

Supreme Court opens 2026 term amid deepening crisis of US democracy

John Burton
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Following tradition, the nine justices of the United States Supreme Court returned from summer recess on the first Monday of October, issued a slew of orders, mostly rejecting petitions for review of cases filed over the last several months, and ceremonially entertained the first oral arguments of the new term.

Promptly at 10:00 a.m., the court marshal announced: “Oyez, oyez, oyez, all persons having business before the Supreme Court of the United States are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court.”

Chief Justice John Roberts then added, “I have the honor to announce, on behalf of the court, that the October 2025 Term of the Supreme Court of the United States is now closed, and the October 2026 Term is now convened.”

The first case was one of the more potentially significant on the current merits docket. Boulder County, Colorado is suing major energy corporations for causing climate change and then distorting, covering up and outright lying about the science, much as the tobacco industry did decades ago in regard to cigarette smoking. At least 60 local governments have filed similar lawsuits to hold oil and gas companies liable related to greenhouse gas emissions, claiming billions of dollars in consequent environmental and economic damages.

Justice Samuel Alito recused himself, apparently because of his personal investments in fossil fuel companies. The lack of an enforceable code of ethics and obvious breaches—particularly gifts showered on Justice Clarence Thomas by wealthy patrons with matters pending—has scandalized the Supreme Court.

The questioning and comments of the remaining eight justices at the oral argument suggested no particular outcome. A 4-4 tie would leave in place the Colorado Supreme Court decision that allows the case to continue for the time being, but future Supreme Court intervention to protect industry profits, either in this case or one of the others, would likely remain on the table.

On Wednesday, the Supreme Court heard arguments on a petition brought by the Air Force challenging a lower court ruling obtained by conservationists in Guam, a US territory in Micronesia, requiring an environmental review before disposing of hazardous munitions on an idyllic stretch of coastline that is home to migratory birds, sea turtles, a

3,000-year-old village of the indigenous Chamorro, and an aquifer. Again, the questions and comments of justices did not suggest a particular outcome.

Beneath this pomp and air of normalcy, tens of millions in the US are wondering whether the six extreme right-wing justices that form the Supreme Court’s super-majority will interfere with the impending November 3 midterm elections, a projected debacle for President Donald Trump and the Republican Party. Twenty-six years ago, the Supreme Court voted 5-4 on bogus legal grounds to terminate the ongoing Florida vote count and install George W. Bush as president, an election theft to which Chief Justice John Roberts owes his position.

Roberts then maneuvered behind the scenes to engineer the extraordinary July 1, 2024 ruling granting then-private citizen Donald Trump immunity from prosecution for his role in the attempted coup of January 6, 2021.

As the Supreme Court engaged politely with counsel, picking through nuances of jurisprudence, Christa Gail Pike emerged from a phenobarbital-induced coma—bruised, burned, shackled and handcuffed to a Nashville hospital bed. Tennessee’s barbaric attempt to execute her based on a conviction 30 years ago proceeded on September 30 after the six right-wing justices overturned a lower court stay with no explanation, its most recent resort to the “shadow docket.” The latter was once a rarely used procedure where emergency orders, principally to maintain the status quo, could be issued without full briefing or argument, and frequently with only perfunctory explanations or, as in the case of Pike, no explanation at all.

Over the 20 months since Trump’s second inauguration, the court majority has repeatedly resorted to shadow docket rulings, along with its merits cases, to expand presidential powers under Article 2 of the Constitution, on the basis of the so-called “unitary executive” theory. At the same time, the Supreme Court is creating arbitrary loopholes for itself, such as the “substantial questions doctrine,” to justify its own future interventions to block executive actions that it does not like.

Shadow docket rulings have overruled lower court orders to give masked ICE agents authority to detain people based on apparent ethnicity, language or type of employment. They have stripped immigrants of “temporary protected status” and authorized their deportation to “third countries” with which

they have no connection.

Other shadow docket orders have allowed Trump to impound foreign aid funds allocated by Congress, and to terminate supposedly “independent” regulatory agency commissioners. Last summer, the majority used the shadow docket to implement a Trump administration program that allows state election authorities to access a notoriously unreliable federal database, compiled from confidential sources, supposedly to verify US citizenship for voter registration.

A particularly petty shadow docket order issued August 31 overturned a lower court injunction so that Trump can proceed with the construction of his oversized, garish ballroom where the White House East Wing used to stand.

The Supreme Court majority’s pro-Trump bias is flagrant. Attorney General Todd Blanche boasted during a recent Fox News interview that Trump has prevailed on his shadow docket petitions 28 out of 35 times since his second inauguration, a rate of 80 percent.

These repeated, unwarranted and blatantly pro-Trump interventions are discrediting the Supreme Court in the eyes of millions. A recent Gallup poll measured public approval at the historic low of 33 percent. Various reforms, including term limits, an enforceable code of ethics and expansion of the number of justices to dilute the right-wing majority have broad support.

So far the Supreme Court has accepted 30 cases and scheduled arguments through the end of 2026. New cases will continue to be added over the next three months, likely bringing the total of merits cases to around 60, the annual average. Oral arguments will be scheduled through April. Many will relate to the flotsam and jetsam that inevitably arise in civil and criminal litigation, but there are already several “hot button” cases scheduled.

Next month the Supreme Court will review a lower court ruling that upheld the exclusion of a Catholic preschool from a Colorado preschool program. The preschool contends that requiring the enrollment of children of same-sex parents to qualify for a state subsidy infringes on its First Amendment right to religious freedom. The majority is expected to rule again that supposed religious beliefs discriminating against same-sex couples outweigh state law protection.

Also on tap for November is a lower court ruling that allowed a federal prison inmate denied medical care after being severely beaten by other inmates to sue the prison officials for money damages. There is justified concern that the case will be used to overturn *Bivens v. Six Unknown Named Agents*, a progressive 1971 precedent that authorizes direct lawsuits under limited circumstances against federal officials who violate the Constitution.

In a closely watched case, on December 2 the Supreme Court will decide whether the Second Amendment prohibits Illinois and Connecticut, and states in general, from regulating the private ownership of AR-15s and similar semiautomatic assault

rifles that have been used in multiple mass shooting events. The Trump administration, of course, opposes the weapons ban.

The following week, the Supreme Court will hear arguments on the rights of minors in Washington State to obtain mental health services, including treatment for gender dysphoria, free from parental interference. The next day the Supreme Court will review an Arizona law requiring proof of citizenship to vote and state authority to disqualify registered voters within 90 days of an election.

The Supreme Court has not yet scheduled arguments on whether immigrants whose asylum has been terminated can be adjusted to lawful permanent resident status and, in a case already subject to a shadow docket order, whether immigrants can be deported to “third countries” with which they have never had contact.

Justice Alito made the rounds of various news shows last weekend to promote his new book *So Ordered: An Originalist’s View of the Constitution, the Court, and Our Country*, a conceit that judges are equipped to divine the “original intent” behind founding documents such as the US Constitution. In practice, Alito and his co-thinkers junk the clear language and intent of constitutional provisions, for example the Fourteenth Amendment’s birthright citizenship clause, whenever it conflicts with their reactionary political objectives.

Alito announced that he is toying with potential retirement, which usually occurs during the summer recess rather than during a term. If the Democrats took control of the Senate as a result of the mid-term elections next month, they could block Trump’s nominee for Alito’s successor, much as the Republicans blocked Obama’s nominee Merrick Garland after the death of Antonin Scalia.

While Trump would be hard pressed to nominate a less principled and more fascistic justice than Alito, he could certainly nominate a younger one. Thus Alito could retire in time for his successor to be confirmed before the next Congress is sworn in on January 3, 2027, bringing the total number of Trump justices to four, potentially solidifying an extreme right-wing Supreme Court majority for decades.



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