

US Supreme Court opens new term: A court of right-wing “partisan hacks” prepares to do its masters’ bidding

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5 October 2021

The U.S. Supreme Court opened its new term Monday, in which it will take up the first direct challenge to its 1973 *Roe v. Wade* decision on abortion rights in nearly 30 years. While the hearing in December’s challenge brought by the state of Mississippi is not expected to produce a ruling before next June, the issue is already convulsing American politics.

The court’s five-member hard-right majority has already telegraphed its likely decision, with its extraordinary refusal in August to block a new Texas state law allowing vigilante-style private lawsuits against abortion clinics. The practical effect of this decision, issued with no hearing or legal arguments and only a two-page ruling, has been to shut down access to abortion in the second-largest US state.

The backlash against this decision has provoked a series of unusual public statements by justices, both ultra-right and moderate-liberal, defending the court against well-founded complaints that its new majority is carrying out a political agenda determined by the right wing of the Republican Party. Three of the five members of the ultra-right faction, Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett, were appointed by Donald Trump.

Justice Barrett gave a speech in Kentucky last month in which she declared that “my goal today is to convince you that this court is not comprised of a bunch of partisan hacks.” This produced a further backlash, as she delivered them at the University of Louisville’s McConnell Center, after an introduction by the center’s namesake, Republican Senator Mitch McConnell, who pushed through her nomination only weeks after the death of liberal Justice Ruth Bader Ginsburg.

It is remarkable that no one in the corporate media has made the obvious comment on Justice Barrett’s transparent and defensive remark, citing Shakespeare: “Methinks the lady doth protest too much.”

If you have to declare that you are not a partisan hack, it would perhaps be better not to do it standing side by side with Senator McConnell. As Senate Majority Leader, McConnell first blocked the nominee of a Democratic president on the grounds that no president should have a Supreme Court choice confirmed in his final year in office, then rammed through the

nominee of a Republican president, Trump, only a week before the presidential election.

On October 1, Justice Samuel Alito denounced criticism of the court “as having been captured by a dangerous cabal that resorts to sneaky and improper methods to get its ways.” The language is a self-exposure: Like Barrett, Alito is trying to rebut the obvious meaning of the court’s actions, by telling the public, “Believe my assurances, don’t believe what you can see right in front of you.”

He was referring to the court’s actions in the “shadow docket,” decisions and rulings issued during its summer break, between the end of June and the first Monday in October, most notably the ruling on the Texas law, which flagrantly defies *Roe v. Wade*, and sets up the vigilante private lawsuit mechanism to enforce the abortion ban in order to evade court scrutiny.

The court ruling provoked harsh dissents from the moderate liberals on the court, with Justice Elena Kagan writing that the “shadow docket” procedure “every day becomes more unreasoned, inconsistent, and impossible to defend.”

Other “shadow docket” rulings by the high court included overturning a federal moratorium on evictions, imposed by the Centers for Disease Control and Prevention (CDC) as a public health measure, and directing the Biden administration to reinstate Trump’s “remain in Mexico” policy for migrants seeking to file asylum claims.

The Senate Judiciary Committee held a hearing on the “shadow docket,” which sparked Alito’s reply in a speech at the University of Notre Dame, in which he denounced criticism as part of “unprecedented efforts to intimidate the court and to damage it as an independent institution.” Alito’s response dovetailed with the statements made by Republican senators at the hearing—itsself refuting Barrett’s claim that the justices are not “partisan hacks.”

Supreme Court justices are, of course, intensely political figures, as the right-wing majority demonstrated as far back as the notorious decision in *Bush v. Gore*, which settled the 2000 presidential election, won by Gore, by installing the Republican George W. Bush in the White House. The only difference is

that the justices, as custodians of the longer-term interests of big business, will occasionally clash with the immediate demands of the presidents who appointed them, as the court did in giving a unanimous rebuff last November to the lawsuit by Trump's supporters that the 2020 election should be overturned.

Alito claims that the Court is simply deciding the issues as they come before it, but this is a lie. With the exception of the rare instance when one state sues another (an example was argued Monday, a dispute over ground water claimed by both Mississippi and Tennessee), the Supreme Court has no original jurisdiction over cases. Its interventions are always discretionary, and the Court's choosing to act or, in the case of the Texas abortion law, not to act defines it perhaps even more than the actual decisions.

The new term is the first full-year term in which the right-wing cabal of Thomas-Alito-Gorsuch-Kavanaugh-Barrett is in total control. Chief Justice John Roberts, a conservative who once held the swing vote, now makes only a four-vote minority when he sides with the three moderate liberals, who seem likely to be impotent dissenters in the major cases of 2021-2022.

Significantly, the Biden administration will argue the more right-wing position in a number of cases dealing with the death penalty and maintaining the secrets of the national security apparatus.

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The major cases coming before the high court begin Wednesday and include:

- **October 6**, *United States v. Abu Zubaydah*. This concerns whether the government can bar a prisoner tortured at Guantanamo Bay by CIA contractors from obtaining information about the two contractors who led his interrogation. The Biden administration is asserting the "state secrets" privilege in this case.

- **October 13**, *United States v. Tsarnaev*. The Biden administration is seeking review of an appeals court ruling throwing out the death sentence for Dzhokhar Tsarnaev, the surviving Boston Marathon bomber. The leader of the 2013 attack, Tsarnaev's older brother Tamerlan, was killed in a shootout with police a few days after the bombing. The Department of Justice is seeking reinstatement of the death sentence.

- **November 1**, *Ramirez v. Collier*. A death row inmate in Texas is appealing against the state's procedures for conducting the execution, seeking the right to have his pastor lay hands on him and pray aloud in the death chamber. The arguments are directed at the court majority's inclination to favor such assertions of "religious rights." The case does not seek to overturn the death sentence.

- **November 3**, *New York State Rifle & Pistol Assn., Inc. v. Bruen*. The first major case on local gun regulation accepted by the high court since its 2008 decision overturning all previous

precedent and declaring that the Second Amendment establishes an individual's right to possess firearms. A New York state law requires that anyone seeking a permit for carrying a concealed weapon must demonstrate a need for self-defense—in other words, the burden of proof is on the permit seeker not the state.

- **November 8**, *FBI v. Fazaga*. A group of Muslim men in California sued the FBI, claiming it instituted surveillance of them solely because of their religion. The Biden administration is again asserting the "state secrets" privilege as an argument for quashing the lawsuit before the substantive issues are litigated.

- **December 1**, *Dobbs v. Jackson Women's Health Organization*. A direct challenge to *Roe v. Wade* based on a Mississippi law that prohibits abortions after 15 weeks of pregnancy. The standard under *Roe* is that states may not prohibit abortion until the fetus is viable, about 23 weeks. The Mississippi law allows only narrow exceptions, including "a severe fetal abnormality" or health emergencies for the mother. The Supreme Court agreed to hear the case only after Justice Barrett's confirmation. A decision on *Dobbs* would not of itself outlaw abortion, but return the issue to the states, where only 15 have legalized abortion. Twelve states have laws that would automatically outlaw abortion if *Roe* is overturned, while another 14 have anti-abortion laws on the books, enacted before *Roe*, whose status is uncertain.

- **December 8**, *Carson vs. Makin*. This case deals with a state government policy prohibiting payment of tuition for religious schools in rural areas of Maine where there is no public school. Many parts of the largely rural state are so sparsely populated that there is no public school. The state policy provides for payment to private schools in those circumstances but not schools providing religious instruction. Three Maine parents claim that their rights under the First Amendment are being denied.



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