good justification for removing this medication from the market. This is just an attempt by anti-abortion extremists to use their hand-picked judge to prevent doctors from prescribing an extremely safe medication that has been used for decades. This appears to be the next step after the Supreme Court overturned federal abortion rights in a larger plan to ban abortions nationwide."

"Keeping mifepristone accessible allows us to receive care on our own terms." We must continue to fight back against anti-abortion operatives in statehouses, in the courts, and even on Capitol Hill and at the White House to ensure all reproductive rights are protected.

<u>The Scurrilously Shrewd Practice of "Judge Shopping"</u>

The practice of "judge shopping" is anathema to a fair and impartial justice system. The "most egregious example" of this practice is the case against FDA approval of the abortion pill that was filed in Amarillo, Texas, where all cases are handled by an extreme right-wing anti-abortion judge appointed by Donald Trump.

In Texas, a quirk of the rules lets people choose where they bring a federal lawsuit and essentially handpick the judge who will hear their case -- judge shopping to boost the chances of a favorable ruling. When a plaintiff files a federal suit in Amarillo, they are 100 percent guaranteed to get Kacsmaryk, a judge with a reputation as a Federalist Society militant. His sister recently told reporters it was his mission to end abortion in the United States. He has called homosexuality "disordered." He made the government reinstate the Trump-era "Remain in Mexico" policy, which was later overturned by the Supreme Court. Such a track record would make him the ideal judge for anti-abortion groups seeking someone sympathetic to their case.

Worse, Kacsmaryk may be readying his abortion pill ruling based on the brand-new "major questions doctrine," which is all of nine months old. First articulated in a case last year that slashed the Environmental Protection Agency's regulatory power, the doctrine claims federal agencies need clear congressional authorization to act on issues that have "major" economic or political significance. This conveniently flexible legal theory is poised to be the go-to reasoning for right-wing judges to block any policies they don't like.

Judge Matthew Kacsmaryk ruled in Amarillo on an outlandish demand to ban the use of the abortion pill mifepristone — medication used for more than half of all abortions in the United States. This ruling revoked the decades-old FDA approval for the pill, and would affect not just women in Texas, but women in every state.

How can a single federal judge have such power over the medical decisions of more than 167 million people (females in the U.S.)? "We cannot let one judge with a gavel and a grudge govern our country."

"Believe it or not, the Supreme Court has never ruled on whether nationwide injunctions are constitutional. Liberals used this tactic on occasion to block the Trump administration's policies, such as the single judge who blocked the "Muslim ban" in 2017. But conservatives have undeniably perfected it.

"The Texas case isn't the only evidence of the impact of skewed lower courts. The Supreme Court's sweeping decision in *New York State Rifle and Pistol Association v. Bruen*, which held that gun laws must pass the test of 'history and tradition' rather than public safety, has led to judicial rulings that verge on satirical. One federal judge in western New York blocked most of the state's new gun law, declaring he could find no colonial-era law banning guns in summer camps, which, of course, did not exist at the time. And surprise, surprise, he found no trace of 18th-century prohibitions on guns in subways, either. Though he let the ban on guns in churches stand, another New York judge ruled shortly afterward that this restriction, too, was ahistorical."

"Just last month, the U.S. Court of Appeals for the Fifth Circuit issued a truly outrageous ruling that upheld domestic abusers' right to keep their guns. The court cited a lack of examples of early American laws against domestic violence. Voila, no protections in 2023."

"Other examples abound, and there will no doubt be many more to come. Trump isn't only responsible for appointing three Supreme Court justices -- he appointed 226 federal judges during his presidency. They were overwhelmingly pre-vetted by the Federalist Society."

"These appointments have left a lasting impact, and there is an urgent need to rebalance the scales of the federal judiciary. Last week, the Judicial Conference of the United States, led by Chief Justice John Roberts, recommended adding 68 federal judges to the courts to meet demanding new workloads. This would be a good step toward countering the partisanship plaguing the courts. But most importantly, we need to understand the significance of what has happened with the federal courts."

<u>The Rogue Fifth Circuit</u>

The following insights are contained in an article originally published online on June 27, 2022. It appeared in the September 2022 issue of Texas Monthly with the headline "Politicians in Black Robes."

When Donald Trump, a former Democrat who favored abortion rights, was running for president, he knew he needed to shore up his bona fides with evangelical voters. In March 2016, he met with Leonard Leo, the cochairman of the Federalist Society, a powerful right-wing legal group.

The society was formed on the campus of Yale University during a three-day seminar in 1982. Some two hundred were in attendance, among them heavyweights including future Supreme Court justice Antonin Scalia and federal judge Robert Bork, who would be famously rejected as a Supreme Court nominee five years later. Central to the society's mission is an "originalist" view of the Constitution, the idea that the words of the document should be interpreted according to the initial intention in 1787. This belief runs counter to the more mainstream and widespread notion of a "living" Constitution, which takes into account the context of current realities that the country's founders could not have anticipated.

The Federalist Society has become much more influential in recent years. Many legal giants on the right have been members of or are closely associated with the group, including current Supreme Court justices John Roberts, Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. Some on the left -- especially those upset by the Federalist Society's growing power -- have suggested that it is part of a right-wing conspiracy to take over the judiciary. Dallas appellate lawyer David Coale, who writes a popular blog about the Fifth, says it's not that dramatic. "They have a very well-developed, philosophical view of how the law ought to work," he told me, "and an outsized voice in conservative circles when it's time to assess people for the judiciary."

After his 2016 meeting with Leonard Leo, Trump went public with a short list from which he would choose his federal judges. "All picked by the Federalist Society," he boasted in June 2016.

It wasn't always done this way. In 1977 President Carter, in a desire to diversify the mostly white male federal judiciary, established a nominating commission to help him select judges. During his term, the number of judges of color nearly doubled and the number of women quintupled. Carter's successors continued to nominate from a wider

pool of candidates than in the past. Nominees might be recommended by staff or senators, including members of the opposing party. "The candidates were those in the mainstream of judicial thought," former federal judge Nancy Gertner said in 2020, "even if on the right or left side of that stream."

In its singular reliance on the Federalist Society, the Trump nomination process was unprecedented. "I'm not saying the Trump appointees are unqualified," a former federal judge from Texas told me. "But so many of them didn't go through the process as it was intended. It was short-circuited. The Federalist Society became a litmus test. I don't think that process is right or appropriate, to just have one organization having veto power over the process."

Trump wound up appointing 226 federal judges, including an astonishing 54 to the appellate courts -- only 1 fewer than Obama, who had two terms in office. And Trump kept his promise: more than 90 percent of his nominees had ties to the Federalist Society. "They're the chosen ones."

The United States Court of Appeals for the Fifth Circuit handles cases that originate in Louisiana, Mississippi and Texas. It is housed just across the street from historic Lafayette Square, in downtown New Orleans. "It is one of the most majestic courthouses in the country. Erected in the years leading up to World War I, it was designed in the Italian Renaissance Revival style and subsumes an entire city block. Its Ionic colonnades recall the Supreme Court building in Washington, D.C. Step inside the lobby known as the Great Hall, and it feels as if you're walking into a cathedral with marble columns, arched windows, and towering ceilings decorated with bas-relief figures."

Among 26 judges who sit on the Fifth Circuit Court of Appeals are Trump appointees Stuart Kyle Duncan, James Ho, Andrew Oldham, and Don Willett -- who had all been relatively young (between 39 and 51) when nominated. Though they were born in very different places -- Louisiana, Taiwan, Virginia and Texas, respectively -- they were all in the Federalist Society and clerked for mostly conservative federal judges. They all learned their trade in Republican politics -- three of them as close advisers to top lawmakers.

"Justice Willett has earned consensus support from every corner of the conservative movement: pro-life, pro-faith, pro-family, pro-liberty, pro-gun rights, pro-law enforcement, pro-private property, and pro-limited government," wrote the Young Conservatives of Texas when he ran for reelection in 2011.

On the campaign trail, Willett said he still had work to do, reportedly proclaiming, "I intend to build such a fiercely conservative record on the court that I will be unconfirmable for any future federal judicial post -- and proudly so."

What happened after Trump had installed these ultra-conservatives on the bench was, in hindsight, predictable. "Look at the places these guys came from," said Martin Siegel, the director of the Appellate Civil Rights Clinic at the University of Houston Law Center. "They were warriors in all these pitched legal battles that were also political and cultural battles. What everyone wanted to know was, were they going to pull their punches once they put on the black robes?"

Ted Cruz, writing for the *National Review* in 2005, described an activist judge as someone who "will substitute his own personal policy views for the clear dictates of the law." By this definition, the Fifth has arguably become the most activist court in the country. The agenda of many judges on the court is simple, says one Republican former state appellate judge: "Advance Federalist Society doctrine and oppose liberal social innovations and policies."

In 2019 the Fifth attempted something that Republicans in Congress had failed to do several times: scuttle Obamacare. The constitutionality of the Affordable Care Act had already been upheld by the Supreme Court seven years earlier, but in *Texas* v. *United States*, the Fifth ruled that the individual mandate was unconstitutional. This was too much even for the conservative Supreme Court, which overruled the Fifth Circuit decision.

The Fifth was at constant war with Biden-era COVID-19 vaccine mandates, ruling against them four times, including rushing to throw out one instituted by the Occupational Safety and Health Administration in 2021, even though the court had no authority to do so.. This led the *New York Times* to dub the Fifth "a rogue court."

"It seems clear that some of the new judges feel very strongly about religious freedom," Furgeson, a former judge, told me. "The problem is that none of our constitutional freedoms are absolute. They all have limits, and there's

been a pretty strong consensus in our judicial ranks that forcing any freedom to its outer limit is not a good idea in a nation as diverse as ours. We have to all find a way to live with each other, and establishing absolute constitutional rules can make that hard to do. How do we live together as a society if we decide religion trumps everything?"

"The judiciary, of course, has always been more political than it likes to admit. The Fifth was once a steadfastly liberal court, derided all across the South, especially for its rulings on civil rights. When the Supreme Court released its monumental *Brown* v. *Board of Education* decisions in 1954 and 1955, making racial segregation in public schools unconstitutional, Southern states at first refused to follow the law. That's when the Fifth stepped in."

"Judge John Minor Wisdom, for whom the Fifth Circuit building is now named, and three other judges led the way in issuing a series of decisions upholding the power of the federal government to not just forbid discrimination but actively require integration. Conservatives and fellow Southerners were horrified; another judge on the Fifth thought the Minor faction's opinions were so apocalyptic he nicknamed them 'the four.' Others held them in higher esteem. 'Without the Fifth Circuit,' a civil rights lawyer told *Time* in 1964, 'we would be on the verge of actual warfare in the South.'"

"Traditionally, even when judges issue controversial opinions, they hew to an ideal of impartiality, upholding their images as independent stewards of the law. 'Predictability, precedent, stare decisis,' Furgeson explained. 'Those things are very, very, very important. Avoid the extremes, find the middle. Justice John Roberts says he just calls balls and strikes. What he really means is, when you have a case before you, decide it on the facts and the law -- don't go beyond that.'"

"This is not the philosophy of the four men with Texas roots serving on the Fifth today. Ho is perhaps the most zealous of the bunch. In his first opinion as a judge on the Fifth, regarding a case about campaign finance laws, he sounded a lot like the Texas politicians he once worked for. 'If you don't like big money in politics,' he wrote, 'then you should oppose big government in our lives.' In 2018 he penned an opinion that discussed 'the moral tragedy of abortion.' In another decision, he suggested it was folly to 'blindly follow the scientists' because they are 'susceptible to peer pressure, careerism, ambition, and fear of cancel culture.'"

"The other three judges are similarly fervent. In 2018 Willett wrote in a dissenting opinion that the entire Federal Housing Finance Agency is unconstitutionally structured, gleefully declaring, 'The FHFA's professed power is something special -- so spacious it's specious.'"

"Oldham, meanwhile, has become a leader in the effort to dismantle federal power. Last year, he authored a forty-page concurrence in the case about the SEC administrative law judges, laying out much of the history of the American regulatory system and painting it in authoritarian tones. It all began, Oldham wrote, in the study of German historicism by Woodrow Wilson, who 'despised democracy' and 'wanted administrative agencies to operate in a separate, anti-constitutional, and anti-democratic space.' Such politically charged history lessons are almost unheard of in appellate opinions."

"For his part, Duncan, who'd spent years combating the expansion of gay and transgender rights while working in D.C., issued a 2020 opinion that echoed his work as an advocate. The case involved a trans inmate's asking to be referred to in court proceedings with feminine pronouns. 'I am a woman,' she wrote. 'Can I not be referred to as one?' Duncan led the charge to deny her request, devoting several pages to hypothetical problems this could create. In his dissent, Judge James Dennis noted that it was actually a simple request and that 'many courts and judges adhere to such requests out of respect for the litigant's dignity.' In fact, the Fifth had done so in the past. 'Ultimately,' Dennis concluded, 'the majority creates a controversy where there is none.'"

"It wasn't the first time. According to numerous lawyers and judges I spoke to, these lengthy, combative opinions have weakened the tradition of congeniality on the court. 'I read every published decision by the Fifth for guidance on how we should handle cases and disputes,' an appellate attorney told me, 'and it is astonishing to me how contentious this court has gotten. Appellate courts are there to review the decisions of lower courts. That's their job, and they should do it constructively. Snark and disregard for other judges isn't helpful. Now, particularly with Ho, you've got this attitude. There's a sense of reigning with impunity.'"

This turn toward judicial activism comes at a time when the public's confidence in the Supreme Court is at its lowest since Gallup started polling on the issue in the seventies. Given that most Americans are in favor of some form of abortion access, the court's approval rating will likely slip further after *Dobbs*. Sotomayor put the issue memorably during oral arguments for *Dobbs* in December, when it became clear the court would soon overturn *Roe*: "Will this institution survive the stench that this creates in the public perception that the Constitution and its reading are just political acts?"

"Many are asking the same question about the Fifth. 'Courts shouldn't just be impartial and separate from politics,' an appellate lawyer told me. 'They should be seen as being impartial and separate from politics. That's the essential problem with the Fifth Circuit. When people think, 'They're just Republicans and doing the Republicans' bidding,' that's when you chip away at the legitimacy of the appellate courts."

Furgeson, who has spent nearly six decades studying the law, agrees. "You can't upend everything overnight and think you'll have the respect you need for the courts and the law. That really, really worries me," he said. "At our best, judges achieve justice by being aware of how the law has developed and of how balance has been struck between the liberty of the individual and the demands of organized society. It's not easy to do, but judges have done it, more often than not."

"At least, they used to. These days, that's just one more precedent the activist judges on the Fifth Circuit seem eager to reject.".

<u>Implications of Ruling about Student Debt</u>

Robert Reich wrote about what the Supreme Court's rejection of student loan relief means for borrowers.

Derrick Johnson, the NAACP's president and CEO, says, "I see it as an unfortunate reality that in a country where we bail out Fortune 100 companies, where we bail out banks that have not been good actors, that this Supreme Court would allow that to happen, and yet the court would choose to leave millions of borrowers stuck in a vicious cycle of debt." Johnson had sent a letter to Biden in the lead-up to the court's decision advising him, in the case of an unfavorable ruling, to "pursue all legal pathways" to erase student loan debts.

"The Supreme Court's decision to strike down the President's student debt program is a clear disregard for what millions of Americans need -- especially Black Americans," said Johnson.

Predictably, given the tendency for politicians to side with the well-to-do over all others, there are loud criticisms of proposed programs that would cancel up to $20,000 in student loan debt for tens of millions of people, and mainly benefit people with modest incomes. Yet a contrasting program that benefits rich people is rarely discussed. Known as 529 college savings plans, these "Dynasty 529 plans" allow wealthy people to create tax-privileged accounts that give their children and heirs in future generations huge benefits for costly educations.

<u>Roe v. Wade</u>

Dan Rather on June 24, 2022:

A year.
A year of harm, tragedy, and anger.
A year of a grim reality overtaking large swaths of the country.
A year when millions of American women have lost the fundamental right to control their own reproduction and access critical health care.
A year of political opportunism.
And a year of political backlash.
A year of judicial overreach.
And a year of diminished judicial credibility.

"The Supreme Court's *Dobbs* decision to overturn *Roe v. Wade*, announced a year ago today, convulsed the nation in ways that were entirely predictable, and yet also surprising. You can't just revoke a right that has been taken for granted for about 50 years and not expect a response. And in the wake of *Dobbs*, public opinion seems to be shifting increasingly in favor of protecting this right, even as states are rushing to rescind it."

The New York Times published an article titled *How a Year Without Roe Shifted American Views on Abortion.* It noted: "For the first time, a majority of Americans say abortion is 'morally acceptable.' A majority now believes abortion laws are too strict. They are significantly more likely to identify, in the language of polls, as 'pro-choice' over 'pro-life', for the first time in two decades."

And more voters than ever say they will vote only for a candidate who shares their views on abortion, with a twist: While Republicans and those identifying as "pro-life" have historically been most likely to see abortion as a litmus test, now they are less motivated by it, while Democrats and those identifying as "pro-choice" are far more so.

It seems likely that Democrats' overperformance in the 2022 midterm elections was in large part spurred by outcry over *Dobbs*. And pollsters, party leaders, and activists mobilizing on the ground all see evidence that this energy has not diminished as we head into the presidential campaign of 2024. The *Times* article is full of examples of Republican voters changing whom they support because of the abortion issue.

"Yet Republican-controlled state legislatures can't help themselves. Most are owned and operated by the extreme right wing of the party. And among these groups a total nationwide abortion ban, with no exceptions, is the only satisfactory outcome. So even as public opinion shifts to more nuanced and accepting positions, certain states are running an arms race over who can outlaw abortion most completely."

"When abortion was legal, even with some restrictions, the worst and most heart-wrenching possibilities for tragic results were mostly theoretical. No longer. National and local news have been filled with devastating stories. The *Times* lists a few: "Women denied abortions despite carrying fetuses with no skull; a 10-year-old pregnant by rape forced to cross state lines for an abortion; women carrying nonviable pregnancies who could not have an abortion until they were on the brink of death." These stories will likely continue, along with those of doctors leaving states with extreme laws, patients denied treatments for other medical conditions like cancer, and potential prosecutions for miscarriages."

"For decades, Republicans ran against abortion rights with a fevered campaign pitch to outlaw the practice completely. They appealed to their religious base using absolutist rhetoric. And they reaped the benefits at the ballot box. But because abortion was still legal, any harm of overturning *Roe* was mostly hypothetical. Politicians didn't have to answer for the kinds of real-world stories listed above. Now all that has changed."

"Ultimately, the greatest harm caused by *Dobbs* will be endured by those who need abortions and can't get them. It's a pain that will radiate outward, engulfing loved ones, families, and communities. But the significance of *Dobbs* also should be considered in our broader political, legal, and social environment."

"The anger that the ruling has engendered is intertwined with a narrative of anti-democratic dysfunction, unrestrained judicial activism, and brazen bad faith. It is the story of Republicans ramming justices onto the Supreme Court. It is the imposition of one group's sense of religion-motivated morality onto the rest of the public. It is misogyny. It is a disregard for the most marginalized. It is a haughty imperviousness to the will of the people."

"In the eyes of millions of voters, the *Dobbs* decision is both a tragedy and an insult. It has unleashed great pain and suffering. And it also calls into question the health of American democracy. This is a country whose population supports legal access to abortion. And yet millions now find it illegal. This is not a stable status quo. And the reverberations may be felt at the ballot box for years or even decades to come, in ways that reshape our country."

Sweeping restrictions and even outright abortion bans adopted by states since the landmark *Dobbs* ruling have had an overwhelmingly negative effect on maternal health care, according to a survey of OBGYNs that provides one of the clearest views yet of how the Supreme Court decision has affected women's health care in the United States, according to Kim Bellware and Emily Guskin.

"The Supreme Court is supposed to be a bastion of consistency in American governance, but these days it's about as stable as a skittish colt on a slippery slope. And nowhere is that volatility more apparent than in the fallout from the overturning of *Roe v. Wade*. This decision represented an abandonment of a half-century of precedence and the will of the majority of Americans. It has created hardship for women across the country, especially those who are poor or from marginalized groups."

"At the time of the ruling, some conservatives argued that it would lead to less contentiousness around the issue by giving more control to individual states through federalism; in reality, it has had the exact opposite effect."

"The court helped further exacerbate America's partisan divide, roiling politics at the state and national levels. And in truth, anti-abortion forces always saw the entire notion of a federal patchwork of different laws as a temporary way station. They want a complete national ban and are determined to find means to get there."

"The latest example came courtesy of a federal judge in Texas who issued a nationwide ban of the long-legal and safe abortion pill mifepristone. He infused his decision with the incendiary rhetoric of the anti-abortion movement, lest anyone had any confusion on whether he was guided by the law or his own personal beliefs."

A federal appeals court upheld much of the ban, with some modifications. And then the Department of Justice announced it will take the matter back to the Supreme Court. Meanwhile, a federal judge in the state of Washington announced that even after the appellate court's ruling, his earlier ruling that the abortion pills should remain legal still stands.

"This is what a brewing constitutional crisis looks like. The pill cannot be both illegal and legal at the same time. The Supreme Court will have no choice but to step in to try to help clean up the chaos they unleashed. Good luck."

"The basis of this new ban on the abortion pill centers on unhinged theories about how the FDA can approve drugs for use. If left to stand, it would likely throw the entire process for regulating medicines into turmoil. That's why executives from more than 300 biotech and pharmaceutical companies decried the ruling."

"Did the Supreme Court consider these possibilities?" Or care about them?

"Meanwhile, some Republican politicians seem to be recognizing they have painted themselves into quite the corner on abortion. The true believers in the party push for more extreme positions. But much of the electorate, especially in swing states, thinks differently. The big victory by a progressive running for the Wisconsin Supreme Court, largely on the issue of abortion rights, has GOP leaders spooked. But they have no control over the base."

It will be interesting to see how strict abortion restrictions passed in Florida will affect Governor Ron DeSantis' bid for the presidency. He signed the law, which might help in the primary, but one wonders about the general election.

"But while we are talking about the mess at the Supreme Court, we would be remiss if we didn't mention the developing scandal with Justice Clarence Thomas. Last week, we posted on ProPublica's excellent investigative reporting into Thomas' cozy relationship with Republican megadonor Harlan Crow. This included the billionaire's providing the justice trips on yachts and stays at resort properties worth hundreds of thousands of dollars. Thomas didn't report any of these as gifts. (We also later learned that Crow collects Nazi memorabilia.)"

Thanks again to ProPublica, we also find out that Thomas failed to report a real estate deal with Crow in which the billionaire bought the home of Thomas' mother at what might be an above market rate, and that he also bought several other properties on the street.

"Thomas' defenders are not arguing the facts. They just say this is another attack by his political opponents. That doesn't cut it. The facts speak for themselves, and at a minimum they require answers far more detailed than we have gotten thus far."

"The plan of Republican senate leader Mitch McConnell was always that if Republicans couldn't enact their objectives through the legislative process, they would use a stacked judiciary. It was supposed to be seamless and subtle."

"It's been ruthlessly effective, but it creates a mess. Is anyone surprised?"

<u>Alabama Shenanigans</u>

In an auspicious surprise 5-4 ruling on June 8, 2023, the Supreme Court, in the redistricting lawsuit *Allen v. Milligan*, upheld a lower court decision striking down Alabama's discriminatory congressional map as a likely violation of the Voting Rights Act, due to the state's failure to provide Black Alabamians an equal opportunity to participate

in the political process.

"This is a victory for all Americans, and it is an important step toward equal voting power and representation for voters of color across the country. It is also a testament to the tenacity of the voters of Alabama, who knew their rights were violated as a result of a map drawn in an unconstitutional and discriminatory manner, and took this fight as far as they could to not only ensure their rights, but the rights of Americans across the country."

As a result of this decision, the case moves forward, returning to the trial court for implementation of a fairer congressional map that all Alabamians want and deserve. The lower court ordered a second Black opportunity district be drawn in Alabama precisely because Black Alabamians have been too long denied the opportunity to elect a candidate of their choice in all but one of the seven congressional districts.

"All of the protections enshrined in the Voting Rights Act of 1965 are still needed today. Although we have made significant progress since the Civil Rights Movement, we still live in a nation where the safeguards found in the Voting Rights Act for minority communities remain necessary and must remain robust."

Experts had been very concerned that the Supreme Court would give the green light to this blatant Alabama gerrymander, paving the way for a similar cascade of racial gerrymandering through the use of congressional or state legislative maps where minority voters have less political power relative to their numbers. In other words, Republican-led states would have been free to gerrymander with impunity -- even if it dilutes the voting power of communities of color.

As Heather Cox Richardson explained some time ago: "Justice Ketanji Brown Jackson brought an important new philosophy to the law when the Supreme Court heard arguments over an Alabama voting rights case. This case concerns Section 2 of the Voting Rights Act, which, as summarized by the Department of Justice, 'prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in one of the language minority groups identified' in the act."

In 2021, Alabama's legislature cut the state into seven districts that "crack and pack" Black voters. About 27% of the residents of Alabama are Black, but they are either "packed" into one district or "cracked" among the others, diluting their overall strength.

Registered voters, the Alabama chapter of the NAACP, and the multifaith Greater Birmingham Ministries sued under the Voting Rights Act. A district court of three judges agreed that the redistricting violated the law and gave the legislature two weeks to redraw the map to create two Black-majority districts.

The state immediately filed an emergency appeal with the Supreme Court, which was granted, wrongly allowing the states to use the original map for the 2022 elections. (In those midterm elections, voters in three other states -- Georgia, Louisiana and Ohio -- also cast their votes using unconstitutional maps where politicians chose their voters instead of the other way around.)

"In arguments before the court, Alabama Solicitor General Edmund G. LaCour Jr. claimed that states must draw districts that are 'race neutral'. When Justice Jackson pressed him to explain, he turned to the Fourteenth Amendment, saying it 'is a prohibition, not an obligation, to engage in race discrimination.'"

"Jackson then turned on its head the so-called 'originalism' that has taken over the court. 'I understood that we looked at the history and traditions of the Constitution and what the framers and founders thought about,' she said, 'and when I drilled down to that level of analysis, it became clear to me that the framers themselves adopted the equal protection clause, the 14th Amendment, the 15th Amendment in a race-conscious way.'"

"She's right, of course, and while she followed up with more Reconstruction history, she could have gone even farther: when President Andrew Johnson vetoed the 1866 civil rights bill on the explicit grounds that it was not race neutral (among other things), Congress repassed it over his veto and based the Fourteenth Amendment on it."

"Jackson's approach was about more than this case, important though it is. She brought to the court what has been called 'progressive originalism' or, perhaps more accurately, legal analyst Mark Joseph Stern's term 'egalitarian constitutionalism.' The Reconstruction Amendments -- the 13th, 14th, and 15th -- give to the federal

government the power to protect individual rights in the states, and originalists' avoidance of them has always stood out. Those amendments launched an entirely new era in our history; scholars call it a 'second founding.'"

"Now, it appears, that second founding has an advocate on the Supreme Court." Historian Heather Cox Richardson elaborated on June 8: "This morning the Supreme Court handed down a decision in *Allen v. Milligan*, a case that challenged the Alabama legislature's redistricting of the state after the 2020 census on the grounds that the new districts had been configured to pack the state's growing numbers of Black voters into a single district and thus dilute their vote. Such discrimination based on race, plaintiffs charged, violated the 1965 Voting Rights Act."

"District courts agreed with the plaintiffs and told the state it couldn't use the new map, but in February 2022 the Supreme Court issued a stay of the injunction prohibiting that map. The Supreme Court ruling left the Alabama map intact for the 2022 elections. Legal scholar Stephen Vladeck noted that the decision was part of the court's recent use of the 'shadow docket' -- unsigned, unexplained orders issued without a hearing."

The 5–4 Supreme Court decision upholding the verdicts of the lower courts agreed that the new Alabama map was, after all, illegal, because it violates Section 2 of the VRA, which prohibits the denial of the right to vote on account of race. This leaves intact the ability of plaintiffs to sue when states appear to discriminate against minority voters. Similar lawsuits are pending in ten different states. After news of the Supreme Court decision, the Cook Political Report, which follows elections, immediately changed their ratings for the leanings of five House districts.

But, as Vladeck notes, the Supreme Court's February 2022 decision leaving the discriminatory map in Alabama, as well as similar maps in other states, in place for the November election, is likely responsible for the Republicans' current majority in the House of Representatives.

<u>UMveeguh in Action</u>

One way that federal court judges can twist the law to rationalize outcomes they personally prefer is by inflexibly using contorted reasoning in their decisions. Conservatives in recent years have made increasingly frequent use of the ideological judicial strategy of "strict constructionism."

This approach interprets the Constitution very narrowly, relying primarily on the text's explicit language and trying to divine the intentions of its framers at the time it was written.

A strict constructionist approach pushes for a limited scope of governmental power and limits the Constitution's flexibility in adapting to societal changes and new circumstances. Strict constructionism is used by "conservative" or originalist judges and legal scholars to advance their politically partisan agenda.

Justices who advocate for a more flexible interpretation believe that a strict approach often does not adequately address modern complexities or account for evolving societal norms, leading to limitations in the Constitution's relevance, fairness and effectiveness.

Strictly adhering to the 'original intent' often does not align with the fundamental principles of justice and equality in contemporary society.

<u>Skewed Arguments Made in Consideration of "Originalism"</u>

Lawrence Lessig wrote on Oct. 13, 2022 in *How Merrick Garland Can Put the Supreme Court's Originalists on Notice;*

"At the end of Ronald Reagan's first term, the Justice Department began to study 'originalism' as a method of constitutional interpretation. Attorney General Ed Meese made the move famous in 1985, giving a speech endorsing originalism as the method the administration would push in cases taken up by the Department of Justice. That push was already well underway in the department's Office of Legal Policy before Meese's speech. Shepherded by Assistant Attorney General Stephen Markman, as well as elites within the Reagan administration, including Pat Buchanan and future Chief Justice John Roberts, the DOJ tagged originalism as the preferred interpretive tool within the administration and for guiding its appointments. Almost 40 years later, their work is now the dominant method for interpreting the Constitution at the Supreme Court."

"From the very start, conservatives framed originalism as principle, not politics. Though they plainly knew that the consequence of their methodology would favor many of their own political preferences, they understood that would not always be true. Justice Antonin Scalia, at least early in his career, famously followed originalism to non-conservative ends. So too has Justice Neil Gorsuch. The question for these justices is not what benefits the party, but what follows from the principle. *Roe v. Wade*, which the court overturned in this year's *Dobbs* decision, was obviously wrong under originalism, at least as it is now understood. *Dobbs* followed originalism to its logical place."

"But if *Dobbs* is correct from an originalist position, a wide range of Supreme Court doctrine is not. Critical modern interpretations of the Reconstruction Amendments -- the 13th, 14th, and 15th Amendments -- are wrong from an originalist perspective. The modern 'state action' doctrine is just made up, as are the limits on Congress's power under Section 5 of the 14th Amendment to pass laws to enforce the amendment, and limits on its power to define the 'privileges or immunities' Americans enjoy under Section 1 of the amendment. Likewise, as Justice Ketanji Brown Jackson evinced in her fierce questioning during oral arguments in the court's most recent affirmative action case, so too are assumptions about race-conscious remedies wholly wrong. These doctrines yield enormous injustice within our society. Yet none of them were crafted by the framers of our Constitution; all of them are the product of activist judges."

"And that's true not just with the Reconstruction Amendments. The court's radical campaign finance doctrine has no basis in the original meaning of the First or Fourteenth Amendments. Likewise with its activist policing of congressional delegation powers, which last term gutted climate change regulations: These are conclusions not of the drafters of our Constitution's text or amendments. They are the unreviewable decisions of judges. Yet cabining the political discretion of judges was said to be the most important original motivation for originalism -- a motivation many in the modern originalist movement seem to have forgotten."

"Lawyers and academics might well question whether originalism makes sense as a doctrine of constitutional law. But given its dominance on the Supreme Court for the next generation at least, it is simple malpractice not to take it seriously. And in particular, it is strategically obtuse for liberals to ignore the potential of the doctrine to address critical injustice within our society. The modern doctrine that has crippled the Reconstruction Amendments is a lie -- from an originalist perspective. So if *Dobbs* is law thanks to originalism, why should we continue to accept that lie?"

"We should not. Instead, Attorney General Merrick Garland should follow Meese's path and establish within the Justice Department a working group that develops a comprehensive public account of whether originalism, applied apolitically and consistently, would alter current Supreme Court jurisprudence. That analysis should become a regular report of the department, to Congress and the public. And it should become a staple in the briefing of the solicitor general to the Supreme Court."

"Not because anyone need necessarily endorse the method, as an original matter, so to speak. But instead because, if the method is our law, then it should be applied neutrally. Originalism should not magically appear when it supports conservative results, and then hide when it would support liberal results. If the doctrine is our law, it should be our law regardless of politics."

"And if it is not -- if the court continues to apply the doctrine as it has, benefiting conservative positions but invisible when it might support non-conservative results -- then we need a clear way to track this partisan truth and to use it to hold this court to account."

"America desperately needs to believe that the Supreme Court is not just nine politicians in black robes. The court could show us if they are not. The Justice Department should show us if otherwise."

<u>"Originalism" and Alito's Fake History</u>

Writing for the majority in the *Dobbs* case, Justice Samuel Alito purported to apply "originalism" -- interpreting the Constitution and the 14th Amendment based solely on their original intent when adopted in 1788 and 1868, respectively. It's a relatively new approach.

As the dissenters in Dobbs emphasized, never in its history has the U.S. Supreme Court rescinded an individual

right in its entirety and conferred it on the states -- until now.

For almost 200 years, the Supreme Court viewed the Constitution as a "living document." Whatever its framers might have thought -- and often those thoughts were contradictory and changing -- was of limited interpretational value in modern times. In the 1960s, originalism emerged as a reaction to the expansion of individual rights under Chief Justice Earl Warren, whom President Dwight Eisenhower -- a Republican -- had appointed in 1953.

With President Richard Nixon's appointment of Chief Justice William Rehnquist in 1971, originalism gained a powerful ally. Ignoring the ways that the world has changed, it has now become an excuse for judges to pretend that they're historians, searching for ancient tidbits to support their personal and political agendas.

"In the historic precedent-overturning *Dobbs* ruling, Justice Alito refers to history many times. He emphasizes that the Constitution makes no reference to abortion, and states that the due process clause protects only those rights not mentioned that are 'deeply rooted in our nation's history and tradition,' said Louise Melling, deputy legal director at the American Civil Liberties Union."

Slate.com explained the lack of abortion rights in the founding document by arguing that the Constitution, written by White men, "does not concern itself with the rights of women" at all. "The omission of abortion, then, says less about the issue itself than about who the Founding Fathers considered people," Slate concluded.

"Yet another attack gaining steam comes from criticism that the draft opinion cites the views of a 17th-century English legal expert who 'supported marital rape and had women executed.' That would be Matthew Hale, one of several legal minds from before the U.S. was a country that Justice Alito looked to for proof that abortion was a crime under English common law. He used those voices to counter the Roe court's insistence that abortion, at least in the earlier stages of pregnancy, was not seen as a crime in Colonial times."

In *Dobbs*, Alito began his historical discussion of whether women have a right to bodily autonomy by citing a treatise -- from the Middle Ages! He quoted Henry de Bracton's 13th century work stating that if a person has "struck a pregnant woman, or has given her poison, whereby he has caused abortion, if the foetus be already formed and animated, and particularly if it be animated, he commits homicide."

Alito cited Bracton six times, but he ignored the misogynist's statements that provide true historical context, such as, "Women differ from men in many respects, for their position is inferior to that of men", and "those born of prohibited intercourse … are fit for nothing."

"From there, Alito mustered cases and authorities from the 1600s and 1700s in concluding -- incorrectly -- that "no common-law case or authority … remotely suggests a positive right to procure an abortion at any stage of pregnancy" and, in the United States specifically, there was "an unbroken tradition of prohibiting abortion on pain of criminal punishment… from the earliest days of the common law until 1973."

But there was no such "unbroken tradition". As the three dissenters in *Dobbs* observed, even on his own originalist terms, Alito was "embarrassingly" wrong, ignoring crucial differences based on the stage of a woman's pregnancy. Ohio State University professor Treva Lindsey noted, "From the nation's founding through the early 1800s, pre-quickening abortions -- that is, abortions before a pregnant person feels fetal movement -- were fairly common and even advertised."

Even Bracton -- in the passage Alito excerpted -- confirmed the pre-quickening distinction ("…if the foetus be already formed and animated, and particularly if it be animated..."). Other historians have blasted Alito's rendition as "egregiously wrong" -- ironically a phrase that Alito used repeatedly to describe *Roe*.

Today, 93 percent of abortions occur during the first trimester of pregnancy -- that is, they're "pre-quickening."

Republican Justice Alito, in his ruling to overturn Roe, ignores the 9th and 10th Amendments, claiming that no right exists that is not specifically enumerated in the U.S. Constitution. "How is this even considered? Is it not a road to fascist tyranny?"

"Conservatives always go out of their way to ignore the 9th Amendment. They do recognize the 10th because the ability to regulate abortion goes back to the states. The Framers wrote everything in order of importance and the

Ninth, obviously comes before the 10th. This is because the rights of the people are ***always*** supposed to come before the powers of the state. If the 2nd Amendment requires gun laws to pass strict scrutiny, abortion should have to as well. Applying the lowest test to it is absolutely bullshit. Saying that it isn't gender discrimination to take away the right to an abortion is also bullshit because only women can get pregnant. That makes it absolutely sex or gender discrimination (sex is more appropriate, but Alito is a right winger and therefore a moron)."

"I sincerely hope that pro-choice Republican women (yes they exist, most of the women in my family are), especially the ones who live in the suburbs, stand up and vote for Democrats! It's time the men in the party were retired the hard way. Flip those seats so that your rights are protected because your right to buy and use birth control will most certainly be next. Vote for Democrats for state legislature and Governor to stop bills where personhood is defined in such an extreme way that a woman can be charged with murder for surviving an ectopic pregnancy or outlaw IVF. Only Democrats will protect the rights of everyone and no, they're not going to take your guns. I left the party 30 years ago when they tried to do this the last time. Come on in, the water is fine."

Stephen Harper wrote in *Alito's Bad History Meets the Vendetta of Clarence Thomas,* "If democracy dies, it will take a long and mighty struggle to get it back. In the interim, the personal damage to millions of Americans will be irreparable."

"Originalism" and a Descent into Darkness

Beyond Alito's bad history, he laid bare another of originalism's flaws when it comes to protecting individual rights and liberties. As the dissenters in *Dobbs* emphasized, never in its history has the U.S. Supreme Court rescinded an individual right in its entirety and conferred it on the states -- until now.

Falsely characterizing the actual history of a uniquely woman's right, Alito denied it federal protection. That is where his invocation of the Middle Ages was so revealing.

At any given moment in history, not all individuals in a society have enjoyed the same rights. Searching the Dark Ages for a woman's personal right to liberty, property or bodily autonomy is futile. Using language from cases, statutes and related treatises in 1250, 1634, 1789 and 1868 to find the rights of those who were excluded from the process of writing the rules is not merely a fool's errand. It's an absurd task.

But Alito used the absence of a right in ancient times to let the states decide whether it exists at all today. Similar invocations of "states' rights" have accompanied the darkest chapters of American history. It's the banner under which white men who feared losing power have retained it by suppressing those who threatened them.

More than 150 years ago, an appeal to "states' rights" provided rhetorical cover for the South to ignore federal laws interfering with slavery. "States' rights" was also segregationist Alabama Gov. George Wallace's battle cry during his failed 1968 presidential run as an independent.

Today, it's the mantra that Republicans use to restrict the right to vote -- targeting those citizens who are least likely to vote for Republicans.

Personal liberty is antithetical to tyranny. The Supreme Court's conservative super-majority has joined the Republican party's push in an anti-democratic direction. Its rulings now go hand-in-hand with the GOP's continuing embrace of authoritarianism, autocracy, and attacks on fair-minded participatory democracy.

Thomas's Vendetta

Justice Thomas's concurring opinion in *Dobbs* took an even more extreme position that Alito's. As he has done repeatedly, Thomas urged the Court to take a close look at the panoply of "substantive due process" rights that have become embedded into 14th Amendment jurisprudence over the past 150 years. He specifically listed cases that established the right to privacy (including the right to obtain contraceptives), gay marriage, and consensual sexual behavior. Conspicuously absent from his list was interracial marriage, but fealty to his own stated interpretational principles might require him to include it too, even though he is in one.

Americans take all of those rights for granted, but make no mistake, they are in Thomas's sights. When the opportunity arises, he and his fellow conservative originalists will conclude that they cannot find those rights in the

Constitution or its amendments. And when they do, those rights will no longer enjoy federal protection.

Thomas has a special personal mission in all of this. A year after his bruising confirmation battle, newly-appointed Justice Thomas told two of his law clerks in 1992 that he intended to serve until 2034, which would give him a 43-year term. "Why 2034?" one of them asked.

"The liberals made my life miserable for 43 years, and I'm going to make their lives miserable for 43 years." He may have gotten the idea from his wife, Ginni, who now finds herself at the center of controversy relating to her involvement in the January 6 insurrection. In a 1991 interview with People magazine, she said, "Clarence will give everyone a fair day in court. But I feel he doesn't owe any of the groups who opposed him anything." Politics!!

The Power of the People

Steven J. Harper is an attorney and adjunct professor at Northwestern University Law School, who has been a regular columnist for Moyers on Democracy. He points out, "Dobbs continues the nation's descent into a period that future historians might well call America's Dark Ages. Stopping it requires those who have been sitting on the sidelines to realize that saving democracy is more important -- and more enduring -- than almost any of their current concerns. Inflation, crime, and gasoline costing more than $6.00 a gallon are real problems. But Republican autocracy won't solve any of them, and it will create many more."

"If democracy dies, it will take a long and mighty struggle to get it back. In the interim, the personal damage to millions of Americans will be irreparable."

On Originalism

Robert Spitzer in *Originalism, History, and Religiosity are the Faults of Alito's Reasoning in Dobbs:*

Constitutional originalism says that judges should interpret the Constitution based on the document's original intent or "fixed" meaning, filtering out contemporary values and preferences. As Justice Antonin Scalia said, judges should "begin with the text, and to give that text the meaning that it bore when it was adopted by the people." Constitutional interpretation by this view should avoid contemporary societal values or other similar considerations.

But originalism's problems are numerous. The Constitution was the product of many hands, and is often vague as to meaning. It often raises more questions than it answers; the framers themselves disagreed not only about the meaning of the document but about how strictly to adhere to its provisions. Some of the framers changed their minds about important matters (chief among those was James Madison). As one analysis noted, "scholars disagree on the original meaning of almost every important constitutional provision." Moreover, the document under which we have been governed could not have survived had it not it been adapted to modern society and conditions that could not have been anticipated in the eighteenth century.

The initial version of originalism, labeled "Originalism 1.0" by Jonathan Gienapp, soon gave way to a new version, what Gienapp dubbed "Originalism 2.0." This second version emerged because of the drubbing originalists took at the hands of historians who pointedly and effectively noted that originalists were, frankly, bad historians who seemed more interested in cloaking their ends-oriented jurisprudence in an ill-fitting historical guise than in getting the history right, as best as that could be determined. The term for this, "law office history", summarizes lawyers' often-ham-handed treatment of history.

Originalism 2.0 tried to dodge critics by shifting their paradigm to "public meaning", or "how the words of the document would have been understood by a competent speaker of the language when the Constitution was enacted." By their account, this meant that historical evidence was now irrelevant to their analysis. They simply needed to study word use in the particular legal context, which was framed as a fairly narrow methodological exercise, not "doing history." Except of course that it was and is. Moreover, this all assumes that "the words the framers used had settled meanings, "which they did not."

With all this, one need not be an originalist to agree that the past matters, not only for the sake of understanding how we arrived at the present, but because it can contribute important perspective to the understanding of contemporary problems and issues. Still, in the real world, we live in the present, not the past.

That aside, in the case of the *Dobbs* opinion, Justice Alito manages to get the history wrong. Alito says in the decision that "a right to abortion is not deeply rooted in the Nation's history and traditions" and that states operated under "an unbroken tradition of prohibiting abortion on pain of criminal punishment" from its earliest days up to the 1973 *Roe v. Wade* decision legalizing abortion. Yet that is simply untrue. Alito himself notes in the decision that pre-quickening abortions (those occurring before fetal movement can be detected, roughly at the mid-point of pregnancy) were not criminalized early in American history. He then claims that at the time of the adoption of the pivotal Fourteenth Amendment, added in 1868, 28 of 37 states had criminalized pre-quickening abortions. Yet as former Supreme Court clerk Aaron Tang points out, this is incorrect. In fact, at most 16 of the 37 states had criminalized pre-quickening abortions by this point. Prior to this time, from the colonial period through the early 1800s, pre-quickening abortions were not regulated, were fairly common, and abortion services were even publicly advertised. In the current era, over 95% of abortions occur before the sixteenth week of pregnancy. In short, historic practices mostly support contemporary abortion standards, not those proposed by Alito in *Dobbs*.

Finally, most supporters of abortion rights agree that the key decision is complicated, difficult, and has a moral dimension. But the idea that abortion at any stage is impermissibly immoral and wrong arises from religious beliefs. As Caroline Mala Corbin has written, "the view that an embryo or a fetus is a human being and that abortion is murder is ultimately a religious view." Yet there is no such thing as religious consensus on this subject. It is well known that the Catholic Church views all abortions as a mortal sin, though that doctrine dates only to 1869, with contemporary fundamentalist Christian sects similarly opposed. But among religions that make allowance for abortions under at least some or most circumstances are the Episcopal Church, Evangelical Lutherans, most Jewish sects (the Orthodox Jewish community is divided), the Presbyterians, Unitarian Universalists, the United Church of Christ, and the United Methodist Church. Non-believers widely support abortion rights. Moral considerations shape the law, but the U.S. is not a theocracy, and a policy decision as important as that pertaining to abortion cannot rest solely on the teachings of some religions in a nation governed by a secular government.

Justice Alito wrote in *Dobbs* that *Roe v. Wade* was "egregiously wrong from the start." But that conclusion more aptly applies to Alito's own ruling. And women suffer the sometimes severe consequences.

Christian nationalists already have religious freedom, but they are now demanding control over others. What we now need is freedom from religion, because the Supreme Court is allowing the right wing and Christian fundamentalists to impose their religious beliefs on the rest of us.

Cynical Ruses

Catharine Rampell writes in *A year after Dobbs, House GOP proposes taking food from hungry babies:* "A year ago, when the Supreme Court struck down the federal right to abortion access, Republican politicians pledged to support women facing unplanned pregnancies."

"Today? Republican lawmakers are literally trying to take food away from disadvantaged new moms and their children."

"They're doing so via the annual House appropriations agricultural bill, specifically the GOP-written House version that was slated for a vote this week. This legislation covers a lot of ground, including rural development grants and loans for farmers. But among its most critical, least appreciated, highest return-on-investment programs is one known as WIC (officially, the Special Supplemental Nutrition Program for Women, Infants, and Children)."

"WIC was created in the early 1970s to serve low-income pregnant women, new moms, babies and young children at nutritional risk. Unlike the better-known food stamp program -- which allows beneficiaries to spend their assistance on almost any groceries they like -- WIC targets the specific nutritional requirements of prenatal and postpartum mothers and their children up to age 5, based on legally required, regular scientific reviews of their dietary needs."

"The program provides modest but evidence-based food benefits (for example, up to a dozen eggs per month per toddler). It also offers screening and referrals to other health and social services, such as breastfeeding counseling and substance-abuse programs. You know, basic stuff you'd expect a rich country to provide for low-income babies and struggling new moms."

"Historically, we've risen to the occasion. There's been strong bipartisan support for WIC for decades. Every year since 1997, Congress has committed to fully funding WIC -- a fancy way of saying we've ensured there would be enough money to serve everyone eligible who applied."

"Government officials have stuck to this commitment regardless of which party controlled the White House or either chamber of Congress, 'even under Republican trifectas,' according to Brookings Institution scholar Robert Greenstein. In fact, even in years in which more funding turned out to be needed than was budgeted -- because a recession increased the number of families eligible or food prices unexpectedly spiked -- Congress and the Agriculture Department have made sure money was available to serve anyone eligible who applied, Greenstein said."

Now that commitment might be ending. The GOP-controlled House's fiscal 2024 agricultural bill would either eliminate or reduce benefits for 5.3 million kids and pregnant, postpartum and breastfeeding adults, the Center on Budget and Policy Priorities estimates."

"The Supreme Court's *Dobbs* decision, which was almost uniformly celebrated by Republican lawmakers (including the House agricultural bill's sponsor, Maryland Rep. Andy Harris) caused thousands of women to have babies they weren't prepared to support. We also recently saw nationwide infant-formula shortages. Republican lawmakers (including Harris) treated this crisis as political fodder, as desperate families scoured the country to feed their newborns."

"And of course we're now roughly two years into a run of elevated inflation. This has been another crisis Republicans have mined for political advantage -- and pledged to remedy while Americans struggled to put food on the table."

"As is always true, voters should pay more attention to what politicians do than to what they say."

"To be clear, GOP-proposed cuts to WIC don't seem motivated by any particular animus toward the program or a desire to hurt poor families. Rather, the party just has other priorities: Republicans have committed to huge cuts to nondefense spending, even bigger cuts than those agreed to in their recent debt limit deal. Adhering to their self-imposed budget constraints, while safeguarding other programs they care more about (border security, etc.), requires slashing safety-net programs."

"So, it's not like the House GOP hates poor babies or postpartum moms. It's just ... indifferent to them."

"There's a twist of irony in all this, though. If your priority is really fiscal rectitude, WIC is a *terrible* program to cut. Available research suggests that every dollar spent on WIC saves much more than a dollar on other government spending programs. That's because investing in maternal and early childhood nutrition is associated with fewer preterm births, higher birthweights and other improvements in mental and physical development."

"Republicans portray their spending cuts as fiscally responsible. In reality, they're throwing the baby out with the bathwater."

<u>Republican Treachery</u>

The Republican Party is selling the vast majority of Americans down the river to unnecessarily harsh fates. They do this by ignoring the common good and primarily pandering to millionaires and billionaires. They get away with this by fooling people and charging Democrats as being "radically Left" and "socialists" and "communists" for representing the best interests of working people, pushing for improved public education and broadened opportunity, advocating for sensible business regulations and drug policy reform and stronger gun safety measures, and championing greater democratic fairness and women's rights and stronger protections of the environment.

Republicans are passing many measures to restrict voting rights due to the fact that their policies are so unpopular among young people and disadvantaged groups that they are trying to disenfranchise.

<u>A Novel Ruse: The Independent State Legislature Theory</u>

Another shrewd and dangerous Republican gambit was the attempt by state lawmakers in red states to seize nearly unchecked power over federal elections, so that they could engage in even more election rigging, and succeed in cementing one-party rule over the people forevermore.

Fortunately, this case that made it to the Supreme Court to test their concocted "independent state legislature

theory" was so extreme that even the currently constituted far-right Supreme Court rejected it.

A 6-3 majority of Justices dismissed this state power grab attempt, but interestingly "Alito, Gorsuch and Thomas dissented from the ruling because they would prefer to give state legislatures, which have been illicitly gerrymandered in many states to favor right-wing goals, a supreme right to exert influence over state constitutions and state supreme courts."

Of course, conservatives have already given excessive power to rich people with their wrongly decided *Citizens United* ruling in 2010, and to red states by eviscerating the Voting Rights Act of 1965, pretending that there is not discriminatory gamesmanship in restrictive election rules passed by state legislatures.

Independent State Legislature Theory basically posits that state legislatures should not have to be constrained by checks and balances from state courts, state constitutions or state governors.

Those who pushed this legal theory ground their interpretation in the Elections and Electors Clauses of the U.S. Constitution. Proponents of this theory claim that state legislation rather than state constitutions should take precedence whenever state legislatures enact laws that conflict with their state constitutions -- "including provisions added to those constitutions through ballot initiatives passed by a state's citizens." We must join together in dissent! -- Demand that power be restored to the people, and taken away from power usurping politicians.

These schemers also argue that only federal courts, not state courts, can resolve conflicts between state laws and state constitutions with respect to administration of federal elections within a state.

Simply put, the fringe "independent state legislature theory" at the center of the *Moore v. Harper* case was a willful misinterpretation of the Constitution. If the Republican lawmakers advancing this theory had prevailed, it would have given control of our elections to anti-democracy politicians and paved the way for things like even more unfairly rigged voting maps, discriminatory barriers to voting access, purges of voters from voting rolls, cuts to early voting and vote-by-mail options, and fewer protections against voter intimidation

In this case before the Supreme Court, Republicans advanced this fringe theory. If the Court had endorsed their position, it would have given GOP legislatures unchecked power not only to gerrymander and suppress voting rights, but also potentially to undermine legitimate presidential election results.

In his article *Ruling with a Gavel and a Grudge*, Michael Waldman of the Brennan Center for Justice stated in March 2023, in advance of the ruling on *Moore v. Harper:* "Constitution watchers brace for upcoming Supreme Court rulings on the Voting Rights Act, affirmative action and the 'independent state legislature theory.' The Marble Palace on First Street (the home of the Supreme Court) gets most of the attention. In the meantime, federal judges across the country are showing us what happens when the lower courts are stuffed with right-wing ideologues."

The Supreme Court's decision to hear *Moore* gave priority to an appeal filed by North Carolina Republicans that would have given state legislatures unchecked power to control congressional redistricting. The case was based on the extreme right "independent state legislature theory" that argues state courts cannot invalidate laws enacted by state legislatures that pertain to federal elections. "We can't emphasize enough how radical this theory is."

State Supreme Court chief justices spoke out in unison against the attempted power grab, recognizing that "some rogue politicians from North Carolina tried to completely demolish the system of checks and balances our democracy depends on."

This legal concept was cunningly concocted by Republicans to further rig our democracy in favor of gerrymandered state legislatures. One pundit wrote, "It's called the Independent State Legislature Theory … but I call it the Lawless Lawmaker Theory. Here's why: if they get their way, these extremist politicians will seize nearly unchecked power over our federal elections, so that they can manipulate the results however they want."

North Carolina legislators asked the Supreme Court in this case to reinstate gerrymandered congressional maps that were deemed unconstitutional and thrown out by the state supreme court. A favorable Supreme Court ruling on this meritless theory would have had disastrous consequences for our democracy.

What did this mean for everyday Americans? If that case had been decided in favor of power-abusing lawless lawmakers, it would have meant more than merely more restrictive voting laws in states where anti-democracy extremists hold power. "It'd be a green light for a lot more deliberately rigged voting maps, with no checks or balances to keep them honest. And, it'd kick into overdrive the recent resurgence of Jim Crow voting laws."

Divide-to-Conquer Roguery

For many legal analysts nationwide, including some at the UC Berkeley School of Law, the high court's interventions like those made in the past three years are the latest in a series of recent rulings that are jeopardizing core standards of democracy. In the span of less than 15 years, they say, an increasingly conservative court has eroded limits on campaign donations and hollowed out the monumental Voting Rights Act of 1965. Last year, the court's six conservative justices seemed to embrace conservative Christian doctrine in decisions that limit abortion rights and advance public school prayer.

"At a time when our country is so politically polarized, the Supreme Court is a risk factor for American democracy," said Berkeley Law Dean Erwin Chemerinsky, one of the nation's preeminent constitutional scholars. "What's it going to mean to have a Supreme Court that's come down so clearly on one side of that divide and so far to the right on that side of the divide?"

"It could mean law, at every level, that is more hostile to people who have long suffered from political and social exclusion," said Berkeley Law Professor Russell K. Robinson, faculty director of the Center on Race, Sexuality and Culture. "Our country is becoming more diverse," he said. "We're seeing more and more the browning of America. More young people identify as non-heterosexual, non-cisgender. … But it feels like this is a backward-looking court. It's not embracing demographic change — in some ways, it's trying to lock in the traditional ways of understanding power and who holds power in America."

Indeed, conservatives throughout much of the U.S. have moved to recast election processes and to constrict rights in ways that appear designed to limit the political power held by people of color, women and LGBTQIA+ communities. Many of the most high-profile cases before the high court in recent years involve fiercely contested issues of race, gender and religion.

Doubts about the court's commitment to democracy are underscored by brass-knuckle politics that conservatives have used to nominate and affirm allied Supreme Court justices. The doubts are further inflamed by ethical issues, as court conservatives in some instances seem to have shed impartiality and to be working closely with religious and political allies.

In a new series of decisions, the court is expected to continue its focus on these contentious issues. At stake, Berkeley scholars say, is a critical question for American democracy: With the nation dangerously divided over demographic and cultural change, is the court helping to assemble a legal structure in which a shrinking base of white conservatives can rule the country long-term, even as a minority?

In a practical sense, the intermingled legal, political and symbolic conflicts that come before the Supreme Court often are conflicts about the values of democracy, how democratic processes should work, and even the meaning of the word.

In the view of Berkeley Law Professor John Yoo (famous for his rationalizations for waterboarding), critics often misunderstand the court's role. "The Constitution's design and the Supreme Court's job is not to advance democracy," he said. "It's to maintain the guardrails that the Constitution imposes on democracy."

The nation's founders worried that a majority of voters, with passions inflamed by some issue or cause, might trample the rights of the minority, he said. To counteract that risk, they decentralized power to three branches of federal government and to the states. And they gave the Supreme Court power to review actions by Congress and the Executive Branch -- in effect, a way to moderate extreme actions driven by a runaway majority.

The current court is simply performing the role advocated by the founders, claims Yoo, who held a high-level Justice Department post during the administration of President George W. Bush (and helped authorize waterboarding).

Others, however, suggest that the Supreme Court has a long history of supporting a majority that's trampling on minority rights. The most stark example: racial justice.

Soon after the Civil War, the United States ratified constitutional amendments that prohibited slavery and racial discrimination, and gave Black men the right to vote. But in 1896, the court sanctioned "separate but equal" treatment for Black and white people. That created a framework for Jim Crow laws that allowed the white majority to repress Black people with impunity -- and often to block them even from voting.

"If a democracy is characterized as the people being able to vote for lawmakers who will represent their interests, this country was not a democracy until the passage of the Voting Rights Act of 1965," said Berkeley Law Professor Khiara Bridges.

Since 2010, the Supreme Court has delivered a succession of rulings focused on changing the rules of elections. The decisions have given potent new advantages to wealthy and corporate donors, and to state governments that seek to make voting more difficult.

"The Supreme Court is deciding election cases in ways that enshrine minority rule and keep some voters, particularly Black voters, from having an equal political voice," said Charlotte Hill, director of the new Democracy Policy Initiative at the Goldman School of Public Policy. "That then could create a bias in election outcomes and create the potential for more right-leaning court appointments down the road."

The court in recent years has loosened a century of controls on political donations and campaign spending, said Berkeley political scientist Henry Brady, former dean of the Goldman School. That has a direct bearing on important policy -- in climate change, for example, or reproductive rights or gun control.

The most momentous decision came in 2010, when the court's conservative bloc concluded that the government could not limit independent spending on political campaigns. Campaign spending is a form of speech protected under the First Amendment, the court said -- and corporations and advocacy groups have free speech rights, just like people.

"But corporations are *not* people. The one thing they want to do is maximize profits. They're not trying to help other social aims. And the result is that we've empowered corporate sector institutions, and they now have tremendous powers to affect outcomes in policy debates."

The courts ruling in the 2010 Citizens United case has created an undesirable situation in which billions of dollars in tax-exempt donations are given to political action committees, often from anonymous donors. This has caused an unprecedented power imbalance between special interests and average voters. While both Democrats and Republicans benefit from these donations, most of the individual mega-donors to super PACs are conservatives.

"The top 100 donors to super PACS basically give two-thirds or more of the total money spent on elections," Brady said. "And so a very, very small group of people have given large sums of money to the super PACs. Those super PACs then run ads. There's no transparency."

According to a Brennan Center analysis of publicly available data, the 100 largest donors collectively spent 60% more in the 2022 midterms than *every small donor in the United States combined*. (Small donors are those who give $200 or less.) The wealthy have, of course, always wielded disproportionate power over American government. In 1895, GOP strategist Mark Hanna famously said, "There are only two important things in politics. The first is money, and I can't remember the second."

While big money's outsized influence has ebbed and flowed over U.S. history, we are now living through another period in which moneyed interests dominate our politics to a dangerous degree. Wealthy donors act as gatekeepers to public office. Billionaires alone -- the United States has fewer than 700 of them -- provided 15 percent of the funding for the most recent federal elections. Money doesn't always buy election results but it emphatically affects policy. "Welcome to the second gilded age of money in politics."

<u>Big Money Influence</u>

Heather Cox Richardson: "Today's emphasis on money and politics brings to mind the speech then–FBI director

Robert Mueller gave in New York in 2011, warning about a new kind of national security threat: 'so-called iron triangles of organized criminals, corrupt government officials, and business leaders', allied not by religion or political inclinations, but by greed."

"It also brings to mind the adamant opposition of then–National Republican Senatorial Committee chair Mitch McConnell (R-KY) to campaign finance reform in 1997 after he raised a record-breaking amount of money for Republican candidates, saying that political donations are simply a form of free speech. The Supreme Court read that interpretation into law in the 2010 Citizens United decision, but the increasingly obvious links between money, politics, and national security suggest it might be worth revisiting."

"The Voting Rights Act of 1965 was a landmark in the mid-20th century campaign against institutionalized racial discrimination, especially the overt discrimination practiced in the Old South. The law gave the federal government broad authority to monitor state and local efforts to suppress voting on the basis of race -- and to block those efforts."

Conservative justices have already gutted a key section of the Voting Rights Act: In 2013, they ruled that the government's approach was invalid because it could not target states for review based on the states' racial practices more than 50 years earlier.

Then, in 2019, the conservative bloc ruled in two cases that gerrymandering — partisan manipulation of voting districts to undercut the opposing party — is a political matter and not for the courts to regulate.

The decisions have provoked a series of extreme gerrymandering and vote suppression legislation. Most of it is in Republican-dominated states, often in the states that would have been targeted under the Voting Rights Act. That suppression has the greatest effect on people of color and those who are low income, students and elderly.

"We now have far-right political leaders who are pushing for voter ID laws, pushing for shorter voting windows, pushing to make it harder for people to vote easily from home, pushing for the closing of polling places," Hill said. "We have policy after policy that really does not serve the public interest."

Another gerrymandering case, this one from North Carolina, has arrived at the Supreme Court backed by a legal doctrine that some Berkeley scholars see as an extraordinary threat to U.S. democracy.

While North Carolina is split evenly between Democrats and Republicans, Republicans dominate the state legislature there, and have drawn new congressional districts that basically assured their party would win 11 of the state's 14 seats in the U.S. House. After the North Carolina Supreme Court struck the map down as a partisan gerrymander and sought to implement a more neutral map, the Legislature sought to overturn its decision at the Supreme Court.

In defense of North Carolina's action, right-wing legal advocates have proposed that under the U.S. Constitution, state legislatures have virtually unlimited power to administer elections, evaluate the results and declare winners — without oversight by elected executives or the courts.

It's called the "independent state legislature theory." Emily Rong Zhang, a Berkeley legal scholar specializing in voting and elections, said the doctrine, if adopted in its most aggressive form, could give state legislatures -- backed by the U.S. Supreme Court -- unchallenged power over federal elections. To many legal scholars -- including some top conservative experts -- the doctrine has no basis in constitutional history.

Chemerinsky has a foreboding view. Writing in the Los Angeles Times, he called the case "ominous" and added: "It is not hyperbole to say that the future of American democracy may turn on the court's answer."

Fortunately the Supreme Court rejected the independent state legislature theory.

The Supreme Court today faces a legitimacy crisis unmatched since the presidency of Franklin D. Roosevelt in the 1930s. The court is increasingly seen as a partisan political body -- and many critics say it's acting like one.

Donald Trump in 2016 did not win a majority of America's votes, but backed by the hardball judicial politics of Sen. Mitch McConnell, the Republican Senate leader, he was able to place three new justices on the court in the space of four years. Each is solidly conservative, religious and young; the trio could shape the court for the next 30

years.

In the same span, some conservative justices reportedly prayed with religious activists who had cases before the court. And Justice Clarence Thomas has declined to recuse himself from cases involving the insurrection of Jan. 6, 2021, even though his wife pressed top government officials to overturn the election results.

Hill, Robinson and other Berkeley scholars suggest that a segment of white Christians who used to comprise the American majority are now going to extremes to preserve power in a changing nation — and eroding the court and other democratic institutions in the process.

"You see these ruthless politics where balance and rules and comity and fairness are out the window," Robinson said. "They seem to have just one concern: How do we capture the Supreme Court for our agenda? That feels wrong to a lot of people in terms of how our democracy and our Constitution should work."

Our politics, our social divisions and shifting judicial norms "have produced a court that's out of touch with the mainstream preferences and views of Americans," Zhang said. "There's a kind of consensus view that that is a very serious problem with the court today.

"This is a court that doesn't take seriously some real pathologies in our political system. It appears content to do nothing about those problems, or even to make them worse."

<u>More on Gerrymandering</u>

It is broadly undesirable that Supreme Court Republicans have looked-the-other-way to bless discriminatory gerrymandering that gives drastically excessive representation to Republican politicians in many red states, especially including Wisconsin, Ohio, Texas, Pennsylvania, North Carolina, Kentucky and Louisiana. Shame on them for their cheating in elections. Integrity now! We must demand reforms to the system to make legislatures more fairly representative of the popular will, and we must also demand a better balance of progressive voices on the Supreme Court, which is wrongly filled with TWO-THIRDS Republicans right now.

In North Carolina, the state Supreme Court is considering overturning an earlier decision that turned down a gerrymandered map. As Eric Holder, the former Attorney General under President Obama, points out, "Let me be very clear: neither the map nor the law has changed, only the composition of the Court. It is my hope that the Court applies the law without bias or political agenda and puts a halt to Republican attempts to undermine free elections through egregious gerrymandering."

Eric Holder is a knowledgeable expert on gerrymandering, and he knowingly says that seemingly, 'Republicans have to cheat' to win elections.

North Carolina voters should long remember that extreme lawmakers are trying to get away with ignoring the growth and influence of communities of interest by gerrymandering maps for their own partisan power.

<u>North Carolina Political Games</u>

DURHAM, N.C. — "The details are all too familiar: Last fall, an election in North Carolina flipped the balance of the State Supreme Court from Democrats to Republicans, and in less than six months, the new conservative majority had reversed a decision from the prior December and ruled that the legislature can gerrymander election maps with no constitutional limit. Another episode of political hardball. Another example of Republicans pushing institutions to their limits to keep power."

North Carolina voters are almost perfectly evenly divided between the two political parties: "Both senators are Republicans, Democrats hold the offices of governor and attorney general, and presidential elections are decided by margins as slim as tens of thousands of votes. But in practice North Carolina is ruled by a Republican legislature that has majorities big enough to override the governor's veto. That legislature is now looking to ban abortion after 12 weeks, abolish tenure for new hires in the University of North Carolina system, and redraw congressional maps to give Republicans several new seats in the U.S. House of Representatives."

"It's a disheartening story, but the uproar over this latest gerrymandering decision also shows us a way to renew democracy in closely divided and gerrymandered states like North Carolina."

"In the myth we are often told about America, the courts are forums of principle, wisdom and deliberation, while politics deals in sudden, often willful shifts of power and policy. To people who believe this myth, the fact that many states, including North Carolina, elect their justices is a sort of scandal, usually ignored or mentioned briefly, then quickly dropped, like a disreputable branch of the family."

"The North Carolina gerrymandering decision made that scandal impossible to ignore: What else but rank partisan allegiance could account for such an abrupt switch on a question that determined political power in the state? In their dissent, the liberals on the court accused the conservative majority of a 'lawless' partisan manipulation of the law. The majority insisted that the politicization had begun with the earlier anti-gerrymandering decision, and warned that the courts should not 'take sides in political battles.'"

"Those justices are far from the only people to maintain that our court system is, and should always be, apolitical. Even candidates running in judicial elections tend to downplay the high stakes of those contests, sticking to bromides about impartial judging (plus some tough-on-crime chest-beating)."

"Where I live, in Durham, N.C., ordinary voters seem to have had little way of knowing last fall that they were choosing between two competing theories of democracy and probably deciding the future of majority rule in the state for decades. Nor, for that matter, did they hear much about abortion, although it was no secret that Republican legislators were likely to attack North Carolina's position as a bulwark of reproductive rights in the South. In other words, the vote for Supreme Court justices may have been the most important of the year, and it was a black box to most voters."

"There is another, better way — and here, North Carolina and other closely divided states such as Georgia could spark a renaissance of democratic constitutional politics. Like it or not, the courts *are* another political branch, most of all when they decide basic constitutional questions, such as whether freedom and equality forbid extreme gerrymandering. Some candidates are bold enough to admit that. On April 4, Judge Janet Protasiewicz won a seat on Wisconsin's Supreme Court and switched the court's ideological balance, by openly emphasizing her support for reproductive rights and broadly liberal commitments. If North Carolina's Democratic judicial candidates had (without commenting on any specific case, which judicial ethics forbids) focused their campaigns more aggressively on a commitment to constitutional values such as voting rights and reproductive rights, the balance of the court might be different today."

"Urging more politicization may seem perverse in a culture already drenched in partisanship. But we have to be real. Deep political conflicts over constitutional vision have always existed in American law, particularly when courts are called upon to judge what a fair election system looks like. 'All political power is vested in and derived from the people,' the North Carolina Constitution announces; 'all government of right originates from the people' and 'is founded upon their will only.' When judges have to choose between dueling constitutional visions of democracy, as the North Carolina Supreme Court has been doing, the voters should have the last word on what they believe democracy means under their Constitution."

"State Supreme Court elections are often the only way for voters to assert this power. Thanks to Republican gerrymandering, a Democratic majority cannot prevail just by winning the most votes: It has to scale the mountain of an artificial legislative majority. Electing the governor, as North Carolina Democrats have done for the past two election cycles, is no help, because with Republican supermajorities in the legislature, the governor can do next to nothing to check conservative overreach. And activists can't even contemplate amending the State Constitution to limit gerrymandering because the legislature must propose amendments in North Carolina, and the current majority is certain to bury any initiative that would weaken its power. Electing Supreme Court justices, however, is a way to change the legislature itself. The court can force changes in the way elections are run, ensuring that the majority's voice is heard. In coming elections, judicial candidates should clearly communicate what is at stake for democracy."

"Since the Supreme Court overturned *Roe v. Wade* in 2022, many liberals have rediscovered an old democratic insight: Constitutional principles are too important to leave to judges alone. If candidates in blue and red states follow the Wisconsin model and convey the stakes of judicial elections vividly, then voters can claim a real role in deciding what their constitutions mean. Democrats should campaign on voting rights, reversing gerrymandering and

protecting basic freedoms like abortion. At the national level, Democrats in the U.S. Senate should hold bolder Supreme Court confirmation hearings, and grill nominees on their commitments to democratic principles and basic freedoms -- and they shouldn't take shrewd evasions for answers. Democrats should also promote stronger congressional oversight of the Supreme Court and even push for a new generation of constitutional amendments designed to strengthen our democracy and empower voters. This will be an uphill battle, but a victory will be more likely if people viscerally understand that the Constitution belongs to all Americans, not just a few judges.

"We can start in states where democracy is most in danger from entrenched minority rule yet, at the same time, most empowered by judicial elections. All that is needed is for judges and activists who are committed to democratic principles and other basic freedoms to say what they mean and let the people decide."

"Today, despite the success of the Republican Supreme Court capture scheme and the failure of conservative Justices to stand up against illicit corrupting voting scams, it could not be possible to fairly construe extreme political gerrymandering to be just and consonant with the great values of unity and liberty."

"This broad inequity is made worse by the real cheating that gerrymandering represents in most red states, in stark contrast to most blue states, which have unilaterally disarmed by creating nonpartisan districts that more fairly represent their citizens. States like California and New York, if they unfairly gerrymandered like red states with surgical precision, could gain many seats in the House of Representatives, and Republicans would be out in the cold instead of having won an exceedingly narrow majority in the 2022 midterm elections."

Evasion and Deceit in Supreme Court Nomination Hearings

Conservative judges nominated for the Supreme Court in the last 30 years deceived Senators and the public about their views on abortion and their respect for precedent during their confirmation hearings. They did this to succeed in getting lifetime appointments to positions of unchecked power. As a consequence, the American people are finding out how severely impactful these deceptions are for people's freedoms, safety and general welfare.

We are living in a moment of extraordinary ethics-deficient conservative Justices on the Supreme Court. Not only did several of them deceive the public about their beliefs on established precedents with respect to abortion rights, some of them have engaged in moral turpitude by socializing and praying with influence-seeking anti-abortion activists and religious evangelicals and others.

Anti-abortion groups engaged in a highly coordinated and lavishly financed influence campaign to get access to Supreme Court Justices to push their agenda. This casts a pall of suspicion on the legitimacy over the high court.

Truly,
Tiffany B. Twain
December 21, 2023