

The Roberts Five: Advancing Right-Wing and Corporate Interests 92% 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.

Methodology:

- We identified 212 5-4 and 5-3 cases since Chief Justice Roberts joined the Court in 2006.
- Of these 212 cases, the Roberts Five formed a bare majority in 79 civil cases.
- 73 (92%) of these 79 5-4 and 5-3 civil cases advance Republican and/or corporate interests, falling into the following four categories:
 - Helping Republicans Win Elections: Dark Money, Voter Suppression & Union-Busting
 - Protecting Corporations from Liability: Letting Polluters Pollute & Making It Harder for Americans to Have Their Day in Court.
 - Taking Away Civil Rights and Condoning Discrimination
 - Advancing the Far-Right Social Agenda: Religion, Guns & Abortion

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

1. *League of Latin American Citizens v. Perry* (2006)
 - Upheld aggressive 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)
 - Reemphasized the Supreme Court’s open-door policy for special interests and lobbyists to influence American politics through money.
8. *Shelby County v. Holder* (2013)
 - Gutted the Voting Rights Act, making it far 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)
 - Burdened the rights of minority voters in Texas by allowing 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 and disrupted thousands of contracts involving millions of employees, potentially crippling public sector unions, a chief opponent of the corporate right.

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 significantly 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. Concepcion* (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)
 - Threw out a class action lawsuit brought by 1.6 million women in a discrimination case, making it more difficult for individuals who have been injured to bring class-action claims and hold corporate wrongdoers accountable.
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 pro-corporate 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 they needed to ensure environmentally sound and economically productive development.
40. *Michigan v. EPA* (2015)
 - Rolled back the EPA’s autonomy 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)
 - Blocked 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 pro-corporate 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 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, making it harder for them to overcome language barriers in their education.
- 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.