

# The Supreme Court Term in 60 Seconds



## What's at Stake

Reaction to the 2021-22 Supreme Court term has largely focused on the policy implications of the Court's rulings. Such commentary ignores the fact that it is not the job of the Court to set public policy.

- The role of the Court is to apply the law as written and to enforce the limits of our governing charter.
- If the people want the laws to change, they can vote for people who will enact change. And if the people do not like the limits imposed by the Constitution, they can amend it.

An unelected judiciary that sets policy is a threat to representative government and to the rule of law.

## What the Court's Rulings Mean:

**Where the Constitution is silent, the people's elected representatives are supposed to make the law.**

- In [\*Dobbs v. Jackson Women's Health Organization\*](#), the Court held that the political branches must determine whether or how much to regulate abortion. The Court did *not* outlaw abortion. It held that, because the Constitution is silent on the matter, it was wrong for nine unelected judges ever to have attempted to settle this widely debated issue for the entire country.
- In [\*West Virginia v. EPA\*](#), the Court held that an agency cannot unilaterally impose a cap and trade system, previously rejected by Congress, that would force certain energy producers out of business. Contrary to the media's portrayal of the decision as an attack on the environment itself, the case makes clear that Congress, not unelected bureaucrats, get to decide important social, political, and economic policy questions.

**Where the Constitution explicitly protects a right, the people's representatives may not tamper with it.**

- In [\*New York State Rifle and Pistol Association v. Bruen\*](#), the Court held that a New York City law prohibiting people from carrying guns outside the home violates the right to "keep and bear" arms protected by the Second Amendment.
- In [\*Kennedy v. Bremerton School District\*](#), the Court held that a school could not punish a high school football coach for publicly praying after each game without violating the Free Exercise and Free Speech clauses of the First Amendment.
- These cases differ from *Dobbs* and *West Virginia* because, unlike abortion and the environment, the right to bear arms, freedom of speech, and the free exercise of religion are rights explicitly protected by the Constitution.

## Addressing Misperceptions

MISPERCEPTIONS	FACTS
Conservative justices are imposing their right-wing policy preferences on the nation.	“Conservative” justices do not seek to impose their own views on the country. Rather, they seek to apply the law as written, leaving policy disagreements to be worked out in the democratic process.
Courts should listen to the will of the people.	The will of the people is best expressed at the ballot box. If the people are not happy with the laws as written, they can vote for people who will change the laws or who will propose amendments to the Constitution. The role of courts is to apply the laws as written.
Together, the <i>Dobbs</i> and <i>Kennedy</i> decisions will usher in a conservative theocracy just like that in “A Handmaid’s Tale.”	<p>This is hyperbole intended to scare people. Women are the majority of voters in the U.S. (and in Mississippi, where the case originated), and women are fully capable of exercising power at the polls.</p> <p>The fictional dystopian scenario depicted in “A Handmaid’s Tale”, in which a theocratic government forces some women into slavery, denies them access to banking and capital, and forbids them from learning to read, could <i>never</i> happen in the U.S. because our Constitution prohibits the establishment of any government religion and protects the civil rights and civil liberties of all Americans. <i>Dobbs</i> and <i>Kennedy</i> do not change that.</p>
The SCOTUS <i>EPA</i> decision means that the <a href="#">planet will burn</a> .	Again, this is hyperbole intended to scare people without any basis in fact. If Congress wants to pass stronger measures to combat climate change, it is free to do so. But unelected bureaucrats at the EPA don’t get to make law without the consent of the governed.