

Supreme Court Marks New Era of Ambitious Conservatism; Decisions on abortion, guns and religion's place in schools make a decisive turn away from the more liberal judicial legacy of the late 20th century

Bravin, Jess . Wall Street Journal (Online) ; New York, N.Y. [New York, N.Y.]. 30 June 2022.

[ProQuest document link](#)

FULL TEXT

WASHINGTON—The Supreme Court's term, which ended Thursday, marked a turning point in the high court's history.

A solid conservative majority issued several consequential rulings that reflected their originalist views of the Constitution on matters that ranged from overturning the landmark *Roe v. Wade* abortion ruling to expanding religious rights in public education and enlarging the scope of the Second Amendment.

On its last day of the term, the court ruled that the Environmental Protection Agency overreached in regulating greenhouse-gas emissions from power plants, in a decision that could limit the authority of government agencies to address major policy questions without more explicit congressional authorization.

The court is also poised for a generational change. Justice Stephen Breyer, 83 years old, retired at noon Thursday and immediately swore in his successor, Ketanji Brown Jackson, a federal judge who once clerked for him. Justice Jackson, President Biden's first appointee, becomes the first Black woman elevated to the high court.

At 51, Justice Jackson all but completes the court's generational turnover. The only justice remaining who was on the Supreme Court in the 20th century is Clarence Thomas, 74, appointed in 1991 by President George H.W. Bush. Justice Samuel Alito, 72, is the second oldest and was nominated in 2005.

The other justices all are in their 50s or 60s, suggesting that most could serve into the 2040s or beyond.

The court made several decisions that changed longstanding precedent, particularly by ending the constitutional right to abortion that it recognized in the 1973 *Roe* decision. Its actions this session also disavowed a rule in place since 1971 against government actions that suggest an endorsement of religion. On a shorter time scale, the court threw out several public-health orders the Biden administration issued to combat the spread of Covid-19 and pared back a watershed decision, reached only two years ago, recognizing Native American sovereignty.

The impacts of the decisions are already rippling out through society. Almost half of the states have introduced or will introduce laws severely restricting or banning abortion after the overturning of *Roe* sent the issue back to state legislatures to decide. States including New York, California and Massachusetts no longer can require that individuals provide a reason to obtain a concealed-weapons permit. And states must pay tuition at religious schools if they subsidize private nonsectarian education in areas that lack public schools. And within public schools, employees won more leeway to engage in religious devotions, after the court ruled a high-school football coach was entitled to pray at the 50-yard line after games, despite objections that his players might feel pressured to join in.

"We've had the most important term of my entire academic career," said Northwestern University law professor John McGinnis, who has been teaching for more than three decades. "It really showed the pivot."

A common characteristic of most members of today's conservative majority—while they differed on the outcome

of some cases—was their eagerness to correct what they saw as errors by their predecessors.

Justices Thomas and Alito were joined by the court's three Trump appointees—Justices Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett—in promoting originalism, or applying constitutional provisions according to their understanding of the text's original public meaning when adopted, whether 1791 for the Bill of Rights, or 1868 when the 14th Amendment placed restraints on state government.

"That creates tensions with a variety of non-originalist precedents," Mr. McGinnis said, "and that's the question going forward: How will that tension be resolved?"

Tensions at the court weren't confined to the jurisprudence. The Supreme Court's marshal is investigating the May leak of the draft opinion in the abortion case, *Dobbs v. Jackson Women's Health Organization*, a move decried by Chief Justice Roberts as a "betrayal of the confidences of the Court." The court said then the leaked decision didn't necessarily reflect the court's final position, but the opinion issued last week was nearly identical to Justice Alito's initial draft.

No culprit has been publicly identified from an investigation that has focused on employees with access to internal documents, including law clerks of the justices. Supreme Court police have sought access to clerks' cellphone data, prompting several to obtain legal counsel.

The court's wholesale reversal of abortion rights reflected a challenge to Justice Roberts's institutional agenda, which is to protect the court's reputation as a judicial rather than political body by acting through incremental steps. A Reuters/Ipsos survey Tuesday found that 57% of Americans disapprove of the Supreme Court, up from 48% in early June before that and several other pathmarking decisions were released.

How far to go—and how fast—at times separated the chief justice from the five other conservatives. Last Friday's decision on abortion rights put the difference in stark relief.

"Roe and Casey must be overruled," Justice Alito wrote for five in *Dobbs*, referring as well to a 1992 case that reaffirmed Roe's basic holding. "That is what the Constitution and the rule of law demand."

Overruling "Roe and Casey is a serious jolt to the legal system—regardless of how you view those cases," Justice Roberts wrote in a separate opinion. He called for "a more measured course" that merely would uphold a Mississippi ban on abortion after 15 weeks of pregnancy, the immediate issue before the court. That partial reversal of Roe "would be markedly less unsettling, and nothing more is needed to decide this case," he wrote. Both the majority determined to overrule Roe and the three liberal dissenters committed to the precedent "a relentless freedom from doubt on the legal issue that I cannot share."

Other decisions united the chief justice and his fellow conservatives; he joined both rulings extending religion's reach into public education and the landmark opinion by Justice Thomas striking down New York state's 110-year-old concealed-weapons law as insufficiently grounded in American history and tradition.

The chief justice bolstered his reputation for nonpartisanship on the term's final day, when he wrote majority opinions in two cases involving the Biden administration, curbing the EPA's power to advance the president's climate agenda but upholding the White House's decision to cancel the Trump-era Remain in Mexico program that barred Central American asylum applicants from entering the U.S. while their cases were processed. Justice Kavanaugh joined the chief in both cases, but the four other conservatives sided with Republican-controlled states that sued to force the policy's reinstatement.

As usual, the justices found consensus on many cases, typically those involving technical clarifications of the law, and at times scrambled ideological stereotypes.

On Wednesday, for instance, Justice Breyer wrote the majority opinion holding that Congress's power to raise armies meant that Texas could be held liable for failing to accommodate a state trooper who returned with a disability from Army Reserve service in Iraq. Justice Roberts and Justice Kavanaugh joined the liberals in the majority to uphold a federal law protecting military reservists' jobs; the other three conservatives joined Justice Thomas's dissent, which argued that allowing the soldier to sue Texas for a suitable job was "offensive to the States' dignity."

Roughly a quarter of the decisions were unanimous, below the average of 33% since 1946.

The sweep of the term's rulings was widely lauded by conservatives. "For the first time in perhaps 80 years, we have a court whose ideal is to try to follow the original meaning of the Constitution," said Mr. McGinnis, who worked in the Justice Department during previous Republican administrations.

The Dobbs decision and other rulings prompted criticism from Democrats that the court had lost step with the mainstream of American society and had seen its legitimacy—defined as the confidence the losing side retains in the judicial branch's fairness and integrity—diminished.

Critics on the left pointed to the maneuvers Senate Republicans took to ensure President Trump could appoint three new justices in his four-year term as well as the actions of Justice Thomas's wife, Virginia, in supporting Mr. Trump's efforts to stay in office after he lost the 2020 election as actions that undermined the court's authority. Justice Thomas hasn't commented and Mrs. Thomas has said her activities have no bearing on those of her husband.

The justices serve for life, if they wish, a constitutional protection intended to insulate the court from popular demands. A key question now is whether the court continues its tack on longstanding precedents set by its more liberal predecessors or tempers its approach.

"Any right that is not textually enumerated is under threat," said Kermit Roosevelt III, a law professor at the University of Pennsylvania. Precedents entitling couples to use contraception, for example, or invalidating sodomy laws applied the Constitution's liberty or equality provisions more broadly than their 19th-century drafters likely would have anticipated, and "are probably wrong under this approach," Mr. Roosevelt said.

"It's just a question of how far these justices are willing to go," he said.

Some justices in the majority may "pick their spots" having overturned *Roe v. Wade*, said Vikram Amar, dean of the University of Illinois College of Law. It is possible the court could move more slowly in other areas, "for fear that if they're too aggressive, there could be repercussions," he said.

One of next term's marquee cases will likely be the Supreme Court's consideration of whether state lawmakers have the authority to adopt voting rules for federal elections without oversight by state courts.

Another involves a challenge to affirmative action in college admissions, a practice the court approved in 1978 and repeatedly has upheld, most recently by a 4-3 vote in 2016.

Public opinion rarely has favored racial preferences. A May poll by the Pew Research Center found across-the-board opposition to considering race or sex in admission, including majorities of white, Asian, Hispanic and Black adults, as well as both Republicans and Democrats.

"There the court is going with public opinion," Mr. McGinnis said.

Brent Kendall contributed to this article.

Write to Jess Bravin at jess.bravin+1@wsj.com

Supreme Court Marks New Era of Ambitious Conservatism

Credit: By Jess Bravin

DETAILS

Business indexing term: Industry: 92111 : Executive Offices 61111 : Elementary and Secondary Schools

Subject: Public schools; Womens health; Constitutional law; Political appointments; Religion; Presidential elections; Abortion; Birth control; 20th century; Education; State court decisions

Location: Texas; United States--US; New York

Company / organization: Name: Environmental Protection Agency--EPA; NAICS: 924110

Publication title:	Wall Street Journal (Online); New York, N.Y.
Publication year:	2022
Publication date:	Jun 30, 2022
column:	U.S. News
Section:	US
Publisher:	Dow Jones &Company Inc
Place of publication:	New York, N.Y.
Country of publication:	United States, New York, N.Y.
Publication subject:	Business And Economics
e-ISSN:	25749579
Source type:	Newspaper
Language of publication:	English
Document type:	News
ProQuest document ID:	2682493322
Document URL:	https://www.proquest.com/newspapers/supreme-court-marks-new-era-ambitious/docview/2682493322/se-2?accountid=14553
Copyright:	Copyright 2022 Dow Jones &Company, Inc. All Rights Reserved.
Last updated:	2022-07-01
Database:	ProQuest One Business,International Newsstream

LINKS

[Check for FullText Availability](#)

Database copyright © 2022 ProQuest LLC. All rights reserved.

[Terms and Conditions](#) [Contact ProQuest](#)