**The Roberts Supreme Court: This Year’s Rulings and Political**

**Considerations. Where is the Court Heading Next?**

September 2024

**Summary**

The Supreme Court this year issued a significant number of controversial rulings that made front page headlines, and heightened debate over whether the Justices have hidden political agendas. These included several rulings about a presidential candidate facing criminal prosecution, as well as decisions in the politically charged areas of abortion, guns, social media content, and federal regulation of business. We will discuss from a layman’s perspective what this year’s decisions, along with prior rulings of the Roberts Court, say about how politics and judicial ideology may affect the Court’s decisions and its credibility. We will also discuss how this Court differs from its predecessors, and where the Court may be heading in the near future. This is a sequel to our June 2023 course (Study Group 1140).

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**Syllabus**

***Overview***

The frequency with which the Supreme Court made front page news this year, and the influence its decisions have had on elections, government regulation, and the culture wars demonstrate the important role the Court plays in our daily lives and in the country’s affairs. Especially under Chief Justice John Roberts, the Court seems not only willing but eager to exercise its judicial power by striking down congressional statutes and wading into treacherous political waters. As one sign of the modern Court’s assertiveness, in recent years it has struck down on average between four and eight federal and state statutes every year, compared to the Court’s first seven decades, when it proceeded with great caution in reviewing actions by the coordinate branches of government, and struck down just two federal laws during that entire 70 year span.

What accounts for the dramatic transformation in the Supreme Court’s role? The Court under John Roberts has become a powerful agent in support of limited government, state’s rights, and conservative values. Is the Roberts Court improperly intruding into policymaking reserved for the elected branches, and thereby failing to “stay within its own lane” as the Framers of the Constitution intended? Does political ideology of the Justices sometimes trump judicial objectivity, as some charge? According to recent polls, the public’s confidence in the Court has now fallen to “an all-time low”. Do we need to worry about this?

To address these timely questions the Course will discuss the Court’s recent record with particular focus on decisions it issued during the 2023-24 term that ended in June.

The Course will consist of four 90-minute sessions.

***Session I. Background: How Did We Get to Where We are Today?*** ***How does the Roberts Court Differ from its Predecessors?***

We will look at history and today’s conservative movement to understand how the country came to have the current, very influential and conservative Roberts Court. In this first session we will discuss:

* The widespread criticism of the current Court’s rulings as unduly affected by the political views of the Justices;

* The ebb and flow of the Court’s rulings over the past century, from those handed down early in the 20th Century favoring property interests over worker rights, to mid-century decisions that supported New Deal reforms, civil rights and individual liberty, to the current Court’s controversial reading of the Constitution;

* Four individuals who have had the greatest impact over the past 100 years in the growth of the Court’s influence;

* The political and ideological movement personified by the Federalist Society to make the current Court a beacon of conservatism, and champion of originalism as a judicial philosophy, from its beginnings in the 1980’s to its expansive influence on the Court today;
* Ways to detect whether particular decisions are driven by overly political concerns; and
* Dwindling public support for the Court, and the Court’s response in the form of an ethics code.

***Sessions II-IV. The Court’s Most Recent Decisions and its Credibility with the Public.***

In considering the Court’s most important 2024 decisions we will discuss the strength of the Justices’ judicial reasoning; how the results compare with earlier decisions by the Roberts Court; and what all that shows about the role of politics and judicial ideology in shaping the Court’s direction. This includes three rulings the Court issued this year that affected Trump’s candidacy and criminal indictments.

We will also look at its 2024 decisions in areas that directly affect our daily lives: reproductive rights, guns, and voting. We will examine whether the Court’s conservatives achieved their often-suggested goal to rein in federal regulation, and how they intend to balance their long dedication to protecting free speech with the efforts by states to regulate social media content.

In discussing these and related cases we will examine among other questions:

* Are Roberts Court decisions consistent with prior rulings by the Supreme Court? If not, is the Court justified in departing from past precedent?
* What is originalism all about? Is it a legitimate tool for constitutional interpretation? Or is it just a pretext for arriving at predetermined results consistent with a political or ideological agenda?
* When originalists rely upon how a law was widely understood when adopted do they sometimes “cherry-pick” the historical record to reach a pre-determined result?
* What is the Court’s rationale for second guessing the regulatory decisions of Executive Branch agencies? Is there evidence of a pro-business bias?

How much deference do the Court’s decisions give to the actions of Congress as a co-equal branch of government and to the role of the states? How consistent are the decisions in doing so?

The course will conclude by discussing where the Roberts Court may be heading next. We’ll consider:

* How the Court’s current 6-3 divisions might shift, and whether a new “centrist” bloc on the Court might emerge, possibly led by the Chief Justice;
* How the Court might address such key issues as reproductive rights, religion, gun control, and government regulation in the near future.

***Class Format and Reading***

We will suggest some short articles and limited excerpts from relevant Court opinions to read before each session.

The sessions will combine lecture and group discussion, which will be encouraged.