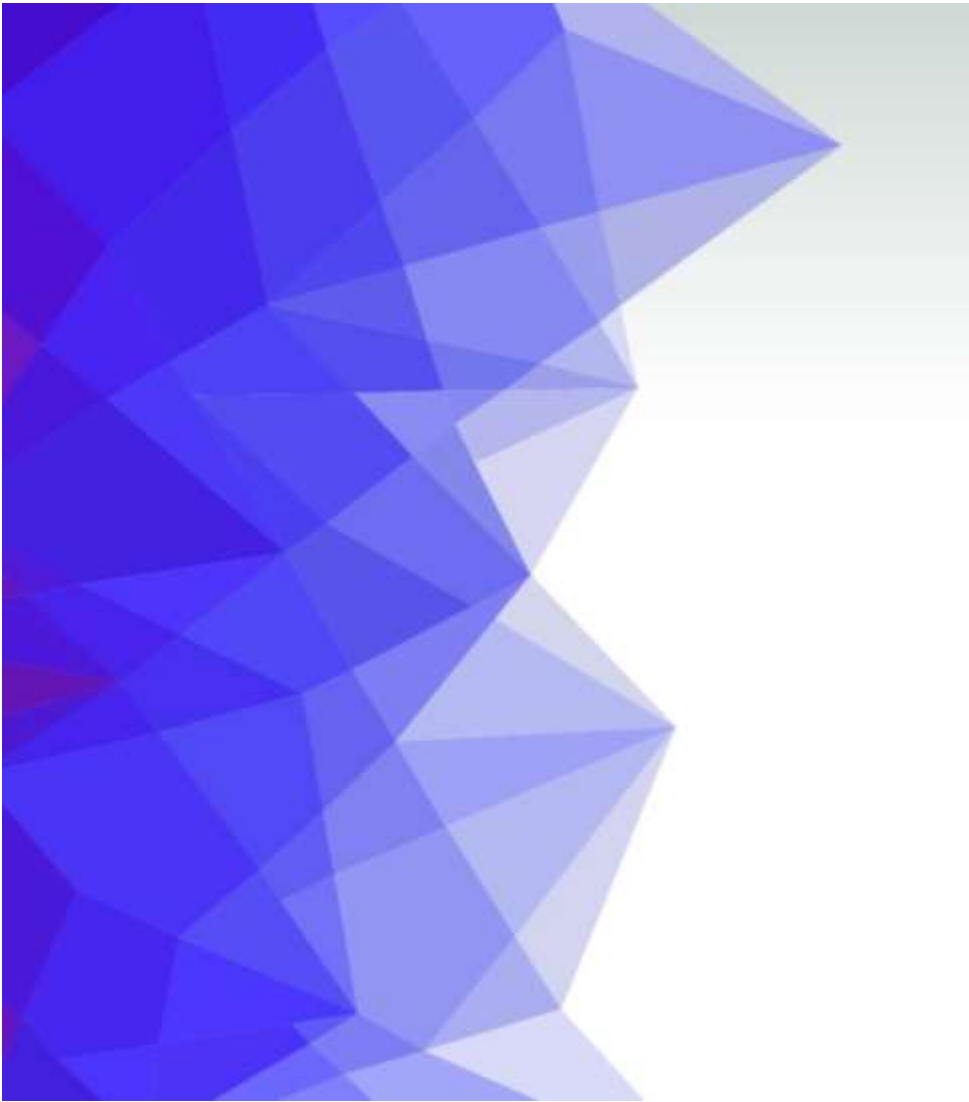




2023-2024 Supreme Court Highlights

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



The Judging Game: Players

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>



2023-2024 Justices

6 Republican, 3 Democratic
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

The Partisan Teams

- **Republican Team**

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

- **Democratic Team**

Sotomayor, Kagan, Jackson

H. Tolley, Esq. — Neutral Umpire/Referee

Scoring (20 of 61 cases selected)

9 Rounds, 20 points — 1 to 4 points per round

1. Recusal + Corruption 3 pts

2. Trump 3

3. Regulatory Agencies 3

4. Abortion 2

5. Guns 2

6. Environment 1

7. Economic Justice 2

8. Free Speech 3

9. Gerrymandering 1

Rules for Fans to Play the Game

How many fans?

50+ Cincinnati residents in the UC OLLI classroom

100+ remote participants from Ohio to Oklahoma

Respectful Silence, Absolutely no

Cheers, Boos, Catcalls, or Trash Talk

Do play a role, pretend to

Hate their sins but love those sinners

1. Recusal and Corruption, 3 pts

Expensive vacations funded by friends

Real Estate Sales for inflated Value

Financial support for family dependents

Substantial “Loans”

Revised/updated reports then submitted by

Thomas, Alito and Gorsuch

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.

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.

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.

Corruption of Public Officials

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.

Round 1. Recusal/Corruption Score

Republicans 3

Democrats 0

- 1. Republican Senators block Democratic legislation imposing recusal standards and transparency on Supreme Court Justices**
- 2. Alito and Thomas with Roberts support decline to recuse themselves in Trump immunity case.**
- 3. Reverse the Mayor's corruption conviction**

Round 2: Trump, 3 Cases

The Colorado Supreme Court disqualified former President Donald J. Trump from appearing on the primary ballot under a provision of the 14th Amendment that prohibits officials who have engaged in insurrection from holding office. It said that the Jan. 6, 2021, attack on the Capitol amounted to an insurrection, that Mr. Trump participated in it and that Section 3 applies to the presidency.

Sotomayor for a unanimous court reversed, barring states from enforcing Section 3.



January 6 Criminal Charges

Joseph Fischer entered the US Capitol on January 6 and was charged with committing a crime that “otherwise obstruct[], influence[], or impede[] any official proceeding.” Congress adopted the law after Enron destroyed documents sought for an official investigation.

Two of the four criminal charges brought against former President Trump by the Special Counsel are based on Trump’s effort to impede the special proceeding to count electoral college votes.

Chief Justice Roberts for a 6 member majority of 5 Republican appointees joined by Jackson (D) ruled that the law applies only to evidence tampering, such as destruction of records or documents, in official proceedings. Barrett (R) dissented.

The Special Counsel can proceed to prosecute Trump based on the two other crimes charged — unless he is immune.

Presidential Immunity

In 2022-2023 Republican Justices denied Trump executive privilege forcing discovery of documents used to support prosecution.

Roberts for 6 Republican appointees grants broad grant of immunity for acts within the outer perimeter of the President's official responsibilities, specifically rejecting several charges. Both Alito and Thomas reject recusal. Thomas concurring opinion objects to special prosecutor.

Case remanded to trial court for a determination of which alleged crimes were private acts outside of the President's official responsibility.

No immunity for NY prosecution of 2016 falsified records.

Round 2. Trump Score

Republicans 3

Democrats 0

3. Regulatory Agencies, 3 Cases

National Marine Fisheries Service agency required herring fishermen to pay for the reimbursed costs, estimated at \$710 per day, associated with carrying observers on board their vessels to collect data about their catches and monitor for overfishing.

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.

SEC: Securities Fraud

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.

Economic Justice: Consumer Protection

**Uphold Congressional funding
approach for the Consumer
Product Safety Commission.
Thomas. 7-2.**

Round 3, Federal Agencies Score

Republicans 2

Democrats 1

Round 4: Abortion, 2 cases

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. Follow up appeal likely.

Abortion: Morning After Pill

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.

Round 4. Abortion Score

Republicans 0

Democrats 2

Round 5: Guns, 2 Cases

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.

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

2024. 8-1 CJ Roberts finds that based on historic principles, no 2nd Amendment violation occurred. Thomas dissent

Round 5: Guns Score

Republicans 1

Bump Stocks

Democrats 1

Restraining Order

Round 6. Environment, 1 case

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.

Round 6. Environment Score

Republicans 1

Democrats 0

Round 7: Economic Justice, 3 Cases

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

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

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.

Round 7: Economic Justice Score

Republicans	1	Homelessness
Democrats	1	Tax foreign
income		
Bipartisan	1	Opioid settlement

Round 8. 1st Amendment Free Speech, 3 cases

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

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

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

Round 8 1st Amendment Score

Republicans	0	
Democrats	2	US win, States lose
Bipartisan	1	NRA

Round 9: Gerrymandered Election Districts

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

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.

Round 9. Gerrymandering Score

Republicans 1

Democrats 0

2023-2024 Final Score

Rounds Won by

Republicans	5	Recusal, Trump, Agencies, Environment Gerrymandering
Democrats	2	Abortion and 1st Amendment Social Media
Bipartisan Tie	2	Guns, Economic Justice

Total Points won by

Republicans	11
Democrats	6
Bipartisan Tie	2

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

“Supreme Court Shenanigans.”

<https://www.youtube.com/watch?v=dDYFiq1l5Dg>