

The Roberts Five: Advancing Right-Wing and Corporate Interests 92 Percent of the Time

A review of the Supreme Court’s jurisprudence during the Roberts Era reveals that in the most controversial and salient civil cases – those decided by bare 5-4 or 5-3 majorities – when the right wing of the Court has voted *en bloc* to form the majority, they do so to advance far-right and corporate interests a striking 92% of the time. In those cases, the “Roberts Five” – Chief Justice John Roberts, Justice Samuel Alito, Justice Clarence Thomas, Justice Anthony Kennedy, and Justice Antonin Scalia (replaced last year by Justice Neil Gorsuch) – have reliably voted in lockstep to help Republicans win elections, to protect corporations from liability, to take away civil rights, and to advance the far right social agenda.

Helping Republicans Win Elections: Dark Money, Voter Suppression & Union-Busting

1. *League of Latin American Citizens v. Perry* (2006)
 - Upheld racial and partisan gerrymandering that burdened the rights of minority voters in Texas.
2. *FEC v. Wisconsin Right to Life* (2007)
 - Allowed corporations to pour unlimited money into electioneering communications.
3. *Davis v. FEC* (2008)
 - Eliminated the “Millionaire’s Amendment” to the Bipartisan Campaign Reform Act, increasing the influence of wealth as a criterion for public office.
4. *Bartlett v. Strickland* (2009)
 - Made it more difficult for minority voters in racially concentrated districts to challenge their districts.
5. *Citizens United v. FEC* (2010)
 - Opened the door to special interests and lobbyists influencing American politics through unlimited corporate spending.
6. *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett* (2011)
 - Allowed PACs and dark money sources to fund political candidates without limit.
7. *American Tradition Partnership v. Bullock* (2012)
 - Affirmed the Supreme Court’s decision in *Citizens United* allowing special interests and lobbyists to influence American politics through money.
8. *Shelby County v. Holder* (2013)
 - Invalidated sections of the Voting Rights Act, making it easier for states with a history of racial discrimination to pass discriminatory voting laws.
9. *McCutcheon v. FEC* (2014)
 - Created a loophole that allows a single individual to donate millions of dollars to a political party or campaign.
10. *Harris v. Quinn* (2014)
 - Weakened public sector unions and took a major step toward overturning public sector fee collection from all non-union members in another 5-4 decision, *Janus v. AFSCME*.
11. *Abbott v. Perez* (2018)

- Allowed the use of electoral maps that a lower court determined were drawn with discriminatory intent.
- 12. Husted v. A. Phillip Randolph Institute (2018)**
- Allowed Ohio to purge voter rolls in a way that disproportionately disqualifies minority voters.
- 13. Janus v. AFSCME (2018)**
- Overturned a 40-year-old precedent allowing public sector unions to collect fair share fees.

Protecting Corporations from Liability: Letting Polluters Pollute & Making It Harder for Americans to Have Their Day in Court.

- 14. Rapanos v. United States (2006)**
- Narrowed the interpretation of the phrase “waters of the United States” in the Clean Water Act, making it easier to pollute and destroy these wetlands.
- 15. Leegin Creative Leather Products v. PSKS (2007)**
- Allowed manufacturers, distributors, and retailers to raise the prices of goods at retail through vertical price restraints.
- 16. National Association of Home Builders v. Defenders of Wildlife (2007)**
- Limited the reach of the Endangered Species Act and eliminated a major regulatory hurdle for developers.
- 17. Stoneridge Inv. Partners, LLC v. Scientific-Atlanta (2008)**
- Restricted liability for secondary actors, such as lawyers and accountants, under federal securities law.
- 18. Winter v. Natural Resources Defense Council (2008)**
- Invalidated an injunction to halt naval training exercise despite irreparable harm to marine life, furthering the right’s anti-environment, anti-regulatory agenda.
- 19. 14 Penn Plaza v. Pyett (2009)**
- Diminished employees’ access to the federal courts and skewed employment agreements in favor of employers through mandatory arbitration.
- 20. Ashcroft v. Iqbal (2009)**
- Heightened the civil pleading standard, making it more difficult for plaintiffs to sue in federal court.
- 21. Summers v. Earth Island Institute (2009)**
- Restricted the right of environmental groups to sue over environmental violations.
- 22. Entergy v. Riverkeeper (2009)**
- Ignored the Clean Water Act’s mandate that power plants use the “Best Technology Available” to protect fish and aquatic life, allowing them to use less-costly, less-effective devices.
- 23. Conkright v. Frommert (2010)**
- Allowed retirement plan administrators to construct the terms of a plan in favor of employers.
- 24. Stolt-Nielsen S.A. v. AnimalFeeds International Corp. (2010)**

- Restricted plaintiffs from using class arbitration (similar to a class action lawsuit) unless all parties specifically agree to it.
- 25. Rent-A-Center, West, Inc. v. Jackson (2010)**
 - Diminished employees’ access to the federal courts and skewed arbitration agreements in favor of employers over employees.
 - 26. Perdue v. Kenny A (2010)**
 - Dramatically heightened the standards for civil rights plaintiffs’ attorneys to receive compensation for their services.
 - 27. Schindler Elevator Corp. v. U.S. ex rel. Kirk (2011)**
 - Limited the ability of plaintiffs to bring suit as whistleblowers on behalf of the government.
 - 28. AT&T v. Conception (2011)**
 - Reduced consumers’ ability to bring class-action claims against corporations for low-dollar, high-volume frauds.
 - 29. Janus Capital Group v. First Derivative Traders (2011)**
 - Shielded corporate advisors from liability and limited the rights of individual investors.
 - 30. Wal-Mart Stores v. Dukes (2011)**
 - Limited the ability of individuals to bring class-action lawsuits.
 - 31. Pliva v. Mensing (2011)**
 - Immunized from suit generic drug makers who failed to warn consumers about dangerous side effects.
 - 32. F.A.A. v. Cooper (2012)**
 - Made it more difficult for plaintiffs to recover for intangible harms caused by government privacy violations.
 - 33. Coleman v. Court of Appeals of Maryland (2012)**
 - Limited plaintiffs from bringing suits for damages under the Family Medical Leave Act.
 - 34. Christopher v. SmithKline Beecham (2012)**
 - Expanded fair wage exemptions under Fair Labor Standards Act exemptions and deprived workers of statutory fair pay protections.
 - 35. American Exp. Co. v. Italian Colors Restaurant (2013)**
 - Diminished employees’ access to the federal courts and skewed employment agreements in favor of employers.
 - 36. Comcast v. Behrend (2013)**
 - Made class action certification more difficult and limited suits against corporations for low-dollar, high-volume antitrust violations.
 - 37. Genesis Healthcare v. Symczk (2013)**
 - Limited plaintiffs’ ability to bring collective action claims under the Fair Labor Standards Act.
 - 38. Mutual Pharmaceutical v. Bartlett (2013)**
 - Prevented states from warning consumers about risky drugs.
 - 39. Koontz v. St. Johns River Water Management District (2013)**
 - Deprived local and state governments of the flexibility to ensure environmentally sound and economically productive development.

40. *Michigan v. EPA* (2015)
 - Limited EPA’s authority and promoted environmental deregulation.
41. *California Public Employees’ Retirement System v. Anz Securities* (2017)
 - Made it harder for individual investors to protect their rights via class action lawsuits.
42. *Epic Systems v. Lewis* (2018)
 - Prohibited workers from banding together to redress workplace violations including sexual harassment, racial discrimination, and wage theft.
43. *Jesner v. Arab Bank* (2018)
 - Held that foreign corporations may not be sued under the Alien Tort Statute, protecting foreign corporations from liability for human rights abuses.
44. *Encino Motorcars v. Navarro* (2018)
 - Expanded exemptions from the Fair Labor Standards Act and deprived workers of statutory fair pay protections.
45. *Wisconsin Central Ltd. v. United States* (2018)
 - Ruled that railroad executives are exempt from federal employment taxes on stock-based compensation.
46. *Ohio v. American Express* (2018)
 - Stifled price competition and hurt consumers.

Taking Away Civil Rights and Condoning Discrimination

47. *Garcetti v. Ceballos* (2006)
 - Narrowed speech protections for public employees.
48. *Ledbetter v. Goodyear Tire* (2007)
 - Made Title VII claims more difficult to bring and ignored the realities of proving wage discrimination.
49. *Morse v. Frederick* (2007)
 - Limited both the speech rights of high school students and the available civil remedies for constitutional violations.
50. *Parents Involved in Community Schools v. Seattle School District No. 1* (2007)
 - Limited the ability of primary and secondary public schools to use affirmative action programs that promote diversity.
51. *Plains Commerce Bank v. Long Family Land and Cattle Co.* (2008)
 - Made it more difficult for Native American plaintiffs to challenge discriminatory conduct by banks.
52. *Gross v. FBL Financial Services* (2009)
 - Heightened the standard for age discrimination claims and made relief for victims more difficult.
53. *District Attorney’s Office for the Third Judicial District v. Osborne* (2009)
 - Limited the ability of plaintiffs to bring suit in federal court for government violations of their constitutional rights.
54. *Horne v. Flores* (2009)
 - Diminished minority students’ access to English as a Second Language programs.

55. *Ricci v. Destefano* (2009)
 - Distorted federal civil rights law to promote the disproportionate exclusion of minority groups from career advancement.
56. *Chamber of Commerce of U.S. v. Whiting* (2011)
 - Allowed states to pass laws that target immigrant workers.
57. *Connick v. Thompson* (2011)
 - Made it harder to hold prosecutor's offices liable for the illegal misconduct of their prosecutors.
58. *Florence v. Board of Chosen Freeholders of County of Burlington* (2012)
 - Allowed strip searches of inmates without reasonable suspicion, reducing the Fourth Amendment protections of arrestees.
59. *Vance v. Ball State University* (2013)
 - Made it harder for plaintiffs to bring workplace harassment claims.
60. *University of Texas Southwestern Medical Center v. Nassar* (2013)
 - Increased the standard of proof for employer retaliation claims, making these claims more difficult to bring.
61. *Glossip v. Gross* (2015)
 - Made challenging execution methods more difficult and thus limited prisoners' Eighth Amendment rights.
62. *Jennings v. Rodriguez* (2018)
 - Allowed for immigrants to be detained for prolonged periods of time without a bail hearing.
63. *Murphy v. Smith* (2018)
 - Reduced compensation for prisoners when government officials violate their constitutional rights.
64. *Trump v. Hawaii* (2018)
 - Allowed the discriminatory Muslim ban to go into effect and restricted immigration from eight, mostly Muslim-majority, countries.

Advancing the Far-Right Social Agenda: Religion, Guns & Abortion

65. *Hein v. Freedom From Religion Foundation* (2007)
 - Restricted the ability of citizens to sue the government under the First Amendment for entangling church and state.
66. *Gonzalez v. Carhart* (2007)
 - Made it harder for women to exercise their reproductive rights.
67. *District of Columbia v. Heller* (2008)
 - Drastically expanded the scope of the Second Amendment and limited commonsense gun regulation.
68. *Salazar v. Buono* (2010)
 - Allowed a cross to stay on federal property, chipping away at the separation of church and state.
69. *McDonald v. Chicago* (2010)

- Continued the expansion of Second Amendment rights and made it more difficult for states to implement gun regulations.
- 70. Arizona Christian School Tuition Organization v. Winn (2011)**
- Made it harder for plaintiffs to challenge Establishment Clause violations in court, chipping away at the separation of church and state.
- 71. Town of Greece v. Galloway (2014)**
- Allowed legislative prayer even when a town fails to represent a variety of religions in its meetings.
- 72. Burwell v. Hobby Lobby Stores (2014)**
- Permitted corporations to deny contraception based on objections to facially neutral, non-discriminatory laws.
- 73. NIFLA v. Becerra (2018)**
- Reduced the amount of information available to pregnant women, potentially deceiving women into believing that anti-abortion pregnancy centers are medical clinics.

Ideologically Neutral Cases

- 74. F.C.C. v. Fox Television Stations, Inc. (2009)**
- Upheld a Federal Communications Commission regulation that bans “fleeting expletives” on television broadcast.
- 75. Free Enterprise Fund v. Public Co. Accounting Oversight Board (2010)**
- Struck down the dual layer of “for cause” protection against presidential removal for PCAOB members.
- 76. Stern v. Marshall (2011)**
- Held that bankruptcy courts lack the constitutional authority under Article III to enter a final judgement on a state law counterclaim.
- 77. Clapper v. Amnesty International (2013)**
- Ruled that plaintiffs lack standing to bring suit even if they claim a reasonable likelihood that their communications will be intercepted by the government under FISA surveillance.
- 78. Kerry v. Din (2015)**
- Held that the government is not required to give an explanation for denying an alien’s visa based on terrorism-related grounds under the Immigration and Nationality Act.
- 79. SAS Institute v. Iancu (2018)**
- Held that when the United States Patent and Trademark Office institutes a review to reconsider an already-issued patent, it must rule on the patentability of all claims the petitioner challenges.
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