

The Supreme Court Helped Trump Win

INTRODUCTION

The Supreme Court helped Donald Trump win the 2024 election. While the Court did not directly decide the election for Trump in the way it did for George W. Bush in 2000 with Bush v. Gore, the justices interfered with our elections, our politics, and our society in ways that certainly helped, and may have been decisive, to Trump's win.

The Supreme Court's assistance to Trump came in numerous forms, from the structural to the political. The Court shielded Trump from prosecution for his attempt to steal the 2020 election. They prevented states from striking him from the ballot in spite of the Fourteenth Amendment's bar on insurrectionists holding office. They allowed unlimited money to flood our politics, permitting billionaires to buy the presidency; gutted the Voting Rights Act; and permitted racial and ethnic gerrymandering, which reduced competition, worsened extremism, and handed Republicans control of the House. They blocked many of President Biden's signature policy accomplishments, including student debt relief, protections for transgender people, and immigration reforms, which gave Joe Biden and then Kamala Harris fewer victories to point to during their campaigns. They weakened labor unions, which harmed the economic and collective power of working people and aided Republican candidates. And finally, the ever-present threat that the Court will strike down any progressive policies limited voters' and elected officials' imagination as to what is possible, bolstered voters' sense that normal politicians can't or won't make real change, and made Trump's rule-breaking, anti-hero persona more appealing.

As Trump and Elon Musk, the unelected billionaire who has seemingly made himself king of the United States, barrel into Trump's second administration, they are defying laws and the Constitution at every turn. They have attempted to end birthright citizenship; frozen spending and payments that have already been appropriated; censored information about health care, climate change, and LGBTQ+ people; attempted to eliminate legislatively created agencies and invented others; and fired officials in violation of the law. In response, people and organizations are naturally turning to the courts. This is as it should be, since enforcing the law is a key function that courts are supposed to play in our system of government. Trump's actions are so extreme and lawless that even this far-right Supreme Court will likely step in to curb some of them.

When and if the Court does block some of these illegal actions, it is important that voters, elected officials, and the media not lose sight of the fact that we would not be in this constitutional crisis had the Court not helped Trump to win reelection. The justices, including the three that Trump got confirmed through illegitimate political hardball and several whose behavior is consistently unethical and corrupt, were critical to getting us to where we now find ourselves. If they step in to stop some of Trump's most egregious violations, that will not outweigh their role in causing the crisis in the first place. It will not mean the Court has become a brave defender of our most cherished principles. It will simply mean that some breaches are too blatant for even the justices to justify.

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The need for Supreme Court reform has been apparent for years. Now, the Court has played a vital role in allowing Trump's reelection just four years after he led a violent coup against our government. Progressives cannot lose sight of the fact that structural court reform will be a critical piece of rebuilding our democracy.

1. The Supreme Court shielded Trump from prosecution for trying to overturn the 2020 election

On July 1, 2024, the right-wing supermajority on the Supreme Court handed down its decision in Trump v. United States, blessing Trump's efforts to overturn the 2020 election and granting him broad immunity from prosecution for actions he took while in office.

The 6–3 decision, written by Chief Justice John Roberts, effectively gave Trump the “power of a King” in flagrant violation of the Constitution's system of limited executive powers. The decision itself, in addition to its timing, made it impossible for Trump to be criminally tried before the election. Additionally, it gave him a huge political win months before voting started. And critically, the decision is likely to

embolden him to do whatever he wants in his current term without fear of criminal consequences.

From the beginning, the justices' handling of the case constituted election interference, even before they reached their final decision. At a minimum, two justices should have recused themselves from the case completely: Justice Samuel Alito because he publicly flew insurrectionist flags outside his homes, and Justice Clarence Thomas because his wife was directly involved in the Stop the Steal movement. By refusing to recuse, these two justices made clear from the start that they would not respect the rule of law in their handling of the case.

The second indication that partisan considerations would affect all aspects of this case was the justices' timeline for deciding the matter. In August 2023, the lower court judge overseeing the case set a trial date of March 4, 2024. But the Supreme Court did not agree to hear Trump's appeal of his claim of immunity until late February, did not hold oral arguments until late April, and did not issue their decision until July. That delay alone would have pushed Trump's trial into the middle of election season, creating what Michael Podhorzer called a “historic crisis.”

When the ruling finally came down, it went further than almost any legal observer had expected. The immunity decision effectively declared that the president is above the law, validating President Richard Nixon's breathtaking (and, until now, ridiculous) Watergate-era claim that “When the President does it, that means it's not illegal.” Legal experts called the Court's decision “an affront to democracy and the rule of law,” “frankly terrifying,” an “instruction manual for lawbreaking presidents,” and a “constitutional embarrassment.”

By ensuring that Trump would not have to stand trial, the decision helped Trump electorally as well as protecting him from accountability and even prison time. Polls showed that a conviction for trying to overturn the 2020 election would have hurt Trump in the polls more than his conviction for paying hush money

to an adult movie actress in 2016. Polls and focus groups also showed that voters blamed Democrats for failing to hold Trump accountable. A trial also would have reminded voters of the violent events of January 6, 2021 in the months before they headed to the polls again. Instead, the Court gave Trump a political win and burnished his image as someone who can do whatever he wants without consequence.

2. The Supreme Court blocked states from removing Trump from the ballot for insurrection.

In March 2024, the Supreme Court ruled in Trump v. Anderson that Colorado, and other states, did not have the power to remove Trump from their presidential ballots for engaging in insurrection under Section 3 of the Fourteenth Amendment. That section bars people from holding state or federal office if they previously swore an oath to support the Constitution and then “engaged in insurrection or rebellion” against it. The Court’s decision threw out the Colorado Supreme Court’s thorough decision, which followed a five-day trial in a lower court, holding that Trump engaged in insurrection on January 6, 2021 when he “incited and encouraged the use of violence and lawless action to disrupt the peaceful transfer of power” by sending an armed mob to the Capitol to prevent the certification of the election.

Commentators called the Supreme Court’s decision an “abdication” of responsibility” and a “judicial train wreck” which “guts enforcement of Section 3.” The Court did not address whether Trump engaged in insurrection, and thus whether he is in fact disqualified from being President under the Constitution. Rather, in an apparent attempt to resolve the case on narrow grounds, the Court held in a per curiam (unsigned and unanimous) decision that states did not have the power to enforce Section 3 with respect to federal offices. But that holding “inverts basic principles of constitutional law,” since the Constitution assigns states the responsibility to decide how to conduct

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elections for federal offices. And the decision effectively discarded an important Constitutional safeguard which our country adopted after the Civil War to prevent insurrectionists from regaining power and “overthrow[ing] the American republic.” Combined with the Court’s sweeping immunity ruling in Trump v. United States, Trump v. Anderson ensured that Trump would not face any consequences for engaging in insurrection.

3. The Supreme Court allowed billionaires and oligarchs to buy the presidency.

The Supreme Court’s 5–4 decision Citizens United v. Federal Election Commission (2010) cleared the way for Donald Trump’s 2024 campaign to be largely paid for, and partly run by, Elon Musk and a few other billionaires. Musk, who is the world’s richest man, also bought Twitter, now renamed X, and has turned the influential social media platform into a pro-Trump echo chamber. Now that Trump is President again, Musk is exercising unprecedented power over the operation of the government, and stands to profit immensely from Trump’s administration. As Justice John Paul Stevens wrote in dissent in Citizens United, “A democracy cannot function effectively when its constituent members believe laws are being bought and sold.” Even Justice Stevens did not foresee that billionaires would buy, and own, an entire Presidency.

Citizens United invalidated campaign finance laws that had existed for more than 100 years on the theory that limiting “independent political spending” by corporations and other groups violated the

First Amendment right to free speech. The decision claimed that decisions about “independent” spending would be truly separate from campaigns and so would not lead to corruption, and that disclosure requirements would allow voters to make informed decisions.

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These assertions were both wrong. Instead, Citizens United itself, other judicial decisions that followed it, inaction from Congress, and the elimination or non-enforcement of regulations by the Federal Election Commission have resulted in the proliferation of super PACs, which are often funded by extremely wealthy individuals and which brazenly coordinate directly with campaigns. It has also resulted in a vast increase in “dark money” groups that don’t disclose their donors. This means voters often have no idea that billionaires are paying for the messages with which they are deluged through ads, mailers, podcasts, traditional media, and social media.

Trump benefited immensely from this anything-goes regime in 2024. A handful of ultra-rich individuals helped him close his fundraising gap with Kamala Harris; about 44 percent of all the money that went to Trump’s re-election efforts (to the tune of \$481 million) came from just 10 individuals. Trump’s campaign outsourced basic campaign functions, including get-out-the-vote, direct mailings, and door-to-door canvassing, to outside groups funded by Musk, who gave at least \$277 million to two super PACs. Musk also spent \$44 billion to buy X, and used it to amplify pro-Trump messages during the campaign. Now that Trump is president, Musk is reaping his reward in the form of an unprecedented and illegal role in shaping the government and huge potential financial benefits.

4. The Supreme Court gutted the Voting Rights Act and permitted voter suppression.

For more than a decade, the right-wing justices have been tearing down the Voting Rights Act (VRA), the legislative “crown jewel” of the civil rights era. By the 2024 election, this had resulted in hundreds of voter-suppression laws being enacted in jurisdictions previously covered by the VRA, and contributed to a growing turnout gap between Black and white eligible voters. In at least one swing state, Georgia, that gap was larger than Trump’s margin of victory. Georgia is the first state to release its voter file after the 2024 election; comparable national data will not be available until summer 2025.

The 1964 VRA was one of the most successful civil rights laws in U.S. history. For decades, it was a key tool to fight against the blatant racial discrimination in voting and redistricting that white officials in the Jim Crow South and other states used to block Black voters, other voters of color, and members of “language minority” groups from the ballot box. The VRA dramatically expanded political power and opportunities for Black and brown individuals and communities. The 1966 election, the first to take place after passage of the VRA, saw the number of Black elected officials in the South more than double. In the 10 years after the VRA’s passage, the white-Black disparity in voter registration rates dropped from nearly 30 percent to 8 percent. The law also resulted in more public infrastructure spending in Black communities in the South, and fewer arrests of Black residents in the counties which were covered by its “preclearance” requirement.

In Shelby County v. Holder (2013), Chief Justice Roberts, writing for a 5–4 Court, eliminated a vital part of the VRA. Section 5 of the law required jurisdictions with a history of racial discrimination in voting to “preclear” changes to their voting practices with the federal courts or the Department of Justice. The Court struck down the formula

that determined which jurisdictions were subject to preclearance, opening the door to racial discrimination throughout the electoral process.

In *Brnovich v. Democratic National Committee* (2021), a 6–3 Court weakened a remaining part of the VRA. The opinion by Justice Alito made it difficult, if not impossible, to challenge discriminatory voting laws by inventing a series of hurdles for plaintiffs to clear. These hurdles include a rule that practices that existed in 1982 are presumptively fine, and that combating the made-up threat of voter fraud is a “strong and entirely legitimate state interest.” As Justice Kagan’s searing dissent put it, Alito’s decision was “mostly a law-free zone.”

Predictably, in the 10 years after *Shelby County*, states enacted more than 100 restrictive voter laws, one-third of which were in states that would have been subject to preclearance if not for *Shelby County*. Between the 2020 and 2024 elections, 30 states enacted 78 new restrictive voting laws. Between 2012 and 2020, the Black-white racial turnout gap grew between nine and 21 percentage points in five of the six states that were once covered by the VRA.

As a result of the Court’s decisions, in 2024 voters in many states faced unprecedented voting restrictions. These included mass purging of eligible voters, more difficult voter registration, more restrictive voter ID requirements, new limits on mail and absentee voting, limits on drop-box availability, shorter voting hours and fewer voting days, thousands of closed polling places, and election workers who were threatened with criminal and civil penalties for routine election administration.

In at least one swing state, the depressed Black turnout that is at least partly traceable to suppressive voter laws may have affected the outcome of the 2024 election. Georgia was the first state to release its voter history file late last year; the equivalent national data will not be available until

this summer. The Black-white racial turnout gap grew by three points in Georgia between 2020 and 2024, with white turnout increasing and Black turnout declining. If Black Georgia voter turnout had matched that of white voters in 2024, Black voters would have cast 400,000 more ballots than they did. Eighty-six percent of Black voters in Georgia cast ballots for Harris; 86 percent of 400,000 more Black votes could have meant 344,000 more votes for Harris. That number is far larger than Trump’s 115,000-vote margin of victory in the state.

5. The Supreme Court greenlit political and racial gerrymandering.

The Supreme Court has eliminated or severely weakened protections against racial and political gerrymandering, and has created an absurd “one free illegal election” rule by which states can use voting maps already found to be illegal. The result has been a skewed election system which contributes to voters’ political disengagement, worsens extremism and gridlock in Congress, and may have been decisive in allowing Republicans to gain and maintain control of the House in 2022 and 2024. While gerrymandering did not directly affect the results of the Presidential election, a House controlled by far-right Republicans harmed Biden’s ability to enact his policy goals after 2022, and will greatly strengthen Trump’s ability to enact his extreme agenda.

In the last few decades, powerful computer models have made it possible for political parties to concoct gerrymandered maps that all but ensure they will remain in power. For instance, Republicans in Wisconsin enacted maps in 2011 that ensured Republicans kept a near-supermajority in the Legislature for more than a decade, despite close election results.

Gerrymandering harms our politics by contributing to extremism, polarization, and voter apathy.

It has shrunk the number of House districts that are competitive to just 27 out of 435 in 2024, which reduces the power of most peoples' votes and contributes to voter disengagement. Incumbents in the 400+ safe seats fear primary challenges by more extreme members of their own parties more than they do a competitive race with a candidate of another party. This pushes politicians to take more extreme positions and to refuse to compromise. The resulting dysfunction leads to even more voter disillusionment.

Rather than protecting democracy by ensuring that electoral maps are fair, the Supreme Court has made it harder or impossible to challenge gerrymandering. In 2019, a 5–4 Court decided in Rucho v. Common Cause that courts would no longer hear partisan gerrymandering challenges at all because, Chief Justice Roberts said, it would be too hard to formulate a standard for evaluating them. As Justice Kagan said in her dissenting opinion, the court “[f]or the first time ever ... refuse[d] to remedy a constitutional violation because it thinks the task beyond judicial capabilities.”

After approving partisan gerrymandering, in 2024 the Court made it much harder to challenge racial gerrymandering. In Alexander v. South Carolina Conference of the NAACP, a 6–3 Court overturned a ruling that South Carolina’s congressional map was a “stark racial gerrymander.” Justice Alito’s decision declared that the gerrymander was done for partisan reasons, not racial ones, and thus it could not be challenged under Rucho. Alito also used his opinion to announce made-up new tests which will make it much harder for future litigants to challenge racial gerrymanders, including that they must almost always produce direct evidence of racial discrimination.

The Court has created an outrageous “one free illegal election” rule under which the Court, or lower courts, often refuse to block states from using maps already found to be illegal, ostensibly to avoid confusing

The Court’s antidemocratic gerrymandering jurisprudence contributed significantly to Republicans gaining, and retaining, control of the House in 2022 and 2024

voters. For instance, in 2021 Alabama Republicans drew a map which packed most of the state’s Black residents into one district, so that the 27 percent of Alabama voters who are Black could only elect candidates of their choice in one of Alabama’s seven districts (14 percent of the state). A three-judge panel, including two Trump-appointed judges, ruled the map was illegal. But, in a shadow docket opinion with no explanation, a 5–4 Supreme Court allowed the map to be used in the 2022 election anyway. In 2023, the Court itself agreed that the map violated the VRA in Allen v. Milligan.

The Supreme Court’s and lower courts’ decisions in these cases are presumably (in shadow docket cases, we can only guess) based on the Purcell principle that courts should not order changes in voting rules close to an election because voters might be confused. But the Court has stretched that principle beyond its breaking point by applying it not days, but months before an election—in the Alabama case, three months before the primary and nine months before the general election. Maps that had already been ruled illegal were used in four states in 2022: Georgia, Louisiana and Ohio in addition to Alabama.

The Court’s antidemocratic gerrymandering jurisprudence contributed significantly to Republicans gaining, and retaining, control of the House in 2022 and 2024. Many Republican legislatures, emboldened by the decisions in Rucho and Alexander, drew brazenly unfair maps. In 2022, the use of illegal maps

in at least four states, combined with heavily gerrymandered maps in Texas and Florida, was enough to give control of the House to Republicans. Similarly, in 2024, gerrymanders in North Carolina and Georgia were enough to let Republicans hold on to their very narrow House majority. Republican control of the house starting in 2022 meant the end of Biden's ability to enact meaningful legislation, which certainly weakened his, and later Harris', candidacy in 2024.

6. The Supreme Court blocked or limited Biden's signature policy accomplishments.

Over the last four years the Court temporarily or permanently blocked many of President Biden's signature policy achievements, including student debt relief, protections for trans students, and immigration reforms. This gave Biden, and then Kamala Harris, fewer accomplishments to point to when running for re-election, and contributed to voters' disillusionment and sense that politicians can't or don't really do anything to improve their lives.

One of Biden's signature campaign promises and, for a time, policy accomplishments, was student debt relief. In August 2022, he announced a sweeping plan to forgive up to \$20,000 of relief to millions of borrowers. The White House received 26 million applications by November, and 16 million of those had been approved before litigation halted the program. In 2023, a 6-3 Supreme Court struck down the plan, in part based on its recently-invented "major questions doctrine," which gives the Court sweeping power to veto agency actions it disagrees with.

In response, Biden implemented the Saving on a Valuable Education (SAVE) plan and other student debt relief plans, which were more complicated and less sweeping. But in August 2024 the Supreme Court temporarily barred the administration from implementing those plans as well—a pause that became permanent when Trump won the election.

Biden's Department of Education announced new rules to increase protections for LGBTQ+ students under Title IX in April 2024. But Republican attorneys general sued, lower courts enjoined the rules in about half the states, and in August the Supreme Court allowed those injunctions to remain in effect.

On immigration, the Supreme Court or lower courts (almost always one of a handful of Trump-appointed judges in Texas) blocked or delayed multiple Biden initiatives:

- **Deportation pause:** Within hours of his inauguration Biden implemented a 100-day pause on deportations; a Trump-appointed judge in Texas blocked it a week later.
- **Ending "Remain in Mexico":** In June 2021 Biden's administration ended Trump's "Remain in Mexico" program, which required migrants and asylum seekers to wait in Mexico, often in dangerous conditions, for their immigration hearings in the U.S. Another Trump judge in Texas blocked the move for more than six months. The Supreme Court eventually reversed, but allowed the case to drag on for years after that.
- **Ending pandemic expulsions:** Judges delayed for almost a year Biden's attempt to end Trump's Title 42 public health order, which allowed officials to expel migrants during the pandemic despite their legal right to seek asylum.
- **Biden's enforcement priorities:** A Trump judge in Texas delayed implementation of Biden's immigration enforcement priorities in June 2022, and the Supreme Court refused to immediately intervene. The Court eventually ruled in Biden's favor, dismissing the case for lack of standing, but not until a full year later. In that year the Biden administration was unable to implement its enforcement priorities.

- **Keeping Families Together:** Biden's Keeping Families Together program, announced in June 2024, would have created a pathway to citizenship for 500,000 undocumented spouses of U.S. citizens. But a Trump-appointed judge in Texas temporarily blocked it in August, the Supreme Court sat on the litigants' request for a stay, and the lower court made its block permanent in November

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All these legal defeats gave Biden, and then later Harris, fewer victories to tout when they ran for re-election. For example, Harris rarely brought up student debt relief on the campaign trail since court defeats meant few borrowers had experienced debt relief. This cannot have helped her in the election, given that more than a quarter of student loan borrowers said student loan debt would have a "major" influence on their vote in November.

In June 2024, the Court added to the arsenal of tools it can use to block policies it doesn't like when it overruled the longstanding Chevron doctrine in *Loper Bright Enterprises v. Raimondo*. *Loper Bright* means that courts can overrule regulations and other policies put in place by democratically accountable administrative agencies, rather than deferring to the agencies' expert judgment. Combined with the

"major questions doctrine," also a recent fabrication, the Court has greatly increased its power to jettison policies backed by Democrats.

7. The Supreme Court attacked workers' ability to form strong unions and build collective political power

The American judiciary has been hostile to the labor movement and worker-protective laws for more than a hundred years, but the Supreme Court has put its attacks into overdrive in the last decade. The Court's decisions have hurt workers' ability to vindicate their rights and to build collective power. This helps Trump and other anti-worker candidates economically, by increasing their profits at workers' expense; electorally, because it means fewer voters and potential voters have exposure to the ways unionizing can allow workers to improve their jobs and communities; and in terms of power, because the labor movement is one of the few forces that can serve as a counterweight to corporations and would-be oligarchs.

In the late 1800s and early 1900s, often called the *Lochner* era, the Supreme Court struck down minimum-wage laws, child labor laws, and protections for workers' protective action, while it and lower courts enjoined thousands of strikes, pickets, and other collective action and imprisoned labor leaders. The Supreme Court reversed course for a time starting in the late 1930s, upholding important New Deal-era laws including the National Labor Relations Act, but returned to steadily weakening worker protections in the 1950s.

In the last ten years the Supreme Court has amped up this pattern, issuing numerous decisions weakening workers' ability to form strong unions or to engage in collective action:

- **Permitting forced arbitration:** In a series of decisions beginning in 2001, the Court ruled that employers could make their employees

sign forced arbitration agreements, even ones that explicitly bar collective action. As a result, more than half, and as much as 80 percent, of American workers are bound by forced arbitration agreements and have no effective recourse against discrimination, harassment, or wage theft.

- **Ending union access to speak to farmworkers:** The Court held in *Cedar Point Nursery v. Hassid* (2021) that a California law allowing unions to enter a farm employer's property at limited times to speak to farmworkers was an unconstitutional "taking," foreclosing one of the only ways this group of isolated, migratory, low-income, often exploited workers could learn about their rights.
- **Weakening public sector unions:** In *Janus v. AFSCME* (2018), the Court struck down state laws permitting unions to negotiate fair-share agreements, under which all workers who benefitted from a union's representation paid part of the cost of representation. This left unions with fewer resources for organizing, negotiating better working conditions, and building power.
- **Giving employers a weapon against strikes:** In *Glacier Northwest v. International Brotherhood of Teamsters* (2023), the Court allowed an employer to sue a union in state court for loss of perishable products stemming from a strike—even though federal law protects the right to strike, and the point of a strike is to cause economic injury.
- **Weakening labor enforcement tools:** After Starbucks fired a group of employees who were organizing a union at a Starbucks in Memphis, the National Labor Relations Board (NLRB) intervened quickly to get them reinstated. But in *Starbucks v. McKinney* (2024) the Court ruled for Starbucks, in a decision that will make it harder for the NLRB to get similar emergency orders in the future.

- **Grabbing power for courts:** The Court struck down the longstanding Chevron doctrine in *Loper Bright Enterprises v. Raimondo* (2024), giving courts broad power to strike down the decisions of administrative agencies that they don't agree with. This will further harm workers' rights, as the courts will have freer rein to eliminate agency actions that protect workers.

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Several of Trump's billionaire supporters, including Elon Musk and Jeff Bezos, are bringing lawsuits attacking the constitutionality of various aspects of the NLRB. Trump has illegally fired Gwynne Wilcox, a Democratic appointee to the NLRB, rendering the Board without a quorum and unable to function; Bezos's Whole Foods has argued this purge means it can ignore a union election victory. The Supreme Court might agree to hear one of the billionaires' anti-NLRB cases soon, and could do further damage to the NLRB's ability to protect workers' rights.

A weakened labor movement is good for Trump and other anti-worker candidates in numerous ways. Strong unions mean less money for the already ultra-wealthy; unions decrease income inequality by fighting to ensure that more corporate earnings go to pay and benefits for workers rather than profits and compensation for corporate owners. On an electoral

level, unions' member education and get-out-the-vote efforts increase voter turnout, both among their own members and in the communities in which their members live. Among white workers, union membership decreases racial resentment and increases the chances that the worker will vote for Democratic candidates. This was true in 2024: even though the working class as a whole moved to the right; Harris won union voters by more than 8 points. But, in part due to Supreme Court decisions, the number of workers in unions is so small that this was not enough to help Harris win.

Finally, on the big-picture level of political power, a strong labor movement is one of the only forces that builds the kind of collective power for working people which can be a counterweight to oligarchy. This is why oligarchs who have sought to take over governments in other nations have frequently targeted unions, and why Trump and Musk are doing so now.

8. The Supreme Court limited Americans' imagination as to what kind of world is possible.

The Supreme Court limits the imaginations of voters, candidates, and elected officials as to what kind of change is possible, both through the decisions it has made and those it could make. Striking down President Biden's policy victories narrowed what Biden, Harris, and other Democratic candidates could point to as accomplishments and could campaign for. Trashing the Voting Rights Act to allow states to draw gerrymandered maps and pass restrictive voting laws blocks people from voting, makes potential voters distrustful of the fairness of our elections, and worsens extremism and gridlock. Flooding our politics with billionaires' money makes ordinary voters powerless compared to Elon Musk and his fellow brologarchs.

The ever-present threat that the Court might strike down any progressive policies that are enacted chills

activists and policymakers from even trying to enact laws they know, or suspect, would be struck down. The current Court would almost certainly strike down policies like strong gun safety legislation, a general right to health care, or access rights for union organizers to speak to workers at work. As a result, those are not on the table in our national conversation. The Court would also likely strike down structural reforms that would strengthen representative democracy, such as making the Senate representative, or eliminating the Electoral College—so those seem like pipe dreams.

At the same time, the Supreme Court's endorsement of Donald Trump's utter disregard for the rule of law strengthens some voters' feeling that he is the only politician who can make change.

CONCLUSION

As we begin the second Trump term and his administration disregards or attacks the Constitution, the law, and the functioning of our government at every turn, the Supreme Court may step in to stop some of his more egregious violations. When or if this happens, it is important that we do not forget, or accept as inevitable, the role the Court played in creating the crisis we are in by putting Trump back in office in the first place. The Court, including the three Justices Trump installed illegitimately, allowed Trump to escape any consequences for attempting to overthrow the 2020 election; made voting and election maps unfair to help Republicans suppress and dilute the votes of Democrats and Black Americans; struck down Biden's policy accomplishments, weakened unions, and limited Americans' imaginations about what is possible.

The solution is court reform. Court expansion would rebalance the Court so it would not have a supermajority of justices who act as power-hungry policymakers for the Republican party and corporate interests, such as by granting Trump sweeping

immunity from prosecution, or consistently attacking workers' collective power. Jurisdiction stripping or channeling legislation and supermajority requirements would address the problem that it is fundamentally undemocratic for courts to strike down laws passed by Congress, like the Voting Rights Act. Giving Congress a way to quickly correct judicial misinterpretation of Congressionally-passed laws would put a brake on the Court willfully misreading laws, as through the "major questions doctrine." Ethics reforms, shadow docket reforms, lower court expansion, term limits, and laws to reverse antidemocratic judicial doctrines would all also help to impose checks and balances on the Court.

It will obviously be a steep uphill climb to get to a place where court reform is politically possible. But progressives must begin climbing that hill, and must build a consensus and a plan as to how to implement court reform when and if we make it to the top.

MEET THE AUTHOR



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Jenny Hunter is a labor lawyer and consultant to unions and nonprofit organizations. She also writes about labor law, judicial nominations, and other topics for Slate, Balls & Strikes, and other outlets. Before she began writing and consulting full-time in 2021, Jenny practiced labor law for 15 years, first as an associate at Bredhoff & Kaiser in Washington DC, and then in the Legal Department of the Service Employees International Union, most recently as Lead Counsel for the Public Services Division. In that role she supported the work of union organizing efforts, including campaigns to bring

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ABOUT PEOPLE'S PARITY PROJECT ACTION

People's Parity Project Action is a 501(c)(4) organization building a nationwide movement of law students and attorneys organizing for a legal system that serves as a force for justice for working people. Through organizing, policy innovation, political education, community building, and advocacy, we aim to take back a legal system dominated by corporate influence and transform it into a true justice system.