Has the Roberts Court Helped Donald Trump and the GOP Rig Elections and Erode American Democracy?

By
TERRI PERETTI

Over the past half century, Republican leaders have had considerable success enlisting courts in their campaign to boost the party's electoral prospects through the suppression of voting and the manipulation of election rules. Donald Trump has embraced this mission and escalated the assault on America's electoral processes in new and dangerous ways. Has the Supreme Court supported or opposed this contemptible project? Its recent election law decisions offer a mixed verdict, though its performance mostly leans in an antidemocratic direction. The court's decisions safeguarding democracy are fewer than those that undermine voting rights and elections, are typically handed down over the objections of Trump's appointees, and often include doctrinal provisions that enable it to restrict democratic participation in the future. Whether the Supreme Court will abet or discourage the erosion of American democracy in the future is an open question.

Keywords: voting rights; democracy; U.S. Supreme Court; Donald Trump; Republican Party; redistricting; partisanship

The Republican Party has, in recent years (and notwithstanding the 2024 election), faced a shrinking voter base, periodic and precarious congressional majorities, and a poor record in winning the popular vote in presidential elections. Its response to these electoral challenges has been voter suppression and partisan gerrymandering (Fraga et al. 2023; Hasen 2013; Peretti 2020, 11–29). This strategy

Terri Peretti is a professor of political science at Santa Clara University. Her research and teaching interests include the U.S. Supreme Court, constitutional law, election law, and judicial selection.

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Correspondence: tperetti@scu.edu

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has required "dismantling the New Deal/Civil Rights regime . . . [in order] to reshape both federal oversight and state autonomy regarding voting rights"; this "transformational work" also requires the support of sympathetic judges, another priority of the Republican Party and Donald Trump (Novkov 2024, 223).

In this article, I catalog Trump's varied efforts to restrict voter access and undermine fair electoral competition and place these activities in context, noting the extent to which they continue or deviate from past Republican efforts. I then assess the Supreme Court's record of cooperation with and resistance to the GOP's campaign to suppress democratic participation, dividing the analysis into two periods: 1969 through 2016 and 2017 to the present. The latter period focuses specifically on Donald Trump's influence on the court's election law decisions through his three appointees—Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. My analysis shows that the court, including the Trump cohort, has too often failed to safeguard democracy when given the chance to do so. Although U.S. courts, including the Supreme Court, held the line and defended democracy in the face of Trump's attempt to overturn the 2020 election, recent Supreme Court decisions, particularly its presidential immunity ruling, are worrisome. The final section of this article explores the extent to which these dynamics may lead to a perilous future for American democracy.

The Antidemocracy Pursuits of Donald Trump

Less than four months into his first term as president, Donald Trump—driven by his false claim that millions of illegal immigrants had voted for Hillary Clinton, thus costing him the popular vote in the 2016 election—issued an executive order establishing the Presidential Advisory Commission on Election Integrity. Vice President Mike Pence was appointed chair of the so-called Voter Fraud Commission, and a who's who of vote-suppression advocates were added, including Hans von Spakovsky of the Heritage Foundation and, as commission vice-chair, Kris Kobach, then serving as Kansas's secretary of state. Among the commission's more controversial actions was a request that states submit personal information on their registered voters, including names, birth dates, addresses, political party affiliations, voting history, and the last four digits of Social Security numbers. Due to security fears, election officials in 44 states and the District of Columbia refused to cooperate. In response to widespread criticism, President Trump abolished the commission less than eight months after its creation.

This was certainly not Trump's only attempt to manipulate voting and elections for personal and political gain. As Table 1 illustrates, he frequently sought, over the 2016 to 2024 period, to obtain electoral advantage by suppressing Democratic turnout, manipulating election rules, and derogating democratic norms.

Even this modest canvassing of the 2016 to 2024 period shows that Donald Trump deployed multiple strategies to restrict participation by Democratic-leaning groups and rig election rules in his favor, even when doing so would

TABLE 1
Donald Trump's Election-Related Activities, 2016–2024

2016	Welcomed Russian interference in 2016 election.
	If elected, threatened to jail Hillary Clinton.
2017	Created Presidential Advisory Commission on Election Integrity.
	Trump's Justice Department dropped objections to Ohio voter purge and Texas voter ID law.
	Trump's Justice Department filed no new Voting Rights Act (VRA) cases from January 2017 to May 2020.
2018	Plotted with Commerce Department to add citizenship question to the census, which would reduce count of Hispanic residents and Democratic representation in Congress.
	Considered appointing vote-suppression crusader Kris Kobach as attorney general.
	Threatened, via tweet, "maximum criminal penalties for illegal voting" in midterm elections.
	The Department of Justice (DOJ) and Immigration and Customs Enforcement subpoenaed eight years of voter records from 44 North Carolina counties, disproportionately affecting Black and Latino voters. Criticized as an "abominable misuse of law enforcement powers . . . [intended] to discredit American democracy and to scare away Democratic-leaning voters" (*Washington Post* Editorial Board 2018).
2019	Opposed, as violating federalism, the proposed Voting Rights Advancement Act that would restore preclearance to VRA by requiring jurisdictions with 15+ voting rights violations in previous 25 years to secure federal approval for new election rules.
	Opposed, on federalism grounds, the For the People Act, which would expand voting rights, ban partisan gerrymandering, and regulate campaign finance.
	Pressured Ukraine's president to publicly investigate Joe Biden by threatening to withhold military aid.
2020	Attacked state efforts to expand ballot access and protect public health during COVID, criticizing mail-in voting via speeches, tweets, and lawsuits. Admitted cutting U.S. Postal Service funding in order to reduce its ability to process the flood of mail-in ballots expected to favor Biden.
2020–2021	Multipronged campaign to overturn 2020 election in order to stay in power unlawfully. Filed 62 postelection lawsuits. Promoted "the big lie" that Joe Biden stole the election through fraud. Pressured officials in battleground states to alter their reported election results. Endorsed plot by campaign staff and supporters to submit slates of fraudulent electors from battleground states. Pressured DOJ leaders to provide legal cover by expressing suspicions of fraud; when they resisted, tried to replace them with loyalists like Jeffrey Clark. Urged Vice President Mike Pence to abuse his ceremonial authority in presiding over Congress on January 6 by rejecting enough state electoral votes to block certification of Biden's election victory. Incited a violent attack on the Capitol on January 6 to disrupt the counting of electoral votes and refused to deploy a timely law enforcement response.

(continued)

TABLE 1 (CONTINUED)

2021	Urged some congressional Republicans, including Rep. Mo Brooks (R-AL), to call for a special election to reinstate him as president. When Brooks refused, Trump withdrew his support; Brooks lost his Republican primary race for Senate.
2022–2024	Threatened more than 100 times to "investigate, prosecute, imprison, or otherwise punish" his political opponents (Dreisbach 2024).
2023	Falsely claimed that the Electronic Registration Information Center (ERIC), which helps states keep their voter rolls accurate, was secretly helping Democrats. Encouraged states to withdraw from ERIC, which seven states did (joining two others that had previously left). Voter databases are less accurate as a result, and the inaccuracies pose obstacles to voters who move frequently—disproportionately, young, nonwhite, and low-income Americans.
2024	Pressured Republican legislators in Nebraska to replace its district method of allocating electoral votes with winner-take-all, preventing one of its electoral votes from going to the Democratic candidate, as had happened in 2008 and 2020.
	Frequently complained about America's "fake" and "broken" election system and continued to claim 2020 election was stolen, which his vice-presidential nominee, J. D. Vance, also claimed. Refused to commit to accepting the results or ruling out political violence should he lose the 2024 election.
	Suggested he would end elections, telling his supporters to "get out and vote, just this time. You won't have to do it anymore. . . . In four years . . . we'll have it fixed so good you're not going to have to vote" (Vazquez and Ellison 2024).
	The Republican National Committee's 2024 platform included a commitment to "fixing our . . . very corrupt Elections" and a pledge to "secure our elections" by requiring "same day voting, voter identification, paper ballots, and proof of citizenship" (2024 Republican Party platform 2024).
	Promised to pardon January 6 insurrectionists, calling them political prisoners.
	Claimed Democrats will steal 2024 election by encouraging illegal voting by undocumented immigrants, leading some Republican states to conduct voter purges and House Speaker Mike Johnson (R-LA) to condition passage of a budget bill preventing a government shutdown on passage of the SAVE Act requiring documentary proof of citizenship to register to vote.

undermine the people's faith in elections and democracy. Many of his strategies were, however, drawn from a well-established Republican playbook.

Historical Context and the GOP's Antidemocracy Project

Both of America's major political parties have historically sought to tilt election rules in their favor. After the Civil War, the Democratic Party disenfranchised Black voters through illegitimate means like poll taxes, literacy tests, and the

grandfather clause. The Republican Party's current strategy of democratic contraction has been driven by its dependence on white, rural, and religious voters, whose numbers are declining. Most strikingly, the proportion of white residents in the United States fell from 79.6 percent in 1980 to 69.1 percent in 2000 and 58.9 percent in 2023 (Frey 2020; U.S. Census Bureau 2023). By 2050, the U.S. will be minority white, and the youth population will be 60 percent minorities (Frey 2024). Instead of following the party's recommendation of minority outreach that followed Mitt Romney's loss in 2012, the GOP sought to make voting more difficult for America's young and nonwhite population—lower-propensity voters who lean Democratic.

The Republican Party's commitment to voter suppression is seen in its legislative activities at the state level. After all, "state authorities administer elections . . . and they determine in large part who can participate in American politics and how" (Grumbach 2023, 968). From 2013 to 2024, state lawmakers in 31 states enacted 103 laws that created new barriers to voting, and voters in 28 states faced new voter restrictions in the 2024 presidential election that were not present in 2020 (Brennan Center for Justice 2024). These varied provisions restrict mail-in voting, shorten voting times, require voter identification at the polls, reduce drop box locations, require proof of citizenship to register, and ban youth preregistration. From 2020 to 2023, state legislatures also considered more than 600 bills that would make election subversion more likely, with 62 of them enacted into law in 28 states (Protect Democracy 2023). These new statutes permit partisan postelection audits; shift election administration responsibilities from nonpartisan, professional officials to partisan actors; impose administrative burdens, such as hand counting of ballots; and subject election workers to criminal penalties for failing to facilitate poll watchers.

Grumbach (2022) has documented substantial democratic backsliding across American states from 2000 to 2018 and found that Republican control of the state government was the single most powerful explanatory factor. In examining 87 voter-access restrictions enacted from 2006 to 2013, Bentele and O'Brien (2016) found that their adoption was most likely in states with Republican control of the government, a larger Black population, and growing minority turnout in presidential elections. This evidence supports a strategic explanation: Republican politicians facing a larger nonwhite population use their power to try to reshape the electorate and boost their chances of winning, with voting restrictions employed as a means to that end. Similarly, the Republicans' Redistricting Majority Project, known as REDMAP, prioritized state legislative races in the first decade of the twenty-first century in order to gain a redistricting advantage in 2010. This campaign was highly successful and enabled "The Great Gerrymander of 2012," which tripled the level of pro-Republican asymmetry in awarding House seats (McGann et al. 2016; Wang 2013).

The Voting Rights Act (VRA) of 1965 has also been a target of the Republican Party, particularly its Section 5 preclearance provisions that required jurisdictions with a history of race discrimination in voting, mostly in the South, to obtain preapproval of their election changes by the Department of Justice (DOJ) or a federal court. Each of the four reauthorizations of the act saw Republican

presidents—Richard Nixon in 1970, Gerald Ford in 1975, Ronald Reagan in 1982, and George W. Bush in 2006—fighting against clean legislative extensions of the law, with Nixon going so far as to propose eliminating preclearance entirely (Peretti 2020, 84–87). Two future Supreme Court justices working in the DOJ joined this fight. William Rehnquist recommended to President Nixon that he veto the 1970 reauthorization, and John Roberts vigorously advanced the Reagan administration's position that the 1982 reauthorization should not eliminate the demanding intent requirement for Section 2 lawsuits, which the Supreme Court had added in 1980 in *City of Mobile v. Bolden* (1980). While the GOP's legislative efforts to weaken the VRA repeatedly failed, their administrative strategies were successful. As Rhodes explains, under Reagan and George W. Bush, DOJ enforcement became centralized, partisan, and lax, and Section 2 cases and preclearance objections "fell precipitously"; additionally, career voting rights attorneys in the department were sidelined as less experienced attorneys aligned with conservative legal groups like the Heritage Foundation and Federalist Society were appointed and empowered (Rhodes 2017, 134, 137).

It is clear that the Republican Party has sought to restrict voter access, weaken the VRA, and rig election rules in order to insulate its candidates from electoral competition. Many of Trump's antidemocracy activities catalogued above fit this pattern. For example, Trump's Presidential Advisory Commission on Election Integrity was little different from similarly unproductive investigations into voter fraud that were launched by President George W. Bush and Republican officials in Texas, Iowa, South Carolina, and Kansas (Peretti 2020, 107).[1] As president, Trump shifted the priorities of the Department of Justice toward voter fraud and away from the protection of voting rights, but so did Reagan and George W. Bush. It was also not unusual that the Trump White House issued public statements against Democratic proposals that would expand voter access. Some might view with disdain Trump's consideration of vote-suppression crusader Kris Kobach as attorney general, but George W. Bush appointed several high-profile critics of the VRA to his administration, including Hans von Spakovsky to the voting section of the Civil Rights Division.

As he is prone to do, however, Donald Trump took these traditional Republican activities in new and more extreme directions. For example, while election litigation has substantially increased over the past two decades, postelection lawsuits have not been common (Hasen 2022b). Trump deviated from existing norms, both by filing 62 postelection cases (losing 61) and by advancing frivolous legal arguments (Griffin 2020). Previous candidates for president neither entertained election assistance from a foreign government nor threatened to jail their political opponents. While other Republican politicians have planted seeds of doubt about election integrity by justifying reforms like voter ID, Trump engaged in "electoral McCarthyism" (Foley 2021), taking this tactic to a new level in terms of the magnitude, persistence, and pure fakery of his claims about voter fraud and rigged elections (Cummings et al. 2021). Most extraordinarily, he plotted after his loss in 2020 to steal the election and disrupt the peaceful transfer of power and, repeating history, failed to commit in advance to accepting the results of the 2024 election or ruling out violence.

Trump's new and perilous additions to the GOP's antidemocracy playbook have raised serious concerns about whether he is damaging Americans' faith in elections and their support for democracy. Ahmed (2023) has explained the difficulty scholars face in testing these propositions and the mixed findings they have produced. It is worth noting, however, that only 29 percent of registered Republicans believe Joe Biden legitimately won the 2020 presidential election (Havird and Neely 2024), and only 28 percent of Republicans were "very or somewhat confident that the votes for president [would] be accurately cast and counted" in the 2024 election (Saad 2024). A grave concern with Trump's repeated claims about a stolen election is that they "markedly raised the potential for an actual stolen election," with many Republicans believing his claims, GOP officials pursuing "sham audits" and enabling election sabotage, and droves of election administrators facing violent threats leaving office and being replaced by election deniers (Hasen 2022a, 265–266).

Has the Supreme Court Safeguarded or Eroded Democracy?

The Supreme Court has faced important choices over the past half century, having to decide whether to restrain Republican efforts to suppress voting and inhibit fair electoral competition or to permit and even supplement them. Dixon and Landau (2021, 82) provide a useful framework for assessing the court's performance, observing how authoritarians shape courts to be "weapons" that employ "abusive" judicial review to attack democracy in ways that help the regime entrench its power. Courts can engage in "weak-form abusive judicial review," where they passively allow power holders to "tilt the electoral playing field," or "strong-form abusive judicial review," in which they act directly to "remove or undermine democratic protections" (Dixon and Landau 2021, 23, 82).

What choices has the Supreme Court made, over two periods—from 1969 to 2016 and from 2017 to 2024—either to safeguard or to erode American democracy? This appraisal begins with judicial appointments, which are a critical contextual factor. From 1969 through 2016, the GOP dominated Supreme Court appointments, with Presidents Nixon, Reagan, George H. W. Bush, and George W. Bush filling 13 of the 17 vacancies that occurred, including 11 in a row from 1969 to 1991. Despite a few surprises like Justices Harry Blackmun, John Paul Stevens, and David Souter, most of the Republican appointees reliably fulfilled the conservative expectations of their appointing president and shifted legal doctrine to the right, including in election law (Baum 2024, 188, 192).

In the 1960s, the Warren court was moving to establish voting as a fundamental right in cases like *Harper v. Virginia Board of Elections* (1966), which would render presumptively unconstitutional any laws restricting the franchise. The Warren court also set in motion a "reapportionment revolution" (Cox and Katz 2002), ruling in 1962 in *Baker v. Carr* (1962) that malapportionment was a

justiciable issue for federal courts and, in 1964, that state legislatures must follow a strict egalitarian standard of one person–one vote in drawing maps for the House (*Wesberry v. Sanders* 1964) and both state legislative houses (*Reynolds v. Sims* 1964).

With the arrival of the Nixon and Reagan appointees, however, this march toward rigorous judicial protection of voting rights and fair electoral competition ended. *Anderson v. Celebrezze* (1983) and *Burdick v. Takushi* (1992) established a more relaxed standard under which "reasonable" and "nondiscriminatory" restrictions imposing "nonsevere" burdens on voting could be justified by the state's "important regulatory interests" (*Burdick* 1992, at 434). Thus "began the Supreme Court's descent into underprotecting the right to vote" (Douglas 2024, 17). The deferential standard of review put in place by Republican justices would later bear fruit, providing an easy path for the Roberts court to uphold Indiana's voter identification law in *Crawford v. Marion County Election Board* (2008). With this ruling, the court exercised weak-form abusive judicial review, allowing lawmakers to impose an obstacle to voting that was unnecessary given the dearth of evidence of in-person voter fraud.

A similar pattern appeared in the court's treatment of the VRA. Initially, the court interpreted the act expansively and gave considerable deference to Congress in exercising its Fifteenth Amendment enforcement powers. That changed as more Republican appointees joined the court. Nine of the 13 Republican appointees joining the court from 1969 through 2006 cast significantly fewer liberal votes in VRA cases than the justices they replaced; for five justices, the percentage drop in liberal votes was greater than 20 points and for Antonin Scalia, Clarence Thomas, and Samuel Alito, the drop was greater than 30 points (Peretti 2020, 90–94). A conservative shift in doctrine resulted, such as *Beer v. United States* (1976) that adopted the lax retrogression standard for preclearance,[2] *City of Mobile v. Bolden* that raised the bar for Section 2 claims by requiring proof of racially discriminatory intent, and *Reno v. Bossier Parish School Board* (2000; also known as *Bossier II*) and *Georgia v. Ashcroft* (2003) that eased preclearance by further weakening the retrogression standard. It is notable that the only justices voting for these doctrinal changes were Republican appointees. They engaged in strong-form abusive judicial review by doing more than passively allowing lawmakers to restrict democracy; rather, they acted independently to weaken the most powerful piece of voting-rights legislation Congress has ever enacted. In fact, Congress typically responded to these conservative interpretations by reversing the court; for example, it overturned *Bolden* when it renewed the VRA in 1982 and *Ashcroft* and *Bossier II* when it did so in 2006.

In *Shelby County v. Holder* (2013), the court handed the GOP its most consequential judicial victory in its campaign to weaken the VRA and return control over elections to the states. A slim majority of five Republican justices invalidated the Section 4(b) coverage formula for determining which jurisdictions are subject to Section 5, thereby putting an end to the act's preclearance regime. Chief Justice Roberts's majority opinion argued that Section 5's departure from federalism principles could no longer be tolerated given the significant decline in race discrimination and substantial increases in Black registration, voting, and office

holding. In a clear act of strong-form abusive judicial review, the court eliminated the most powerful tool in the VRA's arsenal. It, furthermore, ignored a sizable congressional record that concluded preclearance remained necessary to prevent backsliding in protecting minority voting rights and an overwhelming bipartisan congressional consensus, with more than 92 percent of the House and 100 percent of the Senate voting in 2006 to extend the VRA and its preclearance provisions.

The impact of *Shelby County* was swift, substantial, and predictable. By disabling preclearance, previously covered jurisdictions became free—many for the first time in nearly a half century—to adopt electoral changes, even if they threatened voter access and fair competition. Immediately following the court's ruling, Texas, Alabama, and Mississippi began enforcing voter ID requirements that had previously been blocked, and North Carolina adopted "the most sweeping anti-voter law in . . . decades," one that a federal appellate court struck down because it "targeted African Americans with almost surgical precision" (Toobin 2014). In the decade following *Shelby County*, 94 laws imposing new voting restrictions were adopted in 29 states, with a third enacted in predominantly Southern states previously subject to preclearance (Singh and Carter 2023). Nearly 16 million voters were removed from the rolls via purges between 2014 and 2016, a 33 percent increase over the 2006 to 2008 period, with the median purge rate in counties previously subject to preclearance 40 percent higher than in other jurisdictions (Brater et al. 2018). Racial turnout gaps also increased from 2012 to 2020 in seven of the eight Southern states that were previously covered by Section 5, with the white-Black turnout gap growing by 20.9 percent in South Carolina (Morris et al. 2021).

Reviewing the 1969 to 2016 period, the Republican Party remade the Supreme Court, shifting it to the right by filling over three-quarters of the vacant seats. Those appointees adopted significant doctrinal changes in the voting rights field, with *Anderson, Burdick*, and *Shelby County* advancing the GOP's electoral agenda by weakening federal constraints (including federal judicial constraints) on state autonomy in crafting election rules. Employing both weak-form and strong-form abusive judicial review, Republican justices granted Republican politicians the freedom to suppress voting and tilt election rules in their favor.

How did the court perform in safeguarding democracy from 2017 to 2024, the second period of analysis? Beginning again with judicial appointments, President Trump's single term in office afforded him an unusual opportunity to shape the court by appointing three justices—Neil Gorsuch in 2017, Brett Kavanaugh in 2018, and Amy Coney Barrett in 2020. It is a testament to the GOP's commitment to capturing the court, and playing hardball in doing so, that two of these three vacancies were engineered by Trump's copartisan ally in the Senate—Majority Leader Mitch McConnell.[3] The conservative supermajority that the GOP and Donald Trump built has not been restrained, instead aggrandizing power (Brown and Epstein 2023; Lemley 2022) and revolutionizing constitutional doctrine in multiple areas, including abortion with *Dobbs v. Jackson Women's Health Organization* (2022), the Second Amendment with *New York State Rifle & Pistol Association Inc. v. Bruen* (2022), the First Amendment's

establishment clause with *Kennedy v. Bremerton School District* (2022), administrative agency power with *Loper Bright Enterprises v. Raimondo* (2024), and presidential immunity with *Trump v. United States* (2024). It is notable that Trump's three appointees voted with the majority in each of these momentous cases.

From 2017 to 2024, the Trump justices also made significant contributions to the court's election law decisions. This can be seen by examining, first, key voting rights and redistricting cases, then proceeding to the census decision, and concluding with two Trump cases involving ballot eligibility and presidential immunity. First, with regard to voting rights, the court in *Husted v. A. Randolph Institute* (2018) upheld Ohio's policy of updating its voting lists by purging from the rolls individuals who did not vote over a six-year period and who failed to return a pre-addressed, postage-prepaid card confirming their address. A five-member Republican majority that included Gorsuch held that Ohio did not violate the National Voter Registration Act of 1993, which forbids the removal of persons from official voter lists "by reason of the person's failure to vote." The court observed that Ohio's removal of voters was not *solely* based on an individual's failure to vote; rather, it was also due to the individual's failure to respond to a notice. This ruling constitutes weak-form abusive judicial review as the court permitted Ohio to remove thousands of eligible voters, disproportionately low-income and nonwhite, despite negligible evidence of voter fraud. It additionally gave a green light to other Republican states to proceed with aggressive voter purges.

Chief Justice Roberts took pains in his *Shelby County* opinion to reassure critics that the court was not ending the VRA by disabling preclearance since Section 2 remained as a vital tool prohibiting race discrimination in voting. Within a decade, however, the court would significantly weaken Section 2, most notably in *Brnovich v. Democratic National Committee* (2021), which established a much higher bar for Section 2 lawsuits. The court rejected Democrats' claim that Arizona laws banning the counting of ballots cast in the wrong precinct and restricting third-party ballot collection had an adverse, disparate impact on the state's Hispanic, Native American, and African American population. The majority opinion, joined by all three Trump appointees, ignored the court's existing test for Section 2 claims and substituted five factors, each of which "tilts the scales significantly in favor of the state" (Douglas 2024, 132). Under the new guideposts, a Section 2 claim is more likely to fail if the challenged rule does not depart from standard practice; if the burden it imposes is small; if the racial disproportion of that burden is small; if the state affords other voting opportunities; and if the state's interests served by the rule are strong, with the court asserting that fraud prevention constitutes a strong interest. As Douglas (2024, 134, 136) observes, *Brnovich* "devised a new standard that makes it virtually impossible for voting rights plaintiffs to bring successful claims against discriminatory voting laws . . . continu[ing] the trend of removing judicial protection for voting rights." This ruling goes beyond merely permitting Arizona lawmakers to restrict voting; it constitutes strong-form abusive review by inventing new and far stricter

standards for proving race discrimination under Section 2, contrary to Congressional intent.

Quite momentously, Justice Gorsuch wrote a concurrence in *Brnovich* that flagged the question—even though no party had raised it—whether Section 2 permits private lawsuits, which have served as the provision's primary enforcement mechanism for nearly six decades. By inviting legal conservatives to raise this question in future litigation, Gorsuch placed Section 2 of the VRA in even greater jeopardy. In fact, in 2022, a Trump appointee cited Gorsuch's concurrence in dismissing a challenge to a congressional redistricting plan that the judge conceded had merit because the case was brought by Black voters rather than the attorney general; this ruling was upheld by the Eighth Circuit in an opinion written by another Trump appointee (*Arkansas State Conference of the NAACP v. Arkansas Board of Apportionment* 2023). Because the Fifth Circuit ruled differently on this question, the Supreme Court will likely address this issue in the near future, striking fear in the hearts of voting rights advocates that President Trump and his judicial appointees could finally end Section 2. After all, a ruling that blocks private lawsuits would be disastrous for voting rights by "massively shrinking enforcement" given that only 15 of the 182 successful Section 2 cases over the past four decades were brought solely by the attorney general (Yeargain 2024). Additionally, any attorney general in a Republican administration is unlikely to initiate Section 2 lawsuits, as was true during Trump's first term.

In the redistricting field, the court has become increasingly deferential to state legislatures, instructing lower courts to presume good faith, even in the face of blatant partisan and racial gerrymandering. In the *Abbott v. Perez* (2018) litigation, a district court had found that the Texas legislature deliberately discriminated against Latino voters in crafting its redistricting plans in 2011. The district court again found discriminatory intent when the state adopted interim court-drawn maps in 2013 due to its failure to engage in any deliberative process that would ensure that no discriminatory taint remained. In 2018, a five-member Republican majority that included Gorsuch reversed, arguing that the district court had erroneously failed to presume good faith on the part of the Texas legislature, despite its racially discriminatory past.

The Supreme Court has long struggled with partisan gerrymanders, with a majority of justices acknowledging that these rigged maps may be so extreme as to violate the Constitution but failing to agree on a standard for judging them. In *Rucho v. Common Cause* (2019), the Roberts court set new precedent by ruling that federal courts may no longer entertain partisan gerrymandering claims as they are nonjusticiable (meaning they are incapable of being decided by courts in a principled manner). The five-member Republican majority, joined by Gorsuch and Kavanaugh, permitted the North Carolina legislature to engage in extreme partisan gerrymandering despite its significant harm to electoral competition and the fair weighing of citizens' votes. As Justice Elena Kagan observed in her dissent, Republican legislators in North Carolina failed to offer a "legitimate, nonpartisan justification" (*Rucho* 2019, at 735) for why its map was the "absolute worst of 3,001 possible maps" in terms of its "partisan skew" and the "*only one*

that could produce a 10–3 partisan split even as Republicans got a bare majority of the statewide vote" (744).

In *Alexander v. South Carolina State Conference of the NAACP* (2024), the court's six Republican justices, including all three Trump appointees, reversed a lower court ruling that a congressional district created by South Carolina's Republican-controlled legislature was an unconstitutional racial gerrymander due to tens of thousands of Black voters being moved out of the district. The majority opinion acknowledged that a partisan gerrymander may appear to be a racial gerrymander, given that race and partisanship are strongly correlated. It asserted, however, that in assessing whether race or partisanship predominates, district courts should presume good faith on the part of legislators. The court went on to rule that the facts did not provide sufficient evidence of racially discriminatory purpose and, because the intent of Republican legislators was primarily partisan rather than racial, its map was constitutionally permissible. The court's message in *Rucho* was that politicians are free from federal judicial oversight when they engage in partisan gerrymandering. Its message in *Alexander* was that, in pursuing partisan advantage, politicians can also dilute the voting power of Black voters without worry of a racial-gerrymandering lawsuit.

Abbott, Rucho, and *Alexander* all qualify as examples of weak-form abusive judicial review given the considerable freedom the court granted to legislators drawing gerrymandered maps that impair fair competition and harm voters, including Black voters. To Hasen (2024), the court has created "a legal framework that makes it easier for Republican states to engage in redistricting to help white Republicans maximize their political power."

Two redistricting cases decided in 2023—*Allen v. Milligan* and *Moore v. Harper*—show that there are limits to how far the Roberts court will go when it comes to the more extreme arguments of legal conservatives in protecting partisan mapmakers. In *Milligan*, the court ruled that the district court was correct in applying the long-standing *Gingles* framework in ruling that Alabama's congressional redistricting plan violated Section 2 of the VRA (*Thornburg v. Gingles* 1986).[4] The court surprised many by rejecting Alabama's argument that the *Gingles* framework was too aggressive and race-conscious and its more extreme claim that Section 2 either does not apply to redistricting or, if it does, it is unconstitutional. Justices Barrett and Gorsuch, however, both dissented and would have permitted the court's Section 2 rules to be weakened. Justice Kavanaugh joined the majority in *Milligan*, but his concurrence "gave states a blueprint for a future challenge" by warning that Section 2 could not authorize race-based redistricting indefinitely (Douglas 2024, 135).

In *Moore v. Harper* (2023), the North Carolina Supreme Court relied on its state constitution's free elections clause to strike down a congressional map drawn by the legislature's Republican majority. A subsequent court-ordered map was challenged by those legislators as a violation of the U.S. Constitution's Elections Clause, which they claimed grants exclusive authority to state legislatures to regulate federal elections. In a rare move, all 50 state supreme court chief justices filed an amicus brief urging the Supreme Court to deny the argument of North Carolina's Republican lawmakers that state courts cannot review

their election rules. The Roberts court acted to safeguard democracy by rejecting this so-called Independent State Legislature theory. While Gorsuch dissented, Kavanaugh and Barrett both joined the six-member majority in rejecting this radical interpretation of the Elections Clause that possessed great potential to "wreak havoc on federal elections, including presidential elections" (Lowenstein et al. 2024, 27). Quite notably, however, Roberts's majority opinion included a "nefarious caveat . . . that 'state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections'" (Douglas 2024, 168). Litman (2023) suspects that, with this caveat, the conservative justices are preserving their power to constrain state courts that might seek to expand voting rights under their state constitutions. This doctrinal "time bomb" (Hasen 2023) also ensures that "election-law litigation . . . will find its final arbiter in the reliably partisan U.S. Supreme Court rather than the much less predictable state supreme courts" (Brown et al. 2023, 224).

In *Department of Commerce v. New York* (2019), the Supreme Court acted to safeguard democracy by preventing the Trump administration from adding a citizenship question to the census that would likely depress the response rate among immigrants, particularly Latino residents and thereby reduce House representation for Democratic-leaning jurisdictions. Although the decision and voting alignments were complicated, the main ruling, endorsed by Roberts and four Democratic justices, was that the administration's stated rationale that the citizenship question would improve the enforcement of federal voting rights laws was contrived, thereby violating the Administrative Procedure Act. Both Trump justices, Gorsuch and Kavanaugh, dissented from this key point and would have permitted the Commerce Department to add a citizenship question to the census, employing weak-form abusive judicial review to legitimate "one of the most brazen recent efforts to entrench Republican power" (Klarman 2020, 215).

In 2024, the Roberts court had the potential to alter Donald Trump's fortunes in the presidential race by how it decided two important cases involving the Republican nominee. In both *Trump v. Anderson* (2024) and *Trump v. United States* (2024), the court substantially aided candidate Trump. In the former case, it unanimously reversed the decision of the Colorado Supreme Court to remove Donald Trump from the state's GOP presidential primary ballot under Section 3 of the Fourteenth Amendment, which disqualifies from office former members of Congress, state officials, or officers of the United States if they "engaged in insurrection or rebellion" against the U.S.[5] The court's per curiam opinion argued that allowing individual states to determine Section 3 disqualifications could result in a chaotic "patchwork" of divergent state rulings and that the authority to disqualify federal office holders belonged exclusively to the federal government. Five justices, including Gorsuch and Kavanaugh, went further, however, ruling that only Congress could enact the necessary legislation determining the federal officeholders to be disqualified and under what procedures. On this point, four justices, including Barrett, accused the majority of overreach, needlessly going beyond the narrow question of whether Colorado could disqualify Donald Trump from the ballot. While some praise the court for placing the question of Trump's

return to the White House in voters' hands, rather than judicial ones, others criticize the five-justice majority for creating a significant hurdle—congressional action—that offered Trump even greater protection. In the latter view, the majority exercised strong-form abusive judicial review both by ending the disqualification issue for Donald Trump, given the certainty that Congress will not act, and by making it "exceedingly unlikely that anyone who engages in an insurrection against the U.S. Constitution . . . will *ever* be disqualified under the Fourteenth Amendment" (Luttig and Tribe 2024).

Trump's candidacy also faced grave danger during his 2024 presidential campaign from the multiple criminal charges brought in two federal cases (one involving classified documents and the other election subversion) and two state cases (a New York case involving Trump's fraudulent reporting of hush money payments to a porn actress and a Georgia racketeering case alleging conspiracy to overturn the state's 2020 election results). In seeking to get these cases dismissed, Trump's lawyers argued that presidents are absolutely immune from criminal prosecution. In the *Trump v. United States* litigation that resulted, the Supreme Court lent candidate Trump considerable assistance. It first needlessly delayed its decision, with Gorsuch and Thomas going even further and arguing to push the case into the next term, ensuring that no court decision or trial would occur before the election (Kantor and Liptak 2024). The court also helped Trump by granting presidents exceptionally broad immunity from criminal prosecution. A six-member majority that included the three Trump appointees provided absolute immunity to acts flowing from the president's "conclusive and preclusive" powers where Congress plays no role (such as veto, commander-in-chief, and pardon powers), presumptive immunity to actions "within the outer perimeter" of the president's official responsibilities, and no immunity to unofficial, private acts. In several "gratuitous add-ons" (Segall 2024), the court also forbade lower courts to consider the president's motives in determining whether an act is official or unofficial, to rule an act as unofficial merely because it is allegedly unlawful, or to permit prosecutors to use evidence involving the president's official acts in making a case that his unofficial actions were criminal. Justice Barrett declined to join this part of the majority opinion, finding that these restrictions on the lower court inquiry went too far.

In response, special counsel Jack Smith quickly revised his election interference case, for example, dropping the charges involving Trump's efforts to deploy the Justice Department in his plot to overturn the election, as the court's opinion stated that communication with these officials regarding criminal prosecutions is part of the president's conclusive and preclusive authority. In any case, since Donald Trump won the 2024 election and Justice Department policy forbids criminally prosecuting a sitting president, no criminal charges can be pursued.

Segall (2024) does not find it coincidental that "the Court's fast-tracking of the disqualification case" and "slow-walking of the immunity case and its eventual holding" guaranteed that Trump would remain on the ballot, that he could not be tried before the 2024 election, and that Jack Smith's case would be "much, much harder to win. Those events demonstrably help the Republican Party and Donald J. Trump." Additionally, without a trial, voters would not be able to "incorporate

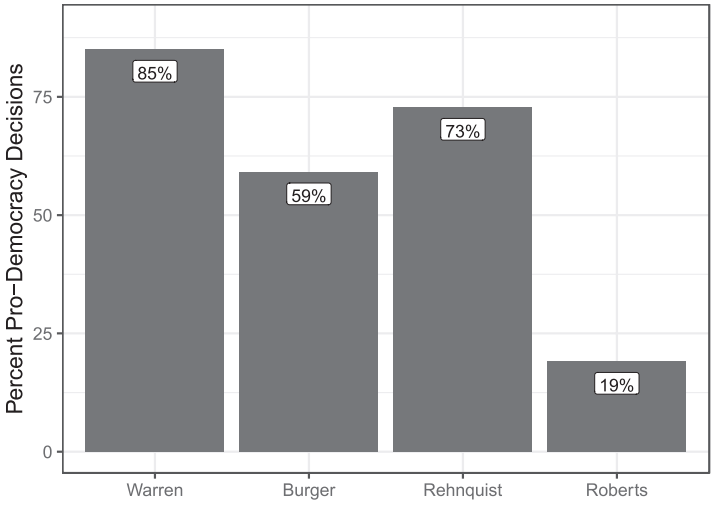
any judicial findings in their decisions" (Lempert 2024). In these respects, *Trump v. United States* constitutes strong-form abusive judicial review.

There are other cases that might be included in a lengthier appraisal of whether the Roberts court has acted to safeguard or erode democracy. Most notably, the court should be credited with refusing to hear lawsuits seeking to overturn the 2020 election, including *Texas v. Pennsylvania* (2020) advancing a frivolous claim by the Texas attorney general that challenged the vote count in four other states. This case has loomed large in Donald Trump's great disappointment with the Roberts court and "his" justices who "he fought like hell for" (Liptak, this volume). Also on the positive side of the ledger, the court declined, in 2024, to hear a Republican challenge to President Joe Biden's efforts to improve access to voter registration on federal websites and Elon Musk's claim that the search warrant granted to Jack Smith for Trump's Twitter messages involving January 6 violated the First Amendment. On the other side of the scale, the court, with the help of Gorsuch and Kavanaugh, failed to safeguard democracy in several COVID-related cases, blocking states from easing voting requirements in order to protect public health during the pandemic.[6] Additionally, in *Fischer v. United States* (2024), a six-member majority that included Gorsuch and Kavanaugh, but not Barrett, ruled that the Justice Department overreached in bringing obstruction charges against some of the January 6 insurrectionists, a ruling that could have negatively affected the federal election interference case against Trump. Rulings in the campaign finance field might also be included in a broader assessment of the Roberts court's impact on American democracy, with critics viewing its strong antiregulatory bent as preventing policies that could enhance electoral fair play, such as its decision in *Citizens United v. Federal Election Commission* (2010).

According to a 2023 study by Brown, Epstein, and Nelson, the Roberts court has been uniquely hostile to democratic participation compared to previous courts and also uniquely partisan in that pursuit. As seen in Figure 1 covering the 1953 through 2021 terms, the Roberts court invalidated voting rights restrictions and upheld campaign finance regulations only 19 percent of the time, "a level of antidemocracy voting on the U.S. Supreme Court unseen in modern history," with the Warren, Burger, and Rehnquist courts all presenting a sharp contrast (Brown et al. 2023, 223).[7] Figure 2 additionally shows that the Republican justices on the Roberts court supported democracy in voting rights and campaign finance cases only 20 percent of the time compared to 80 percent for the Democratic justices, a 60-percentage-point partisan gap that is far greater than that found on the Warren, Burger, and Rehnquist courts. From these data, the authors aptly conclude that "the Republican Party can count on the U.S. Supreme Court and its Republican members in its quest to gain and maintain political power" (Brown et al. 2023, 221).

The analysis provided here and summarized in Table 2 supports a similar conclusion. Although the record is a bit mixed, the Roberts court and the Trump appointees failed to safeguard democracy more often than not and instead aided the GOP's efforts to entrench its power. Though the court blocked the election-rigging initiatives of Republican politicians in *Department of Commerce*,

FIGURE 1
Percentage of Decisions Invalidating Barriers to the Vote or Upholding Campaign-Finance Regulations, by Chief Justice Era

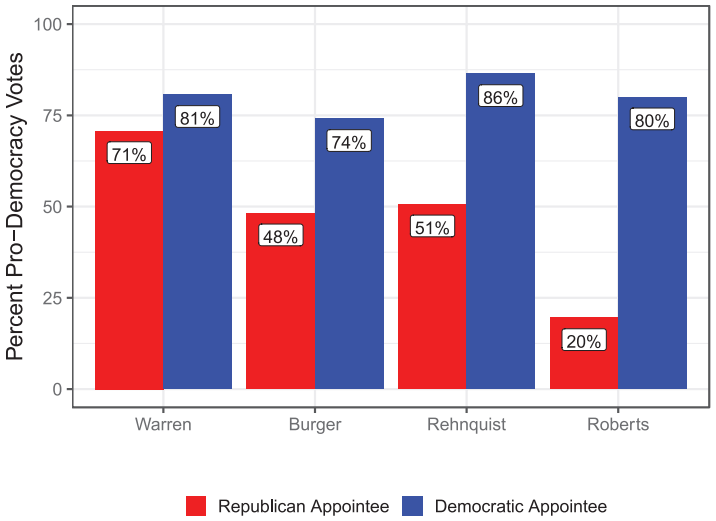


NOTE: Number of decisions: Warren = 20, Burger = 21, Rehnquist = 11, Roberts = 21.
SOURCE: Brown et al. (2023, 219).

Milligan, and *Moore*, it did so over the objections of Kavanaugh and Gorsuch in the census case, Barrett and Gorsuch in *Milligan*, and Gorsuch in *Moore.* Additionally, its few prodemocracy decisions often included doctrinal land mines, as in *Moore v. Harper*, that enable this uniquely antidemocracy, partisan Court to undermine democratic participation on the GOP's behalf in the future.

As Table 2 shows, the Roberts court, with the vital support of the Trump justices, often failed to protect democracy when presented with the opportunity to do so. It exercised weak-form abusive judicial review in *Husted, Abbott, Rucho*, and *Alexander*, allowing Republican legislators to tilt elections in the GOP's favor by restricting voter access and permitting gerrymandered maps. It exercised strong-form abusive judicial review in weakening Section 2 of the VRA in *Brnovich*, with Justice Gorsuch's concurrence going even further by inviting conservative legal groups to challenge Section 2's long-standing reliance on private lawsuits as a primary enforcement mechanism. Although the court did not help the president challenge the 2020 election in *Texas v. Pennsylvania*, it did exercise strong-form abusive judicial review in *Trump v. Anderson* and *Trump v. United States*, insulating Donald Trump from both legal and voter accountability for inciting the January 6 insurrection and attempting to overturn the 2020 election. This outcome is consistent with research findings by Brown and Epstein (2023) that while "the Court has often served as a reliable backstop . . . when presidents overreach" (234), the Roberts court justices "are uniquely partisan, more frequently voting for presidents who share their party identity—especially if the president appointed them" (250).

FIGURE 2
Percentage of Votes Cast by U.S. Supreme Court Justices Invalidating Barriers to the Vote or Upholding Campaign-Finance Regulations, by Political Party and Chief Justice Era



NOTE: Number of votes: Warren (**R**epublicans = 82, **D**emocrats = 93), Burger (Rs = 139, Ds = 54), Rehnquist (Rs = 77, Ds = 22), and Roberts (Rs = 123, Ds = 65).
SOURCE: Brown et al. (2023, 220).

TABLE 2
Landmark Election Cases, 2017–2024: Did the Roberts Court Rule and the Trump Appointees Vote in a Prodemocracy Direction?

Case	Roberts Court	Gorsuch	Kavanaugh	Barrett
Husted v. A. Randolph Institute (2018)	No*	No		
Abbott v. Perez (2018)	No*	No		
Rucho v. Common Cause (2019)	No*	No	No	
Department of Commerce v. New York (2019)	Yes	No	No	
Brnovich v. Democratic National Committee (2021)	No**	No	No	No
Allen v. Milligan (2023)	Yes	No	Yes	No
Moore v. Harper (2023)	Yes	No	Yes	Yes
Alexander v. South Carolina State Conference of the NAACP (2024)	No*	No	No	No
Trump v. Anderson (2024)	No**	No	No	Yes
Trump v. United States (2024)	No**	No	No	No

*Weak-form abusive judicial review.
**Strong-form abusive judicial review.

Conclusion

The question that remains is what the future holds for the Supreme Court, voting rights, and democracy. Because Donald Trump won the 2024 election, the nation was spared from false claims about a stolen election, as well as illegal and potentially violent efforts to overturn the results. Trump, nevertheless, repeatedly threatened vengeance on his political opponents during his campaign and admitted that he would be a dictator, at least on his first day in office. It did not take long to learn that this was not mere campaign rhetoric. President Trump's early actions have been astonishing in their breadth and ferocity. Steven Levitsky has remarked that the Trump administration has "been much more aggressively authoritarian than almost any other comparable case I know of democratic backsliding," asserting that it is even worse than in Hungary, Poland, and Turkey (Taub 2025).

The president issued 89 executive orders in his first eight weeks in office, with more announced each day and many exceeding the president's constitutional authority, such as those ending birthright citizenship protected by the Fourteenth Amendment and freezing federal spending authorized by Congress (Peters and Woolley 2025). An executive order creating and empowering the Department of Government Efficiency led to Elon Musk and his team firing tens of thousands of federal workers, dismantling the U.S. Agency for International Development, and accessing critical government databases at the Internal Revenue Service, the Social Security Administration, and the Treasury Department.

Guardrails that were present in President Trump's first term have substantially weakened with a compliant Republican Party controlling both congressional chambers, MAGA loyalists serving in key cabinet roles, and a Democratic Party that is, thus far, divided and uncertain over how to respond. The administration has additionally sought to silence other institutions that might obstruct its goals: It has, for example, retaliated against Washington law firms that have represented Trump's "enemies," drastically cut funding to universities, and threatened media outlets with Federal Communications Commission investigations and loss of access. Courts have thus far served as the only meaningful check on the president's efforts to consolidate power. More than 100 lawsuits were filed against the administration in the first few months of 2025, with dozens of court orders blocking the president's agenda, from deportations and the federal spending freeze to the firing of federal workers and the banning of transgender persons in the military. Adam Bonica's research found that judges from across the ideological spectrum have ruled against the president "at strikingly similar rates (84 percent liberal, 86 percent centrist, 82 percent conservative)," suggesting that the constitutional violations are exceedingly clear and fundamental (Post 2025). In response, Trump and his allies extended their attacks to include judges, suggesting that compliance with court orders is not required when national security is at stake, that judges have too much power over the executive branch, and that impeachment might be an appropriate response. Republican House Speaker Mike Johnson even threatened that Congress might have to abolish some federal district courts.

When it comes to election law more specifically, President Trump is continuing his efforts to tilt the rules in the GOP's favor, including a halt to voting-rights enforcement by the Justice Department and an executive order asserting new power to regulate elections (White House 2025). Most significantly, the order threatens states with funding cuts if they do not require proof of citizenship to register to vote in federal elections, which could disenfranchise millions of Americans who lack ready access to a passport or birth certificate. Lawsuits are certain to follow, and federal courts will again be asked to assess the legality of the president's election reform agenda.

In his first term, President Trump appointed 177 district court judges and 54 appellate court judges, and their decisions have been more conservative than the appointees of any other president over the past half century (Wheeler 2024). With similar success during a second term, Trump could have a major impact in populating the federal judiciary's front lines in election law decision-making. Additionally, by the end of June 2025, Clarence Thomas will be 77, Samuel Alito will be 75, and John Roberts will be 70. These justices might choose the strategic retirement path, stepping down during a Republican administration in order to continue the court's rightward tilt far into the future. Sonia Sotomayor, who turns 71 in June 2025, might unexpectedly generate another vacancy, enabling Trump to expand the court's conservative supermajority to seven justices. With 53 Republican senators serving in the 119th Congress, party leaders will no longer need to secure the confirmation votes of moderate Republican senators like Susan Collins and Lisa Murkowski, and Trump would be free to nominate more extreme judges like Fifth Circuit Judge James Ho, Arizona Supreme Court Justice Clint Bolick, or, from the U.S. district courts, Judge Matthew Kacsmaryk or Judge Aileen Cannon.

What hope might exist for prodemocracy advocates? Some might envision an anti-Trump and anti-Musk backlash that leads to Democrats gaining power, blocking the president's campaign to aggrandize power, and enacting prodemocracy legislation, such as universal voter registration, redistricting reform and, for the VRA, restoration of preclearance and the explicit authorization of private lawsuits under Section 2. These reforms may not, however, survive the scrutiny of the Roberts court. As a reminder, the Supreme Court in 2015 narrowly upheld Arizona voters' adoption of an independent commission to craft congressional districts (*Arizona State Legislature v. Arizona Independent Redistricting Commission* 2015). Justices Ruth Bader Ginsburg and Anthony Kennedy, who voted with the five-member majority, have been replaced by Trump appointees, very likely turning Roberts's vigorous dissent into a majority opinion if a similar case comes before the court. It is in this vein that Stephanopoulos (2020, 117) envisions a future Supreme Court "barring all institutions, not just federal courts, from correcting democratic failures." Additionally, given strategic retirement and the lengthy terms that justices now serve, the court's conservative and antidemocracy bias is almost certain to persist far into the future, even into the 2080s (Cameron and Kastellec, this volume, 50).

The blatantly political path of the Roberts court's Republican justices—permitting their copartisans to rig election rules to stay in power—is iniquitous

and fraught with danger, both for democracy and the court itself. The Supreme Court "faces threats to its legitimacy that it has not seen since the days of the FDR court-packing scheme in the 1930s" (Gibson, this volume, 261). While 62 percent of Americans approved of how the court was handling its job in 2000, only 40 percent did so in 2023 (Brenan 2024). Additionally, only 16 percent of Americans expressed a great deal of confidence in the Supreme Court in 2024, and only 10 percent did so regarding its handling of elections and voting issues (AP-NORC Center for Public Affairs Research 2024). The Republican Party is disproportionately culpable in this development. Its antidemocracy crusade and its devotion to capturing the court at all costs may have, ironically, triggered a legitimacy crisis and jeopardized the institutional prize it so greatly values.

Frustrated with an imperial and partisan court, Democrats—should they overcome the electoral impediments to power imposed by the Constitution and the GOP—might be tempted to pursue aggressive court-curbing measures. They could, for example, sharply curtail the court's appellate jurisdiction, cut its budget and staff, cancel an upcoming term, or impeach and remove multiple justices. Some might lament the resulting loss of a powerful court that could act as a "reliable democratic guardrail" but, as Keck's (2024, 197) research has shown, it has not often played this role in history. And the analysis here shows that the Roberts court did not play this role in the first Trump term. Whether the court will stand up to Trump's authoritarian turn in his second term, as lower courts have thus far done, could determine how far American democracy is permitted to decline.

Notes

1. The two-year investigation of voter fraud led by Kansas Secretary of State Kris Kobach produced only nine convictions, most of which involved older individuals who had misunderstood their voting rights. Iowa's two-year investigation of voter fraud produced six criminal convictions. The five-year investigation by President Bush's Department of Justice produced 86 convictions, but more than half were against campaign workers or government officials rather than individual voters.

2. A voting change could survive preclearance as long as it was not retrogressive, rendering racial or ethnic minority groups worse off in terms of the effectiveness of their vote. In the *Beer* case, a reapportionment plan for New Orleans did not violate Section 5 since it did not worsen the existing representation of African Americans on the city council, even though it would not produce or approximate proportional representation.

3. In an unprecedented move, Mitch McConnell refused to consider President Obama's nomination of Merrick Garland in March 2016 because of a supposed Senate tradition of not fulfilling a nomination in the middle of a presidential year. With Hillary Clinton's loss, McConnell succeeded in reserving that vacancy for a copartisan president, with Trump appointing Neil Gorsuch. In sharp contrast were McConnell's frenzied efforts to confirm Trump nominee Amy Coney Barrett as a replacement for Justice Ginsburg, who died a mere 46 days before the 2020 election. Barrett joined the court a week before a presidential election that Donald Trump would decisively lose.

4. *Gingles* requires that a judge assessing a vote dilution claim must find that a minority group is large and compact enough to constitute a majority in a district; that it has a history of political cohesiveness in voting; and that, in light of the totality of the circumstances, the minority group has less opportunity than others to influence the electoral process and elect its preferred candidates.

5. Section 3 was intended to prevent supporters of the Confederacy from holding office after the Civil War.

6. These cases, decided in 2020, include *Merrill v. People First of Alabama* (2020), *Andino v. Middleton* (2020), *Republican National Committee v. Democratic National Committee* (2020), and *Democratic National Committee v. Wisconsin State Legislature* (2020).

7. Looking only at voting rights cases, only 30 percent of Roberts court decisions invalidated voting restrictions compared to 84 percent for the Warren court, 67 percent for the Burger court, and 75 percent for the Rehnquist court (Brown et al. 2023, 219).

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