

WHY THE U.S. SUPREME COURT AND LOWER FEDERAL COURTS MATTER

I. INTRODUCTION

NEA members and affiliates are impacted every day by federal court decisions. Within just the past six years, the Trump-created Supreme Court conservative supermajority has:

- Stripped away the **reproductive rights** that women have enjoyed for generations and that have immeasurably improved the lives of women and their children and families. *Dobbs v. Jackson Women's Health Organization* (2022) (overturning *Roe v. Wade*).
- Hamstrung efforts to make schools and communities safe by subjecting **commonsense gun regulations** to sweeping, unprecedented & irrational scrutiny. *New York State Rifle & Pistol Association, Inc. v. Bruen* (2022).
- Fueled a national backlash against necessary efforts to advance **racial equity** in our society by striking down race-conscious admissions in higher education as unconstitutional. *Students for Fair Admissions v. University of North Carolina/Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (2023).
- Blocked **\$400 billion in student debt relief for 43 million** Americans. *Biden v. Nebraska* (2022).
- Opened a yawning gap in **civil rights protections** by permitting a business to discriminate against LGBTQ individuals on the basis of asserted religious beliefs. *303 Creative LLC v. Elenis* (2023).
- Overturned deference to administrative agency expertise that undergirds **fundamental workplace, worker, environmental, health and more protections**. *Loper Bright v. Raimondo/ Relentless, Inc v. Dep't of Commerce* (2024).
- Barred the Occupational Safety and Health Administration from providing **workplace health & safety protections** during the COVID-19 pandemic. *NFIB v. OSHA* (2022).
- Undermined **public education** by nullifying state constitutional protections against aid to religious schools. *Carson v. Makin* (2022); *Espinoza v. Montana* (2020).
- Barred states from enforcing the U.S. Constitution's prohibition against insurrectionists running for federal office. *Trump v. Anderson* (2024).

WHY THE U.S. SUPREME COURT AND LOWER FEDERAL COURTS MATTER

- Upheld a series of executive orders by the Trump administration that prohibited travel and refugee resettlement from select predominately Muslim countries (aka the “Muslim Ban”). *Trump v. Hawaii* (2018).
- **Reversed decades of precedent** to bar unions from charging non-members for the costs of union representation. *Janus v. AFSCME* (2018).

And decisions at the lower federal court level have also had widespread impact including, in just the past month:

- Preventing enforcement in 10 states of the U.S. Department of Education’s Title IX rule – a rule recognizing that federal law prohibits discrimination on the basis of sex in K-12 schools and colleges, including on the basis of sexual orientation and gender identity; and
- Preventing enforcement in two states of the Equal Employment Opportunity Commission’s new rule enforcing the Pregnant Workers’ Fairness Act.

This document provides an overview of the federal courts and the judges who serve on them so that members and affiliates fully understand what is at stake in the upcoming presidential election regarding our federal courts.

II. THE FEDERAL JUDICIARY

Article III of the Constitution establishes the federal judiciary by vesting “[t]he judicial Power of the United States,” “in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Besides the Supreme Court, Congress has established both federal courts of appeal and federal district courts. The 890 judges who sit on these courts, often referred to as “Article III judges,” are nominated by the President, confirmed by the U.S. Senate, and serve for life.

A. The Supreme Court

The Supreme Court is the highest court in the United States. Congress establishes by law how many justices serve on that court. Congress first exercised this power in the Judiciary Act of 1789, which created a Supreme Court with six justices. Over the first 100 plus years of our country’s history the number of justices fluctuated. Today, nine justices make up the current Supreme Court: one Chief Justice and eight Associate Justices.

WHY THE U.S. SUPREME COURT AND LOWER FEDERAL COURTS MATTER

While thousands of decisions are appealed to the Supreme Court each year, the Court usually decides no more than 80 cases a year. In contrast, [over 50,000 cases are filed in federal appeals courts, and over 340,000 are filed in district courts every year.](#)

A. Courts of Appeals

There are 13 appellate courts below the Supreme Court, called the Courts of Appeals. In the federal system, the trial-level courts are organized into 12 circuits or regions. Each circuit has its own Court of Appeals, which reviews cases decided in District Courts within the circuit.¹

A Court of Appeals hears challenges to District Court decisions from courts within its circuit and appeals from decisions of federal administrative agencies. The Court of Appeals' task is to determine whether the law was applied correctly in the trial court.

B. District Courts

The nation's 94 district or trial courts are called District Courts. There is at least one District Court in each state, and the District of Columbia. District courts resolve disputes by determining the facts and applying legal principles to decide who is right.

For most Americans, these lower federal courts have the final say on decisions that affect our civil and constitutional rights, environmental and workplace safeguards, access to health care, and other fundamental protections. For public employees, state courts (many of which are made up of elected judges) often provide even more critical protections, as public employee rights are often guaranteed by state law that is usually enforced in state courts.

III. THE POWER OF SUPREME COURT JUSTICES

A. Lifetime Appointments

Article III judges "hold their office during good behavior," which means they have a lifetime appointment except under extremely limited circumstances. They can be removed from office only through impeachment by the House of Representatives and conviction by the Senate.

B. Ethics

Supreme Court Justices are the only members of the federal judiciary who are not covered by a binding [code of conduct](#). Nor are Supreme Court Justices subject to the complaint

¹ The U.S. Court of Appeals for the Federal Circuit brings the number of federal appellate courts to 13. This court takes cases from across the nation, but only particular types of cases.

WHY THE U.S. SUPREME COURT AND LOWER FEDERAL COURTS MATTER

and discipline requirements that apply to other federal judges under the Judicial Conduct and Disability Act of 1980.

While the Justices are subject to statutory requirements regarding financial disclosures and recusal in the event of a conflict of interest, and the U.S. Senate has pressed for the Court [to](#) adopt real and enforceable ethics requirements, the Supreme Court has not done so and there continue to be revelations of questionable conduct that raises serious conflict of interest issues by a number of Supreme Court justices. [CREW raises alarm to Chief Justice Roberts over Alito Misconduct](#) (June 2024); [Supreme Court Ethics Controversies: New Clarence Thomas Harlan Crowe Trips Revealed](#) (Forbes June 2024); [Clarence Thomas: Here are all the Ethics Scandals](#) (Forbes October 2023).

IV. DECISIONS BY THE SUPREME COURT HAVE AN ENORMOUS IMPACT ON NEA MEMBERS, STUDENTS, & THEIR COMMUNITIES

For decades, ultraconservatives have sought control of our federal courts. The Trump Administration and Senate Republicans were highly effective in packing the federal judiciary to advance their agenda. As a result, today's Supreme Court is more conservative than at any point in modern history and already has issued an array of decisions stripping away critical protections from women, people of color, LGBTQ+ people, and working people.

The Supreme Court also has taken aim at key protections for democracy by continuing to limit the reach of the Voting Rights Act of 1965. For example, in *Alexander v. South Carolina State Conference of the NAACP* (2024) the Court permitted the state of South Carolina to continue to use a congressional map that divides and reduces Black political voting power while increasing the burden on voters who challenge unconstitutional racial gerrymanders in federal court.

The Supreme Court's conservative supermajority has also thrown sand in the gears of the effort to hold Trump accountable for his conduct as President, by delaying the resolution of his absolute immunity claims for his alleged criminal actions while President.

V. NEA MEMBERS CONTINUE TO FACE AN UNPRECEDENTED THREAT FROM AN INCREASINGLY PARTISAN SUPREME COURT

Though conflict surrounding the processes by which the President nominates and the Senate confirms Supreme Court justices is not new, it has become more intensely partisan in recent years. These ideological conflicts have also resulted in extended periods of Senate obstruction and gridlock during which the President is prevented from placing judges on the Court (and the lower federal courts). For example, in 2016 former President Barack Obama

WHY THE U.S. SUPREME COURT AND LOWER FEDERAL COURTS MATTER

named former U.S. Court of Appeals Judge Merrick Garland to fill a seat on the Supreme Court. However, the conservative majority on the Senate Judiciary Committee refused to conduct a hearing and advance his nomination to the Senate at large. As a result, Garland's nomination expired in 2017, more than eight months after being submitted to the Senate, and the seat was filled by newly elected President Trump a few months later.

Senate Republicans justified their refusal to hold a hearing on the theory that it was too close to a presidential election. Yet at the very end of Trump's term in office when Justice Ruth Bader Ginsburg passed away, Senate Republicans rushed to confirm Trump's nominee to the Supreme Court, Justice Amy Coney Barrett, less than one month before a presidential election. The result? *A six to three conservative* supermajority that has already rolled back so many basic constitutional and civil rights protections.

By 2025, four of the nine Supreme Court justices will be over 70 years old. That means *the next President may be in a position to nominate as many as four new Supreme Court justices*. The last President able to wield that much power over the future course of the Supreme Court was President Nixon, whose appointments to the Court effectively ended federal efforts to enforce *Brown v. Board of Education* (1954) and blocked efforts to establish a fundamental right to education under the U.S. Constitution in *San Antonio Independent School District v. Rodriguez* (1973).

VI. The Lower Federal Courts Remain Dangerously Stacked by Extreme Conservative Judges

Former President Trump not only stacked the Supreme Court with a conservative supermajority, but he also secured the confirmation of 234 judges to the lower federal courts. These judges are overwhelmingly conservative white men, whose lifetime appointments to the federal courts will continue to have devastating impacts on our nation's hard-fought progress.

By contrast, President Biden has made impressive progress on his commitment to make the federal judiciary more experientially diverse. As of June 2024, the Senate has confirmed more than 200 of Biden's lifetime judicial nominees, including the incredible Justice Ketanji Brown Jackson, who sits as the first African American woman on the Supreme Court. These confirmations feature a diverse group of nominees including six lawyers who spent some or all their legal careers representing unions and advocating for workers' rights and 74 lawyers with experience as public defenders or as civil rights litigators. President Biden has also prioritized more demographic diversity on the federal bench and has appointed more people of color and more women to federal judgeships than any other President. In fact, while 84% of President Trump's nominees were white, [64% of President Biden's nominees are people of color](#).



WHY THE U.S. SUPREME COURT AND LOWER FEDERAL COURTS MATTER

This progress is impressive, but more is needed. Federal judges across the U.S. are still disproportionately white, male, and come from corporate lawyer or prosecutor backgrounds. And conservative activists continue to engage in “forum-shopping,” (particularly in Texas), which allows them to cherry-pick conservative District Court judges to hear their cases. The result? Nationwide injunctions issued against key Biden administration priorities including vaccine mandates, immigration reform, and efforts to provide farmers of color equitable relief under the Agriculture Department’s COVID-19 pandemic disaster relief program. Currently, conservative activists are seeking to use these same “judge shopping” tactics to strike down the U.S. Department of Education’s new rule confirming that Title IX’s prohibitions against discrimination on the basis of sex also prohibit discrimination on the basis of sexual orientation and gender identity.

VII. VOTE THIS NOVEMBER LIKE THE SUPREME COURT DEPENDS UPON IT

What does all this mean? Vote this November like the future of the Supreme Court depends on your vote for President - *because it does*.

If you want a Supreme Court that will protect voting, civil, reproductive, and labor rights, there is only one possible choice in November. The next President may appoint as many as four Supreme Court justices, which will shape the trajectory of the Court for the next generation. We cannot afford to let the highest court in our nation move further to the right.