



Unprecedented Injustice: The Political Agenda of the Roberts Court

“It is not often in the law that so few have so quickly changed so much.”

- Justice Stephen Breyer, *June 28, 2007*

- When Associate Justice John Paul Stevens retires this summer, the Supreme Court will lose its most powerful spokesperson for personal freedoms, separation of powers, and the rule of law. A staunch protector of the rights of ordinary Americans faced with unchecked corporate and government interests, Justice Stevens has said that he only appears liberal because he has been surrounded by ideologically extreme right-wing justices.
- Justice Stevens’s opinions stand out as a bulwark against the Court’s increasingly sharp turn to the right. Rather than keep faith with core American values, a slim majority on the Supreme Court has abandoned principles of fundamental fairness and steadily eroded, if not outright overturned, long-standing constitutional doctrine.
- From antitrust regulations to environmental protections to women’s rights to First Amendment rights, the Roberts Court has consistently rewritten decades of law to protect big business at the expense of everyday Americans.
- A review of recent cases shows the conservative justices’ disregard for precedent, eagerness to roll back personal freedoms, and willingness to ignore the promises that Chief Justice John Roberts and Associate Justice Samuel Alito made at their Senate confirmation hearings to respect precedent, neutrally uphold the Constitution, and fairly apply the law to everyone.

Promoting Corporations and the Wealthy at the Expense of Ordinary Americans

The Roberts Court, the product of a conservative effort dating to the Reagan Administration to shift the ideology of the Court, follows a political agenda that consistently favors big corporations over average citizens. In the past several years, the Court has radically rewritten laws in order to shield big business from liability and to enable powerful interests to flood our election process with special interest dollars.

Shielding Corporations from Liability

- In *Riegel v. Medtronic, Inc.* (2008), the Court ruled that a consumer who has been seriously injured by a defective medical device cannot sue the manufacturer if the product was approved by federal government regulators, even if the company knew the product was dangerous.
- In *Exxon Shipping v. Baker* (2008), the Court allowed Exxon to escape full financial liability for the damage done by the Exxon-Valdez oil spill to communities and the environment, leaving over 30,000 people whose livelihoods and community were destroyed by the disaster with only a tenth of the original jury award—a sum completely inadequate to make up for their loss, almost two decades after the disaster.

Insulating Corporate Interests from Environmental and Antitrust Regulation

- Two recent Supreme Court decisions, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) and *Rapanos v. United States* (2006), took many waterways outside the protection of the Clean Water Act—even though pollution from these waterways can dirty the drinking water of 117 million

Americans. As a result, 1500 major pollution investigations have been halted, and EPA actions against water polluters have fallen by 50 percent.

- In *Leegin Creative Leather Products, Inc. v. PSKS, Inc.* (2007), the five conservatives overturned a century of antitrust law and decided that manufacturers and retailers could sometimes engage in price-fixing. In dissent, Justice Breyer cited studies estimating that this change in law would cost consumers \$300 billion a year in increased prices on everyday items.

Putting Elections Up for Sale

- In *Davis v. FEC* (2008), the five conservative Justices overturned the “Millionaire’s Amendment,” Congress’s effort to level the playing field in the political process and reduce the influence of a candidate’s wealth on elections.
- In *Citizens United v. FEC* (2010), the five conservatives reversed a century of law to fundamentally change the rules of the game in favor of big business. The Court went out of its way to toss aside several precedents to allow corporations to use unlimited funds from their general treasuries to influence federal elections—and held for the first time in American history that corporations have the same right as ordinary people to spend money on elections. As Justice Stevens wrote in dissent, “Essentially, five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law.”

Making it Easier for Companies to Discriminate Against Women and the Elderly

The five conservatives have undermined settled antidiscrimination laws to make it easier for corporations to discriminate against people at work, and they have rewritten basic legal procedure rules to close the courthouse doors on ordinary Americans.

- In *Ledbetter v. Goodyear* (2007), a 5-4 decision, the Court ruled that a woman who had been paid less than her male peers for 20 years had no right to bring a lawsuit for equal pay because she failed to file suit within 180 days of the first discrimination—even though she had no way of learning about the discrimination until years later.
- In several split decisions, the Court changed the basic rules of litigation and made it much harder for victims of unlawful conduct to seek redress in court. Abandoning fifty years of settled law, the Court, in a 5-4 decision in *Ashcroft v. Iqbal* (2009), unnecessarily heightened the burdens on plaintiffs to prove their cases upfront. In *Gross v. FBL Financial Services* (2009), the five conservatives changed the long-standing evidentiary standard for proving age discrimination. These new rules make it much more difficult for plaintiffs to prevail, especially when going up against well-financed corporate defendants.

Shattering Precedent and Undermining Core Constitutional Values

While the five conservatives rail against ‘judicial activism’ in one breath, they unabashedly exercise it in the next in order to advance their political agenda. In recent years, the Court has not been shy to overturn precedent at an astonishing pace.

- In a 5-4 decision in *Gonzales v. Carhart* (2007), the Court eviscerated more than 30 years of precedent requiring that abortion restrictions provide an exemption to protect a pregnant women’s health.
- In two cases in 2007, *Parents Involved in Community Schools v. Seattle School District #1* and *Meredith v. Jefferson County Board of Education*, the five conservatives undercut one of our nation’s most cherished precedents, *Brown v. Board of Education*. Declaring certain voluntary school integration plans unconstitutional, the Court did unprecedented damage to *Brown*’s promise of racial equality, leaving Justice Breyer to ask in dissent, “What has happened to *stare decisis*?” Justice Stevens added, “It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today’s decision.”

A copy of the full report, “Unprecedented Injustice: The Political Agenda of the Roberts Court,” can be found at www.afj.org/check-the-facts/supreme-court-watch/