Turning Back the Clock

How the Supreme Court's 2022-23 Term Upends Decades of Progress

During the 2022-23 Supreme Court term ending in June, the far-right majority continued their mission to change our country to benefit the wealthy and powerful, at the expense of our fundamental rights. They ended affirmative action in higher education, created a constitutional right to discriminate against LGBTQ+ people, struck down the Biden administration's program to relieve student debt, removed millions of acres of wetlands from the protection of the Clean Water Act, and undermined organized labor.

Not every case was the disaster it could have been. Some of the far-right justices occasionally prevented the Court from going to the extremes their ultra-conservative colleagues wanted. The Court rejected an effort to let partisan state legislatures sabotage the right to vote in violation of their own state constitutions. An ideologically mixed majority enforced the Voting Rights Act in a key racial gerrymandering case and upheld a law protecting Native American families. In a sign of how far the Court has moved to the extreme right, a decision to maintain existing protections rather than cut them back counts as a victory.

Introduction

This is a historic time for our federal courts and for our nation. The Supreme Court has lurched ever rightward under the influence of Donald Trump's three justices. Most prominently last term, the devastating *Dobbs* decision has led to a crisis in abortion care, while the *Bruen* decision has made it far more difficult to maintain common sense gun violence laws. We have seen far-right federal circuit and district court judges use these and other new precedents to cause even more harm.

For instance, a year ago, most people had never even heard of Matthew Kacsmaryk, the Trump judge in Texas who ruled against medication abortion earlier this year. Now he is one of the most notorious lower court judges in the country. At the same time, it has become hard to track the blizzard of ethics scandals at the Supreme Court, especially those involving Clarence Thomas and Samuel Alito. A national movement has arisen to impose binding ethics rules on the justices, something that is long overdue.

The ethics scandals and the accelerating assault on our rights have brought home to millions of people just how important it is to have fair-minded judges on the Supreme Court and all of our nation's courts. That awareness is why public approval of the Supreme Court has reached record lows. Fortunately, the Biden administration and Senate Democrats are having remarkable success at getting a historically large and diverse group of women and men confirmed to the federal bench. It is a promising start to an effort to rebalance the courts that will take many years.

The highlight of that effort so far has been the confirmation of Ketanji Brown Jackson, the first Black woman on the Supreme Court. She has now finished her first term, and her brilliance has come through in inspiring ways. Her presence teaches us to persevere. The power to transform our courts and protect our rights lies in our own hands.

Affirmative Action

Far-Right Justices Strike Down Universities' Affirmative Action Programs

In a 6-3 ruling, the Supreme Court struck down race-based affirmative action efforts in higher education as violating the Constitution's Equal Protection Clause and the Civil Rights Act. This was a long-term goal of the Far Right. The decision comes from a Court that had repeatedly upheld affirmative action programs in higher education for nearly half a century.

It comes at a significant cost to the communities whom those programs have long helped. It also harms our entire society by severely limiting our ability to benefit from the contributions of students from all backgrounds.

The cases were *Students for Fair Admission v. President and Fellows of Harvard College* and *Students for Fair Admission v. University of North Carolina.*

The Court's previous support for affirmative action

In the 2003 *Grutter v. Bollinger* case, the Court rejected an Equal Protection challenge to a public law school's limited use of race and ethnicity in admissions to promote diversity in the educational experience. The *Grutter* majority anticipated that in a quarter century, affirmative action programs would no longer be necessary to achieve diversity. The Court reaffirmed *Grutter* in 2016 in the *Fisher* case involving the University of Texas, again confirming that universities have a compelling interest in the educational benefits that flow from student body diversity.

In an opinion written by former Justice Anthony Kennedy, the court upheld the school's affirmative action program because all consideration of applicants remained individualized and there were no quotas and no numerical targets used in the selection process.
The program met the Court's most stringent review ("strict scrutiny"), which is used in cases where governments use racial classifications. It was a major victory for Americans who cherish our national ideals of fairness and equal opportunities for all.

But then came Donald Trump and Mitch McConnell. They installed three far-right justices and created the current 6-3 superconservative majority. This led to a very different result from seven years ago.

How did the majority rule?

Chief Justice John Roberts wrote the majority opinion on behalf of the entire far-right six-justice majority.

Among other things, the majority did not even concede that student body diversity is a compelling interest. Instead, Roberts referred to "the interests [Harvard and UNC] view as compelling." According to the majority, courts have no way of measuring whether a program is even meeting its diversity goals. As specific examples, the justices claimed it would be difficult for lower courts to measure whether a school had developed a sufficiently robust market of ideas or whether students were actually acquiring new knowledge based on diverse outlooks. This seriously undermined the Court's previous holdings that promoting diversity can be a compelling government interest.

Roberts also framed affirmative action programs as harmful discrimination. He did this by focusing on student applicants who don't benefit from it. This is consistent with how those in power have often sought to divide us, knowing that we are stronger when we stand together.

The majority opinion also cited *Grutter's* expectation in 2003 that affirmative action programs would no longer be needed in 25 years. The Court reinterpreted this hope into a constitutional commandment that affirmative action programs have a clear end point built into them. Roberts wrote that nothing in Harvard or UNC's programs indicated when they would end, short of setting up an unconstitutional quota system. He rejected as insufficient the universities' frequent reviews of their programs to determine if they remain necessary.

What did the concurring far-right justices say?

Although all the far-right justices joined Roberts's majority opinion, several of them also wrote their own concurring opinions. Justice Thomas insisted that his "originalist" approach to the Constitution prohibited "all forms of discrimination based on race." Of course, he was framing affirmative action as constitutionally no different from intentional racial discrimination.

Justice Neil Gorsuch (joined by Thomas) questioned whether Title VI should always be read to mean the same thing as the Equal Protection Clause. He wrote that independent of the Equal Protection Clause, he read Title VI as prohibiting affirmative action programs. And Justice Brett Kavanaugh wrote to say that he believed *Grutter* had set a one-generation deadline for affirmative action programs in higher education to end, and we have reached that deadline.

How did the dissenting justices respond?

Justice Sonia Sotomayor

Justice Sonia Sotomayor wrote a powerful dissent, joined by Elena Kagan and Ketanji Brown Jackson. As she has in the past, she pointed out that the far-right justices' assumptions around race are not based on reality:

> [T]he Court cements a superficial rule of colorblindness as a constitutional principle in an endemically segregated society where race has always mattered and continues to matter.

Rather than advancing equal protection, the majority was "further entrenching racial inequality in education, the very foundation of our democratic government and pluralistic society."

Among other things, Sotomayor explained that the majority mischaracterized the Court's decisions in *Brown v. Board of Education* and afterwards. Although the majority claimed the Court was pursuing "colorblindness," such an "indifference to race is not an end in itself." Instead, "the ultimate goal is racial equality of opportunity." Sotomayor described the majority's approach as "grounded in the illusion that racial inequality was a problem of a different generation."

Justice Jackson also wrote a powerful dissent, joined by Sotomayor and Kagan. Comparing the current majority to the monarchy before the French Revolution, she wrote:

> With let-them-eat-cake obliviousness, today, the majority pulls the ripcord and announces "colorblindness for all" by legal fiat. But deeming race irrelevant in law does not make it so in life.

Indeed, it does not. Jackson gave a detailed description of generations of government policies that impoverished Black Americans:

Justice Ketanji Brown Jackson

> Those past preferences carried forward and are reinforced today by (among other things) the benefits that flow to homeowners and to the holders of other forms of capital that are hard to obtain unless one already has assets.

She rejected the contention that racial discrimination is an artifact of a past time:

> Although formal race-linked legal barriers are gone, race still matters to the lived experiences of all Americans in innumerable ways, and today's ruling makes things worse, not better.

(Jackson recused herself from the Harvard case, but the legal analysis of the UNC case was the same.)

What does this decision mean for the future?

This is not the first time powerful forces have sought to divide our communities, but we will stand strong together. When everyone has access to higher education, everyone prospers. We will continue to fight for equal opportunity for all in our diverse multiracial democracy.

While the far-right majority has ended affirmative action in higher education, what happens next will be decided, at least initially, in the lower courts. The *Students for Fair Admissions* case is about higher education. Doubtless, far-right advocates will be eager to cite this case as an excuse to end diversity efforts in other contexts, such as government grant programs and industry diversity initiatives.

Those issues will be decided in the lower courts in the months and years to come. That is one reason it is so important to fight to confirm President Biden's fair-minded judicial nominees. In fact, several Biden judges have already been instrumental in rejecting attacks on efforts to promote diversity, such as in admissions to Thomas Jefferson high school in Virginia and in a Pfizer program to promote diversity in its employee ranks. And as the process of confirming such fair-minded nominees continues, it will be important for the Senate to set aside old practices that give far-right senators a veto over who gets named to be federal district judges in their states.

LGBTQ+ Equality

Right-Wing Majority Weaponizes First Amendment to Grant License to Discriminate Against LGBTQ+ People and More

In a 6-3 decision on the last day of its 2022-23 Term, the far-right Supreme Court majority continued its weaponization and misuse of the First Amendment to permit discrimination. Specifically, in an opinion by Justice Gorsuch, the majority ruled that businesses can deny web design services to LGBTQ+ couples' weddings despite a state law prohibiting such discrimination in public accommodations, effectively granting a license to discriminate.

That license, Justice Sotomayor pointed out in her dissent, could ultimately be construed to permit discrimination against interracial couples and others as well. The case is *303 Creative LLC v Elenis*.

What is the background of the case?

A one-person corporation in Colorado, 303 Creative LLC, wants to go into business marketing and designing websites for people who want to get married. Because of its owner's strong religious beliefs against same-sex marriage, however, it wants to deny its services to people seeking to celebrate same-sex weddings and make that clear on its website. Colorado has a law prohibiting discrimination in public accommodations including business services based on LGBTQ+ status, among other things, and the law covers discrimination with respect to weddings of same-sex couples. The corporation therefore filed a lawsuit for a declaratory judgment that, on First Amendment grounds, the law does not forbid the company's proposed actions.

The lawsuit was filed by the Alliance Defending Freedom, a right-wing legal group that has worked against LGBTQ+ rights. Recent news reports suggest that ADF may have filed papers in the district court falsely suggesting that the corporation's owner received an inquiry about designing a website to celebrate a same-sex marriage. In any event, both the district court and the court of appeals declined to provide the judgment that the corporation sought, and the Supreme Court agreed to hear the case.

What did the Court decide and why is it important?

In a 6-3 ruling written by Justice Gorsuch, the Court reversed the decision of the lower court and sent the case back for further proceedings. The right-wing majority consisted of all three Trump justices (Gorsuch, Kavanaugh and Amy Coney Barrett) plus Roberts, Thomas, and Alito. They maintained that in essence, Colorado was violating the First Amendment by "forcing a website designer to create expressive designs speaking messages with which the designer disagrees."

Although public accommodations laws prohibiting discrimination are generally valid, the majority made clear, such laws "sweep too broadly when deployed to compel speech" as in this case.

Justice Sotomayor strongly dissented, for herself and Justices Kagan and Jackson. She pointed out that just five years ago, in the *Masterpiece Cakeshop* case, the Court had recognized that "religious and philosophical objections to gay marriage" do not allow businesses and others to "deny protected persons equal access to goods and services" under a public accommodations law like Colorado's. Now, she went on, "for the first time in its history," the Court was granting a business open to the public the "constitutional right to refuse to serve members of a protected class." She went on to explain, under previous precedent, that the law "targets conduct, not speech," and the "act of discrimination" as proposed here "has never constituted protected expression under the First Amendment."

Sotomayor also pointed out that the majority's ruling is "not limited to discrimination on the basis of sexual orientation or gender identity." Under the majority's rationale, she went on, a "website designer could equally refuse to create a wedding website for an interracial couple," or a business owner could "refuse to sell a birth announcement to a disabled couple because she opposes their having a child." The ruling clearly "threatens" to grant licenses to businesses to commit such discrimination as well.

The right-wing majority's ruling in the *303 Creative* case, like its decisions on affirmative action and student loans at the end of its current term, clearly harms the rights of millions of us around the country. We can help mitigate that damage by encouraging the appointment of as many fair-minded Biden judges as possible to our lower federal courts, which will interpret and apply these decisions. But make no mistake—the continuing legacy of lifetime Trump and other presidents' far-right justices will continue to harm all of our rights.

Fair Elections and the Right to Vote

Supreme Court Rejects Partisan Power Grab to End Fair Elections

In a great and surprising victory for democracy, the Supreme Court turned aside a dangerous fringe constitutional theory regarding federal elections. It would have let far-right state legislatures rig presidential and congressional elections in violation of their own state constitutions. Fortunately, the 6-3 ruling in *Moore v. Harper* rejected that theory, at least in its most extreme form.

How did this case begin?

In 2021, North Carolina's Republican-controlled legislature drew new lines for congressional districts. But they didn't adopt fair or neutral lines. Instead, they created an unfair advantage for their party. In fact, the partisan gerrymander was so strong that even if voters turned against Republicans in future elections, their party would still win most of the races in the state.

However, the constitution of North Carolina protects free elections. So in early 2022, the state supreme court struck down the partisan gerrymander. Republican state legislators appealed this decision to the U.S. Supreme Court.

A theory to justify a dangerous power grab

State Republicans presented a dangerous argument to the U.S. Supreme Court. It's based on a line in the Constitution saying that state legislatures set the time, place, and manner for federal elections in their states. (This is called the "Elections Clause.")

According to the Republican state legislators, it doesn't matter if they had violated the state constitution. In their view, when it comes to elections for federal offices, the Elections Clause gives state legislatures the final word over any other state entity. Under this theory, it doesn't matter how much the state constitution protects people's right to vote, or how flagrantly the legislature violates those rights. The state courts that are set up to protect the people from such dangerous power grabs can't do a thing.

In legal jargon, it's called the "independent state legislature theory." It would eliminate vital checks and balances that protect democracy.

Through most of American history, this outlandish theory would have been laughed out of court. But the far-right legal movement that has exercised so much influence in legal academia and the courts has been pushing this fringe theory. The fact that the U.S. Supreme Court even agreed to hear the case was ominous.

What did the majority do?

Fortunately, the Court rejected the theory. The 6-3 opinion by Chief Justice Roberts was joined by Justices Sotomayor, Kagan, Kavanaugh, Barrett, and Jackson.

The Court discussed how judicial review of legislative actions has been "one of the fundamental principles of our society" since the founding era. So the question was whether the Elections Clause created an exception to this "basic principle."

The majority opinion went over old Supreme Court cases that thoroughly rejected the idea that the Elections Clause somehow nullifies the way state laws are normally passed. For instance, if the Elections Clause meant that only state legislatures could be involved in redistricting, then redistricting bills could never be vetoed by governors. Yet that happens all the time. In fact, in the 1930s, the Court unanimously ruled that the Elections Clause does not prohibit governors from vetoing redistricting bills.

In addition, the Court continued, the framers understood a very basic idea: "[When] legislatures make laws, they are bound by the provisions of the very documents that give them life." In other words, the framers understood that state legislatures would be acting consistent with their own state constitutions, and subject to the same state-level checks and balances that apply to all state legislation.

Wait, wasn't this case moot?

Many were expecting the Court to dismiss the case without addressing the constitutional issue. That's because of a strange and corrupt development in North Carolina.

After oral arguments in Washington DC last fall, there were elections for the North Carolina Supreme Court. Republican candidates gained a majority on the state court, and they immediately took steps that helped their state party. They reconsidered the reasoning of the state supreme court's 2022 decision, and they eventually overturned it in early 2023. They ruled that the North Carolina partisan gerrymander did *not* violate the state constitution.

Did that mean there was no longer an ongoing case before the U.S. Supreme Court?

The chief justice's majority opinion said the case was not moot. In part, that's because the 2023 state supreme court decision didn't change that court's position on the *federal* question before the U.S. Supreme Court. In the original 2022 decision *and* in the 2023 decision overruling it, the North Carolina Supreme Court was addressing whether the North Carolina legislature had violated the state constitution. Whether state supreme courts have the power to do that was the question before the U.S. Supreme Court.

(There were also other reasons the majority gave for not considering the case moot, having to do with the details of the case's history in the state courts.)

What did the dissenting justices say?

Justice Thomas, joined by Alito and Gorsuch, would have dismissed the case as moot. Thomas and Gorsuch also made clear that on the merits, they agreed with some version of the "independent state legislature theory." For them, governors can veto bills on federal elections because the governor's signature or veto is part of the basic legislative process. In contrast, a lawsuit challenging such a bill is not part of the basic legislative process. Therefore, in their opinion, letting a state court have the final word violates the Election Clause.

Fortunately, this dangerous opinion did not carry the day.

What does the ruling mean for the future?

The repudiation of the "independent state legislature theory" is a great victory for the American people. At the same time, the majority opinion included a section that might leave room for trouble in the future.

The Court stated that state courts don't have "free rein" when interpreting their state constitutions in cases involving federal elections. Federal judges must give significant deference to the state courts in this area. However:

> … state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.

In one sense, that's not at all controversial: State constitutions still have to be consistent with the U.S. Constitution, including the Election Clause's provision that state legislatures set the rules for federal elections in their states. At the same time, it is not hard to imagine far-right judges inaccurately claiming that a state court has "arrogated" the legislature's role. How federal judges should make that call is a question left for a future case.

Chief Justice John Roberts

As Election Law Blog's Richard Hasen wrote in *Slate*, "Chief Justice John Roberts drove a hard bargain."

Moore v. Harper soundly repudiated an effort to empower partisan power grabs by state legislatures. People retain their ability to challenge partisan gerrymandering of congressional districts based on their own state constitutions. State legislatures are not free to ignore state constitutional protections for the right to vote.

At the same time, this is still a dangerous right-wing Court. The majority has issued decisions that have greatly damaged our democracy, and it will likely continue to do so. While *Moore v. Harper* is an important victory, it also shows how low our expectations are with the current majority. Rejection of an extreme fringe theory that would imperil democracy should be a given, not a cause for a surprised sigh of relief.

An Unexpected Win for Voting Rights in a Racial Vote Dilution Case

It shouldn't be a surprise when the Supreme Court applies the Voting Rights Act (VRA) the way it's supposed to. But the far-right majority has made its hostility to voting rights clear on multiple occasions, with devastating consequences. So it was unexpected when the Court protected the voting rights of Black Americans from a vote-dilution scheme in *Allen v. Milligan*. (This case was formerly known as *Merrill v. Milligan*). Four right-wing justices dissented, and dangers remain concerning voting rights.

The need for a second majority-Black congressional district in Alabama

The 2020 Census showed that Black voters had increased to 27 percent of Alabama's voters since the last redistricting. However, the state legislature drew new congressional lines so that only one of its seven districts – only half of 27 percent – was majority-Black. But they could have created a second majority-Black district without having to violate any of the traditional criteria for redistricting (like relatively compact districts that respect existing political subdivisions and contain equal populations).

So Black voters seeking a second majority-Black district sued. A redistricting scheme that has a racially discriminatory effect violates Section 2 of the Voting Rights Act, regardless of whether the legislature intended to discriminate. The voters argued that the redistricting plan gave Black Alabamians less opportunity than others to elect the candidates of their choice to Congress. That's because voting is racially polarized in Alabama.

A three-judge federal court panel agreed, even though two of those judges were put on the bench by Donald Trump. It was a straightforward application of Section 2 of the Voting Rights Act, under principles laid out by the Supreme Court back in a 1980s case called *Thornburg v. Gingles*. A 5-4 Court majority prevented the ruling from taking effect for the 2022 election in a "shadow docket" ruling, but left the case for full consideration on the merits.

What did the majority opinion do?

The majority opinion was written by Chief Justice Roberts and joined by Sotomayor, Kagan, Jackson, and Kavanaugh. (As noted below, there was a part that Kavanaugh did not join.) They recognized that Alabama officials weren't asking them to apply the law as it exists, but to rewrite the law. The Court refused to revise the standards it has used since the *Gingles* case to determine when a redistricting plan has a racially discriminatory effect.

The Court also refused to rule that Section 2 doesn't apply to single-member districts, a holding that would depart from 40 years of precedent. The Court typically is expected to pay particular attention to precedent when it is interpreting a statute. That's because Congress can always change a statute when the Court misinterprets it. If Congress doesn't do that, the Court usually takes that as meaning it got the interpretation right. (As an aside, this shows how important it is for Congress to pass the John Lewis Voting Rights Advancement Act to correct the Court's mistakes in cases like 2021's *Brnovich v. Democratic National Committee,* where the ultra-right justices misinterpreted the VRA to make it far less effective than Congress had written it.)

Finally, the Court in *Milligan* made an important ruling about congressional authority to prevent racial discrimination in voting. Alabama argued that Congress can only ban *intentional* race discrimination in voting. That's because the 15th Amendment has been interpreted to ban only intentional discrimination. But the Court reaffirmed prior holdings from decades ago that banning changes that are discriminatory *in effect* is "an appropriate method of promoting the purposes of the Fifteenth Amendment."

Where did Kavanaugh differ from the majority?

Justice Brett Kavanaugh

There was a section of Roberts' opinion that Kavanaugh did not join, meaning that this section did not get a majority. In it, Roberts rejected the claim of voting rights opponents that even considering race as a way to counter racial discrimination is itself racial discrimination. Roberts (joined only by Sotomayor, Kagan, and Jackson) pointed out that such an approach would not be consistent with the Court's precedents.

In a concurring opinion, Kavanaugh invited a particular constitutional challenge to those precedents. While considering race to some extent might have been necessary when Congress updated the VRA in the 1980s, he wrote, that might not be the case anymore. This is an echo of the argument the far-right justices used to strike down the VRA's preclearance provision in 2013. Kavanaugh wrote that since Alabama did not make this argument in this case, he would not consider it. But he certainly seems open to it.

What did the dissenters say?

Justice Thomas wrote a dissent that had the partial support of the remaining justices. Gorsuch joined the part saying that Section 2 of the VRA simply doesn't apply to redistricting cases like this one. More ominously, all four dissenters (Thomas, Alito, Gorsuch, and Barrett) agreed that the Court's longtime interpretation of the VRA in redistricting cases – reaffirmed by the majority in this case – violates the Constitution.

The current Court majority still endangers our right to vote

Despite the positive result in this case, we cannot forget the bigger picture: The far-right justices remain deeply hostile to the right to vote. The Roberts Court gutted the preclearance provision in 2013's *Shelby County v. Holder.* And in 2021's *Brnovich v. Democratic National Committee*, they rewrote the VRA to allow changes in voting processes that have discriminatory effects. They also shut the door to lawsuits challenging partisan gerrymanders in 2019's *Rucho v. Common Cause*.

In various states across the country, Americans are living under right-wing state legislative majorities that do not accurately reflect the will of the voters. That is the all too plain impact of decisions by the far-right justices.

Student Loan Debt

Court Majority Saddles Millions with Crushing Student Loan Debt

In a 6-3 ruling, the Supreme Court's far-right majority struck down the Biden administration's forgiveness of student debt for lower-income borrowers. The administration had granted this debt relief in response to the COVID-19 national emergency. The Court's decision reimposed enormous debt on millions of people. It also created a precedent designed to make it harder for federal agencies to adopt necessary health and safety regulations. The case was *Biden v. Nebraska*.

President Biden's debt forgiveness plan

This was part of the national response to the ongoing economic impact of COVID-19. The government took action under a law called the HEROES Act (the Higher Education Relief Opportunities for Students Act) of 2003. The HEROES Act lets the Secretary of Education waive financial assistance requirements in a national emergency.

President Joe Biden

The continuing economic impact of COVID-19 puts lower-income borrowers at higher risk of default. So last year, the Education Department said it would issue up to $10,000 in relief to eligible borrowers making less than $125,000 per year. That was the income level that data showed is the threshold at which repayment capability is likely to substantially change. Under the plan, qualifying Pell Grant recipients would have been able to get up to $20,000 in relief.

The Biden plan would have significantly reduced or even eliminated the debt of millions of lower-income people across the country. In fact, nearly half of Latino borrowers and a quarter of Black borrowers would have had their entire student debt relieved.

Conservatives worked hard to create the current 6-3 far-right majority. So they ginned up lawsuits to get the issue before the justices.

Two manufactured lawsuits

One case before the Court involved individuals who were not harmed by the Biden plan, and who would not have been helped in any way by having the Court strike it down. Myra Brown wasn't covered by the loan forgiveness because she borrowed from a commercial lender rather than the federal government. And Alexander Taylor was slated to get $10,000 in relief but not $20,000 because he was not eligible for a Pell Grant.

Their lawsuit should have been dismissed immediately, since they obviously don't have standing to sue. But district court judge Mark Pittman, a Trump nominee, held that they had standing and struck the program down. This grasping for an excuse to decide the case was too much even for the current Supreme Court. In *Department of Education v. Brown*, the justices unanimously held that Judge Pittman should have dismissed the case.

Unfortunately, the Supreme Court's far-right justices were still eager to address the issue. They did so in *Biden v. Nebraska*, a lawsuit by six states led by officials opposed to Biden's debt relief plan. In fact, none of the states could show an actual injury from the plan. But the court majority ruled that one of them – Missouri – had done so.

How did the majority rule that Missouri had standing?

Chief Justice Roberts wrote the opinion for the 6-3 majority. First, he wrote that Missouri had standing to sue, because debt relief would affect a state agency called the Missouri Higher Education Loan Authority (MOHELA). MOHELA handles billing and payments for federal student loan payments. It gets paid a fee for this. If a loan is cancelled, MOHELA doesn't get a fee. So for Roberts, that was enough to give Missouri standing – and give the justices their opportunity to strike down the Biden plan.

What did the dissent say about standing?

Justice Kagan (joined by Sotomayor and Jackson) agreed that if MOHELA itself had sued, it would have had standing. But it chose not to.

Justice Elena Kagan

As for Missouri itself, Kagan pointed out that none of MOHELA's revenue actually gets passed through to the state. As she wrote, "the state's treasury will not be out one penny" because of the Biden plan. MOHELA was set up to be financially and legally separate from the state that created it.

She compared it to how corporations are legally and financially separate from the people who incorporate them. Missouri and the other states have an ideological disagreement with the administration's plan, but they are not actually affected by it. Kagan wrote that by hearing the case anyway, the majority was forgetting that the Court's proper role is to consider actual cases rather than decide policy disputes.

The majority struck down the debt relief plan

Once the far-right majority gave itself permission to address the substance of the case, they dredged up one of their new favorite tools: the "major questions doctrine."

Last year in *West Virginia v. EPA*, the Court struck down Environmental Protection Agency (EPA) regulations designed to combat climate change because the plan had an enormous economic and political impact. That made it what the majority called a "major question." They held that agencies addressing "major questions" must point to "clear congressional authorization" for their actions.

But the majority's reasoning was not limited to the EPA or to climate change. The "major questions" doctrine gives powerful business interests a legal weapon to use to sabotage important health and safety protections they oppose. It undermines long-recognized federal authority to actually help people in deeply meaningful ways.

That's what happened here. In the HEROES Act, Congress specifically gave the president the power to "waive or modify" the Education Act's legal provisions for student loans in case of a national emergency. According to the majority, those terms by definition include only "modest adjustments." Since the Biden loan forgiveness plan would affect 43 million borrowers and involve $430 billion in federal debt, that is not a "modest adjustment." The chief justice's opinion characterized this as an "exhaustive rewriting" of the Education Act.

Because of the proposal's "economic and political significance," the far-right majority ruled that this was a "major question." As in the EPA case last year, the Court held that agencies addressing such "major questions" must have "clear congressional authorization" to do so.

How did the dissenters respond?

Justice Kagan's dissent pointed out that the HEROES Act clearly and explicitly gives the administration the authority to create such a far-reaching policy. The statute lets the administration "waive or modify any statutory or regulatory provision" relating to student loans. Faced with this obviously "expansive delegation" of power, she wrote, the majority had to find some justification outside the statute to reach its chosen result:

> So the majority resorts, as is becoming the norm, to its so-called major-questions doctrine. And the majority again reveals that doctrine for what it is—a way for this Court to negate broad delegations Congress has approved …

What will the impact be?

The decision by the six far-right justices immediately saddled 43 million people with debt that the elected branches of government opted to relieve them of. As noted above, the impact will be particularly severe for Black and Latino individuals.

The damage from this case will go even farther. That's because of the "major questions" doctrine. It is a weapon that can be used by those who have long sought to undo the New Deal – to make it harder for federal agencies to adopt measures to protect our rights, our safety, and our lives.

Cases raising the "major questions doctrine" are already in the lower courts. Examples include ones on requiring COVID-19 vaccinations for people working with children in a Head Start program; setting a minimum wage for federal contractors; and canceling student debt of borrowers who attended for-profit schools accused of defrauding students. There will be even more after this decision. That is why we need to make sure President Biden fills every vacancy with judges who understand that our courts should work for everyone, not just the wealthy and powerful.

Religious Accommodations

Supreme Court Issues Useful Ruling on Religious Accommodations to Workers

In a unanimous decision issued on the same day as its controversial affirmative action ruling, the Supreme Court helpfully clarified the religious accommodations owed to workers under federal law. The Court avoided catering to far-right religious demands, as it has in other cases, but provided useful guidance on how to interpret federal law requiring that employers seek to accommodate workers' religious practices, ranging from wearing a head covering to not working on their Sabbath or holy days. The case was *Groff v DeJoy*.

What is the background of the case?

As part of its effort to end discrimination in the workplace, Title VII of the 1964 Civil Rights Act requires that employers must "reasonably accommodate" a worker's "religious observance or practice" on the job unless doing so would create "undue hardship." In 1977, in a case called *TWA v Hardison*, the Supreme Court majority ruled that such undue hardship would be caused by the accommodation requested by an employee, and suggested that such a hardship would be created by any proposed accommodation that would require an employer to "bear more than a *de minimis* cost."

Justice Samuel Alito

This apparent standard drew severe criticism across the political and ideological spectrum, including from representatives of minority religions. In fact, Justices William Brennan and Thurgood Marshall strongly dissented on that point. Advocates on both the right and the left supported efforts in Congress over the years to clarify the standard and effectively overrule the "*de minimis*" test. As diverse religious groups explained to the Court, the *Hardison* language has been used by many lower courts over the years to deny employees "even minor" religious accommodations.

Gerald Groff, a part-time postal worker, sued the U.S. Postal Service (USPS) for refusing to accommodate his evangelical religious views that require him not to work shifts on Sunday. Based on *Hardison*, the lower courts ruled for USPS, and the Supreme Court agreed to hear the case.

What did the Court decide and why is it important?

In a unanimous opinion written by Justice Alito, the Court vacated the lower court rulings and sent the case back for reconsideration. It made clear that the "*de minimis*" language should not be interpreted as many lower courts have, and that to comply with Title VII, an employer should grant an accommodation unless it would result in "substantial increased costs" in its business or other undue hardship.

In a concurring opinion, Justices Sotomayor and Jackson explained that while correcting the interpretation of *Hardison's* "loose language," the Court had not endorsed some of the more far-reaching action that Groff had requested. The Court declined to overrule *Hardison* or to create a "significant difficulty or expense" standard. The Court's ruling also recognizes, Sotomayor explained, that undue hardship "may include" such hardship to other employees, who could be required to work longer or inconvenient hours because of a religious employee's accommodation demands.

Reaction to the Court's decision has already been positive from diverse religious groups, including from the Religious Action Center of Reform Judaism and Islam RFI. Hopefully this ruling will provide an example to all members of the Court about the importance of trying to achieve consensus on religious liberty issues.

Protecting Our Environment

Majority Puts a "Thumb on the Scales for Property Owners" to Weaken the Clean Water Act

Since the 1970s, Congress has required people and businesses to get a permit before polluting or filling in wetlands. In *Sackett v. EPA*, a right-wing 5-4 Supreme Court majority rewrote the Clean Water Act. They severely limited the kinds of wetlands covered by the Act, taking protection away from tens of millions of wetlands previously covered.

What did Congress say in the Clean Water Act?

The Clean Water Act protects more than just traditional bodies of water like rivers, lakes, and streams. It also protects "wetlands adjacent" to such bodies. Congress understood the importance of wetlands. They filter and purify water draining into adjacent bodies of water. They slow the flow of surface runoff into lakes, rivers, and streams. And they play a vital role in flood control.

But business interests that prioritize profits over such concerns have long wanted to make it easier to pollute or fill in wetlands without a permit. A case involving property owners Michael and Chantell Sackett gave them their chance.

How did this case begin?

The Sacketts wanted to build a house on land that the EPA protected as wetlands. The Idaho property is 30 feet from a creek tributary that ultimately feeds into Priest Lake. A subsurface flow of water connects their property to other nearby wetlands and the lake. The EPA determined that the land is part of an area that significantly affects the lake. So when the Sacketts started to fill in the wetlands without a permit, the EPA and Corps of Engineers stepped in.

The Sacketts went to court. They argued that since a road separates their property from the tributary and there isn't continuous surface-level water connecting them, it is not protected by the Clean Water Act. That would mean they could fill in the land without a permit regardless of the impact on the creek or the lake.

How did the majority rule?

The five-justice majority opinion was written by Justice Alito, and joined by Roberts, Thomas, Gorsuch, and Barrett. They adopted a new test that changed the Clean Water Act's reach. Congress wrote the Clean Water Act to protect "adjacent wetlands," which means *nearby* wetlands. Alito's majority narrowed that to *adjoining* wetlands, which is not what Congress said. Under their new test, a wetlands isn't protected unless it's "indistinguishable" from a traditional body of water. If there isn't a continuous surface connection between the two, then it is no longer protected under the Act.

This was essentially a definition that five justices had rejected in a 2006 case called *Rapanos v. United States*. But this is a much more right-wing Court than existed then.

How did the other justices criticize the majority?

Alito's rewrite of the Clean Water Act was too much even for Justice Kavanaugh, whose criticism was joined by Sotomayor, Kagan, and Jackson. They actually agreed with the majority that the Sacketts' land wasn't covered by the Clean Water Act. But they would not have limited the reach of the law in the draconian way the majority did.

Kavanaugh pointed out that the majority was "rewriting" the Act by having it only protect adjoining wetlands. He noted that the term *adjacent* is "unambiguously broader" than *adjoining*. In fact, since the wetlands provision was adopted in 1977, all eight presidential administrations agreed that "adjacent" wetlands include those not actually joined to covered waters. Even administrations with the narrowest definition of "adjacent wetlands" included wetlands separated from covered waters by features like artificial dikes or barriers, natural river berms, and beach dunes.

Justice Kagan (joined by Sotomayor and Jackson) was even more critical. She cited Alito's complaints about the reach of the Clean Water Act and its impact on property owners. Kagan noted that those policy issues are up to Congress to decide, not the Court. But the far-right majority took it upon itself to "rescue property owners" from Congress's decision.

Kagan criticized Alito's statement that when Congress exercises power "over private property," and particularly over "land and water use," it must adopt "exceedingly clear language." The majority opinion, she wrote, puts "a thumb on the scale for property owners – no matter that the Act … is all about stopping property owners from polluting."

She compared this to last term's decision in *West Virginia v. EPA*, the climate change case mentioned earlier. In that case, the Court majority – including Kavanaugh – made up a "major questions" doctrine to diminish another statute's clearly expansive grant of power to the EPA.

Dangers of the majority's ruling

It has been estimated that up to half or even more of the nation's wetlands have lost their federal protection under the Clean Water Act. This is a gift to businesses that have long sought to act without regard to the damage their actions cause to others. It undermines efforts to protect the nation's water. It endangers communities around the country, especially those most vulnerable to the impact of pollution and climate change.

The Rights of Working People

Supreme Court Weakens an Important Precedent Protecting Labor Unions

Glacier Northwest v. International Brotherhood of Teamsters should have been a straightforward application of an important 1959 precedent protecting labor rights. Instead, the majority chipped away at that precedent. The case gave business interests an opening to harass striking unions with lawsuits designed to deter them from exercising their rights.

Congress set up a system to resolve labor disputes

Congress established our nation's primary labor policies in the National Labor Relations Act (NLRA). The NLRA protects the rights of unions to engage in activities like strikes that put economic pressure on the employer, including when the strike damages a company's goods (like perishable food that isn't being sold because of the strike). But the NRLA does not protect property destruction that isn't incidental to a work stoppage.

That law created the National Labor Relations Board (NLRB) as the forum for resolving conflicts between management and labor over whether a union's actions are protected by law. What happens if management whose property is damaged tries to bypass the NLRB by suing the union in court?

Under a 1959 Supreme Court precedent called *Garmon*, the court can't consider the case if the union's alleged conduct is even "arguably" protected by the NRLA. Unlike state courts, the NLRB has expertise in labor law. It can also enforce labor law in a uniform manner throughout the country.

How did this case begin?

Teamsters cement truck drivers in Washington working for a company called Glacier Northwest went on strike. Once the strike was called, drivers left their cement trucks with the keys still in them and the drums rotating. This let management keep the concrete from hardening immediately. But according to the company, even with the drums rotating, it still could not have made alternative delivery plans before the cement hardened.

So Glacier claims it had to undertake expensive emergency efforts to dispose of the wet cement and to prevent the trucks from being ruined. The company accused the workers of timing their strike to cause such economic damage.

But the company did not go to the NLRB. Instead, it went to state court and sued the union. Glacier claimed *Garmon* wasn't relevant because the union's actions were not even arguably protected under the NLRA. But it also made a broader attack: If *Garmon* controlled, then applying it in this case would deprive the company of its property without just compensation, in violation of the Constitution's "Takings Clause."

What did the Supreme Court majority do?

Justice Barrett wrote the majority opinion, joined by Roberts, Sotomayor, Kagan, and Kavanaugh. The ideologically mixed group of justices ruled in favor of the company but did not give it the most expansive victory it had been seeking. They ruled that the union's specific activities in this particular case (as alleged by the company) were not even arguably protected by the NLRA. Barrett wrote that the union should have taken "reasonable precautions" to protect Glacier's property from "imminent danger" caused by their decision to time their strike to begin after the concrete had already been loaded into the trucks. Accordingly, the corporation could bypass the NLRB and sue the union in this case.

Which justices wanted to go farther?

Justices Thomas, Alito, and Gorsuch agreed with the result (ruling against the workers). Thomas and Gorsuch suggested that *Garmon* had been wrongly decided and should be overturned. But since Glacier hadn't made that argument, they invited some future litigant to make it so the Court could act on it. Alito's concurrence strongly suggested he would join them in overturning *Garmon*.

Only Justice Jackson dissented

Justice Jackson was the only dissenter. She criticized the majority for overlooking congressional intent and Supreme Court precedent that the NLRB be the first forum for deciding whether actions surrounding a strike are protected by the NLRA.

Jackson also strongly condemned how the other justices were framing the rights of working people:

> Workers are not indentured servants, bound to continue laboring until any planned work stoppage would be as painless as possible for their master. They are employees whose collective and peaceful decision to withhold their labor is protected by the NLRA even if economic injury results.

She also focused on a development that happened after the lower court ruled, but before the Supreme Court heard oral arguments: The NLRB filed an administrative complaint against Glacier. The NLRB's complaint alleges that Glacier interfered with the workers' right to strike in two ways: by disciplining the workers who left their trucks with cement, and by filing the state lawsuit against the union.

According to Jackson, the existence of the NLRB complaint means the union's actions were at least "arguably" protected by the NLRA, and the state lawsuit should be dismissed when this case returns to the state courts.

The majority opted not to address this point. Instead, they left it up to the Washington state courts to address. In contrast, Alito (joined by Thomas and Gorsuch) made clear such a result would, in his opinion, merit a return to the Supreme Court.

What is the impact of this case?

By avoiding the constitutional issue and focusing on the facts of this specific case, the majority avoided a much worse result. Nevertheless, the result may leave unions more cautious about going on strike when perishable products are concerned. Just defending against a company's lawsuit in state court costs the union resources, even if the lawsuit is baseless. But as SEIU noted in its response to the case, workers retain the right to strike: "Through striking and collective action, working people become more powerful than any boss or corporation."

Some have conjectured that Sotomayor and Kagan joined Barrett, Roberts, and Kavanaugh in order to prevent an even more damaging result. As we have seen in previous cases like *Janus v. AFSCME*, which overturned a decades-old precedent protecting the rights of public sector unions, the far-right justices have a deep hostility to organized labor.

Maintaining Native American Families

The Court Upholds the Indian Child Welfare Act

In *Haaland v. Brackeen*, the Court upheld congressional efforts to protect Native American tribes from having their children taken away from them. The justices rejected some of the constitutional attacks against the law. But the Court left some others open to potential challenges by different parties in a future case.

What is the Indian Child Welfare Act?

The federal government has a trust obligation to act in the welfare of tribes. Congress passed the Indian Child Welfare Act (ICWA) in 1978 because so many Native American families were having their children removed and raised by non-Native families and institutions. The law states that "there is no resource that is more vital to the continued existence and integrity of Indian tribes than their children." The ICWA established rules for state custody proceedings to increase the likelihood that Native children would be raised by Native families.

Several non-Native families whose adoption plans were affected by the law sued in federal court, as did the governments of Texas, Louisiana, and Indiana.

What did the Court do?

Justice Barrett wrote the 7-2 opinion rejecting the challenges to the law. She was joined by everyone but Thomas and Alito, who dissented. The Native American Rights Fund called the result a "major win for Native families."

The Court rejected the argument that since child custody decisions are state decisions, Congress had no authority to pass the law. The majority opinion stressed that Congress has extensive authority to pass laws relating to Native American tribes, including statutes that preempt state laws.

Justice Amy Coney Barrett

This is part of Congress's broad authority to act as a trustee to protect the Indian Nations. Barrett's opinion also rejected claims that the ICWA unconstitutionally "commandeers" state courts and adoption agencies to carry out a federal program.

The Court also ruled that the plaintiffs in this case did not have standing to make another argument against the law: that the adoption preference for Native American families violates the Equal Protection rights of non-Native families. The parents can't press this claim in this case because they sued the federal government, instead of the state entities that actually carry out the federal preference for Native American families. And the states can't press this claim because they aren't the ones allegedly injured by the preference.

It should be noted that the Equal Protection claim inaccurately frames the issue at stake as akin to racial discrimination. But the ICWA makes distinctions based on tribal sovereignty and tribal citizenship, which are not at all the same. Despite the Court's dismissal of the claim in this case, some other party might raise the issue in a future lawsuit against state officials. While the majority opinion did not give any hints as to how the justices would see the issue, Kavanaugh wrote a concurrence to stress that the Equal Protection issue remained undecided. He called it a "serious" constitutional claim that the Court should consider in the future.

Justice Gorsuch also wrote a concurring opinion (joined by Sotomayor and Kagan), mainly to call attention to the horrific history of how the federal and state governments have mistreated Native American children in the past.

The Rights of Immigrants

Supreme Court Reverses Trump Judge's Overreach on Immigration

An 8-1 Supreme Court majority rejected a transparently political effort by a Trump judge to hobble the Biden administration on immigration. In *United States v. Texas*, the Court dismissed efforts by two red states to prevent the president from pursuing his own priorities rather than Donald Trump's.

What did the Biden administration try to do?

When he took office, President Biden sought a sharp departure from Trump's deliberately cruel immigration policies. The Trump administration generally encouraged federal Immigration and Customs Enforcement (ICE) agents to arrest and seek to deport as many people without immigration papers as possible. This included people with long ties to their local communities who posed no public safety or national security risks. This spread fear and misery throughout the targeted communities.

In contrast, Biden officials directed ICE agents to prioritize enforcement efforts against immigrants who pose "threats to public safety and national security."

The Supreme Court has long recognized that the president has enormous discretion in how to prioritize immigration enforcement. That is especially the case since Congress does not appropriate enough money for any administration to fully enforce every immigration law in every context. Every administration must choose where to put its limited resources.

How did Republican states and judges respond?

Despite what the law says, Republican officials in Texas and Louisiana quickly sued. They went before Trump Judge Drew Tipton, who ordered Biden to follow Trump's policies.

He held that the immigration statutes require all immigrants in certain categories to be deported, which means it is illegal to give officials discretion. His order applied not just in Texas and Louisiana, but nationwide. This was condemned as "unprecedented and outrageous."

On appeal, the Fifth Circuit let Tipton's order remain in effect. This was not a surprise, since the Fifth Circuit is among the most right-wing in the country. The three-judge panel was composed of judges nominated by Ronald Reagan, George W. Bush, and Trump, all of whom were committed to the Far Right's agenda of taking over our nation's courts.

What did the Supreme Court do?

The lower courts' efforts to impose their political beliefs were too much even for most of the current Supreme Court. Eight justices agreed that the states lacked standing to sue, but they were split in the reasoning.

Justice Kavanaugh wrote the majority opinion, joined by Roberts, Sotomayor, Kagan, and Jackson. They ruled that Judge Tipton should never have considered the case in the first place, because the states don't have "standing" to sue. To have standing, you must show an injury. Judge Tipton had held that having more undocumented immigrants in Texas and Louisiana would force the states to spend money, and that is enough injury to get into federal court.

The Court disagreed. The majority opinion found no precedent for a case like this, which Kavanaugh called a "highly unusual lawsuit." The states are not the ones being subjected to immigration policies. In addition, the decision *not* to arrest or prosecute someone does not threaten anyone's liberty interest. Also, courts simply don't have any standards to use to determine the propriety of an administration's enforcement choices in a context with such limited resources and public policy choices.

Justice Neil Gorsuch

Gorsuch (joined by Thomas and Barrett) agreed that the states lack standing, but they disagreed with the majority's reasons. For them, it was because the courts can't offer the states any relief. They wrote that the immigration statutes prohibit lower federal courts from ordering immigration officials to carry out certain immigration laws, including the ones at issue in this case. Alito disagreed with both sets of justices and believed the lower courts were right to consider the states' lawsuit. He also made clear that he would have ruled in their favor on the merits, calling up images of ancient British monarchs who unilaterally suspended acts of Parliament.

Can someone other than states bring this issue back to the courts?

Kavanaugh's majority opinion made clear that this was simply not a matter for the federal courts to decide. He stressed that the Court was not addressing whether the administration's policies comply with our immigration laws. He said that is a question to be addressed in the political process, through congressional hearings, new legislation, and elections.

What does this tell us about lower federal courts?

This case would never have made it to the Supreme Court if Trump judges in Texas and the Fifth Circuit had not overreached. Yet the vast majority of lower federal court decisions don't get reviewed by the Supreme Court, which hears only a few dozen cases a year.

President Biden and Senate Democrats have done a spectacular job of filling vacancies with fair-minded judges who will protect the rights of all people, not just the powerful. Yet progress is slow in many red states, including Texas, which has eight district court vacancies without nominees. As long as home state senators exercise unilateral veto power over district court nominees in their states, we will have two systems of justice.

Safe Medical Care

The Court Maintains Protections for Patients Who Get Substandard Care

In *Health and Hospital Corp. v Talevski*, the far-right majority opted not to overturn an important precedent protecting all of us. The case was about whether we can sue Medicaid-funded healthcare providers for substandard care. But a bad decision could have affected other programs that affect our health and our lives. It could have closed the courthouse door to victims of any business or organization that violates protections set by Congress for recipients of federal funds. This did not happen this time.

Alleged mistreatment of a nursing home resident

Ivanka Talevski sued her husband Gorgi's nursing home for overprescribing unnecessary and powerful psychotropic drugs that she says caused his rapid physical and cognitive decline. She also accused them of moving him to another facility without his or his family's consent. These actions violated the standards of care the nursing home agreed to when it accepted Medicaid funding.

How Congress has protected us from substandard care

Through the Constitution's "Spending Clause," Congress can set conditions for recipients of federal funds – like nursing homes that take Medicaid funds. What happens if the recipient violates those terms and hurts someone who those terms were supposed to protect? Decades ago, the Supreme Court established the principle that the victim can sue for damages if the spending statute in question clearly gives victims substantive legal rights. That's because a federal civil rights law dating back to Reconstruction – called "Section 1983" – protects a person's ability to sue when a federally protected right is violated.

In this case, the Court was being asked to overrule its precedent and shut down victims' lawsuits. The nursing home argued that even if Talevski's allegations are true and the hospital violated the conditions it had agreed to, Talevski should not be able to sue. It said any Supreme Court precedent to the contrary should be overruled.

How did the majority rule?

Justice Jackson wrote the 7-2 majority opinion, joined by everyone but Thomas and Alito. She pointed out that Section 1983 is triggered when someone's rights under the Constitution "and laws" is violated. And she noted that Congress didn't include any modifiers that carved out rights under "Spending Clause" laws. She wrote that the Court would not "reimagine Congress's handiwork (and our precedent interpreting it)." In addition to this general question, she also concluded that the Medicaid statute in particular grants patients legal rights to minimum standards of care that Congress intended to be enforceable by patients through lawsuits under Section 1983.

What did the dissenters say?

Alito wrote a dissent joined by Thomas. They interpreted the Medicaid statute very narrowly. According to them, letting people sue to protect their rights would "swallow" the parts of the Medicaid statute that authorize federal and state sanctions against non-compliant facilities. (Jackson explained that those provisions complement Section 1983, rather than supplant them.) Thomas wrote a more expansive dissent of his own. He would have ruled that the Constitution does not allow Congress to create enforceable rights through setting conditions for the spending of federal funds. According to Thomas, those conditions are simply contractual terms, and they can only be enforced in court by Congress itself as a party to the contract.

What is the impact of this decision?

Justice Jackson's opinion upheld the right of low-income people – people receiving Medicaid – to vindicate their rights in federal court.

Next Term

The Court has already announced some of the cases that it will be hearing in the term starting in October. They include cases addressing:

- **Gun Violence** (*United States v. Rahimi*): The Court will address whether people subject to a domestic violence restraining order have a constitutional right to firearms.
- **Uncovering Illegal Discrimination** (*Acheson Hotels v. Laufer*): The Court could undermine the longstanding civil rights practice of using “testers” to uncover illegal discrimination.
- **Health and Safety Protections** (*Loper Bright Enterprises v. Raimondo*): Conservatives are hoping the Court will overrule its longtime practice of upholding federal agencies’ regulations as long as they are reasonable interpretations of congressional statutes. The alternative would greatly expand judges’ ability to strike down vital health and safety protections.
- **Racial Gerrymandering** (*Alexander v. South Carolina Conference of the NAACP*): The Court will decide whether to reverse a lower court’s finding that South Carolina Republicans used illegal racial gerrymandering in drawing congressional districts.
- **Fair Taxation** (*Moore v. United States*): This case could have an enormous impact on whether Congress would ever be able to pass a wealth tax, which some progressives have advocated as a way to address our society’s vast wealth inequality.

Conclusion

The Supreme Court and all federal courts have an enormous impact on our lives. Cases this term have sharply limited our efforts to attain educational equity, our right to fair treatment in the marketplace, our ability to become free of crushing debt, and our right to protect our nation's water. In addition, even decisions that were not as bad as they could have been left room for future assaults on our rights.

This is all by design. The Far Right spent many years in their long-term project to take the courts over. Repairing this damage is a similarly long-term project. As the conservatives have shown, today's minority viewpoint can become tomorrow's majority if we work hard enough for it.