

**POLITICS BEFORE THE AMERICAN
PEOPLE: *THE MAGA COURT*
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Introduction

The Supreme Court should be a critical tool in safeguarding our democracy. The most recent term, however, only further underscored the deep politicalization at the heart of the Court—and how that corruption is bleeding not only into the justice’s decision-making but into the very functioning of the Court itself.

As the U.S. Senate Judiciary Committee prepares for its [September 24](#) hearing on the Supreme Court’s momentous decision to infuse American presidents with king-like powers—a critical decision to examine—it is also worth considering the full range of troubling decisions and acts by the justices that demonstrate an allegiance to politics over the law.

As was very [recently revealed through leaked internal memos and discussions with individuals close to the Court](#), Chief Justice John Roberts handled the cases concerning Trump before the justices in highly irregular ways. He played a leading role in shaping the Court’s decisions sympathetic to the twice-impeached president and his supporters, even replacing Alito as the author of the decision concerning the January 6 rioters and also rejecting efforts by Justice Sotomayor to find more moderate, common ground in the dangerous immunity decision.

Unfortunately, this reporting is unsurprising given the relentless disregard many of the MAGA justices have for the critical need to appear unbiased. Consider:

- Justice Alito’s flagrant disregard for his duty to not engage in political activity as his multiple homes flew symbols of support for former Donald Trump as well as his [failure to recuse](#) from Trump-related cases despite the clear appearance of bias his actions caused.
- Justice Thomas’s [repeated failures](#) to properly disclose expensive “gifts” given to him by donors and activists aligned with the Republican party.
- Chief Justice Roberts’s [refusal](#) to even meet with members of Congress to discuss how the judiciary—the institution he leads—handles serious ethics concerns such as these.

These types of actions, and cowardice, should be disqualifying on their own. But the harms they cause are magnified when one considers how these types of actions relate to some of the biggest decisions of the prior term.

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Overwhelming Allegiance

As next week's hearing recognizes, this political behavior manifested itself perhaps most directly, and certainly most damaging for our democracy, in practically acting to shield Donald Trump from the threat of criminal prosecution for his acts to try to overturn the 2020 election before the November 2024 election.

But evidence of the Supreme Court serving as an arm of the far-right movement goes further than that. While the below focuses on the most-recent term, it is worth pointing out that the leaks that revealed the Chief Justice's actions in the Trump decisions follow the major leak of the Court's decision overturning *Roe*. We may never know exactly who is responsible or why Court materials and private deliberations are being fed to the press—but it's clear that, as the Court's opinions get more and more extreme, internal norms are fracturing.

Examining what were considered the “major” cases of the past term demonstrates that the Court overwhelmingly delivered at least a partial victory for MAGA interests. And when it came to election-related cases and cases directly related to former Trump, the Court ruled in lockstep with those interests.

Below provides an overview of some examples where this trend was most obvious—as well as dangerous for the rights and well-being of everyday Americans.

To course-correct this trend, reform will be essential.

Case Highlights

The following are just some examples of the past term about how extreme the Court has become, almost all of which were decided along strict ideological lines. In addition, it's worth noting that the opinion that barred individual states from removing Trump from their ballots, even if they found him guilty of insurrection, was less unanimous than it appeared—the three liberal justices, in addition to Justice Barrett, thought the court's opinion went too far.

Victories for Trump and his Supporters Who Attacked the Capitol

As already stated, perhaps the most stunning decision out of the Court this term was the decision granting broad criminal immunity to presidents in *Trump v. United States*. This decision, which

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was an affront to the American ideal that no one is above the law, all but ensured that the former President wouldn't stand trial on some of the most serious felony charges he faces—denying the American people the knowledge of the outcomes of those proceedings before the November election. The Chief Justice's opinion, which will undoubtedly become a major part of American history, was called “strange” by one former clerk, now law professor.

In addition, *Fischer v. United States* operated to protect supporters of the former president, by shielding the individuals who attacked the U.S. Capitol on January 6 from some charges. As noted above, in an irregular move, the Chief Justice took over the writing of this opinion from Alito. This occurred in the wake of the flag scandals—but Alito remained a part of deliberations.

Giving an Edge to Republicans in Elections

This trend wasn't restricted to simply Donald Trump's interests, but also Republican desires in election-related suits overall. In *Alexander v. South Carolina State Conference of the N.A.A.C.P.*, the Court ruled to make it harder to challenge voting maps—and, most immediately, ensured that South Carolinians would have to adhere to the Republican-controlled state legislature's controversial voting map even while further litigation played out.

Consolidating Power in the Judiciary Instead of the Elected Branches

Finally, in overturning what is known as the *Chevron* doctrine, the Court issued a decision that granted itself with new policy making powers. This will enable MAGA members of the judiciary, including the Supreme Court, to have a greater say over critical issues like health care costs and worker protections—likely resulting in policies that would never pass muster at the ballot box.

The Need for Reform

Simply put, our current Supreme Court is one that can't be trusted to do its job in a fair and unbiased manner. That fact is even more alarming in light of the fact that some justices themselves have acknowledged that the Supreme Court is likely to play a role in the 2024 elections. For the sake of our democracy, it will be critical for the Court to conduct itself—and rule—with more integrity than it currently exhibits.

At the same time, the Constitution gives Congress the power to make sure that the Supreme Court actually serves the people and not themselves. The Biden-Harris administration recognized

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this fact when it announced support for term limits and ethics requirements for Supreme Court justices. These are essential reforms to begin to check a judiciary that clearly feels it is above the law it is supposed to safeguard.

And there is much more that can be considered and should be done to bring transparency—sorely needed, as demonstrated by the Chief Justice’s reported actions in the Trump cases as well as overall stonewalling of Congress—and prevent the judiciary from writing their own rules in ways that damage democracy.

Finally, it is important to note that the need for reform is a strongly bipartisan issue. Nearly three-fourths of Americans, including 80 percent of Independents and over 70 percent of both Democrats and Republicans, think the judiciary has too much power over our laws and therefore our lives.

Congress must act.