I. Introduction
A. Supreme Court Justices 2021-2022

<table>
<thead>
<tr>
<th>Name</th>
<th>Party</th>
<th>Gender</th>
<th>Religion</th>
<th>Education</th>
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<tbody>
<tr>
<td>Thomas</td>
<td>GHW Bush (R, 1991)</td>
<td>M</td>
<td>Catholic</td>
<td>Yale, Georgia.</td>
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<tr>
<td>Breyer</td>
<td>Clinton (D, 1994)</td>
<td>M</td>
<td>Jewish</td>
<td>Harvard, CA.</td>
<td>83</td>
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<tr>
<td>Alito</td>
<td>GW Bush (R, 2006)</td>
<td>M</td>
<td>Catholic</td>
<td>Yale, NJ.</td>
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<td>Sotomayor</td>
<td>Obama (D, 2009)</td>
<td>F</td>
<td>Catholic</td>
<td>Yale, NY.</td>
<td>67</td>
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<tr>
<td>Kavanaugh</td>
<td>Trump (R, 2018)</td>
<td>M</td>
<td>Catholic</td>
<td>Yale, DC.</td>
<td>56</td>
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<tr>
<td>Barrett</td>
<td>Trump (R, 2020)</td>
<td>F</td>
<td>Catholic</td>
<td>Notre Dame, Indiana</td>
<td>50</td>
</tr>
</tbody>
</table>

B. Merits Docket
- 7,000 to 8,000 appeals per year
  
amicus curiae friend of the court briefs
- Rule of 4: required to grant certiorari
- 62 Cases heard in person by April 2022 in 2021 Term begun on 1st Monday in Oct.
- 33 opinions issued as of 6/14/22
- 26 opinions TBA by 6/30/22 or early July

C. Emergency Appeals — Shadow Docket
Unsigned order of several sentences that stays lower court injunction blocking a change in the law before oral argument and final decision of the merits. Critics: violates the Court’s traditional preference to maintain the status quo or apply past precedent until they can properly rule on the merits
From 2005 to 2013 the Court never granted more than 8 applications for emergency relief in a given term
2017-2021  41 DOJ appeals for emergency orders
2019-2020 Term
12 of 53 Merits Docket decisions 5-4
11 Emergency orders decided 5-4

By the halfway point of the 2021–2022 Term, the Court had granted emergency relief 13 times

- reinstating new, post 2000 census districting maps in Alabama and Wisconsin for elections in 2022, overriding lower court injunctions responding to claims of racial gerrymandering
- Ordered Pa officials to count undated absentee ballots
- 5-to-4 vote, reinstated a Trump administration Clean Water Act regulation that limited the ability of states to block projects that could pollute rivers and streams.
- blocked the Occupational Safety and Health Administration’s (OSHA) vaccinate-or-test rule for businesses with 100 or more employees.

II. Two Pending Landmark Decisions
A. Abortion
7-2 including 3 of 4 Nixon appointees over dissents by the 4th, Rehnquist, and JFK appointee White. 14th Amendment privacy right to be regulated based on trimester formula

5 Republican appointees including O’Connor replace trimester formula with “undue burden” test

2021 Dobbs v Jackson Women’s Health. TBA
Mississippi bans abortion after 15 weeks. Leak: Alito, Thomas + 3 Trump appointees in February voted to overturn Roe. Roberts favors allowing 15 week ban without overturning Roe. Clerks investigated
2021 *Whole Women’s Health v. Texas.*
Ban after 6 weeks enforced by private litigants entitled to damages. Sept. reject Emergency Stay
5-4 order lifting lower court stay blocking enforcement over 4 dissents, including Roberts.

*Cameron v. EMW Women’s Surgical Center, P.S.C.* 8-1. Grant Kentucky Attorney General right to intervene to defend law.

B. Guns

Scalia finds 2nd Amendment Right to keep private weapon at home wile acknowledging constitutionality of reasonable limits TBA. Follow up decisions extended 2d Amendment limits to state and local gun regulations.

2022 *New York State Rifle & Pistol Association Inc. v. Bruen*
New York prohibits its ordinary law-abiding citizens from carrying a handgun outside the home without a license, and it denies licenses to every citizen who fails to convince the state that he or she has “proper cause” to carry a firearm.

TBA: Whether the state of New York's denial of petitioners' applications for concealed-carry licenses for self-defense violates the Second Amendment.

C. By What Right?

Strict Scrutiny for special groups and selected rights = Double Standard

*US v Carolene Products.* 1938
Chief Justice Harlan Stone, appointed by Republican Coolidge, promoted by Democrat FDR. Footnote 4
Applied “rational basis test” presuming government economic regulations of corporations constitutional
Articulate “strict scrutiny” standard to protect individual liberties + “discrete and insular minorities”
a) Suspect Classifications — marginalized, subordinate groups
   Race, national origin, religious minorities
   Quasi suspect — gender

b) Fundamental Rights — express (speech, religion, bear arms) or deemed essential (privacy, abortion, procreation, voting)

D. Liberal v Conservative Agendas
   Liberal precedents.
   1960s 8-1 Democratic appointed Justices a super majority,
   1970’s Republican moderates
   Counter majoritarian, Independent Judiciary
   Racial Integration, Voting Rights, School Prayer, Religious liberty, Criminal due process, immigrant rights, Equal rights for women, Abortion, labor rights

Conservative Agenda to Reverse Liberal Precedents: (Federalist Society, Heritage Found)
1. That favor government regulation of free enterprise and protect unions allowing US laws that violate fundamental property rights of entrepreneurs and corporations
2. That create reverse discrimination in favor of racial, religious, immigrant and sexual minorities in violation of majority rights of white, Christian, heterosexual citizens

E. Checks on Independent Judiciary
1. Congressional:
   • limits on jurisdiction 1868 Ex parte Milligan + McCardle
   • 2022 financial disclosure.
   • Impeachment. Clarence Thomas breach of ethical obligation to recuse in case involving his wife and Jan. 6 inquiry.
   • Revise statutes to correct misreading. Amend Constitution Move to Amend (Citizens United)
2. Executive (Election Campaign for 1968 + 2016 votes)
   Nixon 4, Trump 3 appointees.
   Forced Removal. Johnson induce Goldberg to resign in favor of Fortas who forced out by Nixon.
3. State constitutions and courts
4. Extra legal — non-compliance — school prayer, peer/public pressure assassination

**F. Biden's Bipartisan Presidential Commission**

*Biden Executive Order 36 members*

*December 2021 report on reform proposals*

1. Size of the court
2. 18 year term limits or mandatory retirement
3. Super majority to find law unconstitutional
4. Increase number of cases on the merit docket
5. Oral argument and briefing for shadow docket

**II. 2021 Term 6/14/22 Overview**

A. Immigration: Executive Orders

*Biden v Texas. TBA*

Issues:

1) Whether 8 U.S.C. § 1225 requires the Department of Homeland Security to continue implementing the Migrant Protection Protocols, revoked by the Biden administration ordered by the previous Trump administration under which certain non-citizens arriving at the southwest border were returned to Mexico during their immigration proceedings; and

(2) whether the U.S. Court of Appeals for the 5th Circuit erred by concluding that the secretary of homeland security’s new decision terminating MPP had no legal effect.

B. January 6 Investigation

Trump sought emergency Supreme Court order barring House committee subpoena of White House documents related to planning challenges to Biden’s election. Rejected 8-1 with Thomas in dissent.

As with Watergate investigation of Richard Nixon’s impeachable, election related crimes, a Republican President’s appointed Justices voted to compel disclosure of incriminating documents, including evidence of Ginni Thomas’ support for “stop the steal.”
C. Affordable Care Act


In an opinion for a 7-2 majority Justice Breyer upheld the Affordable Care Act (or Obamacare) against a challenge that claimed the act was invalid after Congress eliminated its minimum essential coverage fine. The majority justices disagreed, citing a lack of standing by the plaintiffs.

D. Free Exercise and Religious Establishment

Death Penalty: *Ramirez v. Collier*

Alito for 8 member majority, Thomas dissenting: Texas’ restrictions on religious touch and audible prayer in the execution chamber burden religious exercise and are not the least restrictive means of furthering the state’s compelling interests.

Tax $ for Religious Schools: *Carson v. Makin*

TBA: Issue(s): Whether Maine violates the religion clauses or equal protection clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or “sectarian,” instruction.


TBA: Issue(s): (1) Whether a public-school employee who says a brief, quiet prayer by himself while at school and visible to students is engaged in government speech that lacks any First Amendment protection; and (2) whether, assuming that such religious expression is private and protected by the free speech and free exercise clauses, the establishment clause nevertheless compels public schools to prohibit it.

E. COVID-19

In response to petitions for emergency orders challenging Biden administration vaccination mandates the court scheduled in person hearings for January, just after the Omicron surge. Justice Sotomayor, who has diabetes, was the only Justice to wear a mask until all except Gorsuch did so at the January hearing which Sotomayor attended remotely from her office.
National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration

Holding: The 6 member conservative majority granted the applications to stay the Occupational Safety & Health Administration’s challenged rule mandating that employers with at least 100 employees require covered workers to receive a COVID–19 vaccine. Justices Breyer, Sotomayor, and Kagan filed a dissenting opinion.

Biden v. Missouri

Holding: In a 5-4 per curiam opinion the court granted the applications to stay the two injunctions barring the Secretary of Health and Human Services’ regulation requiring facilities that participate in Medicare and Medicaid to ensure that their employees are vaccinated against COVID–19. Roberts and Kavanaugh joined Breyer, Sotomayor + Kagan. Four conservatives dissented.

F. Environment
West Virginia v EPA.
Does the Environmental Protection Agency have the authority to regulate greenhouse gas emissions in virtually any industry, so long as it considers cost, non-air impacts, and energy requirements? TBA

G. Qualified Immunity
Per Curiam Orders Granted Reversing Appeals Court findings that police used excessive force without oral argument

Rivas-Villegas v. Cortesluna

Holding: Officer Rivas-Villegas is entitled to qualified immunity in this excessive force action brought under 42 U.S.C. § 1983; the U.S. Court of Appeals for the 9th Circuit’s holding that circuit precedent “put him on notice that his conduct constituted excessive force” is reversed.

City of Tahlequah, Oklahoma v. Bond

Holding: Officers Girdner and Vick are entitled to qualified immunity in this excessive force action brought under 42 U.S.C. § 1983; the U.S. Court of Appeals
for the 10th Circuit’s contrary holding is not based on a single precedent finding a Fourth Amendment violation under similar circumstances.

H. 2021-2022 Scorecard

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<th>Liberal</th>
<th>Conservative</th>
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<tr>
<td>COVID Vaccine Medicare</td>
<td>COVID-19 OSHA</td>
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<td>Free Exercise Death Penalty</td>
<td>Excessive Use of Force Qualified Immunity</td>
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<tr>
<td>Affordable Care Act</td>
<td>Emergency Order Clean Water Act</td>
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<td>January 6 Subpoena</td>
<td>Emergency Orders allowing gerrymanders</td>
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<td>Pa undated absentee ballots</td>
<td>TBA</td>
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<td>Abortion</td>
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<td>Gun Rights</td>
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<td>Free Exercise Prayer</td>
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<td>Religious Establishment Tax $ for Church Schools</td>
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<td>Environmental Regulation</td>
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<td>Immigration Remain in Mexico</td>
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III. October 2022 Term Preview
A. Supreme Court Justices 2022-2023

**Thomas:** GHW Bush (R, 1991) M, Catholic, Yale, Georgia. 72

**Roberts:** GW Bush (R, 2005), Male, Catholic, Harvard, NY. 66

**Alito:** GW Bush (R, 2006), Male, Catholic, Yale, NJ. 71

**Sotomayor:** Obama (D, 2009), Female, Catholic, Yale, NY. 67

**Kagan:** Obama (D, 2010), F, Jewish, Harvard, NY. 61

**Gorsuch:** Trump (R, 2017), M, Cath/Episc, Harvard, COL 55

**Kavanaugh:** Trump (R, 2018), M, Catholic, Yale, DC. 56

**Barrett:** Trump (R, 2020), F, Catholic, Notre Dame, Indiana 50

**Jackson:** Biden (D, 2022) F, Protestant, Harvard. DC/FL 53
B. Cases

Affirmative Action

*Students for Fair Admission Harvard*

Issue(s): (1) Whether the Supreme Court should overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions; and (2) whether Harvard College is violating *Title VI* of the Civil Rights Act by penalizing Asian American applicants, engaging in racial balancing, overemphasizing race and rejecting workable race-neutral alternatives.

Environment

*I Sackett v. Environmental Protection Agency*, No. 21-454

Issue(s): Whether the U.S. Court of Appeals for the 9th Circuit set forth the proper test for determining whether wetlands are "waters of the United States" under the *Clean Water Act, 33 U.S.C. § 1362(7)*.

Free Speech

*303 Creative LLC v. Elenis*, No. 21-476

Issue(s): Whether applying a public-accommodation law to compel an artist to speak or stay silent violates the free speech clause of the First Amendment. Lorie Smith is the owner and founder of a graphic design firm, 303 Creative LLC. She wants to expand her business to include wedding websites. However, she opposes same-sex marriage on religious grounds so does not want to design websites for same-sex weddings. She wants to post a message on her own website explaining her religious objections to same-sex weddings that would violate The Colorado AntiDiscrimination Act ("CADA").

Voting

Whether the state of Alabama’s 2021 redistricting plan for its seven seats in the United States House of Representatives violated Section 2 of the *Voting Rights Act*

IV. Conclusion

A. Who Should Decide?

Legislators

Congress, State Assemblies, City Councils

Executives

President, Governors, Mayors

Regulatory Officers

EEOC, DHS, EPA

Judges
B. Politics, Principles and Preferences
   • Judicial Review makes the court a political actor
   • Justices are unavoidably influenced by both legal and political principles, that invariably involve personal preferences to varying degrees.
   • Court lawmaking can modify a flawed Constitution, poorly drafted legislation, and check abuse of executive and legislative power or be an abuse of judicial power
   • Reasonable, informed citizens when disagreeing about which judicial lawmaking was appropriate can do so with respectful appreciation of others’ values

V. Online References
   scotusblog.com/
   oyez.org/
   supremecourt.gov/