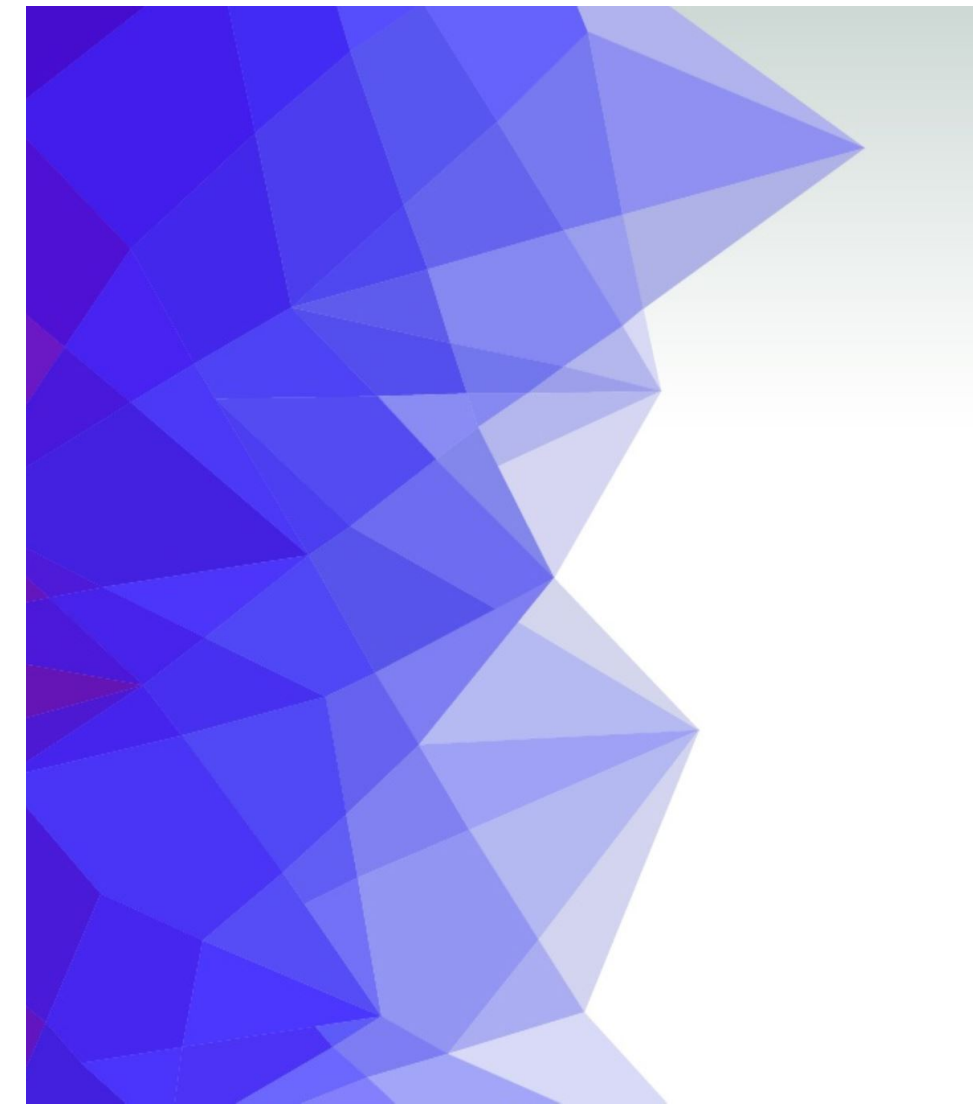




2024 -2025

Supreme Court Highlights

**UC Professor Emeritus Howard Tolley
October 11, 2024 UC OLLI**



The Justices

The Supreme Court as composed June 30, 2022 to present.

Front row, left to right: Associate Justice Sonia Sotomayor, Associate Justice Clarence Thomas, Chief Justice John G. Roberts, Jr., Associate Justice Samuel A. Alito, Jr., and Associate Justice Elena Kagan.

Back row, left to right: Associate Justice Amy Coney Barrett, Associate Justice Neil M. Gorsuch, Associate Justice Brett M. Kavanaugh, and Associate Justice Ketanji Brown Jackson.

Credit: Fred Schilling, Collection of the Supreme Court of the United States

<https://www.supremecourt.gov/about/justices.aspx>



2024-2025 Justices

6 Republicans, 3 Democrats

6 Conservatives, 3 Liberals

5 Men, 4 Women

6 White, 3 of color with humbler origins

7 Catholic, 1 Jew, 1 Protestant

5 Harvard, 3 Yale, 1 Notre Dame

4 in their 50's, 3 in their 60's, 2 age 75

Party Affiliations

- **6 Republicans**

**Chief Justice Roberts, Thomas, Alito,
Gorsuch, Kavanaugh, Barrett**

- **3 Democrats**

Sotomayor, Kagan, Jackson

Accountability Standards

1978 Ethics in Government Act

Annual Financial Reports

2022 Courthouse Ethics and Transparency Act.

Disclose stock trades within 45 days

28 USC section 455. Recusal Act

“Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.”

2023 Supreme Court Code of Conduct

“A justice is presumed impartial and has an obligation to sit unless disqualified.”

“Should” recuse when a “reasonable person who is aware of all relevant circumstances would doubt that the Justice could fairly discharge his or her duties.”

Constitutional Guarantee of “Due Process”

Jury awarded \$50 million payment to injured miners by Massey coal. The CEO then contributed \$3 million enabling a candidate elected to the state Supreme Court to vote to overturn the award.

2009 U.S. Supreme Court 5-4 majority vacated that decision ruling that the [Due Process Clause](#) requires judges to recuse themselves not only when actual bias has been demonstrated or when the judge has an economic interest in the outcome of the case, but also when "extreme facts" create a "probability of bias."

Roberts, Thomas, Alito and Scalia dissent would require a *quid pro quo*, *Caperton v. A. T. Massey Coal Co.*,

John Grisham novel *The Appeal* based on the case.

Financial Conflict of Interest

Expensive vacations funded by friends

Real Estate Sales for inflated Value

Financial support for family dependents

Substantial “Loans”

**Sotomayor and Gorsuch hear cases involving
their book publisher. Kagan + Harvard case**

**Revised/updated reports submitted by
Thomas, Alito and Gorsuch**

Corruption of Public Official Case 2023-24

Mayor Snyder convicted of violating a federal anti-corruption law for receiving \$13,000 from a trucking company after the firm received over \$1 million in city contracts.

Justice Kavanaugh's majority opinion for 6 Republican appointees ruled the law only applied to bribes paid prior to a payoff, not to gifts received after receipt of a benefit.

3 Democratic appointees dissented, reasoning that the federal corruption law applied to both bribes and rewards.

Indicted NY Mayor Eric Adams can use to defend himself

Personal Conflict of Interest 2024-2025

A Yemeni man who served as an assistant to Osama bin Laden imprisoned at Guantanamo Bay petitioned the Supreme Court to rule that a judge deciding his guilt and sentence violated the statute requiring recusal from “any proceeding in which his impartiality might reasonably be questioned”? While serving as a Justice Department prosecutor of the accused during military commission hearings in 2008, the future judge publicly praised the Guantánamo prosecutions’ legality and effectiveness, saying that Bahlul’s prosecution in particular “worked well” and noting it ended with a life sentence.

Justices Gorsuch and Kavanaugh recused themselves as the court refused to accept the case for oral argument.

Investigations: Partisan Activity

House Committee investigation of January 6 violence obtains emails revealing Ginny Thomas contacts with Trump efforts to “stop the steal”

Alito public flag displays, surreptitiously recorded pro Christian conversation and stock trades.

Roberts also covertly recorded at \$500 per ticket Supreme Court Historical Society gala granting wealthy donors access.

Senate Judiciary Committee Hearings

Roberts

- declines invitation to appear asserting judicial independence based on **Constitutional separation of powers**
- rejects calls that he enforce the recusal act to make Alito step aside in cases involving Trump.



Unlikely Proposed Legislative Remedies

1. President Biden

- a. 18-year terms. Constitution specifies indefinite on “good behavior”
- b. binding code of conduct.

2. Senator Wyden

- a. Increase from 9 to 15 Justices
- b. 2/3 majority to find a law unconstitutional. Article III issue

3. Obstacles

60 Senate votes needed to stop a filibuster

Republicans oppose

The Supreme Court could find the laws unconstitutional — separation of powers

3 Decisions for Trump 2023-2024

- 1. States can not enforce the Constitutional prohibition barring a Presidential candidate guilty of insurrection. 6-3**
- 2. Chief Justice Roberts rejects the legal basis for two of the four prosecution's charges against Trump for seeking to win an electoral college majority. 6-3**
- 3. Roberts grants broad grant of immunity for acts within the outer perimeter of the President's official responsibilities. Case remanded to trial court for a determination of which alleged crimes were private acts outside of the President's official responsibility.**



2 Pending Trump Cases

- 1. Sentencing delayed until after the election for conviction in a New York state court for falsifying 34 business records in 2016 while campaigning for President prior to qualifying for immunity.**
- 2. Responding to Supreme Court immunity decision, US Special counsel revised the indictment by identifying Trump's private rather than official acts that constitute criminal efforts to overturn the 2020 election results. The federal trial court judge released that redacted document providing the public with additional information. Trump will appeal to the Supreme Court any adverse ruling the judge makes responding to the indictment and that will further delay a trial date until 2025.**

Elections: October 2024 Decisions

Purcell Principle: avoid interference in state voter registration policies and election procedures close to an election

Allow Arizona to require proof of citizenship to register and vote.

Denied Robert F. Kennedy Jr., request to reinstate him to New York's ballot for the 2024 presidential election.

Left in place a ruling by the Nevada Supreme Court that keeps the Green Party's Presidential candidate off the state's ballot for the 2024 general election.

Likely Post-Election Cases 2024-25

The Republican National Committee has asked a conservative federal appeals court panel to prohibit the counting in Mississippi of mail ballots that arrive after [Election](#) Day, even if they are postmarked on or before Nov. 5. Roughly 20 states have long standing laws permitting late-arriving ballots, including Nevada, Virginia and Ohio.

In [North Carolina](#), Republicans have sued state election officials seeking to remove 225,000 voters ahead of election day, claiming voter registration forms lacked the required identification information. The case is among more than three dozen GOP-led suits attempting to purge alleged ineligible voters, according to Democracy Docket, a left-leaning group tracking the litigation.

The [Electoral Count Reform Act of 2022](#) (ECRA) mandates that states must certify their results by Dec. 11, There could be litigation to resolve the appointment of a state's electors for president by Dec. 16 when the Electoral College meets to cast votes.

Election Related Facebook Case 2024-2025

A British political consulting firm improperly harvested personal data from millions of unwitting Facebook users. The firm used this data to create personality profiles of American voters, allegedly used to benefit political campaigns, including Donald Trump's 2016 presidential campaign. Facebook learned of the misconduct in 2015 but failed to inform affected users. 2018 publicity about the scandal led to significant drops in Facebook's stock price.

Shareholders filed a securities fraud action against Facebook, alleging violations of the 1934 Securities Exchange Act. The U.S. Court of Appeals for the Ninth Circuit concluding that the shareholders adequately pleaded falsity as to some of the challenged risk statements.

The court hears argument November 8 as to whether Facebook is liable to shareholders for false or misleading risk disclosures that do not disclose that a risk has materialized in the past, even if that past event presents no known risk of ongoing or future business harm.

Elections: Gerrymandered Districts 2023-24

6/8/23 5-4. Alabama violated the Voting Rights Act by diluting the power of Black voters in drawing a congressional voting map with only a single district in which they made up a majority. Roberts

2024. Alexander v S. Carolina NAACP. 6-3

Alito. Upheld black voters removal from Republican Congressional District based on political calculus rather than unconstitutional racial bias.

Regulatory Agency Cases. 2023-2024

- 1. Court, 6-3, overrules 40 year precedent applied in over 17,000 cases that required judges to defer to agency technical experts who administer regulation of corporations. Roberts faults Congress for delegating unchecked authority to agencies. Instead of deferring to agencies, federal judges can decide.**
- 2. Securities and Exchange Commission regulatory agency administrative law Judges levied penalties for securities fraud. Roberts opinion for 6-3 majority holds that the 7th Amendment guarantees those charged with a right to trial by jury, thus invalidating similar tribunals in other regulatory agencies.**

FDA Case 2024-2025

The Food and Drug Administration's denied marketing authorization for flavored e-cigarettes such as "Jimmy The Juice Man Peachy Strawberry" and "Killer Kustard Blueberry" because they would pose a "serious, well-documented risk" of enticing young users, contributing to alarming rates of e-cigarette use among adolescents. In 2020, nearly 20% of high school students reported using e-cigarettes. The 2009 Tobacco Control Act mandates that new tobacco products be proven "appropriate for the protection of the public health."

The Court of Appeals ruled that the FDA had acted in an "arbitrary and capricious" manner by imposing new requirements for studies on smoking cessation that had not been communicated prior to the companies' applications.

FDA v. Wages and White Lion Investments

Guns. 2023-2024

After a 2017 massacre in Las Vegas, the ATF changed its rule so that bumpstocks became prohibited as machine-guns. A Texas gunstore owner, Cargill, challenged the rule.

Justice Thomas majority opinion for 6 Republican appointees ruled the federal statute banning machine guns did not apply to bump stocks.

3 Democratic appointees dissented



Guns: 2nd Amendment

2022 *New York State Rifle & Pistol Association Inc. v. Bruen*
6-3 Justice Thomas, originalism rules that without a
comparable historic practice the gun control law violated
the 2nd Amendment.

2023-2024. Rahimi convicted for using guns in violation
of a domestic restraining order.

8-1 CJ Roberts finds that based on historic principles, no
2nd Amendment violation occurred. Thomas dissent

Guns for Mexican Drug Cartels 2024-2025

Smith & Wesson Brands v. Estados Unidos Mexicanos

The Mexican government sued U.S. gun manufacturers in Massachusetts, arguing that they had aided and abetted the illegal sales of guns to traffickers for cartels in Mexico. The issues:

1. Whether the production and sale of firearms in the United States is the "proximate cause" of alleged injuries to the Mexican government stemming from violence committed by drug cartels in Mexico.

2. Whether the production and sale of firearms in the United States amounts to "aiding and abetting" illegal firearms trafficking because firearms companies allegedly know that some of their products are unlawfully trafficked.

“Ghost” Guns 2024-2025

Garland v. VanDerStok, Argued 10/8. <https://www.oyez.org/cases/2024/23-852>

Bureau of Alcohol Tobacco and Firearms rule requires background checks on buyers and traceable numbers on gun components purchased for home assembly.

The 1968 Gun Control Act authorizes regulation of “firearms.” The issues:

Is a weapon parts kit that is designed to or may readily be completed, assembled, restored, or otherwise converted

1. to expel a projectile by the action of an explosive” a “firearm” regulated by the Act?

2. to function as a “frame or receiver” a “frame or receiver” regulated by the Act?

5-to-4, Roberts and Barrett joining the liberals reinstated the regulations temporarily as the legal challenge continues.

Emergency Abortion: 2023-2024

Federal judge in Idaho temporarily blocked the state from enforcing its abortion ban, which carves out exceptions only to save the life of the mother and in cases of rape or incest.

The 1986 US Emergency Medical Treatment and Labor Act requires hospital emergency rooms that receive Medicare to provide “necessary stabilizing treatment” to patients who arrive with an “emergency medical condition.”

In an unsigned opinion, the Supreme Court dismissed without deciding the case and allowed the judge’s injunction to continue until he ruled on the merits.

Emergency Abortion: 2024-2025

By denying review of an appeal from the 5th Circuit this term, the Court allowed Texas to limit emergency abortions

Two medical groups claimed that Texas must follow Department of Health and Human Services guidance to remind hospitals that, in some cases, EMTALA may require hospitals to provide abortions to save a pregnant woman's life or prevent serious harm to her health – even if state law would otherwise prohibit the abortion.

The US Solicitor General asked the justices to send the Texas case back for a new look. She cited not only the Idaho cases, but also the challengers' suggestion that there is no conflict between EMTALA and Texas law and the Supreme Court's recent ruling in a case involving medication abortion – which, she wrote, “makes clear that the members of the” medical groups challenging the law “cannot be required to terminate a pregnancy against their conscience.”

The justices turned down the emergency appeal without explanation.

Abortion: Morning After Pill. 2023-2024

Doctors and medical groups challenged the expansion of access to mifepristone, one of the two drugs used in medication abortions by the Food and Drug Administration in 2016 and 2021.

Kavanaugh for a unanimous court ruled that the challengers lacked legal standing, the right to sue, because the FDA decision had no impact on their medical practice.

The justices declined to rule on whether the FDA acted properly in expanding access to mifepristone. Plaintiffs with standing have brought new challenges that could be added to the 2024-2025 docket.

Treatment for Gender Dysphoria 2024-25

United States v. Skrmetti

Tennessee law prohibits puberty blockers, cross-sex hormones, and gender-transition surgeries for transgender minors. The US Solicitor General contends that the law violates the equal protection clause by allowing these medical interventions for other medical conditions while categorically banning them for gender dysphoria. Tennessee's Attorney General defends the law as a necessary measure to protect minors from potentially irreversible treatments that may be based on "uncertain" benefits. Similar laws in Europe.

The Supreme Court's ruling could establish a landmark precedent not only on transgender medical care but also on broader issues, including access to public bathrooms and participation in sports.

Environment Clean Air 2023-2024

The EPA's interpretation of a law known as the "good neighbor" provision of the Clean Air Act, which requires "upwind" states to reduce emissions that affect the air quality in "downwind" states.

Ohio challenged the EPA's plan that required reduction of Ozone emissions from the state that impacted air quality to the east.

Gorsuch for a 5 member majority enjoined enforcement of the plan until lower courts decided the merits of Ohio's claim. Barrett dissented with three Democratic appointees.

Environment Clean Air 2024

Biden administration allowed to enforce EPA rules to reduce emissions of mercury, a hazardous neurotoxin, and methane, a potent greenhouse gas — hazardous air pollutants from coal-fired power plants.

Republican attorneys general and industry groups filed unsuccessful emergency applications asking the Supreme Court to block enforcement until their objections were resolved by lower courts.

Environment Clean Water 2024-2025

City and County of San Francisco v. Environmental Protection Agency, Wed Oct. 16

The city of San Francisco operates a combined sewer system that collects both sewage and stormwater runoff. During heavy rains, the system can exceed its capacity, resulting in combined sewer overflows (CSOs) that discharge pollutants into the Pacific Ocean. The Clean Water Act requires cities like San Francisco to obtain a National Pollutant Discharge Elimination System (NPDES) permit for such discharges. San Francisco challenges an EPA directive that it update its control plan and improve water quality standards.

Issue: Whether the Clean Water Act allows the EPA to impose generic prohibitions in National Pollutant Discharge Elimination System permits that subject permit-holders to enforcement for violating water quality standards without identifying specific limits to which their discharges must conform. **Withdraw?**

Environment Nuclear Waste Disposal 2024-25

Roughly 100,000 tons (90,000 metric tons) of spent fuel, some of it dating from the 1980s, is piling up at current and former nuclear plant sites nationwide and growing by more than 2,000 tons a year. The waste was meant to be kept there temporarily before being deposited deep underground. A plan to build a national storage facility northwest of Las Vegas at Yucca Mountain has been mothballed because of staunch opposition from most Nevada residents and officials.

The 5th Circuit court of Appeals rejected the NRC's decision to license temporary storage facilities for "high-level spent nuclear fuel" at a dump in West Texas for 40 years and New Mexico.

Issue: Does the Atomic Energy Act of 1954 and the Nuclear Waste Policy Act of 1982 permit the Nuclear Regulatory Commission to license private entities to temporarily store nuclear fuel away from the nuclear-reactor sites where the spent fuel was generated.

Economic Justice Decisions. 2023-2024

Homelessness

”Camping ban” laws that criminalize sleeping on public property do not constitute “cruel and unusual punishment” and are therefore not prohibited by the Eighth Amendment.

Gorsuch 6-3

Economic Justice: Wealth Tax. 2023-2024

Moore, invested \$40,000 in an Indian corporation, KisanKraft, that supplies small farmers in India with modern tools. In return, they received 13% of the company's shares that they never sold to receive income. They challenged an IRS assessment of \$15,000 due in income tax.

Kavanaugh for a 7-2 majority upholds the constitutionality of the Mandatory Repatriation Tax on realized but undistributed income earned abroad.
Moore v. US.

Economic Justice: Bankruptcy 2023-2024

Negotiated settlement agreement to pay damages shielded Purdue Pharma and Sackler family from additional Oxytocin opioid victims' claims that would cause bankruptcy.

Gorsuch joined by 3 fellow Republican appointees and Democratic appointee Jackson rules 5-4 that the company and family remain liable for additional claims to be settled according to the Bankruptcy law.

Republican appointees Kasvanaugh and Roberts join two Democratic appointees in dissent.

1st Amendment Free Speech Cases 2023-2024

New York Department of Financial Services violated the First Amendment by coercing regulated entities to terminate their business relationships with the NRA in order to punish or suppress the NRA's gun-promotion advocacy.

9-0. Sotomayor

Social Media

6-3 Barrett upholds Biden administration's 1st Amendment right to urge removal of social media disinformation postings.



Social Media: Coerced Expression

Challenges to Texas and Florida laws that regulate how large social media companies (Facebook, YouTube) control content posted on their sites.

Texas and Florida acted after the Jan. 6, 2021, attacks on the U.S. Capitol, believing that media companies were censoring users with conservative beliefs.

Kagan for a unanimous court sent both cases back to the appeals courts for proper 1st Amendment review. Concurring opinions challenge her finding of likely 1st Amendment violation.

Free Speech Case. 2024-2025

Sexually Explicit Websites

In order to protect children, a 2013 Texas law mandates that users provide personal information for age verification to access any website that publishes content one-third or more of which is “harmful to minors.” The Free Speech Coalition claims the law burdens adults' access to protected speech that can not be done without a compelling interest using the least restrictive means, a “strict scrutiny” standard of review applied by federal courts in similar cases. The 5th Circuit Court of Appeals upheld the law applying a “rational basis” review finding the law was reasonably related to Texas’ legitimate interest.

Free Speech: Campaign Financing. 2024-25

San Francisco voters overwhelmingly approved a 2019 initiative compelling election ads to include a disclaimer naming the top three donors to the group running the ad. If the donor is another committee, then the committee's top two donors and the dollar amounts given by both need to be disclosed.

The court decided not to hear the conservative challenge to San Francisco's law requiring disclosure of 'dark money' contributors to election campaigns that had been found Constitutional by the liberal 9th Circuit Court of Appeals.

Freedom of Religion: 2024-2025

As part of his religious practice a devout Rastafarian inmate had not cut his hair for nearly two decades. When he was transferred to a new prison, he provided prison guards with a copy of a decision by the U.S. Court of Appeals for the 5th Circuit holding that Louisiana's policy of prohibiting Rastafarian inmates from wearing dreadlocks violated the Constitution. A guard threw the copy in the trash, and – at the warden's direction – forcibly restrained him and shaved his head to the scalp. He now seeks to hold prison officials personally liable for damages.

***Landor v. Louisiana Department of Corrections* –**

Issue: Whether a plaintiff can sue a government official in his individual, rather than official, capacity, for violations of the Religious Land Use and Institutionalized Persons Act. The court has solicited the Solicitor General's views before deciding whether to hear the appeal.

Death Penalty 2024-2025

GLOSSIP V. OKLAHOMA. Oral Argument Wednesday October 9

Before the Oklahoma Court of Criminal Appeals, the State confessed error, admitting failure to disclose the mental illness of its primary witness against a death row inmate rendering "Glossip's trial unfair and unreliable" entitling him to a new trial. The OCCA ruled the execution should proceed.

At oral argument Justice Kavanaugh and three liberals appeared to support Glossip. Gorsuch recused himself. Four conservative justices appeared to believe that the US Supreme Court lacked jurisdiction as Oklahoma had "adequate and independent state grounds." A 4-4 split would leave the execution order in place.

Criminal Due Process. 2024-2025

DNA Testing and the Death Penalty

The 5th Circuit ruled that a death row inmate can not bring a constitutional challenge against a state DNA statute that limited access to potentially exonerating evidence. Evidence from the crime scene, included fingernail scrapings, a bloodstained shirt and a loose hair found on one of the victim's fingers.

Prosecutors had pushed back against testing, saying it would not definitively clear Mr. Gutierrez. They also pointed to a doctrine in Texas, known as the law of parties, which allows them to hold people involved in a crime liable, even if those people did not directly participate in the killing.

Lethal Force + Racial Minorities. 2024-2025

Officer Roberto Felix, Jr. fatally shot an unarmed black man during a lawful traffic stop. In a case for damages brought by his parents, the trial court granted the officer summary judgment, upheld by the 5th Circuit. Both courts found that Barnes posed a threat of serious harm to Officer Felix in the moment the car began to move, thus making the use of deadly force reasonable and not excessive, granting the officer qualified immunity.

Issue: In evaluating claims that a police officer's illegal acts preceded the use of excessive force whether courts should apply the "moment of the threat" doctrine, which looks only at the narrow window in which a police officer's safety was threatened to determine whether his actions were reasonable.

Historical Context: 1960s Liberal Activist Court

Warren Court 1954 - 1968

8 Democrats, 1 Republican

Civil Rights, Defendant's Rights, Workers rights

1968. Nixon Southern Strategy vs. Warren Court

Nixon appointed 3 Republicans + 1 Democrat.

***Roe v. Wade*. 7-2 written + supported by Republicans**

1968-2000: Era of Good Feelings

**Presidents Ford and Reagan appointed liberal, moderate and conservative justices giving centrists the decisive vote on issues such as abortion + race.
Republican+Democratic Liberals vs. Republican Conservatives**

Seeds of Discord

GHW Bush replaced Thurgood Marshall with Clarence Thomas.

1992 Senate Judiciary Committee chair Biden refused to hold hearings on John Roberts nomination to the DC court of appeals, stepping stone to Supreme Court.

2024: A Conservative Activist Court

In 2000 George Bush lost the popular vote but became President when 5 of the 7 Republican appointees intervened giving him Florida's disputed electors.

Bush appointed Roberts Chief Justice and Alito.

Republican Senate refused to hold hearings on Obama nominee Garland, changed voting rules to permit majority confirmation of Trump's nominees Gorsuch, Kavanaugh, and Barrett to replace Ginsberg in 10/20.

Supreme Court Resources

<https://www.scotusblog.com>

Latest updates, data, analysis

<https://www.oyez.org>

Case summaries, audio with photo of justice speaking

<https://www.supremecourt.gov>

Briefs, Transcripts, Audio. The Court convenes for public session in the Courtroom at 10 a.m. An audio feed is live-streamed, and that audio is available on the Court's website later in the day.

“Supreme Court Shenanigans.” <https://www.youtube.com/watch?v=dDYFiq1l5Dg>