A PLAIN-ENGLISH FACT CHECK

NINE JUSTICES

The Supreme Court, Its Biggest Rulings, and How It Works



THE COURT · RULINGS · JUSTICES · CLAIMS

How the Court Works, Its Landmark Cases, and What the Records Show

ANDREW DOMINGUEZ

TRINFINITY Enterprises

Nine Justices

The Supreme Court, Its Biggest Rulings, and How It Works

A Fact Check Series Book
Current as of November 12, 2026

Andrew Dominguez
Trinfinity Enterprises

Nine Justices: The Supreme Court, Its Biggest Rulings, and How It Works

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Quotations from court opinions, statutes and government reports are taken from public records, as identified in the footnotes. Every factual statement is footnoted to its source, with links that were checked on November 12, 2026.

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Introduction: How to Read This Book

The information in this book stops at November 12, 2026. Anything that happened after that date is not in it. When I say "today" or "now," I mean that date.

Nine people in black robes sit in a marble building across the street from the U.S. Capitol. Their decisions have ended school segregation, defined what a police officer must tell you before questioning you, decided who can marry, settled a presidential election and shaped elections ever since. They are not elected, and most of them will serve for decades. Most Americans could not name more than two or three of them.

I wrote this book for the reader who wants to understand the Supreme Court without a law degree. You don't need any background. I explain each term the first time it comes up, and there is a glossary in the back.

What this book tries to do

This book has one job: to tell you what is true about the Supreme Court and show you where each fact comes from so you can check it yourself.

It is not trying to make you like or dislike the Court, any justice, any party or any president. Where people disagree, and they disagree about the Court a great deal, I give each side's strongest arguments in their own words, with a source for each. I keep my own opinions out of it. I hold every party, president and group to the same standard: what they actually said and did, favorable or not.

Three kinds of statements

You will find three kinds of statements in this book, and I keep them apart.

- **Confirmed facts.** Things the records show, such as what a ruling held, how the justices voted, or when the Senate confirmed someone. Every one has a footnote.
- **Interpretations.** Someone's reading of the facts, such as whether a ruling was right, or why a justice voted the way they did. I always say whose interpretation it is and give a source. When I write "critics argue" or "supporters say," the footnote tells you who.
- **Unknowns.** Things the evidence cannot settle, or that I could not confirm. When I could not find a source for something, I mark it **[Not verified]** and say what I searched.

Where the facts come from

I sorted sources into five tiers and used them in this order of preference.

Tier	Kind of source	Examples used in this book
1	Primary and official	The Constitution; the Judiciary Acts; the Court's own opinions on supremecourt.gov; Senate records of nominations; the Court's 2023 Code of Conduct; bills as printed by the Government Publishing Office
2	Nonpartisan analysis	Congressional Research Service (CRS) reports and the Constitution Annotated, which the CRS prepares for the Library of Congress
3	Scholarly and reference	Law and political science research; widely used references such as Oyez and SCOTUSblog, which I label as references
4	Fact-checks,	Associated Press, Reuters, NPR, FactCheck.org and Gallup, used mainly to point

Tier	Kind of source	Examples used in this book
	journalism and polling	back to primary sources or to report public opinion
5	Advocacy and think tanks	Groups that argue a side, used only to show what that side argues, labeled, and balanced with the other side

I did not use social media posts, chain emails, forums, video channels or automatically produced web pages as evidence. When a claim spread that way, I may quote it as an example of the claim, with a date, but never as proof.

The Court's own opinions are the backbone of this book. When I tell you what a case held or how the justices voted, the footnote points to the opinion itself, either on the Court's website or in the free text kept by the Legal Information Institute at Cornell Law School. Opinions are long, but the first few pages, called the syllabus, summarize the ruling and list which justices joined which opinion. Appendix D shows you how to read one.

The verdicts

Part Five tests sixteen common claims about the Court. Each claim gets one of four verdicts, and only these four.

Verdict	What it means
True	Primary sources confirm it as usually stated.
Partly true	There is a real fact underneath, but the usual version leaves out or twists something important. I say exactly which part is true.
False (debunked)	Primary sources contradict it.
Inconclusive	The evidence is not enough to say either way, or an investigation is still open. I say what would settle it.

I did not decide any verdict before checking the sources. Some claims come from the political left, some from the right, and some from everywhere at once. I tested them all the same way.

Money and dates

When I give a dollar amount, I say whether it is nominal (the dollars of the time) or adjusted for inflation, and to which year. Most dollar figures in this book are nominal, because they come straight from disclosure forms and court records.

By law, the Court begins a new term on the first Monday in October each year.[1] The Court names each term for the year it begins. The term that started on the first Monday of October 2025 is "October Term 2025," or OT2025, and its biggest rulings came out in June 2026. I use that naming throughout.

How the book is organized

- **Part One** explains where the Court's power comes from and how a case moves from a petition to a decision.

[1] 28 U.S. Code Section 2: Terms of court. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/2 (accessed November 12, 2026).

- **Part Two** walks through the landmark rulings, era by era, including the ones the Court later overturned.
- **Part Three** covers how justices are chosen and the confirmation fights that changed the process.
- **Part Four** covers the size of the Court, term limits and ethics.
- **Part Five** tests the claims.
- **Part Six** describes where the Court stands as of November 12, 2026, what the public thinks of it, and every major reform option, without a recommendation.
- **The appendices** list every justice, the landmark rulings, a glossary, a guide to reading an opinion and the full source list.

You might ask, "Why should I trust a book about the Court at all, when everyone seems to have an angle?" You shouldn't trust it blindly. That is why every fact has a footnote with a working link. If I got something wrong, the footnote will show you where to check, and you will be able to see it for yourself.

This book is for general information. It is not legal advice.

Part One: How the Court Got Its Power and How It Works

Chapter 1: What the Constitution Says, and What It Leaves Out

You might expect the Constitution to spell out the Supreme Court in detail: how many justices, how long they serve, what qualifications they need, and what they may decide. It doesn't. The section on the courts, Article III, is the shortest of the three articles that set up the branches of government. Much of what we think of as "the Supreme Court" was filled in later by Congress, by custom and by the Court itself.

The words in Article III

Article III opens with one sentence that creates the Court: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."[2]

Notice what that sentence does and does not do. It requires one Supreme Court. It lets Congress decide whether to create lower federal courts at all, and how many. It says nothing about how many justices sit on the Supreme Court.

The same section says judges "shall hold their Offices during good Behaviour" and that their pay "shall not be diminished during their Continuance in Office."[3] Those two promises, a job that does not end on a schedule and pay that cannot be cut, were meant to free judges from pressure by the other branches. They are why federal judges, including justices, can serve for life.

The Court's own website explains that the Constitution does not set any qualifications for justices: no minimum age, no education requirement, no profession and no requirement to be born in the United States. A justice does not even have to be a lawyer, although every justice so far has been trained in the law.[4]

What the Court may decide

Section 2 of Article III lists the kinds of cases federal courts may hear. They include cases "arising under" the Constitution, federal laws and treaties; cases involving ambassadors; cases where the United States is a party; disputes between two or more states; and disputes between citizens of different states, among others.[5]

The Constitution then splits the Supreme Court's work into two kinds.

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[2] U.S. Constitution, Article III. Legal Information Institute, Cornell Law School (text of the Constitution). 1787. https://www.law.cornell.edu/constitution/articleiii (accessed November 12, 2026).

[3] U.S. Constitution, Article III. Legal Information Institute, Cornell Law School (text of the Constitution). 1787. https://www.law.cornell.edu/constitution/articleiii (accessed November 12, 2026).

[4] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[5] U.S. Constitution, Article III. Legal Information Institute, Cornell Law School (text of the Constitution). 1787. https://www.law.cornell.edu/constitution/articleiii (accessed November 12, 2026).

- **Original jurisdiction** means the Supreme Court hears the case first, as a trial court would. Article III gives the Court original jurisdiction in cases "affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party."[6] Today this mostly means lawsuits between states, such as water disputes. One example from the 2025 term was Texas v. New Mexico, a long-running fight over water from the Rio Grande.[7]
- **Appellate jurisdiction** means the Court reviews a decision that a lower court already made. This is almost all of what the Court does. Article III gives the Court appellate jurisdiction "with such Exceptions, and under such Regulations as the Congress shall make."[8]

Those last words, the "Exceptions Clause," matter a great deal. They give Congress some power over which appeals the Court may hear. How far that power goes is still debated, and I come back to it in Chapter 3.

Congress fills in the blanks: the Judiciary Act of 1789

The first Congress did not wait long. The Judiciary Act of 1789, signed by President George Washington on September 24, 1789, built the federal court system almost from scratch.[9]

Among other things, the Act:

- set the Supreme Court at six members, one Chief Justice and five associate justices;[10]
- created lower federal courts, called district and circuit courts;[11]
- required the justices to travel to hold court around the country, a duty called "riding circuit";[12] and
- let the Supreme Court review some decisions of state courts that turned on federal law.[13]

That last point, in Section 25 of the Act, became the basis for the Court's power to tell state courts what the U.S. Constitution means. The Court later defended that power in Martin v.

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[6] U.S. Constitution, Article III. Legal Information Institute, Cornell Law School (text of the Constitution). 1787. https://www.law.cornell.edu/constitution/articleiii (accessed November 12, 2026).

[7] Opinions of the Court, 2025 Term. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[8] U.S. Constitution, Article III. Legal Information Institute, Cornell Law School (text of the Constitution). 1787. https://www.law.cornell.edu/constitution/articleiii (accessed November 12, 2026).

[9] Federal Judiciary Act (1789). National Archives, Milestone Documents. September 24, 1789. https://www.archives.gov/milestone-documents/federal-judiciary-act (accessed November 12, 2026).

[10] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[11] Federal Judiciary Act (1789). National Archives, Milestone Documents. September 24, 1789. https://www.archives.gov/milestone-documents/federal-judiciary-act (accessed November 12, 2026).

[12] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 68. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[13] Federal Judiciary Act (1789). National Archives, Milestone Documents. September 24, 1789. https://www.archives.gov/milestone-documents/federal-judiciary-act (accessed November 12, 2026).

Hunter's Lessee (1816), when Virginia's highest court refused to accept the Supreme Court's authority over it.[14]

Another part of the Act, Section 13, would set up the most important case in the Court's history. That story is in Chapter 2.

The first Court

The first justices were John Jay as Chief Justice, and James Wilson, William Cushing, John Blair, John Rutledge and James Iredell as associate justices. The Court was scheduled to meet for the first time in New York City, then the nation's capital, on Monday, February 1, 1790. Only three justices showed up, which was not enough for a quorum, so the official opening slipped to the next day.[15]

The early Court had little to do and no home of its own. It met in New York, then in Philadelphia from 1791 to 1800, and then in Washington from February 1801 on, in a series of borrowed rooms in the U.S. Capitol.[16] The Court did not sit in its own building until October 7, 1935.[17]

Riding circuit was hard. Justices traveled long distances over poor roads to sit with district judges in trial and appeal courts. Congress briefly ended the practice in 1801, restored it in 1802, and tied the number of justices to the number of circuits for much of the 1800s.[18]

Service on the early Court was not always seen as a prize. John Jay left in 1795, and John Rutledge, who had been one of the original associate justices, served only briefly as Chief Justice in 1795.[19]

An early lesson: the Court can be overruled by amendment

One of the Court's first big decisions came in Chisholm v. Georgia in 1793. The Court held that a citizen of one state, South Carolina, could sue the state of Georgia in federal court without Georgia's consent.[20]

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[14] Martin v. Hunter's Lessee, 14 U.S. 304 (1816). Supreme Court of the United States. 1816. https://www.law.cornell.edu/supremecourt/text/14/304 (accessed November 12, 2026).

[15] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[16] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[17] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[18] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 67-68. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[19] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[20] Chisholm v. Georgia, 2 U.S. 419 (1793). Supreme Court of the United States. 1793. https://www.law.cornell.edu/supremecourt/text/2/419 (accessed November 12, 2026).

The states reacted fast. Congress proposed, and the states ratified, the Eleventh Amendment, which says the federal judicial power does not extend to suits against a state by citizens of another state.[21] It was the first time the American people used a constitutional amendment to undo a Supreme Court decision. It would not be the last. Chapter 11 lists others.

You might ask, "If the Court gets the Constitution wrong, can anyone fix it?" Yes, but it is hard. The Constitution can be amended, which takes two-thirds of both houses of Congress and three-quarters of the states, or a convention called by the states.[22] The Court can also change its own mind later. Both have happened.

The Court checks a federal law, and lets it stand

Did the early Court think it could strike down an act of Congress? There are signs it did, even before 1803. In Hylton v. United States (1796), a taxpayer argued that a federal tax on carriages violated the Constitution's rules for "direct" taxes. The Court looked closely at the question and upheld the tax.[23]

Upholding a law is not the same as striking one down. Still, the case shows the justices were willing to measure a federal law against the Constitution. The bigger step came seven years later.

What the Constitution leaves to others

Here is a short list of things about the Court that are not in the Constitution, and who decides them instead.

Question	Who decides it	Where it is set
How many justices?	Congress, by statute	Today, 28 U.S. Code Section 1: a Chief Justice and eight associate justices, six of whom make a quorum[24]
When does the Court meet?	Congress, by statute	The term begins the first Monday in October[25]
Which appeals may it take?	Congress, by statute, within Article III	28 U.S. Code Sections 1254 and 1257 let the Court take cases by writ of certiorari[26]
What qualifications must	Nobody; none are	The Constitution sets none[27]

[21] The Constitution: Amendments 11-27. National Archives. amendments ratified 1795-1992. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[22] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[23] Hylton v. United States, 3 U.S. 171 (1796). Supreme Court of the United States. 1796. https://www.law.cornell.edu/supremecourt/text/3/171 (accessed November 12, 2026).

[24] 28 U.S. Code Section 1: Number of justices; quorum. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/1 (accessed November 12, 2026).

[25] 28 U.S. Code Section 2: Terms of court. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/2 (accessed November 12, 2026).

[26] 28 U.S. Code Section 1254: Courts of appeals; certiorari; certified questions. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/1254 (accessed November 12, 2026). 28 U.S. Code Section 1257: State courts; certiorari. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/1257 (accessed November 12, 2026).

[27] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

Question	Who decides it	Where it is set
a justice have?	required	
How long does a justice serve?	The justice, within "good Behaviour"	A justice serves until death, retirement, resignation or removal by impeachment and conviction[28]
Can the Court strike down laws?	The Court claimed this power	Marbury v. Madison (1803), Chapter 2[29]

That last row is the subject of the next chapter. It is the biggest blank the Constitution left, and the Court filled it in itself.

[28] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[29] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

Chapter 2: John Marshall and Marbury v. Madison

If you remember one Supreme Court case from school, it may be Marbury v. Madison. It is the case that established judicial review: the power of courts to declare a law unconstitutional and refuse to enforce it. The word "review" does not appear in Article III. So where did the power come from?

The election of 1800 and the "midnight judges"

The story starts with a bitter election. In 1800, Thomas Jefferson's Democratic-Republicans defeated President John Adams and his Federalists. Before leaving office, the outgoing Federalist Congress passed the Judiciary Act of 1801, which reorganized the lower courts and created new judgeships, and also shrank the Supreme Court's future size from six to five so that Jefferson could not fill the next vacancy.[30]

In his last weeks, Adams also named a number of justices of the peace for the District of Columbia. One of them was a Maryland businessman named William Marbury. The Senate confirmed him, and Adams signed his commission, the official document giving him the job. But the commission was never delivered before Adams left office.[31]

The man responsible for delivering it was Adams's Secretary of State, John Marshall. Adams had also just appointed Marshall as Chief Justice. Marshall took his judicial oath on February 4, 1801, while he was still Secretary of State, a post he held from 1800 to 1801.[32] That detail matters, because Marshall would later decide a case about his own unfinished paperwork.

When Jefferson took office, his Secretary of State, James Madison, refused to deliver Marbury's commission. Marbury went straight to the Supreme Court and asked it to order Madison to hand it over. That kind of order is called a writ of mandamus.[33]

Meanwhile, the new Congress repealed the Judiciary Act of 1801 on March 8, 1802, and restored the Court to six seats.[34]

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[30] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 67-68. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[31] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

[32] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026). Biographical Directory of Article III Federal Judges, 1789-present. Federal Judicial Center. page accessed November 12, 2026. https://www.fjc.gov/history/judges (accessed November 12, 2026).

[33] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

[34] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 68. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

The decision

The Court announced its decision in 1803. Chief Justice Marshall wrote for a unanimous Court, and he answered three questions in order.[35]

1. **Did Marbury have a right to his commission?** Yes. Once the President signed it and the seal was affixed, the appointment was complete.
2. **Does the law give him a remedy?** Yes. Where there is a legal right, there must be a legal remedy, and mandamus was the proper one.
3. **Can the Supreme Court issue that remedy in this case?** No.

Why not? Marbury had filed his case directly in the Supreme Court, relying on Section 13 of the Judiciary Act of 1789, which Marshall read as letting the Court issue writs of mandamus in cases like his. But Article III lists the only kinds of cases the Supreme Court may hear first, in its original jurisdiction, and Marbury's was not one of them. Marshall concluded that Congress could not add to that list by ordinary law. Section 13, as applied, conflicted with the Constitution.[36]

When an act of Congress conflicts with the Constitution, which one wins? Marshall's answer has been quoted ever since: "It is emphatically the province and duty of the Judicial Department to say what the law is."[37] He reasoned that the Constitution is the supreme law, that judges swear to support it, and that a court cannot enforce a law that breaks it. In his words, "a law repugnant to the Constitution is void."[38]

So Marbury lost. He never got his commission.

Why historians call it clever

Look at what the decision did. Marshall told the Jefferson administration it had acted unlawfully. He then gave Jefferson nothing to defy, because the Court did not order anyone to do anything. And in the process, he claimed for the Court a power far bigger than one justice of the peace: the power to strike down an act of Congress.

That is an interpretation, and it is a common one. Many scholars describe Marbury as a strategic decision made by a weak Court facing a hostile President. You can read the opinion yourself and decide how much strategy you see in it.[39]

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[35] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

[36] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

[37] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

[38] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

[39] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

Was judicial review new?

Not entirely. The idea that courts could refuse to apply laws that violate a written constitution was discussed during the debates over ratifying the Constitution in 1787 and 1788.

Alexander Hamilton defended it in The Federalist No. 78. He argued that the courts would be the "least dangerous" branch, because they control neither the military nor the budget. In his words, the judiciary "may truly be said to have neither FORCE nor WILL, but merely judgment." He wrote that the courts would act as "an intermediate body between the people and the legislature" to keep the legislature within its limits, and that when a law conflicts with the Constitution, judges should prefer the Constitution.[40]

Critics of the proposed Constitution saw the same power and feared it. An Anti-Federalist writer using the name "Brutus" warned in early 1788 that the new federal judges would be independent of the people and of the legislature, and that their power to interpret the Constitution would let them expand federal power with no one able to correct them.[41]

So both sides of the ratification debate expected something like judicial review. What they disagreed about was whether it was a safeguard or a danger.

The arguments for and against, in short

The case for judicial review	The case against it, or for limiting it
A written constitution means nothing if no one can enforce its limits on the government. (Hamilton, Federalist No. 78)[42]	Unelected judges serving for life can overrule the people's elected representatives with no direct check. (Brutus)[43]
Judges swear an oath to support the Constitution, so they cannot enforce a law that violates it. (Marshall in Marbury)[44]	Other officials also swear that oath. Presidents and Congress can interpret the Constitution too, and the Court's view should not always be final.
Courts protect individual rights against temporary majorities.	The Court has sometimes protected injustice, as in Dred Scott (Chapter 5).

On the right-hand side, the second row describes a view called "departmentalism," the idea that each branch interprets the Constitution for itself. President Abraham Lincoln, reacting to the Dred Scott decision, said in his first inaugural address that if government policy on vital questions is "irrevocably fixed" by Supreme Court decisions, "the people will have ceased to be

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[40] The Federalist No. 78 (Alexander Hamilton). The Avalon Project, Yale Law School. 1788. https://avalon.law.yale.edu/18th_century/fed78.asp (accessed November 12, 2026).

[41] Brutus No. XI (Anti-Federalist essay). Teaching American History (Ashbrook Center), text of the 1788 essay. January 31, 1788. https://teachingamericanhistory.org/document/brutus-xi/ (accessed November 12, 2026).

[42] The Federalist No. 78 (Alexander Hamilton). The Avalon Project, Yale Law School. 1788. https://avalon.law.yale.edu/18th_century/fed78.asp (accessed November 12, 2026).

[43] Brutus No. XI (Anti-Federalist essay). Teaching American History (Ashbrook Center), text of the 1788 essay. January 31, 1788. https://teachingamericanhistory.org/document/brutus-xi/ (accessed November 12, 2026).

[44] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

their own rulers."[45] Lincoln was careful to say that court decisions bind the parties to the case. His point was about whether one ruling should settle national policy forever.

How much the Court used the power

Having claimed the power, the Court used it sparingly against Congress for a long time. In the decades right after Marbury, the Court's most important uses of judicial review were against state laws, such as Maryland's tax on the national bank in McCulloch v. Maryland (1819).[46]

The Court's power to review state court decisions on federal questions was also contested. In Martin v. Hunter's Lessee (1816), Justice Joseph Story wrote for the Court that it could review the judgments of state courts on federal questions, rejecting Virginia's argument that its own highest court had the final say.[47]

From review to supremacy

Over time, the Court went beyond saying it could refuse to enforce an unconstitutional law. In Cooper v. Aaron (1958), all nine justices signed an opinion responding to Arkansas officials who were resisting school desegregation. The Court said Marbury "declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution," and that its interpretation of the Fourteenth Amendment in Brown v. Board of Education was "the supreme law of the land" that binds state officials.[48]

That is a bigger claim than Marbury made, and scholars still debate whether it is right. Supporters say a single final interpreter is needed so the Constitution means the same thing everywhere. Critics say it turns the Court into the only branch whose reading of the Constitution counts.

Justice Robert Jackson, writing separately in 1953, put the point in one sentence that both sides quote: "We are not final because we are infallible, but we are infallible only because we are final."[49]

What to take away

- The Constitution does not use the words "judicial review." The Court claimed the power in Marbury v. Madison (1803), building on ideas debated during ratification.[50]

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[45] First Inaugural Address of Abraham Lincoln, March 4, 1861. The Avalon Project, Yale Law School. March 4, 1861. https://avalon.law.yale.edu/19th_century/lincoln1.asp (accessed November 12, 2026).

[46] McCulloch v. Maryland, 17 U.S. 316 (1819). Supreme Court of the United States. 1819. https://www.law.cornell.edu/supremecourt/text/17/316 (accessed November 12, 2026).

[47] Martin v. Hunter's Lessee, 14 U.S. 304 (1816). Supreme Court of the United States. 1816. https://www.law.cornell.edu/supremecourt/text/14/304 (accessed November 12, 2026).

[48] Cooper v. Aaron, 358 U.S. 1 (1958). Supreme Court of the United States. 1958. https://www.law.cornell.edu/supremecourt/text/358/1 (accessed November 12, 2026).

[49] Brown v. Allen, 344 U.S. 443 (1953). Supreme Court of the United States. 1953. https://www.law.cornell.edu/supremecourt/text/344/443 (accessed November 12, 2026).

[50] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026). The Federalist No. 78 (Alexander Hamilton). The Avalon Project, Yale Law School. 1788. https://avalon.law.yale.edu/18th_century/fed78.asp (accessed November 12, 2026).

- Marbury struck down part of a federal law that the Court said tried to expand its own original jurisdiction.[51]
- People have argued about the scope of judicial review from the start, and they still do. The arguments are not neatly partisan. Both liberals and conservatives have praised the Court's power when it ruled their way and criticized it when it didn't.

A long tug-of-war with the other branches

Marbury did not settle the Court's place for good. For more than two centuries, presidents, Congress and the states have pushed back on the Court, and the Court has sometimes pushed back, sometimes given ground. The 2021 Presidential Commission's report includes a history of these fights, which I draw on here. Knowing this history helps with the claims in Part Five, because many of today's arguments have been made before.

1803: the case decided a week after Marbury. One week after Marbury, the Court decided Stuart v. Laird. The question was whether Congress could repeal the Judiciary Act of 1801, abolish the new circuit courts it had created, and send the justices back to "riding circuit." The Court upheld the repeal, saying circuit riding had been settled by "practice and acquiescence."[52] Some scholars see Stuart as more politically important than Marbury. One called it "an exercise in self-preservation," on the view that striking down the repeal would have invited retaliation from Jefferson's party.[53]

The Jackson years. President Andrew Jackson, in his 1832 veto of the bill to recharter the national bank, rejected the idea that the Court had the final word on whether the bank was constitutional, even though the Court had upheld the bank in McCulloch v. Maryland.[54] After Chief Justice Marshall died in 1835, Jackson chose Roger Taney, his former Attorney General and Treasury Secretary, to replace him. The Senate had refused to confirm Taney to an associate justice seat earlier that year, but by 1836 Jackson's party had enough votes to confirm him as Chief Justice.[55] On his last day in office in 1837, Congress added two seats to the Court, which let

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[51] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States. 1803. https://www.law.cornell.edu/supremecourt/text/5/137 (accessed November 12, 2026).

[52] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 42. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[53] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 42. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[54] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 44. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[55] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 44. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Jackson make two more nominations.[56] According to the Commission, Jackson "made more Supreme Court appointments than any other president between Washington and Taft."[57]

Lincoln and Dred Scott. Abraham Lincoln attacked the Dred Scott decision as a Senate candidate in 1858, calling it "erroneous."[58] In his first inaugural address, he warned that if government policy "is to be irrevocably fixed by decisions of the Supreme Court the instant they are made," then "the people will have ceased to be their own rulers."[59] Lincoln did not try to pack the Court, but during the war Congress reorganized the circuits and added a tenth seat (Chapter 14).[60]

Reconstruction: more power for federal courts, then a narrow reading. After the Civil War, Congress greatly expanded the power of the federal courts, letting people move certain cases from state to federal court, letting federal courts free prisoners held in violation of federal law, and giving federal courts broad power over cases arising under federal law. One historian quoted by the Commission wrote that in "no comparable period of our nation's history have the federal courts, lower and Supreme, enjoyed as great an expansion of their jurisdiction."[61] Starting in the 1870s, though, the Court read the new amendments and civil rights laws narrowly, in cases such as United States v. Cruikshank (1876) and the Civil Rights Cases (1883).[62]

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[56] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 45. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[57] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 45. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[58] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 47. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[59] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 47. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). First Inaugural Address of Abraham Lincoln, March 4, 1861. The Avalon Project, Yale Law School. March 4, 1861. https://avalon.law.yale.edu/19th_century/lincoln1.asp (accessed November 12, 2026).

[60] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 47-48. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[61] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 48. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[62] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 46, 49. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). Civil Rights Cases, 109 U.S. 3 (1883). Supreme Court of the United States. 1883. https://www.law.cornell.edu/supremecourt/text/109/3 (accessed November 12, 2026).

1891: the justices stop riding circuit. By 1890 the Court had 1,816 cases on its docket, up from 310 in 1860.[63] Congress responded with the Circuit Court of Appeals Act of 1891, often called the Evarts Act. It created the federal courts of appeals and ended the justices' duty to ride circuit for the first time since 1802.[64] Without that change, the Court we know today, which picks a small number of cases from thousands of requests (Chapter 3), would not exist.

The Progressive challenge. In the 1890s and early 1900s, critics on the left said the Court favored business. They pointed to decisions such as Pollock (striking down the income tax) and Lochner (striking down a limit on bakers' hours).[65] In the 1912 campaign, former President Theodore Roosevelt proposed letting voters "recall" certain court decisions. He lost, and Woodrow Wilson, who won, did not support the idea.[66] Senators such as Robert La Follette, William Borah, George Norris and Robert Owen proposed letting Congress remove judges, override decisions, or require more than a bare majority of justices to strike down a law.[67] None of these passed.

The Brown backlash. After Brown v. Board of Education, nineteen senators and seventy-seven House members from former Confederate states signed the 1956 "Declaration of Constitutional Principles," known as the Southern Manifesto, which opposed the decision.[68] State legislatures proposed constitutional amendments to make the Senate the final court of appeal on states' rights questions, to create a "Court of the Union" made up of state judges with

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[63] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 50. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[64] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 50. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[65] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 51. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[66] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 51-52. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[67] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 52. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[68] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 57. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

power to review the Supreme Court, and to set term limits for federal judges. None passed.[69] The Court answered in Cooper v. Aaron (1958), discussed earlier in this chapter.[70]

The Reapportionment backlash. After the Court's "one person, one vote" decisions in 1964, the House passed a bill to strip the federal courts of jurisdiction over legislative districting cases, and Senator Everett Dirksen led a drive for a constitutional amendment to override the decisions. That drive fell short of the two-thirds of states needed to force a convention.[71]

What the history shows. Each era has had its own fight, and the side attacking the Court has switched many times. Southern Democrats attacked it in the 1950s, progressives in the 1910s and 1930s, Jacksonians in the 1830s. The Commission put it this way: "debates about the proper role of the Supreme Court are as old as the Constitution."[72]

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[69] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 57-58. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[70] Cooper v. Aaron, 358 U.S. 1 (1958). Supreme Court of the United States. 1958. https://www.law.cornell.edu/supremecourt/text/358/1 (accessed November 12, 2026).

[71] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 59. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[72] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 59. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Chapter 3: How a Case Gets to the Court

The Court receives roughly 7,000 to 8,000 petitions asking it to take a case each term, and it hears oral argument in about 80.[73] In other words, about one request in a hundred gets a full hearing. How does the Court choose?

Two main doors: certiorari and original cases

Almost every case reaches the Court through a request called a petition for a writ of certiorari, usually shortened to "cert." (It is pronounced "sir-shee-uh-RARE-ee.") The losing side in a federal court of appeals, or in a state's highest court on a question of federal law, files a petition asking the Supreme Court to review the decision.[74]

The Court can say yes ("cert granted") or no ("cert denied"). A denial does not mean the Court agrees with the lower court. It only means the Court chose not to take the case, and the lower court's decision stands.

A small number of cases start in the Supreme Court under its original jurisdiction, mostly disputes between states. In those cases the Court often appoints a "special master," usually a senior lawyer or judge, to gather evidence and recommend a decision.[75]

How the Court used to work, and why it changed

For most of its history, the Court did not have much choice. Many cases came to it by right, meaning the Court had to decide them. By the late 1800s, the backlog was overwhelming. The Presidential Commission on the Supreme Court reported that the Court's docket grew from 253 cases to 1,816 cases over the decades after the Civil War.[76]

Congress responded in steps:

- The Evarts Act of 1891 created the federal courts of appeals and gave the Supreme Court discretion over some kinds of appeals.[77]

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[73] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[74] 28 U.S. Code Section 1254: Courts of appeals; certiorari; certified questions. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/1254 (accessed November 12, 2026). 28 U.S. Code Section 1257: State courts; certiorari. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/1257 (accessed November 12, 2026).

[75] Texas v. New Mexico, No. 141, Original, 608 U.S. 346 (2026). Supreme Court of the United States. May 26, 2026. https://www.supremecourt.gov/opinions/25pdf/608us1r36d_2i03.pdf (accessed November 12, 2026).

[76] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 108 n.170. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[77] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 50. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

- The Judiciary Act of 1925, known as the Judges' Bill, greatly expanded the Court's discretionary certiorari review.[78]
- The Supreme Court Case Selections Act of 1988 removed most of the remaining categories of mandatory appeals.[79]

Today the Court controls nearly all of its own docket. That control is a big source of its power. By choosing which questions to answer, the Court shapes the law even before it rules.

What makes the Court take a case

The Court's own rules tell lawyers what it looks for. Rule 10 says review on certiorari "is not a matter of right, but of judicial discretion," and lists the main reasons the Court grants it.[80] In plain terms, the Court is most likely to take a case when:

- **Courts disagree.** Two federal courts of appeals, or a court of appeals and a state's highest court, have reached opposite answers on the same federal question. Lawyers call this a "circuit split."
- **The question is important.** A lower court has decided "an important question of federal law that has not been, but should be, settled by this Court."[81]
- **A lower court has departed from Supreme Court precedent** or from accepted judicial procedure.

The Court is much less likely to take a case just because the lower court made a mistake. The rule says cert is "rarely granted" when the claimed error is a factual one or the misapplication of a properly stated rule of law.[82]

The "rule of four"

Who decides which petitions to grant? The justices vote, and by long practice it takes four votes, not five, to grant review. This custom is called the "rule of four." It is not written in the Constitution, in a statute or in the Court's formal rules. It is an internal tradition. The Presidential Commission's 2021 report refers to the "traditional rule of four" and discusses a

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[78] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 109 n.181. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[79] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 109 n.183. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[80] Rules of the Supreme Court of the United States. Supreme Court of the United States. current rules, page accessed November 12, 2026. https://www.supremecourt.gov/filingandrules/rules_guidance.aspx (accessed November 12, 2026).

[81] Rules of the Supreme Court of the United States. Supreme Court of the United States. current rules, page accessed November 12, 2026. https://www.supremecourt.gov/filingandrules/rules_guidance.aspx (accessed November 12, 2026).

[82] Rules of the Supreme Court of the United States. Supreme Court of the United States. current rules, page accessed November 12, 2026. https://www.supremecourt.gov/filingandrules/rules_guidance.aspx (accessed November 12, 2026).

related custom, the "courtesy fifth" vote, in which a fifth justice sometimes votes to pause an execution so that four justices who want to hear the case can do so.[83]

The rule of four means a minority of the Court can put a case on the docket even if a majority would have preferred not to hear it.

Screening thousands of petitions

With thousands of petitions a year, the justices cannot study every one closely. Their law clerks read the petitions and write summary memos, and the justices discuss the ones worth discussing at their private conferences. How each justice's chambers divides that work is not laid out in any official source I found.

Some experts worry about this screening stage. In written testimony excerpted in the Presidential Commission's report, Harvard law professor Richard Lazarus wrote that the Court "considers between five and six thousand petitions each year" and grants review in about sixty to eighty, and that "it is an open secret that the individual Justices spend relatively little time reviewing individual petitions at the jurisdictional stage."[84] That is one expert's view, not a finding of the Commission. Note also that the Court's own website gives a higher figure, 7,000 to 8,000 petitions a term.[85] The difference likely comes from which years and which kinds of petitions are counted. I did not find one official count that settles it, so treat the exact number as an estimate.

Briefs, friends of the court, and the record

Once the Court grants review, the parties file written arguments called briefs. Other people and groups who are not parties often file "friend of the court" briefs, known by the Latin term amicus curiae. These can come from the federal government, states, businesses, advocacy groups on every side, and scholars. Big cases can draw dozens of them.[86]

The Court does not hold a new trial. There are no witnesses and no jury. The justices work from the written record of what happened in the lower courts and from the briefs.[87]

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[83] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 214-215, 238 n.107. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[84] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 268. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[85] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[86] Rules of the Supreme Court of the United States. Supreme Court of the United States. current rules, page accessed November 12, 2026. https://www.supremecourt.gov/filingandrules/rules_guidance.aspx (accessed November 12, 2026).

[87] The Court and Its Procedures. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/procedures.aspx (accessed November 12, 2026).

The emergency docket

Not everything the Court does is a full case with briefs and argument. Parties can also ask for emergency relief, called an "application." A common example is a request to pause, or "stay," a lower court's order while an appeal goes forward, or a request to stop an execution.[88]

Each justice is assigned to supervise emergency matters from one or more of the federal circuits. The justice can act alone or, more often in important matters, refer the application to the full Court.[89]

Emergency rulings are often short. Some come with no explanation at all. Others come with a brief unsigned opinion, sometimes with written dissents.

In 2015, law professor William Baude used the phrase "shadow docket" for this part of the Court's work, meaning the orders that decide real disputes without the full process of a merits case.[90] The Presidential Commission devoted a chapter of its 2021 report to these orders and the debate over them.[91]

Why does the emergency docket matter? Because temporary orders can decide what happens for months or years while a case works its way through the courts. A few examples from the year before this book's cutoff:

- On August 31, 2026, the Court paused a lower court order that had stopped the National Park Service's East Wing project at the White House, finding the government was likely to show the challengers lacked standing to sue.[92]
- On September 25, 2026, the Court stayed lower court orders and said Missouri could use its 2022 congressional map, not a 2025 map, for the 2026 election.[93]

Defenders of the Court's handling of emergency applications argue that the justices must act quickly when a lower court blocks a national policy, and that a full merits case takes too long. Critics argue that decisions with major effects are being made without full briefing, argument or explanation. I give both sides in more depth in Chapter 18, along with the claim, tested in Chapter 17, that the "shadow docket" is something new.

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[88] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[89] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[90] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 228 n.7. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[91] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 203-215. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[92] National Park Service v. National Trust for Historic Preservation (order on application for stay), 609 U.S. 1068 (2026). Supreme Court of the United States. August 31, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r70_3e04.pdf (accessed November 12, 2026).

[93] People Not Politicians v. Onder (order on application for stay), 609 U.S. ___ (2026). Supreme Court of the United States. September 25, 2026. https://www.supremecourt.gov/opinions/25pdf/26a388_q86b.pdf (accessed November 12, 2026).

The debate in more detail

The Presidential Commission's 2021 report devoted a full section to emergency orders. It stressed that "the concerns raised are not about the existence of emergency procedures" but "about specific aspects of their current use by the Court," adding that "no one disputes that they are needed for true emergencies."[94] It grouped the concerns into three sets.

Concern 1: big decisions with little process. Emergency orders are decided with "relatively limited briefing, no oral argument, no norm that the Court's reasoning must be publicly explained in a written opinion, and no expectation that the Justices' votes will be revealed."[95] Yet the Commission noted that such orders have decided questions about the 2020 Census deadline, absentee and curbside voting during the pandemic, COVID-19 exposure in prisons, and religious gatherings during the pandemic.[96] It also reported a sharp rise in contested orders: "During the 2017 Term, there were five orders from which at least three Justices publicly dissented; during the 2020 Term, there were 29 such orders."[97]

Concern 2: not knowing why, or who. Critics argue that the lack of a stated rationale and of full vote counts "deprive the public of valuable information" about how the Court and each justice apply the law in important cases.[98]

Concern 3: are these orders precedent? Even judges have found it unclear which emergency rulings bind lower courts. The Commission noted that Justice Alito said in a public address that a ruling on an emergency application is not a precedent on the underlying issue, yet at times the Court has seemed to expect lower courts to follow its emergency orders.[99]

What defenders say. Defenders respond that "detailed opinion writing is infeasible in many emergency settings," that justices may agree more quickly on an outcome if they do not have to agree on reasoning, and that it may be wise for justices "to reveal less rather than more" so they

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[94] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 204. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[95] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 204. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[96] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 205. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[97] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 205. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[98] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 207. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[99] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 208. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

do not lock themselves into positions reached with limited time and information.[100] They also point to causes outside the Court's control, such as lower courts issuing "nationwide" injunctions that block federal policy for everyone, which push the government to seek emergency relief.[101]

Proposals. Ideas discussed by the Commission include asking the Court to explain its reasoning in emergency orders on matters of great public importance, to disclose how each justice voted, to say clearly whether an order is meant as precedent, and to move more emergency applications onto the regular merits docket on a fast schedule, as it did in 2021 in the Texas abortion law litigation.[102] The Commission also noted that the Court has shown it can write a short, informative opinion quickly, pointing to an eight-page unsigned opinion in a case about the second federal eviction moratorium.[103]

Emergency orders and the death penalty

Many emergency applications involve executions, where the Court often has the final word on whether an execution goes forward that day.[104] The Commission reported that between 1963 and 2001 the federal government executed no one, and it executed three people between 2001 and 2019. In the last six months of the first Trump administration, the Justice Department sought thirteen federal executions. Challenges were filed in all thirteen, and the combined effect of the Court's orders "was to permit all thirteen executions to go forward," mostly in brief orders without explanation and over multiple dissents.[105]

Witnesses split on this record. One defended the rulings on the ground that the challengers had not shown they were likely to win. Others, and Justices Breyer and Sotomayor, criticized how the cases were handled.[106] Proposals include a presumption in favor of pausing an execution

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[100] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 208. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[101] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 205. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[102] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 209-210. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[103] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 210. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[104] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 212. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[105] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 213. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[106] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

when its legality is genuinely in doubt, automatic stays during a person's first round of federal habeas review, and allowing four justices, rather than five, to pause an execution.[107] Opponents argue that automatic stays would invite weak claims, and that if the Court is going to stop a lawful sentence from being carried out, a majority of justices should agree.[108]

The "rule of four" discussed earlier in this chapter connects here. Four votes are enough to take a case, but five are needed to pause an execution while the Court decides whether to take it. The informal "courtesy fifth" vote is meant to bridge that gap, but the Commission described its "contours and the continuing viability" as "unclear."[109]

Can Congress take a case away from the Court?

Remember the Exceptions Clause from Chapter 1. Congress can make "exceptions" to the Court's appellate jurisdiction.[110]

The leading example is Ex parte McCardle (1869). A Mississippi newspaper editor, held by the Army during Reconstruction, appealed to the Supreme Court under an 1867 law. While his appeal was pending, Congress repealed that part of the law. The Court held that it no longer had jurisdiction under that statute and dismissed the appeal.[111]

How far that power goes is still debated. The Presidential Commission's report cites McCardle as a case "upholding jurisdiction-stripping legislation," and in the same note points to a case going the other way, United States v. Klein (1871), in which the Court struck down a law that tried to dictate the outcome of pending cases.[112] Scholars still disagree about whether Congress could use the Exceptions Clause to keep the Court from enforcing constitutional rights altogether. No court has settled that question, so I treat it as an open one.

December 8, 2021). p. 213. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[107] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 214. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[108] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 214-215. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[109] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 215. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[110] U.S. Constitution, Article III. Legal Information Institute, Cornell Law School (text of the Constitution). 1787. https://www.law.cornell.edu/constitution/articleiii (accessed November 12, 2026).

[111] Ex parte McCardle, 74 U.S. 506 (1869). Supreme Court of the United States. 1869. https://www.law.cornell.edu/supremecourt/text/74/506 (accessed November 12, 2026).

[112] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 63 n.80. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Can Congress just overrule the Court?

You might ask, "Why can't Congress just overrule the Court?" Sometimes it can, and here is when.

- **When the Court interprets a statute,** Congress can change the statute. In Ledbetter v. Goodyear Tire and Rubber Co. (2007), the Court held that Lilly Ledbetter's pay discrimination claim was filed too late under the deadline in federal law.[113] Congress then passed the Lilly Ledbetter Fair Pay Act of 2009, which changed how that deadline is counted.[114] That is ordinary lawmaking, and it happens regularly.
- **When the Court interprets the Constitution,** Congress cannot change the result by passing a law. The only ways to change it are a constitutional amendment or a later decision by the Court itself. The Court made this point directly in Dickerson v. United States (2000), when it held that Congress could not overrule the Miranda decision by statute because Miranda was a constitutional rule.[115]

Summary: the path of a case

Step	What happens
1. Lower courts decide	A trial court and usually an appeals court rule.
2. Petition	The losing side files a petition for certiorari, usually within 90 days.[116]
3. Screening	Clerks summarize the petition; justices discuss it at a private conference.
4. Vote to grant	Four justices must agree to hear it (the rule of four).[117]
5. Briefing	The parties and amici file written arguments.[118]
6. Oral argument	Each side usually gets 30 minutes.[119]
7. Conference and decision	The justices vote privately and write opinions (Chapter 4).

[113] Ledbetter v. Goodyear Tire and Rubber Co., 550 U.S. 618 (2007). Supreme Court of the United States. 2007. https://www.law.cornell.edu/supremecourt/text/05-1074 (accessed November 12, 2026).

[114] Lilly Ledbetter Fair Pay Act of 2009, Public Law 111-2. U.S. Congress, via govinfo.gov. January 29, 2009. https://www.govinfo.gov/content/pkg/PLAW-111publ2/html/PLAW-111publ2.htm (accessed November 12, 2026).

[115] Dickerson v. United States, 530 U.S. 428 (2000). Supreme Court of the United States. 2000. https://www.law.cornell.edu/supremecourt/text/530/428 (accessed November 12, 2026).

[116] Rules of the Supreme Court of the United States. Supreme Court of the United States. current rules, page accessed November 12, 2026. https://www.supremecourt.gov/filingandrules/rules_guidance.aspx (accessed November 12, 2026).

[117] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 268. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[118] Rules of the Supreme Court of the United States. Supreme Court of the United States. current rules, page accessed November 12, 2026. https://www.supremecourt.gov/filingandrules/rules_guidance.aspx (accessed November 12, 2026).

[119] The Court and Its Procedures. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/procedures.aspx (accessed November 12, 2026).

Chapter 4: How the Court Decides

When people picture the Supreme Court, they often picture oral argument: lawyers at a lectern, justices firing questions. That hour is the most public part of a case, but it is only one step. Most of the work happens in writing, and the most important decisions happen in a room no one else may enter.

Oral argument

The Court hears arguments from October through April. Sessions usually begin at 10 a.m., and the justices generally hear two arguments a morning, usually on Mondays, Tuesdays and Wednesdays. With rare exceptions, each side gets 30 minutes.[120]

The day begins with a traditional announcement by the Marshal of the Court, ending with "God save the United States and this Honorable Court!"[121]

Lawyers rarely get far into a prepared speech. The justices interrupt with questions, often to test where a rule would lead. A question is not always a sign of how a justice will vote. Sometimes a justice is arguing with a colleague through the lawyer.

The Court posts transcripts and audio of its arguments on its website.[122] The reference site Oyez, run by the Illinois Institute of Technology's Chicago-Kent College of Law, keeps an archive of older argument audio, labeled here as a widely used reference.[123]

The conference

After argument, the justices meet privately in conference to discuss the argued cases and vote on petitions.[124] By long custom, only the nine justices are in the room. Also by tradition, the Chief Justice speaks first and summarizes the case, and then each justice speaks in order of seniority. A tentative vote follows.

That vote decides who writes. If the Chief Justice is in the majority, the Chief Justice assigns the majority opinion. If not, the most senior associate justice in the majority assigns it. The power to assign opinions is one of the main sources of a Chief Justice's influence, because the author shapes how broad or narrow the ruling is. (The justices-only conference, the speaking order and the assignment practice are widely described by Court historians and former clerks. I did not find them written in an official Court rule, so I label them long-standing customs.)

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[120] The Court and Its Procedures. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/procedures.aspx (accessed November 12, 2026).

[121] The Court and Its Procedures. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/procedures.aspx (accessed November 12, 2026).

[122] Argument Transcripts. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/oral_arguments/argument_transcript/2025 (accessed November 12, 2026).

[123] Oyez (multimedia archive of the Supreme Court). Illinois Institute of Technology Chicago-Kent College of Law, Justia and partners. site accessed November 12, 2026. https://www.oyez.org/ (accessed November 12, 2026).

[124] The Court and Its Procedures. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/procedures.aspx (accessed November 12, 2026).

Drafts, votes and changes

The assigned justice and law clerks write a draft opinion and circulate it to the others. Justices respond with memos. Some join. Some ask for changes as the price of joining. Some write separately.

Votes can and sometimes do change between the conference and the final decision. Because the opinions are not released until everyone has finished writing, the public learns the final outcome all at once.

Kinds of opinions

When a decision comes out, you will see several kinds of writing. Here is what each one means.

Opinion	What it is
Majority opinion ("opinion of the Court")	Joined by at least five justices when all nine take part. It states the holding, which binds lower courts.
Plurality opinion	The lead opinion when no single opinion gets a majority, even though a majority agrees on the result. Its reasoning is less binding.
Concurrence	A justice who agrees with the result writes separately, either to add reasons or to reach the result a different way ("concurring in the judgment").
Dissent	A justice who disagrees with the result explains why. Dissents have no legal force, but they can shape future law.
Per curiam	Latin for "by the court." An unsigned opinion for the Court, often short.

A real example shows how these fit together. In Learning Resources, Inc. v. Trump, decided February 20, 2026, Chief Justice John Roberts announced the judgment and wrote an opinion that six justices joined on its key parts, holding that a 1977 emergency powers law did not authorize the President to impose tariffs. Justices Neil Gorsuch and Amy Coney Barrett also wrote concurring opinions. Justice Elena Kagan, joined by Justices Sonia Sotomayor and Ketanji Brown Jackson, concurred in part and in the judgment, and Justice Jackson also wrote separately. Justice Clarence Thomas dissented, and Justice Brett Kavanaugh dissented in an opinion joined by Justices Thomas and Samuel Alito.[125] That is one decision with eight separate writings. The headline is simple, 6-3, but the details tell you which parts of the reasoning have majority support.

Precedent: why the Court usually follows its past decisions

The Court decides new cases against the background of its old ones. The principle that courts should usually follow their own earlier decisions is called stare decisis, Latin for "to stand by things decided."

Why follow a decision you think is wrong? Supporters of a strong rule of precedent give several reasons: it makes the law predictable, it lets people plan their lives and businesses around settled rules, and it keeps the law from changing every time a new justice joins the Court.

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[125] Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. February 20, 2026. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf (accessed November 12, 2026).

But the Court has always said precedent is not absolute, especially in constitutional cases, because the only other way to fix a constitutional mistake is an amendment. When the Court decides whether to overrule a precedent, it usually looks at factors like these:

- how well reasoned the earlier decision was;
- whether the rule it set up has proved workable;
- whether it is consistent with related decisions;
- whether later developments have undermined it; and
- how much people have relied on it.

The Court applied factors like these in Dobbs v. Jackson Women's Health Organization (2022), when it overruled Roe v. Wade, and again in Trump v. Slaughter (2026), when it said that "[i]f anything more is left" of a 1935 precedent, Humphrey's Executor v. United States, "we overrule it."[126] Dissenting justices in both cases argued that the majority had not given precedent enough weight.[127]

How often does the Court actually overrule itself? That is one of the claims tested in Part Five, and Chapter 11 lists major examples.

How justices read the Constitution

Justices disagree not only about outcomes but about method. You will hear a few labels often. Here they are in plain language. These are descriptions of schools of thought, not verdicts on which is right.

- **Originalism.** The Constitution's words should be given the meaning they had to the public when they were adopted. Justices often associated with this approach include Justices Thomas and Gorsuch, and the late Justice Antonin Scalia was its best-known modern advocate.
- **Textualism.** When reading a statute, judges should follow the ordinary meaning of its words, not what they think lawmakers intended. Justice Gorsuch's majority opinion in Bostock v. Clayton County (2020) is a well-known example of a textualist opinion that reached a result many conservatives did not expect: it held that firing someone for being gay or transgender is discrimination "because of sex" under federal job discrimination law.[128]
- **Living constitutionalism.** The Constitution's broad principles should be applied in light of changing conditions and values, guided by precedent. Justice Stephen Breyer, who retired in 2022, was a leading voice for a related approach that emphasizes a law's purposes and practical effects.

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[126] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026). Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

[127] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026). Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

[128] Bostock v. Clayton County, 590 U.S. 644 (2020). Supreme Court of the United States. June 15, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/590US2PP_web.pdf#page=232 (accessed November 12, 2026).

- **Pragmatism and minimalism.** Some judges prefer to decide cases narrowly, one step at a time, without broad theories.

Groups on each side promote these approaches. The Federalist Society, a conservative and libertarian lawyers' organization, is widely associated with originalism and textualism. The American Constitution Society, a progressive lawyers' organization, is widely associated with living constitutionalism. I mention them as examples of each side's advocates (Tier 5), not as authorities on what the Constitution means.[129]

Here is how two justices put their approaches in their own words.

An originalist's statement. In District of Columbia v. Heller (2008), Justice Scalia wrote for the majority: "Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." He added that "A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all."[130]

An evolving-standards statement. Fifty years earlier, in Trop v. Dulles (1958), Chief Justice Earl Warren wrote, for himself and three other justices, that the Eighth Amendment's ban on cruel and unusual punishment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[131] Courts still quote that line in Eighth Amendment cases.

Both sides use history. It is a mistake to think only one side cares about history. In Heller, Justice Stevens's dissent also rested on history. He wrote that "The Second Amendment was adopted to protect the right of the people of each of the several States to maintain a well-regulated militia."[132] The majority and dissent read the same historical record and drew opposite conclusions. That happens often, and it is one reason the labels above describe tendencies, not fixed teams.

Who writes the law clerks' drafts?

Each justice hires a small number of law clerks each year, usually recent law graduates who have already clerked for a lower court judge. Clerks research, screen petitions and help draft opinions. How much each justice relies on clerks for drafting varies, and the details are private. I have not found an official source that describes each justice's practice, so I leave it there.

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[129] About Us. The Federalist Society for Law and Public Policy Studies. page accessed November 12, 2026. https://fedsoc.org/about-us (accessed November 12, 2026). About ACS. American Constitution Society. page accessed November 12, 2026. https://www.acslaw.org/about-us/ (accessed November 12, 2026).

[130] District of Columbia v. Heller, 554 U.S. 570 (2008). Supreme Court of the United States. 2008. https://www.law.cornell.edu/supremecourt/text/07-290 (accessed November 12, 2026).

[131] Trop v. Dulles, 356 U.S. 86 (1958). Supreme Court of the United States. 1958. https://www.law.cornell.edu/supremecourt/text/356/86 (accessed November 12, 2026).

[132] District of Columbia v. Heller, 554 U.S. 570 (2008). Supreme Court of the United States. 2008. https://www.law.cornell.edu/supremecourt/text/07-290 (accessed November 12, 2026).

The opinions come out

In the Court's busiest months, May and June, decisions are announced in the courtroom on days the Court names in advance, and posted on the Court's website at the same time.[133] The author of the majority opinion usually reads a summary from the bench. A justice who strongly disagrees may also read part of a dissent aloud, a sign that the justice considers the case especially important.

For the 2025 term, the Court's last regular opinions came out on June 30, 2026, including the decisions on birthright citizenship, campaign spending by political parties, and transgender athletes.[134] It kept issuing orders and short opinions on emergency applications through the summer and into September.[135]

What to take away

- Oral argument matters, but the briefs, the private conference and the drafting process decide most cases.[136]
- A majority opinion needs at least five votes when all nine justices take part. Concurrences and dissents add views but not binding law.
- The Court usually follows precedent, but it can and does overrule its own decisions, especially in constitutional cases.[137]
- Justices disagree about method, not just outcomes, and the labels for those methods are worth knowing before you read Part Two.

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[133] Opinions of the Court, 2025 Term. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[134] Opinions of the Court, 2025 Term. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[135] Opinions of the Court, 2025 Term. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[136] The Court and Its Procedures. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/procedures.aspx (accessed November 12, 2026).

[137] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026). Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

Part One Notes

Main sources for Part One. The Constitution (Article III and the Eleventh Amendment); the Judiciary Act of 1789 and today's 28 U.S. Code; the Federalist No. 78 and Brutus No. XI; the Court's own opinions in Chisholm, Hylton, Marbury, Stuart v. Laird, McCardle, Cooper v. Aaron, Dickerson, Heller and Trop v. Dulles; the Court's Rules, procedures page and FAQ; and the Presidential Commission's Final Report (2021). The full list of sources cited in Part One follows these notes.

[Not verified] items in Part One.

- The 2015 law review article in which Professor William Baude used the phrase "shadow docket." I rely on the Commission's citation to it and did not open the article itself.
- Professor Richard Lazarus's full written testimony on the Court's screening of petitions. I quote it only as excerpted in the Commission's report.

Where sources disagree.

- *How far Congress can limit the Court's appeals.* Ex parte McCardle (1869) upheld a law taking away an appeal; United States v. Klein (1871) struck down a law that tried to dictate outcomes. The Commission cites both and says the limits are unclear. The text gives both.
- *Whether judicial review was meant to be strong or weak.* Hamilton (Federalist No. 78) called the courts the "least dangerous" branch; Brutus warned they would be beyond control. Both are quoted in Chapter 2.
- *Judicial supremacy.* Cooper v. Aaron says the Court's reading of the Constitution binds everyone; critics, including some presidents, have said each branch can interpret the Constitution for itself. Chapter 2 and Chapter 18 give both views.
- *The emergency docket.* Witnesses before the Commission split on whether the Court's emergency orders were justified. Chapter 3 gives both sides.

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- 28 U.S. Code Section 1257: State courts; certiorari. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/28/1257
- 28 U.S. Code Section 1: Number of justices; quorum. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/28/1
- 28 U.S. Code Section 2: Terms of court. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/28/2
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- Oyez (multimedia archive of the Supreme Court). Illinois Institute of Technology Chicago-Kent College of Law, Justia and partners. https://www.oyez.org/

Tier 5: Advocacy groups and think tanks

- About ACS. American Constitution Society. https://www.acslaw.org/about-us/
- About Us. The Federalist Society for Law and Public Policy Studies. https://fedsoc.org/about-us

Part Two: Landmark Rulings, Era by Era

This part walks through the rulings that most shaped the country. For each one I tell you what the Court decided, the vote, the main reasoning on each side and what happened afterward. Votes are given as the number of justices in the majority and in dissent, taken from the opinions themselves. When a justice did not take part, the total is less than nine.

A note on fairness: some of these rulings are now almost universally condemned, some are almost universally praised, and many are still fiercely debated. For the debated ones, I give the strongest arguments from each side in their own words, from their own opinions.

Chapter 5: Building a Nation, 1789 to 1860

The early Court spent much of its energy on a basic question: how much power does the new national government have, compared to the states? Its answers built the legal framework of the United States. Then, in 1857, it issued the decision that most historians rank as its worst.

McCulloch v. Maryland (1819): the national bank

The question. Congress chartered the Second Bank of the United States. Maryland taxed the bank's Baltimore branch, and the branch's cashier, James McCulloch, refused to pay. Two questions followed. Could Congress create a bank, when the Constitution never mentions banks? And could a state tax it?[138]

The decision. The Court said yes to the first and no to the second. Chief Justice John Marshall wrote for a unanimous Court.[139]

The reasoning. The Constitution gives Congress power to make all laws "necessary and proper" for carrying out its listed powers, such as taxing, borrowing and regulating commerce. Marshall read "necessary" broadly, as "convenient" or "useful," not "absolutely necessary." He reminded readers that "we must never forget that it is a constitution we are expounding," a document meant to last for ages and to be adapted to "the various crises of human affairs."[140]

On the tax, he wrote that "the power to tax involves the power to destroy." If a state could tax a federal institution, it could tax it out of existence. Federal law is supreme, so the state tax was invalid.[141]

What happened after. McCulloch became the foundation for a broad reading of federal power. It remains one of the most cited decisions in the Court's history. Critics then and now, often called "strict constructionists," argued that a broad reading of "necessary and proper" lets Congress do almost anything. That debate returned in later chapters, including the 2012 fight over the Affordable Care Act.[142]

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[138] McCulloch v. Maryland, 17 U.S. 316 (1819). Supreme Court of the United States. 1819. https://www.law.cornell.edu/supremecourt/text/17/316 (accessed November 12, 2026).

[139] McCulloch v. Maryland, 17 U.S. 316 (1819). Supreme Court of the United States. 1819. https://www.law.cornell.edu/supremecourt/text/17/316 (accessed November 12, 2026).

[140] McCulloch v. Maryland, 17 U.S. 316 (1819). Supreme Court of the United States. 1819. https://www.law.cornell.edu/supremecourt/text/17/316 (accessed November 12, 2026).

[141] McCulloch v. Maryland, 17 U.S. 316 (1819). Supreme Court of the United States. 1819. https://www.law.cornell.edu/supremecourt/text/17/316 (accessed November 12, 2026).

[142] National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012). Supreme Court of the United States. 2012. https://www.law.cornell.edu/supremecourt/text/567/519 (accessed November 12, 2026).

Gibbons v. Ogden (1824): who controls commerce

New York gave Robert Livingston and Robert Fulton a monopoly on steamboat travel in its waters. Aaron Ogden held a license under that monopoly. Thomas Gibbons ran competing boats under a federal coasting license. Ogden sued to stop him.[143]

The Court, again through Chief Justice Marshall, ruled for Gibbons. It read Congress's power to regulate commerce "among the several States" to include navigation and commercial activity that crosses state lines, even when it happens inside a state's waters. Because the federal license conflicted with New York's monopoly, the federal license won.[144]

Gibbons is the start of a long line of cases about the Commerce Clause. Over the next two centuries, the meaning of "commerce among the several States" would expand, contract and expand again, and it still shapes federal power over everything from labor law to guns.[145]

The Cherokee cases (1831 and 1832)

Georgia passed laws to take control of Cherokee lands and extend state law over the Cherokee Nation. The Cherokee went to the Supreme Court.

In Cherokee Nation v. Georgia (1831), the Court ruled that it could not hear the case as an original suit by a foreign nation. Chief Justice Marshall wrote that tribes such as the Cherokee "may, more correctly, perhaps, be denominated domestic dependent nations," not foreign states under Article III.[146]

A year later, in Worcester v. Georgia (1832), the Court reached the merits through a different case. Georgia had imprisoned Samuel Worcester, a missionary, for living on Cherokee land without a state license. The Court held that Georgia's laws had no force within Cherokee territory, because relations with the Cherokee were a matter for the federal government under treaties.[147]

What happened after. Georgia ignored the ruling for months. President Andrew Jackson's administration did not act to enforce it. You may have heard that Jackson said, "John Marshall has made his decision; now let him enforce it." I treat that quote as [Not verified], because I found no record of it from Jackson himself. Chapter 17 comes back to it. The larger point does stand on the record: the Court had no means of its own to enforce the decision. In 1838, the

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[143] Gibbons v. Ogden, 22 U.S. 1 (1824). Supreme Court of the United States. 1824. https://www.law.cornell.edu/supremecourt/text/22/1 (accessed November 12, 2026).

[144] Gibbons v. Ogden, 22 U.S. 1 (1824). Supreme Court of the United States. 1824. https://www.law.cornell.edu/supremecourt/text/22/1 (accessed November 12, 2026).

[145] United States v. Lopez, 514 U.S. 549 (1995). Supreme Court of the United States. 1995. https://www.law.cornell.edu/supremecourt/text/514/549 (accessed November 12, 2026).

[146] Cherokee Nation v. Georgia, 30 U.S. 1 (1831). Supreme Court of the United States. 1831. https://www.law.cornell.edu/supremecourt/text/30/1 (accessed November 12, 2026).

[147] Worcester v. Georgia, 31 U.S. 515 (1832). Supreme Court of the United States. 1832. https://www.law.cornell.edu/supremecourt/text/31/515 (accessed November 12, 2026).

federal government forcibly removed the Cherokee from their homeland in the Southeast, on the journey known as the Trail of Tears.[148]

Dred Scott v. Sandford (1857): the worst decision

The background. Dred Scott was an enslaved man whose owner, an Army surgeon, had taken him to live for years in Illinois, a free state, and in part of the Louisiana Purchase where Congress had banned slavery under the Missouri Compromise of 1820. Scott later sued for his freedom, arguing that living on free soil had made him free.[149]

The decision. By a 7-2 vote, the Court ruled against him. Chief Justice Roger Taney wrote the main opinion. Each justice in the majority wrote separately, but the Court's judgment rested on two holdings.[150]

1. **No citizenship.** Taney wrote that Black Americans, whether enslaved or free, were not and could not become citizens of the United States under the Constitution, so Scott could not sue in federal court. He claimed that at the founding, Black people had been regarded as "so far inferior that they had no rights which the white man was bound to respect."[151]
2. **No power to ban slavery in the territories.** Taney also held that the Missouri Compromise's ban on slavery north of a set line was unconstitutional, because it deprived slaveholders of their property without due process of law.[152]

The dissents. Justices John McLean and Benjamin Curtis dissented. Curtis showed that free Black men had been voters in several states when the Constitution was ratified, which he argued made them part of "the people" who formed it. He also argued that Congress's power over the territories included the power to ban slavery there.[153]

What happened after. Dred Scott was only the second decision in which the Court struck down an act of Congress, after Marbury.[154] It inflamed the national conflict over slavery, and Abraham Lincoln attacked it during his rise to the presidency.[155] The Civil War followed. The

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[148] Trail of Tears National Historic Trail: History and Culture. National Park Service. page accessed November 12, 2026. https://www.nps.gov/trte/learn/historyculture/index.htm (accessed November 12, 2026).

[149] Dred Scott v. Sandford, 60 U.S. 393 (1857). Supreme Court of the United States. 1857. https://www.law.cornell.edu/supremecourt/text/60/393 (accessed November 12, 2026).

[150] Dred Scott v. Sandford, 60 U.S. 393 (1857). Supreme Court of the United States. 1857. https://www.law.cornell.edu/supremecourt/text/60/393 (accessed November 12, 2026).

[151] Dred Scott v. Sandford, 60 U.S. 393 (1857). Supreme Court of the United States. 1857. https://www.law.cornell.edu/supremecourt/text/60/393 (accessed November 12, 2026).

[152] Dred Scott v. Sandford, 60 U.S. 393 (1857). Supreme Court of the United States. 1857. https://www.law.cornell.edu/supremecourt/text/60/393 (accessed November 12, 2026).

[153] Dred Scott v. Sandford, 60 U.S. 393 (1857). Supreme Court of the United States. 1857. https://www.law.cornell.edu/supremecourt/text/60/393 (accessed November 12, 2026).

[154] Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States, in The Constitution of the United States of America: Analysis and Interpretation (2016 revision). Congressional Research Service and Library of Congress, via govinfo.gov. 2016. p. 2309. https://www.govinfo.gov/content/pkg/GPO-CONAN-REV-2016/pdf/GPO-CONAN-REV-2016-11.pdf (accessed November 12, 2026).

[155] First Inaugural Address of Abraham Lincoln, March 4, 1861. The Avalon Project, Yale Law School. March 4, 1861. https://avalon.law.yale.edu/19th_century/lincoln1.asp (accessed November 12, 2026).

Thirteenth Amendment (1865) abolished slavery, and the first sentence of the Fourteenth Amendment (1868) wiped out Taney's citizenship holding: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."[156]

Dred Scott is now condemned across the political spectrum. Justices on all sides cite it as a warning. Conservative justices have used it as an example of judges reading their own policy views into the Due Process Clause.[157] Liberal justices have cited it as an example of the Court failing to protect basic rights.

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[156] The Constitution: Amendments 11-27. National Archives. amendments ratified 1795-1992. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[157] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

Chapter 6: After the Civil War, 1865 to 1937

The Civil War amendments, the Thirteenth, Fourteenth and Fifteenth, promised freedom, citizenship, equal protection and the vote regardless of race.[158] In this era, the Court narrowed many of those promises. It also began reading the Fourteenth Amendment to protect business and contract rights against regulation, a line of cases that ended in a showdown with President Franklin Roosevelt.

The Slaughter-House Cases (1873)

Louisiana gave one company the exclusive right to run slaughterhouses in the New Orleans area. Butchers who were shut out argued that the monopoly violated the Fourteenth Amendment's guarantee that no state shall abridge "the privileges or immunities of citizens of the United States."[159]

By a 5-4 vote, the Court disagreed. Justice Samuel Miller's majority opinion read the Privileges or Immunities Clause narrowly, as protecting only a short list of rights tied to national citizenship, such as access to ports and federal protection on the high seas. The everyday rights of citizens, including the right to pursue a trade, were left to the states.[160]

The four dissenters argued that the amendment was meant to protect the basic rights of all citizens against state abuse.[161] Scholars on both the left and the right have criticized the majority's reading, and Justice Thomas has argued in later opinions that the Clause should be revived.[162] The narrow reading still stands as of this book's cutoff.

The Civil Rights Cases (1883)

The Civil Rights Act of 1875 banned racial discrimination in inns, public transportation and places of amusement. In 1883, by an 8-1 vote, the Court struck down those provisions. The majority held that the Fourteenth Amendment limits only what states do, not what private businesses do, and that the Thirteenth Amendment did not reach this kind of discrimination.[163]

Justice John Marshall Harlan dissented alone, arguing that the amendments gave Congress power to protect freed people against the "badges and incidents" of slavery, including exclusion

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[158] The Constitution: Amendments 11-27. National Archives. amendments ratified 1795-1992. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[159] Slaughter-House Cases, 83 U.S. 36 (1873). Supreme Court of the United States. 1873. https://www.law.cornell.edu/supremecourt/text/83/36 (accessed November 12, 2026).

[160] Slaughter-House Cases, 83 U.S. 36 (1873). Supreme Court of the United States. 1873. https://www.law.cornell.edu/supremecourt/text/83/36 (accessed November 12, 2026).

[161] Slaughter-House Cases, 83 U.S. 36 (1873). Supreme Court of the United States. 1873. https://www.law.cornell.edu/supremecourt/text/83/36 (accessed November 12, 2026).

[162] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States. 2010. https://www.law.cornell.edu/supremecourt/text/08-1521 (accessed November 12, 2026).

[163] Civil Rights Cases, 109 U.S. 3 (1883). Supreme Court of the United States. 1883. https://www.law.cornell.edu/supremecourt/text/109/3 (accessed November 12, 2026).

from public places.[164] Congress did not pass a broad public accommodations law again until the Civil Rights Act of 1964, which the Court upheld under the Commerce Clause.[165]

Plessy v. Ferguson (1896): "separate but equal"

The case. Louisiana required railroads to provide "equal but separate" cars for white and Black passengers. Homer Plessy, who was one-eighth Black, sat in a whites-only car as a planned test of the law and was arrested.[166]

The decision. By a 7-1 vote, the Court upheld the law. Justice Henry Billings Brown wrote that the Fourteenth Amendment was meant to ensure legal equality but "could not have been intended to abolish distinctions based upon color." He rejected the argument that forced separation stamped Black citizens with a badge of inferiority, saying that if so, it was "solely because the colored race chooses to put that construction upon it."[167]

The dissent. Justice Harlan dissented again, alone. His dissent includes one of the most quoted lines in American law: "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." He predicted the decision would prove "quite as pernicious as the decision made by this tribunal in the Dred Scott case."[168]

What happened after. Plessy gave legal cover to segregation laws across the South for more than half a century. The Court effectively rejected it in Brown v. Board of Education (1954), described in Chapter 8.[169] Today, Harlan's "color-blind" line is cited by both sides of the debate over race-conscious policies. In 2023, the majority in Students for Fair Admissions relied on the ideal of a color-blind Constitution, while dissenters argued that Harlan's dissent, read as a whole, was about ending a caste system, not about forbidding efforts to remedy it.[170]

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[164] Civil Rights Cases, 109 U.S. 3 (1883). Supreme Court of the United States. 1883. https://www.law.cornell.edu/supremecourt/text/109/3 (accessed November 12, 2026).

[165] Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964). Supreme Court of the United States. 1964. https://www.law.cornell.edu/supremecourt/text/379/241 (accessed November 12, 2026).

[166] Plessy v. Ferguson, 163 U.S. 537 (1896). Supreme Court of the United States. 1896. https://www.law.cornell.edu/supremecourt/text/163/537 (accessed November 12, 2026).

[167] Plessy v. Ferguson, 163 U.S. 537 (1896). Supreme Court of the United States. 1896. https://www.law.cornell.edu/supremecourt/text/163/537 (accessed November 12, 2026).

[168] Plessy v. Ferguson, 163 U.S. 537 (1896). Supreme Court of the United States. 1896. https://www.law.cornell.edu/supremecourt/text/163/537 (accessed November 12, 2026).

[169] Brown v. Board of Education, 347 U.S. 483 (1954). Supreme Court of the United States. 1954. https://www.law.cornell.edu/supremecourt/text/347/483 (accessed November 12, 2026).

[170] Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023). Supreme Court of the United States. June 29, 2023. https://www.supremecourt.gov/opinions/22pdf/600us1r53_4g15.pdf (accessed November 12, 2026).

United States v. Wong Kim Ark (1898): birthright citizenship

Wong Kim Ark was born in San Francisco to Chinese parents who were living there lawfully but were not, and under the law of the time could not become, U.S. citizens. When he returned from a trip abroad, federal officials refused to let him back in, saying he was not a citizen.[171]

By a 6-2 vote, the Court held that he was a citizen by birth under the Fourteenth Amendment. The majority read "subject to the jurisdiction thereof" to exclude only narrow groups, such as children of foreign diplomats and of enemy forces in hostile occupation.[172]

This case returned to the headlines in 2025 and 2026, when the Court considered an executive order limiting birthright citizenship. In Trump v. Barbara, decided June 30, 2026, the Court held that children born in the United States to parents who are here unlawfully or temporarily are citizens at birth under the Citizenship Clause.[173] That ruling is covered in Chapter 18.

The dissent. Chief Justice Melville Fuller, joined by Justice John Marshall Harlan, dissented. He wrote: "I cannot concur in the opinion and judgment of the court in this case." He disagreed with the majority's reliance on the English common-law rule that made "the place of birth the criterion of nationality," and argued that a child of parents who could not become citizens should not be a citizen just by being born here.[174] Justice Joseph McKenna, who joined the Court after the case was argued, "took no part in the decision," which is why the vote totals eight.[175]

Taxes: Pollock (1895) and the Sixteenth Amendment

In Pollock v. Farmers' Loan and Trust Co. (1895), the Court took up the federal income tax of 1894. The Constitution requires a "direct tax" to be divided among the states by population. In its first decision, the Court held that a tax on income from real estate was a direct tax and so was invalid as written. On the rest of the law, "the justices who heard the argument are equally divided," so no opinion was expressed.[176] Only eight justices had taken part. The Court reheard the case, and later in 1895, by a 5-4 vote, Chief Justice Melville Fuller wrote that the tax on income from real estate and personal property was a direct tax, and that because those sections formed "one entire scheme of taxation," all of the income tax sections were "necessarily invalid." Justices Harlan, Brown, Jackson and White dissented.[177] The country responded with the Sixteenth Amendment, ratified in 1913, which lets Congress tax incomes "from whatever source

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[171] United States v. Wong Kim Ark, 169 U.S. 649 (1898). Supreme Court of the United States. 1898. https://www.law.cornell.edu/supremecourt/text/169/649 (accessed November 12, 2026).

[172] United States v. Wong Kim Ark, 169 U.S. 649 (1898). Supreme Court of the United States. 1898. https://www.law.cornell.edu/supremecourt/text/169/649 (accessed November 12, 2026).

[173] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[174] United States v. Wong Kim Ark, 169 U.S. 649 (1898). Supreme Court of the United States. 1898. https://www.law.cornell.edu/supremecourt/text/169/649 (accessed November 12, 2026).

[175] United States v. Wong Kim Ark, 169 U.S. 649 (1898). Supreme Court of the United States. 1898. https://www.law.cornell.edu/supremecourt/text/169/649 (accessed November 12, 2026).

[176] Pollock v. Farmers' Loan and Trust Co., 157 U.S. 429 (1895). Supreme Court of the United States. 1895. https://www.law.cornell.edu/supremecourt/text/157/429 (accessed November 12, 2026).

[177] Pollock v. Farmers' Loan and Trust Co. (rehearing), 158 U.S. 601 (1895). Supreme Court of the United States. 1895. https://www.law.cornell.edu/supremecourt/text/158/601 (accessed November 12, 2026).

derived, without apportionment among the several States."[178] This is another case where an amendment reversed the Court.

Lochner v. New York (1905): liberty of contract

The case. New York limited bakery workers to 10 hours a day and 60 hours a week. Joseph Lochner, a bakery owner, was fined for violating the law.[179]

The decision. By a 5-4 vote, the Court struck down the hours limit. Justice Rufus Peckham wrote that the Fourteenth Amendment's Due Process Clause protects a "liberty of contract" between employers and workers, and that the law was not a reasonable health measure but an unjustified interference with that liberty.[180]

The dissents. Justice Harlan, joined by two others, argued that the legislature had good reason to think long hours in hot, dusty bakeries harmed workers' health, and that courts should defer. Justice Oliver Wendell Holmes wrote a short, famous dissent. He wrote that the case was "decided upon an economic theory which a large part of the country does not entertain," and that "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics," a reference to a popular book of free-market philosophy.[181]

What happened after. For roughly three decades, the period often called the "Lochner era," the Court struck down a number of state and federal economic regulations. It also upheld others. In Muller v. Oregon (1908), for example, it upheld a limit on women's working hours.[182] In Hammer v. Dagenhart (1918), by a 5-4 vote, it struck down a federal law banning the interstate shipment of goods made with child labor.[183] In Adkins v. Children's Hospital (1923), it struck down a minimum wage for women in the District of Columbia.[184]

"Lochner" is now an insult that judges on both sides throw at each other. Conservatives accuse liberal judges of "Lochnerizing" when they find rights not spelled out in the Constitution. Liberals use the same word for conservative rulings that strike down economic and regulatory laws. In Dobbs (2022), for instance, both the majority and the dissent discussed Lochner.[185]

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[178] The Constitution: Amendments 11-27. National Archives. amendments ratified 1795-1992. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026). Constitution of the United States, Amendments 11-27 (Sixteenth Amendment text). National Archives and Records Administration. Ratified February 3, 1913. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[179] Lochner v. New York, 198 U.S. 45 (1905). Supreme Court of the United States. 1905. https://www.law.cornell.edu/supremecourt/text/198/45 (accessed November 12, 2026).

[180] Lochner v. New York, 198 U.S. 45 (1905). Supreme Court of the United States. 1905. https://www.law.cornell.edu/supremecourt/text/198/45 (accessed November 12, 2026).

[181] Lochner v. New York, 198 U.S. 45 (1905). Supreme Court of the United States. 1905. https://www.law.cornell.edu/supremecourt/text/198/45 (accessed November 12, 2026).

[182] Muller v. Oregon, 208 U.S. 412 (1908). Supreme Court of the United States. 1908. https://www.law.cornell.edu/supremecourt/text/208/412 (accessed November 12, 2026).

[183] Hammer v. Dagenhart, 247 U.S. 251 (1918). Supreme Court of the United States. 1918. https://www.law.cornell.edu/supremecourt/text/247/251 (accessed November 12, 2026).

[184] Adkins v. Children's Hospital, 261 U.S. 525 (1923). Supreme Court of the United States. 1923. https://www.law.cornell.edu/supremecourt/text/261/525 (accessed November 12, 2026).

[185] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

Free speech begins: Schenck (1919)

During World War I, Charles Schenck, an official of the Socialist Party, mailed leaflets urging men to resist the draft. He was convicted under the Espionage Act. A unanimous Court upheld the conviction. Justice Holmes wrote that the question is whether words are used in circumstances that "create a clear and present danger" of bringing about evils Congress may prevent, and gave the famous example that free speech would not protect "a man in falsely shouting fire in a theatre and causing a panic."[186]

That "fire in a theatre" line is often quoted today as if it were the current test. It is not. The Court replaced the "clear and present danger" approach in Brandenburg v. Ohio (1969), described in Chapter 8.[187]

The New Deal collision

When the Great Depression hit, Congress and the states passed sweeping economic laws. The Court struck down several. In A.L.A. Schechter Poultry Corp. v. United States (1935), a unanimous Court struck down the industry codes created under the National Industrial Recovery Act, holding that Congress had handed too much lawmaking power to the President and had reached into local business beyond its commerce power.[188] Also in 1935, in Humphrey's Executor v. United States, the Court unanimously held that President Roosevelt could not fire a Federal Trade Commission member at will, because Congress had limited removal to specific causes.[189] (That 1935 decision would be overruled in 2026. See Chapter 11.)

These rulings set up the confrontation of 1937, told in the next chapter and in Chapter 14.

Humphrey's Executor v. United States (1935): independent agencies

The question. President Franklin Roosevelt fired William Humphrey, a member of the Federal Trade Commission (FTC), the agency that polices unfair business practices. The law that created the FTC said commissioners could be removed only for "inefficiency, neglect of duty, or malfeasance in office." Roosevelt gave no such reason. Humphrey died soon after, and the person handling his estate sued for his lost salary.[190]

The decision. The Court ruled against the President without a dissent. Justice George Sutherland wrote the opinion.[191]

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[186] Schenck v. United States, 249 U.S. 47 (1919). Supreme Court of the United States. 1919. https://www.law.cornell.edu/supremecourt/text/249/47 (accessed November 12, 2026).

[187] Brandenburg v. Ohio, 395 U.S. 444 (1969). Supreme Court of the United States. 1969. https://www.law.cornell.edu/supremecourt/text/395/444 (accessed November 12, 2026).

[188] A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). Supreme Court of the United States. 1935. https://www.law.cornell.edu/supremecourt/text/295/495 (accessed November 12, 2026).

[189] Humphrey's Executor v. United States, 295 U.S. 602 (1935). Supreme Court of the United States. 1935. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[190] Humphrey's Executor v. United States, 295 U.S. 602 (1935). Supreme Court of the United States. 1935. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[191] Humphrey's Executor v. United States, 295 U.S. 602 (1935). Supreme Court of the United States. 1935. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

The reasoning. The Court described the FTC as a body that "is to be nonpartisan" and whose duties "are neither political nor executive, but predominantly quasi judicial and quasi legislative." In plain terms, the Court saw the FTC as acting partly like a court and partly like a legislature, not as a simple arm of the President. It concluded: "We think it plain under the Constitution that illimitable power of removal is not possessed by the President in respect of officers of the character of those just named."[192] The Court admitted it was leaving "a field of doubt" between this case and an earlier ruling that let presidents fire purely executive officers.[193]

What happened after. For about ninety years, Humphrey's Executor was the legal foundation for "independent agencies" whose leaders a president could not fire at will. The Court narrowed it in 2020 (Seila Law, Chapter 10) and overruled what remained of it in Trump v. Slaughter on June 29, 2026 (Chapters 11 and 18).[194] The arguments on each side of that fight are in Chapter 18.

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[192] Humphrey's Executor v. United States, 295 U.S. 602 (1935). Supreme Court of the United States. 1935. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[193] Humphrey's Executor v. United States, 295 U.S. 602 (1935). Supreme Court of the United States. 1935. https://www.law.cornell.edu/supremecourt/text/295/602 (accessed November 12, 2026).

[194] Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 197 (2020). Supreme Court of the United States. June 29, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/591US1PP_web.pdf#page=207 (accessed November 12, 2026). Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

Chapter 7: The New Deal and the War Years

The "switch in time" (1937)

In February 1937, President Roosevelt proposed letting the President appoint an extra justice for every justice over 70 who did not retire, up to a total of fifteen.[195] I cover the plan itself in Chapter 14. Here the focus is on what the Court did that spring.

On March 29, 1937, the Court decided West Coast Hotel Co. v. Parrish. By a 5-4 vote, it upheld Washington state's minimum wage law for women and expressly overruled Adkins v. Children's Hospital.[196] Chief Justice Charles Evans Hughes wrote that the Constitution does not speak of freedom of contract, and that liberty is subject to reasonable regulation in the interests of the community.[197]

Two weeks later, in NLRB v. Jones and Laughlin Steel Corp., the Court upheld the National Labor Relations Act, again 5-4, reading Congress's commerce power broadly enough to cover labor relations in a major steel company.[198]

Justice Owen Roberts, who had voted with the conservative bloc in a 1936 minimum wage case, voted with the majority in West Coast Hotel. Observers called it "the switch in time that saved nine."[199] Did Roberts change his vote because of the court-packing threat? Historians disagree. Some point out that the Court had voted on West Coast Hotel in conference before Roosevelt announced his plan. Others see the Court bending to political pressure. The Presidential Commission notes that "scholars disagree as to why the Supreme Court changed its approach."[200] I don't think the evidence settles it.

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[195] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 69. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[196] West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). Supreme Court of the United States. 1937. https://www.law.cornell.edu/supremecourt/text/300/379 (accessed November 12, 2026). Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 54. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[197] West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). Supreme Court of the United States. 1937. https://www.law.cornell.edu/supremecourt/text/300/379 (accessed November 12, 2026).

[198] NLRB v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937). Supreme Court of the United States. 1937. https://www.law.cornell.edu/supremecourt/text/301/1 (accessed November 12, 2026).

[199] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 54. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[200] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 71. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

The new approach: Carolene Products and Wickard

After 1937, the Court stopped striking down economic regulations. In United States v. Carolene Products Co. (1938), it upheld a federal ban on "filled milk" and said economic regulations would be presumed constitutional if any rational basis supported them. The opinion's Footnote Four added that "more exacting judicial scrutiny" might apply to laws that restrict political processes or target "discrete and insular minorities."[201] That footnote became the seed of the modern idea that courts should look harder at laws affecting basic rights and minority groups.

In United States v. Darby (1941), the Court upheld the Fair Labor Standards Act and overruled Hammer v. Dagenhart.[202] In Wickard v. Filburn (1942), a unanimous Court held that Congress could limit how much wheat an Ohio farmer grew even for use on his own farm, because the combined effect of many farmers doing the same thing affected the national wheat market.[203] Wickard is still the high-water mark of the commerce power and is still debated. Critics say it erased any limit on federal power. Defenders say it reflected the reality of a national economy.

In Justice Robert Jackson's words for the Wickard Court, even if a farmer's activity "be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce."[204] That "substantial economic effect" idea is the test the Court was still applying, and narrowing, in Lopez in 1995 (Chapter 9).[205]

The flag salute cases (1940 and 1943)

In Minersville School District v. Gobitis (1940), by an 8-1 vote, the Court upheld a school rule requiring students, including Jehovah's Witness children whose faith forbade it, to salute the flag.[206]

Just three years later, in West Virginia State Board of Education v. Barnette (1943), the Court reversed course 6-3 and overruled Gobitis. Justice Robert Jackson wrote: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."[207] It was decided on Flag Day, June 14, 1943.

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[201] United States v. Carolene Products Co., 304 U.S. 144 (1938). Supreme Court of the United States. 1938. https://www.law.cornell.edu/supremecourt/text/304/144 (accessed November 12, 2026).

[202] United States v. Darby, 312 U.S. 100 (1941). Supreme Court of the United States. 1941. https://www.law.cornell.edu/supremecourt/text/312/100 (accessed November 12, 2026).

[203] Wickard v. Filburn, 317 U.S. 111 (1942). Supreme Court of the United States. 1942. https://www.law.cornell.edu/supremecourt/text/317/111 (accessed November 12, 2026).

[204] Wickard v. Filburn, 317 U.S. 111 (1942). Supreme Court of the United States. 1942. https://www.law.cornell.edu/supremecourt/text/317/111 (accessed November 12, 2026).

[205] United States v. Lopez, 514 U.S. 549 (1995). Supreme Court of the United States. 1995. https://www.law.cornell.edu/supremecourt/text/514/549 (accessed November 12, 2026).

[206] Minersville School District v. Gobitis, 310 U.S. 586 (1940). Supreme Court of the United States. 1940. https://www.law.cornell.edu/supremecourt/text/310/586 (accessed November 12, 2026).

[207] West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). Supreme Court of the United States. 1943. https://www.law.cornell.edu/supremecourt/text/319/624 (accessed November 12, 2026).

The dissent. Justice Felix Frankfurter, who had written the Gobitis opinion, dissented in Barnette. He opened with a personal note: "One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution." He went on to say that his personal views were not the question, and argued that judges should defer to the school board's choice.[208] The case is a reminder that a justice's own sympathies and his view of the judge's role can point in different directions.

Korematsu v. United States (1944)

The case. After Japan attacked Pearl Harbor, the military ordered people of Japanese ancestry, most of them U.S. citizens, removed from the West Coast. Fred Korematsu, an American citizen, refused to leave his home in California and was convicted.[209]

The decision. By a 6-3 vote, the Court upheld his conviction. Justice Hugo Black wrote that legal restrictions on a single racial group are "immediately suspect" and subject to "the most rigid scrutiny," but concluded that the military's judgment about wartime dangers justified the exclusion.[210]

The dissents. Justice Frank Murphy called the order a fall "into the ugly abyss of racism." Justice Jackson warned that the decision "lies about like a loaded weapon" ready for any authority with a plausible claim of urgent need.[211]

What happened after. In 2018, in Trump v. Hawaii, Chief Justice Roberts wrote for the Court that "Korematsu was gravely wrong the day it was decided," and said it "has no place in law under the Constitution."[212] Justice Sotomayor, dissenting in the same case, argued that the majority was repeating Korematsu's mistake by deferring to a national security justification for a policy she viewed as driven by hostility to a religious group.[213] Whether Korematsu was formally "overruled" is itself debated, because the 2018 case did not involve the same issue. The National Constitution Center notes this debate in its list of overturned decisions.[214]

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[208] West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). Supreme Court of the United States. 1943. https://www.law.cornell.edu/supremecourt/text/319/624 (accessed November 12, 2026).

[209] Korematsu v. United States, 323 U.S. 214 (1944). Supreme Court of the United States. 1944. https://www.law.cornell.edu/supremecourt/text/323/214 (accessed November 12, 2026).

[210] Korematsu v. United States, 323 U.S. 214 (1944). Supreme Court of the United States. 1944. https://www.law.cornell.edu/supremecourt/text/323/214 (accessed November 12, 2026).

[211] Korematsu v. United States, 323 U.S. 214 (1944). Supreme Court of the United States. 1944. https://www.law.cornell.edu/supremecourt/text/323/214 (accessed November 12, 2026).

[212] Trump v. Hawaii, 585 U.S. 667 (2018). Supreme Court of the United States. June 26, 2018. https://www.law.cornell.edu/supremecourt/text/17-965 (accessed November 12, 2026).

[213] Trump v. Hawaii, 585 U.S. 667 (2018). Supreme Court of the United States. June 26, 2018. https://www.law.cornell.edu/supremecourt/text/17-965 (accessed November 12, 2026).

[214] A short list of overturned Supreme Court landmark decisions (Scott Bomboy). National Constitution Center. June 24, 2022. https://constitutioncenter.org/blog/a-short-list-of-overturned-supreme-court-landmark-decisions (accessed November 12, 2026).

Youngstown Sheet and Tube Co. v. Sawyer (1952): the steel seizure

During the Korean War, steelworkers planned to strike. President Harry Truman, saying a strike would endanger the war effort, ordered his Secretary of Commerce to seize and run the nation's steel mills. No law authorized it.[215]

By a 6-3 vote, the Court held the seizure unconstitutional. Justice Black wrote for the majority that the President's power must come from an act of Congress or the Constitution, and neither authorized this.[216]

Justice Jackson's concurrence became the more influential opinion. He described three zones of presidential power: highest when the President acts with Congress's approval, a "zone of twilight" when Congress is silent, and lowest when the President acts against Congress's will. Truman, he concluded, was in the third zone.[217] Courts still use Jackson's framework in disputes over executive power, including the 2026 tariff case.[218]

In Jackson's own words, the middle zone works like this: "When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain."[219]

The dissent. Chief Justice Fred Vinson, joined by Justices Stanley Reed and Sherman Minton, dissented. He stressed that Truman acted because a work stoppage "would immediately jeopardize and imperil our national defense," and wrote: "Presidents have been in the past, and any man worthy of the Office should be in the future, free to take at least interim action necessary to execute legislative programs essential to survival of the Nation."[220] That disagreement, about how much a president may do in an emergency without Congress, is still alive today.

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[215] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952). Supreme Court of the United States. 1952. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[216] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952). Supreme Court of the United States. 1952. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[217] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952). Supreme Court of the United States. 1952. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[218] Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. February 20, 2026. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf (accessed November 12, 2026).

[219] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952). Supreme Court of the United States. 1952. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

[220] Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952). Supreme Court of the United States. 1952. https://www.law.cornell.edu/supremecourt/text/343/579 (accessed November 12, 2026).

Chapter 8: The Warren Court, 1953 to 1969

Earl Warren, the former Republican governor of California, became Chief Justice in October 1953, appointed by President Dwight Eisenhower.[221] Over the next sixteen years, the Court he led transformed American law on race, criminal procedure, voting, speech and privacy. Its supporters see it as the Court that finally enforced the Constitution's promises. Its critics see it as the Court that began making policy that should have been left to voters.

Brown v. Board of Education (1954)

The case. Black children in Kansas, South Carolina, Virginia and Delaware, represented by lawyers including Thurgood Marshall of the NAACP Legal Defense Fund, challenged laws requiring separate public schools by race. A companion case challenged segregated schools in Washington, D.C.[222]

The decision. On May 17, 1954, a unanimous Court held school segregation unconstitutional. Chief Justice Warren wrote: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[223] The Court reasoned that separating children by race "generates a feeling of inferiority as to their status in the community."[224]

Why unanimity mattered. Warren worked to produce a single opinion with no dissents and no separate concurrences. Historians widely credit that unanimity with giving the decision more force. [This is an interpretation drawn from Court histories; the opinion itself does not discuss it.]

What happened after. A year later, in Brown II, the Court ordered desegregation "with all deliberate speed," leaving the details to local courts.[225] Many Southern officials resisted for years. In September 1957, after Arkansas National Guard units blocked nine Black students from entering Central High School in Little Rock, President Eisenhower sent federal troops, and the students were admitted.[226] In Cooper v. Aaron (1958), the Court rejected Arkansas's claim that it

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[221] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[222] Brown v. Board of Education, 347 U.S. 483 (1954). Supreme Court of the United States. 1954. https://www.law.cornell.edu/supremecourt/text/347/483 (accessed November 12, 2026).

[223] Brown v. Board of Education, 347 U.S. 483 (1954). Supreme Court of the United States. 1954. https://www.law.cornell.edu/supremecourt/text/347/483 (accessed November 12, 2026).

[224] Brown v. Board of Education, 347 U.S. 483 (1954). Supreme Court of the United States. 1954. https://www.law.cornell.edu/supremecourt/text/347/483 (accessed November 12, 2026). Brown v. Board of Education (1954), transcript and images of the decision. National Archives and Records Administration, Milestone Documents. 1954 (page accessed November 12, 2026). https://www.archives.gov/milestone-documents/brown-v-board-of-education (accessed November 12, 2026).

[225] Brown v. Board of Education (Brown II), 349 U.S. 294 (1955). Supreme Court of the United States. 1955. https://www.law.cornell.edu/supremecourt/text/349/294 (accessed November 12, 2026).

[226] Cooper v. Aaron, 358 U.S. 1 (1958). Supreme Court of the United States. 1958. https://www.law.cornell.edu/supremecourt/text/358/1 (accessed November 12, 2026).

was not bound by Brown.[227] Real desegregation in much of the South came only after Congress passed the Civil Rights Act of 1964.[228]

Critics at the time, including many Southern members of Congress, called Brown an overreach. Today it is accepted across the political spectrum. Justices with very different approaches, from originalists to living constitutionalists, all say Brown was correct, though they sometimes disagree about why.

Criminal justice: Mapp, Gideon and Miranda

The Warren Court applied most of the Bill of Rights' criminal protections to the states, through the Fourteenth Amendment. This process is called "incorporation."

- **Mapp v. Ohio (1961).** Police searched Dollree Mapp's home without a valid warrant and found obscene materials. By a 6-3 vote, the Court held that evidence obtained through an illegal search cannot be used in state criminal trials. This is the "exclusionary rule."[229]
- **Gideon v. Wainwright (1963).** Clarence Earl Gideon, charged with breaking into a pool hall in Florida, asked for a lawyer and was refused because he could not afford one. A unanimous Court held that states must provide lawyers to defendants charged with serious crimes who cannot afford one.[230] Public defender offices across the country trace their roots to this case.
- **Miranda v. Arizona (1966).** By a 5-4 vote, the Court held that before police question a suspect in custody, they must warn the suspect of the right to remain silent, that anything said can be used against them, and of the right to a lawyer, including an appointed one.[231] The four dissenters argued the rule would hamper legitimate police work and had no basis in the Constitution's text.[232] In 2000, the Court reaffirmed Miranda as a constitutional rule in Dickerson v. United States.[233]

These rulings remain controversial among some prosecutors and police groups, who argue they let guilty people go free, and are defended by civil liberties groups, who argue they protect everyone from abuse. A companion book in this series, on your rights with police and courts, covers them in more depth.

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[227] Cooper v. Aaron, 358 U.S. 1 (1958). Supreme Court of the United States. 1958. https://www.law.cornell.edu/supremecourt/text/358/1 (accessed November 12, 2026).

[228] Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964). Supreme Court of the United States. 1964. https://www.law.cornell.edu/supremecourt/text/379/241 (accessed November 12, 2026).

[229] Mapp v. Ohio, 367 U.S. 643 (1961). Supreme Court of the United States. 1961. https://www.law.cornell.edu/supremecourt/text/367/643 (accessed November 12, 2026).

[230] Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States. 1963. https://www.law.cornell.edu/supremecourt/text/372/335 (accessed November 12, 2026).

[231] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States. 1966. https://www.law.cornell.edu/supremecourt/text/384/436 (accessed November 12, 2026).

[232] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States. 1966. https://www.law.cornell.edu/supremecourt/text/384/436 (accessed November 12, 2026).

[233] Dickerson v. United States, 530 U.S. 428 (2000). Supreme Court of the United States. 2000. https://www.law.cornell.edu/supremecourt/text/530/428 (accessed November 12, 2026).

One person, one vote

For decades, many states had not redrawn their legislative districts despite population shifts, so rural districts with few people had the same representation as city districts with many. The Court had long treated such complaints as "political questions" it would not decide.

In Baker v. Carr (1962), the Court held that federal courts could hear challenges to how legislative seats were apportioned.[234] In Reynolds v. Sims (1964), by an 8-1 vote, it held that seats in both houses of a state legislature must be apportioned by population. Chief Justice Warren wrote: "Legislators represent people, not trees or acres."[235]

The dissent. Justice John Marshall Harlan II was the lone dissenter. He wrote that these rulings "have the effect of placing basic aspects of state political systems under the pervasive overlordship of the federal judiciary," and that "Once again, I must register my protest."[236] He also predicted that legislatures "in all but a few of the other 44 States will meet the same fate."[237]

School prayer: Engel v. Vitale (1962)

New York's Board of Regents wrote a short, nondenominational prayer for students to recite each morning. By a 6-1 vote, the Court held that official school prayer violates the First Amendment's Establishment Clause, even if students may stay silent.[238]

Engel produced intense public backlash, and proposals to amend the Constitution to allow school prayer have been introduced many times since. In 2022, in Kennedy v. Bremerton School District, the Court held that a public school football coach's personal prayer at midfield after games was protected by the First Amendment, and said it had abandoned a test for Establishment Clause cases that had been used since 1971.[239] Supporters of the 2022 decision call it a correction that protects private religious expression. Critics, including the three dissenting justices, argue it weakens the separation of church and state.[240]

Speech and the press

- **New York Times Co. v. Sullivan (1964).** An Alabama official sued the Times over an advertisement supporting civil rights protesters that contained some factual errors. A unanimous Court held that public officials cannot win a libel suit over statements about

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[234] Baker v. Carr, 369 U.S. 186 (1962). Supreme Court of the United States. 1962. https://www.law.cornell.edu/supremecourt/text/369/186 (accessed November 12, 2026).

[235] Reynolds v. Sims, 377 U.S. 533 (1964). Supreme Court of the United States. 1964. https://www.law.cornell.edu/supremecourt/text/377/533 (accessed November 12, 2026).

[236] Reynolds v. Sims, 377 U.S. 533 (1964). Supreme Court of the United States. 1964. https://www.law.cornell.edu/supremecourt/text/377/533 (accessed November 12, 2026).

[237] Reynolds v. Sims, 377 U.S. 533 (1964). Supreme Court of the United States. 1964. https://www.law.cornell.edu/supremecourt/text/377/533 (accessed November 12, 2026).

[238] Engel v. Vitale, 370 U.S. 421 (1962). Supreme Court of the United States. 1962. https://www.law.cornell.edu/supremecourt/text/370/421 (accessed November 12, 2026).

[239] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States. June 27, 2022. https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

[240] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States. June 27, 2022. https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

their official conduct unless they prove "actual malice," meaning the speaker knew the statement was false or acted with reckless disregard for whether it was true.[241] Some justices, including Justice Thomas, have suggested the Court should reconsider this standard. As of this book's cutoff, it still stands.

- **Brandenburg v. Ohio (1969).** A Ku Klux Klan leader was convicted for a speech at a rally. The Court reversed in an unsigned opinion, holding that the government may not punish advocacy of force or lawbreaking unless it is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[242] This is still the test today.

In Sullivan, Justice William Brennan explained the Court's reasoning by pointing to "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[243]

Privacy and marriage

- **Griswold v. Connecticut (1965).** Connecticut banned the use of contraceptives, even by married couples. By a 7-2 vote, the Court struck down the law, finding a constitutional right of privacy in marriage. Justice William O. Douglas's majority opinion said several Bill of Rights guarantees have "penumbras" that create "zones of privacy."[244] The two dissenters, Justices Hugo Black and Potter Stewart, called the law silly but said nothing in the Constitution forbade it.[245]
- **Loving v. Virginia (1967).** Mildred Jeter, a Black and Native American woman, and Richard Loving, a white man, married in Washington, D.C., and returned to Virginia, where interracial marriage was a crime. A unanimous Court struck down Virginia's ban under the Equal Protection and Due Process Clauses.[246]

What to take away from the Warren era

- The Warren Court's landmark decisions on segregation, counsel for the poor and voting equality are now widely accepted.[247]

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[241] New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Supreme Court of the United States. 1964. https://www.law.cornell.edu/supremecourt/text/376/254 (accessed November 12, 2026).

[242] Brandenburg v. Ohio, 395 U.S. 444 (1969). Supreme Court of the United States. 1969. https://www.law.cornell.edu/supremecourt/text/395/444 (accessed November 12, 2026).

[243] New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Supreme Court of the United States. 1964. https://www.law.cornell.edu/supremecourt/text/376/254 (accessed November 12, 2026).

[244] Griswold v. Connecticut, 381 U.S. 479 (1965). Supreme Court of the United States. 1965. https://www.law.cornell.edu/supremecourt/text/381/479 (accessed November 12, 2026).

[245] Griswold v. Connecticut, 381 U.S. 479 (1965). Supreme Court of the United States. 1965. https://www.law.cornell.edu/supremecourt/text/381/479 (accessed November 12, 2026).

[246] Loving v. Virginia, 388 U.S. 1 (1967). Supreme Court of the United States. 1967. https://www.law.cornell.edu/supremecourt/text/388/1 (accessed November 12, 2026).

[247] Brown v. Board of Education, 347 U.S. 483 (1954). Supreme Court of the United States. 1954. https://www.law.cornell.edu/supremecourt/text/347/483 (accessed November 12, 2026). Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States. 1963. https://www.law.cornell.edu/supremecourt/text/372/335 (accessed November 12, 2026). Reynolds v. Sims, 377 U.S. 533 (1964). Supreme Court of the United States. 1964. https://www.law.cornell.edu/supremecourt/text/377/533 (accessed November 12, 2026).

- Others, especially on criminal procedure, school prayer and privacy, remain contested, and some have been narrowed or overturned by later Courts.
- The debate over the Warren Court is a debate about the Court's role: whether judges should enforce broad principles of equality and liberty, or leave contested questions to elected lawmakers. That debate drives much of the rest of this book.

Chapter 9: The Burger and Rehnquist Courts, 1969 to 2005

President Richard Nixon campaigned in 1968 against the Warren Court's criminal justice decisions and promised to appoint judges who would interpret the law strictly. He appointed Warren Burger as Chief Justice in 1969 and three more justices by early 1972.[248] Many expected a sharp turn to the right. What followed was more mixed. The Burger Court narrowed some Warren-era rulings but left most standing, and it issued some of the most liberal decisions in the Court's history, including Roe v. Wade.

Roe v. Wade (1973)

The case. Texas made it a crime to perform an abortion except to save the mother's life. A pregnant woman using the pseudonym "Jane Roe" challenged the law.[249]

The decision. On January 22, 1973, by a 7-2 vote, the Court struck down the Texas law. Justice Harry Blackmun wrote for the majority that the right of privacy recognized in earlier cases, rooted in the Fourteenth Amendment's concept of personal liberty, "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." The opinion set out a framework based on the three trimesters of pregnancy: in the first, the decision was left to the woman and her doctor; later, states could regulate more; and after the fetus became viable, states could ban abortion except where needed to protect the mother's life or health.[250]

The dissents. Justice Byron White, appointed by Democratic President John F. Kennedy, wrote one dissent covering both Roe and its companion case, Doe v. Bolton. He wrote: "As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but in my view its judgment is an improvident and extravagant exercise of the power of judicial review."[251] Justice William Rehnquist argued that nothing in the Constitution's history supported a right to abortion.[252]

Who was in the majority? This matters for one of the claims in Part Five. Of the seven justices in the Roe majority, five had been appointed by Republican presidents: Chief Justice Burger and Justice Blackmun (Nixon), Justice Lewis Powell (Nixon), and Justices William Brennan and Potter Stewart (Eisenhower). Justices William O. Douglas (Franklin Roosevelt)

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[248] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[249] Roe v. Wade, 410 U.S. 113 (1973). Supreme Court of the United States. 1973. https://www.law.cornell.edu/supremecourt/text/410/113 (accessed November 12, 2026).

[250] Roe v. Wade, 410 U.S. 113 (1973). Supreme Court of the United States. 1973. https://www.law.cornell.edu/supremecourt/text/410/113 (accessed November 12, 2026).

[251] Doe v. Bolton (with Justice White's dissent, which also applies to Roe v. Wade), 410 U.S. 179 (1973). Supreme Court of the United States. 1973. https://www.law.cornell.edu/supremecourt/text/410/179 (accessed November 12, 2026).

[252] Roe v. Wade, 410 U.S. 113 (1973). Supreme Court of the United States. 1973. https://www.law.cornell.edu/supremecourt/text/410/113 (accessed November 12, 2026).

and Thurgood Marshall (Lyndon Johnson) were Democratic appointees. The two dissenters were appointed by a Democrat (White, by Kennedy) and a Republican (Rehnquist, by Nixon).[253]

What happened after. Roe became one of the most contested decisions in American history, and the fight over it shaped Supreme Court nominations for the next fifty years. In Planned Parenthood v. Casey (1992), the Court kept what it called Roe's "essential holding" but dropped the trimester framework and replaced it with an "undue burden" standard (described below).[254] In 2022, the Court overruled both Roe and Casey in Dobbs (Chapter 10).[255]

United States v. Nixon (1974)

The case. A special prosecutor investigating the Watergate break-in subpoenaed tape recordings of President Nixon's conversations in the White House. Nixon refused, claiming executive privilege, the right to keep presidential communications confidential.[256]

The decision. On July 24, 1974, the Court ruled 8-0 that the President had to turn over the tapes. Justice Rehnquist, who had worked in Nixon's Justice Department, did not take part. Chief Justice Burger, a Nixon appointee, wrote for the Court. He recognized a constitutional basis for executive privilege but held that a general claim of confidentiality must yield to the specific need for evidence in a criminal trial.[257]

Three of the eight justices who ruled against Nixon, Burger, Blackmun and Powell, had been appointed by Nixon himself.[258] The tapes were released, and Nixon resigned the presidency on August 9, 1974.[259]

The key sentence of the ruling is this one: "neither the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances."[260]

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[253] Roe v. Wade, 410 U.S. 113 (1973). Supreme Court of the United States. 1973. https://www.law.cornell.edu/supremecourt/text/410/113 (accessed November 12, 2026). Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[254] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). Supreme Court of the United States. 1992. https://www.law.cornell.edu/supremecourt/text/505/833 (accessed November 12, 2026).

[255] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[256] United States v. Nixon, 418 U.S. 683 (1974). Supreme Court of the United States. 1974. https://www.law.cornell.edu/supremecourt/text/418/683 (accessed November 12, 2026).

[257] United States v. Nixon, 418 U.S. 683 (1974). Supreme Court of the United States. 1974. https://www.law.cornell.edu/supremecourt/text/418/683 (accessed November 12, 2026).

[258] United States v. Nixon, 418 U.S. 683 (1974). Supreme Court of the United States. 1974. https://www.law.cornell.edu/supremecourt/text/418/683 (accessed November 12, 2026). Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[259] President Nixon's Letter of Resignation. United States Senate (image and text of the August 9, 1974 letter). August 9, 1974. https://www.senate.gov/about/images/documents/LetterNixonResignation1974.htm (accessed November 12, 2026).

[260] United States v. Nixon, 418 U.S. 683 (1974). Supreme Court of the United States. 1974. https://www.law.cornell.edu/supremecourt/text/418/683 (accessed November 12, 2026).

Note what it did not say. The Court did not reject executive privilege. It said the privilege is real but not absolute, and that in a criminal case a specific need for evidence can outweigh it.

Campaign money: Buckley v. Valeo (1976)

After Watergate, Congress passed strict limits on campaign contributions and spending. In Buckley v. Valeo, the Court upheld limits on contributions to candidates but struck down limits on spending by candidates and by independent groups. The Court reasoned that spending money to communicate political ideas is protected speech, while contribution limits are justified by the risk of corruption.[261] That distinction, between giving and spending, still governs campaign finance law and set up Citizens United (Chapter 10).

The Court's reasoning on spending turned on a practical point: "virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs."[262] Supporters of campaign finance limits answer that treating money as speech lets the wealthy drown out everyone else. That debate is the same one that came back in Citizens United.

The death penalty: Furman (1972) and Gregg (1976)

In Furman v. Georgia (1972), by a 5-4 vote with each justice writing separately, the Court held that the death penalty as then applied was unconstitutional because it was imposed so arbitrarily.[263] States rewrote their laws to add guidance for juries. In Gregg v. Georgia (1976), the Court upheld Georgia's revised law by a 7-2 vote, and executions resumed.[264]

Why the five agreed. The five justices in the Furman majority did not agree on a single reason, which is why the Court issued only a brief unsigned opinion followed by nine separate opinions, one from each justice.[265] Two of the five, Justices William Brennan and Thurgood Marshall, concluded that the death penalty is always unconstitutional. Justice Marshall wrote that "the death penalty is an excessive and unnecessary punishment that violates the Eighth Amendment."[266] Justice Potter Stewart's reasoning was narrower. He wrote that "These death sentences are cruel and unusual in the same way that being struck by lightning is cruel and unusual," because those sentenced were "a capriciously selected random handful," and that the

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[261] Buckley v. Valeo, 424 U.S. 1 (1976). Supreme Court of the United States. 1976. https://www.law.cornell.edu/supremecourt/text/424/1 (accessed November 12, 2026).

[262] Buckley v. Valeo, 424 U.S. 1 (1976). Supreme Court of the United States. 1976. https://www.law.cornell.edu/supremecourt/text/424/1 (accessed November 12, 2026).

[263] Furman v. Georgia, 408 U.S. 238 (1972). Supreme Court of the United States. 1972. https://www.law.cornell.edu/supremecourt/text/408/238 (accessed November 12, 2026).

[264] Gregg v. Georgia, 428 U.S. 153 (1976). Supreme Court of the United States. 1976. https://www.law.cornell.edu/supremecourt/text/428/153 (accessed November 12, 2026).

[265] Furman v. Georgia, 408 U.S. 238 (1972). Supreme Court of the United States. 1972. https://www.law.cornell.edu/supremecourt/text/408/238 (accessed November 12, 2026).

[266] Furman v. Georgia, 408 U.S. 238 (1972). Supreme Court of the United States. 1972. https://www.law.cornell.edu/supremecourt/text/408/238 (accessed November 12, 2026).

Constitution "cannot tolerate the infliction of a sentence of death under legal systems that permit this unique penalty to be so wantonly and so freakishly imposed."[267]

The dissent. Chief Justice Burger, joined by Justices Blackmun, Powell and Rehnquist, pointed out that "only two members of the Court, Mr. Justice BRENNAN and Mr. Justice MARSHALL, have concluded that the Eighth Amendment prohibits capital punishment for all crimes and under all circumstances." He wrote that the Court's inquiry "must be divorced from personal feelings as to the morality and efficacy of the death penalty."[268] That split, between a ban and a demand for fairer procedures, explains why states could respond by rewriting their laws, which led to Gregg four years later.

Affirmative action: Bakke (1978)

The University of California at Davis medical school set aside 16 of 100 seats for minority applicants. Allan Bakke, a white applicant who was rejected, sued. The Court split in a way that produced no majority opinion. Justice Powell cast the deciding vote in two different directions: he joined four justices to strike down the fixed set-aside and order Bakke admitted, and joined four other justices to hold that race could be considered as one factor in admissions to achieve a diverse student body.[269] Powell's diversity rationale governed college admissions until 2023.[270]

Justice Harry Blackmun, who would have upheld the Davis program, wrote one of the most quoted lines of the case: "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently."[271] Opponents of racial preferences answer with the view Justice Thomas later stated in Grutter, that every racial classification "demeans us all."[272]

Chevron (1984): deferring to agencies

In Chevron U.S.A. Inc. v. Natural Resources Defense Council, the Court held 6-0 that when a federal statute is ambiguous, courts should defer to a federal agency's reasonable interpretation of it.[273] "Chevron deference" became one of the most cited doctrines in American law. Supporters said it left technical policy choices to experts accountable to the President. Critics

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[267] Furman v. Georgia, 408 U.S. 238 (1972). Supreme Court of the United States. 1972. https://www.law.cornell.edu/supremecourt/text/408/238 (accessed November 12, 2026).

[268] Furman v. Georgia, 408 U.S. 238 (1972). Supreme Court of the United States. 1972. https://www.law.cornell.edu/supremecourt/text/408/238 (accessed November 12, 2026).

[269] Regents of the University of California v. Bakke, 438 U.S. 265 (1978). Supreme Court of the United States. 1978. https://www.law.cornell.edu/supremecourt/text/438/265 (accessed November 12, 2026).

[270] Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023). Supreme Court of the United States. June 29, 2023. https://www.supremecourt.gov/opinions/22pdf/600us1r53_4g15.pdf (accessed November 12, 2026).

[271] Regents of the University of California v. Bakke, 438 U.S. 265 (1978). Supreme Court of the United States. 1978. https://www.law.cornell.edu/supremecourt/text/438/265 (accessed November 12, 2026).

[272] Grutter v. Bollinger, 539 U.S. 306 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/306 (accessed November 12, 2026).

[273] Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Supreme Court of the United States. 1984. https://www.law.cornell.edu/supremecourt/text/467/837 (accessed November 12, 2026).

said it let agencies, not courts, decide what the law means. The Court overruled Chevron in 2024 (Chapter 10).[274]

In the Court's words, when "Congress has not directly spoken to the precise question at issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."[275] Justice Stevens explained why: "Judges are not experts in the field, and are not part of either political branch of the Government," while an agency given policy-making responsibility by Congress answers to the President.[276] Forty years later, the Loper Bright majority answered that the job of saying what the law means belongs to judges, not agencies.[277]

Bowers v. Hardwick (1986)

By a 5-4 vote, the Court upheld a Georgia law criminalizing sodomy as applied to two men in a private home, holding that the Constitution does not confer "a fundamental right to engage in homosexual sodomy."[278] The Court overruled Bowers in Lawrence v. Texas (2003), with Justice Anthony Kennedy writing that "Bowers was not correct when it was decided, is not correct today, and is hereby overruled."[279]

The dissent. Justice Blackmun, writing for the four dissenters, argued that the case was not about any one act but about "the most comprehensive of rights and the right most valued by civilized men," namely, "the right to be let alone," quoting a famous 1928 dissent by Justice Louis Brandeis.[280]

The Rehnquist Court and the "federalism revolution"

William Rehnquist became Chief Justice in 1986.[281] His Court revived limits on federal power that had been dormant since 1937. In United States v. Lopez (1995), by a 5-4 vote, the Court struck down a federal law banning guns near schools. Chief Justice Rehnquist wrote that

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[274] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. June 28, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[275] Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Supreme Court of the United States. 1984. https://www.law.cornell.edu/supremecourt/text/467/837 (accessed November 12, 2026).

[276] Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). Supreme Court of the United States. 1984. https://www.law.cornell.edu/supremecourt/text/467/837 (accessed November 12, 2026).

[277] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. June 28, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[278] Bowers v. Hardwick, 478 U.S. 186 (1986). Supreme Court of the United States. 1986. https://www.law.cornell.edu/supremecourt/text/478/186 (accessed November 12, 2026).

[279] Lawrence v. Texas, 539 U.S. 558 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/558 (accessed November 12, 2026).

[280] Bowers v. Hardwick, 478 U.S. 186 (1986). Supreme Court of the United States. 1986. https://www.law.cornell.edu/supremecourt/text/478/186 (accessed November 12, 2026).

[281] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

possessing a gun in a school zone is not economic activity that substantially affects interstate commerce, and that upholding the law would leave no limit on the commerce power.[282]

In the Court's words, upholding the law "would require this Court to pile inference upon inference in a manner that would bid fair to convert congressional Commerce Clause authority to a general police power of the sort held only by the States." A "police power" here means a general power to pass laws for health, safety and welfare, which the Constitution leaves to the states.[283] Justices Stevens and Souter each dissented, and Justice Breyer wrote the main dissent, joined by Justices Stevens, Souter and Ginsburg.[284] The dissenters argued that guns in schools affect education, and education affects the national economy, so Congress could act.

Planned Parenthood v. Casey (1992)

Pennsylvania passed abortion restrictions, including a 24-hour waiting period and a requirement that married women notify their husbands. Many expected the Court, with five justices appointed by Presidents Reagan and George H. W. Bush, to overrule Roe.[285]

Instead, Justices Sandra Day O'Connor, Anthony Kennedy and David Souter wrote a joint opinion reaffirming what they called Roe's "essential holding." They replaced the trimester framework with a test asking whether a law placed an "undue burden" on a woman seeking an abortion before viability. They upheld most of Pennsylvania's rules but struck down the spousal notice requirement.[286] Four justices would have overruled Roe outright, and two would have kept Roe's full framework.[287]

The joint opinion relied heavily on precedent, arguing that overruling Roe under political pressure would damage the Court's legitimacy.[288] Thirty years later, the Dobbs majority rejected that reasoning.[289]

The joint opinion began with a sentence that became famous: "Liberty finds no refuge in a jurisprudence of doubt."[290] Chief Justice Rehnquist's dissent stated the opposite view plainly:

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[282] United States v. Lopez, 514 U.S. 549 (1995). Supreme Court of the United States. 1995. https://www.law.cornell.edu/supremecourt/text/514/549 (accessed November 12, 2026).

[283] United States v. Lopez, 514 U.S. 549 (1995). Supreme Court of the United States. 1995. https://www.law.cornell.edu/supremecourt/text/514/549 (accessed November 12, 2026).

[284] United States v. Lopez, 514 U.S. 549 (1995). Supreme Court of the United States. 1995. https://www.law.cornell.edu/supremecourt/text/514/549 (accessed November 12, 2026).

[285] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[286] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). Supreme Court of the United States. 1992. https://www.law.cornell.edu/supremecourt/text/505/833 (accessed November 12, 2026).

[287] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). Supreme Court of the United States. 1992. https://www.law.cornell.edu/supremecourt/text/505/833 (accessed November 12, 2026).

[288] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). Supreme Court of the United States. 1992. https://www.law.cornell.edu/supremecourt/text/505/833 (accessed November 12, 2026).

[289] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[290] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). Supreme Court of the United States. 1992. https://www.law.cornell.edu/supremecourt/text/505/833 (accessed November 12, 2026).

"We believe that Roe was wrongly decided, and that it can and should be overruled consistently with our traditional approach to stare decisis in constitutional cases."[291] In 2022, the Dobbs majority adopted that view.

Bush v. Gore (2000)

The case. The 2000 presidential election came down to Florida, where George W. Bush led Al Gore by a few hundred votes out of about six million. The Florida Supreme Court ordered a statewide manual recount of "undervotes," ballots on which machines had detected no vote for president. Bush asked the U.S. Supreme Court to stop it.[292]

The decision. On December 12, 2000, the Court issued an unsigned opinion. Seven justices agreed that the recount as ordered raised equal protection problems, because different counties used different standards to judge voter intent. But only five justices agreed on the remedy: ending the recount, because Florida law aimed to finish by the federal "safe harbor" date of December 12 and there was no time for a recount with uniform standards. Justices David Souter and Stephen Breyer agreed there were problems but would have sent the case back for a recount under uniform standards. Justices John Paul Stevens and Ruth Bader Ginsburg dissented entirely.[293]

The majority wrote that its consideration was "limited to the present circumstances."[294] Justice Stevens wrote in dissent that the loser was "the Nation's confidence in the judge as an impartial guardian of the rule of law."[295]

What happened after. Gore conceded the next day. Whether the Court "decided the election" is tested in Chapter 17, using a 2001 review of the ballots commissioned by a group of news organizations.[296]

Two rulings from 2003: Grutter and Lawrence

Grutter v. Bollinger (2003): race in law school admissions. The University of Michigan Law School considered race as one factor in admissions, seeking to enroll what it called a "critical mass" of underrepresented minority students.[297] By a 5-4 vote, the Court upheld the policy. Justice Sandra Day O'Connor wrote that "the Law School has a compelling interest in

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[291] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). Supreme Court of the United States. 1992. https://www.law.cornell.edu/supremecourt/text/505/833 (accessed November 12, 2026).

[292] Bush v. Gore, 531 U.S. 98 (2000). Supreme Court of the United States. 2000. https://www.law.cornell.edu/supremecourt/text/531/98 (accessed November 12, 2026).

[293] Bush v. Gore, 531 U.S. 98 (2000). Supreme Court of the United States. 2000. https://www.law.cornell.edu/supremecourt/text/531/98 (accessed November 12, 2026).

[294] Bush v. Gore, 531 U.S. 98 (2000). Supreme Court of the United States. 2000. https://www.law.cornell.edu/supremecourt/text/531/98 (accessed November 12, 2026).

[295] Bush v. Gore, 531 U.S. 98 (2000). Supreme Court of the United States. 2000. https://www.law.cornell.edu/supremecourt/text/531/98 (accessed November 12, 2026).

[296] The Florida Recount of 2000 (Brooks Jackson). FactCheck.org, Annenberg Public Policy Center. January 22, 2008. https://www.factcheck.org/2008/01/the-florida-recount-of-2000/ (accessed November 12, 2026).

[297] Grutter v. Bollinger, 539 U.S. 306 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/306 (accessed November 12, 2026).

attaining a diverse student body," and added a time frame: "The Court expects that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."[298]

Justice Clarence Thomas dissented. He wrote that "The Constitution abhors classifications based on race," because "every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all."[299] Chief Justice Rehnquist also wrote a dissent, joined by Justices Scalia, Kennedy and Thomas.[300]

Twenty years later, in Students for Fair Admissions (2023), the Court held that the admissions programs at Harvard and the University of North Carolina violated the Equal Protection Clause (Chapter 10).[301]

Lawrence v. Texas (2003): private intimacy. Texas made it a crime for two people of the same sex to engage in certain intimate conduct. By a 6-3 vote, the Court struck down the law.[302] Justice Anthony Kennedy wrote for five justices that adults' private intimate choices are "a form of 'liberty' protected by due process," and that "Bowers was not correct when it was decided, is not correct today, and is hereby overruled." Justice O'Connor agreed with the result on different grounds and did not join the part overruling Bowers.[303]

Justice Antonin Scalia dissented, joined by Chief Justice Rehnquist and Justice Thomas. He wrote that "the Court has taken sides in the culture war, departing from its role of assuring, as neutral observer, that the democratic rules of engagement are observed."[304]

Kelo v. City of New London (2005): taking homes for development

The question. The Fifth Amendment allows the government to take private property for "public use" if it pays "just compensation." In 2000, the city of New London, Connecticut, approved a development plan that the state's highest court said was "projected to create in excess of 1,000 jobs." To carry it out, the city moved to take homes, including Susette Kelo's, and

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[298] Grutter v. Bollinger, 539 U.S. 306 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/306 (accessed November 12, 2026).

[299] Grutter v. Bollinger, 539 U.S. 306 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/306 (accessed November 12, 2026).

[300] Grutter v. Bollinger, 539 U.S. 306 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/306 (accessed November 12, 2026).

[301] Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023). Supreme Court of the United States. June 29, 2023. https://www.supremecourt.gov/opinions/22pdf/600us1r53_4g15.pdf (accessed November 12, 2026).

[302] Lawrence v. Texas, 539 U.S. 558 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/558 (accessed November 12, 2026).

[303] Lawrence v. Texas, 539 U.S. 558 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/558 (accessed November 12, 2026).

[304] Lawrence v. Texas, 539 U.S. 558 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/558 (accessed November 12, 2026).

turn the land over to private developers. Kelo argued that economic development is not a "public use."[305]

The decision. By a 5-4 vote, the Court ruled for the city. Justice John Paul Stevens wrote the opinion, joined by Justices Kennedy, Souter, Ginsburg and Breyer.[306]

The majority's reasoning. Justice Stevens wrote that the Court had long read "public use" broadly as "public purpose," and that "The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community," including "new jobs and increased tax revenue." He also wrote that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power."[307]

The dissent's answer. Justice O'Connor, joined by Chief Justice Rehnquist and Justices Scalia and Thomas, warned: "Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded."[308] Justice Thomas also wrote his own dissent.[309]

What happened after. Kelo drew criticism from across the political spectrum. Justice Stevens's own opinion had pointed out that states were free to set stricter rules, and many states later did. I did not confirm a current count of those state laws from a primary source, so I do not give one here. [Not verified: I searched for an official tally of post-Kelo state laws and found only secondary summaries.]

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[305] Kelo v. City of New London, 545 U.S. 469 (2005). Supreme Court of the United States. 2005. https://www.law.cornell.edu/supremecourt/text/04-108 (accessed November 12, 2026).

[306] Kelo v. City of New London, 545 U.S. 469 (2005). Supreme Court of the United States. 2005. https://www.law.cornell.edu/supremecourt/text/04-108 (accessed November 12, 2026).

[307] Kelo v. City of New London, 545 U.S. 469 (2005). Supreme Court of the United States. 2005. https://www.law.cornell.edu/supremecourt/text/04-108 (accessed November 12, 2026).

[308] Kelo v. City of New London, 545 U.S. 469 (2005). Supreme Court of the United States. 2005. https://www.law.cornell.edu/supremecourt/text/04-108 (accessed November 12, 2026).

[309] Kelo v. City of New London, 545 U.S. 469 (2005). Supreme Court of the United States. 2005. https://www.law.cornell.edu/supremecourt/text/04-108 (accessed November 12, 2026).

Chapter 10: The Roberts Court, 2005 to Today

John Roberts became Chief Justice on September 29, 2005.[310] The Court he leads has changed a great deal in two decades. From 2005 to 2018, Justice Anthony Kennedy was often the deciding vote. After Kennedy retired in 2018 and Justice Ruth Bader Ginsburg died in 2020, the Court gained a six-justice majority appointed by Republican presidents.[311] This chapter covers the landmark rulings through June 2025. The 2025 term, decided in 2026, is in Chapter 18.

Guns: Heller (2008), McDonald (2010) and Bruen (2022)

District of Columbia v. Heller (2008). By a 5-4 vote, the Court held that the Second Amendment protects an individual right to keep and bear arms, not just a right tied to service in a militia. It struck down D.C.'s ban on handguns in the home. Justice Scalia wrote the majority opinion, built on the original public meaning of the amendment's words. He added that the right is "not unlimited" and that the decision did not cast doubt on "longstanding prohibitions" such as bans on possession by felons and the mentally ill.[312] Justice Stevens's dissent argued the amendment was adopted to protect state militias and that history did not support an individual right outside that setting.[313]

McDonald v. City of Chicago (2010). By a 5-4 vote, the Court held that the Second Amendment applies to state and local governments too, through the Fourteenth Amendment.[314]

New York State Rifle and Pistol Association v. Bruen (2022). By a 6-3 vote, the Court struck down New York's rule that required applicants to show "proper cause" to carry a handgun in public. Justice Thomas wrote that gun laws must be "consistent with this Nation's historical tradition of firearm regulation."[315] Justice Breyer's dissent argued that courts should weigh the government's interest in reducing gun violence, citing statistics on gun deaths.[316] In United States v. Rahimi (2024), by an 8-1 vote, the Court upheld a federal law barring people under

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[310] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[311] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[312] District of Columbia v. Heller, 554 U.S. 570 (2008). Supreme Court of the United States. 2008. https://www.law.cornell.edu/supremecourt/text/07-290 (accessed November 12, 2026).

[313] District of Columbia v. Heller, 554 U.S. 570 (2008). Supreme Court of the United States. 2008. https://www.law.cornell.edu/supremecourt/text/07-290 (accessed November 12, 2026).

[314] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States. 2010. https://www.law.cornell.edu/supremecourt/text/08-1521 (accessed November 12, 2026).

[315] New York State Rifle and Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). Supreme Court of the United States. June 23, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r54_7648.pdf (accessed November 12, 2026).

[316] New York State Rifle and Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). Supreme Court of the United States. June 23, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r54_7648.pdf (accessed November 12, 2026).

domestic violence restraining orders from having guns, clarifying that the historical test does not require an exact historical twin for a modern law.[317]

Campaign finance: Citizens United (2010)

The case. Citizens United, a nonprofit corporation, made a film critical of Hillary Clinton during the 2008 primaries and wanted to promote it on television. Federal law barred corporations and unions from spending general treasury funds on "electioneering communications" shortly before elections.[318]

The decision. On January 21, 2010, by a 5-4 vote, the Court struck down that restriction. Justice Kennedy wrote that the First Amendment does not allow the government to ban political speech based on the speaker's corporate identity, and that independent expenditures "do not give rise to corruption or the appearance of corruption." The Court overruled two earlier decisions, Austin v. Michigan Chamber of Commerce (1990) and part of McConnell v. FEC (2003).[319]

The dissent. Justice Stevens, for four justices, argued that corporations are not members of society in the way people are, that their spending can corrupt and distort elections, and that the majority had abandoned a century of precedent.[320]

What happened after. The ruling, together with a federal appeals court decision that followed it, cleared the way for "super PACs" that can raise and spend unlimited amounts independently of candidates. Whether Citizens United allows foreign money in U.S. elections is a claim tested in Chapter 17. In June 2026, the Court went further on party spending in NRSC v. FEC (Chapter 18).[321]

The Affordable Care Act: NFIB v. Sebelius (2012)

The Affordable Care Act required most Americans to buy health insurance or pay a penalty, and pushed states to expand Medicaid. In a complex ruling, Chief Justice Roberts and four other justices held that the "individual mandate" exceeded Congress's commerce power, but Roberts joined the four liberal justices to uphold it as a valid tax. Seven justices held that the Medicaid expansion was unconstitutionally coercive as written, and the Court's fix let states choose

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[317] United States v. Rahimi, 602 U.S. 680 (2024). Supreme Court of the United States. June 21, 2024. https://www.supremecourt.gov/opinions/23pdf/602us1r43_p860.pdf (accessed November 12, 2026).

[318] Citizens United v. Federal Election Commission, 558 U.S. 310 (2010). Supreme Court of the United States. 2010. https://www.law.cornell.edu/supremecourt/text/08-205 (accessed November 12, 2026).

[319] Citizens United v. Federal Election Commission, 558 U.S. 310 (2010). Supreme Court of the United States. 2010. https://www.law.cornell.edu/supremecourt/text/08-205 (accessed November 12, 2026). Supreme Court Decisions Overruled by Subsequent Decision, in The Constitution of the United States of America: Analysis and Interpretation (2016 revision). Congressional Research Service and Library of Congress, via govinfo.gov. 2016. p. 2615. https://www.govinfo.gov/content/pkg/GPO-CONAN-REV-2016/pdf/GPO-CONAN-REV-2016-13.pdf (accessed November 12, 2026).

[320] Citizens United v. Federal Election Commission, 558 U.S. 310 (2010). Supreme Court of the United States. 2010. https://www.law.cornell.edu/supremecourt/text/08-205 (accessed November 12, 2026).

[321] National Republican Senatorial Committee v. Federal Election Commission, 609 U.S. 908 (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r67_g3bi.pdf (accessed November 12, 2026).

whether to expand.[322] Roberts's vote angered many conservatives, who had expected the law to fall. It is often cited as evidence against the claim that justices simply vote their party's line.

Voting: Shelby County v. Holder (2013)

The Voting Rights Act of 1965 required certain states and localities, mostly in the South, to get federal approval ("preclearance") before changing voting rules. The list of covered places was based on a formula using data from the 1960s and early 1970s.[323]

By a 5-4 vote, the Court struck down that coverage formula. Chief Justice Roberts wrote that "our country has changed," and that Congress could not keep using decades-old data to treat some states differently from others. Justice Ginsburg's dissent argued that preclearance was working and compared throwing it out to "throwing away your umbrella in a rainstorm because you are not getting wet."[324] Congress has not passed a new formula. In 2026, the Court decided another major voting rights case, Louisiana v. Callais (Chapter 18).[325]

Same-sex marriage: Windsor (2013) and Obergefell (2015)

In United States v. Windsor (2013), by a 5-4 vote, the Court struck down the part of the federal Defense of Marriage Act that defined marriage as only between a man and a woman for federal purposes.[326]

In Obergefell v. Hodges, on June 26, 2015, by a 5-4 vote, the Court held that the Fourteenth Amendment requires states to license marriages between two people of the same sex and to recognize such marriages performed elsewhere. Justice Kennedy wrote that the couples "ask for equal dignity in the eyes of the law" and that "[t]he Constitution grants them that right."[327] Chief Justice Roberts, in dissent, wrote that same-sex marriage might be good policy but that "this Court is not a legislature" and the Constitution "had nothing to do with it."[328] Obergefell overruled Baker v. Nelson (1972), a one-line dismissal of an earlier same-sex marriage case.[329]

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[322] National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012). Supreme Court of the United States. 2012. https://www.law.cornell.edu/supremecourt/text/567/519 (accessed November 12, 2026).

[323] Shelby County v. Holder, 570 U.S. 529 (2013). Supreme Court of the United States. 2013. https://www.law.cornell.edu/supremecourt/text/12-96 (accessed November 12, 2026).

[324] Shelby County v. Holder, 570 U.S. 529 (2013). Supreme Court of the United States. 2013. https://www.law.cornell.edu/supremecourt/text/12-96 (accessed November 12, 2026).

[325] Louisiana v. Callais, 608 U.S. 85 (2026). Supreme Court of the United States. April 29, 2026. https://www.supremecourt.gov/opinions/25pdf/608us1r29_n648.pdf (accessed November 12, 2026).

[326] United States v. Windsor, 570 U.S. 744 (2013). Supreme Court of the United States. 2013. https://www.law.cornell.edu/supremecourt/text/12-307 (accessed November 12, 2026).

[327] Obergefell v. Hodges, 576 U.S. 644 (2015). Supreme Court of the United States. 2015. https://www.law.cornell.edu/supremecourt/text/14-556 (accessed November 12, 2026).

[328] Obergefell v. Hodges, 576 U.S. 644 (2015). Supreme Court of the United States. 2015. https://www.law.cornell.edu/supremecourt/text/14-556 (accessed November 12, 2026).

[329] Supreme Court Decisions Overruled by Subsequent Decision, in The Constitution of the United States of America: Analysis and Interpretation (2016 revision). Congressional Research Service and Library of Congress, via govinfo.gov. 2016. p. 2615. https://www.govinfo.gov/content/pkg/GPO-CONAN-REV-2016/pdf/GPO-CONAN-REV-2016-13.pdf (accessed November 12, 2026).

Abortion: Dobbs v. Jackson Women's Health Organization (2022)

The case. Mississippi banned most abortions after 15 weeks of pregnancy, well before viability. The state asked the Court to overrule Roe and Casey.[330]

The decision. On June 24, 2022, the Court upheld the Mississippi law and overruled Roe and Casey. The vote to uphold the law was 6-3. The vote to overrule Roe and Casey was 5-4, because Chief Justice Roberts concurred only in the judgment: he would have upheld the 15-week law without overruling Roe entirely.[331]

The majority. Justice Alito wrote that "[t]he Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision." He wrote that Roe "was egregiously wrong from the start," and that the decision returned the issue "to the people and their elected representatives."[332] The majority said the ruling did not cast doubt on other precedents, such as those on contraception and marriage, because abortion uniquely involves what the opinion called "potential life."[333]

The concurrences. Justice Thomas wrote separately that the Court should reconsider all of its "substantive due process" precedents, including Griswold, Lawrence and Obergefell. Justice Kavanaugh wrote that the Constitution is "neutral" on abortion and that the decision did not threaten those other precedents.[334]

The dissent. Justices Breyer, Sotomayor and Kagan wrote a joint dissent. They argued that the majority had taken away a right relied on by millions of women for half a century, that nothing had changed but the Court's membership, and that the majority's reasoning threatened other rights.[335]

What happened after. Dobbs did not ban abortion. It returned the question to states and Congress. States have since adopted widely different laws. Whether Dobbs "banned abortion nationwide" is tested in Chapter 17.

Religion, race and agencies: 2022 to 2024

- **Kennedy v. Bremerton School District (2022).** A coach's personal prayer after games was protected speech and religious exercise (Chapter 8).[336]

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[330] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[331] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[332] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[333] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[334] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[335] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[336] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States. June 27, 2022. https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

- **West Virginia v. EPA (2022).** By a 6-3 vote, the Court held that the Environmental Protection Agency lacked clear authority from Congress to require power plants to shift away from coal, applying what it called the "major questions doctrine": agencies need clear congressional authorization for decisions of vast economic and political significance.[337]
- **Students for Fair Admissions v. Harvard and University of North Carolina (2023).** The Court held that race-conscious admissions programs at Harvard and UNC violated equal protection (UNC) and federal civil rights law (Harvard). The vote was 6-3 in the UNC case and 6-2 in the Harvard case, where Justice Jackson did not take part. Chief Justice Roberts wrote that "[e]liminating racial discrimination means eliminating all of it."[338] Justice Sotomayor's dissent argued the ruling "rolls back decades of precedent and momentous progress."[339]
- **Biden v. Nebraska (2023).** By a 6-3 vote, the Court held that the Secretary of Education lacked authority to cancel about $430 billion in student loan principal (nominal dollars, as described in the opinion).[340]
- **Loper Bright Enterprises v. Raimondo (2024).** The Court overruled Chevron. Chief Justice Roberts wrote that courts "must exercise their independent judgment" about what a statute means and "may not defer to an agency interpretation of the law simply because a statute is ambiguous."[341] Justice Kagan's dissent warned that the ruling gives courts power over technical policy questions that Congress meant for experts.[342]

The former President's cases (2024)

- **Trump v. Anderson (March 4, 2024).** Colorado's highest court had removed Donald Trump from the state's 2024 presidential primary ballot under Section 3 of the Fourteenth Amendment, which bars certain officials who engaged in insurrection from holding office. The Supreme Court unanimously reversed, holding that states cannot enforce Section 3 against federal officeholders and candidates; Congress must do so. Four justices wrote separately, disagreeing over how far the majority's reasoning went.[343]
- **Trump v. United States (July 1, 2024).** By a 6-3 vote, the Court held that a former President has absolute immunity from criminal prosecution for actions within his "conclusive and preclusive constitutional authority," at least presumptive immunity for

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[337] West Virginia v. Environmental Protection Agency, 597 U.S. 697 (2022). Supreme Court of the United States. June 30, 2022. https://www.supremecourt.gov/opinions/21pdf/597us2r65_5iel.pdf (accessed November 12, 2026).

[338] Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023). Supreme Court of the United States. June 29, 2023. https://www.supremecourt.gov/opinions/22pdf/600us1r53_4g15.pdf (accessed November 12, 2026).

[339] Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023). Supreme Court of the United States. June 29, 2023. https://www.supremecourt.gov/opinions/22pdf/600us1r53_4g15.pdf (accessed November 12, 2026).

[340] Biden v. Nebraska, 600 U.S. 477 (2023). Supreme Court of the United States. June 30, 2023. https://www.supremecourt.gov/opinions/22pdf/600us1r56_1o13.pdf (accessed November 12, 2026).

[341] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. June 28, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[342] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. June 28, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[343] Trump v. Anderson, 601 U.S. 100 (2024). Supreme Court of the United States. March 4, 2024. https://www.supremecourt.gov/opinions/23pdf/601us1r06_a86c.pdf (accessed November 12, 2026).

other official acts, and no immunity for unofficial acts.[344] Chief Justice Roberts wrote that the President "is not above the law" but that the separation of powers requires some immunity. Justice Sotomayor's dissent argued that the ruling makes the President "a king above the law" in his use of official power.[345]

2025: universal injunctions and medical care for minors

- **United States v. Skrmetti (June 18, 2025).** By a 6-3 vote, the Court upheld Tennessee's law banning certain medical treatments, including puberty blockers and hormones, for minors with gender dysphoria, holding that it did not violate equal protection.[346] Chief Justice Roberts wrote for the Court. The Court's summary of the ruling says that "Questions regarding the law's policy are thus appropriately left to the people, their elected representatives, and the democratic process."[347] Justice Sotomayor, joined by Justice Jackson and in part by Justice Kagan, dissented. She wrote that "By retreating from meaningful judicial review exactly where it matters most, the Court abandons transgender children and their families to political whims. In sadness, I dissent."[348] Justice Kagan also wrote her own dissent.[349]
- **Trump v. CASA, Inc. (June 27, 2025).** By a 6-3 vote, the Court held that "universal injunctions," court orders blocking a policy for everyone rather than just the parties, likely exceed the power Congress has given federal courts.[350] The case arose from challenges to the birthright citizenship executive order. The Court did not decide whether the order itself was lawful until Trump v. Barbara in June 2026 (Chapter 18).[351] Justice Amy Coney Barrett wrote for the majority. The Court's summary states its view in one line: "When a court concludes that the Executive Branch has acted unlawfully, the answer is not for the court to exceed its power, too."[352] Justice Sotomayor, joined by Justices Kagan and Jackson, dissented: "No right is safe in the new legal regime the Court creates. Today, the threat is to birthright citizenship. Tomorrow, a different administration may try to seize firearms from lawabiding citizens or prevent people of certain faiths from gathering to worship." Justice Jackson added her own dissent, calling

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[344] Trump v. United States, 603 U.S. 593 (2024). Supreme Court of the United States. July 1, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r57_2dp3.pdf (accessed November 12, 2026).

[345] Trump v. United States, 603 U.S. 593 (2024). Supreme Court of the United States. July 1, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r57_2dp3.pdf (accessed November 12, 2026).

[346] United States v. Skrmetti, 605 U.S. 495 (2025). Supreme Court of the United States. June 18, 2025. https://www.supremecourt.gov/opinions/24pdf/605us2r48_m648.pdf (accessed November 12, 2026).

[347] United States v. Skrmetti, 605 U.S. 495 (2025). Supreme Court of the United States. June 18, 2025. https://www.supremecourt.gov/opinions/24pdf/605us2r48_m648.pdf (accessed November 12, 2026).

[348] United States v. Skrmetti, 605 U.S. 495 (2025). Supreme Court of the United States. June 18, 2025. https://www.supremecourt.gov/opinions/24pdf/605us2r48_m648.pdf (accessed November 12, 2026).

[349] United States v. Skrmetti, 605 U.S. 495 (2025). Supreme Court of the United States. June 18, 2025. https://www.supremecourt.gov/opinions/24pdf/605us2r48_m648.pdf (accessed November 12, 2026).

[350] Trump v. CASA, Inc., 606 U.S. 831 (2025). Supreme Court of the United States. June 27, 2025. https://www.supremecourt.gov/opinions/24pdf/606us2r66_j426.pdf (accessed November 12, 2026).

[351] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[352] Trump v. CASA, Inc., 606 U.S. 831 (2025). Supreme Court of the United States. June 27, 2025. https://www.supremecourt.gov/opinions/24pdf/606us2r66_j426.pdf (accessed November 12, 2026).

the decision "an existential threat to the rule of law."[353] Note that the majority did not say universal injunctions were always unlawful in every form. It held they "likely exceed the equitable authority that Congress has given to federal courts." It pointed to the class action, governed by Rule 23 of the Federal Rules of Civil Procedure, as the modern form of relief for a large group, and said universal injunctions "impermissibly circumvent Rule 23's procedural protections."[354]

- **Mahmoud v. Taylor (June 27, 2025).** By a 6-3 vote, the Court held that parents with religious objections were likely entitled to have their children excused from public school lessons using certain storybooks about gender and sexuality.[355] Justice Alito wrote for the majority. The parents argued that the school board's introduction of the storybooks, "combined with its decision to withhold notice and opt outs," unconstitutionally burdened their religious exercise, and the Court held they "are entitled to a preliminary injunction."[356] Justice Sotomayor, joined by Justices Kagan and Jackson, dissented. She wrote that public schools "offer to children of all faiths and backgrounds an education and an opportunity to practice living in our multicultural society," and that this experience "will become a mere memory if children must be insulated from exposure to ideas and concepts that may conflict with their parents' religious beliefs."[357]

More Roberts Court rulings worth knowing

The rulings above get the most attention. These eight are less famous, but each changed how a part of government works. I list them in time order, with the vote and each side's words.

Rucho v. Common Cause (2019): partisan gerrymandering. "Gerrymandering" means drawing election district lines to help one side. Voters in North Carolina and Maryland sued over maps drawn to favor Republicans in one state and Democrats in the other. By a 5-4 vote, the Court held that "Partisan gerrymandering claims present political questions beyond the reach of the federal courts." Chief Justice Roberts wrote that "Excessive partisanship in districting leads to results that reasonably seem unjust," but that this "does not mean that the solution lies with the federal judiciary." He added that the ruling "does not condone excessive partisan gerrymandering" and pointed to states addressing the issue on their own.[358] Justice Elena Kagan, for the four dissenters, wrote: "For the first time ever, this Court refuses to remedy a constitutional violation because it thinks the task beyond judicial capabilities."[359] Note what the

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[353] Trump v. CASA, Inc., 606 U.S. 831 (2025). Supreme Court of the United States. June 27, 2025. https://www.supremecourt.gov/opinions/24pdf/606us2r66_j426.pdf (accessed November 12, 2026).

[354] Trump v. CASA, Inc., 606 U.S. 831 (2025). Supreme Court of the United States. June 27, 2025. https://www.supremecourt.gov/opinions/24pdf/606us2r66_j426.pdf (accessed November 12, 2026).

[355] Mahmoud v. Taylor, 606 U.S. 522 (2025). Supreme Court of the United States. June 27, 2025. https://www.supremecourt.gov/opinions/24pdf/606us2r63_n648.pdf (accessed November 12, 2026).

[356] Mahmoud v. Taylor, 606 U.S. 522 (2025). Supreme Court of the United States. June 27, 2025. https://www.supremecourt.gov/opinions/24pdf/606us2r63_n648.pdf (accessed November 12, 2026).

[357] Mahmoud v. Taylor, 606 U.S. 522 (2025). Supreme Court of the United States. June 27, 2025. https://www.supremecourt.gov/opinions/24pdf/606us2r63_n648.pdf (accessed November 12, 2026).

[358] Rucho v. Common Cause, 588 U.S. 684 (2019). Supreme Court of the United States. June 27, 2019. https://www.supremecourt.gov/opinions/preliminaryprint/588US2PP_final.pdf#page=346 (accessed November 12, 2026).

[359] Rucho v. Common Cause, 588 U.S. 684 (2019). Supreme Court of the United States. June 27, 2019. https://www.supremecourt.gov/opinions/preliminaryprint/588US2PP_final.pdf#page=346 (accessed November 12, 2026).

case did and did not decide: federal courts no longer hear these claims, but state courts and state laws still can.

Knick v. Township of Scott (2019): property rights in federal court. Before Knick, a 1985 ruling (Williamson County) required property owners to sue in state court first before bringing a federal claim that the government had taken their property without paying. By a 5-4 vote, the Court overruled that requirement. Chief Justice Roberts wrote that "A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it."[360] Justice Kagan wrote the dissent for four justices.[361]

Seila Law LLC v. Consumer Financial Protection Bureau (2020): one director, fired at will. The Consumer Financial Protection Bureau (CFPB) was led by a single director whom the President could remove only for cause. By a 5-4 vote on that question, the Court held that this structure "violates the separation of powers." Chief Justice Roberts wrote that "the President's removal power is the rule, not the exception," while saying the Court did "not revisit Humphrey's Executor or any other precedent today."[362] Justice Kagan, joined by Justices Ginsburg, Breyer and Sotomayor, agreed on a narrower point but dissented on the main question.[363] Six years later, Trump v. Slaughter went further (Chapter 18).[364]

McGirt v. Oklahoma (2020): treaty promises. Jimcy McGirt, a member of the Seminole Nation, argued that Oklahoma had no power to try him because his crime took place on the Creek Reservation, which he said still legally existed. By a 5-4 vote, the Court agreed. Justice Neil Gorsuch, joined by Justices Ginsburg, Breyer, Sotomayor and Kagan, wrote: "Because Congress has not said otherwise, we hold the government to its word," and "Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law."[365] Chief Justice Roberts, joined by Justices Alito and Kavanaugh and by Justice Thomas except for one footnote, dissented. He pointed out that about 1.8 million people live in the area and that only 10 to 15 percent of them are Indians, and he wrote that "The decision today creates significant uncertainty for the State's continuing authority over any area that touches Indian affairs."[366] This case shows the Court's usual lineups do not always hold: a justice appointed by a Republican president wrote for the four justices appointed by Democratic presidents.

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[360] Knick v. Township of Scott, 588 U.S. 180 (2019). Supreme Court of the United States. June 21, 2019. https://www.supremecourt.gov/opinions/preliminaryprint/588US1PP_final.pdf#page=188 (accessed November 12, 2026).

[361] Knick v. Township of Scott, 588 U.S. 180 (2019). Supreme Court of the United States. June 21, 2019. https://www.supremecourt.gov/opinions/preliminaryprint/588US1PP_final.pdf#page=188 (accessed November 12, 2026).

[362] Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 197 (2020). Supreme Court of the United States. June 29, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/591US1PP_web.pdf#page=207 (accessed November 12, 2026).

[363] Seila Law LLC v. Consumer Financial Protection Bureau, 591 U.S. 197 (2020). Supreme Court of the United States. June 29, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/591US1PP_web.pdf#page=207 (accessed November 12, 2026).

[364] Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

[365] McGirt v. Oklahoma, 591 U.S. 894 (2020). Supreme Court of the United States. July 9, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/591US2PP_web.pdf#page=453 (accessed November 12, 2026).

[366] McGirt v. Oklahoma, 591 U.S. 894 (2020). Supreme Court of the United States. July 9, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/591US2PP_web.pdf#page=453 (accessed November 12, 2026).

Allen v. Milligan (2023): the Voting Rights Act. Alabama has seven congressional districts. After the 2020 census, Black voters sued under Section 2 of the Voting Rights Act, arguing the new map should include a second majority-Black district, and they offered example maps that did.[367] By a 5-4 vote, the Court upheld a lower court's finding that the map likely violated the law, saying the lower court "faithfully applied this Court's precedents." Chief Justice Roberts wrote the opinion, joined by Justices Sotomayor, Kagan and Jackson, and by Justice Kavanaugh in most part. Justices Thomas and Alito wrote dissents.[368] In 2026, Louisiana v. Callais dealt with a related question (Chapter 18).[369]

Moore v. Harper (2023): who controls election rules. North Carolina lawmakers argued that the Constitution's Elections Clause, which gives state "Legislature[s]" power over federal election rules, kept state courts from reviewing their congressional maps. Supporters and critics alike usually call this argument the independent state legislature theory. By a 6-3 vote, the Court rejected it: "The Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review." The Court added that "state courts do not have free rein" either.[370] Justice Thomas dissented, joined by Justice Gorsuch and in part by Justice Alito.[371]

Securities and Exchange Commission v. Jarkesy (2024): agencies and juries. The Securities and Exchange Commission (SEC) imposed a $300,000 civil penalty on George Jarkesy and his firm, Patriot28, in an in-house proceeding, without a jury. By a 6-3 vote, the Court held: "When the SEC seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial."[372] Justice Sotomayor, joined by Justices Kagan and Jackson, dissented: "Make no mistake: Today's decision is a power grab."[373] The $300,000 figure is a nominal amount, in dollars of the time.

You might ask: what do these cases have in common? Several of them (Seila Law, Jarkesy, and Loper Bright, described above) moved power away from federal agencies and toward the President, the courts or juries. Supporters call that a return to the Constitution's design. Critics call it the Court taking power for itself. That framing is my own summary of the two positions, which the majority and dissenting opinions quoted above state in their own words.

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[367] Allen v. Milligan, 599 U.S. 1 (2023). Supreme Court of the United States. June 8, 2023. https://www.supremecourt.gov/opinions/22pdf/599us1r33_dc8f.pdf (accessed November 12, 2026).

[368] Allen v. Milligan, 599 U.S. 1 (2023). Supreme Court of the United States. June 8, 2023. https://www.supremecourt.gov/opinions/22pdf/599us1r33_dc8f.pdf (accessed November 12, 2026).

[369] Louisiana v. Callais, 608 U.S. 85 (2026). Supreme Court of the United States. April 29, 2026. https://www.supremecourt.gov/opinions/25pdf/608us1r29_n648.pdf (accessed November 12, 2026).

[370] Moore v. Harper, 600 U.S. 1 (2023). Supreme Court of the United States. June 27, 2023. https://www.supremecourt.gov/opinions/22pdf/600us1r50_h3ci.pdf (accessed November 12, 2026).

[371] Moore v. Harper, 600 U.S. 1 (2023). Supreme Court of the United States. June 27, 2023. https://www.supremecourt.gov/opinions/22pdf/600us1r50_h3ci.pdf (accessed November 12, 2026).

[372] Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024). Supreme Court of the United States. June 27, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r50_7kh7.pdf (accessed November 12, 2026).

[373] Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024). Supreme Court of the United States. June 27, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r50_7kh7.pdf (accessed November 12, 2026).

Chapter 11: Overturned: When the Court Reverses Itself

Rulings are not permanent. The Court has reversed itself many times, and the country has reversed the Court by constitutional amendment several times. This chapter collects the major examples in one place.

How often does it happen?

The Constitution Annotated, prepared by the Congressional Research Service for the Library of Congress, keeps a table of "Supreme Court Decisions Overruled by Subsequent Decision." Its 2016 edition listed 236 overruling decisions, from 1810 through 2016. The table counts only cases where the Court expressly overruled an earlier decision, or did the functional equivalent.[374] Because some decisions overrule more than one earlier case, the number of overruled precedents is somewhat higher than the number of overruling decisions.

The National Constitution Center, citing the Library of Congress, put the figure at "an estimated 232 cases" as of 2020, and noted that such counts involve judgment calls.[375] The two figures differ because they count differently and were compiled at different times. Several more overrulings have happened since, listed below.

Is 236 a lot or a little? The Court has decided many thousands of cases since 1790; the official U.S. Reports, the bound volumes of its decisions, reached volume 609 with the 2025 term.[376] So overruling is uncommon as a share of all decisions. But many of the overruled cases were among the most important ever decided. Whether that makes overruling "rare" is a claim tested in Chapter 17.

Major decisions the Court overruled

Overruled decision	What it held	Overruled by	Vote to overrule
Adkins v. Children's Hospital (1923)	Struck down a minimum wage for women	West Coast Hotel v. Parrish (1937)[377]	5-4
Hammer v. Dagenhart (1918)	Struck down a federal child labor law	United States v. Darby (1941)[378]	9-0

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[374] Supreme Court Decisions Overruled by Subsequent Decision, in The Constitution of the United States of America: Analysis and Interpretation (2016 revision). Congressional Research Service and Library of Congress, via govinfo.gov. 2016. p. 2601. https://www.govinfo.gov/content/pkg/GPO-CONAN-REV-2016/pdf/GPO-CONAN-REV-2016-13.pdf (accessed November 12, 2026).

[375] A short list of overturned Supreme Court landmark decisions (Scott Bomboy). National Constitution Center. June 24, 2022. https://constitutioncenter.org/blog/a-short-list-of-overturned-supreme-court-landmark-decisions (accessed November 12, 2026).

[376] Opinions of the Court, 2025 Term. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[377] West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). Supreme Court of the United States. 1937. https://www.law.cornell.edu/supremecourt/text/300/379 (accessed November 12, 2026).

[378] United States v. Darby, 312 U.S. 100 (1941). Supreme Court of the United States. 1941. https://www.law.cornell.edu/supremecourt/text/312/100 (accessed November 12, 2026).

Overruled decision	What it held	Overruled by	Vote to overrule
Minersville v. Gobitis (1940)	Upheld a required flag salute	West Virginia v. Barnette (1943)[379]	6-3
Plessy v. Ferguson (1896)	"Separate but equal"	Brown v. Board of Education (1954), as to public education[380]	9-0
Bowers v. Hardwick (1986)	Upheld a sodomy law	Lawrence v. Texas (2003)[381]	6-3 on the judgment; five justices joined the part overruling Bowers
Austin v. Michigan Chamber (1990)	Allowed limits on corporate election spending	Citizens United v. FEC (2010)[382]	5-4
Baker v. Nelson (1972)	Dismissed a same-sex marriage claim	Obergefell v. Hodges (2015)[383]	5-4
Abood v. Detroit Board of Education (1977)	Allowed public unions to charge nonmembers fees	Janus v. AFSCME (2018)[384]	5-4
Williamson County Regional Planning Commission v. Hamilton Bank (1985)	Required property owners to go to state court first before bringing a federal claim that their property was taken without pay	Knick v. Township of Scott (2019)[385]	5-4
Apodaca v. Oregon (1972)	Allowed non-unanimous juries in state cases	Ramos v. Louisiana (2020)[386]	6-3 on the judgment, with justices splitting on parts of the reasoning
Roe v. Wade (1973) and Casey (1992)	Constitutional right to abortion	Dobbs v. Jackson (2022)[387]	5-4 on overruling
Chevron v. NRDC (1984)	Courts defer to agency readings of unclear laws	Loper Bright v. Raimondo (2024)[388]	6-3 (6-2 in one of the two consolidated

[379] West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943). Supreme Court of the United States. 1943. https://www.law.cornell.edu/supremecourt/text/319/624 (accessed November 12, 2026).

[380] Brown v. Board of Education, 347 U.S. 483 (1954). Supreme Court of the United States. 1954. https://www.law.cornell.edu/supremecourt/text/347/483 (accessed November 12, 2026).

[381] Lawrence v. Texas, 539 U.S. 558 (2003). Supreme Court of the United States. 2003. https://www.law.cornell.edu/supremecourt/text/539/558 (accessed November 12, 2026).

[382] Citizens United v. Federal Election Commission, 558 U.S. 310 (2010). Supreme Court of the United States. 2010. https://www.law.cornell.edu/supremecourt/text/08-205 (accessed November 12, 2026).

[383] Obergefell v. Hodges, 576 U.S. 644 (2015). Supreme Court of the United States. 2015. https://www.law.cornell.edu/supremecourt/text/14-556 (accessed November 12, 2026).

[384] Janus v. American Federation of State, County, and Municipal Employees, 585 U.S. 878 (2018). Supreme Court of the United States. June 27, 2018. https://www.law.cornell.edu/supremecourt/text/16-1466 (accessed November 12, 2026).

[385] Knick v. Township of Scott, 588 U.S. 180 (2019). Supreme Court of the United States. June 21, 2019. https://www.supremecourt.gov/opinions/preliminaryprint/588US1PP_final.pdf#page=188 (accessed November 12, 2026).

[386] Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States. April 20, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12, 2026).

[387] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

Overruled decision	What it held	Overruled by	Vote to overrule
			cases)
Humphrey's Executor v. United States (1935)	Congress may limit the President's power to fire FTC commissioners	Trump v. Slaughter (2026)[389]	6-3

A few notes on this table.

- **Brown and Plessy.** Brown held that "separate but equal" has no place in public education. Later decisions applied the same principle to other public facilities. Plessy is now treated as overruled.[390]
- **Korematsu** is not in the table. In 2018, the Court said Korematsu "was gravely wrong the day it was decided," but whether that counts as formally overruling it is disputed, because the 2018 case did not present the same question.[391]
- **Trump v. Slaughter** is the newest. On June 29, 2026, Chief Justice Roberts wrote for the Court that the Federal Trade Commission's protection against removal without cause violates the separation of powers, and that "[i]f anything more is left of Humphrey's, we overrule it." Justice Sotomayor, joined by Justices Kagan and Jackson, dissented.[392]
- **Votes** above come from the overruling opinions. For Dobbs, the 6-3 vote on the Mississippi law differs from the 5-4 vote on overruling Roe, as explained in Chapter 10.[393] For Loper Bright, Justice Jackson did not take part in one of the two cases decided together.[394]

Decisions overturned by constitutional amendment

The people can also reverse the Court. These amendments responded, at least in part, to specific decisions.

Decision	What it held	Amendment that changed the result

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[388] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. June 28, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[389] Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

[390] Brown v. Board of Education, 347 U.S. 483 (1954). Supreme Court of the United States. 1954. https://www.law.cornell.edu/supremecourt/text/347/483 (accessed November 12, 2026).

[391] Trump v. Hawaii, 585 U.S. 667 (2018). Supreme Court of the United States. June 26, 2018. https://www.law.cornell.edu/supremecourt/text/17-965 (accessed November 12, 2026). A short list of overturned Supreme Court landmark decisions (Scott Bomboy). National Constitution Center. June 24, 2022. https://constitutioncenter.org/blog/a-short-list-of-overturned-supreme-court-landmark-decisions (accessed November 12, 2026).

[392] Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

[393] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[394] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. June 28, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

Decision	What it held	Amendment that changed the result
Chisholm v. Georgia (1793)[395]	A state could be sued in federal court by a citizen of another state	Eleventh Amendment (1795)[396]
Dred Scott v. Sandford (1857)[397]	Black Americans could not be citizens	Fourteenth Amendment (1868), Citizenship Clause[398]
Pollock v. Farmers' Loan and Trust (1895)[399]	Struck down the federal income tax	Sixteenth Amendment (1913)[400]
Oregon v. Mitchell (1970)[401]	Congress could not set the voting age at 18 for state elections	Twenty-Sixth Amendment (1971)[402]

Decisions changed by Congress

When the Court interprets a statute, Congress can change the statute. This happens more often than people realize. The Ledbetter example in Chapter 3 is one.[403] Congress can also respond to a constitutional ruling in narrower ways, for example by passing a new law that tries to meet the Court's objections. The Presidential Commission's report discusses proposals to let Congress override even constitutional decisions, and the arguments for and against them; Chapter 18 summarizes that debate.[404]

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[395] Chisholm v. Georgia, 2 U.S. 419 (1793). Supreme Court of the United States. 1793. https://www.law.cornell.edu/supremecourt/text/2/419 (accessed November 12, 2026).

[396] The Constitution: Amendments 11-27. National Archives. amendments ratified 1795-1992. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[397] Dred Scott v. Sandford, 60 U.S. 393 (1857). Supreme Court of the United States. 1857. https://www.law.cornell.edu/supremecourt/text/60/393 (accessed November 12, 2026).

[398] The Constitution: Amendments 11-27. National Archives. amendments ratified 1795-1992. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[399] Pollock v. Farmers' Loan and Trust Co., 157 U.S. 429 (1895). Supreme Court of the United States. 1895. https://www.law.cornell.edu/supremecourt/text/157/429 (accessed November 12, 2026).

[400] The Constitution: Amendments 11-27. National Archives. amendments ratified 1795-1992. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[401] Oregon v. Mitchell, 400 U.S. 112 (1970). Supreme Court of the United States. 1970. https://www.law.cornell.edu/supremecourt/text/400/112 (accessed November 12, 2026).

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[404] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 183-191. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

The arguments about overruling

People's views on overruling tend to track whether they like the precedent at issue. That is worth noticing. Here are the main arguments, as the justices themselves have made them.

- **For a strong rule of precedent.** The Casey joint opinion argued that overruling a major decision under fire would cause "profound and unnecessary damage to the Court's legitimacy" and that people had organized their lives around Roe.[405] Justice Kagan, dissenting in Loper Bright, argued that the Court's willingness to overrule precedents undermined the rule of law.[406]
- **For correcting errors.** The Dobbs majority wrote that stare decisis "is not an inexorable command" and is "at its weakest" when the Court interprets the Constitution, because only an amendment can otherwise fix the error. It pointed to Brown's overruling of Plessy as proof that overruling a wrong precedent can be right.[407]
- **The middle.** Many justices of every stripe agree that precedent matters a great deal and that some precedents should still be overruled. They disagree about which ones.

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[405] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). Supreme Court of the United States. 1992. https://www.law.cornell.edu/supremecourt/text/505/833 (accessed November 12, 2026).

[406] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. June 28, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[407] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

Part Two Notes

Main sources for Part Two. The Court's own opinions in every case discussed, read from the Court's website or from the Legal Information Institute's copy of the official text; the National Archives' transcript of Brown v. Board of Education and its text of the amendments; the Library of Congress's Constitution Annotated list of overruled decisions; and the Presidential Commission's Final Report for the 1937 "switch in time." The full list of sources cited in Part Two follows these notes.

[Not verified] items in Part Two.

- The quote attributed to Andrew Jackson after Worcester v. Georgia. I found no record of it from Jackson himself.
- A current count of state laws passed after Kelo v. City of New London to limit takings for economic development. I found only secondary summaries.
- The Legal Information Institute's page for Brown v. Board of Education did not load fully from my research setup. I checked the quoted words against the National Archives' transcript instead, which uses slightly different punctuation (it adds commas around "in the field of public education"). I kept the punctuation of the official U.S. Reports as it is usually quoted.

Where sources disagree.

- *Why Justice Owen Roberts changed his vote in 1937.* Some historians point to the timing of the Court's conference vote; others see political pressure. The Commission says "scholars disagree." The text gives both and does not decide it.
- *Whether Korematsu has been formally overruled.* Trump v. Hawaii (2018) called it "gravely wrong," but it did not present the same question. The text notes the dispute.
- *Every debated ruling.* For each ruling still argued about today, the text quotes the majority and the main dissent in their own words rather than choosing between them.

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Part Three: Choosing Justices

Chapter 12: How Justices Are Chosen

The Constitution gives the job of choosing justices to two branches. Article II says the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint… Judges of the supreme Court."[408] That one sentence is the entire constitutional process. Everything else, from the background checks to the televised hearings, grew up around it.

Step by step

Step	Who	What happens
1. Vacancy	A justice	A seat opens when a justice dies, retires or resigns. Justices often announce a retirement in advance, effective when a successor is confirmed.
2. Selection	The President	The President and advisers review candidates, usually federal appeals judges.
3. Nomination	The President	The President formally sends the nomination to the Senate.
4. Background check	FBI and the Senate Judiciary Committee	The FBI conducts a background investigation; the nominee fills out a long committee questionnaire.
5. Hearings	Senate Judiciary Committee	The nominee testifies, usually over several days, and outside witnesses appear.
6. Committee vote	Senate Judiciary Committee	The committee votes to send the nomination to the full Senate, with or without a recommendation.
7. Floor vote	Full Senate	A simple majority of senators voting confirms.
8. Commission and oath	President and the Court	The President signs the commission, and the new justice takes the oaths.

The Court's own website confirms that confirmation "requires a simple majority" of the Senate.[409]

A few points in this table are custom, not law. The Constitution does not require hearings, a committee vote or an FBI check. The Senate's own record shows that some nominations were never acted on at all.[410] The Presidential Commission's appendix on the confirmation process includes testimony from a former Senate Judiciary Committee staff director who proposed turning some of these customs into firm rules, including a requirement that every nominee get a hearing and a vote.[411]

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[408] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[409] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[410] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[411] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 254-261. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

The numbers

According to the Senate, presidents have submitted 165 nominations to the Supreme Court since 1789, counting nominations for Chief Justice. Of those, 128 were confirmed, though 7 of the people confirmed declined to serve.[412]

The other nominations ended in different ways.

Outcome	Number
Confirmed and served	121
Confirmed but declined to serve	7
Rejected by Senate vote	12
Withdrawn by the President	12
No action taken	10
Postponed	3

Source: U.S. Senate, Supreme Court Nominations (1789-Present), accessed November 12, 2026.[413] The categories come from the Senate's own key. Some people were nominated more than once, so the number of nominations is larger than the number of people.

The membership, by the numbers

I counted the following from the Court's own list of members, which gives each justice's state, appointing president and the dates of service, measured from the judicial oath.[414] The counts are mine; the dates are the Court's.

Appointments by president. The list has 121 appointments, counting a promotion from Associate Justice to Chief Justice as a separate appointment.[415]

President	Appointments on the Court's list
George Washington	11
Franklin D. Roosevelt	9
Andrew Jackson	6
William Howard Taft	6
Abraham Lincoln	5
Dwight D. Eisenhower	5

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[412] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[413] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[414] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[415] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

Source: my count from the Court's list of members.[416] Washington's total is high because he filled the whole first Court. Roosevelt's nine includes his promotion of Justice Harlan Fiske Stone to Chief Justice.[417]

Longest service. Measured from the oath date to the end date on the Court's list, these are the longest tenures, with Justice Thomas's counted through November 12, 2026:[418]

Justice	Served	Length, rounded
William O. Douglas	April 17, 1939 to November 12, 1975	about 36.6 years
Clarence Thomas	October 23, 1991 to present	about 35.1 years as of November 12, 2026
Stephen J. Field	May 20, 1863 to December 1, 1897	about 34.5 years
John Paul Stevens	December 19, 1975 to June 29, 2010	about 34.5 years
John Marshall	February 4, 1801 to July 6, 1835	about 34.4 years
Hugo L. Black	August 19, 1937 to September 17, 1971	about 34.1 years

Source: my calculation from the dates on the Court's list of members.[419] By these dates, Justice Thomas became the second-longest-serving justice in the Court's history during 2026. That ranking is my own calculation from the Court's dates; I did not find an official statement of it.

Shortest service. The shortest tenure on the list is John Rutledge's term as Chief Justice, from August 12 to December 15, 1795, about four months. He took the oath in August 1795, and the Senate rejected his nomination by a 10-14 vote on December 15, 1795.[420] Among other short tenures, James Byrnes served from July 8, 1941 to October 3, 1942, and Thomas Johnson from September 19, 1791 to January 16, 1793.[421]

You might ask: why do these numbers matter? They are the raw facts behind the term-limit debate in Chapter 15. A justice who serves 35 years outlasts almost nine four-year presidential terms, which is the point term-limit supporters stress and the point defenders of life tenure say protects judicial independence.

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[416] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[417] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[418] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[419] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[420] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026). Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[421] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

How the process has changed

From voice votes to roll calls. The Presidential Commission found that "[f]or seventy years until 1968, most Justices were confirmed by voice vote." Since then, recorded roll call votes have been the norm, and votes have split more and more along party lines.[422]

From lopsided votes to close ones. Look at the votes for every sitting justice, from the Senate's records.

Justice	Nominated by	Confirmed	Senate vote
Clarence Thomas	George H. W. Bush (R)	October 15, 1991	52-48
John Roberts (as Chief Justice)	George W. Bush (R)	September 29, 2005	78-22
Samuel Alito	George W. Bush (R)	January 31, 2006	58-42
Sonia Sotomayor	Barack Obama (D)	August 6, 2009	68-31
Elena Kagan	Barack Obama (D)	August 5, 2010	63-37
Neil Gorsuch	Donald Trump (R)	April 7, 2017	54-45
Brett Kavanaugh	Donald Trump (R)	October 6, 2018	50-48
Amy Coney Barrett	Donald Trump (R)	October 26, 2020	52-48
Ketanji Brown Jackson	Joseph Biden (D)	April 7, 2022	53-47

Source: U.S. Senate, Supreme Court Nominations (1789-Present).[423]

Compare those to earlier votes: Antonin Scalia, 98-0 in 1986; Anthony Kennedy, 97-0 in 1988; David Souter, 90-9 in 1990; Ruth Bader Ginsburg, 96-3 in 1993; Stephen Breyer, 87-9 in 1994.[424]

The Commission noted how few votes now cross party lines: Justice Kavanaugh received the vote of only one Democrat, and Justice Barrett received no Democratic votes.[425]

From 60 votes to 51. For most of modern history, senators could block a vote on a nominee by filibustering, and ending a filibuster took 60 votes (called "cloture"). In November 2013, the Senate's Democratic majority changed the rule by a simple majority vote so that most nominations needed only a majority to end debate, but left Supreme Court nominations out. On April 6, 2017, during the Gorsuch nomination, the Senate's Republican majority extended the same change to Supreme Court nominations. The Senate's own floor record for that day shows

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[422] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 16. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[423] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[424] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[425] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 16. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Majority Leader Mitch McConnell raising a point of order that the November 21, 2013 precedent should cover all nominations, the chair ruling that it did not, and the Senate voting to overturn the chair's ruling.[426] Since then, a nominee can be confirmed with a simple majority, with no 60-vote hurdle.

People call these rule changes the "nuclear option." Each party blames the other for starting the escalation. Democrats point to Republican filibusters of lower-court nominees in the early 2010s. Republicans point to Democratic filibusters of President George W. Bush's appeals court nominees in the early 2000s. Both sides have a factual basis for their account. (That last paragraph is my summary of each side's argument. The dates of the rule changes come from the Senate's floor record and the Congressional Research Service.)

From long careers to young nominees. The Commission observed that presidents "are also expected to nominate individuals who, if confirmed, will be young enough to serve for many decades."[427] That expectation drives much of the term limits debate in Chapter 15.

From quiet process to public campaign. The Commission reported that "[m]illions of dollars were spent for and against the nominations of Justices Kavanaugh and Barrett," and that confirmation battles now draw "multi-million dollar lobbying campaigns."[428]

How much do nominees say at their hearings?

Not much, by design. Nominees of both parties routinely decline to say how they would rule on issues that might come before the Court. Recent nominees have often pointed to Justice Ginsburg's 1993 hearing, where she declined to give "hints," "forecasts" or "previews" of how she would vote. People call this the "Ginsburg rule."

The former Senate staffer whose testimony appears in the Commission's report interviewed 25 former senators and senior staff from both parties. He reported that most believe the value of hearings "has increasingly diminished over time," and that interviewees described them with words like "kabuki theater" and "charade." He also argued that the "Ginsburg Rule" is "neither a rule nor an appropriate tactic," noting that Ginsburg herself did not always follow it.[429] That is one witness's view, but it reflects a complaint heard on both sides of the aisle.

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[426] Senate Floor Activity, Thursday, April 6, 2017. United States Senate, Legislative Information System. April 6, 2017. https://www.senate.gov/legislative/LIS/floor_activity/2017/04_06_2017_Senate_Floor.htm (accessed November 12, 2026). Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations: In Brief (R44819). Valerie Heitshusen, Congressional Research Service (copy hosted by EveryCRSReport.com). April 14, 2017. Located by search; the full text could not be opened from my research setup. Facts in the book rest on the Senate floor record. https://www.everycrsreport.com/reports/R44819.html (accessed November 12, 2026).

[427] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 16-17. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[428] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 16. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[429] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 255-259. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

The first hearings: Brandeis and Parker

Public confirmation hearings are newer than many people assume. According to the Presidential Commission, the first time the Senate held a confirmation hearing for a Supreme Court nominee was President Wilson's nomination of Louis D. Brandeis in 1916.[430] Brandeis, known as "the people's attorney" for his attacks on corporate interests, was opposed by former President William Howard Taft, Harvard's president, a former Attorney General and the president of the American Bar Association, among others. The Commission noted that "Another factor in the attacks on Brandeis was bigotry: He was the first Jewish person to be nominated to the Court." After four months, and hearings that Brandeis himself did not attend, the Senate confirmed him on a party-line vote.[431]

In 1930, President Hoover nominated Judge John J. Parker of the federal court of appeals. His nomination failed, 39-41, after opposition from civil rights groups and labor organizations.[432] After Parker, no nominee was rejected by a Senate vote until 1969.[433]

You might ask whether today's fights are unusual. The Commission put it in perspective: "for most of the nineteenth century, the Senate had rejected or otherwise blocked an average of nearly one out of every three nominees to the Court."[434] What is new is not conflict itself but party-line voting on nominees who do get confirmed, which Chapter 12's vote tables show.

Proposals to change the confirmation process

The Commission did not take a position on changing the confirmation process, saying that was beyond its charge. But it printed excerpts from the testimony of Jeffrey Peck, a former General Counsel and Majority Staff Director of the Senate Judiciary Committee, who interviewed 25 former senators and senior staff, 13 Republicans and 12 Democrats, covering 17 nominations

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[430] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 53. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[431] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 53. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[432] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 13, 53-54. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[433] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[434] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 54. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

from Sandra Day O'Connor in 1981 to Amy Coney Barrett in 2020.[435] His recommendations show the kinds of fixes people from both parties have discussed. They are one witness's ideas, not law and not the Commission's findings.

- **Deadlines.** Hearings would start 30 to 50 days after the Senate receives a nomination, the committee would vote 10 to 21 days after hearings end, and the full Senate would begin debate 10 to 21 days after that.[436]
- **Every nominee gets a vote.** The committee would have to send every nomination to the floor, even with a negative recommendation, and "No nominee should be refused consideration unless the nomination has been withdrawn."[437]
- **An election-year cutoff.** The Senate would consider all nominations made before August 1 of a presidential election year, but not those made after.[438]
- **Keep the simple majority.** Peck wrote that if writing on a blank slate he would require 60 votes to confirm, to force bipartisan consultation, but that restoring the 60-vote rule was not realistic.[439]
- **A clearer role for the FBI.** He recommended a written agreement, adopted at the start of a Congress, setting out how the FBI's background investigations are done and reported, so that the White House and both parties on the committee receive information at the same time.[440]
- **Less weight for any single bar group.** He recommended that "The American Bar Association should no longer play the dominant role it has in reviewing nominees."[441]

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[435] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 254-255. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[436] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 257-258. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[437] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 258, 260. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[438] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 260. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[439] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 260. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[440] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 259. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[441] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 260. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

- **Delayed start.** To reduce partisanship, he suggested the new rules take effect only after the next presidential election, so that "neither party would know who the rules theoretically help."[442]

None of these proposals had been adopted as Senate rules as of November 12, 2026, as far as I found. I base that on the Senate's published rules and the confirmation practices described in Chapter 13; I did not search every Senate resolution, so I mark it [Not verified] at that level.

Who gets picked

There are no formal qualifications, but there are strong patterns.

- **Lower court judges.** Eight of the nine sitting justices served on a federal court of appeals before joining the Supreme Court. The exception is Justice Kagan, who was Solicitor General of the United States and, before that, dean of Harvard Law School.[443]
- **A few law schools.** Eight of the nine current justices earned their law degrees at Harvard or Yale. Justice Barrett, a Notre Dame Law School graduate, is the exception.[444]
- **Firsts.** Thurgood Marshall became the first Black justice in 1967. Sandra Day O'Connor became the first woman in 1981. Sonia Sotomayor became the first Hispanic justice in 2009. Ketanji Brown Jackson became the first Black woman on the Court in 2022.[445]

You might ask, "Does a justice have to be a lawyer?" No. The Constitution does not require it. But every justice has been trained in the law, and the last justice who did not attend law school was James Byrnes, who served from 1941 to 1942.[446]

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[442] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 258. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[443] Biographies of Current Justices of the Supreme Court. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/biographies.aspx (accessed November 12, 2026).

[444] Biographies of Current Justices of the Supreme Court. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/biographies.aspx (accessed November 12, 2026).

[445] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026). Biographical Directory of Article III Federal Judges, 1789-present. Federal Judicial Center. page accessed November 12, 2026. https://www.fjc.gov/history/judges (accessed November 12, 2026).

[446] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

Chapter 13: The Big Fights

Most confirmations are quiet. A few have changed how the process works and how Americans see the Court. This chapter covers the fights most often cited today, by both parties, as turning points. For each, I give the facts from the official record and each side's view.

The Presidential Commission summarized the split neatly: Democratic former staffers it surveyed cited the Garland and Barrett nominations "as evidence of Republican bad faith," while Republican former staffers "cited the hearings on the nominations of Judge Bork, Justice Clarence Thomas, and Justice Kavanaugh, and blamed Democrats for personal attacks on nominees."[447] Each side tends to remember the other side's fights.

Before the modern era: Fortas, Haynsworth and Carswell

In June 1968, President Lyndon Johnson nominated Justice Abe Fortas, already on the Court, to be Chief Justice, and Homer Thornberry to take Fortas's seat. Senators opposed to Fortas filibustered, and both nominations were withdrawn in October 1968.[448] The Senate Historical Office's account says the hearings showed that Fortas, as a sitting justice, had attended White House staff meetings and briefed the president on the Court's secret deliberations, and that a privately funded teaching stipend worth about 40 percent of his Court salary cost him key support. The Senate failed to end the filibuster on October 1, 1968.[449] Fortas resigned from the Court the next year, in May 1969, amid a second ethics controversy described in Chapter 16.[450]

President Nixon then had two nominees rejected in a row: Clement Haynsworth Jr., rejected 45-55 in November 1969, and G. Harrold Carswell, rejected 45-51 in April 1970.[451] Harry Blackmun was confirmed 94-0 in May 1970.[452]

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[447] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 16. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[448] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[449] Filibuster Derails Supreme Court Appointment. United States Senate Historical Office. page accessed November 12, 2026. https://www.senate.gov/about/powers-procedures/nominations/filibuster-derails-supreme-court-appointment.htm (accessed November 12, 2026).

[450] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[451] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[452] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

Robert Bork (1987)

The facts. President Ronald Reagan nominated Judge Robert Bork of the D.C. Circuit on July 7, 1987, to replace Justice Lewis Powell. After lengthy hearings, the Senate rejected him 42-58 on October 23, 1987.[453]

Each side's view. The Presidential Commission described the two positions this way. Bork's supporters said he was "a highly qualified nominee who was subjected to deceptive and inflammatory partisan criticism," and that his views were mischaracterized. Defenders of the Senate's treatment said he received "an extensive hearing" where he could defend his views, and that he lost "by a bipartisan majority vote" because of "fundamental and legitimate disagreements with his legal views and judicial philosophy."[454]

What happened after. Reagan next announced Judge Douglas Ginsburg as his choice, but Ginsburg withdrew in November 1987 before a nomination was sent to the Senate, which is why his name does not appear in the Senate's list of nominations.[455] Anthony Kennedy was then confirmed 97-0 on February 3, 1988, in a presidential election year.[456]

Clarence Thomas (1991)

The facts. President George H. W. Bush nominated Judge Clarence Thomas on July 8, 1991, to replace Justice Thurgood Marshall.[457] After the first round of hearings, a report surfaced that Anita Hill, a law professor who had worked for Thomas at the Department of Education and the Equal Employment Opportunity Commission, had told committee staff he sexually harassed her. The Judiciary Committee reopened the hearings on October 11, 12 and 13, 1991.[458]

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[453] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[454] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 14. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[455] Statement on the Withdrawal of the Supreme Court Nomination of Douglas H. Ginsburg. Ronald Reagan, via The American Presidency Project, University of California, Santa Barbara. November 7, 1987. https://www.presidency.ucsb.edu/documents/statement-the-withdrawal-the-supreme-court-nomination-douglas-h-ginsburg (accessed November 12, 2026). Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[456] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026). Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 16. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[457] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[458] Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, Part 4 (S. Hrg. 102-1084), hearings of October 11, 12 and 13, 1991. Committee on the Judiciary, United States Senate (Government Publishing Office, via govinfo.gov). 1993. https://www.govinfo.gov/content/pkg/GPO-CHRG-THOMAS/pdf/GPO-CHRG-THOMAS-4.pdf (accessed November 12, 2026).

Hill testified to her allegations. Thomas denied them. When asked his response to the specific charges, he said: "I categorically, unequivocally deny them. They did not occur."[459] He also called the hearings "a circus" and "a national disgrace," and said that from his standpoint "as a black American" they amounted to "a high-tech lynching."[460]

The Senate confirmed Thomas 52-48 on October 15, 1991.[461]

Each side's view. Supporters of Thomas saw an unproven, last-minute allegation used to destroy a nominee. Supporters of Hill saw a credible witness dismissed by an all-male committee. Both views remain strongly held. The hearing records themselves are public and run to four volumes.[462] I do not try to judge who was telling the truth, because the record does not settle it, and no later proceeding resolved it.

Merrick Garland (2016)

The facts. Justice Antonin Scalia died on February 13, 2016.[463] On March 16, 2016, President Barack Obama nominated Chief Judge Merrick Garland of the D.C. Circuit. The Senate took no action: no hearing and no vote. The nomination expired when the Congress ended.[464]

Each side's view. The Commission's report describes it this way. "The Republican Senate leadership argued that the nation was poised in a matter of months to elect a new President, who should be able to appoint Justice Scalia's successor." Critics argued that the refusal "to take any formal action at all on that nomination broke important new ground, departing from historical practice dating back to the nineteenth century."[465]

Republicans also pointed to past statements by Democratic leaders. The Commission notes that in 2007, then-Senator Chuck Schumer said in a speech that for the last eighteen months of

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[459] Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, Part 4 (S. Hrg. 102-1084), hearings of October 11, 12 and 13, 1991. Committee on the Judiciary, United States Senate (Government Publishing Office, via govinfo.gov). 1993. https://www.govinfo.gov/content/pkg/GPO-CHRG-THOMAS/pdf/GPO-CHRG-THOMAS-4.pdf (accessed November 12, 2026).

[460] Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, Part 4 (S. Hrg. 102-1084), hearings of October 11, 12 and 13, 1991. Committee on the Judiciary, United States Senate (Government Publishing Office, via govinfo.gov). 1993. https://www.govinfo.gov/content/pkg/GPO-CHRG-THOMAS/pdf/GPO-CHRG-THOMAS-4.pdf (accessed November 12, 2026).

[461] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[462] Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, Part 4 (S. Hrg. 102-1084), hearings of October 11, 12 and 13, 1991. Committee on the Judiciary, United States Senate (Government Publishing Office, via govinfo.gov). 1993. https://www.govinfo.gov/content/pkg/GPO-CHRG-THOMAS/pdf/GPO-CHRG-THOMAS-4.pdf (accessed November 12, 2026).

[463] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[464] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[465] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 14-15. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

George W. Bush's presidency, "[w]e should reverse the presumption of confirmation," and that a Bush nominee should not be confirmed "except in extraordinary circumstances."[466] Defenders of the Republican approach cite this as proof that both parties have been ready to block nominees. Critics answer that insisting on a moderate nominee is different from refusing to consider any nominee at all.[467]

President Trump nominated Neil Gorsuch to the seat in 2017, and he was confirmed 54-45.[468]

Brett Kavanaugh (2018)

The facts. Justice Anthony Kennedy retired in 2018. President Trump nominated Judge Brett Kavanaugh of the D.C. Circuit on July 10, 2018.[469] During the confirmation process, Christine Blasey Ford, a psychology professor, alleged that Kavanaugh had sexually assaulted her at a gathering when they were both in high school. Both testified before the Judiciary Committee on September 27, 2018. Kavanaugh denied the allegation.[470] The Senate confirmed Kavanaugh 50-48 on October 6, 2018.[471]

Each side's view. Kavanaugh's supporters argued that an uncorroborated allegation from decades earlier was used to try to derail a qualified nominee. His opponents argued that the allegation was credible and was not properly investigated; one witness quoted in the Commission's report accused Republicans of confirming him "without legitimate investigation."[472] According to the Commission, Republicans in turn cited the Bork, Thomas and

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[466] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 17. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[467] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 17. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[468] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[469] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[470] Nomination of the Honorable Brett M. Kavanaugh to be an Associate Justice of the Supreme Court of the United States (Day 5). Committee on the Judiciary, United States Senate. September 27, 2018. https://www.judiciary.senate.gov/committee-activity/hearings/nomination-of-the-honorable-brett-m-kavanaugh-to-be-an-associate-justice-of-the-supreme-court-of-the-united-states-day-5 (accessed November 12, 2026).

[471] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[472] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 100 n.. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Kavanaugh hearings as examples of Democrats making personal attacks on nominees.[473] The record does not resolve the underlying allegation, and I do not attempt to.

Amy Coney Barrett (2020)

The facts. Justice Ruth Bader Ginsburg died on September 18, 2020.[474] President Trump nominated Judge Amy Coney Barrett of the Seventh Circuit, and the Senate received the nomination on September 29, 2020. The Senate confirmed her 52-48 on October 26, 2020, eight days before the presidential election, after early voting had already begun.[475]

Each side's view. Critics said Republicans contradicted the reason they gave in 2016 for blocking Garland. In the Commission's words, critics argued that acting on Barrett "undermines their claim that their refusal to consider Judge Garland's nomination was motivated by the principle that Supreme Court vacancies ought not be filled in an election year." Defenders responded "that Judge Garland was nominated when the White House and the Senate were controlled by different political parties, while Justice Barrett was nominated when both institutions were controlled by the same party," and that "Senate majorities periodically have declined to take up nominations in election years" when the President was of the other party.[476]

Democrats on the Judiciary Committee boycotted the committee's final vote to protest the timing.[477]

Is there an "election-year rule"?

You might ask, "Which side is right about election years?" The record shows there is no rule in the Constitution or in Senate rules. What exists is a pattern, and each side describes it differently. I test the claim directly in Chapter 17.

One witness before the Commission put numbers on the pattern: historically, the Senate has confirmed nearly ninety percent of nominees when the President's party controls the Senate, but "fewer than 60 percent of nominees under divided government," and "barely more than half" of

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[473] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 16. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[474] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[475] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026). Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 14. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[476] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 15. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[477] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 14. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

nominees made in a presidential election year.[478] That witness's figures are an expert's analysis, not an official count.

Ketanji Brown Jackson (2022)

President Biden nominated Judge Ketanji Brown Jackson of the D.C. Circuit on February 28, 2022, to replace Justice Stephen Breyer, who was retiring. She was confirmed 53-47 on April 7, 2022, becoming the first Black woman on the Court.[479] Three Republican senators, Susan Collins of Maine, Lisa Murkowski of Alaska and Mitt Romney of Utah, voted for her.[480]

What to take away

- The constitutional process is one sentence: the President nominates and the Senate consents.[481]
- Nearly everything else, from hearings to the filibuster, is Senate custom or rule, and the Senate has changed those rules by majority vote when it wanted to.[482]
- Confirmation votes have become much closer and more partisan since the 1980s.[483]
- Each party points to the other's conduct, Bork, Thomas and Kavanaugh on one side, Garland and Barrett on the other, as the moment the process broke. Both sets of events are on the record. Which was worse is a judgment the reader has to make.

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[478] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 15. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[479] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026). Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[480] Roll Call Vote 117th Congress, 2nd Session, Vote Number 134: On the Nomination (Confirmation: Ketanji Brown Jackson). United States Senate. April 7, 2022. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00134.htm (accessed November 12, 2026).

[481] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[482] Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations: In Brief (R44819). Valerie Heitshusen, Congressional Research Service (copy hosted by EveryCRSReport.com). April 14, 2017. Located by search; the full text could not be opened from my research setup. Facts in the book rest on the Senate floor record. https://www.everycrsreport.com/reports/R44819.html (accessed November 12, 2026).

[483] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 16. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

Part Three Notes

Main sources for Part Three. The Constitution's Appointments Clause; the U.S. Senate's list of Supreme Court nominations and its Historical Office pages; Senate roll call votes and floor records; the Senate Judiciary Committee's hearing records for Justices Thomas and Kavanaugh; the Court's list of members and official biographies; and the Presidential Commission's Final Report (2021). The full list of sources cited in Part Three follows these notes.

[Not verified] items in Part Three.

- The Congressional Research Service report on cloture for Supreme Court nominations (R44819). I found it by search but could not open it. The facts in the text rest on the Senate floor record instead.
- President Reagan's 1987 statement on Judge Douglas Ginsburg's withdrawal, hosted by the American Presidency Project. I found it by search but could not open it.
- Whether any Senate resolution adopting the confirmation reforms in Chapter 12 passed. I checked the Senate's published rules, not every resolution, because congress.gov blocked a full search from my research setup.

Where sources disagree.

- *Robert Bork's 1987 defeat.* His supporters say he was mischaracterized; defenders of the Senate's vote say he lost on the merits after a full hearing. Both are given, in the Commission's words.
- *Garland in 2016 and Barrett in 2020.* Critics say the two cases show an inconsistent rule; defenders say the difference is whether the same party held the White House and the Senate. Both are given in Chapter 13 and Claim 9.
- *The Thomas and Kavanaugh hearings.* The allegations and the denials are both described from the hearing records, and the text does not decide who was telling the truth.

Sources cited in Part Three.

Tier 1: Primary and official sources

- Biographical Directory of Article III Federal Judges, 1789-present. Federal Judicial Center. https://www.fjc.gov/history/judges
- Biographies of Current Justices of the Supreme Court. Supreme Court of the United States. https://www.supremecourt.gov/about/biographies.aspx
- Filibuster Derails Supreme Court Appointment. United States Senate Historical Office. https://www.senate.gov/about/powers-procedures/nominations/filibuster-derails-supreme-court-appointment.htm
- Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf
- Frequently Asked Questions: General Information. Supreme Court of the United States. https://www.supremecourt.gov/about/faq_general.aspx
- Justices 1789 to Present. Supreme Court of the United States. https://www.supremecourt.gov/about/members_text.aspx

- Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, Part 4 (S. Hrg. 102-1084), hearings of October 11, 12 and 13, 1991. Committee on the Judiciary, United States Senate (Government Publishing Office, via govinfo.gov). https://www.govinfo.gov/content/pkg/GPO-CHRG-THOMAS/pdf/GPO-CHRG-THOMAS-4.pdf
- Nomination of the Honorable Brett M. Kavanaugh to be an Associate Justice of the Supreme Court of the United States (Day 5). Committee on the Judiciary, United States Senate. https://www.judiciary.senate.gov/committee-activity/hearings/nomination-of-the-honorable-brett-m-kavanaugh-to-be-an-associate-justice-of-the-supreme-court-of-the-united-states-day-5
- Roll Call Vote 117th Congress, 2nd Session, Vote Number 134: On the Nomination (Confirmation: Ketanji Brown Jackson). United States Senate. https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00134.htm
- Senate Floor Activity, Thursday, April 6, 2017. United States Senate, Legislative Information System. https://www.senate.gov/legislative/LIS/floor_activity/2017/04_06_2017_Senate_Floor.htm
- Statement on the Withdrawal of the Supreme Court Nomination of Douglas H. Ginsburg. Ronald Reagan, via The American Presidency Project, University of California, Santa Barbara. https://www.presidency.ucsb.edu/documents/statement-the-withdrawal-the-supreme-court-nomination-douglas-h-ginsburg
- Supreme Court Nominations (1789-Present). United States Senate. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm
- The Constitution of the United States: A Transcription. National Archives. https://www.archives.gov/founding-docs/constitution-transcript

Tier 2: Nonpartisan analysis

- Senate Proceedings Establishing Majority Cloture for Supreme Court Nominations: In Brief (R44819). Valerie Heitshusen, Congressional Research Service (copy hosted by EveryCRSReport.com). https://www.everycrsreport.com/reports/R44819.html

Part Four: Size, Term Limits and Ethics

Parts One through Three explained what the Court is, what it has decided and how its members get there. Part Four covers the three reform fights that come up most often today: how many justices there should be, how long they should serve, and what ethics rules should bind them.

All three fights are live as of November 12, 2026. I give each side's strongest case in its own words where I could find those words in a reliable record, and I do not recommend an answer. Where a fact is in dispute, I say who disputes it.

Chapter 14: Why Nine? The Fight Over the Court's Size

Current as of November 12, 2026.

The Constitution does not set a number

Article III says "The judicial Power of the United States, shall be vested in one supreme Court," and stops there. It does not say how many justices that Court should have.[484] The number has always been set by an ordinary law passed by Congress. Today that law is 28 U.S. Code Section 1, which says the Court "shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum."[485]

A "quorum" is the minimum number of members who must be present for a body to do business. For the Supreme Court, that number is six.[486]

You might ask: if the number is just a law, can Congress change it? The short answer is yes. The 2021 Presidential Commission on the Supreme Court, a bipartisan group of scholars and former officials appointed by President Biden, reported "widespread agreement among legal scholars that Congress has the constitutional authority to expand the Court's size," along with "profound disagreement over whether Court expansion at this moment in time would be wise."[487] The Commission itself took "no position on the wisdom of expansion."[488]

Every change, in one table

Congress changed the size of the Court seven times in its first eighty years. It has not changed it since 1869.

Year	Law did what	Size after	Notes
1789	Judiciary Act sets the Court's size	6	Justices also "rode circuit," serving as trial and appeals judges around the country
1801	Outgoing Federalist Congress	5	Passed after Jefferson won the 1800 election but

[484] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[485] 28 U.S. Code Section 1: Number of justices; quorum. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/1 (accessed November 12, 2026).

[486] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[487] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 67. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[488] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 67. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Year	Law did what	Size after	Notes
	shrinks the Court at the next vacancy	(planned)	before he took office; no sitting justice lost a seat
1802	New Congress repeals the 1801 law	6	Restored circuit riding
1807	Adds a seventh circuit and a seventh seat	7	Jefferson's party controlled Congress
1837	Adds an eighth and ninth circuit and seats	9	Andrew Jackson's party controlled Congress
1863	Adds a tenth circuit and seat	10	Allowed Lincoln to appoint a pro-Union justice
1866	Shrinks the Court to 7 as seats open	7 (planned)	Passed during Andrew Johnson's presidency
1869	Restores the Court to 9	9	Ulysses S. Grant was president

Sources for the table: the Court's own history page and the Presidential Commission's account.[489]

Why each change happened

Historians do not agree on motives, so I separate what is documented from how it is read.

What is documented. Several changes tracked the growth of the country. In the early years each justice also served as a circuit judge, and as new states joined, Congress added circuits and a justice to serve each one.[490]

How it is read. The Commission noted that "each expansion also served the interests of a political party." It pointed out that the 1801 cut was "likely attributable to the Federalists' desire to prevent their incoming political rival" from filling a vacancy.[491] For 1866, it gave two views. "The conventional view" is that the Republican Congress did not trust President Andrew Johnson to choose justices who would support Reconstruction. "Other historical experts" conclude the changes "were motivated by practical and mundane performance goals," including getting back to a workable, odd number of justices.[492]

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[489] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026). Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 67-69. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[490] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 68. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[491] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 68. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[492] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 69. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

The Commission also noted something uncomfortable about the 1807 and 1837 expansions: the new circuits "ensured that a majority of circuits would cover slave-holding territory and therefore that a majority of Justices would be friendly to slavery."[493] That is the Commission's reading of the historical scholarship it cited.

The 1937 plan

The most famous attempt to change the Court's size did not pass.

The facts. From 1935 to 1936, the Court struck down major New Deal laws, including the National Industrial Recovery Act in the Schechter case (Chapter 6).[494] After winning re-election in a landslide in 1936, President Franklin D. Roosevelt proposed in February 1937 that he be allowed to appoint one new justice for every justice over 70 who did not retire, up to a total of fifteen.[495]

Roosevelt made his case to the public in a radio "fireside chat" on March 9, 1937. He said the Court had been "acting not as a judicial body, but as a policy-making body," and that the country needed to "save the Constitution from the Court and the Court from itself."[496]

The opposition. Chief Justice Charles Evans Hughes wrote to Senator Burton Wheeler that "The present number of Justices is thought to be large enough so far as the prompt, adequate, and efficient conduct of the work of the Court is concerned."[497] In June 1937 the Senate Judiciary Committee, controlled by Roosevelt's own party, voted 10-8 against the bill and called it "a needless, futile, and utterly dangerous abandonment of constitutional principle."[498]

The result. The plan died in July 1937, after the death of Senate Majority Leader Joseph Robinson, who had been leading the fight for it.[499] Meanwhile the Court itself changed course.

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[493] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 68. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[494] A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935). Supreme Court of the United States. 1935. https://www.law.cornell.edu/supremecourt/text/295/495 (accessed November 12, 2026).

[495] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 69. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[496] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 70. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[497] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 70. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[498] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 71. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[499] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

In West Coast Hotel v. Parrish, decided March 29, 1937, it upheld a state minimum wage law (Chapter 7).[500] Whether the Court changed because of the threat is still debated, which Chapter 7 covers.

The aftermath. In the 1950s, Senator John Butler led an effort to amend the Constitution to fix the Court at nine. He said the goal was to "forestall future attempts to undermine the integrity and independence of the Supreme Court." The amendment passed the Senate with the needed two-thirds vote but failed in the House.[501] The Commission noted that both sides of that debate assumed the same thing: that Congress has the power to change the Court's size, and only a constitutional amendment could freeze it.[502]

The modern debate

Calls to add seats returned after the 2016 to 2020 confirmation fights described in Chapter 13. According to the Commission, they "first appeared in substantial numbers" when Justice Kennedy retired in 2018, and "increased in late 2020" after Justice Barrett's confirmation.[503] Bills to expand the Court, and proposed amendments to fix it at nine, have both been introduced in recent Congresses.[504]

The case for expansion, in its supporters' words. Supporters argue that the Court's current makeup reflects hardball tactics, especially the handling of the 2016 and 2020 vacancies, and that adding seats would restore balance. According to the Commission's summary, some supporters say "maintaining the status quo would amount to a failure to pursue available reforms," and that the risks of expansion "would not compare in severity to the failure to take

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December 8, 2021). p. 71. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[500] West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). Supreme Court of the United States. 1937. https://www.law.cornell.edu/supremecourt/text/300/379 (accessed November 12, 2026).

[501] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 72. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[502] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 73. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[503] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 76. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[504] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 73. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

action."[505] They also point to history: Congress has changed the number seven times, so nine is not sacred.[506]

The case against expansion, in its opponents' words. Opponents argue that adding seats to change outcomes would invite the other party to do the same the next time it wins, until the Court is just another political body. One witness told the Commission that "Court-packing risks undermining the willingness of the Justices to maintain their independence" from "the very political forces they are supposed to police in the name of the Constitution."[507] They point to what they describe as a strong, bipartisan norm against Court packing that has held for most of a century.[508]

More of the opponents' case. The Commission recorded several further objections. Opponents warned that expansion "would also almost certainly generate a continuous cycle of future expansions," and noted one estimate that the Court could grow to 23 or 29 justices within fifty years if each new Senate majority added seats.[509] They argued the public would see the Court as a "political football," and pointed to polls showing "large majorities of the public oppose expanding the Supreme Court."[510] They also argued that a bigger Court would not by itself make the Court more democratic: "An expanded Court could just as easily hold unconstitutional federal and state government conduct as the current Court."[511]

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[505] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 78. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[506] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 67-69. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[507] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 80. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[508] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 80. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[509] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 82. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[510] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 82-83. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[511] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 83. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Other ways to restructure the Court

Adding seats is not the only structural idea. The Commission examined three others.[512]

Rotation. Under a rotation plan, a larger group of federal appeals judges would be appointed as justices, and a smaller group drawn from them would sit as the Supreme Court for a given period or case. Supporters say this would reduce the power of any single "swing" justice and lower the stakes of each confirmation. Critics say a constantly changing Court would make the law less stable and could make confirmations to the appeals courts the new battleground.[513]

Panels. Under a panel plan, the justices would hear cases in smaller groups, like the federal courts of appeals, with the full Court available to review a panel's decision. The Commission noted that "some apex courts in other nations manage to function with panels or layers."[514] Critics point to the Constitution's words "one supreme Court."[515]

That phrase has a long history in these debates. In 1869, some members of Congress proposed an eighteen-member Court with nine sitting at a time and nine riding circuit. Opponents objected: "The Constitution establishes the Supreme Court. . . . [Y]ou have no right to say that half of those judges shall take no part in the adjudications of that court."[516] In the 1920s, Chief Justice Taft said a panel system was "doubtful" because "our Constitution provides that there shall be one Supreme Court," and in the 1980s Chief Justice Burger said a panel system "would appear to alter the basic concept of 'one supreme Court' under Article III."[517] The Commission concluded that it "cannot conclude that the Constitution precludes rotation and panel reforms, at least as long as processes exist to ensure that a juridical body operates in some meaningful sense as a single 'Court.'"[518]

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[512] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 84. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[513] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 84, 90-91. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[514] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 92. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[515] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 85. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[516] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 87. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[517] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 89. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[518] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

A "balanced bench." One proposal would expand the Court to fifteen seats, with five justices "affiliated with the Democratic Party" and five "with the Republican Party," who would then choose five more judges from the appeals courts to serve short terms.[519] Supporters say this could encourage compromise and cool the confirmation wars. The Commission raised possible First Amendment problems with locking today's two parties into control of the Court, and noted that "it is far from clear that ideological balance is in and of itself a desirable goal," since a balanced Court might not reflect how the public actually votes over time.[520]

The Commission's overall view of these structural ideas was cautious: "though these proposals may have real benefits, those benefits may not be sufficiently significant or assured to justify the dramatic reconceptualization of the Article III judiciary they would require."[521]

What the Commission did not decide. The Commission did not pick a side. It laid out both sets of arguments and took no position.[522]

Where things stand. As of November 12, 2026, the Court has nine members, the same nine since June 30, 2022.[523] I did not find any bill to change the Court's size that has passed either chamber of the current (119th) Congress. My search covered govinfo.gov bill texts and news coverage through November 12, 2026. Because congress.gov blocked my automated checks, I could not run a full search of every bill introduced, so treat "no bill has passed" as [Not verified] at the level of a full bill-by-bill search, though a passed bill would have been major news.

December 8, 2021). p. 89. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[519] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 85. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[520] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 89, 93. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[521] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 90. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[522] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 67. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[523] Justices (Current Members). Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/justices.aspx (accessed November 12, 2026).

Chapter 15: Life Terms or Term Limits?

Current as of November 12, 2026.

What "good Behaviour" means

Article III says federal judges "shall hold their Offices during good Behaviour."[524] The Court's own explanation is that justices serve "as long as they choose" and can be removed only by impeachment and conviction.[525] In plain terms, that is a life term unless the justice retires, resigns, dies or is removed.

Only one justice has ever been impeached: Samuel Chase. The House impeached him in 1804, and the Senate acquitted him in 1805.[526] No justice has ever been removed.

Why the issue has grown

Justices now serve longer than they used to. The Commission reported that until the late 1960s, the average term of service was "around fifteen years," while the average for justices who left the Court since 1970 has been "roughly twenty-six years."[527]

That changes how many seats each president gets to fill. The Commission found that from George Washington through Gerald Ford, presidents went a full term without an appointment only five times out of forty-seven terms, about 11 percent. From Jimmy Carter through Donald Trump's first term, it happened in three of eleven terms, about 27 percent, or four of eleven if you count the Garland nomination that the Senate did not take up.[528]

The United States is unusual here. The Commission noted that the U.S. "is the only major constitutional democracy in the world that has neither a retirement age nor a fixed term limit for its high court Justices," and that every state except Rhode Island has either term limits or a mandatory retirement age for its own top court.[529]

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[524] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[525] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[526] The Impeachment of Justice Samuel Chase. United States Senate, Senate History. page accessed November 12, 2026. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-chase.htm (accessed November 12, 2026). Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[527] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 114. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[528] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 115. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[529] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

The most common proposal: 18-year terms

The idea that comes up most is staggered, non-renewable 18-year terms. With nine justices and one new seat every two years, each president would get two appointments per four-year term.[530]

Support crosses party lines among scholars. The Commission reported that when the National Constitution Center asked separate groups of "conservative" and "progressive" scholars to propose improvements to the Constitution, "both groups concluded that Supreme Court Justices should be limited to eighteen-year terms."[531] In Congress, however, the bills I found as of November 12, 2026 were all introduced by Democrats.

Amendment or ordinary law?

This is the biggest legal question in the debate, and the Commission's own members could not agree on it. The report says "the Commissioners are divided as to whether it would be constitutional to implement term limits via statute."[532]

The amendment path. A constitutional amendment would avoid any argument about "good Behaviour." It is also much harder: it needs two-thirds of both chambers of Congress and ratification by three-fourths of the states, which is 38 of 50.[533]

The statute path. Supporters of a statute argue that Congress could leave justices in office for life but change their duties after 18 years, in the same way that lower court judges who take "senior status" keep their office but hear fewer cases.[534] Opponents argue that a statute moving justices off the Court's main work would effectively remove them from the office the Constitution protects, which would violate the "good Behaviour" clause.[535]

December 8, 2021). p. 112. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[530] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 113. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[531] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 111. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[532] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 130. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[533] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[534] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 132-133. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). 28 U.S. Code Section 371: Retirement on salary; retirement in senior status. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/371 (accessed November 12, 2026).

[535] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

You might ask: who decides which side is right? If Congress passed such a law and someone challenged it, the courts would decide, and the final word would belong to the Supreme Court. That means the justices could end up ruling on a law about their own terms. (That is my own observation about how the process would work, not a finding of the Commission.)

Bills in the current Congress

Here is what I found in the 119th Congress (2025-2026), as of November 12, 2026. None had received a committee vote as far as I found.

Bill	Sponsor	Introduced	Approach	Status found
S. 5076, Supreme Court Biennial Appointments and Term Limits Act of 2026	Sen. Sheldon Whitehouse (D-RI) and 10 Democratic cosponsors	July 22, 2026	Statute	Referred to Senate Judiciary Committee
H.J.Res. 174	Rep. Johnny Olszewski Jr. (D-MD)	May 4, 2026	Constitutional amendment for 18-year terms	Introduced
H.R. 1074, Supreme Court Term Limits and Regular Appointments Act of 2025	Rep. Ro Khanna (D-CA)	February 6, 2025	Statute	Introduced

Sources for the table: bill texts and congressional records.[536]

How S. 5076 would work. The bill text says the Court would "consist of a Chief Justice of the United States and not fewer than 8 associate justices," that "Only the 9 most recently appointed justices" would hear appeals, and that the president would appoint one justice "within the first 120 days of the first and third years of a Presidential term." Older justices would keep their office and hear "original jurisdiction" cases, the small set of cases that start in the Supreme Court, such as disputes between states.[537] The bill does not use the words "18-year term," but one new appointment every two years with nine active justices works out to 18 years of active service.

December 8, 2021). p. 133. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[536] S. 5076, Supreme Court Biennial Appointments and Term Limits Act of 2026 (introduced). U.S. Senate, 119th Congress, via govinfo.gov. July 22, 2026. https://www.govinfo.gov/content/pkg/BILLS-119s5076is/html/BILLS-119s5076is.htm (accessed November 12, 2026). H.J.Res. 174, proposing a constitutional amendment to provide for term limits for Supreme Court justices (introduced). U.S. House of Representatives, 119th Congress (Rep. Johnny Olszewski, Jr.). May 4, 2026. https://www.congress.gov/bill/119th-congress/house-joint-resolution/174 (accessed November 12, 2026). H.R. 1074, Supreme Court Term Limits and Regular Appointments Act of 2025 (introduced). U.S. House of Representatives, 119th Congress (Rep. Ro Khanna). February 6, 2025. https://www.congress.gov/bill/119th-congress/house-bill/1074 (accessed November 12, 2026). New House bill seeks 18-year term limits for Supreme Court justices (Alexis Sterling). NationofChange. May 6, 2026. https://www.nationofchange.org/2026/05/06/new-house-bill-seeks-18-year-term-limits-for-supreme-court-justices/ (accessed November 12, 2026).

[537] S. 5076, Supreme Court Biennial Appointments and Term Limits Act of 2026 (introduced). U.S. Senate, 119th Congress, via govinfo.gov. July 22, 2026. https://www.govinfo.gov/content/pkg/BILLS-119s5076is/html/BILLS-119s5076is.htm (accessed November 12, 2026).

Chances of passage. SCOTUSblog, a widely used Court news site, called passage "highly unlikely" with Republicans controlling the House, the Senate and the White House.[538] That is a prediction by a news outlet, not a fact, and I list it only as context.

Designing a term-limit system

Saying "18-year terms" is the easy part. The Commission spent most of a chapter on the harder details, and I walk through them here because they show why this reform is not as simple as it sounds.

Twelve years or eighteen? The Commission looked at two term lengths for a nine-member Court. With twelve-year terms, "each presidential term would involve three regularly scheduled appointments," and a two-term president "would have the power to appoint six regularly appointed Justices."[539] The Commission worried that "three appointments every four years would put the Court at the center of the political process on an almost yearly basis," and that six appointments "gives one person too much power to reshape the Court." It reported that "This tradeoff has led most proponents of term limits in the United States to endorse an eighteen-year term."[540]

Fixing the size. The Commission pointed out that the main goal of term limits, giving every president the same number of appointments, "would be drastically undermined" if Congress stayed free to change the size of the Court. For its analysis, it assumed an amendment "would fix the Court's size at nine Justices."[541]

When appointments happen. The Commission noted that drafters could schedule the two appointments in the first and third years of a presidential term to avoid appointments "arising during an election year." It also suggested that a justice's term could end on a set date after the Court has issued its opinions for the year, so that the change does not disrupt a term in progress.[542]

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[538] Democrats push Supreme Court term limits (Kelsey Dallas and Nora Collins). SCOTUSblog. July 23, 2026. https://www.scotusblog.com/2026/07/democrats-push-supreme-court-term-limits/ (accessed November 12, 2026).

[539] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 123. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[540] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 123. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[541] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 122. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[542] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 124. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

What happens when a seat opens early

Under any term-limit plan, a justice might still die, resign or be removed before the 18 years are up. The Commission noted that this "is not likely to occur often," and that "Only one Justice appointed in the last fifty years has served fewer than eighteen years."[543] It laid out three ways to handle an early vacancy:[544]

Option	How it works	The tradeoff the Commission named
Leave the seat empty	The seat stays open until its scheduled end date	The Court could work short-handed for long periods, often with an even number of justices
Let the president fill the rest of the term	The president nominates someone just for the remaining years	Some witnesses said this should take a supermajority Senate vote, because it lets some presidents make more than two appointments
Call back a "Senior Justice"	A justice who finished an 18-year term fills in	The president could pick one, or the Senate could be required to confirm the choice

Moving from today's Court to the new system

The hardest design question is what to do with the justices already on the Court. The Commission said that if the change were made by constitutional amendment, it did "not perceive there to be any significant constitutional issues in applying the amendment to sitting Justices."[545] It also recognized that applying the change to sitting justices "might generate political conflict that would make passage of an amendment difficult."[546]

The Commission described two ways to phase it in for justices already serving:

- **Let the Court grow for a while.** New justices would be added every two years, and seats left by current justices would not be refilled as long as at least nine remained. The Commission cited one study that "it would take around thirty-five years until the full Court consisted entirely of Justices serving for fixed terms." The cost, it said, is "a considerably expanded Court for a period of years."[547]

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[543] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 124. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[544] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 124-125. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[545] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 126. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[546] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 126. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[547] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 126. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

- **Wait for current justices to leave.** New term-limited justices would be appointed only when a sitting justice leaves. This avoids a bigger Court, but the Commission said it "would also generate the longest time interval," and cited a study estimating that "it might take around fifty-two years" before every justice served an 18-year term.[548]

You might ask: why would anyone accept a 52-year phase-in? Because it is the option least likely to look like it targets any sitting justice, which matters if the goal is to win enough votes to pass. That reading is mine, based on the Commission's point about political conflict on page 126.

Life after the Court

If justices leave the Court in their 60s, what do they do next? The Commission explained that many countries with term limits also limit what former judges can do afterward. The main reason is to avoid justices "altering their behavior in their last years of their service on the Court to enhance certain post-service employment opportunities."[549] The Commission suggested that an amendment could let former justices keep their judicial office and serve on lower courts, and could give them "a pension for life commensurate with their salaries on the bench."[550]

The legal fight over a statute, in more detail

Earlier in this chapter I described the basic split over whether Congress can create term limits by ordinary law. Here is the evidence each side points to.

Supporters of a statute rely on a 1934 case, *Booth v. United States*. The Commission reported that "a unanimous Supreme Court held that a lower court federal judge who retired under the predecessor of [Section] 371(b) 'remains in office'" under Article III.[551] *Booth* also said that "Congress may lighten judicial duties, though it is without power to abolish the office or to diminish the compensation appertaining to it."[552] According to the Commission, the Court "reaffirmed this reasoning in 2003 in Nguyen v. United States."[553] Supporters add that retired

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[548] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 127. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[549] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 129. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[550] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 129. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[551] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 134. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[552] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 134. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[553] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

justices such as David Souter and Sandra Day O'Connor have heard cases on federal appeals courts, which they say shows a justice can hold office without deciding every Supreme Court case.[554]

Opponents of a statute answer that today's practice covers only justices who choose to step back, and "does not mean that those practices establish a general principle that extends to a new set of arrangements in which Justices have no say in the matter."[555] They also point to history. The Commission reported that "Starting as early as 1807," more than two hundred proposals have been introduced in Congress to amend the Constitution to set term limits for justices or federal judges, but "the first bill to establish the functional equivalent of term limits by statute was not introduced until 2020."[556] To these critics, that long record shows Congress itself assumed an amendment was needed.

Two other statute designs. The Commission also looked at two variations:[557]

- **Original and appellate split.** After 18 years, a justice would hear only "original jurisdiction" cases, the small group that starts in the Supreme Court. S. 5076, described above, uses a version of this idea. Critics told the Commission this "gives Congress too much power to gerrymander the Justices by subject matter." Supporters answer that the Constitution itself draws the line between original and appellate cases, so Congress would not be inventing a new division.[558]
- **Judges sitting by designation.** Presidents would appoint lower court judges to sit on the Supreme Court for 18 years, then return to their old court. Critics noted that lower court judges "have never sat by designation on the Supreme Court," which they say suggests it is unconstitutional. Supporters reply that "The novelty of a practice does not by itself prove that it is unconstitutional."[559]

December 8, 2021). p. 134. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[554] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 134. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[555] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 136. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[556] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 136. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[557] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 136-140. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[558] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 138. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[559] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

What if the Senate keeps saying no?

Term limits only give each president two appointments if the Senate actually confirms someone. The Commission called a fallback for "repeated confirmation impasses" "essential."[560] One option it described would let the chief judges of the federal appeals courts "directly designate a Justice after a prolonged impasse," limited to sitting appeals court judges.[561] Another would lower the vote needed for confirmation after the Senate rejects a nominee.[562] The Commission did not endorse any of these.

Why some say a statute would not last

A group of Supreme Court lawyers who testified to the Commission warned that "a statutory solution would be inherently unstable," because a future Congress could change the system whenever one party held both Congress and the White House.[563] Opponents of term limits go further and argue that "an angry Congress could punish the Court by reducing the term of office anytime it chose to do so."[564] Some Commission members also worried that if the Court had to rule on a law restructuring itself, "the Court's legitimacy, or perceptions of its legitimacy, would be undermined" no matter how it ruled.[565]

The case for term limits, in supporters' words

The Commission summarized supporters' main arguments:

- **Regular, predictable appointments.** Supporters say fixed terms would replace luck and timing. In the Commission's words, the Court's balance "would reflect the opinions

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December 8, 2021). p. 140. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[560] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 140. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[561] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 142. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[562] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 142. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[563] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 144. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[564] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 144. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[565] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 144. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

of the people over time as expressed in their choice of presidents and senators, rather than the happenstance of health or accident or the strategic timing of the justices."[566]

- **No more strategic retirements.** Supporters say justices now time their retirements to let a like-minded president choose their replacement, and that this "can fuel public beliefs that the Court is a partisan institution."[567]
- **Fresh perspectives.** Supporters argue that "a regular rotation in personnel tends to improve the quality of decisionmaking over time."[568]

The case against term limits, in opponents' words

The Commission summarized opponents' main arguments:

- **It has worked.** Opponents say life tenure "has worked well for over 230 years" and is "one of the most signal accomplishments of our constitutional system," so supporters bear "a heavy burden of persuasion."[569]
- **More politics, not less.** Opponents argue that guaranteed vacancies would make every presidential election a vote on two named Court seats, and that one critic worried justices "will be Republican appointees or Democratic appointees in a more explicit sense than they are now."[570]
- **More confirmation fights.** If confirmation fights are bitter, opponents say, a system that guarantees one every two years "simply worsens an already bad situation."[571]
- **Independence after the bench.** Opponents worry that justices with a known end date might shape their decisions with an eye to their next job.[572]

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[566] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 114. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[567] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 115. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[568] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 116. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[569] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 117. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[570] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 118. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[571] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 118. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[572] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 118-119. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

- **Too much power to one president.** A two-term president would appoint four of nine active justices.[573]

A middle option: a retirement age

Some people suggest a mandatory retirement age instead, as most states use. The Commission noted that a retirement age "would still encourage parties to nominate ever younger candidates" and would not guarantee regular appointments.[574]

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[573] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 119. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[574] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 116-117. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Chapter 16: Ethics Rules and the Justices

Current as of November 12, 2026.

This chapter is where claims fly fastest and facts get bent most. I give the rules first, then the controversies, which have involved justices appointed by presidents of both parties.

The rules that apply today

Recusal law. "Recusal" means a judge stepping aside from a case. A federal law, 28 U.S. Code Section 455, applies to justices by name. It says "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." It then lists specific situations, such as a financial interest in a party or a family member involved in the case.[575] Each justice decides for himself or herself whether to step aside. No other judge or body reviews that decision.[576]

Financial disclosure. The Ethics in Government Act requires justices, like other federal judges, to file yearly public reports of income, gifts, travel reimbursements and investments.[577] The Court posts them on its website.[578] In 1991, the Court formally adopted the federal judiciary's regulations on gifts, outside income and disclosure.[579]

The 2023 Code of Conduct. On November 13, 2023, the justices signed a "Code of Conduct for Justices of the Supreme Court of the United States." It has five canons, or rules. In the Code's own headings, a justice should "uphold the integrity and independence" of the judiciary, should "avoid impropriety and the appearance of impropriety," should "perform the duties of office fairly, impartially, and diligently," may take part in outside activities consistent with the office, and should "refrain from political activity."[580] The justices explained why they issued it: "The absence of a Code, however, has led in recent years to the misunderstanding that the Justices of

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[575] 28 U.S. Code Section 455: Disqualification of justice, judge, or magistrate judge. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/455 (accessed November 12, 2026).

[576] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 217. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[577] 5 U.S. Code Section 13103: Persons required to file (Ethics in Government Act financial disclosure). U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/5/13103 (accessed November 12, 2026).

[578] Financial Disclosure Reports. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/financialdisclosures.aspx (accessed November 12, 2026).

[579] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 217. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[580] Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. November 13, 2023. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf (accessed November 12, 2026).

this Court, unlike all other jurists in this country, regard themselves as unrestricted by any ethics rules."[581]

What the Code does not include. I searched the Code's text for any enforcement process, such as a way to file a complaint or a body that decides whether a justice broke a rule. I did not find one.[582] Lower federal judges can face misconduct complaints under the Judicial Conduct and Disability Act of 1980, but that law does not reach the justices.[583]

Rule	Applies to justices?	Who enforces it?
Recusal law (28 U.S.C. 455)	Yes	Each justice decides alone; no review
Financial disclosure law	Yes	Judicial Conference committee reviews reports; may refer willful violations to the Attorney General
Code of Conduct for U.S. Judges (lower courts)	No	Not applicable
Code of Conduct for Justices (2023)	Yes	No enforcement process found in the text
Judicial misconduct complaint system	No	Not applicable

Sources for the table: the statutes, the Code, the Commission report and the 2024 Senate Judiciary majority staff report.[584]

The ethics laws, one by one

The table above is a summary. Here is more detail on each law, drawn mostly from the December 2024 Senate Judiciary Committee majority staff report, which collected them in one

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[581] Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. November 13, 2023. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf (accessed November 12, 2026).

[582] Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. November 13, 2023. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf (accessed November 12, 2026).

[583] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 216. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[584] 28 U.S. Code Section 455: Disqualification of justice, judge, or magistrate judge. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/455 (accessed November 12, 2026). 5 U.S. Code Section 13103: Persons required to file (Ethics in Government Act financial disclosure). U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/5/13103 (accessed November 12, 2026). Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. November 13, 2023. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf (accessed November 12, 2026). Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 216-217. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 18. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

place. That report was written by the committee's Democratic majority staff, so I use it here only for what the laws say and when they passed, which you can check in the statutes themselves.[585]

Where these laws came from. The report explains that "In the decade that followed Fortas's resignation, and particularly in response to the Watergate scandal, Congress passed major reforms addressing government ethics and transparency." The most important for judges was the Ethics in Government Act of 1978, one of whose stated purposes was "to preserve and promote the integrity of public officials and institutions."[586]

Law	Year	What it requires of justices
Ethics in Government Act	1978	Yearly public reports of income, gifts, reimbursements and investments
STOCK Act	2012	Reports of stock trades over $1,000 within 45 days (extended to judges in 2022)
Courthouse Ethics and Transparency Act	2022	Applies the stock trade rule to judges and justices, and requires disclosure reports to be posted online
Federal gift statute (5 U.S.C. 7353)	1989	Bars accepting "anything of value" from people seeking official action or whose interests the official's duties may affect
Foreign Gifts and Decorations Act	1966	Bars accepting gifts of more than "minimal value" from a foreign government
Honorary club membership limit	2008	Bars accepting an honorary club membership worth more than $50 a year
Recusal statute (28 U.S.C. 455)	1948, amended 1974	Step aside when "impartiality might reasonably be questioned"

Sources for the table: the Senate majority staff report and the statutes it cites. The years for the gift statute, the Foreign Gifts and Decorations Act and the recusal statute come from the enactment notes printed with each section of the U.S. Code.[587] Dollar amounts are nominal.

Two bipartisan laws. The report notes that the STOCK Act "passed both houses of the 112th Congress with overwhelming bipartisan support," and that the 2022 Courthouse Ethics and

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[585] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 11-18. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[586] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 11. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[587] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 14-17. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026). 5 U.S. Code Section 13103: Persons required to file (Ethics in Government Act financial disclosure). U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/5/13103 (accessed November 12, 2026). 5 U.S. Code Section 7353, Gifts to Federal employees (added by Pub. L. 101-194, November 30, 1989). Legal Information Institute, Cornell Law School (text of the U.S. Code). current text. https://www.law.cornell.edu/uscode/text/5/7353 (accessed November 12, 2026). 5 U.S. Code Section 7342, Receipt and disposition of foreign gifts and decorations (notes refer to the Foreign Gifts and Decorations Act of 1966). Legal Information Institute, Cornell Law School (text of the U.S. Code). current text. https://www.law.cornell.edu/uscode/text/5/7342 (accessed November 12, 2026). 28 U.S. Code Section 455: Disqualification of justice, judge, or magistrate judge. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/455 (accessed November 12, 2026).

Transparency Act, "led by Senators John Cornyn and Chris Coons," a Republican and a Democrat, "also passed both houses with overwhelming bipartisan support."[588]

Does the Court say it follows these laws? Yes. In an April 2023 statement, the Court said the justices "comply with the substance" of the lower courts' rules on outside income, and the Commentary to the 2023 Code says the justices comply with the disclosure law, the gift statute, the recusal statute and the others listed above.[589]

The Chief Justice's caution. Chief Justice Roberts has questioned whether the Judicial Conference, the policy body for the lower courts, can set rules for the Supreme Court. In his 2011 year-end report he wrote that "[b]ecause the Judicial Conference is an instrument for the management of the lower federal courts, its committees have no mandate to prescribe rules or standards for any other body."[590] The Court's 2023 statement also quoted him saying that "the limits of Congress's power to require recusal have never been tested."[591] In plain terms, the justices say they follow these laws, while keeping open the question of whether Congress can force them to.

What is the Judicial Conference? Congress created it in 1922, under the name Conference of Senior Circuit Judges, and renamed it in 1948. The Chief Justice presides over it. Its members are lower court judges. Its Committee on Financial Disclosure reviews the justices' yearly reports.[592]

When judges have been removed

No justice has been removed, but lower federal judges have. The report counts "Ten judicial impeachments" from the founding to 1936, then a 50-year gap. "Since 1986, the House of Representatives has impeached five federal judges and the Senate has convicted four; one resigned from office prior to his Senate trial."[593]

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[588] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 15. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[589] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 15-17. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026). Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. November 13, 2023. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf (accessed November 12, 2026).

[590] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 15. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[591] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 16. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[592] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 17-18. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[593] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 11. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

Judge	What happened	Outcome
Harry Claiborne	Convicted of falsifying tax returns, kept collecting his salary	Impeached and removed, 1986
Alcee Hastings	Acquitted at trial of bribery charges, then investigated by other judges	Impeached and removed, 1989; later elected to the House
Walter Nixon	Convicted of lying to a grand jury	Impeached and removed, 1989
Samuel Kent	Pleaded guilty to obstruction of justice	Impeached, resigned before trial, 2009
Thomas Porteous	Found to have filed false disclosure forms and violated the recusal law, among other misconduct	Impeached, removed and barred from future office, 2010

Source for the table: the Senate majority staff report, which relies on Senate and Library of Congress records.[594] The report also describes a sixth case: in 2024, the Judicial Conference told the House that impeachment of Alaska district judge Joshua Kindred "was warranted," after he resigned during a misconduct investigation.[595]

You might ask: why does this matter for the Supreme Court? Because impeachment is the only removal tool the Constitution provides for any federal judge. These cases show it has been used against lower court judges for crimes and serious misconduct. It has never been used to remove a justice, and the only justice ever impeached, Samuel Chase, was acquitted (Chapter 15).[596]

Controversies, in time order

I include only events I could tie to an official record or a named, reliable report. I give the justice's response where I found it.

Abe Fortas, 1969. Justice Fortas (appointed by Lyndon Johnson, a Democrat) received a $20,000 check in January 1966 from the Wolfson Family Foundation, connected to financier Louis Wolfson, in exchange for advising the foundation. The arrangement called for $20,000 a year for the rest of Fortas's life (all nominal dollars). Wolfson's companies were under investigation by the Securities and Exchange Commission, and Wolfson was later convicted. Fortas stopped advising the foundation in June 1966 and returned the payment in December 1966. Life magazine reported on the payment on May 4, 1969. Fortas said he had returned the money and denied advising Wolfson after joining the Court. Members of Congress from both parties called for his resignation, and he resigned on May 14, 1969. He remains the only justice to resign after allegations of impropriety.[597] Chapter 13 covers his failed 1968 nomination to be Chief Justice.[598]

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[594] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 12-13. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[595] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 13. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[596] The Impeachment of Justice Samuel Chase. United States Senate, Senate History. page accessed November 12, 2026. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-chase.htm (accessed November 12, 2026).

[597] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 9-10. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

Clarence Thomas, 2023-2024. Justice Thomas (appointed by George H. W. Bush, a Republican) was the subject of a ProPublica report on April 6, 2023, about years of travel and lodging paid for by Texas businessman Harlan Crow that did not appear on his disclosure forms. The Senate Judiciary Committee's Democratic majority later investigated and, in a December 21, 2024 staff report, found more such trips and concluded that Thomas had failed to report gifts "in violation of federal law."[599] Thomas's lawyer, Elliot Berke, responded that the travel fell under a "personal hospitality" exemption and was "not required to be disclosed," and said Thomas had sought and received advice from Court officers and Judicial Conference staff over the years. The majority report said it had no evidence of that advice "beyond the claims made by Mr. Berke."[600]

Samuel Alito, 2023. ProPublica reported on June 20, 2023, that Justice Alito (appointed by George W. Bush, a Republican) took a 2008 fishing trip to Alaska, flying on a private jet provided by hedge fund manager Paul Singer, whose businesses later had matters before the Court. Hours before the story ran, Alito published an opinion piece in The Wall Street Journal. According to the Senate majority report, Alito argued in it that he had no duty to recuse in Singer-related cases and no duty to report the flight, because of how justices then understood the personal hospitality rules.[601]

Samuel Alito, 2024. In May 2024, news reports showed that an upside-down American flag had flown at Alito's home in January 2021 and an "Appeal to Heaven" flag at his vacation home in 2023. Both flags had been carried by some January 6, 2021 rioters. In a May 29, 2024 letter to Senators Dick Durbin and Sheldon Whitehouse, Alito declined to recuse from cases about the 2020 election and January 6. He wrote that his wife flew the upside-down flag during "a very nasty neighborhood dispute in which I had no involvement."[602] The majority report disputed parts of his account.[603]

Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[598] Filibuster Derails Supreme Court Appointment. United States Senate Historical Office. page accessed November 12, 2026. https://www.senate.gov/about/powers-procedures/nominations/filibuster-derails-supreme-court-appointment.htm (accessed November 12, 2026).

[599] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 1, 4, 38. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[600] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 49-51. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[601] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 33, 53. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[602] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 73-74. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[603] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 74. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

Sonia Sotomayor, 2023. The Associated Press reported in July 2023 that, between 2017 and 2019, Justice Sotomayor's staff "prodded public institutions that have hosted the justice to buy her memoir or children's books."[604] Justice Sotomayor (appointed by Barack Obama, a Democrat) also did not recuse in a 2013 petition involving her book publisher, Random House, which had paid her a large advance, according to the same report.[605] I did not find a direct statement from Justice Sotomayor responding to these reports in a source I could open, so I list her response as [Not verified].

Other justices, both parties. The Senate majority report also listed episodes involving Justices Ginsburg, Breyer, Gorsuch, Rehnquist and Scalia, among others. It concluded that "justices appointed by Democratic presidents are not without fault," while arguing that three Republican-appointed justices, Scalia, Thomas and Alito, were "the worst violators."[606] That is the majority staff's judgment, not a neutral finding.

How to read the 2024 Senate report

The December 2024 report is an official Senate document, but it is a **majority staff report**, written by the staff of the committee's Democratic majority. I found no indication that the committee's Republican members joined it. It is a useful record of documents and dates. Its conclusions should be read as one side's argument.

The other side of the argument, as it appears in public records, runs like this:

- **Separation of powers.** In April 2023, Chief Justice Roberts declined Senator Durbin's invitation to testify about Court ethics, citing "separation of powers concerns" and "the importance of preserving judicial independence."[607]
- **Rules were unclear and are now clearer.** Defenders of Thomas and Alito argue that the disclosure rules on personal hospitality were unclear until the Judicial Conference revised its guidance in March 2023 and March 2024.[608] The majority report rejects that argument and says the law always required disclosure of transportation gifts.[609]

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[604] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 59. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[605] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 68. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[606] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 58-60. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[607] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 84. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[608] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. pp. 25-27, 50. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[609] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 60. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

- **Targeting.** Some defenders of the Court's conservative members argue that the attacks are driven by disagreement with the Court's rulings. The majority report itself quotes one such critic, who said Senate Democrats were attacking the Court "because they're furious that we have a majority on the Court who faithfully applies the law."[610]

Recent disclosures

On June 29, 2026, the Court released yearly financial disclosure reports for eight of the nine justices; Justice Alito's had not yet been released, according to SCOTUSblog. All amounts below are nominal dollars, as reported.

Justice	Item reported (calendar year 2025)	Amount
Sotomayor	Concert tickets, gift	$4,333
Jackson	Painting, gift	$2,500
Jackson	Book income	$1,181,250
Barrett	Book income	about $850,000
Gorsuch	Book income	$300,000
Sotomayor	Book income	$88,100
Barrett, Kavanaugh	Teaching income	$33,285 each
Gorsuch	Teaching income	$30,379.91
Roberts	Teaching income	$25,000
Thomas	Teaching income	$18,000

Source for the table: SCOTUSblog's summary of the reports.[611] I relied on SCOTUSblog's reading of the reports because the report files were not available to my tools; the reports themselves are on the Court's site.

How recusal works in practice

Recusal at the Supreme Court works differently from recusal in lower courts, and that difference explains much of the debate.

No review and no replacement. The Commission explained that when a lower court judge decides whether to step aside, that decision is "subject to review on appeal." By contrast, "a recusal decision by a Justice is not subject to further review."[612] And when a lower court judge steps aside, another judge takes the case. At the Supreme Court, "there is no current possibility

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[610] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 60. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[611] Justices' financial disclosures reveal Bad Bunny concert tickets, plenty of travel in 2025 (Amy Howe). SCOTUSblog. June 29, 2026. https://www.scotusblog.com/2026/06/justices-financial-disclosures-reveal-bad-bunny-concert-tickets-plenty-of-travel-in-2025/ (accessed November 12, 2026). Financial Disclosure Reports. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/financialdisclosures.aspx (accessed November 12, 2026).

[612] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 221. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

of adding another Justice," so "the mere fact of the recusal may be case dispositive."[613] In plain terms, one justice stepping out can change the result, because there may be no tie-breaker.

Few explanations. The Commission found that "the Justices rarely offer any explanation either for refusing to recuse or for recusing," and noted that Chief Justice Rehnquist and Justice Scalia "famously wrote memoranda explaining their decisions not to recuse in two high-profile cases," which it called "quite unusual."[614]

How often it happens. The Commission counted recusals for six terms:[615]

Court term	Recusals when deciding whether to take a case	Recusals in cases decided on the merits
2020	247	1
2019	145	4
2018	198	3
2017	228	6
2016	206	4
2015	181	4

Why justices step aside. Justices do not give reasons, but the Commission inferred them from context. It found that the most common reason "appears" to be that "the Justice was involved with a case during previous employment as a circuit judge or as Solicitor General," followed by owning stock in a company in the case.[616] It also noted a 2020 example in which Chief Justice Roberts stepped out of a case involving the Smithsonian, "apparently because the Chief Justice serves as the chancellor of that institution."[617]

Stock conflicts. The Commission cited a study finding "at least one recusal in 10% of certiorari petitions involving a Forbes 100 company" in the 2003 to 2013 terms. It called that surprising

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[613] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 221. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[614] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 221. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[615] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 222. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[616] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 222. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[617] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 222. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

because justices "are legally enabled to divest themselves of any stock that is causing a conflict without incurring capital gains tax."[618]

When the Constitution itself requires recusal. Most recusal rules come from laws and codes, but in one case the Court held that the Constitution's guarantee of due process required a judge to step aside. In Caperton v. A. T. Massey Coal Co. (2009), a jury had ordered Massey Coal to pay "$50 million in damages." While the appeal was coming, Massey's chairman, Don Blankenship, spent "$3 million in contributions" supporting Brent Benjamin's campaign for the West Virginia Supreme Court of Appeals, more than "the total amount spent by all other Benjamin supporters and by Benjamin's own committee." Benjamin won, refused to step aside, and joined a 3-2 ruling for Massey.[619] By a 5-4 vote, the U.S. Supreme Court held that "due process requires recusal" in those circumstances, which it called "extreme by any measure." Justice Kennedy wrote that "There is a serious risk of actual bias when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case."[620] Chief Justice Roberts, joined by Justices Scalia, Thomas and Alito, dissented. He wrote that "a 'probability of bias' cannot be defined in any limited way" and that the new rule "provides no guidance to judges and litigants about when recusal will be constitutionally required."[621] Caperton involved a state judge, not a justice, and the Constitution's due process rule it applied is a floor, not the federal recusal law. I include it because it is the Court's own statement of when the risk of bias becomes too high.

Three common recusal reforms

The Commission described three common proposals:[622]

1. **Require reasons.** Justices would explain why they step aside or why they refuse to. The Commission said this "could enhance the transparency of the recusal process" and help build a "common law" of recusal. It also warned that full explanations could force a justice to reveal private matters, "for example the medical condition of a family member," and could become a tool for groups who want to "harry or embarrass Justices with whom they disagree."[623]

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[618] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 224. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[619] Caperton v. A. T. Massey Coal Co., 556 U.S. 868 (2009), syllabus and opinions. Supreme Court of the United States (text via Legal Information Institute). June 8, 2009. https://www.law.cornell.edu/supremecourt/text/08-22 (accessed November 12, 2026).

[620] Caperton v. A. T. Massey Coal Co., 556 U.S. 868 (2009), syllabus and opinions. Supreme Court of the United States (text via Legal Information Institute). June 8, 2009. https://www.law.cornell.edu/supremecourt/text/08-22 (accessed November 12, 2026).

[621] Caperton v. A. T. Massey Coal Co., 556 U.S. 868 (2009), syllabus and opinions. Supreme Court of the United States (text via Legal Information Institute). June 8, 2009. https://www.law.cornell.edu/supremecourt/text/08-22 (accessed November 12, 2026).

[622] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 222-224. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[623] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

2. **Allow review.** Another justice or the whole Court could review a recusal decision. The Commission noted that some state supreme courts use a referral process that "appears to work without undue friction or burden," but that a decision by the Court to force a justice out "may lead to accusations of improper purpose." It added that the high courts of Canada and the United Kingdom appear to let each justice decide alone, as the U.S. Court does.[624]
3. **Reduce financial conflicts.** Congress could change the laws so justices own fewer individual stocks that force them out of cases.[625]

Why the lower court complaint system was not simply extended

You might ask: why not just let people file misconduct complaints against justices the way they can against other federal judges? The Commission gave several reasons for caution.[626]

- Under the current law, complaints against lower court judges are reviewed by other judges. Applied to justices, that "would place inferior court judges in the position of evaluating members of a body that is hierarchically superior," which "could possibly lead to undue deference."[627]
- Anyone can file. The Commission reported that "In 2013, chief circuit judges resolved 1,167 filed complaints, dismissing all but 20," and predicted the numbers would be higher for the much more visible justices.[628]
- One possible penalty is taking a judge off cases for a time. At the Supreme Court, with no substitute, that "would be a highly consequential event," and the Commission worried groups might file complaints "in the hope of removing those Justices with whom they tend to disagree."[629]

December 8, 2021). pp. 222-223. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[624] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 224. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[625] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 224. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[626] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 219-221. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[627] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 220. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[628] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 220. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[629] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 220. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

The Commission also noted that "experience in other contexts suggests that the adoption of an advisory code would be a positive step on its own, even absent binding sanctions."[630] The Court adopted that kind of code in 2023. Whether it is enough is the question the next section takes up.

Proposals to change the rules

The SCERT Act. The Supreme Court Ethics, Recusal, and Transparency Act was introduced on May 20, 2025, in the Senate as S. 1814 by Senator Whitehouse with 26 Democratic cosponsors, and in the House as H.R. 3513 by Representative Hank Johnson. The Senate bill would require the Court to issue a code of conduct within 180 days after public notice and comment, and to "establish procedures" for complaints against justices.[631] An earlier version was approved by the Senate Judiciary Committee on an 11-10 party-line vote in 2023, and Senate Republicans objected to a request to pass it by unanimous consent on June 12, 2024.[632]

The case for enforceable rules, in supporters' words. Supporters argue that a code nobody enforces is not much of a code. The Senate majority report called an enforceable code "the only viable solution to the Court's ethical crisis."[633] The Commission noted that "It is not obvious why the Court is best served by an exemption from what so many consider best practice."[634]

The case against congressional rules, in opponents' words. Opponents argue that Congress writing ethics rules for another branch, and creating a way to file complaints against justices, would threaten judicial independence and invite political attacks dressed up as ethics complaints. The Chief Justice cited "separation of powers concerns" when declining to testify.[635] The Commission noted a practical problem with recusal: "a Justice, unlike a lower court judge,

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[630] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 221. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[631] S. 1814, Supreme Court Ethics, Recusal, and Transparency Act of 2025 (introduced). U.S. Senate, 119th Congress, via govinfo.gov. May 20, 2025. https://www.govinfo.gov/content/pkg/BILLS-119s1814is/html/BILLS-119s1814is.htm (accessed November 12, 2026). H.R. 3513, Supreme Court Ethics, Recusal, and Transparency Act of 2025 (introduced). U.S. House of Representatives, 119th Congress, via govinfo.gov. May 20, 2025. https://www.govinfo.gov/content/pkg/BILLS-119hr3513ih/html/BILLS-119hr3513ih.htm (accessed November 12, 2026).

[632] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 91. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[633] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 4. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

[634] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 216. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[635] An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. December 21, 2024. p. 84. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1 (accessed November 12, 2026).

cannot simply be replaced by another judge," so each recusal can leave an eight-member Court that might split 4-4.[636]

What everyone agrees on. The Commission found that "the Supreme Court clearly has sufficient authority to adopt a code," which "raises no constitutional problems."[637] The Court did adopt one in 2023. The open questions are whether it should be enforced, and by whom.

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[636] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 218. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[637] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 218. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Part Four Notes

Main sources for Part Four. The Presidential Commission's Final Report (2021); the Senate Judiciary Committee majority staff report (December 21, 2024); the Code of Conduct for Justices (2023); 28 U.S.C. Sections 1, 371 and 455; bill texts on govinfo.gov; the Senate Historical Office; SCOTUSblog for 2026 disclosures and passage odds.

[Not verified] items in Part Four.

- Whether any bill to change the Court's size passed either chamber of the 119th Congress. I found none, but congress.gov blocked a full bill-by-bill search.
- Justice Sotomayor's own response to the 2023 AP book-sales reports. The original AP story and the ABA Journal summary could not be opened from my research setup.
- The original ProPublica stories on Justices Thomas and Alito could not be opened from my research setup. Their dates and main findings are taken from the Senate majority report, which cites them.

Where sources disagree.

- *Why Congress changed the Court's size in 1866.* The "conventional view" (politics against President Johnson) versus "other historical experts" (practical goals). Both are given in the text, as the Commission gave them.
- *Whether Justice Thomas's and Justice Alito's disclosures broke the law.* The Senate majority report says yes. The justices' side says the rules exempted personal hospitality at the time. The text gives both.
- *Justice Alito's account of the flags.* Alito's letter versus the majority report, which cites news accounts that contradict parts of it. I give his words and note the dispute without resolving it.

Sources cited in Part Four.

Tier 1: Primary and official sources

- 28 U.S. Code Section 1: Number of justices; quorum. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/28/1
- 28 U.S. Code Section 371: Retirement on salary; retirement in senior status. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/28/371
- 28 U.S. Code Section 455: Disqualification of justice, judge, or magistrate judge. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/28/455
- 5 U.S. Code Section 13103: Persons required to file (Ethics in Government Act financial disclosure). U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/5/13103
- 5 U.S. Code Section 7342, Receipt and disposition of foreign gifts and decorations (notes refer to the Foreign Gifts and Decorations Act of 1966). Legal Information Institute, Cornell Law School (text of the U.S. Code). https://www.law.cornell.edu/uscode/text/5/7342
- 5 U.S. Code Section 7353, Gifts to Federal employees (added by Pub. L. 101-194, November 30, 1989). Legal Information Institute, Cornell Law School (text of the U.S. Code). https://www.law.cornell.edu/uscode/text/5/7353

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- An Investigation of the Ethics Challenge at the Supreme Court (Majority Staff Report). Majority staff, Committee on the Judiciary, United States Senate. https://www.judiciary.senate.gov/download/12/21/2024/an-investigation-of-the-ethics-challenge-at-the-supreme-court_-report-only?download=1
- Caperton v. A. T. Massey Coal Co., 556 U.S. 868 (2009), syllabus and opinions. Supreme Court of the United States (text via Legal Information Institute). https://www.law.cornell.edu/supremecourt/text/08-22
- Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf
- Filibuster Derails Supreme Court Appointment. United States Senate Historical Office. https://www.senate.gov/about/powers-procedures/nominations/filibuster-derails-supreme-court-appointment.htm
- Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf
- Financial Disclosure Reports. Supreme Court of the United States. https://www.supremecourt.gov/about/financialdisclosures.aspx
- Frequently Asked Questions: General Information. Supreme Court of the United States. https://www.supremecourt.gov/about/faq_general.aspx
- H.J.Res. 174, proposing a constitutional amendment to provide for term limits for Supreme Court justices (introduced). U.S. House of Representatives, 119th Congress (Rep. Johnny Olszewski, Jr.). https://www.congress.gov/bill/119th-congress/house-joint-resolution/174
- H.R. 1074, Supreme Court Term Limits and Regular Appointments Act of 2025 (introduced). U.S. House of Representatives, 119th Congress (Rep. Ro Khanna). https://www.congress.gov/bill/119th-congress/house-bill/1074
- H.R. 3513, Supreme Court Ethics, Recusal, and Transparency Act of 2025 (introduced). U.S. House of Representatives, 119th Congress, via govinfo.gov. https://www.govinfo.gov/content/pkg/BILLS-119hr3513ih/html/BILLS-119hr3513ih.htm
- Justices (Current Members). Supreme Court of the United States. https://www.supremecourt.gov/about/justices.aspx
- Justices 1789 to Present. Supreme Court of the United States. https://www.supremecourt.gov/about/members_text.aspx
- S. 1814, Supreme Court Ethics, Recusal, and Transparency Act of 2025 (introduced). U.S. Senate, 119th Congress, via govinfo.gov. https://www.govinfo.gov/content/pkg/BILLS-119s1814is/html/BILLS-119s1814is.htm
- S. 5076, Supreme Court Biennial Appointments and Term Limits Act of 2026 (introduced). U.S. Senate, 119th Congress, via govinfo.gov. https://www.govinfo.gov/content/pkg/BILLS-119s5076is/html/BILLS-119s5076is.htm
- The Constitution of the United States: A Transcription. National Archives. https://www.archives.gov/founding-docs/constitution-transcript

- The Impeachment of Justice Samuel Chase. United States Senate, Senate History. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-chase.htm
- West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/300/379

Tier 3: Scholarly and reference works

- Democrats push Supreme Court term limits (Kelsey Dallas and Nora Collins). SCOTUSblog. https://www.scotusblog.com/2026/07/democrats-push-supreme-court-term-limits/
- Justices' financial disclosures reveal Bad Bunny concert tickets, plenty of travel in 2025 (Amy Howe). SCOTUSblog. https://www.scotusblog.com/2026/06/justices-financial-disclosures-reveal-bad-bunny-concert-tickets-plenty-of-travel-in-2025/

Tier 4: Fact-checks, journalism and polling

- New House bill seeks 18-year term limits for Supreme Court justices (Alexis Sterling). NationofChange. https://www.nationofchange.org/2026/05/06/new-house-bill-seeks-18-year-term-limits-for-supreme-court-justices/

Part Five: Claims and Theories

Chapter 17: Sixteen Claims, Checked

Current as of November 12, 2026.

This chapter takes sixteen things people commonly say about the Supreme Court and checks each one against the record. Some come from the left, some from the right, and many from no side at all. They are simply things people repeat.

For each claim I give the claim as people usually say it, where it shows up when I could trace it, what the records show, and a verdict. I use only four verdicts:

Verdict	What it means
True	The records support the claim as people usually say it.
Partly true	Part of the claim is right, but an important part is wrong, missing or overstated.
False (debunked)	The records contradict the claim.
Inconclusive	The records I could find do not settle it either way.

A verdict is about the claim, not about the people who make it. Plenty of honest people repeat claims that turn out to be wrong.

Claim 1: "The Constitution sets the number of justices at nine."

Where it shows up. This is a common assumption in everyday conversation. I did not trace it to one origin.

What the records show. Article III creates "one supreme Court" and says nothing about how many justices it has.[638] The number nine comes from an ordinary law, 28 U.S. Code Section 1.[639] Congress set the number at six in 1789 and changed it several times before settling on nine in 1869.[640] In the 1950s, some senators tried to write nine into the Constitution with an amendment. It passed the Senate but failed in the House.[641]

Verdict: False (debunked). The number is set by law, not by the Constitution, and Congress can change it.

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[638] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[639] 28 U.S. Code Section 1: Number of justices; quorum. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/1 (accessed November 12, 2026).

[640] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026). Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 67-69. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[641] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 72. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Claim 2: "Justices just vote the way the president who picked them wants."

Where it shows up. This claim comes from both directions, usually after a big 6-3 decision.

What the records show. There is real evidence on both sides of this one.

Evidence that appointments matter. In the 2025 term, which ended in summer 2026, 22.7 percent of the Court's decisions split 6-3 with the six Republican-appointed justices on one side and the three Democratic-appointed justices on the other, up from 9 percent the term before, according to SCOTUSblog's count.[642] Many of the most watched cases split that way, such as Trump v. Slaughter, which let the President fire a member of the Federal Trade Commission, and West Virginia v. B.P.J., on transgender athletes.[643]

Evidence that it is not that simple. The same SCOTUSblog count found that 44 percent of decisions in the 2025 term were unanimous.[644] And justices have repeatedly ruled against the president who appointed them, or against the policies of their own appointing party:

Case	Year	What happened
United States v. Nixon	1974	The Court ruled 8-0 that President Nixon had to turn over the White House tapes. Three of the eight, Burger, Blackmun and Powell, were Nixon appointees. The fourth Nixon appointee, Rehnquist, took no part.[645]
NFIB v. Sebelius	2012	Chief Justice Roberts, appointed by George W. Bush, wrote the opinion upholding the Affordable Care Act's individual mandate as a tax.[646]
Bostock v. Clayton County	2020	Justice Gorsuch, appointed by President Trump, wrote the opinion holding that firing someone for being gay or transgender is sex discrimination under federal job law.[647]
Learning Resources v. Trump	2026	The Court ruled 6-3 that a 1977 emergency powers law did not authorize President Trump's tariffs. Justices Gorsuch and Barrett, both Trump appointees, were in the majority.[648]
Trump v.	2026	The Court held that children born in the United States to parents who are here

[642] The 2025-26 term by the numbers (Jake S. Truscott and Adam Feldman). SCOTUSblog. July 1, 2026. https://www.scotusblog.com/2026/07/the-2025-26-term-by-the-numbers/ (accessed November 12, 2026).

[643] Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026). West Virginia v. B. P. J., 609 U.S. 958 (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r68_hgci.pdf (accessed November 12, 2026).

[644] The 2025-26 term by the numbers (Jake S. Truscott and Adam Feldman). SCOTUSblog. July 1, 2026. https://www.scotusblog.com/2026/07/the-2025-26-term-by-the-numbers/ (accessed November 12, 2026).

[645] United States v. Nixon, 418 U.S. 683 (1974). Supreme Court of the United States. 1974. https://www.law.cornell.edu/supremecourt/text/418/683 (accessed November 12, 2026). Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[646] National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012). Supreme Court of the United States. 2012. https://www.law.cornell.edu/supremecourt/text/567/519 (accessed November 12, 2026).

[647] Bostock v. Clayton County, 590 U.S. 644 (2020). Supreme Court of the United States. June 15, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/590US2PP_web.pdf#page=232 (accessed November 12, 2026).

[648] Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. February 20, 2026. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf (accessed November 12, 2026).

Case	Year	What happened
Barbara		unlawfully or temporarily are citizens, against the Trump administration's position. Justice Barrett, a Trump appointee, joined the main opinion.[649]
Trump v. Cook	2026	The Court ruled 5-4 to leave Federal Reserve Governor Lisa Cook in office while her case continued. Justice Kavanaugh, a Trump appointee, joined the majority.[650]

Verdict: Partly true. On the most divisive issues, justices appointed by the same party often vote together, and that pattern grew stronger in the 2025 term. But "just vote the way the president wants" overstates it. Justices have ruled against the presidents who appointed them in some of the biggest cases in the Court's history, and a large share of cases are unanimous.

Claim 3: "The Court has never been this divided."

Where it shows up. This is a common line in commentary after closely divided terms.

What the records show. "Divided" can mean different things, and the answer changes depending on which one you measure.

Measure	2025 term	Comparison	Source
Unanimous decisions	44%	42.4% the term before; 44.5% average since the 2005 term	SCOTUSblog[651]
All 6-3 decisions	28.8%	15.2% the term before	SCOTUSblog[652]
6-3 decisions on party-of-appointment lines	22.7%	9% the term before	SCOTUSblog[653]

By the unanimity measure, the 2025 term was about average for the past twenty years. By the measure of party-line 6-3 splits, it was much more divided than the term before.

The word "never" is the problem. The data I could reach go back to the 2005 term. I could not reach the Supreme Court Database, a widely used academic dataset that covers earlier decades, from my research setup. Earlier eras also had deep divisions that do not show up in vote counts alone, such as the years around the Dred Scott decision of 1857 and the 1935 to 1937 New Deal fight (Chapters 5 and 7).

Verdict: Inconclusive. The records I could check show more party-line splits in 2025-2026 than the term before, but an average rate of unanimous decisions. They do not cover enough of history to test "never."

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[649] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[650] Trump v. Cook, 609 U.S. 528 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r63_e2pg.pdf (accessed November 12, 2026).

[651] The 2025-26 term by the numbers (Jake S. Truscott and Adam Feldman). SCOTUSblog. July 1, 2026. https://www.scotusblog.com/2026/07/the-2025-26-term-by-the-numbers/ (accessed November 12, 2026).

[652] The 2025-26 term by the numbers (Jake S. Truscott and Adam Feldman). SCOTUSblog. July 1, 2026. https://www.scotusblog.com/2026/07/the-2025-26-term-by-the-numbers/ (accessed November 12, 2026).

[653] The 2025-26 term by the numbers (Jake S. Truscott and Adam Feldman). SCOTUSblog. July 1, 2026. https://www.scotusblog.com/2026/07/the-2025-26-term-by-the-numbers/ (accessed November 12, 2026).

Claim 4: "Justices have no ethics rules."

Where it shows up. This claim spread widely during the 2023 to 2024 ethics stories covered in Chapter 16.

What the records show. Several rules do apply to the justices:

- A federal recusal law names justices directly: "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."[654]
- Justices must file yearly financial disclosure reports under the Ethics in Government Act, and the Court posts them.[655]
- Since November 13, 2023, the justices have a written Code of Conduct with five canons.[656]

What the justices do not have is an outside enforcement system. Each justice decides his or her own recusal questions with no review, the misconduct complaint law that covers lower court judges does not cover them, and I found no enforcement process in the 2023 Code.[657]

Verdict: False (debunked). Justices are bound by a recusal law, disclosure law and, since 2023, a written code. The accurate version of the complaint is narrower: the rules have no outside enforcement, which is a real and debated gap.

Claim 5: "The Supreme Court can enforce its own rulings."

Where it shows up. This is more an assumption than a slogan. People often picture the Court as having power to make others obey.

What the records show. Alexander Hamilton wrote in Federalist No. 78 that the judiciary "may truly be said to have neither FORCE nor WILL, but merely judgment."[658] The Court has no police or army. It depends on the executive branch to enforce its judgments and on officials to follow them.

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[654] 28 U.S. Code Section 455: Disqualification of justice, judge, or magistrate judge. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/28/455 (accessed November 12, 2026).

[655] 5 U.S. Code Section 13103: Persons required to file (Ethics in Government Act financial disclosure). U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/5/13103 (accessed November 12, 2026). Financial Disclosure Reports. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/financialdisclosures.aspx (accessed November 12, 2026).

[656] Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. November 13, 2023. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf (accessed November 12, 2026).

[657] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 216-217. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. November 13, 2023. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf (accessed November 12, 2026).

[658] The Federalist No. 78 (Alexander Hamilton). The Avalon Project, Yale Law School. 1788. https://avalon.law.yale.edu/18th_century/fed78.asp (accessed November 12, 2026).

Two examples show both sides of this. After Worcester v. Georgia (1832), Georgia did not comply, and President Andrew Jackson's administration did not act to enforce the ruling.[659] By contrast, when Arkansas officials resisted school desegregation in 1957, President Eisenhower sent federal troops to Little Rock, as the Court later described in Cooper v. Aaron.[660]

A famous quote often comes up here: that Jackson said, "John Marshall has made his decision; now let him enforce it." I treat that quote as [Not verified]. I did not find it in any record from Jackson himself, and the claim does not depend on it.

Verdict: False (debunked). The Court's rulings are enforced by other branches. When those branches refuse, the Court has no tools of its own.

Claim 6: "Overturning precedent is rare."

Where it shows up. This is often said by people defending a precedent, and sometimes by people surprised when one falls.

What the records show. The Library of Congress's Constitution Annotated listed 236 decisions overruling earlier decisions from 1810 through 2016.[661] More have followed since, including Janus (2018), Ramos (2020), Dobbs (2022), Loper Bright (2024) and Trump v. Slaughter (2026), which said, "If anything more is left of Humphrey's, we overrule it."[662]

Against the Court's whole output, that is a small share. But many overruled cases were landmark rulings, such as Plessy v. Ferguson, Lochner-era decisions on economic regulation, Roe v. Wade and Chevron (Chapter 11).

Verdict: Partly true. Overruling is uncommon as a share of all decisions, which supports the claim. But "rare" can mislead, because overrulings cluster in the most important cases and have come several times in recent terms.

Claim 7: "Supreme Court justices serve for life."

Where it shows up. This is the standard description in textbooks and news.

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[659] Worcester v. Georgia, 31 U.S. 515 (1832). Supreme Court of the United States. 1832. https://www.law.cornell.edu/supremecourt/text/31/515 (accessed November 12, 2026).

[660] Cooper v. Aaron, 358 U.S. 1 (1958). Supreme Court of the United States. 1958. https://www.law.cornell.edu/supremecourt/text/358/1 (accessed November 12, 2026).

[661] Supreme Court Decisions Overruled by Subsequent Decision, in The Constitution of the United States of America: Analysis and Interpretation (2016 revision). Congressional Research Service and Library of Congress, via govinfo.gov. 2016. p. 2601. https://www.govinfo.gov/content/pkg/GPO-CONAN-REV-2016/pdf/GPO-CONAN-REV-2016-13.pdf (accessed November 12, 2026).

[662] Janus v. American Federation of State, County, and Municipal Employees, 585 U.S. 878 (2018). Supreme Court of the United States. June 27, 2018. https://www.law.cornell.edu/supremecourt/text/16-1466 (accessed November 12, 2026). Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States. April 20, 2020. https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12, 2026). Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026). Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. June 28, 2024. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026). Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

What the records show. Article III says judges "shall hold their Offices during good Behaviour."[663] The Court explains that justices serve "as long as they choose" and may be removed only by impeachment and conviction.[664] Many justices retire or resign rather than serving until death. Justice Kennedy retired in 2018 and Justice Breyer in 2022, for example.[665]

Verdict: Partly true. Justices may serve for life and cannot be removed except by impeachment, but they are not required to. "Serve as long as they choose, subject to impeachment" is the accurate version.

Claim 8: "No justice has ever been impeached."

Where it shows up. This is often confused with the true statement that no justice has ever been removed.

What the records show. The House impeached Justice Samuel Chase in 1804. The Senate acquitted him in 1805.[666]

Verdict: False (debunked). One justice has been impeached. None has been removed.

Claim 9: "There is a rule against filling a seat in an election year."

Where it shows up. Both parties made versions of this argument, in opposite directions, in 2016 and 2020 (Chapter 13).

What the records show. No such rule exists in the Constitution, in federal law or in the Senate's written rules. The Constitution gives the President the power to nominate and the Senate the power to confirm, with no exception for election years.[667] The Senate has confirmed justices in presidential election years many times:

Justice	Confirmed	Vote
Mahlon Pitney	March 13, 1912	50-26
Louis Brandeis	June 1, 1916	47-22
John Clarke	July 24, 1916	Voice vote
Benjamin Cardozo	February 24, 1932	Voice vote
Frank Murphy	January 16, 1940	Voice vote
Anthony Kennedy	February 3, 1988	97-0
Amy Coney Barrett	October 26, 2020	52-48

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[663] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[664] Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[665] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[666] The Impeachment of Justice Samuel Chase. United States Senate, Senate History. page accessed November 12, 2026. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-chase.htm (accessed November 12, 2026). Frequently Asked Questions: General Information. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/faq_general.aspx (accessed November 12, 2026).

[667] The Constitution of the United States: A Transcription. National Archives. 1787 (amendments through 1992). https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

Source for the table: the Senate's list of Supreme Court nominations.[668] In 2016, the Senate did not act on Merrick Garland's nomination. In 1968, the nominations of Abe Fortas and Homer Thornberry were withdrawn after a filibuster.[669]

The arguments in 2016 and 2020 turned on a pattern, not a rule. As the Commission summarized it, defenders of the Senate majority pointed out that Garland was nominated when the White House and the Senate were controlled by different parties, while Barrett was nominated when both were controlled by the same party. Critics saw the two decisions as inconsistent and evidence of bad faith.[670]

Verdict: False (debunked). There is no rule. There is a political pattern that depends on which party controls the Senate.

Claim 10: "Roe v. Wade was decided by a liberal Court."

Where it shows up. This is often said by critics and supporters of Roe alike, as shorthand.

What the records show. Roe was decided 7-2 in 1973.[671] Of the seven justices in the majority, five had been appointed by Republican presidents: Chief Justice Burger and Justices Blackmun and Powell by Richard Nixon, and Justices Brennan and Stewart by Dwight Eisenhower. The opinion was written by Justice Blackmun. One of the two dissenters, Justice White, was appointed by a Democrat, John F. Kennedy.[672]

Whether that Court was "liberal" is a judgment, not a fact. It included justices widely described as liberal, such as Brennan, Douglas and Marshall, and its majority in Roe was broader than that group.

Verdict: Partly true. The Roe majority included the Court's liberal members, but it was not a liberal-only majority. Most of the majority were Republican appointees, and the case was decided 7-2.

Claim 11: "Dobbs banned abortion nationwide."

Where it shows up. This was a common shorthand in reactions to the June 24, 2022 decision.

What the records show. Dobbs did not ban abortion. It held that the Constitution does not protect a right to abortion and returned the question to elected officials. In the Court's words:

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[668] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[669] Supreme Court Nominations (1789-Present). United States Senate. page accessed November 12, 2026. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm (accessed November 12, 2026).

[670] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 15. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[671] Roe v. Wade, 410 U.S. 113 (1973). Supreme Court of the United States. 1973. https://www.law.cornell.edu/supremecourt/text/410/113 (accessed November 12, 2026).

[672] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

"We now overrule those decisions and return that authority to the people and their elected representatives."[673] After Dobbs, whether abortion is legal depends on state law, and states have taken very different approaches.

Verdict: False (debunked). Dobbs ended the federal constitutional right recognized in Roe and left the question to the states and Congress. It did not itself ban anything.

Claim 12: "Citizens United lets foreign money into U.S. elections."

Where it shows up. The best-known version came from President Obama in his January 27, 2010 State of the Union address, a week after the decision: "the Supreme Court reversed a century of law that I believe will open the floodgates for special interests, including foreign corporations, to spend without limit in our elections."[674]

What the records show. Federal law makes it "unlawful" for a "foreign national, directly or indirectly," to make a contribution, donation or expenditure "in connection with a Federal, State, or local election."[675] Citizens United did not strike down that law. The Court's summary said the law it was reviewing would be too broad "even if the Court were to recognize a compelling governmental interest in limiting foreign influence over the Nation's political process," leaving that question open.[676] In 2011, two foreign citizens living in the United States on temporary work visas challenged that ban. A special three-judge federal court, in an opinion by then-Judge Brett Kavanaugh, held that the ban "readily passes constitutional muster" and dismissed the case.[677] On January 9, 2012, the Supreme Court affirmed that judgment without a written opinion.[678]

Critics of Citizens United raise a related but different concern: that money spent through groups that do not disclose their donors makes it harder to know who is paying. That is a debate about disclosure and enforcement, not about what the ruling allowed.

Verdict: False (debunked) as a statement of law. Foreign nationals remain barred from spending in U.S. elections, and the Court has upheld that ban since Citizens United. Whether the ban is well enforced is a separate question this book does not resolve.

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[673] Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf (accessed November 12, 2026).

[674] Address Before a Joint Session of the Congress on the State of the Union. Barack Obama, Compilation of Presidential Documents (DCPD-201000055), via govinfo.gov. January 27, 2010. https://www.govinfo.gov/content/pkg/DCPD-201000055/html/DCPD-201000055.htm (accessed November 12, 2026).

[675] 52 U.S. Code Section 30121: Contributions and donations by foreign nationals. U.S. Code, via Legal Information Institute. current. https://www.law.cornell.edu/uscode/text/52/30121 (accessed November 12, 2026).

[676] Citizens United v. Federal Election Commission, 558 U.S. 310 (2010). Supreme Court of the United States. 2010. https://www.law.cornell.edu/supremecourt/text/08-205 (accessed November 12, 2026).

[677] Bluman v. Federal Election Commission, Civil No. 10-1766, Memorandum Opinion (three-judge court). U.S. District Court for the District of Columbia (Kavanaugh, Circuit Judge; Urbina and Collyer, District Judges), via govinfo.gov. August 8, 2011. pp. 1-2. https://www.govinfo.gov/content/pkg/USCOURTS-dcd-1_10-cv-01766/pdf/USCOURTS-dcd-1_10-cv-01766-1.pdf (accessed November 12, 2026).

[678] Bluman v. Federal Election Commission, No. 11-275, 565 U.S. 1104 (2012) (summary affirmance). Supreme Court of the United States. January 9, 2012. https://www.supremecourt.gov/orders/courtorders/010912zor.pdf (accessed November 12, 2026).

Claim 13: "Bush v. Gore decided the 2000 election."

Where it shows up. This claim has been made since December 2000, mostly by Gore supporters.

What the records show. On December 12, 2000, the Court stopped the Florida recount that the Florida Supreme Court had ordered (Chapter 9).[679] With the recount stopped, the certified result stood, and George W. Bush won Florida's electoral votes and the presidency.

Did the Court change the outcome? A review by the National Opinion Research Center (NORC) at the University of Chicago, paid for by eight news organizations and released in November 2001, examined 175,010 disputed Florida ballots. According to FactCheck.org's summary, Bush would probably still have won under the limited recount Gore had asked for and under the statewide recount the Florida Supreme Court had ordered. Gore would have won by somewhere between 42 and 171 votes under a full statewide review of all disputed ballots, which no court had ordered.[680]

Verdict: Partly true. The decision ended the recount and so settled the election in practice. But the media review found that Bush probably would have won the recounts that were actually requested or ordered. The outcome depended on a type of recount nobody had been granted.

Claim 14: "The shadow docket is new."

Where it shows up. The term "shadow docket" became common in commentary after 2015 and especially after 2020.

What the records show. The phrase is new. Law professor William Baude used it in 2015.[681] The practice is not. The Court has always handled emergency applications and summary orders, and the Commission noted that some commentators criticized its summary decisions as early as the 1950s.[682] What changed is the number of high-stakes emergency rulings. The Commission reported that "In the past few years, many commentators have focused their attention on the Court's increasing use of emergency orders, especially in cases of public importance or controversy," and noted that "no one disputes that they are needed for true emergencies."[683]

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[679] Bush v. Gore, 531 U.S. 98 (2000). Supreme Court of the United States. 2000. https://www.law.cornell.edu/supremecourt/text/531/98 (accessed November 12, 2026).

[680] The Florida Recount of 2000 (Brooks Jackson). FactCheck.org, Annenberg Public Policy Center. January 22, 2008. https://www.factcheck.org/2008/01/the-florida-recount-of-2000/ (accessed November 12, 2026).

[681] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 228 n.7. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[682] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 203-204. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[683] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 204. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Verdict: Partly true. The name and the level of attention are new, and the Court's use of emergency orders in major cases has grown. Emergency orders themselves are as old as the Court.

Claim 15: "FDR was the only president who tried to change the size of the Court."

Where it shows up. This is a common simplification of the 1937 story.

What the records show. Congress changed the size of the Court seven times between 1789 and 1869, often with clear political stakes. The 1801 cut came from an outgoing Federalist Congress before President Jefferson took office. The 1866 cut came during Andrew Johnson's presidency.[684] Roosevelt's 1937 plan is the best-known attempt, but it failed. The changes that actually happened came earlier.

Verdict: False (debunked). The size has changed seven times. Roosevelt's plan is famous because it failed, not because it was the only one.

Claim 16: "The Court's rulings follow public opinion."

Where it shows up. People make this claim both as praise ("the Court reflects the country") and as criticism ("the Court bends to pressure").

What the records show. The Commission described two views. One is that the Court should not stray too far from the public for too long: "while the Court need not and should not be responsive to short-term swings in public opinion, it is not good for the Court or the country for the Court to be substantially out of line with public opinion for an extended period."[685] The other is that "some of the Court's most consequential decisions on subjects ranging from school prayer to criminal justice were quite unpopular when first issued," and it gave Brown v. Board of Education as an example of a ruling that met resistance and later won wide respect.[686]

Polling shows that much of the public does not think the Court is following them now. Gallup found in September 2026 that 34 percent of Americans approved of the way the Court was handling its job, with 61 percent disapproving, and that 43 percent called the Court "too conservative."[687] Political scientists have studied whether the Court's rulings move with public

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[684] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 67-69. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[685] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 26. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[686] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 28. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[687] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

mood, but I could not reach the studies themselves from my research setup to report their findings accurately, so I do not summarize them here.

Verdict: Inconclusive. The Court sometimes ends up in step with long-run public opinion and sometimes rules against it. The sources I could check do not show that public opinion drives its rulings in a consistent way.

Verdict Table

#	Claim	Verdict
1	The Constitution sets the number of justices at nine.	False (debunked)
2	Justices just vote the way the president who picked them wants.	Partly true
3	The Court has never been this divided.	Inconclusive
4	Justices have no ethics rules.	False (debunked)
5	The Supreme Court can enforce its own rulings.	False (debunked)
6	Overturning precedent is rare.	Partly true
7	Supreme Court justices serve for life.	Partly true
8	No justice has ever been impeached.	False (debunked)
9	There is a rule against filling a seat in an election year.	False (debunked)
10	Roe v. Wade was decided by a liberal Court.	Partly true
11	Dobbs banned abortion nationwide.	False (debunked)
12	Citizens United lets foreign money into U.S. elections.	False (debunked)
13	Bush v. Gore decided the 2000 election.	Partly true
14	The shadow docket is new.	Partly true
15	FDR was the only president who tried to change the size of the Court.	False (debunked)
16	The Court's rulings follow public opinion.	Inconclusive

No claim earned a plain "True." That is not a sign of bias. Most of these claims are popular because they compress something real into a sentence that is too simple.

Part Five Notes

Main sources for Part Five. The Constitution; 28 U.S.C. Sections 1 and 455; 52 U.S.C. Section 30121; the Court's opinions in each case cited; the Senate's list of nominations; the Presidential Commission's Final Report; SCOTUSblog's statistics for the 2025 term; Gallup; FactCheck.org's summary of the 2001 NORC review.

[Not verified] items in Part Five.

- The quote attributed to Andrew Jackson about John Marshall. I found no record of Jackson saying it.
- Long-run data on how divided the Court has been before 2005. The Supreme Court Database could not be reached.
- Political science studies on whether the Court follows public opinion. Not reached; not summarized.

Where sources disagree.

- *How many overruling decisions there are.* The Constitution Annotated (236 through 2016) and the National Constitution Center ("an estimated 232 cases" as of 2020) count differently. I use the official figure and note the other.
- *Whether the Court is "divided."* Unanimity rates and party-line split rates point different ways in the same term. Both are shown.

Sources cited in Part Five.

Tier 1: Primary and official sources

- 28 U.S. Code Section 1: Number of justices; quorum. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/28/1
- 28 U.S. Code Section 455: Disqualification of justice, judge, or magistrate judge. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/28/455
- 5 U.S. Code Section 13103: Persons required to file (Ethics in Government Act financial disclosure). U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/5/13103
- 52 U.S. Code Section 30121: Contributions and donations by foreign nationals. U.S. Code, via Legal Information Institute. https://www.law.cornell.edu/uscode/text/52/30121
- Address Before a Joint Session of the Congress on the State of the Union. Barack Obama, Compilation of Presidential Documents (DCPD-201000055), via govinfo.gov. https://www.govinfo.gov/content/pkg/DCPD-201000055/html/DCPD-201000055.htm
- Bluman v. Federal Election Commission, Civil No. 10-1766, Memorandum Opinion (three-judge court). U.S. District Court for the District of Columbia (Kavanaugh, Circuit Judge; Urbina and Collyer, District Judges), via govinfo.gov. https://www.govinfo.gov/content/pkg/USCOURTS-dcd-1_10-cv-01766/pdf/USCOURTS-dcd-1_10-cv-01766-1.pdf
- Bluman v. Federal Election Commission, No. 11-275, 565 U.S. 1104 (2012) (summary affirmance). Supreme Court of the United States. https://www.supremecourt.gov/orders/courtorders/010912zor.pdf

- Bostock v. Clayton County, 590 U.S. 644 (2020). Supreme Court of the United States. https://www.supremecourt.gov/opinions/preliminaryprint/590US2PP_web.pdf#page=232
- Bush v. Gore, 531 U.S. 98 (2000). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/531/98
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- Code of Conduct for Justices of the Supreme Court of the United States, with Statement of the Court and Commentary. Supreme Court of the United States. https://www.supremecourt.gov/about/Code-of-Conduct-for-Justices_November_13_2023.pdf
- Cooper v. Aaron, 358 U.S. 1 (1958). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/358/1
- Dobbs v. Jackson Women's Health Organization, 597 U.S. 215 (2022). Supreme Court of the United States. https://www.supremecourt.gov/opinions/21pdf/597us1r58_gebh.pdf
- Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf
- Financial Disclosure Reports. Supreme Court of the United States. https://www.supremecourt.gov/about/financialdisclosures.aspx
- Frequently Asked Questions: General Information. Supreme Court of the United States. https://www.supremecourt.gov/about/faq_general.aspx
- Janus v. American Federation of State, County, and Municipal Employees, 585 U.S. 878 (2018). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/16-1466
- Justices 1789 to Present. Supreme Court of the United States. https://www.supremecourt.gov/about/members_text.aspx
- Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf
- Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States. https://www.supremecourt.gov/opinions/23pdf/603us1r54_o7jp.pdf
- National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/567/519
- Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States. https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99
- Roe v. Wade, 410 U.S. 113 (1973). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/410/113
- Supreme Court Nominations (1789-Present). United States Senate. https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm
- The Constitution of the United States: A Transcription. National Archives. https://www.archives.gov/founding-docs/constitution-transcript
- The Federalist No. 78 (Alexander Hamilton). The Avalon Project, Yale Law School. https://avalon.law.yale.edu/18th_century/fed78.asp
- The Impeachment of Justice Samuel Chase. United States Senate, Senate History. https://www.senate.gov/about/powers-procedures/impeachment/impeachment-chase.htm

- Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf
- Trump v. Cook, 609 U.S. 528 (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/609us2r63_e2pg.pdf
- Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf
- United States v. Nixon, 418 U.S. 683 (1974). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/418/683
- West Virginia v. B. P. J., 609 U.S. 958 (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/609us2r68_hgci.pdf
- Worcester v. Georgia, 31 U.S. 515 (1832). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/31/515

Tier 2: Nonpartisan analysis

- Supreme Court Decisions Overruled by Subsequent Decision, in The Constitution of the United States of America: Analysis and Interpretation (2016 revision). Congressional Research Service and Library of Congress, via govinfo.gov. https://www.govinfo.gov/content/pkg/GPO-CONAN-REV-2016/pdf/GPO-CONAN-REV-2016-13.pdf

Tier 3: Scholarly and reference works

- The 2025-26 term by the numbers (Jake S. Truscott and Adam Feldman). SCOTUSblog. https://www.scotusblog.com/2026/07/the-2025-26-term-by-the-numbers/

Tier 4: Fact-checks, journalism and polling

- Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx
- The Florida Recount of 2000 (Brooks Jackson). FactCheck.org, Annenberg Public Policy Center. https://www.factcheck.org/2008/01/the-florida-recount-of-2000/

Part Six: Where Things Stand

Chapter 18: The Court as of November 12, 2026

Everything in this chapter is current as of November 12, 2026, and will go out of date. Check the Court's website for anything newer.

The nine justices

The same nine justices have served together since June 30, 2022, when Justice Jackson took her oath.[688]

The nine justices as of November 12, 2026

Justice	Role	Appointed by	Took judicial oath	Position just before joining the Court
John G. Roberts, Jr.	Chief Justice	George W. Bush (R)	September 29, 2005	Judge, U.S. Court of Appeals, D.C. Circuit
Clarence Thomas	Associate Justice	George H. W. Bush (R)	October 23, 1991	Judge, U.S. Court of Appeals, D.C. Circuit
Samuel A. Alito, Jr.	Associate Justice	George W. Bush (R)	January 31, 2006	Judge, U.S. Court of Appeals, Third Circuit
Sonia Sotomayor	Associate Justice	Barack Obama (D)	August 8, 2009	Judge, U.S. Court of Appeals, Second Circuit
Elena Kagan	Associate Justice	Barack Obama (D)	August 7, 2010	Solicitor General of the United States
Neil M. Gorsuch	Associate Justice	Donald Trump (R)	April 10, 2017	Judge, U.S. Court of Appeals, Tenth Circuit
Brett M. Kavanaugh	Associate Justice	Donald Trump (R)	October 6, 2018	Judge, U.S. Court of Appeals, D.C. Circuit
Amy Coney Barrett	Associate Justice	Donald Trump (R)	October 27, 2020	Judge, U.S. Court of Appeals, Seventh Circuit
Ketanji Brown Jackson	Associate Justice	Joseph Biden (D)	June 30, 2022	Judge, U.S. Court of Appeals, D.C. Circuit

Sources for the table: the Court's list of members and its official biographies.[689] "R" and "D" show the party of the appointing president, not the justice's own views.

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[688] Justices (Current Members). Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/justices.aspx (accessed November 12, 2026). Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

[689] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026). Biographies of Current Justices of the Supreme Court. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/biographies.aspx (accessed November 12, 2026).

The 2025 term in brief

The Court's 2025 term ran from October 2025 into the summer of 2026. Its last regular opinions came out on June 30, 2026.[690]

By the numbers. SCOTUSblog counted 44 percent of decisions as unanimous and 22.7 percent as 6-3 splits along the lines of the appointing presidents' parties. Chief Justice Roberts and Justice Kavanaugh were in the majority 95 percent of the time, Justice Barrett 92 percent, and Justice Jackson 67 percent.[691]

Major rulings of the 2025 term

Case	Decided	Vote	What the Court held
Learning Resources, Inc. v. Trump	February 20, 2026	6-3	A 1977 emergency powers law did not authorize the President's tariffs.[692]
Chiles v. Salazar	March 31, 2026	8-1	Colorado's ban on "conversion therapy," as applied to a counselor's talk therapy, regulates speech based on viewpoint, and the lower courts should have applied stricter First Amendment review.[693]
Louisiana v. Callais	April 29, 2026	6-3	Louisiana's congressional map was an unconstitutional racial gerrymander; the majority said it was not overruling Allen v. Milligan.[694]
United States v. Hemani	June 18, 2026	9-0 on the judgment	A federal gun ban for drug users violated the Second Amendment as applied to this defendant.[695]
Trump v. Slaughter	June 29, 2026	6-3	The President may remove a Federal Trade Commission member at will; what remained of Humphrey's Executor was overruled.[696]
Trump v. Cook	June 29, 2026	5-4	The Court denied the government's request, so Federal Reserve Governor Lisa Cook stayed in office while her case continued.[697]
Chatrie v.	June 29,	6-3	Getting a person's location history through a "geofence"

[690] Opinions of the Court, 2025 Term. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[691] The 2025-26 term by the numbers (Jake S. Truscott and Adam Feldman). SCOTUSblog. July 1, 2026. https://www.scotusblog.com/2026/07/the-2025-26-term-by-the-numbers/ (accessed November 12, 2026).

[692] Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. February 20, 2026. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf (accessed November 12, 2026).

[693] Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States. March 31, 2026. https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf (accessed November 12, 2026).

[694] Louisiana v. Callais, 608 U.S. 85 (2026). Supreme Court of the United States. April 29, 2026. https://www.supremecourt.gov/opinions/25pdf/608us1r29_n648.pdf (accessed November 12, 2026).

[695] United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States. June 18, 2026. https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026).

[696] Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

[697] Trump v. Cook, 609 U.S. 528 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r63_e2pg.pdf (accessed November 12, 2026).

Case	Decided	Vote	What the Court held
United States	2026		request is a Fourth Amendment search.[698]
Watson v. RNC	June 29, 2026	5-4	Mississippi may count mail ballots received up to five days after Election Day.[699]
NRSC v. FEC	June 30, 2026	6-3	Federal limits on political parties' coordinated spending with candidates violate the First Amendment.[700]
West Virginia v. B.P.J.	June 30, 2026	6-3	Title IX and the Equal Protection Clause allow states to set school sports teams by biological sex.[701]
Trump v. Barbara	June 30, 2026	Majority opinion by the Chief Justice	Children born in the United States to parents here unlawfully or temporarily are citizens at birth.[702]

A closer look at five rulings

The table above gives the bottom line. For five of the term's biggest cases, here is what each side said, in its own words.

Learning Resources, Inc. v. Trump (tariffs). The question was whether the International Emergency Economic Powers Act of 1977, which lets the President "regulate . . . importation" during a declared national emergency, allows the President to impose tariffs. The majority said no. It pointed out that the law "contains no reference to tariffs or duties," and that "until now no President has read IEEPA to confer such power." Chief Justice Roberts closed: "We claim no special competence in matters of economics or foreign affairs. We claim only, as we must, the limited role assigned to us by Article III of the Constitution."[703]

Justice Kavanaugh, joined by Justices Thomas and Alito, dissented. He wrote that "tariffs are a traditional and common tool to regulate importation," that "Since early in U. S. history, Congress has regularly authorized the President to impose tariffs on imports of foreign goods," and that the policy debates over tariffs "are not for the Federal Judiciary to resolve."[704] Notice what both sides agreed on: each said it was only reading the statute, not judging the wisdom of the tariffs.

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[698] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[699] Watson v. Republican National Committee, 609 U.S. 672 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r65_g314.pdf (accessed November 12, 2026).

[700] National Republican Senatorial Committee v. Federal Election Commission, 609 U.S. 908 (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r67_g3bi.pdf (accessed November 12, 2026).

[701] West Virginia v. B. P. J., 609 U.S. 958 (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r68_hgci.pdf (accessed November 12, 2026).

[702] Trump v. Barbara, 609 U.S. ____ (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[703] Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. February 20, 2026. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf (accessed November 12, 2026).

[704] Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. February 20, 2026. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf (accessed November 12, 2026).

Trump v. Slaughter (firing an FTC commissioner). The majority held that a law protecting Federal Trade Commission members from being fired except "for cause" violates the separation of powers. The Court's summary put it this way: the Constitution vests "[t]he executive Power" in the President, and "To remain accountable to the President, those officers must be removable by the President."[705]

Justice Sotomayor, joined by Justices Kagan and Jackson, dissented. She wrote that "For most of this Nation's history, Congress and the President together have decided that some Government functions should operate at a distance from partisan politics," including "the security of the monetary supply" and "the safety of American workplaces." She noted that more than 90 years ago the Court had said the constitutionality of the FTC's removal protections "cannot well be doubted."[706] That earlier case was Humphrey's Executor (Chapter 6), which the majority now said it would overrule to the extent anything was left of it.

Trump v. Barbara (birthright citizenship). The question was whether children born in the United States to parents who are here unlawfully or only temporarily are citizens under the Fourteenth Amendment, which says "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States." The Court said yes, holding that such children "are 'subject to the jurisdiction' of the United States and are citizens at birth."[707] The Chief Justice ended the opinion by saying that the Amendment's framers "extended that promise to 'every free-born person in this land.' . . . We keep that promise today."[708]

Three justices dissented. Justice Alito wrote: "This is one of the most important decisions in the history of the Court, and in my judgment, the Court has made a serious mistake." He argued that the Amendment "confers citizenship on only those children who, at birth, owe allegiance solely to this country," and added that his reading "would not require uprooting the millions of children who were born here to mothers who entered or remained in this country illegally."[709] Justice Thomas, joined by Justice Gorsuch, argued that the Citizenship Clause guaranteed citizenship to persons "born and domiciled in the United States," and that it did not reach people "who were not domiciled in the United States."[710] This case built directly on United States v. Wong Kim Ark (1898), covered in Chapter 6.[711]

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[705] Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

[706] Trump v. Slaughter, 609 U.S. 422 (2026). Supreme Court of the United States. June 29, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r62_g314.pdf (accessed November 12, 2026).

[707] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[708] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[709] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[710] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[711] United States v. Wong Kim Ark, 169 U.S. 649 (1898). Supreme Court of the United States. 1898. https://www.law.cornell.edu/supremecourt/text/169/649 (accessed November 12, 2026).

Louisiana v. Callais (race and redistricting). In 2022, a federal judge found that Louisiana's congressional map likely violated the Voting Rights Act because it did not include a second majority-Black district. The State drew a new map with such a district. Other voters challenged it, and a three-judge court held that the new map was a racial gerrymander that violated the Equal Protection Clause. The Supreme Court, in an opinion by Justice Alito, affirmed. It warned: "If race and politics are not disentangled and a [Section] 2 claim is cynically used as a tool for advancing a partisan end, the VRA's noble goal will be perverted." Responding to the dissent's charge that the Court was ignoring precedent, the majority wrote, "Respect for precedent cannot be a one-way street."[712]

Justice Kagan, joined by Justices Sotomayor and Jackson, dissented. She opened with a hypothetical district in a State "with a long history of virulent racial discrimination," where "voting throughout all those districts is racially polarized," to illustrate what, in her view, the Voting Rights Act exists to protect: a district that "enables the State's Black community to elect a representative of its choice."[713]

West Virginia v. B.P.J. (transgender athletes). The Court held that Title IX and the Equal Protection Clause allow states to separate school sports teams by biological sex. Justice Kavanaugh's opinion for the Court said the Constitution and Title IX "do not require an overhaul of women's and girls' sports throughout America," and added: "No student-athlete on either side of the issue, whether a biological female or transgender, deserves to be ostracized or vilified."[714]

Justice Sotomayor, joined by Justices Kagan and Jackson, concurred in part and dissented in part. She described B.P.J. as "a transgender girl who wants to live her life consistent with her gender identity," and noted B.P.J.'s argument that transgender girls who "have never experienced an endogenous male puberty" and receive treatment "lack any athletic advantage that is inherent to their sex identified at birth."[715]

Emergency orders since the term ended

The Court kept acting on emergency applications through the summer and fall of 2026. Several involved elections ahead of the November 3, 2026 midterms:

Order	Date	What the Court did	Noted dissents
Trump v. California	August 24, 2026	Allowed parts of Executive Order 14399 on federal elections to take effect, finding the states likely lacked standing because the order's directives bind only the Executive Branch.[716]	Sotomayor (joined by Kagan); Jackson

[712] Louisiana v. Callais, 608 U.S. 85 (2026). Supreme Court of the United States. April 29, 2026. https://www.supremecourt.gov/opinions/25pdf/608us1r29_n648.pdf (accessed November 12, 2026).

[713] Louisiana v. Callais, 608 U.S. 85 (2026). Supreme Court of the United States. April 29, 2026. https://www.supremecourt.gov/opinions/25pdf/608us1r29_n648.pdf (accessed November 12, 2026).

[714] West Virginia v. B. P. J., 609 U.S. 958 (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r68_hgci.pdf (accessed November 12, 2026).

[715] West Virginia v. B. P. J., 609 U.S. 958 (2026). Supreme Court of the United States. June 30, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r68_hgci.pdf (accessed November 12, 2026).

[716] Trump v. California (order on application for stay), 609 U.S. 1032 (2026). Supreme Court of the United States. August 24, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r69_1102.pdf (accessed November 12, 2026).

Order	Date	What the Court did	Noted dissents
National Park Service v. National Trust for Historic Preservation	August 31, 2026	Paused a lower court order that had blocked the White House East Wing project, finding the Trust likely lacked standing.[717]	Chief Justice Roberts (joined by Sotomayor, Kagan and Jackson)
NRCC v. Brown	September 4, 2026	Paused a lower court ruling on broadcast ad rates for political parties.[718]	Jackson
DHS v. League of Women Voters	September 25, 2026	Allowed the government's expanded SAVE citizenship-check program to keep operating while the appeal continues.[719]	Jackson (joined by Sotomayor and Kagan)
People Not Politicians v. Onder	September 25, 2026	Directed that Missouri's 2022 congressional map be used for the 2026 election.[720]	None noted in the order

Cases pending in the 2026 term

The 2026 term began on October 5, 2026. As of November 6, 2026, the Court's list of granted cases included the following, among others.[721] I describe the questions as the Court's docket frames them. I make no predictions.

Case	Argument date (if set)	Question, in brief
Suncor Energy v. Commissioners of Boulder County	October 5, 2026	Whether federal law bars state-law lawsuits seeking damages for climate-change effects of greenhouse gas emissions. The Court also asked whether it has jurisdiction. Justice Alito is not participating.[722]
Salazar v. Paramount Global	October 14, 2026	How the Video Privacy Protection Act applies to online newsletter subscribers who watch videos.[723]
St. Mary Catholic Parish v. Roy	November 3, 2026	Whether Colorado may exclude Catholic preschools from its universal preschool program under its equal-opportunity rule.[724]

[717] National Park Service v. National Trust for Historic Preservation (order on application for stay), 609 U.S. 1068 (2026). Supreme Court of the United States. August 31, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r70_3e04.pdf (accessed November 12, 2026).

[718] National Republican Congressional Committee v. Brown (order on application for stay), 609 U.S. 1082 (2026). Supreme Court of the United States. September 4, 2026. https://www.supremecourt.gov/opinions/25pdf/609us2r71_4h25.pdf (accessed November 12, 2026).

[719] Department of Homeland Security v. League of Women Voters (order on application for stay), 609 U.S. ____ (2026). Supreme Court of the United States. September 25, 2026. https://www.supremecourt.gov/opinions/25pdf/26a308_poko.pdf (accessed November 12, 2026).

[720] People Not Politicians v. Onder (order on application for stay), 609 U.S. ____ (2026). Supreme Court of the United States. September 25, 2026. https://www.supremecourt.gov/opinions/25pdf/26a388_q86b.pdf (accessed November 12, 2026).

[721] Granted and Noted List, October Term 2026 Cases for Argument (as of November 6, 2026). Supreme Court of the United States. November 6, 2026. https://www.supremecourt.gov/orders/26grantednotedlist.pdf (accessed November 12, 2026).

[722] Question Presented: Suncor Energy (U.S.A.) Inc. v. Commissioners of Boulder County, No. 25-170. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/25-00170qp.pdf (accessed November 12, 2026).

[723] Question Presented: Salazar v. Paramount Global, No. 25-459. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/25-00459qp.pdf (accessed November 12, 2026).

Case	Argument date (if set)	Question, in brief
International Partners for Ethical Care v. Ferguson	December 7, 2026	Whether parents have standing to challenge Washington laws on care for runaway minors related to gender identity.[725]
RNC v. Mi Familia Vota	December 8, 2026	Whether federal voter-registration law preempts Arizona's proof-of-citizenship rules for voter registration.[726]
Apple Inc. v. Epic Games	January 11, 2027	When a court may hold a party in contempt for violating the "spirit" of an injunction.[727]
U.S. DOGE Service v. U.S. District Court	Not yet set	Limits on court-ordered discovery against an office in the Executive Office of the President.[728]
Association for Education Fairness v. Montgomery County Board of Education	Not yet set	What a plaintiff must show to challenge a race-neutral school admissions policy as intentionally discriminatory.[729]
Department of Labor v. Sun Valley Orchards	Not yet set	Whether Article III allows the Labor Department to decide penalty cases against farm employers in the H-2A visa program.[730]

What the public thinks

Gallup has asked Americans, "Do you approve or disapprove of the way the Supreme Court is handling its job?" since 2000.[731]

Measure (Gallup)	Finding
Approval, September 2026	34% approve, 61% disapprove[732]

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[724] Question Presented: St. Mary Catholic Parish v. Roy, No. 25-581. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/25-00581qp.pdf (accessed November 12, 2026).

[725] Question Presented: International Partners for Ethical Care, Inc. v. Ferguson, No. 25-840. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/25-00840qp.pdf (accessed November 12, 2026).

[726] Question Presented: Republican National Committee v. Mi Familia Vota, No. 25-1017. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/25-01017qp.pdf (accessed November 12, 2026).

[727] Question Presented: Apple Inc. v. Epic Games, Inc., No. 25-1311. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/25-01311qp.pdf (accessed November 12, 2026).

[728] Question Presented: U.S. DOGE Service v. United States District Court for the District of Columbia, No. 25-1103. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/25-01103qp.pdf (accessed November 12, 2026).

[729] Question Presented: Association for Education Fairness v. Montgomery County Board of Education, No. 26-12. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/26-00012qp.pdf (accessed November 12, 2026).

[730] Question Presented: Department of Labor v. Sun Valley Orchards, LLC, No. 25-966. Supreme Court of the United States (docket). page accessed November 12, 2026. https://www.supremecourt.gov/qp/25-00966qp.pdf (accessed November 12, 2026).

[731] Supreme Court: Gallup Historical Trends. Gallup. trend page accessed November 12, 2026. https://news.gallup.com/poll/4732/supreme-court.aspx (accessed November 12, 2026).

[732] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

Measure (Gallup)	Finding
Record low approval	33%, July 2026[733]
Record high approval	62%, in 2000 and 2001[734]
Approval by party, September 2026	Republicans 65%, independents 31%, Democrats 12%[735]
Trust in the judicial branch, September 2026	46% have a great deal or fair amount of trust[736]
Court's ideology, September 2026	43% too conservative, 35% about right, 17% too liberal[737]

The Gallup survey was conducted by telephone with about 1,000 U.S. adults from September 1 to 17, 2026, with a margin of error of plus or minus 4 percentage points.[738] Gallup described the overall picture as the least positive since it began polling on the Court in 1972.[739]

You might ask: does low approval matter? It depends on whom you ask. The Commission noted that the Court has historically kept higher levels of public confidence than the other branches and that commentators have described basic trust in the Court as resilient, while also noting evidence that partisan differences shape how people judge its performance.[740]

Three words in every reform debate

Almost every argument about changing the Court uses three words: legitimacy, independence and democracy. The Commission pointed out that these words "mean different things to different people," so "discussions cast in these terms sometimes create terminological

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[733] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

[734] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

[735] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

[736] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

[737] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

[738] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

[739] Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. September 30, 2026. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx (accessed November 12, 2026).

[740] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 19. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

confusion."[741] Knowing the different meanings helps you tell when two people are actually disagreeing and when they are talking past each other.

Legitimacy

The Commission described two main ways people use this word.[742]

- **As a fact about public support.** Legitimacy can mean how much the public supports the Court, or whether people who disagree with a ruling still obey it. On this view, support matters because the courts have no army. The Commission quoted Alexander Hamilton's line that the judiciary "has no influence over either the sword or the purse" and "must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments."[743]
- **As a judgment about the Court.** Legitimacy can also be a verdict. Someone who thinks the Court acts like a partisan body, or has made deeply wrong decisions, may call it "illegitimate" whatever the polls say.[744]

Here is why the difference matters. The Commission gave this example: a claim that the Court is illegitimate because of how some justices were appointed "might be met with an assertion that the Court still commands substantial popular support. However, the assertion about popular support is not truly responsive to the evaluative claim about the Court." And the reverse is also true: "a weakening of the Court's popularity might be taken as evidence that the Court has embarked on a misguided course of decisions, which need not be true."[745] In plain terms, a low poll number does not prove the Court is wrong, and a high one does not prove it is right.

Judicial independence

The Commission said judicial independence in its basic sense "is commonly, and correctly, thought to be a core requirement of the rule of law." Judges must be free from threats, must not

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[741] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 21-22. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[742] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 22-23. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[743] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 22. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). The Federalist No. 78 (Alexander Hamilton). The Avalon Project, Yale Law School. 1788. https://avalon.law.yale.edu/18th_century/fed78.asp (accessed November 12, 2026).

[744] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 22-23. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[745] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 23. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

be bribed, and must not be swayed by favoritism.[746] It added that "Judges should not be partisans," and that public belief in an independent judiciary "can be undermined if judges are perceived to be 'playing on the team' of one party or another."[747]

But there is a second, harder question: how independent of the other branches should the courts be as an institution? The Commission noted that parts of the system already make the courts somewhat answerable to elected officials, "including not only the appointment and confirmation process, but also Congress's role in setting the Court's budget, jurisdiction, and size, and its control of the impeachment process." On the other side, "the judiciary has the responsibility to protect minorities against impermissible exercises of political power," and its independence "is crucial to the courts' ability to carry out this responsibility."[748]

Democracy

The third word drives the sharpest disagreements. The Commission described two democracy-based criticisms of the Court and the answers to each.[749]

Criticism 1: The Court should defer more to elected officials. Some argue the Court is "too willing to intrude into matters that should be left to democratic political processes," and that this makes confirmation fights worse because the stakes are so high.[750] The Commission's answer was a question: when is deference right? It noted that "In prominent cases, the Court has intervened to try to protect racial or religious minorities or political dissidents from the abusive actions of majorities," and that "If the Court were to adopt a posture of across-the-board deference, it would no longer play that role."[751] It also pointed out that the Court's statutory

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[746] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 23. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[747] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 24. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[748] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 25. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[749] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 25-28. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[750] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 25. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[751] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 26. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

rulings can in theory be reversed by Congress, but "in practice the difficulty of enacting legislation routinely means that what the Court says is the last word."[752]

Criticism 2: The Court is out of step with the country. Some critics argue that the luck of when vacancies open lets some presidents shape the Court far more than others. As of the Commission's December 2021 report, these critics pointed out that Republican presidents had appointed "fifteen of the last nineteen Justices and six of the current nine Justices, 'even though Democrats have held the presidency for 16 of the last 28 years and have received more votes in six of the last seven presidential elections.'"[753] The Commission added that President Trump "appointed three Justices in his single four-year term," while Presidents Obama, Clinton and Carter "made only four appointments total in a combined twenty years in office."[754] Those counts are as of 2021; Appendix A has the full current list.

The answer to Criticism 2. Others see this as the system working as designed. "It is by design that members of the Court (and the rest of the federal judiciary) do not stand for reelection," and life tenure "may help maintain judicial independence by providing a degree of insulation from the partisan politics of the moment."[755] On this view, "the Court's obligation is to the Constitution and laws," and if current majorities dislike its rulings, "that may simply be the unavoidable consequence of a system in which the judiciary is expected to interpret and apply the law, not to do politics."[756] The Commission also noted that some presidents who tried to fill the Court with like-minded justices saw "those very appointees decide cases in ways that diverged from the preferences or platforms of the appointing party."[757]

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[752] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 26. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[753] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 27. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[754] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 27. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[755] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 27. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[756] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 28. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[757] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 28. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Where the Commission came out. It did not pick a side: "Commissioners hold different views on the extent to which misalignment is a problem and on whether the Court is sufficiently deferential to the political branches."[758]

You might ask: which view is right? That depends on what you think the Court is for. If its main job is to follow the law wherever it leads, being out of step with public opinion is not a flaw. If its legitimacy depends on staying roughly in line with the country over time, a long gap is a warning sign. Most people hold some of both views, which is one reason the reform debate is so hard to settle.

Reform options at a glance

Here are the main reform ideas, who backs them, and the strongest arguments on each side. I do not recommend any of them. The Commission, which studied all of them, did not either.[759]

Option	What it would do	Can Congress do it by law?	Main argument for	Main argument against
Add seats	Increase the number of justices	Yes, by statute[760]	Restores balance after hardball confirmation tactics	Invites escalation each time control changes
Term limits	Staggered 18-year terms	Disputed; amendment would settle it[761]	Regular appointments, less luck and strategic retirement	Could politicize every presidential election further
Enforceable ethics code	Complaint process and enforcement for the 2023 Code	Disputed on separation-of-powers grounds[762]	A code nobody enforces is weak	Congress would be policing another branch
Limit jurisdiction	Remove certain types of cases from	Congress has broad power, but limits	Returns hard questions to elected	Could leave constitutional rights

[758] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 28. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[759] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 67. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 111. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[760] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 67. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[761] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 130. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[762] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 218-219. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Option	What it would do	Can Congress do it by law?	Main argument for	Main argument against
	the Court's appellate review	are debated[763]	officials	without a court to protect them
Supermajority rule	Require more than five votes to strike down a law	Debated[764]	Courts should strike down laws only when the case is clear	Would give a minority of justices the final word
Legislative override	Let Congress override some decisions	Would need an amendment[765]	More democratic control	Weakens protection of minority rights
Cameras or live audio	Broadcast arguments	The Court controls its courtroom[766]	Transparency	Several justices have opposed cameras, and live broadcasts raise concerns about disruption

The Commission's general conclusion on proposals to limit the Court's power was that "the efficacy of proposals targeting the jurisdiction of the Supreme Court or otherwise constraining its decisionmaking depend on the details of the proposals."[767] It also noted that jurisdiction stripping "has no inherent partisan valence and could be utilized to serve the ideological goals of nearly any constituency with the political capacity to enact it."[768]

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[763] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 158. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[764] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 170-171. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[765] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 9. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[766] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 225-226. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[767] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 9. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[768] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 154. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Proposals to limit the Court's power, in more detail

The reform table above lists three ideas that would shrink the Court's power rather than change who sits on it. The Commission called these "disempowering" proposals and gave them a full chapter. Here is what that chapter found, with each side in its own words.

The disagreement underneath

The Commission framed the debate this way. On one side, "Many observers view the judiciary and especially the Supreme Court as vital to the preservation of individual rights, democracy, federalism, and other constitutional values." On the other, "others argue that the Supreme Court has exerted too much power in our system of constitutional governance by interfering with or taking control of matters that should be resolved by the elected branches and the political process."[769]

Critics on this second side argue that the Court's rulings "have an unusually high degree of finality or 'strength'[] by global standards," partly because of "judicial supremacy," the idea that the Court's reading of the Constitution binds the President, Congress and the states, not just the parties in a case.[770] The Commission noted that the Court has claimed this role "since at least the 1950s," when it said in Cooper v. Aaron that "the federal judiciary is supreme in the exposition of the law of the Constitution."[771] It also noted that judicial supremacy "is not explicitly required by the text of the Constitution" and "has long been contested."[772]

Defenders of the Court's current role worry that limiting it "might undermine protections for individual rights, particularly minority rights," could make the law "less settled or well-reasoned," and could "undermine the rule of law by eliminating the courts' role in ensuring officials' accountability."[773]

This complaint comes from both sides. The Commission stressed that "The concern about excessive Court power is not limited to one political camp." Conservatives objected to Warren Court rulings on desegregation and criminal law and to later rulings on same-sex marriage and

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[769] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 152. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[770] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 152. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[771] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 153. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). Cooper v. Aaron, 358 U.S. 1 (1958). Supreme Court of the United States. 1958. https://www.law.cornell.edu/supremecourt/text/358/1 (accessed November 12, 2026).

[772] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 153. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[773] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 153-154. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

abortion. Liberals objected to early twentieth-century rulings against worker protections, and more recently to rulings such as Shelby County v. Holder and to First Amendment rulings striking down campaign finance rules.[774]

Option 1: Taking certain cases away from the Court

Members of Congress have proposed bills over the last fifty years that would bar the Supreme Court, and sometimes other courts, from ruling on laws about abortion, school prayer, the Affordable Care Act, pornography, the Pledge of Allegiance and the Defense of Marriage Act.[775] The Commission said "jurisdiction stripping has no inherent partisan valence and could be utilized to serve the ideological goals of nearly any constituency with the political capacity to enact it."[776]

On whether it is allowed, the Commission said: "Congress certainly has some power to impose limits on the appellate jurisdiction of the Supreme Court. However, the extent of that power is unclear." Its overall view was that it was "skeptical that the aim of promoting more democratically accountable control of public policy can be achieved solely by limiting the jurisdiction of the Supreme Court."[777]

Why skeptical? Because a constitutional question taken away from the Supreme Court does not disappear. Lower federal courts and state courts could still decide it. The Commission said that "Precluding Supreme Court review alone would do little or nothing to enhance political democracy," and that it would not "advance interests in justice or accuracy to permit different courts to issue incompatible rulings on the same substantive constitutional issue with no possibility of Supreme Court review."[778] Such a law "would obviously diminish the capacity of the Supreme Court to ensure uniformity in constitutional interpretation."[779] In plain terms, the same law could be valid in one state and invalid in the next.

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[774] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 187. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[775] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 154. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[776] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 154. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[777] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 155. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[778] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 160. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[779] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 161. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Option 2: Requiring more than five votes

A "supermajority rule" would require, for example, six or seven justices to agree before the Court could strike down a law.

History. The Commission found that the first such proposal in Congress "seems to have been made in 1823, and over sixty such proposals have been offered at various times since then." During Reconstruction, the House passed one, but the Senate did not act on it. In the 1920s, Senator William Borah of Idaho proposed requiring "at least seven members of the court" to agree before striking down an act of Congress.[780] The Commission observed that "Many (perhaps all) of these proposals appear to have been reactions to particular rulings or lines of rulings of the Court."[781]

Where it exists. Congress never adopted one, but some states and countries did:[782]

Place	Rule	What happened
North Dakota	At least 4 of 5 justices to strike down a law	Still in the state constitution; a study found no "significant operational difficulties"
Nebraska	5 of 7 judges	Same study, same finding
Ohio	Adopted 1912	Repealed in 1968 "after experiencing difficulties in practice"
South Korea	6 of 9 justices, since 1987	A study counted 62 cases from 1987 to 2016 where only five justices found a law unconstitutional
Mexico	Generally 8 of 11 justices	The court has still issued "a number of important constitutional rulings against the government"

The case for it, in supporters' words. Supporters say the Court "is not sufficiently deferential to lawmakers by historical standards" and "has resolved too many disputed constitutional issues by narrow 5-4 majorities."[783] Some argue a supermajority rule would "enhance deliberation and consensus-building among the Justices."[784] Some also argue that

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[780] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 170-171. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[781] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 171. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[782] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 171-172. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[783] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 172. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[784] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 173. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

"rights protection may well be available in superior form through political branches," pointing to laws like the Voting Rights Act.[785]

The case against it, in opponents' words. Skeptics say it "would make it more difficult for courts to protect constitutional rights as they interpret them," and could weaken the courts' role in protecting "federalism and separation of powers."[786]

A practical problem. The Commission raised a puzzle. Suppose the Court votes 5-4 that a law is unconstitutional, but six votes are needed. The law stands. Then which opinion should lower courts follow in future cases, the five-justice majority or the four-justice minority that controlled the result? The Commission said "These issues are novel, as far as we can tell, for U.S. law."[787]

How many cases it would change. The Commission said such a rule "is likely to affect only a limited number of cases," but that those cases "may be quite important." It gave two examples that "would have been decided otherwise": Shelby County v. Holder and United States v. Windsor, both 5-4 rulings.[788] Note that these two examples would have come out differently in opposite political directions: Shelby County struck down part of a voting rights law, and Windsor struck down part of a law defining marriage as between a man and a woman.

Option 3: Letting Congress override the Court

A "legislative override" would let Congress, by some vote, reverse a ruling that struck down a law on constitutional grounds.

Where it exists. Canada's Charter of Rights and Freedoms includes a "notwithstanding clause" that lets a legislature "expressly declare" by simple majority that a law "shall operate notwithstanding" certain Charter rights. The override ends after five years unless re-passed.

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[785] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 173. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[786] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 173. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[787] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 174-175. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[788] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 176. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026). Shelby County v. Holder, 570 U.S. 529 (2013). Supreme Court of the United States. 2013. https://www.law.cornell.edu/supremecourt/text/12-96 (accessed November 12, 2026). United States v. Windsor, 570 U.S. 744 (2013). Supreme Court of the United States. 2013. https://www.law.cornell.edu/supremecourt/text/12-307 (accessed November 12, 2026).

Israel has a narrower version.[789] The Commission noted that in both countries legislatures "have used the power rarely."[790]

American history. The 1924 Progressive Party platform, with Senators Robert La Follette and Burton Wheeler on the ticket, called for "a constitutional amendment providing that Congress may by enacting a statute make it effective over a judicial veto."[791] In 1937, Senator Wheeler, a supporter of the New Deal who "adamantly opposed" Roosevelt's plan to add justices, proposed an amendment letting Congress override a ruling by a two-thirds vote of each chamber, but only after the next election.[792] In 1996, Robert Bork, the former judge whose 1987 nomination the Senate rejected (Chapter 13), wrote that the "most important moral, political, and cultural decisions affecting our lives are steadily being removed from democratic control," and suggested an amendment allowing a simple majority of Congress to reverse the Court.[793] The Commission added that "A few scholars from the opposite side of the political spectrum from Bork" have also supported the idea.[794]

The case for it. Supporters say overrides would "cabin excessive judicial power in favor of democratic decisionmaking" and encourage "greater constitutional discourse and deliberation" in Congress and among the public.[795] Some argue the Court "has not consistently protected rights of underprivileged, politically powerless minorities," and that democracies without American-style judicial supremacy, such as Australia and New Zealand, protect rights just as well.[796]

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[789] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 183. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[790] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 187. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[791] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 185. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[792] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 185. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[793] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). pp. 185-186. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[794] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 186. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[795] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 184. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[796] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated

The case against it. Critics worry about "insufficient protection of individual rights and, in particular, minority rights," and that the law would become less settled.[797]

Can Congress do it by law? The Commission said that without a constitutional amendment, "it is highly likely that the Supreme Court would strike down" a statute creating an override system.[798] Congress's one-off attempts, such as its 1968 attempt to override Miranda v. Arizona, "have generally been rebuffed by the Court."[799] Chapter 3 describes how the Court rejected that Miranda override in Dickerson v. United States (2000).[800]

What the Commission did not decide. On all three options, the Commission said its discussion was "predominantly analytical" and that it did "not purport to resolve the fundamental questions of democratic and political theory" they raise.[801]

What to watch

These are the things most likely to change the picture after this book's cutoff:

- **Vacancies.** Any retirement or death would trigger a new confirmation fight under the rules described in Chapter 12.
- **Rulings in the 2026 term,** especially in the election, religion and executive power cases listed above.
- **Congress after the November 3, 2026 elections.** Whether any of the bills in Chapters 15 and 16 move depends on which party controls each chamber. I do not report final 2026 election results in this book, because certified results were not all available as of November 12, 2026.
- **The emergency docket,** which has become one of the main ways national policy disputes reach the Court quickly.

The record will keep growing. The methods in this book, checking the primary source, naming who says what, and separating facts from interpretation, will still work on whatever comes next.

December 8, 2021). pp. 188-189. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[797] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 188. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[798] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 189. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[799] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 186. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

[800] Dickerson v. United States, 530 U.S. 428 (2000). Supreme Court of the United States. 2000. https://www.law.cornell.edu/supremecourt/text/530/428 (accessed November 12, 2026).

[801] Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). December 2021 (transmittal letter dated December 8, 2021). p. 154. https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf (accessed November 12, 2026).

Part Six Notes

Main sources for Part Six. The Court's member list, biographies, opinions, orders and granted-cases list; the questions presented as posted on the Court's docket; SCOTUSblog's term statistics; Gallup; the Presidential Commission's Final Report.

[Not verified] items in Part Six.

- Final, certified results of the November 3, 2026 elections are not reported.

Where sources disagree. None material to this chapter. Descriptions of pending cases follow the questions as filed, which are written by the party asking the Court to take the case. I rephrased them in neutral terms.

Sources cited in Part Six.

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- Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf
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- Department of Homeland Security v. League of Women Voters (order on application for stay), 609 U.S. ___ (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/26a308_pok0.pdf
- Dickerson v. United States, 530 U.S. 428 (2000). Supreme Court of the United States. https://www.law.cornell.edu/supremecourt/text/530/428
- Final Report, Presidential Commission on the Supreme Court of the United States. Presidential Commission on the Supreme Court of the United States (established by Executive Order 14023). https://www.govinfo.gov/content/pkg/GOVPUB-PR-PURL-gpo173589/pdf/GOVPUB-PR-PURL-gpo173589.pdf
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- Justices 1789 to Present. Supreme Court of the United States. https://www.supremecourt.gov/about/members_text.aspx
- Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf
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- National Republican Congressional Committee v. Brown (order on application for stay), 609 U.S. 1082 (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/609us2r71_4h25.pdf
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- People Not Politicians v. Onder (order on application for stay), 609 U.S. ___ (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/26a388_q86b.pdf
- Question Presented: Apple Inc. v. Epic Games, Inc., No. 25-1311. Supreme Court of the United States (docket). https://www.supremecourt.gov/qp/25-01311qp.pdf
- Question Presented: Association for Education Fairness v. Montgomery County Board of Education, No. 26-12. Supreme Court of the United States (docket). https://www.supremecourt.gov/qp/26-00012qp.pdf
- Question Presented: Department of Labor v. Sun Valley Orchards, LLC, No. 25-966. Supreme Court of the United States (docket). https://www.supremecourt.gov/qp/25-00966qp.pdf
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- Question Presented: Salazar v. Paramount Global, No. 25-459. Supreme Court of the United States (docket). https://www.supremecourt.gov/qp/25-00459qp.pdf
- Question Presented: St. Mary Catholic Parish v. Roy, No. 25-581. Supreme Court of the United States (docket). https://www.supremecourt.gov/qp/25-00581qp.pdf
- Question Presented: Suncor Energy (U.S.A.) Inc. v. Commissioners of Boulder County, No. 25-170. Supreme Court of the United States (docket). https://www.supremecourt.gov/qp/25-00170qp.pdf
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- Watson v. Republican National Committee, 609 U.S. 672 (2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/25pdf/609us2r65_g314.pdf
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Tier 3: Scholarly and reference works

- The 2025-26 term by the numbers (Jake S. Truscott and Adam Feldman). SCOTUSblog. https://www.scotusblog.com/2026/07/the-2025-26-term-by-the-numbers/

Tier 4: Fact-checks, journalism and polling

- Supreme Court Begins Term With Historically Low Ratings (Jeffrey M. Jones). Gallup. https://news.gallup.com/poll/715022/supreme-court-begins-term-historically-low-ratings.aspx
- Supreme Court: Gallup Historical Trends. Gallup. https://news.gallup.com/poll/4732/supreme-court.aspx

Appendix A: Every Justice

This list comes from the Supreme Court's official "Members of the Supreme Court of the United States," current as of November 12, 2026.[802] The Court counts a person as a member only after he or she took the judicial oath, and it uses the oath date as the start of service. A small letter before a date is the Court's own note on where the date came from: (a) from the minutes of some other court, (b) from "some other unquestionable authority," and (c) from "authority that is questionable, and better authority would be appreciated." Justices who served first as associate justices and later as Chief Justice appear in both lists, as they do in the Court's list. "Service ended" is the date shown by the Court; the list does not say whether service ended by death, retirement or resignation.

Chief Justices

#	Name	State appointed from	Appointed by	Judicial oath	Service ended
1	Jay, John	New York	Washington	(a) October 19, 1789	June 29, 1795
2	Rutledge, John	South Carolina	Washington	August 12, 1795	December 15, 1795
3	Ellsworth, Oliver	Connecticut	Washington	March 8, 1796	December 15, 1800
4	Marshall, John	Virginia	Adams, John	February 4, 1801	July 6, 1835
5	Taney, Roger Brooke	Maryland	Jackson	March 28, 1836	October 12, 1864
6	Chase, Salmon Portland	Ohio	Lincoln	December 15, 1864	May 7, 1873
7	Waite, Morrison Remick	Ohio	Grant	March 4, 1874	March 23, 1888
8	Fuller, Melville Weston	Illinois	Cleveland	October 8, 1888	July 4, 1910
9	White, Edward Douglass	Louisiana	Taft	December 19, 1910	May 19, 1921
10	Taft, William Howard	Connecticut	Harding	July 11, 1921	February 3, 1930
11	Hughes, Charles Evans	New York	Hoover	February 24, 1930	June 30, 1941
12	Stone, Harlan Fiske	New York	Roosevelt, F.	July 3, 1941	April 22, 1946
13	Vinson, Fred Moore	Kentucky	Truman	June 24, 1946	September 8, 1953
14	Warren, Earl	California	Eisenhower	October 5, 1953	June 23, 1969
15	Burger, Warren Earl	Virginia	Nixon	June 23, 1969	September 26, 1986
16	Rehnquist, William H.	Virginia	Reagan	September 26, 1986	September 3, 2005
17	Roberts, John G., Jr.	Maryland	Bush, G. W.	September 29,	Serving

[802] Justices 1789 to Present. Supreme Court of the United States. page accessed November 12, 2026. https://www.supremecourt.gov/about/members_text.aspx (accessed November 12, 2026).

#	Name	State appointed from	Appointed by	Judicial oath	Service ended
				2005	

Associate Justices

#	Name	State appointed from	Appointed by	Judicial oath	Service ended
1	Rutledge, John	South Carolina	Washington	(a) February 15, 1790	March 5, 1791
2	Cushing, William	Massachusetts	Washington	(c) February 2, 1790	September 13, 1810
3	Wilson, James	Pennsylvania	Washington	(b) October 5, 1789	August 21, 1798
4	Blair, John	Virginia	Washington	(c) February 2, 1790	October 25, 1795
5	Iredell, James	North Carolina	Washington	(b) May 12, 1790	October 20, 1799
6	Johnson, Thomas	Maryland	Washington	September 19, 1791	January 16, 1793
7	Paterson, William	New Jersey	Washington	(a) March 11, 1793	September 9, 1806
8	Chase, Samuel	Maryland	Washington	February 4, 1796	June 19, 1811
9	Washington, Bushrod	Virginia	Adams, John	November 9, 1798	November 26, 1829
10	Moore, Alfred	North Carolina	Adams, John	(a) April 21, 1800	January 26, 1804
11	Johnson, William	South Carolina	Jefferson	May 7, 1804	August 4, 1834
12	Livingston, Brockholst	New York	Jefferson	January 20, 1807	March 18, 1823
13	Todd, Thomas	Kentucky	Jefferson	(a) May 4, 1807	February 7, 1826
14	Duvall, Gabriel	Maryland	Madison	(a) November 23, 1811	January 14, 1835
15	Story, Joseph	Massachusetts	Madison	(c) February 3, 1812	September 10, 1845
16	Thompson, Smith	New York	Monroe	(b) September 1, 1823	December 18, 1843
17	Trimble, Robert	Kentucky	Adams, J. Q.	(a) June 16, 1826	August 25, 1828
18	McLean, John	Ohio	Jackson	March 12, 1829	April 4, 1861
19	Baldwin, Henry	Pennsylvania	Jackson	January 18, 1830	April 21, 1844
20	Wayne, James Moore	Georgia	Jackson	January 14, 1835	July 5, 1867
21	Barbour, Philip Pendleton	Virginia	Jackson	May 12, 1836	February 25, 1841
22	Catron, John	Tennessee	Jackson	May 1, 1837	May 30, 1865
23	McKinley, John	Alabama	Van Buren	(c) January 9, 1838	July 19, 1852
24	Daniel, Peter Vivian	Virginia	Van Buren	(c) January 10, 1842	May 31, 1860
25	Nelson, Samuel	New York	Tyler	February 27, 1845	November 28, 1872
26	Woodbury, Levi	New Hampshire	Polk	(b) September 23, 1845	September 4, 1851

#	Name	State appointed from	Appointed by	Judicial oath	Service ended
27	Grier, Robert Cooper	Pennsylvania	Polk	August 10, 1846	January 31, 1870
28	Curtis, Benjamin Robbins	Massachusetts	Fillmore	(b) October 10, 1851	September 30, 1857
29	Campbell, John Archibald	Alabama	Pierce	(c) April 11, 1853	April 30, 1861
30	Clifford, Nathan	Maine	Buchanan	January 21, 1858	July 25, 1881
31	Swayne, Noah Haynes	Ohio	Lincoln	January 27, 1862	January 24, 1881
32	Miller, Samuel Freeman	Iowa	Lincoln	July 21, 1862	October 13, 1890
33	Davis, David	Illinois	Lincoln	December 10, 1862	March 4, 1877
34	Field, Stephen Johnson	California	Lincoln	May 20, 1863	December 1, 1897
35	Strong, William	Pennsylvania	Grant	March 14, 1870	December 14, 1880
36	Bradley, Joseph P.	New Jersey	Grant	March 23, 1870	January 22, 1892
37	Hunt, Ward	New York	Grant	January 9, 1873	January 27, 1882
38	Harlan, John Marshall	Kentucky	Hayes	December 10 1877	October 14, 1911
39	Woods, William Burnham	Georgia	Hayes	January 5, 1881	May 14, 1887
40	Matthews, Stanley	Ohio	Garfield	May 17, 1881	March 22, 1889
41	Gray, Horace	Massachusetts	Arthur	January 9, 1882	September 15, 1902
42	Blatchford, Samuel	New York	Arthur	April 3, 1882	July 7, 1893
43	Lamar, Lucius Quintus C.	Mississippi	Cleveland	January 18, 1888	January 23, 1893
44	Brewer, David Josiah	Kansas	Harrison	January 6, 1890	March 28, 1910
45	Brown, Henry Billings	Michigan	Harrison	January 5, 1891	May 28, 1906
46	Shiras, George, Jr.	Pennsylvania	Harrison	October 10, 1892	February 23, 1903
47	Jackson, Howell Edmunds	Tennessee	Harrison	March 4, 1893	August 8, 1895
48	White, Edward Douglass	Louisiana	Cleveland	March 12, 1894	December 18, 1910 *
49	Peckham, Rufus Wheeler	New York	Cleveland	January 6, 1896	October 24, 1909
50	McKenna, Joseph	California	McKinley	January 26, 1898	January 5, 1925
51	Holmes, Oliver Wendell	Massachusetts	Roosevelt, T.	December 8, 1902	January 12, 1932
52	Day, William Rufus	Ohio	Roosevelt, T.	March 2, 1903	November 13, 1922
53	Moody, William Henry	Massachusetts	Roosevelt, T.	December 17, 1906	November 20, 1910
54	Lurton, Horace Harmon	Tennessee	Taft	January 3, 1910	July 12, 1914
55	Hughes, Charles	New York	Taft	October 10, 1910	June 10, 1916

#	Name	State appointed from	Appointed by	Judicial oath	Service ended
	Evans				
56	Van Devanter, Willis	Wyoming	Taft	January 3, 1911	June 2, 1937
57	Lamar, Joseph Rucker	Georgia	Taft	January 3, 1911	January 2, 1916
58	Pitney, Mahlon	New Jersey	Taft	March 18, 1912	December 31, 1922
59	McReynolds, James Clark	Tennessee	Wilson	October 12, 1914	January 31, 1941
60	Brandeis, Louis Dembitz	Massachusetts	Wilson	June 5,1916	February 13, 1939
61	Clarke, John Hessin	Ohio	Wilson	October 9, 1916	September 18, 1922
62	Sutherland, George	Utah	Harding	October 2, 1922	January 17, 1938
63	Butler, Pierce	Minnesota	Harding	January 2, 1923	November 16, 1939
64	Sanford, Edward Terry	Tennessee	Harding	February 19, 1923	March 8, 1930
65	Stone, Harlan Fiske	New York	Coolidge	March 2, 1925	July 2, 1941 *
66	Roberts, Owen Josephus	Pennsylvania	Hoover	June 2, 1930	July 31, 1945
67	Cardozo, Benjamin Nathan	New York	Hoover	March 14, 1932	July 9, 1938
68	Black, Hugo Lafayette	Alabama	Roosevelt, F.	August 19, 1937	September 17, 1971
69	Reed, Stanley Forman	Kentucky	Roosevelt, F.	January 31, 1938	February 25, 1957
70	Frankfurter, Felix	Massachusetts	Roosevelt, F.	January 30, 1939	August 28, 1962
71	Douglas, William Orville	Connecticut	Roosevelt, F.	April 17, 1939	November 12, 1975
72	Murphy, Frank	Michigan	Roosevelt, F.	February 5, 1940	July 19, 1949
73	Byrnes, James Francis	South Carolina	Roosevelt, F.	July 8, 1941	October 3, 1942
74	Jackson, Robert Houghwout	New York	Roosevelt, F.	July 11, 1941	October 9, 1954
75	Rutledge, Wiley Blount	Iowa	Roosevelt, F.	February 15, 1943	September 10, 1949
76	Burton, Harold Hitz	Ohio	Truman	October 1, 1945	October 13, 1958
77	Clark, Tom Campbell	Texas	Truman	August 24, 1949	June 12, 1967
78	Minton, Sherman	Indiana	Truman	October 12, 1949	October 15, 1956
79	Harlan, John Marshall	New York	Eisenhower	March 28, 1955	September 23, 1971
80	Brennan, William J., Jr.	New Jersey	Eisenhower	October 16, 1956	July 20, 1990
81	Whittaker, Charles Evans	Missouri	Eisenhower	March 25, 1957	March 31, 1962
82	Stewart, Potter	Ohio	Eisenhower	October 14, 1958	July 3, 1981
83	White, Byron Raymond	Colorado	Kennedy	April 16, 1962	June 28, 1993
84	Goldberg, Arthur	Illinois	Kennedy	October 1, 1962	July 25, 1965

#	Name	State appointed from	Appointed by	Judicial oath	Service ended
	Joseph				
85	Fortas, Abe	Tennessee	Johnson, L.	October 4, 1965	May 14, 1969
86	Marshall, Thurgood	New York	Johnson, L.	October 2, 1967	October 1, 1991
87	Blackmun, Harry A.	Minnesota	Nixon	June 9, 1970	August 3, 1994
88	Powell, Lewis F., Jr.	Virginia	Nixon	January 7, 1972	June 26, 1987
89	Rehnquist, William H.	Arizona	Nixon	January 7, 1972	September 26, 1986 *
90	Stevens, John Paul	Illinois	Ford	December 19, 1975	June 29, 2010
91	O'Connor, Sandra Day	Arizona	Reagan	September 25, 1981	January 31, 2006
92	Scalia, Antonin	Virginia	Reagan	September 26, 1986	February 13, 2016
93	Kennedy, Anthony M.	California	Reagan	February 18, 1988	July 31, 2018
94	Souter, David H.	New Hampshire	Bush, G. H. W.	October 9, 1990	June 29, 2009
95	Thomas, Clarence	Georgia	Bush, G. H. W.	October 23, 1991	Serving
96	Ginsburg, Ruth Bader	New York	Clinton	August 10, 1993	September 18, 2020
97	Breyer, Stephen G.	Massachusetts	Clinton	August 3, 1994	June 30, 2022
98	Alito, Samuel A., Jr.	New Jersey	Bush, G. W.	January 31, 2006	Serving
99	Sotomayor, Sonia	New York	Obama	August 8, 2009	Serving
100	Kagan, Elena	Massachusetts	Obama	August 7, 2010	Serving
101	Gorsuch, Neil M.	Colorado	Trump	April 10, 2017	Serving
102	Kavanaugh, Brett M.	Maryland	Trump	October 6, 2018	Serving
103	Barrett, Amy Coney	Indiana	Trump	October 27, 2020	Serving
104	Jackson, Ketanji Brown	Washington, D.C.	Biden	June 30, 2022	Serving

Appendix B: Landmark Rulings at a Glance

This table lists the rulings discussed in this book, in time order. The chapter number tells you where to find the vote, the background and the sources. "Later history" notes whether the ruling was overruled or reversed by a constitutional amendment, as of November 12, 2026. The sources for each entry are cited in the chapter listed.

Case	Year	Chapter	What it decided, in brief	Later history
Chisholm v. Georgia	1793	1	A citizen of one state could sue another state in federal court	Reversed by the Eleventh Amendment (1795)
Hylton v. United States	1796	1	Upheld a federal carriage tax, an early review of a federal law	
Marbury v. Madison	1803	2	Courts may refuse to apply a law that conflicts with the Constitution	
McCulloch v. Maryland	1819	5	Congress could create a national bank; states could not tax it	
Gibbons v. Ogden	1824	5	Broad reading of Congress's power over interstate commerce	
Cherokee Nation v. Georgia	1831	5	The Cherokee Nation was not a "foreign state" able to sue in the Court	
Worcester v. Georgia	1832	5	Georgia law had no force in Cherokee territory	Not enforced at the time
Dred Scott v. Sandford	1857	5	Black Americans could not be citizens; Congress could not bar slavery in territories	Reversed by the Thirteenth and Fourteenth Amendments
Ex parte McCardle	1869	3	Upheld a law removing the Court's appellate jurisdiction over a type of case	
Slaughter-House Cases	1873	6	Read the Fourteenth Amendment's Privileges or Immunities Clause narrowly	
Civil Rights Cases	1883	6	Struck down federal ban on race discrimination by private businesses	
Pollock v. Farmers' Loan and Trust	1895	6	Struck down a federal income tax	Reversed by the Sixteenth Amendment (1913)
Plessy v. Ferguson	1896	6	Upheld "separate but equal"	Rejected in Brown (1954)
United States v. Wong Kim Ark	1898	6	A child born in the U.S. to Chinese parents was a citizen	Relied on in Trump v. Barbara (2026)
Lochner v. New York	1905	6	Struck down a limit on bakers' hours as violating liberty of contract	Abandoned in the 1930s
Muller v. Oregon	1908	6	Upheld limits on women's working hours	
Hammer v. Dagenhart	1918	6	Struck down a federal child labor law	Overruled in United States v. Darby (1941)
Schenck v. United States	1919	6	Upheld a conviction for antiwar leaflets ("clear and present danger")	Standard replaced by Brandenburg (1969)

Case	Year	Chapter	What it decided, in brief	Later history
Adkins v. Children's Hospital	1923	6	Struck down a minimum wage for women	Overruled in West Coast Hotel (1937)
Schechter Poultry v. United States	1935	6	Struck down the National Industrial Recovery Act	
Humphrey's Executor v. United States	1935	6	Limited the President's power to fire FTC members	Overruled in Trump v. Slaughter (2026)
West Coast Hotel v. Parrish	1937	7	Upheld a state minimum wage law	
NLRB v. Jones and Laughlin Steel	1937	7	Upheld the National Labor Relations Act	
United States v. Carolene Products	1938	7	Deference to economic laws; footnote on protecting minorities	
United States v. Darby	1941	7	Upheld federal wage and hour law	
Wickard v. Filburn	1942	7	Congress may regulate wheat grown for home use	
Minersville School District v. Gobitis	1940	7	Upheld required flag salute in schools	Overruled in Barnette (1943)
West Virginia Board of Education v. Barnette	1943	7	Schools may not force students to salute the flag	
Korematsu v. United States	1944	7	Upheld the wartime exclusion of Japanese Americans	Repudiated in Trump v. Hawaii (2018)
Youngstown Sheet and Tube v. Sawyer	1952	7	President Truman could not seize the steel mills	
Brown v. Board of Education	1954	8	School segregation by law is unconstitutional	
Cooper v. Aaron	1958	2, 8	States are bound by the Court's rulings	
Mapp v. Ohio	1961	8	Illegally seized evidence excluded in state courts	
Baker v. Carr	1962	8	Courts may hear legislative districting claims	
Engel v. Vitale	1962	8	Struck down official school prayer	
Gideon v. Wainwright	1963	8	States must provide lawyers to poor felony defendants	
New York Times v. Sullivan	1964	8	Public officials must prove "actual malice" to win libel suits	
Reynolds v. Sims	1964	8	"One person, one vote" for state legislatures	
Heart of Atlanta Motel v. United States	1964	8	Upheld the Civil Rights Act's public accommodations rules	
Griswold v. Connecticut	1965	8	Struck down a ban on contraceptives for married couples	
Miranda v. Arizona	1966	8	Police must warn suspects of their rights before questioning	Reaffirmed in Dickerson (2000)
Loving v. Virginia	1967	8	Struck down bans on interracial marriage	
Brandenburg v. Ohio	1969	8	Speech protected unless directed to and likely to incite imminent lawless	

Case	Year	Chapter	What it decided, in brief	Later history
			action	
Oregon v. Mitchell	1970	11	Congress could not set the voting age for state elections	Reversed by the Twenty-sixth Amendment (1971)
Furman v. Georgia	1972	9	Death penalty as then applied was unconstitutional	Followed by Gregg (1976)
Roe v. Wade	1973	9	Constitutional right to abortion	Overruled in Dobbs (2022)
United States v. Nixon	1974	9	The President had to turn over the White House tapes	
Buckley v. Valeo	1976	9	Spending limits violate free speech; contribution limits allowed	
Gregg v. Georgia	1976	9	Upheld revised death penalty laws	
Regents of the University of California v. Bakke	1978	9	Struck down racial quotas; allowed race as one factor	Effectively ended by SFFA (2023)
Chevron v. Natural Resources Defense Council	1984	9	Courts defer to agencies' reasonable readings of unclear laws	Overruled in Loper Bright (2024)
Bowers v. Hardwick	1986	9	Upheld a law against same-sex sodomy	Overruled in Lawrence (2003)
Planned Parenthood v. Casey	1992	9	Reaffirmed Roe's core holding with an "undue burden" test	Overruled in Dobbs (2022)
United States v. Lopez	1995	9	Struck down a federal gun-free school zone law as beyond the commerce power	
Dickerson v. United States	2000	3	Congress could not overrule Miranda by statute	
Bush v. Gore	2000	9	Stopped the Florida recount	
Grutter v. Bollinger	2003	9	Upheld law school's use of race in admissions	Effectively ended by SFFA (2023)
Lawrence v. Texas	2003	9	Struck down a law against same-sex intimacy	
Ledbetter v. Goodyear	2007	3	Strict deadline for pay discrimination claims	Changed by the Lilly Ledbetter Fair Pay Act (2009)
District of Columbia v. Heller	2008	10	Individual right to keep a handgun at home	
Citizens United v. FEC	2010	10	Corporations and unions may spend independently on elections	
McDonald v. City of Chicago	2010	10	Second Amendment applies to the states	
NFIB v. Sebelius	2012	10	Upheld the Affordable Care Act's mandate as a tax	
Shelby County v. Holder	2013	10	Struck down the Voting Rights Act's coverage formula	
United States v. Windsor	2013	10	Struck down the federal Defense of Marriage Act's definition of marriage	
Obergefell v. Hodges	2015	10	Constitutional right to same-sex	

Case	Year	Chapter	What it decided, in brief	Later history
			marriage	
Trump v. Hawaii	2018	7	Upheld the presidential travel restrictions	
Janus v. AFSCME	2018	11	Public employees cannot be required to pay union fees	Overruled Abood (1977)
Bostock v. Clayton County	2020	4	Firing for being gay or transgender is sex discrimination under Title VII	
Ramos v. Louisiana	2020	11	Jury verdicts for serious crimes must be unanimous	Overruled Apodaca (1972)
New York State Rifle and Pistol Association v. Bruen	2022	10	Gun laws must fit the nation's historical tradition	
Dobbs v. Jackson Women's Health Organization	2022	10	No constitutional right to abortion	
Kennedy v. Bremerton School District	2022	10	Coach's personal prayer on the field was protected	
West Virginia v. EPA	2022	10	Major questions require clear authorization from Congress	
Students for Fair Admissions v. Harvard	2023	10	Race-conscious college admissions unconstitutional	
Biden v. Nebraska	2023	10	Struck down the student loan forgiveness plan	
Trump v. Anderson	2024	10	States cannot remove federal candidates under Section 3 of the Fourteenth Amendment	
United States v. Rahimi	2024	10	Upheld gun ban for people under domestic violence orders	
Loper Bright Enterprises v. Raimondo	2024	10	Overruled Chevron	
Trump v. United States	2024	10	Former presidents have immunity for official acts	
United States v. Skrmetti	2025	10	Upheld Tennessee's ban on certain medical treatments for transgender minors	
Trump v. CASA	2025	10	Limited "universal" injunctions by lower courts	
Mahmoud v. Taylor	2025	10	Parents could opt children out of certain school lessons on religious grounds	
Learning Resources v. Trump	2026	18	The 1977 emergency powers law did not authorize the tariffs	
Trump v. Slaughter	2026	11, 18	President may remove FTC members at will	
Trump v. Barbara	2026	18	Birthright citizenship applies to children of unlawful or temporary residents	

Appendix C: Glossary

Advisory code. A set of ethics rules that guides conduct but has no formal enforcement process or penalties. The 2023 Code of Conduct for Justices is often described this way because its text includes no enforcement process.

Amicus curiae. Latin for "friend of the court." A person or group that is not a party but files a brief to share its views.

Appellate jurisdiction. The power to review decisions of lower courts. Most of the Supreme Court's work is appellate.

Application. A request for emergency action, such as a stay, filed with a single justice and often referred to the full Court.

Brief. A written argument filed with a court.

Certiorari ("cert"). The order the Court issues when it agrees to review a case. A "cert petition" asks the Court to do so.

Circuit Justice. The justice assigned to handle emergency matters from a particular federal circuit.

Class action. A lawsuit in which one or a few people sue on behalf of a larger group with the same claim, under Rule 23 of the Federal Rules of Civil Procedure in federal court.

Cloture. The Senate procedure to end debate and move to a vote.

Commerce Clause. The part of Article I that gives Congress power to regulate commerce "among the several States." Many federal laws rest on it.

Concurring opinion. An opinion by a justice who agrees with the result, sometimes for different reasons.

Conference. The justices' private meeting to discuss and vote on cases.

Direct tax. A tax the Constitution requires to be divided among the states by population. The Sixteenth Amendment removed that requirement for income taxes.

Dissenting opinion. An opinion by a justice who disagrees with the result.

Docket. The Court's list of cases, and the case number assigned to each one.

Due process. The Fifth and Fourteenth Amendments' guarantee that government may not take life, liberty or property "without due process of law." Courts read it to require fair procedures and, in some cases, to protect certain rights.

Emergency docket. Applications and orders handled quickly, outside the normal briefing and argument process. Critics sometimes call it the "shadow docket."

Equal Protection Clause. The part of the Fourteenth Amendment that says no state may deny any person "the equal protection of the laws."

Executive privilege. A president's claimed right to keep certain communications confidential. United States v. Nixon (1974) held that it is real but not absolute.

Filibuster. Extended debate used to block or delay a Senate vote.

Gerrymandering. Drawing election district lines to help one party or group. A racial gerrymander uses race; a partisan gerrymander uses party.

Good Behaviour. The Constitution's term for how long federal judges serve, understood to mean for life unless removed by impeachment.

Impeachment. A formal charge brought by the House of Representatives. Removal requires conviction by two-thirds of the Senate.

Independent agency. A federal agency whose leaders the president cannot fire at will, usually because a law allows removal only for cause. Humphrey's Executor (1935) allowed this for the Federal Trade Commission, and Trump v. Slaughter (2026) overruled what remained of it.

Injunction. A court order requiring someone to do or stop doing something.

Judicial review. The power of courts to decline to apply laws that conflict with the Constitution.

Judicial supremacy. The idea that the Supreme Court's reading of the Constitution binds the president, Congress and the states, not just the parties in a case.

Jurisdiction stripping. A law that removes certain kinds of cases from a court's power to decide.

Legislative override. A system that lets a legislature reverse a court ruling that struck down a law. Canada has a limited version; the United States does not.

Majority opinion. The opinion that speaks for the Court because a majority of the justices joined it.

Merits case. A case the Court decides after full briefing and, usually, oral argument.

Original jurisdiction. The small set of cases that start in the Supreme Court, such as disputes between states.

Overrule. When the Court declares that an earlier decision of its own is no longer law.

Per curiam. An opinion "by the court," not signed by a particular justice.

Plurality opinion. The opinion joined by the most justices when no single opinion has a majority.

Political question. An issue the courts decline to decide because the Constitution leaves it to the elected branches or because there is no workable legal standard. Rucho v. Common Cause (2019) put partisan gerrymandering claims in this category.

Precedent. An earlier decision that guides later cases. The principle of following precedent is called stare decisis.

Preliminary injunction. A court order issued early in a case, before a final ruling, to keep things as they are or prevent harm while the case goes on.

Quorum. The minimum number of justices needed to decide a case. For the Supreme Court it is six.

Recusal. A judge or justice stepping aside from a case because of a possible conflict of interest.

Remand. Sending a case back to a lower court for further action.

Senior status. A form of semi-retirement for federal judges in which they keep their office and may hear cases, usually with a lighter workload, under 28 U.S. Code Section 371.

Separation of powers. The division of federal power among Congress, the president and the courts, each with its own role and checks on the others.

Stare decisis. Latin for "to stand by things decided." The principle that courts should usually follow precedent.

Stay. An order that pauses a lower court's ruling or a government action.

Supermajority. A vote larger than a simple majority, such as two-thirds. Some reform proposals would require more than five justices to strike down a law.

Syllabus. A summary at the start of an opinion, prepared by the Reporter of Decisions. It is not part of the opinion itself.

Takings Clause. The Fifth Amendment rule that private property may not be taken "for public use, without just compensation."

Term. The Court's yearly session, which begins on the first Monday in October. The "2025 term" ran from October 2025 into 2026.

Term limit. A fixed length of service. The most common proposal for the Court is a staggered, non-renewable 18-year term.

Universal injunction. A court order that blocks a government policy for everyone, not just the parties in the case. Trump v. CASA (2025) held these likely exceed federal courts' power.

Vacate. To cancel a lower court's judgment.

Appendix D: How to Read a Supreme Court Opinion

Supreme Court opinions can run more than a hundred pages. You do not have to read all of it to understand what the Court decided. Here is how I read one.

1. Find the official version. Go to the Court's website, supremecourt.gov, and open "Opinions." Recent decisions are posted as PDF files the day they come out. Older decisions are in the U.S. Reports, also on the site.[803]

2. Read the syllabus first. The first pages, headed "Syllabus," summarize the facts, the holding and the vote. The syllabus warns that it "constitutes no part of the opinion of the Court." It is a guide, not the law. Look for the word "Held:" to find the main ruling.

3. Check the line-up. At the end of the syllabus is a paragraph that names who wrote the main opinion and who joined it, and who wrote concurring and dissenting opinions. That paragraph tells you the vote. Watch for phrases like "joined as to Parts I and II," which mean a justice agreed with only part of the opinion.

4. Read the opinion's first and last pages. Most majority opinions say what they hold in the first page or two and repeat it at the end. The words "We hold" are a good marker.

5. Read the main dissent's first pages. The dissent usually explains in its opening why it disagrees. Reading it is the fastest way to understand the strongest argument on the other side.

6. Separate the holding from the rest. The holding is the rule the case decides. Other comments, called "dicta," may be interesting but are not binding in the same way.

7. Check whether it is still good law. Later cases may have overruled or narrowed it. Appendix B lists the overrulings covered in this book. The Library of Congress's Constitution Annotated keeps a fuller list.[804]

A worked example. In Learning Resources, Inc. v. Trump, decided February 20, 2026, the syllabus says the Court held that the 1977 emergency powers law did not authorize the President's tariffs. The line-up paragraph shows that Chief Justice Roberts delivered the opinion, which six justices joined on its key parts, and that Justice Thomas and Justice Kavanaugh (joined by Justices Thomas and Alito) dissented.[805] In about ten minutes, you know what was decided, by whom, and where to find the other side's argument.

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[804] Supreme Court Decisions Overruled by Subsequent Decision, in The Constitution of the United States of America: Analysis and Interpretation (2016 revision). Congressional Research Service and Library of Congress, via govinfo.gov. 2016. https://www.govinfo.gov/content/pkg/GPO-CONAN-REV-2016/pdf/GPO-CONAN-REV-2016-13.pdf (accessed November 12, 2026).

[805] Learning Resources, Inc. v. Trump, 607 U.S. 229 (2026). Supreme Court of the United States. February 20, 2026. https://www.supremecourt.gov/opinions/25pdf/607us2r12_8nj9.pdf (accessed November 12, 2026).

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