

THEY'VE ONLY JUST BEGUN

How the Far-Right Justices Reshaped
Our Country in the 2021-22 Term



INTRODUCTION

The Supreme Court has just finished one of its most notable and destructive terms in history. America is a fundamentally different country than it was just a year ago. The Far Right justices have shown just how eager they are to transform our country with their ill-gained 6-3 majority. In the term that just ended, the Court has at times even become too radical for John Roberts. He can no longer control the destructive movement that he began to lead when he became chief justice in 2005.

The Court is accomplishing many of the Far Right's political goals. *Roe v. Wade* has been overturned, and we have no constitutional right to abortion care. Church-state separation is a shadow of what it used to be, with a critical 50 year-old Establishment Clause precedent overruled. The Far Right is getting away with "bounty-hunter" laws targeting constitutional rights with impunity. A century-old firearms licensing system has been declared unconstitutional. And we are rapidly backsliding to before the New Deal, when far-right justices imposed legal theories that made it impossible to adopt vitally important health and safety protections.

These decisions are why Donald Trump and Senate Republicans broke nearly every rule in the book to get Neil Gorsuch, Brett Kavanaugh, and Amy Barrett onto the Court. The radical political movement that promoted these three justices was confident that they would regularly rule against the rights and interests of everyday Americans.

We have reached this moment in history because the Far Right has effectively organized for decades, even though their beliefs are still not embraced by most Americans. But they have become strong enough to take advantage of systemic flaws in the nation's political structure – flaws dating back to the nation's founding that were designed to stymie popular democracy. Five of the six right-wing justices were nominated by Republican presidents who came to office after losing the popular vote. And they were confirmed by a Senate controlled by Republicans [who have not represented a majority of Americans since the 1990s](#).

The current majority is sacrificing the Court's legitimacy in the eyes of the American public. Indeed, the longest-serving justice – Clarence Thomas – even refused to recuse himself from participating in a case where his wife's secret machinations against our democracy were implicated. Such abuse of power by the Far Right is becoming the norm in the United States, both on and off the court.

This was Justice Stephen Breyer's last term on the Court. He has now been replaced by Ketanji Brown Jackson. Hers will be a unique voice on the Court, and her elevation is the beginning of the long-term effort to create a new majority. The past year makes clear to the American people what the stakes are in making sure our next justices are more like Jackson.

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People For the American Way

To list just a few examples of what the radical majority did in the 2021-22 term that just ended, they:

- took away a basic constitutional right: the right to abortion care (*Dobbs v. Jackson Women's Health*);
- wrote a roadmap for taking away the constitutional right to privacy, including marriage equality and contraception use (*Dobbs*);
- showed right-wing states how to eliminate constitutional rights they don't like without being taken to court (*Whole Women's Health v. Jackson*);
- overturned a 50 year-old church-state precedent and let public school employees pressure children into praying with them (*Kennedy v. Bremerton School District*);
- elevated the "right" to carry concealed firearms in public over our efforts to stop mass shootings (*New York State Rifle & Pistol Association v. Bruen*);
- severely undermined our ability to adopt meaningful federal health and safety protections, a major step back to before the New Deal (*West Virginia v. EPA*; *NFIB v. Department of Labor*).

These cases and more are discussed in this report.

As Adam Serwer has written in [The Atlantic](#), "the Supreme Court has become an institution whose primary role is to force a right-wing vision of American society on the rest of the country."

THE RIGHT TO ABORTION CARE

The Court's decisions this term in abortion-related cases demonstrated a contempt for the rule of law, a willingness to deceive the American people to achieve that goal, and a disregard for the severe harm they cause.

The Far Right Succeeds in Overturning *Roe v. Wade*: *Dobbs v. Jackson Women's Health*

In a devastating ruling, the Supreme Court majority overturned *Roe v. Wade* and *Casey v. Planned Parenthood*. In [Dobbs v. Jackson Women's Health](#), ultra-conservative justices eliminated the constitutional right to abortion. In so doing, they committed an unprecedented assault on our freedom.

They especially endangered people who are already unable to access equitable healthcare: poorer people; people of color; and LGBTQ+ people. And they craftily laid the groundwork to assault other constitutional rights they have long opposed.

The majority opinion: Alito's leaked draft is now the law

Justice Samuel Alito's leaked draft terrified the nation. But it was "only a draft." Now it is real. He wrote the majority opinion in *Dobbs*, and it was much the same as the draft. He was joined by Justice Thomas and all three justices installed by Donald Trump and Mitch McConnell – Gorsuch, Kavanaugh, and Barrett – making a five-justice majority. (Chief Justice Roberts concurred in the result only – more on that later.)

Alito found it important that the specific word "abortion" does not appear in the Constitution. He acknowledged that the Supreme Court has in the past identified other constitutional rights that are not specifically enumerated in the Constitution. But he wrote that the Court only acknowledges such rights if they are deeply rooted in our history and tradition "and" essential to our Nation's scheme of ordered liberty. ([As others have pointed out](#), Alito distorted that test: it's been "or," not "and." This deception now makes it harder to protect unenumerated rights in future cases.)

Alito presented a [much-criticized](#) version of history in which abortion was regularly unlawful at the time the Fourteenth Amendment was adopted, back in 1868. Therefore, he reasoned, the framers did not understand the new amendment's protection of "liberty" to include the right to make one's own decisions about pregnancy.

(It is worth noting that in 1868, women could not vote, and in many states a woman's property automatically became her husband's upon marriage. In addition, wives were legally considered to have consented to sex with their husbands at any time simply by marrying them, making it legally impossible for a husband to be prosecuted for raping his wife. None of that stopped Alito and his colleagues from deferring to what they claimed the Americans who approved the Fourteenth Amendment had in mind.)

What is the impact of this decision on protections for liberty and the right to privacy?

Roe correctly recognized that the liberty protected by the Constitution must include intimate decisions about family, which the Court had already recognized in the past. For instance, in the 1965 *Griswold* case, it recognized a constitutional right for married couples to use contraception. That is part of the greater constitutional right to privacy. In the 1942 *Skinner* case, the Court recognized the constitutional right not to be involuntarily sterilized and have the decision whether to have children be taken away. In the 1925 *Pierce v. Society of Sisters* case, the Court protected the constitutional right of parents to direct their children's upbringing and education.

And after *Roe*, the Court protected the right to privacy in several ways. These included, in 1977, the right to live with family members (*Moore v. East Cleveland*); also in 1977, the right to marry while in prison

(*Turner v. Safley*); in 2003, the right to same-sex intimacy (*Lawrence v. Texas*); and in 2015, the right to marry someone of the same sex (*Obergefell v. Hodges*).

None of these rights is explicitly mentioned in the Constitution. And the Far Right is deeply hostile to some of them, especially the ones protecting contraception and those recognizing the equality, dignity, and humanity of LGBTQ+ people. Conservatives on and off the court have long attacked the line of Supreme Court cases from *Griswold* onward protecting privacy. And the reasons they offer for why the Constitution does not protect those rights are exactly the same ones that Alito used in *Dobbs* to say that abortion is not protected. In fact, Thomas had a concurrence in *Dobbs* specifically calling on the Court to “reconsider” *Griswold*, *Lawrence*, and *Obergefell*.

Alito’s majority opinion tried to convince people that he wasn’t laying the groundwork to attack these other rights. He tried to reassure people by saying abortion is different from other privacy cases because only abortion involves the “critical moral question” of ending an unborn human’s life.

But that should not give anyone any comfort. All it means is that the “critical moral question” used to justify banning abortion is *different* from the “critical moral questions” purportedly justifying laws banning same-sex couples from having sex or marrying, banning the use of contraception, etc. No rational person can possibly believe that Alito and his colleagues won’t go after the right to privacy writ large. They have certainly made it clear in other contexts they want to undo *Obergefell*. And, as noted above, Thomas said it in this very case.

Overruling precedent

In the past, the Court has declined to overrule precedent simply because a new majority disagreed with it. For instance, *Casey* upheld *Roe*’s central holding, even though not all of the justices in the majority agreed with *Roe*. Generally, there have to be exceptional circumstances to justify overruling a precedent, because so much of the rule of law depends on upholding precedents.

Alito claimed this is just such an exceptional circumstance. For one thing, he claimed that *Roe* “short-circuited the democratic process by closing it to the large number of Americans who dissented in any respect.” But the entire point of a constitutional right is that it is protected from hostile majorities seeking to curtail that right. Alito’s characterization simply put a negative spin on that because he opposes the right to abortion.

Alito also claimed that the “undue burden” standard set forth in *Casey* “has proved to be unworkable.” As evidence, he cited circuit court disagreement across a variety of abortion-related cases as to whether a particular restriction is an undue burden. But that disagreement is the result of having anti-abortion judges who were put on the bench in part to stymie *Casey* and uphold what are obviously undue burdens on the right to abortion. Alito used this judicial defiance of precedent as an excuse to overrule that precedent.

Equal Protection and some irony

One small portion of Alito's opinion is worth mentioning for its sheer chutzpah.

The right to abortion has been identified as coming from the right to privacy protected by the Fourteenth Amendment's Due Process Clause. Alito dedicated a tiny portion of his opinion to the question of why a constitutional right to abortion can't be found in the *Equal Protection Clause*: because that option "is squarely foreclosed by our precedents, which establish that a State's regulation of abortion is not a sex-based classification."

"Squarely foreclosed by our precedents." Yes, the majority said that, in a case where they overruled one of the most important precedents in American history.

Chief Justice Roberts's concurrence

Chief Justice Roberts wrote a concurrence that no other justice joined. He agreed with the majority that Mississippi's abortion ban should be upheld. But he would not have gone so far as to overrule *Roe* and *Casey*. He criticized those cases for focusing on fetal viability as a constitutionally relevant factor. He would have ruled that a pregnant person has a constitutional right to a "reasonable opportunity" for an abortion, but "certainly not all the way to viability."

Roberts criticized the majority for "repudiating a constitutional right we have not only previously recognized, but also expressly reaffirmed." He called it "a serious jolt to the legal system."

Roberts' fealty to precedent is quite situational. He did not mind the "jolt[s] to the legal system" – and to our nation – caused when he and his far-right colleagues jettisoned precedent in cases like *Citizens United* (opening up our elections to unlimited corporate money) or *Janus* (striking down "fair share" fees for public sector unions).

So Roberts would have overruled the core holding of *Roe* and *Casey*, but he would have avoided the headlines generated by an explicit overruling of those cases.

The dissent

Reflecting the profound importance and devastating impact of taking away a constitutional right, the three moderate justices issued a joint dissent. Justices Breyer, Sonia Sotomayor, and Elena Kagan noted that for half a century, *Roe* and *Casey* "have protected the liberty and equality of women." They wrote:

Respecting a woman as an autonomous being, and granting her full equality, meant giving her substantial choice over this most personal and most consequential of all life decisions.

That has now changed. From the moment of fertilization, a pregnant individual “has no rights to speak of. A State can force her to bring a pregnancy to term, even at the steepest personal and familial costs.” Now a state can impose its own moral choice on that individual and “coerce her to give birth to a child.”

The dissenters criticized the majority for trying to hide the scope of their ruling by saying some states may continue to permit abortion care. That is “cold comfort” for the poor individual “who cannot get the money to fly to a distant State for a procedure.” “Above all others,” people without financial resources “will suffer from today’s decision.”

The dissenting justices also note that abortion opponents are already planning to impose interstate restrictions. Some states will prohibit pregnant people from traveling out of state for abortion care, and some may prohibit the receipt of abortion medications from outside the state. Yet even that is not the worst:

Most threatening of all, no language in today’s decision stops the Federal Government from prohibiting abortions nationwide, once again from the moment of conception and without exceptions for rape or incest.

The dissent also warns of the other constitutional rights now at risk from the majority:

And no one should be confident that this majority is done with its work. The right *Roe* and *Casey* recognized does not stand alone. To the contrary, the Court has linked it for decades to other settled freedoms involving bodily integrity, familial relationships, and procreation.

Because all these rights are linked, the majority’s assurances that they don’t mean to threaten those rights cannot be taken seriously. The dissenters said this quite clearly:

Either the mass of the majority’s opinion is hypocrisy, or additional constitutional rights are under threat. It is one or the other.

Texas’s Anti-Abortion Bounty-Hunter Law:

Whole Woman’s Health v. Jackson

In the summer of 2021, Texas passed its notorious anti-abortion bounty-hunter law. The law banned abortions after six weeks of pregnancy. This was before *Dobbs* overturned *Roe* and *Casey*. Not even the law’s supporters pretended that it was constitutional under the law at that time. They knew it wasn’t. They didn’t care. Instead, they came up with a trick to keep it in effect anyway – and the Supreme Court majority allowed it, in [*Whole Woman’s Health v. Jackson*](#).

What the Texas law does

That trick is that the law is enforced by private individuals, not government officials. Any individual who opposes abortion can sue anyone else in the state who helps a person obtain abortion care and make them pay a penalty of \$10,000 for each instance of help. That means a medical official, a clinic volunteer, even a friend or a cab driver who takes someone for abortion care risks financial ruin. With people in Texas living in a constant state of intimidation, clinics closed and the constitutional right to abortion essentially ended in Texas. Clinics went to federal court and sued state officials to block the law from being enforced. But those officials – backed by the anti-abortion political movement – argued that courts should dismiss the lawsuit, because the entities being sued had nothing to do with enforcement.

How the majority ruled

Ominously yet predictably, five far-right Supreme Court justices gave anti-abortion forces what they wanted. In an opinion authored by Justice Gorsuch, the 5-4 majority in *Whole Woman's Health v. Jackson* ordered the case against the state attorney general dismissed.

What the dissenting justices said

This flagrant contempt for the rule of law was too much even for the chief justice, but the hard right bloc no longer needs his vote to hold on to their majority. Roberts wrote a dissent condemning the “array of stratagems” used to “nullify this Court’s rulings” concerning constitutional rights. Justices Breyer, Sotomayor, and Kagan joined him. Sotomayor (joined only by Breyer and Kagan) pointed out that the far-right majority had cleared the way for other states to “target the exercise of any right recognized by this Court with which they disagree.”

After the ruling

The Court did allow some limited types of lawsuits to go forward, but this turned out to be meaningless. The majority ruled that if Texas law allows enforcement by state licensing officials against individual clinics, then there is no federal constitutional bar to suing them to block enforcement of the law. However, this approach would still not allow for a statewide injunction of the law, which is essential. Even worse, two months after the case returned to the lower courts, the Texas Supreme Court ruled that under state law, these licensing officials actually don't have enforcement power. So the clinics' lawsuit against them had to be dismissed, too.

CHURCH-STATE SEPARATION AND RELIGIOUS LIBERTY

Dating back to the 1960s and 1970s, many of the Religious Right's policy goals were impossible to enact because they were blatantly unconstitutional. Their efforts to impose their religious beliefs on others through government officials and the force of law were stymied in the courts. So they set out to capture the courts with judges who would reinterpret the First Amendment and give them a free hand. This term, their investment in such judges paid off, with grave damage to church-state separation and genuine religious liberty.

Pressuring Schoolchildren to Pray and Rewriting the Establishment

Clause:

Kennedy v. Bremerton School District

Trump Justices Gorsuch, Kavanaugh, and Barrett cast deciding votes in a 6-3 decision, written by Gorsuch, that aimed a wrecking ball at church-state separation. The ruling contradicted and abolished decades of Establishment Clause precedent. It also sanctioned religious activity by public school officials risking coercion of students. The June 2022 opinion was in [Kennedy v Bremerton School District](#).

What happened at the school district

The majority and the dissent disagreed strongly on this basic question. According to Gorsuch's opinion, the Bremerton school district disciplined and then fired Joseph Kennedy as an assistant high school football coach because he knelt at the 50-yard line after games and offered a "quiet prayer" while "students were otherwise occupied." According to Gorsuch, "Kennedy's private religious exercise did not come close" to coercing students to participate.

Justice Sotomayor's dissent saw things very differently, as evidenced by several pictures included in the dissent. As she explained, Kennedy had begun praying silently and alone after games. Over time, however, "a majority of the team" joined him, and he clearly promoted and led the prayers. The district reminded him that school policy provided that school staff "shall neither encourage nor discourage" students' own silent or non-disruptive prayer. The policy also stated that religious services or activities "shall not be conducted" on school grounds during school hours or in connection with "any school sponsored or school related activity."

A coach from another team reported that Kennedy had “asked him and his team to join” in the post-game prayer. The district specifically warned Kennedy to cease his activity as violating its policy and the Establishment Clause and offered to help him find a place to pray privately “away from student activities.” Instead, before an upcoming homecoming game, Kennedy “publicize[d] his plans to pray at the 50-yard line.” He claimed he was not encouraging anyone else to participate. When Kennedy began his prayer after the game, numerous members of the public, along with players and coaches from another team, joined him. Despite warning letters from the district, Kennedy continued his now public prayer right after the next few games, joined by students and others.

Kennedy refused to comply or to discuss other possible accommodations with the district. Some parents reported that their children had participated in Kennedy’s prayers “solely to avoid separating themselves from the rest of the team.” The district placed Kennedy on administrative leave and the head coach recommended that the district not rehire Kennedy when his contract expired.

Kennedy then filed suit against the district in federal court. He claimed that it had violated his First Amendment rights to free speech and free exercise of religion. He sought a preliminary injunction against the school district.

What happened in the lower courts

The district court denied the preliminary injunction in a decision affirmed on appeal. After discovery, the district court then granted summary judgment in favor of the school district. The court explained that Kennedy’s prayer practice violated the Establishment Clause. It noted that a coach’s “speech from the center of the football field immediately after” games clearly “conveys official sanction.” The court found that some players felt “compelled to join Kennedy in prayer to stay connected with the team or ensure playing time.”

The Ninth Circuit affirmed. It pointed out that the facts in the record “utterly belie” Kennedy’s claim that he had engaged only in “personal and private” prayer. Several members of the Supreme Court had expressed concern about the case at the preliminary injunction stage. At Kennedy’s request, the Supreme Court agreed to review the case.

How the majority ruled

The right-wing Court majority reversed. They ruled that the court below should grant summary judgment to Kennedy and that the district had violated his First Amendment rights. They held that the Establishment Clause “neither mandates nor permits” the Bremerton school district’s actions.

The majority’s view of the facts played a key role in its conclusion that the First Amendment “double protects” Kennedy’s “quiet, personal” prayers at the 50-yard line. Gorsuch wrote that both the Free Expression and Free Exercise clause protected Kennedy unless the district could show its actions were

“narrowly tailored” to serve a “compelling interest.” Based on a view of previous Establishment Clause precedent just as distorted as its view of the facts, the majority said no.

In particular, the majority maintained that the Court had “long ago abandoned” the *Lemon v Kurtzman* precedent and “its endorsement test offshoot.” According to Gorsuch, it does not violate church-state separation for the government to take action that has the purpose or effect of promoting religion or that would be perceived by a “reasonable observer” as endorsing or promoting religion. Instead, Gorsuch claimed, courts must apply the Establishment Clause only “by reference to historical practices and understandings.” A governmental practice violates the Establishment Clause, Gorsuch declared, only where “history” and the “understanding of the Founding Fathers” say so. This reliance on the majority’s view of “history” eerily resembles the majority’s invocation of “history” in the Court’s recent decisions on abortion and gun safety.

It thus did not matter to the majority that Kennedy’s prayer clearly appeared to have the school district’s “official sanction.” Nor did it matter that high school students felt coerced to pray with Kennedy. Since there was “no evidence” that Kennedy “directly coerced” students to pray with him, there was no violation of the Establishment Clause.

What the dissenting justices said

Justice Sotomayor strongly dissented on behalf of herself and Justices Breyer and Kagan. In addition to her analysis of the facts, Sotomayor carefully showed that the majority had badly misinterpreted prior case law. It is this ruling, she noted, that first “overrules” *Lemon*, and improperly questions “decades” of precedent on improper government endorsement of religion. The majority inappropriately relied on “pluralities, concurrences, and dissents” by current Court members to “effect fundamental changes” in First Amendment jurisprudence, she went on, “all the while proclaiming that nothing has changed at all.” She explained that the decision clearly undermines our country’s “longstanding commitment to the separation of church and state.”

Sotomayor went on to show more specific errors in the majority’s opinion. Its free speech findings, she noted, ignore the settled principle that as a public employee, Kennedy “accepted certain limitations” on his own speech when on the job. Similarly, she explained, his status as a school official means that his “participation in religious exercise” can “create Establishment Clause” concerns. The facts demonstrate, she went on, that precisely this problem occurred in this case. They also show, she explained, that the district’s restrictions on Kennedy were “narrowly tailored” to prevent violating the Establishment Clause and were therefore valid.

Sotomayor particularly criticized the majority’s “toothless” version of the principle that government officials should not coerce others, particularly impressionable students, to participate in religious activities. The fact that Kennedy did not require or direct student participation, she explained, remains irrelevant under applicable precedent. As the Court previously held, the government “may no more use social pressure to enforce orthodoxy”, as Kennedy clearly did, “than it may use more direct means.”

Dangers of the Court's ruling

As Sotomayor concluded, the majority ruling improperly “elevates one individual’s interest in personal religious exercise” over “society’s interest in protecting the separation between church and state.” It endangers the rights of “particularly vulnerable” public school students. And it “sets us down a perilous path in forcing States to entangle themselves with religion, with all of our rights hanging in the balance.”

The longer term consequences of the right-wing majority’s decision remain unclear. Because Gorsuch’s opinion so plainly distorts the facts to portray Kennedy’s coercive prayer as “private” activity, it may leave the door open for rulings against more obviously coercive Establishment Clause violations. But it remains more likely that the ruling will further embolden far right efforts to promote particular religious views to public school students, perhaps even undermining established precedents that protect against teacher-led prayer in public school classrooms. The case presents yet another example of the harm to all of our rights that the Trump-manufactured Supreme Court majority causes to us all.

Forcing a State to Pay for Religious Education:

Carson v. Makin

Shortly before *Kennedy* was decided, the Trump-solidified hard-right majority on the Supreme Court took a grave step in their long-term effort to severely undermine separation between church and state, as well as true religious liberty, in [Carson v. Makin](#). The 6-3 majority’s ruling requires Maine to use taxpayer money to pay for children’s religious education. As Justice Sotomayor put it, they have transformed our nation’s longstanding constitutional commitment to separation of church and state into a constitutional violation.

Maine’s tuition program

In rural areas without public high schools, Maine uses private schools to deliver a public high school education to students. Parents in those parts of the state choose a private school for their children, and Maine reimburses them the tuition. To protect church-state separation, Maine does not fund sectarian schools that would use the money for religious education.

How the majority ruled

The majority ruled that Maine was discriminating against religion in violation of the Constitution. They held that this conclusion follows from the “principles” of two recent church-state cases issued during the past five years, since Justice Gorsuch filled the vacancy that Republicans kept open in 2016 to block President Obama from replacing the late Justice Antonin Scalia.

In 2017’s [Trinity Lutheran v. Comer](#) case, the Court ruled that a state’s grant program for organizations to improve their playgrounds cannot exclude churches even though the state constitution prohibits funding

churches. The majority classified that as discrimination on the basis of the church's religious identity or "status." They went further in 2020's *Espinoza v. Montana Department of Revenue*. In that case, they required Montana to include sectarian schools in its program funding scholarships for private schools. But they again classified Montana's decision as discriminating against schools on the basis of their "status" as religious. They carefully avoided the question of what happens when the state knows the school will actually use the funds for its religious and not just secular education.

The Maine case answered that question, in an opinion written by Chief Justice Roberts and joined by his fellow ultra-conservatives. Roberts wrote that *Trinity Lutheran* and *Espinoza* set out principles that apply when the state tries to avoid subsidizing religious use of taxpayer funds. Even though the conservatives in those decisions made a point of limiting them to "status-based" distinctions, Roberts wrote that "those decisions never suggested that use-based discrimination is any less offensive to the Free Exercise Clause."

It was a classic bait-and-switch operation. In fact, Justice Kagan had joined the *Trinity Lutheran* majority opinion, perhaps in an effort to limit it to playgrounds.

What the dissenting justices said

The remaining moderate justices had two separate dissents discussing the harm of the majority decision.

Justice Breyer wrote a dissent, joined by Justice Kagan and (in part) Justice Sotomayor. Breyer pointed out that the First Amendment has two religious clauses: the Establishment Clause and the Free Exercise Clause. He criticized the majority for "pay[ing] almost no attention to the words in the first Clause while giving almost exclusive attention to the words in the second."

Breyer noted that the Court has in the past allowed a state to fund religious education if it chooses, it has never before ruled that a state *must* do so. This reinterpretation of the First Amendment opens the door to dangerous possibilities. For instance, does a school district that pays for public schools now have to pay equivalent funds to parents who wish to send their children to religious schools? In what other circumstances will a state now have to pay people for the religious equivalent of a secular benefit the state provides?

Breyer quoted from a 1963 case when the Supreme Court ruled that Bible readings in public schools violated the Establishment Clause. In that case, one of the justices specifically noted "the increased risk of religiously based social conflict when government promotes religion in its public school system." Although that was more than half a century ago, Breyer recognized that the same "potential for religious strife is still with us," clearly an understatement at a time when aggressive Christian nationalism threatens our society. Justice Breyer emphasized that to truly protect religious liberty, taxpayers should not be forced to subsidize religion.

Justice Sotomayor wrote a separate dissent that did not mince words, even calling the ruling "perverse." She observed that "in just a few years, the Court has upended constitutional doctrine." She noted that the

Court’s “increasingly expansive view of the Free Exercise Clause risks swallowing the space” states have always had to respect both free exercise and church-state separation. She concluded her dissent with a warning:

What a difference five years makes. In 2017 [*Trinity Lutheran*], I feared that the Court was “lead[ing] us . . . to a place where separation of church and state is a constitutional slogan, not a constitutional commitment.” Today, the Court lead us to a place where separation of church and state becomes a constitutional violation. ... With growing concern for where this Court will lead us next, I respectfully dissent.

Reimagining church-state separation as a constitutional violation is exactly what the Religious Right has sought for decades – and a key reason they have worked so long to capture the courts.

Forcing a City to Fly a Religious Flag:

Shurtleff v. Boston

In [*Shurtleff v. Boston*](#), decided several weeks before *Kennedy*, the Court weakened church-state separation and required the city of Boston to fly a religious flag. However, while all nine justices agreed on the outcome, they did not agree on the reasoning. The majority opinion did much less damage than it could have. This may have been a compromise that the remaining moderates agreed to in order to avoid an even worse outcome.

What the case was about

The case involved Boston’s practice of agreeing to temporarily fly flags requested by private groups associated with events they are holding in the city. The flags are often those of another country, as a way to celebrate Bostonians’ various national origins. The city has also flown flags of groups such as the Bunker Hill Association, the National Juneteenth Observance Foundation, and Boston Pride.

Harold Shurtleff wanted the city to fly a Christian flag, and Boston said no due to church/state concerns. If the city flew a religious flag, that could be seen as the government promoting a specific religion in violation of the First Amendment’s Establishment Clause.

How the majority ruled

The Court ruled that in the circumstances of this case – where the city routinely agrees to fly flags upon request without even looking at them – the flag wasn’t “government speech.” That meant there was no church-state concern. Instead, Boston had created a forum for community members to “speak” via their flags (like speaking in a public park), but excluded one speaker because of what he wanted to say. Under that framing, the city violated Shurtleff’s Free Speech rights.

Thomas, Alito, and Gorsuch agreed that the city was wrong, but not with the majority's reasoning. They proposed a different test for distinguishing government speech from private speech facilitated by the government: For them, government speech occurs only when a government purposefully expresses a message of its own through people authorized to speak on its behalf. This could make it harder to limit state-sponsored religious displays than the majority's approach, which looks at factors like how the public perceives the message.

In addition, Thomas and Gorsuch criticized the city's church-state separation concerns as a cover for anti-religious hostility. This foreshadowed their rewriting of the Establishment Clause a few weeks later in the *Kennedy v. Bremerton School District* case.

GUN SAFETY

The Supreme Court majority issued a dangerous ruling in a Second Amendment case that does even more damage than the 2008 *Heller* decision, when they first transformed the Second Amendment.

Weakening Gun Safety Protections:

NY State Rifle & Pistol Association v. Bruen

In [*New York State Rifle & Pistol Association Inc. v. Bruen*](#), the far-right majority struck down a New York law dating back to 1911 that requires a permit to carry a concealed firearm. The ruling weakened the ability of states and cities to have reasonable restrictions on firearms. In so doing, it also threatened the lives of people throughout the country.

New York's licensing system

New York requires an individual to show "proper cause" in order to get a license to carry a concealed firearm. Proper causes include a specific, individualized, non-speculative belief that a firearm is needed for self-defense. A general desire to defend oneself from crime in high-population cities is not sufficient.

New York state residents Robert Nash and Brandon Koch applied for licenses to carry arms. The state issued them licenses to carry concealed handguns outside the home for hunting and target practice. However, they did not get licenses to carry concealed firearms for self-defense in areas frequented by the general public. Joined by the New York affiliate of the NRA, they sued, claiming their Second Amendment rights were violated.

How the majority ruled

In a 6-3 opinion written by Justice Thomas and joined by his fellow ultra-conservatives, the Supreme Court ruled that the state had violated the two men's Second Amendment right to carry firearms for self-defense. The majority ruled that the amendment gives "law-abiding citizens with ordinary self-defense needs [the] right to keep and bear arms in public for self-defense."

This went even farther astray from the actual meaning of the Second Amendment than the Court's 2008 decision in *Heller*. That was when the majority first crossed out the first half of the amendment and ruled that it wasn't limited to bearing arms for authorized military use. But even Justice Scalia's opinion in that case did not open the door to today's ruling. While *Heller* found a right to self-defense in the home, Scalia stressed that the Court was not undermining longstanding gun safety measures. That 2008 majority looked at American history in making its interpretation and noted with approval that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues."

But with three Trump justices, the current majority has become far more extreme.

The six-justice bloc held that when assessing firearms restrictions, judges should not engage in the type of scrutiny that they do in other cases. Instead, they should just analyze history. (Of course, real historians actually are trained to do historical research, unlike justices, whose academic and professional training is completely different. In addition, real historians do their own research and develop expertise over a lifetime. They do not rely exclusively on material and arguments presented to them by parties with a vested interest in their historical conclusions.)

Under the new approach, a limitation on firearms is constitutional if its burden on the right to self-defense is comparable to those in historical laws that existed in 1791 (when the Second Amendment was adopted) and 1868 (when it became applicable to the states via the Fourteenth Amendment). Even if the "burden" is comparable, judges still must strike the modern law down unless that "burden" is "comparably justified."

The majority noted that historical laws prohibited firearms in "sensitive places," but they claimed to know of only three such places: legislative assemblies, polling places, and courthouses. It is now up to modern judges to determine if "new" sensitive places are analogous, so that gun restrictions in those places can be upheld.

What the dissenting justices said

Justice Breyer wrote the dissent, joined by Justices Sotomayor and Kagan. The dissent sharply criticized the majority's "history-only" approach to Second Amendment cases. As Breyer acknowledged. "I am not a historian, and neither is the Court."

He contended that the majority got its historical analysis wrong: He cited numerous public-carry restrictions in the founding era, as well as the era right after the Civil War. Thomas and the other far-right justices reached their factual conclusions about previous laws “[o]nly by ignoring an abundance of historical evidence supporting regulations restricting the public carriage of firearms.”

In addition, Breyer wrote, the majority “refuses to consider the government interests that justify a challenged gun regulation, regardless of how compelling those interests may be.” He noted “the potentially deadly consequences” of that refusal. The dissent listed a long series of mass shootings that have killed innocent people, destroyed families, and horrified the nation – the recent mass shootings in Buffalo, New York and Uvalde, Texas are just a small part of a frighteningly long list. Breyer noted that with 277 reported mass shootings so far this year, there has been an average of more than one per day.

The dissent also explained that mass shootings are only part of the problem. Breyer discussed the violent and often fatal impact of easy access to firearms in situations of road rage, domestic abuse, interactions with police, political protests, and suicidal depression.

Who else is affected

New York is one of six states plus the District of Columbia requiring good cause for a public-carry license. Those states contain a quarter of the nation’s population, and they were immediately affected by the decision.

But the outcome of this case will affect people in every part of the country. Even though only a few states have licensing procedures similar to New York’s, all firearms safety laws are now subject to the new type of analysis that *Bruen* orders. So even laws that have been upheld since *Heller* can be challenged again, with lower court judges directed not to engage in the type of scrutiny and balancing of interests that previously led to upholding those laws.

Breyer wrote:

The primary difference between the Court’s view and mine is that I believe the [Second] Amendment allows States to take account of the serious problems posed by gun violence that I have just described. I fear that the Court’s interpretation ignores these significant dangers and leaves States without the ability to address them.

DEMOCRACY AND THE RIGHT TO VOTE

The majority blocked an important limit on money in politics and upheld efforts to weaken the electoral strength of Black voters.

More Corrupt Money in Politics:

FEC v. Ted Cruz for Senate

In May 2022, the far-right Supreme Court majority issued yet another ruling undermining efforts to address corrupt dealings through campaign contributions. In *Federal Elections Commission v. Ted Cruz For Senate*, they gave special interests an opening to enrich the personal wealth of elected officials.

Ted Cruz's loan to his campaign

Ted Cruz's 2018 reelection campaign was a lot more competitive than many people had expected. That meant it cost a lot more. The day before Election Day, Cruz lent his campaign \$260,000 for a quick cash infusion. And he won the election.

So how did he get his \$260,000 back? After all, the campaign didn't have a lot of money to spare.

He did it by using campaign funds that came in *after* his victory.

Federal laws on campaign loans

Using post-election donations to pay back a loan from the candidate raises special ethical issues. Donors know they are backing the winner, someone who will be in a position of power and influence for several years. They also know their donation will be used to enrich the candidate personally, unlike ordinary campaign contributions.

To limit the obvious appearance of corruption, Congress limits how much a nominee can reimburse themselves after the election. For the first \$250,000 of the loan, the campaign can pay it back any time. But for anything beyond that, the campaign has 20 days after the election to pay it back, and it can only use contributions that came in before Election Day. After that 20-day period, nothing above \$250,000 can be repaid; that part of the loan gets reclassified as a contribution by the candidate to their own campaign.

But Cruz was out \$260,000. So he went to court and argued that the \$250,000 limit violated his constitutional rights.

How the majority ruled

The case was decided in the 6-3 alignment we have come to expect. Chief Justice Roberts wrote the majority opinion, joined by Thomas, Alito, Gorsuch, Kavanaugh, and Barrett.

They ruled that the \$250,000 violates the First Amendment by burdening candidates who want to fund their campaigns through personal loans. They rejected the argument that the limit serves the interest of

preventing corruption, which they defined narrowly to exclude buying influence and access. According to the majority, the fact that individual contributions are capped at \$2,900 per election already prevents corruption, so the government had to show a need for this “additional” regulation.

What the dissenting justices said

Justice Kagan wrote the dissent, joined by Breyer and Sotomayor. She pointed out the obvious corruption when a winning candidate with a “gaping” hole in their personal finances solicits donations that will then be redirected straight to the candidate. She describes the “crooked exchanges” Congress set out to address:

And as they paid him, so he will pay them. In the coming months and years, they receive government benefits—maybe favorable legislation, maybe prized appointments, maybe lucrative contracts. The politician is happy; the donors are happy. The only loser is the public. It inevitably suffers from government corruption.

Kagan pointed out that political contributions “that will line a candidate’s own pockets, given after his election to office, pose a special danger of corruption.” Everyone has an incentive for what she rightly calls “dirty dealing.”

She lamented that the majority “greenlights all the sordid bargains Congress thought right to stop.” The decision “can only bring this country’s political system into further disrepute.”

Blocking a majority-Black congressional district in Alabama

Merrill v. Milligan

Trump Justices Gorsuch, Kavanaugh, and Barrett cast deciding votes in a 5-4 “shadow docket” ruling that allows Alabama to use a redistricting map it designed. This was despite a lower court ruled that it discriminates against Black voters. The February 2022 ruling was in [Merrill v. Milligan](#).

Alabama’s Discriminatory Redistricting Map

After the 2020 census, Alabama approved a new map that redrew its seven congressional districts. Black voters challenged the map as discriminatory. They pointed out that even though Black voters have increased to 27% of the state’s voters, they make up a majority in only one of the districts. A special three-judge court, including two Trump district judges, heard the case.

The court agreed that the map is discriminatory because it gives Black voters “[less opportunity](#) than other Alabamians to elect candidates of their choice to Congress.” It ordered the state immediately to create

new maps that would include a second majority Black district. Instead, Alabama asked the Supreme Court to stay the court order and reconsider the case.

How the majority ruled

In yet another “shadow docket” ruling with no explanation, the three Trump justices and Justices Thomas and Alito granted the state’s request. By a 5-4 vote, the Court stopped the lower court order and agreed to review the decision on the merits. That review will likely last until after the 2022 elections. This forces use of the state’s discriminatory map in 2022.

Although the majority did not issue any opinion, Justice Kavanaugh wrote a concurring opinion joined by Justice Alito. Kavanaugh claimed that the stay of the lower court order was proper under the so-called “*Purcell* principle.” Under that view, he explained, lower courts “ordinarily should not enjoin a state’s election law” too “close to an election.” According to Kavanaugh, the “late-breaking injunction” violated that principle. If the Court eventually affirms the lower court’s analysis, he wrote, the injunction would apply to “congressional elections that occur after 2022.

What the dissenting justices said

Chief Justice Roberts’s dissent: Chief Justice Roberts dissented from the majority’s order to stay the injunction and allow the state’s map to be used in 2022. He explained that the court had “properly applied existing law in an extensive opinion with no apparent errors for our correction.”

He did agree with the decision to review the case on the merits, however. He maintained that current case law on “vote dilution” claims like those made in this case has “engendered considerable disagreement and uncertainty” and that the Court should “resolve” the “uncertainties” in reviewing the case. In other words, Roberts disagreed about staying the lower court order, but may well agree to revisit and weaken vote dilution rules in the future.

Justice Kagan’s dissent: Justice Kagan wrote a strong dissent, joined by Justices Breyer and Sotomayor. She vigorously disagreed with the claim that the lower court order violated the *Purcell* principle. She pointed out that the district court rejected that argument because we are not “just weeks before an election” as in that case.

Instead, Kagan continued, the general election is “nine months away,” the first day of absentee voting for the primaries comes “more than two months after” the lower court’s order, and the state had enacted its initial plan in “less than a week.” She noted that the Supreme Court has “previously denied stays of districting orders issued at similar times.” Alabama is “not entitled to keep violating Black Alabamians voting rights,” she wrote, “just because the court’s order came down in the first month of an election year.”

Justice Kagan carefully explained how the district court had correctly “applied established legal principles to an extensive evidentiary record.” That record resulted from “seven days of testimony” and “more than 1,000 pages of briefing.” The court concluded that Alabama’s redistricting plan “unlawfully diluted” the votes of the state’s Black population under the Voting Rights Act by failing to create a second majority-Black district. Accepting Alabama’s view, Kagan maintained, “would rewrite decades of this Court’s precedent” about the Act and minority voting rights.

The state showed no good reason to do so on the merits, she continued, and certainly not to stay the lower court injunction without explanation. The decision is “one more in a disconcertingly long line of cases,” Kagan concluded, where the Court “uses its shadow docket to signal or make changes in the law, without anything approaching full briefing or argument.” Even more importantly, she wrote, the ruling harms “Black Alabamians” who saw “their electoral power diminished – in violation of a law that this Court once knew to buttress all of American democracy.”

Dangers of the Court’s Ruling

Experts quickly recognized the harm and dangers of the Court’s ruling. Election law specialist [Rick Hasen](#) has explained that it is “ominous” in several ways. In addition to its effects in 2022, it could result in “radical reworking” of voting rights law as applied to redistricting cases that would seriously harm redistricting and decrease “minority representation” in Congress and state legislatures. In addition, he wrote, the majority’s use of the “*Purcell* principle on steroids” could make it difficult or impossible to successfully challenge discriminatory redistricting plans.

Blocking a majority-Black state legislative district in Wisconsin:

Wisconsin Legislature v. Wisconsin Elections Commission

In a shadow docket ruling in [Wisconsin Legislature v. Wisconsin Elections Commission](#), the Supreme Court majority blocked Wisconsin from temporarily adopting a majority-Black state legislative district during a lawsuit over redistricting.

What happened in Wisconsin

State officials in Wisconsin have worked on the redrawing of voting district lines for the state legislature based on the 2020 census. An impasse developed between the Republican-controlled state legislature and Democratic governor Tony Evers. The legislature wanted a map that would [shrink](#) the number of majority-minority districts from six to five. This would make it harder for minority voters to elect candidates of their choice to office. Governor Evers favored a map that would increase from six to seven the number of districts in which a majority of voters are racial minorities.

A lawsuit on the issue reached the Wisconsin Supreme Court. The court explained that new maps should make the least change possible. Given the alternatives, the court found, the governor’s map was

preferable for now. He had maintained that Section 2 of the Voting Rights Act (VRA) required the addition of a majority-minority district given population changes. The court [left open](#) the possibility that this conclusion could be challenged and the maps redrawn later.

The Republican state legislature, however, wanted immediate action. It asked for U.S. Supreme Court review. It sought an emergency order to stay the state supreme court decision.

How the majority ruled

In an unsigned opinion, and without full briefing and oral argument, the Court majority went even further. It granted review and reversed the Wisconsin court decision to adopt the governor's map. It did not order the adoption of the legislature's map, but sent the case back to the state court to approve new maps before the state's August primaries. The majority included Trump justices Gorsuch, Kavanaugh, and Barrett.

According to the majority, the governor committed error by claiming that the VRA required the creation of another majority-minority district. The state court, they maintained, should have applied strict scrutiny to such a race-conscious plan. Specifically, it should have considered "whether a race-neutral alternative that did not add a seventh majority-black district would deny black voters equal political opportunity." The state court could "take additional evidence" and reconsider the governor's plan, but it had to pass the Court's test in order to be adopted.

What the dissenting justices said

Justices Sotomayor and Kagan strongly dissented from what they called the majority's "unprecedented" ruling. They criticized the majority for "summarily" reversing the state supreme court for its "failure to comply with an obligation" to use strict scrutiny that "is hazy at best." They pointed out that the state court had adopted the Governor's plan primarily because it was "vastly superior" on its "least change" criteria, and that all parties had agreed that some minority-majority districts were required. Under these circumstances, they went on, the majority improperly imposed the strict scrutiny requirement. Indeed, they noted, the majority pointed to "no precedent requiring" such an analysis.

The dissenters also noted that the majority's "extraordinary intervention" was "unnecessary." The state court had "rightly preserved" the ability of others to challenge the new maps on VRA or constitutional grounds. The Court should have "allowed that process to unfold." That would have led to a complete judicial consideration and resolution of the VRA issue. Instead, the dissent concluded, the majority had "further complicat[ed]" matters with "legal confusion through a summary reversal."

What does all this mean?

Litigation will clearly continue in Wisconsin on new state legislative districts. It remains possible that the state court will re-adopt the governor's plan after hearing more evidence. Indeed, it's quite possible that

Justice Breyer pushed for this in the Court's ruling and accordingly did not dissent. But given divisions on the state supreme court and the new mandate imposed by the Court majority, the chances of a new plan that harms minority voting rights have clearly increased. And this new mandate will likely harm minority voting rights in future cases.

Election law expert [Rick Hasen has explained](#) that this case sends "another signal of a conservative supermajority" of the Court "showing increasing hostility" to the VRA. Based on "skimpy briefing" and no oral argument, the majority announced a new rule concerning majority-minority districts. That rule is "hostile to minority voting rights" by making it harder to adopt such districts. In short, the majority "continues to chip away" at the VRA. It is "killing off the last major protection for minority voters from discriminatory districting plans."

The 6-3 majority issued a similar order in a Louisiana case shortly before the end of the term and blocked the temporary creation of a second majority-Black congressional district for the 2022 midterm elections. The outcome of the Alabama case next term will apply to Louisiana. As the [New York Times](#) recognized, this shows the majority is "open to weakening the role race may play in drawing voting districts for federal elections."

POLICE ACCOUNTABILITY

No person in the United States should live in fear of unjustified violence or other abuse of power at the hands of law enforcement. In a nation governed by the rule of law, police and other law enforcement officials are held accountable for their misdeeds. Unfortunately, the far-right majority on the Supreme Court continues to let such individuals escape accountability. This encourages more abuse by law enforcement and highlights the need for systemic change.

Accountability for abusive federal Border Patrol agents

Egbert v. Boule

Trump Justices Gorsuch, Kavanaugh, and Barrett cast deciding votes in a 6-3 decision that made it much harder for even US citizens to seek damages and accountability from US Border Patrol (CBP) agents for harmful misconduct. Justice Thomas wrote the 6-3 June 2022 opinion in [Egbert v. Boule](#).

What happened at the border

Robert Boule owns and operates a small inn in Washington state, very near to the Canadian border. Boule is a US citizen and has frequently cooperated with the US Border Patrol. This has included answering inquiries about his hotel guests.

In 2014, he answered questions about a guest arriving at his inn who had traveled overseas. The agent, Erik Egbert, said nothing. But when the guest arrived, Egbert pulled up behind the car carrying the guest and approached the vehicle with no explanation. When Boule asked Egbert to leave, he refused with no explanation.

According to Boule's complaint, Egbert then pushed Boule against the car and "grabbed him and pushed him aside and onto the ground." Boule had to seek medical treatment for his injuries. Egbert found no problem with the guest's immigration status and left.

Boule later sued Egbert for misconduct, including improper use of excessive force under the Fourth Amendment. Because a constitutional violation by a federal agent constituted a key part of the case, Boule relied in part on the Supreme Court's long-established *Bivens* doctrine. That rule authorizes lawsuits to hold federal officials accountable under the constitution for constitutional violations that cause serious injury. But a district court dismissed the case without a trial.

On appeal, a Ninth Circuit panel reversed, holding that Boule should have the opportunity to prove his case at trial. The full Ninth Circuit declined to review the case, despite harsh [dissents](#) primarily by Trump judges. One dissenter called *Bivens* an improper "judicial usurpation" of authority, about which he claimed the Supreme Court has since had "buyer's remorse." As the panel explained, however, numerous courts around the country have authorized such lawsuits claiming excessive force "against border patrol agents under the Fourth Amendment."

How the majority ruled

Unfortunately, the Court majority proved the Trump dissenting judge exactly right and reversed the decision below. Consequently, Boule will have no chance to prove his case and get no accountability in court for the agent's misconduct.

Thomas maintained that despite *Bivens*, the Court has "at best, uncertain" authority to permit someone injured by federal officers' unconstitutional misconduct to sue under the Constitution. He claimed that under the law since *Bivens*, even a "single sound reason" to decide that Congress rather than the courts should determine whether someone can sue for such injury has become sufficient. He asserted several such reasons in this case. He claimed that the Court had never recognized the ability to sue Border Patrol agents under *Bivens*, and that previous cases suggested this should be Congress' decision because of potential "national security implications."

Thomas also maintained that Congress had provided “alternative remedies” because people like Boule can file grievances against agents, as Boule did here. Thomas also reversed the court of appeals’ decision to allow Boule to sue under the First Amendment for retaliation, a result that drew no dissent. Trump justice Gorsuch went even further in a separate concurring opinion. He stated explicitly that *Bivens* was a “misstep” and that the Court should now decide that there is “no place” for judicial decisions to authorize lawsuits to hold federal officials accountable for violating the Constitution.

What the dissenting justices said

Justice Sotomayor strongly dissented on behalf of herself and Justices Breyer and Kagan. She explained that the majority ruling “contravenes precedent” concerning federal agent liability for constitutional misconduct under *Bivens*. Indeed, she went on, it will “strip many more individuals who suffer injuries at the hands of other federal officers” of “an important remedy.”

Sotomayor explained specifically the errors in Thomas’ rationale. She noted that this case closely resembled *Bivens* because it concerned federal agents’ alleged use of “constitutionally unreasonable force” against someone. “Existing precedent,” she wrote, clearly “permits Boule to seek compensation for his injuries in federal court” and does not support Thomas’ “single, sound reason” rationale. Only five years ago, she pointed out, the Court emphasized the “powerful reasons” to retain the *Bivens* remedy in the Fourth Amendment context. The fact that Egbert was a border patrol and not a drug agent, she went on, “plainly” is not a “meaningful” distinction that would warrant different treatment of his use of “constitutionally excessive force.”

If it were, she noted, then the Court would need to reconsider *Bivens* on the excessive use of force by agents of each of the “83 different federal law enforcement agencies” with authority to act as Egbert did. The facts of the case, moreover, show that no “national security implications” existed, a claim Sotomayor called “sheer hyperbole.” And the existence of a grievance procedure, Sotomayor went on, “does not provide Boule with any relief” for his injuries. This remains particularly true since the grievance procedure produced no relief in this case and Congress had not “explicitly declared” that the procedure would substitute for a lawsuit by injured parties.

Who else is affected

Sotomayor elaborated on the “severe” consequences of the Court’s ruling. Almost 20,000 CBP agents have now become “absolutely immunized” from any liability for damages, “no matter how egregious the misconduct or resultant injury.” This can include actions “up to 100 miles away from the border.” The holding “shrinks *Bivens*” in the “law enforcement sphere where it is needed most.”

The majority’s ruling, Sotomayor concluded, “ignores our repeated recognition of the importance of *Bivens* actions” to help prevent and remedy “unconstitutional conduct by federal law enforcement officers.” It “closes the door” of the federal courthouse to “many who will suffer serious federal

constitutional violations at the hands of federal agents.” And it presents an all too typical example of damaging actions by the Supreme Court after the addition of three Trump justices.

No accountability for unconstitutional interrogation by police:

Vega v. Tekoh

Trump Justices Gorsuch, Kavanaugh, and Barrett cast deciding votes in a 6-3 decision that people cannot try to hold police responsible for misconduct concerning interrogations. The majority ruled that a person interrogated without receiving required *Miranda* warnings cannot sue offending police officers. Justice Alito wrote the June 2022 opinion in [Vega v Tekoh](#).

Failure to read a suspect his rights

Terence Tekoh worked as a nursing assistant in a Los Angeles medical center. Deputy sheriff Carlos Vega and others interrogated Tekoh “at length” about a report that he had assaulted a patient. The police failed to provide required *Miranda* warnings, however, and it was disputed whether they also used “coercive” tactics. Tekoh eventually provided a written statement that admitted responsibility and prosecutors used it against him at trial. The trial nevertheless resulted in a finding of not guilty.

Tekoh then filed a civil rights lawsuit in federal court against Vega and other police. He contended that they had violated his constitutional rights under the Fifth Amendment by interrogating him without providing *Miranda* warnings. The trial judge refused to instruct the jury that this conduct violated the Constitution, and Tekoh lost.

On appeal, the Ninth Circuit found for Tekoh. They ruled that the “use of an un-*Mirandized* statement against” someone “violates the Fifth Amendment and may support” a federal civil rights lawsuit against police like Vega. The police sought rehearing by the full Ninth Circuit. The court denied rehearing despite a harsh dissent by Trump judge Bumatay and others. The Supreme Court decided to hear the case.

How the majority ruled

The right-wing Court majority reversed. They ruled that people cannot file federal civil rights lawsuits to help hold police accountable for violating *Miranda* rights.

Lawsuits under 42 U.S.C. 1983 can provide damages against police and other officials who violate people’s rights “secured by the [U.S.] constitution and laws.” According to the majority, however, the constitution does not protect the right to be warned about the right against self-incrimination and to have a lawyer present during questioning. Instead, according to Alito, *Miranda* “imposed” only “prophylactic rules” that help safeguard the Fifth Amendment right against self-incrimination.

Alito conceded that *Miranda* could at least be considered federal “law.” But he maintained that this “law” does “not include the right to sue for damages” under 42 U.S.C. 1983.

Alito also claimed that allowing such lawsuits against offending police “would cause many problems.” These could include, he asserted, causing “friction” between federal and state courts. Alito concluded that the “exclusion” of un-*Mirandized* statements from criminal trials (which did not happen in Tekoh’s case) was generally a “sufficient remedy.” Accordingly, the majority ruled that people like Tekoh cannot sue police to help hold them accountable for violating *Miranda*.

What the dissenting justices said

Justice Kagan strongly dissented on behalf of herself and Justices Breyer and Sotomayor. She carefully showed that past Court decisions had established that *Miranda* “is a ‘constitutional rule.’” And “that rule,” she explained, “grants a corresponding right” under the Constitution to people interrogated by police. The majority’s decision, she went on, contradicts that principle. It improperly “prevents” people from “obtaining any redress when police violate their rights under *Miranda*.”

Kagan also pointed out that the majority’s ruling contradicts previous Court precedent that “rejected” efforts to “limit the types of constitutional rights” protected by 42 U.S.C. 1983. The Court has found *Miranda*, she noted, “necessary to safeguard the personal protections of the Fifth Amendment” despite “friction” with local government.

Who else is affected

Justice Kagan elaborated on the consequences of the majority’s holding. All too often, a statement by a person to police that violates *Miranda* “will not be suppressed” at trial. “And sometimes, as a result,” she continued, a person “will be wrongly convicted and spend years in prison.” Even if another court eventually reverses the conviction, “what remedy does he have for all the harm he has suffered?” The majority, Kagan concluded, severely “injures the right by denying the remedy.”

The ruling also seriously harms efforts to promote police accountability. Police violation of people’s rights concerning improper interrogation continues today. For example, Oakland public defenders recently charged police with “[routinely](#)” violating *Miranda* and related protections concerning interrogation of juveniles. Depriving people of the ability to sue offending police for violating their *Miranda* rights can only harm efforts to hold police accountable for misconduct.

UNDOING THE NEW DEAL AND WEAKENING OUR GOVERNMENT

A key environmental protection case and two COVID-19 pandemic cases made clear the far-right justices' eagerness to weaken the ability of the federal government to adopt critically important health and safety protections.

Undermining our ability to protect the environment and address climate change:

West Virginia v. EPA

On the last day of the term, the Supreme Court severely undermined the American people's efforts to address climate change and protect the planet's environment. In fact, the 6-3 majority in [West Virginia v. EPA](#) created a new legal doctrine that could make it much harder for any federal agency to effectively deal with pressing national problems. Even worse, they did it illegitimately, since there aren't even any regulations in place for the Court to review.

It was a victory for businesses and their allies who see health and safety regulations as getting in the way of the corporate bottom line. Yet the harm to the rest of us is a bracing reminder to exercise our own power to reshape the Court every time we vote for the people who nominate and confirm our nation's judges.

The EPA's Efforts to Address Climate Change

In 2015, during the Obama administration, the EPA used its authority under the Clean Air Act to adopt the "Clean Power Plan" (CPP). The CPP regulated carbon emissions in an effort to address climate change. Based on its scientific expertise and experience, the EPA concluded that operational improvements at individual power plants would not be enough to cost-effectively address the problem. Instead, it needed to shift electricity generation from high-carbon-emitting sources to low-carbon-emitting ones. (Hence, CPP was called a "generation-shifting" plan.)

However, it never went into effect: In early 2016, the Supreme Court issued a 5-4 order blocking enforcement of the CPP while litigation against it was pending.

In 2019, the Trump-era EPA held that the CPP had been beyond the authority granted to the agency by the Clean Air Act. It formally repealed the CPP and replaced it with a less expansive plan called the “Affordable Clean Energy Rule.” But that, too, is not in effect: In early 2021, the D.C. Circuit ruled that the Trump administration’s decision was premised on a fundamental misinterpretation of the Clean Air Act.

So the issue went back to the Biden administration, which stated that it plans to develop its own set of regulations. The CPP has not gone into effect and never will. There is no longer any actual dispute before the courts. Nevertheless, the Supreme Court decided to hear an appeal of the D.C. Circuit case and consider the legality of a set of rules that will not be enacted. Harvard Law Prof. Richard Lazarus [called](#) the Court’s decision to hear the case “the equivalent of an earthquake around the country for those who care deeply about the climate issue.”

How the majority ruled

Chief Justice John Roberts wrote the opinion for the now-familiar 6-3 majority. He wrote that the Court still had a case to hear. Even though the Biden administration stated it will not be resurrecting the CPP, Roberts wrote that the EPA still might adopt some other generation-shifting plan. Therefore, he concluded that the Court could consider the issue.

That gave them the opportunity they have been looking for to limit agencies’ ability to adopt health and safety regulations. They classified this as an “extraordinary case” because the EPA had never before interpreted the Clean Air Act to allow a generation-shifting plan, and because the plan adopted had an enormous economic and political impact. That makes it what the majority called a “major question.” Roberts characterized precedents as requiring agencies addressing “major questions” to point to “clear congressional authorization” for their actions. Not surprisingly, the far-right justices did not find any such “clear authorization” in the Clean Air Act, because its grant of authority to the EPA is too general to be read that way.

What the dissenting justices said

Justice Elena Kagan wrote a dissent, joined by Justices Stephen Breyer and Sonia Sotomayor. She wrote that “there was no reason to reach out to decide this case” because no one is now subject to the CPP. The appropriate time for the Court to address the issues in this case will be when an administration adopts a rule implicating those issues. But “this Court could not wait—even to see what the new rule says—to constrain EPA’s efforts to address climate change.”

Kagan was equally critical of the “major questions” doctrine. Although the majority claimed to be following precedent, the dissent noted that “the Court has never even used the term ‘major questions doctrine’ before.”

In fact, precedents finding that an agency acted outside its authority have never been based on an artificial classification by the Court that the scope of the agency ruling is “extraordinary” in nature and

therefore beyond the authority of the agency to act. Instead, they have used the “ordinary method” always used by the Court: reading a statute’s delegation of power to an agency “in context with a modicum of common sense.” If an agency is acting outside its usual field and addresses an issue where it has no viable claim of expertise or experience, that may signal that the agency is acting beyond the authority Congress gave it. Another warning sign would be if the agency’s action conflicts with or even “wreak[s] havoc” on “Congress’s broader design.”

Kagan wrote that the Clean Power Plan “falls within EPA’s wheelhouse.” In addition, it “fits perfectly” with the Clean Air Act’s directive for the EPA to select the “best system of emission reduction” for power plants.

The dissent criticizes the majority’s conclusion that the Clean Power Plan is simply too big a plan for Congress to have authorized without saying so specifically. That reasoning goes against the very purpose of agencies like the EPA:

A key reason Congress makes broad delegations like [in the Clean Air Act] is so an agency can respond, appropriately and commensurately, to new and big problems. Congress knows what it doesn’t and can’t know when it drafts a statute; and Congress therefore gives an expert agency the power to address issues—even significant ones—as and when they arise.

The impact of the decision

Kagan’s dissent summed up the immediate stakes:

The stakes here are high. Yet the Court today prevents congressionally authorized agency action to curb powerplants’ carbon dioxide emissions. The Court appoints itself—instead of Congress or the expert agency—the decision-maker on climate policy. I cannot think of many things more frightening.

The far-right majority has severely undermined the EPA’s ability to meaningfully address climate change at a moment when we are running out of time to do so. The impact will be particularly harsh on those living in areas most severely impacted by the damage we are doing to our planet, including floods and droughts.

But the majority’s reasoning is not limited to the EPA or to climate change. The “major questions” doctrine gives powerful business interests a new legal weapon to use to sabotage important health and safety protections they oppose. And that can harm us all in any number of ways. It represents a step backward toward the era before the New Deal, when a different far-right majority regularly created legal doctrines to strike down health and safety protections.

Blocking the Biden administration's workplace vaccination requirement:

NFIB v. Department of Labor

In January, the six far-right justices blocked a key Biden administration effort to address the COVID-19 pandemic: requiring large businesses to ensure their employees are vaccinated or take other measures to protect other workers. The case was [*National Federation of Independent Businesses v. Department of Labor*](#).

The vaccination requirement

In November 2021, a federal agency called the Occupational Health and Safety Administration (OSHA) issued a requirement that businesses with more than 100 workers ensure that employees are vaccinated, or that they wear masks at work and get tested at least weekly. OSHA forecast that this would save over 6,500 lives and prevent over 250,000 hospitalizations in six months' time. The Biden administration acted through OSHA because – as the agency's name makes clear – it issues health and safety regulations affecting the safety of working people.

Large businesses in different parts of the country immediately went to court to block the requirement. One court ordered that the rule not be enforced during the litigation. But the nationwide cases were consolidated into one, with the Sixth Circuit designated as the appeals court to decide the issue. A three-judge panel recognized that the statute creating OSHA gives it the authority to protect workers from infectious diseases like COVID-19. Supreme Court precedent was also clear on the matter. So the Sixth Circuit held that the vaccination requirement should stay in effect while the case was being litigated. The businesses appealed that decision to the Supreme Court.

How the majority ruled

In an unsigned order, the Court blocked enforcement of the OSHA rule pending litigation. The six far-right justices held that the businesses are likely to win their lawsuit. The majority acknowledged that COVID-19 is a risk in many workplaces, but it is also a risk everywhere else. They concluded that this means the disease is not an *occupational* hazard. Therefore, under their reasoning, it is not clear that the statute creating OSHA gave the agency the authority to issue the vaccination and testing rule. They wrote that a federal agency can only make such a broad rule affecting such a large number of people if the statute creating that agency plainly says so. Their opinion found that the statute did not “speak clearly” enough for them to recognize its authority to issue the vaccination requirement.

In a separate concurrence, Justice Gorsuch (joined by Thomas and Alito) went even further. They wrote that if Congress really did give OSHA the power to decide such a “major question” of policy, then that would likely be unconstitutional: Only Congress can exercise such broad lawmaking authority.

What the dissenting justices said

Justice Breyer dissented, joined by Sotomayor and Kagan. They observed that the OSHA statute actually *requires* it to issue an emergency rule to address a “new hazard” that poses a “grave danger” to workers. Furthermore, the statute does not say OSHA can’t address a workplace hazard if that same hazard also exists outside the workplace. Breyer chastised the majority for making a decision affecting health and safety themselves, rather than trusting the agency charged by Congress with safeguarding employees from workplace dangers.

Who else is affected

The case obviously impacted working people who contracted and spread COVID-19 due to workplace exposure that the Biden administration had acted to prevent. But it also sent a signal about an aggressive Court majority eager to find excuses to prevent federal agencies from enacting vital health and safety regulations that big businesses oppose.

COVID-19 vaccination requirements for Medicare and Medicaid funding recipients

Biden v. Missouri

In [*Biden v. Missouri*](#), the far-right justices came only one vote away from striking down another Biden administration effort to address COVID-19, this one through the Medicare and Medicaid programs.

The vaccination requirement

Under President Biden, the Department of Health and Human Services adopted a rule applicable to hospitals and other health care facilities that receive funds under Medicare and Medicaid. Under the rule, workers who interact with vulnerable patients must be vaccinated against COVID-19. HHS adopted this rule under its long-recognized authority to set conditions for entities receiving funds under those two programs. The rule required providers to offer medical and religious exemptions, and it did not require vaccinations for staff who telework full-time. Because of the urgency, HHS adopted the rule on a temporary basis without the normal waiting period for public notice and comment.

Several Republican-led states sued the administration. Conservative lower court judges stopped the rule from going into effect while the lawsuits were ongoing, so the Biden administration appealed to the Supreme Court.

How the majority ruled

In an unsigned opinion, the Court ruled that the vaccination requirement could remain in effect while lower courts considered the lawsuits. It stated that “perhaps the most basic” of HHS’s functions is to “ensure that the healthcare providers who care for Medicare and Medicaid patients protect their patients’ health and safety.” The vaccination rule “fits neatly within the language of the statute” that gives HHS its authority to set conditions for the receipt of Medicare and Medicaid funds.

What the dissenting justices said

Four of the right-wing justices dissented: Thomas, Alito, Gorsuch, and Barrett. They would have severely limited HHS’s authority. They wrote that Congress had not “clearly” authorized this specific grant of a power that is of “vast economic and political significance.” They also wrote that HHS should have gone through the time-consuming public notice and comment process, despite the nationwide health consequences of doing so.

As with the other COVID-19 vaccination case and the EPA case, the right-wing justices signaled hostility toward letting us use the federal government to pass even life-saving health and safety protections.

IMMIGRANTS’ RIGHTS

Although the Court did not force the Biden administration to follow the Trump-era “Remain in Mexico” policy, it was still a damaging term for immigrants.

Eliminating Judicial Review of Key Immigration Decisions:

Patel v. Garland

In a 5-4 decision in [Patel v. Garland](#), the far-right Supreme Court made life harder for immigrants who thought they could turn to our courts to protect their rights. In this case, an immigration official ruled that Indian citizen Pankaj Kumar Patel could not remain in the country. The law gave a government official the discretion to let him stay or make him go, but the official may have based his decision on inaccurate facts. The justices ruled that Patel can’t go to court to correct the mistake.

The abuse of power this could allow is so extreme that even the federal government urged the Court not to rule this way.

Why officials denied Patel's request

Patel didn't have documentation when he originally came to America. He asked officials to let him remain in the country based on a labor certification – something called an “adjustment of status.” This type of relief is generally discretionary: It's up to the immigration officials.

Officials concluded Patel was ineligible for relief because when he had applied for a Georgia driver's license, he had incorrectly checked a box that said he was a U.S. citizen. He testified that it had been a mistake, but immigration officials didn't believe him. They concluded it had been intentional.

Based on that factual conclusion, the officials determined that Patel was legally “inadmissible” – that the law would prohibit him from entering the country if he were entering now. And since he was inadmissible, the officials ruled that he could not remain in the country.

What happened in the lower court

Patel lost in the lower courts. [The Eleventh Circuit, driven far to the right by Trump-appointed judges, ruled against him.](#) They based their decision on an interpretation of the 2005 Real ID Act. In that law, Congress took away courts' jurisdiction in certain categories of cases to hear appeals of denials of “discretionary relief.” The Eleventh Circuit interpreted the law so broadly as to prevent courts from reviewing discretionary decisions premised on “facts” that were simply not true.

Other circuits had not interpreted the law that way, so the Supreme Court agreed to hear the case. Even though the federal government had won in the lower courts, the Biden administration had urged the justices to take the case. It argued that Patel had a right to judicial review of the decision against him. The Court had to appoint an outside lawyer to argue that the Eleventh Circuit had been right.

How the majority ruled

Justice Barrett wrote for the five-justice majority, joined by Roberts, Thomas, Alito, and Kavanaugh. The majority concluded that when the 2005 law took away court review of “any judgment regarding the granting of relief” under certain immigration provisions, that included any and all decisions relating to that discretionary judgment.

The majority acknowledged that there is generally a presumption that administrative actions are reviewable by courts. But in this case, they concluded, Congress clearly took away judicial review from situations like Patel's.

What the dissenting justices said

Justice Gorsuch actually agreed with Breyer, Sotomayor, and Kagan in this case, and he wrote the dissent. The dissenters pointed out that an adjustment of status is a two-step process: First, officials

determine if the applicant is eligible for the requested change in status. If so, then they move to the second step: the discretionary decision of whether to grant the request. What Patel appealed was the first step, the legal conclusion that courts clearly have jurisdiction to review. What Congress made unreviewable was only the second step – the discretionary decision that Patel never advanced to.

The dissenting justices summed up the unjust results:

[Under the majority’s interpretation,] no court may correct even the agency’s most egregious factual mistakes about an individual’s statutory eligibility for relief. It is a novel reading of a 25-year-old statute. One at odds with background law permitting judicial review. And one even the government disavows.

Who else is affected

The impact of the majority’s ruling is enormous. For instance, Gorsuch’s dissent specifically mentions green-card applications from “the student hoping to remain in the country, the foreigner who marries a U.S. citizen, the skilled worker sponsored by her employer.” The dissent notes that in the last three months of 2021, officials denied more than 13,000 green card applications, with nearly 790,000 remaining, and that the denials are often terse and seem to be subject to little administrative overview. Given this caseload, officials sometimes make serious errors and may even take unlawful shortcuts. The majority’s ruling “foreclose[s] judicial review for countless law-abiding individuals whose lives may be upended by bureaucratic misfeasance.”

DISABILITY DISCRIMINATION

The Court issued a harmful ruling that will harm people with disabilities and potentially weaken a variety of civil rights protections.

Taking Away a Key Remedy For Illegal Discrimination:

Cummings v. Premier Rehab Keller

In late April the Supreme Court’s far-right majority issued another harmful 6-3 decision undercutting congressional laws passed to protect people from discrimination. In [*Cummings v. Premier Rehab Keller*](#), the Court ruled that when someone violates certain civil rights laws protecting people with disabilities, they can’t be held financially accountable for the emotional distress they caused. This result was made possible by the three Trump justices on the Court.

Whose rights were violated?

The case was brought by Jane Cummings. She has been deaf from birth, and her primary language is American Sign Language (ASL). Cummings went to Premier Rehab Keller to treat her chronic back pain. The company did not provide her with an ASL interpreter when requested. Instead of serving her, they sent her to another facility.

She sued the company for discrimination on the basis of her disability, which is illegal under the Rehabilitation Act (RA) and the Affordable Care Act (ACA). Among other things, she sued to collect damages for the emotional distress she experienced.

The issue she raised applies to anyone who experiences emotional distress from disability discrimination by an entity that has received federal funding.

How the majority ruled

The Supreme Court's far-right majority ruled that those two laws don't allow victims of discrimination to recover damages for emotional distress.

The RA and the ACA prohibit recipients of federal funds from discriminating on the basis of disability. This is an exercise of Congress's authority under the Constitution's Spending Clause. Congress can set conditions under which its money can be spent, and the recipients agree to those conditions when they accept the funds.

The question for the Court was whether damages for emotional distress are an available remedy when the law is violated, since the statutes don't say one way or another. All nine members of the Court agreed that this is like interpreting a contract. So the question becomes: When the rehab facility accepted federal funds and agreed to the conditions (not to discriminate), was it on notice that violating the conditions could require them to compensate the people they harm for emotional distress?

The far-right majority found a way to say no. In an opinion by Chief Justice Roberts, the Court said that in general contract law, damages for emotional distress are not traditionally available for breach of the agreement. Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett joined his opinion.

What the dissenting justices said

Justice Breyer wrote the dissent, joined by Justices Sotomayor and Kagan. He faulted the majority for looking "broadly, at all contracts." He pointed out that damages for emotional distress are a traditional remedy for contracts of the type where a breach is particularly likely to cause serious emotional distress. And that is exactly the situation in this case, and in any case involving discrimination.

In fact, Breyer cited one of the most important cases ever discussing Congress’s vast authority to prohibit discrimination: the 1964 *Heart of Atlanta* case upholding the Civil Rights Act. Breyer quoted from Justice Arthur Goldberg’s concurrence in that case, noting that Congress’ antidiscrimination laws seek “the vindication of human dignity and not mere economics.”

This was exactly the point made by a group of disability organizations in an amicus brief: The harm caused by disability discrimination is often not monetary in nature but emotional. Congress set out to address the humiliations that were routinely visited upon people with disabilities. Damages for emotional distress are an important remedy and help give force to the congressional prohibition against discrimination.

As Breyer stated in conclusion, it is “difficult to square the Court’s holding with the basic purposes that antidiscrimination laws seek to serve.” Since the harm caused by intentional discrimination is often non-economic, the majority’s decision will leave many victims “with no remedy at all.”

Who else is affected

The case is about two specific statutes, the RA and the ACA, which prohibit recipients of federal funds from discriminating on the basis of disability. The reasoning could apply to other federal laws prohibiting other kinds of discrimination by recipients of federal funds. That includes Title VI (race, color, and national origin discrimination) and Title IX (sex discrimination in education).

So in addition to weakening laws protecting people with disabilities, the Court’s decision could also weaken a wide array of other congressionally-passed civil rights protections across the board. The majority has decreed that recipients of federal funds cannot be held financially accountable for the emotional distress caused by their decisions to unlawfully discriminate in violation of those laws.

MORE THREATS NEXT TERM

After the past year, no one can doubt how far the conservative justices will go. They will continue to use their ill-gained supermajority to hurt all of us. Cases they have already announced they will hear will address issues such as:

Ending state law protections for free and fair federal elections: The Court in *Moore v. Harper* will address a right-wing theory that state legislatures do not have to follow their own state constitutions when making laws concerning federal elections, including congressional gerrymandering. State courts and even governors could be made powerless to affect a state legislature’s decisions on the rules for federal elections.

Racial justice in education: The Far Right is hoping to end affirmative action in *Students for Fair Admissions v. President and Fellows of Harvard*.

Protecting Black voters: The Court will address racially discriminatory redistricting in Alabama in *Merrill v. Milligan*.

LGBTQ+ equality: *303 Creative LLC v. Elenis* is about a wedding website designer who wants to exclude same-sex couples. It is the next step in the Far Right's effort to undermine equality by giving themselves a constitutional right to discriminate against LGBTQ+ people.

Protecting our water: In *Sackett v. EPA*, the right-wing justices may finally have a majority to remove most wetlands from the protection of the Clean Water Act. This would let companies get away with much more pollution.

CONCLUSION: WHAT CAN WE DO?

There is no turning away from the devastating impact of the far-right Supreme Court justices this term on people in every part of the country. The damage will be lasting.

But we can make sure it is not forever. After all, what we saw this term is the result of decades of organizing by the Far Right. We, too, must work to change the Supreme Court and the entire judiciary. We need fair-minded judges on all our courts. It is a long-term project, but one that has never been more important.

The American people took an important step in that long journey earlier this year when President Biden nominated – and the Senate confirmed – Judge Ketanji Brown Jackson to the Supreme Court, an eminently qualified nominee with a demonstrated commitment to civil rights and equal justice for all. The outpouring of support for the nation's first Black woman justice showed how much the public values diversity in the lived experiences of those who serve on the Court. By contrast, the unprincipled attacks against her demonstrated how hard the Far Right will fight to protect their ill-gotten gains in the federal judiciary.

One of the steps in the long journey will come as soon as this November, when it is crucial that Americans vote for senators and others who will support judges who will protect our core constitutional rights as well as for public officials at the local and state level who will use their power to protect the rights the far-right majority attacked in their decisions this term.