

THE INFLUENCE OF PARTISANSHIP ON SUPREME COURT ELECTION LAW RULINGS

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I. INTRODUCTION

The Constitution has always been an ideological battleground. But has it become a partisan battleground as well? This article examines the role of partisanship in Supreme Court election law rulings. To that end, it surveys the major election law cases involving constitutional issues over the past century. It begins with *Williams v. Mississippi* in 1898¹ and concludes with the most recent election law cases, including the 2021 case of *Brnovich v. Democratic National Committee*² and the 2022 case of *Federal Election Commission v. Ted Cruz for Senate*.³ This article identifies three distinct chronological phases in the Court's election law jurisprudence: (1) 1898 to 2000; (2) 2000 to 2010; and (3) 2011 to 2022.

This article makes five main points.

First, it finds remarkably little evidence of partisan influence in Supreme Court election law cases in the 20th century. Justices appointed by Republican presidents routinely joined justices appointed by Democratic presidents in majority and concurring opinions. Only rarely did the Court issue election law rulings with majorities and concurrences formed exclusively of justices appointed by presidents of the same party. And in the few cases when the Court did split along partisan lines, the rulings had a neutral or modest effect on the parties' competitive

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1. *Williams v. Mississippi*, 170 U.S. 213 (1898).
2. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021).
3. *FEC v. Ted Cruz for Senate*, No. 21-12, 2022 WL 1528348 (U.S. May 16, 2022).

standing. Consequently, when it came to election law cases, a remarkably bipartisan ethos prevailed on the Supreme Court throughout the 20th century.

Second, this article contends that the Court's bipartisan approach to election law cases ended in abrupt fashion in the 21st century. In the decades since the 2000 *Bush v. Gore*⁴ decision, election law cases have divided the justices along partisan lines to an unprecedented degree. The trend has become pronounced since the 2011 *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett* ruling.⁵ In effect, for the first time in modern history, the votes of each Republican-appointed justice in the most important election law cases often mirror the position of the Republican Party, and the votes of each Democratic-appointed justice often mirror the position of the Democratic Party. This partisan alignment on key election law cases represents a stark and troubling break with more than a century of past precedent.

Third, this article asserts that the ideological realignment of the parties largely—but not completely—explains the Court's recent voting patterns in election law cases. Conservatives coalesced in the Republican Party in the 1960s and 1970s and liberals and progressives coalesced during the same years in the Democratic Party. By the 1980s and 1990s, presidents of both parties increasingly appointed justices with ideologies that conformed to the nominating president's partisan base. The emphasis on judicial ideological conformity with partisan norms inevitably resulted in a significant degree of judicial polarization in election law cases. But ideological polarization has its limits as an explanation for the Court's partisan tilt. Throughout the 20th century, conservative and liberal justices sometimes agreed on major election law cases. They continued to do so even after the ideological realignment of the two major parties began in the 1960s and 1970s. Only in the 2000s did conservative and progressive justices chart dramatically different courses in major election law cases. Ideological realignment alone therefore does not fully explain the Court's partisan polarization.

Fourth, this article contends that any account of the Supreme Court's partisan divide must also take into consideration the 21st century's unusually close presidential elections, a development that unfortunately coincided with ideologically polarized judicial appointments. During the 20th century, victorious presidential candidates almost always won by large margins. In an era of landslide elections, individual election law rulings had minimal impact on presidential election outcomes. Moreover, for much of the 20th century, Republican presidents sometimes nominated liberal justices, and Democrats occasionally nominated conservative justices. Presidential election outcomes therefore did not necessarily predict the Court's ideological balance.

But that changed dramatically in the 21st century. The 2000 election ushered in both an era of extraordinarily close elections and an era in which presidential candidates made the Court's ideological composition a focus of their campaigns. With Republican presidents consistently appointing conservative justices and Democrats consistently appointing progressive justices, there was no uncertainty as to how the outcome of presidential elections would affect the Supreme Court's

4. *Bush v. Gore*, 531 U.S. 98 (2000).

5. *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011).

ideological balance of power. A Republican victory meant conservative justices would be appointed and a Democratic victory meant liberal justices would be appointed. In a perfect storm, the ideological polarization of Supreme Court appointments culminated during a time of extremely close presidential races. That in turn meant that election law rulings potentially meant the difference between victory and defeat for the presidential candidates. As election law rulings soared in importance, and as presidential candidates committed to basing their judicial appointments on ideology, the justices' partisan affiliations became disconcertingly accurate predictors of their positions in the most important election law cases.

This article concludes that the justices' polarized approach to election law cases undermines the Court's reputation as a neutral arbiter of the Constitution. Indeed, with conservatives holding a narrow 5-4 majority for much of the 2000s and 2010s, one could reasonably argue that the justices—progressive and conservative alike—had a clear conflict of interest when it came to election law cases. After all, by shaping the rules under which Republicans and Democrats campaigned for the White House, election law cases decided in the 2000s and 2010s had a direct impact on the Court's own ideological balance of power. Accordingly, this article contends that it is imperative that the justices on both ends of the ideological spectrum make a much greater effort to find common ground in election law cases. At a time of hyperpolarization in the country at large, it has never been more important for the Court to avoid the appearance—and reality—of partisan favoritism. But if the justices persist in their polarized approach to election law cases, they risk permanent damage to the Court's standing as a neutral arbiter of justice.

For the sake of manageability, the survey is limited to election law cases involving constitutional issues. This article generally does not address Supreme Court rulings based solely on statutory interpretation, such as cases arising under the Voting Rights Act, the National Voter Registration Act, or the Help America Vote Act. Moreover, even limited as it is to constitutional cases, this article cannot claim to cover every election law case of the last 120 years. The sheer volume of such cases exceeds the reach of a single article. Instead, the article has cast as wide a net as possible to include the most important cases of the 20th and 21st centuries. Although it includes some election law cases of general interest, this survey places a particular focus on election law cases that had a potential impact on the competitive balance between the two major parties.⁶

6. In identifying the most important election law cases involving constitutional issues, I have drawn cases from (1) Supreme Court citations, (2) histories of election law: ROBERT E. MUTCH, *BUYING THE VOTE: A HISTORY OF CAMPAIGN FINANCE REFORM* (2014); ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* (rev. ed. 2009); EDWARD B. FOLEY, *BALLOT BATTLES: THE HISTORY OF DISPUTED ELECTIONS IN THE UNITED STATES* (2016), (3) leading election law casebooks: EDWARD B. FOLEY ET AL., *ELECTION LAW AND LITIGATION: THE JUDICIAL REGULATION OF POLITICS* (2d ed. 2022); JAMES A. GARDNER & GUY-URIEL E. CHARLES, *ELECTION LAW IN THE AMERICAN POLITICAL SYSTEM* (2d ed. 2018); DANIEL HAYS LOWENSTEIN ET AL., *ELECTION LAW: CASES AND MATERIALS* (6th ed. 2017); SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (5th ed. 2016), and (4) an election law treatise: MICHAEL R. DIMINO, SR. ET AL., *UNDERSTANDING ELECTION LAW AND VOTING RIGHTS* (2017).

II. A CENTURY OF NON-PARTISAN ELECTION LAW JURISPRUDENCE: 1898 TO 2000

The modern two-party system began in the 1850s when the Republican Party emerged as the leading challenger to the Democratic Party.⁷ From 1860 to 1908, Republicans won eleven out of thirteen presidential elections.⁸ As a result, from Justice Nathan Clifford's death in 1881 until Lucius Lamar's appointment in 1888, the Court consisted solely of Republican appointees.⁹ For example, all nine justices who heard the famous 1884 *Ku Klux Cases* were Republican appointees.¹⁰ Only after the Democratic President Grover Cleveland appointed four justices in the late 1880s and mid-1890s did Democratic appointees break the Republicans' monopoly on Court seats.¹¹ Accordingly, this article's survey period begins in the 1890s, when Cleveland's appointees provided a point of comparison to the Republican appointees.

Section II examines the major election law cases over a 102-year period, beginning with an 1898 Mississippi disenfranchisement case and ending with a 2000 campaign finance case. Table 1 organizes the major election law cases from 1898 to 2000 (not including *Bush v. Gore*, which is addressed in Section III). Table 1 summarizes the Supreme Court's election law voting patterns based on the partisan identity of the president who nominated each justice. Appendix A includes the names of the justices participating in each case and the justices' respective Martin-Quinn scores where available.¹²

As table 1 demonstrates, justices in the 20th century rarely polarized along partisan lines in election law cases. Unlike the 21st century, when (as Section III below discusses) Democratic-appointed justices and Republican-appointed justices began to divide along partisan lines in major election law cases, there were almost always Republican and Democratic appointees on both sides of the "v" in the 20th century. Majority, concurring, and dissenting opinions routinely saw coalitions of justices appointed by presidents of different parties. Moreover, Republican-

7. For the rise of the Democratic-Republican competition in the 1850s, see DONALD T. CRITCHLOW, *AMERICAN POLITICAL HISTORY: A VERY SHORT INTRODUCTION* 46–59 (2015).

8. *National Political Party Platforms*, THE AMERICAN PRESIDENCY PROJECT, <https://www.presidency.ucsb.edu/documents/presidential-documents-archive-guidebook/party-platforms-and-nominating-conventions-3> (last visited Mar. 23, 2022).

9. *Justices 1789 to Present*, SUPREME COURT OF THE UNITED STATES, https://www.supremecourt.gov/about/members_text.aspx (last visited Mar. 23, 2022).

10. *Ex Parte Yarbrough* (The Ku Klux Cases), 110 U.S. 651 (1884); *Supreme Court Nominations (1789-Present)*, UNITED STATES SENATE, <https://www.senate.gov/legislative/nominations/SupremeCourtNominations1789present.htm> (last visited Mar. 23, 2022).

11. *Supreme Court Nominations (1789-Present)*, *supra* note 9.

12. The "Martin-Quinn score" measures the voting record of all justices since the 1930s by analyzing where each individual justice falls on the Court's ideological continuum each term. See *Project Description*, MARTIN-QUINN SCORES, <https://mqscores.lsa.umich.edu/index.php> (last visited Mar. 23, 2022); Andrew D. Martin & Kevin M. Quinn, *Dynamic Ideal Point Estimation via Markov Chain Monte Carlo for the U.S. Supreme Court, 1953–1999*, 10 *POL. ANALYSIS* 134 (2002) (current data available at <https://mqscores.lsa.umich.edu/measures.php>) ("We recommend using the posterior mean (post_mn) as the estimate the ideal point of each justice in each term.").

appointed justices frequently voted against the partisan interests of the Republican Party and Democratic-appointed justices frequently voted against the partisan interests of the Democratic Party. In short, partisan influences played no discernible role in the vast majority of election law cases in the 20th century.

Table 1 lists the election law cases in chronological order from 1898 to 2000. As table 1 demonstrates, the partisan identity of the president who appointed the justice had very little predictive power in how an individual justice voted on the election law cases of the 20th century.

TABLE 1: Election Law Cases 1898–2000

Case	Year	Majority/ Plurality	Concur	Part Concur/ Dissent	Dissent
Williams v. Mississippi	1898	3D, 6R			
Taylor and Marshall v. Beckham (No. 1)	1900	3D, 2R	1R		3R
Wiley v. Sinkler	1900	3D, 6R			
Giles v. Harris	1903	3D, 3R			3R
Pope v. Williams	1904	3D, 6 R			
Guinn v. United States	1915	1D, 7R			
Myers v. Anderson	1915	1D, 7R			
United States v. Mosley	1915	1D, 6R			1R
Ohio ex. rel. Davis v. Hildebrandt	1916	2D, 5R			
Newberry v. United States	1921	1D, 3R	2D, 2R	1D	
Nixon v. Herndon	1927	2D, 7R			
Smiley v. Holm	1932	2D, 6R			
Nixon v. Condon	1932	1D, 4R			1D, 3R
Burroughs v. United States	1934	1D, 7R			1D
Grove v. Townsend	1935	2D, 7R			
Breedlove v. Suttles	1937	3D, 6R			
Lane v. Wilson	1939	3D, 3R			1D, 1R
United States v. Classic	1941	2D, 2R			3D
Smith v. Allwright	1944	6D, 1R	1D		1R
Colegrove v. Green	1946	3D	1D		3D
United States v. C.I.O.	1948	4D	5D		
Terry v. Adams	1953	4D*	4D		1D
United States v. Automobile Workers	1957	3D, 2R			2D, 1R
Lassiter v. Northampton County Board of Elections	1959	4D, 5R			
Gomillion v. Lightfoot	1960	4D, 4R	1R		
Baker v. Carr	1960	1D, 2R	2D, 1R		1D, 1R
Gray v. Sanders	1963	4D, 2R	1D, 1R		1R
Anderson v. Martin	1964	5D, 4R			
Wesberry v. Sanders	1964	4D, 2R		1D	2R
Wright v. Rockefeller	1964	3D, 3R	1R		2D
Reynolds v. Sims	1964	4D, 2R	1D, 1R		1R
Lucas v. 44th General Assembly of Colorado	1964	4D, 2R			1D, 2R
Forston v. Dorsey	1965	4D, 3R	1R		1D
Carrington v. Rash	1965	5D, 2R			1R
United States v. Mississippi	1965	5D, 3R	1R		

Louisiana v. United States	1965	5D, 3R	1R		
South Carolina v. Katzenbach	1966	4D, 4R		1D	
Harper v. Virginia State Board of Elections	1966	4D, 2R			1D, 2R
Burns v. Richardson	1966	4D, 2R	2R		
Mills v. State of Alabama	1966	4D, 2R	1D, 2R		
Katzenbach v. Morgan	1966	4D, 2R	1D		2R
Forston v. Morris	1966	3D, 2R			2D, 2R
Swann v. Adams	1967	5D, 2R			2R
Kilgarlin v. Hill	1967	3D, 2R	1D		1D, 2R
Moody v. Flowers	1967	5D, 4R			
Dusch v. Davis	1967	5D, 2R	2R		
Avery v. Midland County	1968	3D, 2R			1D, 2R
Williams v. Rhodes	1968	3D, 1R	1D, 1R	1D, 1R	1R
Hunter v. Erickson	1969	4D, 2R	2R		1D
Allen v. State Board of Elections	1969	2D, 3R		2D, 1R	1D
Kirkpatrick v. Preisler	1969	3D, 3R	1D		1D, 1R
Wells v. Rockefeller	1969	3D, 2R	1D		1D, 2R
McDonald v. Board of Election Commissioners of Chicago	1969	5D, 2R	2R		
Moore v. Ogilvie	1969	5D, 2R			2R
Red Lion Broadcasting Co. v. FEC	1969	3D, 4R			
Oregon v. Mitchell	1970	1D		3D, 5R	
Monitor Patriot Co. v. Roy	1971	3D, 5R**	1D		
Ocala Star-Banner Co. v. Damron	1971	1D, 5R	1D	2D	
Whitcomb v. Chavis	1971	2D, 2R		2D, 3R	
Abate v. Mundt	1971	3D, 2R	2R		1D, 1R
Jenness v. Fortson	1971	3D, 4R	1D, 1R		
Dunn v. Blumstein	1972	3D, 2R	1R		1R
Pipefitters Local Union No. 562 v. U.S.	1972	3D, 3R			2R
O'Brien v. Brown	1972	5R	1R	1D	2D
Mahan v. Howell	1973	1D, 4R		2D, 1R	
Marston v. Lewis	1973	1D, 5R			2D, 1R
Gaffney v. Cummings	1973	1D, 5R			2D, 1R
White v. Regester	1973	1D, 5R		2D, 1R	
White v. Weiser	1973	2D, 3R	1D, 3R		
U.S. Civil Service Commission v. National Assoc. of Letter Carriers	1973	6R			2D, 1R
Storer v. Brown	1974	1D, 5R			2D, 1R
Richardson v. Ramirez	1974	1D, 5R			2D, 1R
Miami Herald Publishing Co. v. Tornillo	1974	2D, 3R	1D, 3R		
Cousins v. Wagoner	1975	3D, 2R	3R	1R	
Buckley v. Valeo (expenditure limits)	1976	1D, 7R			1D
Buckley v. Valeo (contribution limits)	1976	2D, 5R			2R
Buckley v. Valeo (mandatory reporting/disclosure)	1976	2D, 6R			1R

Buckley v. Valeo (public financing)	1976	2D, 5R			2R
Elrod v. Burns	1976	2D, 1R	2R		3R
United Jewish Org. of Williamsburgh v. Carey	1977	1D, 1R	2R	3R	1R
First National Bank of Boston v. Bellotti	1978	4R	1R		2D, 2R
Holt Civic Club v. City of Tuscaloosa	1978	5R	1R		2D, 1R
City of Mobile v. Bolder	1980	4R	2R		2D, 1R
City of Rome v. United States	1980	2D, 2R	2R		3R
Democratic Party of the U.S. v. Wisconsin ex rel. La Follette	1981	2D, 4R			3R
Brown v. Hartlage	1982	2D, 5R	2R		
Clements v. Fashing	1982	4R	1R		2D, 2R
Washington v. Seattle School District No. 1	1982	2D, 3R			4R
Rogers v. Lodge	1982	2D, 4R			3R
Brown v. Socialist Workers '74 Campaign Committee	1982	2D, 3R		4R	
FEC v. National Right to Work Committee	1982	2D, 7R			
Anderson v. Celebrezze	1983	1D, 4R			1D, 3R
Karcher v. Daggett	1983	1D, 3R	1R		1D, 3R
Brown v. Thomson	1983	3R	2R		2D, 2R
FEC v. National Conservative PAC	1985	5R		2R	2D
Hunter v. Underwood	1985	2D, 6R			
Thornburg v. Gingles	1986	1R	1D, 4R	1D, 2R	
Davis v. Bandemer	1986	2D, 2R	3R	2R	
Munro v. Socialist Workers Party	1986	1D, 6R			1D, 1R
Tashjian v. Republican Party of Connecticut	1986	2D, 3R			4R
FEC v. Massachusetts Citizens for Life, Inc.	238	1D, 3R	1R	1D, 3R	
Meyer v. Grant	1988	2D, 7R			
Eu v. San Francisco Co. Democratic Central Committee	1989	2D, 5R	1R		
Austin v. Michigan Chamber of Commerce	1990	2D, 2R	2R		3R
Rutan v. Republican Party of Illinois	1990	2D, 2R	1R		4R
Burson v. Freeman	1992	1D, 2R	2R		3R
Burdick v. Takushi	1992	1D, 5R			3R
Voinovich v. Quilter	1993	1D, 8 R			
Shaw v. Reno	1993	5R			1D, 3R
McIntyre v. Ohio Elections Commission	1995	1D, 4R	1D, 1R		2R
U.S. Term Limits v. Thornton	1995	2D, 2R	1R		4R
Miller v. Johnson	1995	4R	1R		2D, 2R
Wisconsin v. City of New York	1996	2D, 7R			
Morse v. Republican Party	1996	1D, 1R	1D, 2R		4R

Shaw v. Hunt	1996	5R			2D, 2R
Bush v. Vera	1996	1R	4R		2D, 2R
Colorado Republican Federal Campaign Committee v. FEC	1996	1D, 2R		4R	1D, 1R
Timmons v. Twin Cities Area New Party	1997	1D, 5R			1D, 2R
Buckley v. American Constitutional Law Foundation	1999	1D, 4R	1R	1D, 1R	1R
Lopez v. Monterey Co.	1999	2D, 4R	2R		1R
Nixon v. Shrink Missouri Government PAC	2000	3R	2D, 1R		3R
Rice v. Cayetano	2000	5R	1D, 1R		1D, 1R
California Democratic Party v. Jones	2000	1D, 5R	1R		1D, 1R

*One Democratic appointee wrote a separate opinion that is counted with the majority/plurality in this table.

**Two Democratic appointees wrote a separate opinion that is counted with the majority/plurality in this table.

SUMMARY OF SURVEY RESULTS (1898–2000)

- **Total number of cases in table 1 survey period (1898–2000): 120**
- **Number (percentage) of cases with both Democratic and Republican appointees in the majority/concurring: 105 (87.5%)**
- **Number (percentage) of cases with only Democratic or only Republican appointees in the majority/concurring: 15 (12.5%)**
- **Total number (percentage) of cases with complete polarization along partisan lines (all Democratic appointees on the opposite side of all Republican appointees): 2 (1.6%)**

Discussion

As table 1 demonstrates, the twentieth century saw an extraordinary level of bipartisan agreement among Supreme Court justices. Over 87% of the election law cases in the 1898 to 2000 survey period found both Republican and Democratic appointees in the majority or concurring opinions. Moreover, three of the fifteen cases with appointees of only one party joining the majority or concurring opinions came in the late 1940s and early 1950s when only Democratic appointees served on the Court. Most noteworthy of all, only 2 of the 120 survey cases saw complete polarization with all Republican appointees on the opposite side of all Democratic appointees.

The bipartisan voting patterns in table 1 are particularly striking in light of the politically charged nature of the cases that came before the Supreme Court. Election law cases in the 20th century involved the most fundamental—and politically divisive—constitutional issues of the day.

For example, the Court heard a dozen major voting rights cases challenging southern election laws from the 1900s through the 1960s. In the late 1800s and early 1900s, white Democrats in the South disenfranchised Black Republicans by

adopting grandfather clauses, whites-only primaries, and discriminatory voter registration tests.¹³ Accordingly, when legal challenges to the South's white supremacist political order reached the Supreme Court, the justices understood their rulings would have clear political ramifications. A ruling in favor of the Black challengers effectively constituted a ruling against the political interests of the white supremacist Democratic Party in the South.

Yet, from the 1910s through the 1960s, Democratic-appointed justices joined Republican-appointed justices in majority and concurring opinions that struck down laws enacted by Southern Democrats. For example, in the 1915 case of *Guinn v. United States*, the Supreme Court struck down Oklahoma's racially discriminatory grandfather clause.¹⁴ The Oklahoma Democratic Party had used the grandfather clause to exclude Black Republicans from voting.¹⁵ Notwithstanding the fact that invalidating the grandfather clause undermined the Democratic Party, Chief Justice Edward White—a Louisiana Democrat and a Confederate veteran of the Civil War—wrote the majority opinion for the unanimous Court.¹⁶

A decade later in the 1927 case of *Nixon v. Herndon*, two Democratic appointees—James McReynolds and Louis Brandeis—joined seven Republican appointees in striking down a Texas law that allowed the Texas Democratic Party to establish a whites-only primary.¹⁷ The bipartisan pattern in voting rights cases did not change when Democratic appointees became a majority on the Court. For example, in the 1944 case of *Smith v. Allwright*, the Court held that the Texas Democratic Party constituted a state actor when it adopted a whites-only party platform.¹⁸ Six Democratic appointees joined one Republican appointee in ruling that Texas Democrats' whites-only platform violated the Fifteenth Amendment.¹⁹

The reverse was also true, even when the Court got its rulings wrong. In two of the Court's worst turn-of-the-century rulings, Republican-appointed justices joined Democratic-appointed justices in ruling against Black Republican legal challenges to Southern disenfranchisement. In the 1898 case of *Williams v. Mississippi*, six Republican-appointed justices and three Democratic-appointed justices held that Mississippi's suffrage laws did not facially discriminate against

13. MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 8–9, 28–39 (2004).

14. *Guinn v. United States*, 238 U.S. 347, 368 (1915).

15. Benno C. Schmidt, Jr., *Principle and Prejudice: The Supreme Court and Race in the Progressive Era. Part 3: Black Disfranchisement from the KKK to the Grandfather Clause*, 82 COLUM. L. REV. 835, 852 (1982).

16. *Guinn*, 238 U.S. at 354. On White's career, see REBECCA S. SHOEMAKER, THE WHITE COURT: JUSTICES, RULINGS, AND LEGACY 41–46 (2004); Andrew Kent, *The Rebel Soldier Who Became Chief Justice of the United States: The Civil War and Its Legacy for Edward Douglass White of Louisiana*, 56 AM. J. LEGAL HIST. 209, 213 (2016) (“publicly identified by his service as a former Confederate soldier”); Kent, *supra*, at 230 (“White was the son of a Louisiana governor and, after the war, was a rising Democratic politician . . .”).

17. *Nixon v. Herndon*, 273 U.S. 536, 541 (1927).

18. *Smith v. Allwright*, 321 U.S. 649 (1944).

19. *Id.* at 650.

Black voters in violation of the Fourteenth Amendment.²⁰ Five years later in *Giles v. Harris*, three Republican-appointed justices joined three Democratic-appointed justices in holding that the Supreme Court lacked jurisdiction under the Fifteenth Amendment to hear a Black Republican's challenge to Alabama's voter registration policies.²¹ As Professor Richard Pildes has observed, the Court's ruling in *Giles* permitted "the virtual elimination of black citizens from political participation in the South."²² But what is also striking about *Giles* is the bipartisan nature of the ruling. Republican appointees joined Democratic appointees in creating a majority ruling that harmed Republican voters and helped Southern Democrats hold onto power. Thus, whether ruling against the South's disenfranchisement policies or in favor of them, Republican and Democratic justices acted in unison.

Republican appointees continued to join Democratic appointees in voting rights majorities even after African American voters moved from the Republican Party to the Democratic Party in the 1930s and 1940s.²³ For example, in the 1965 case of *Louisiana v. United States*, the Court unanimously struck down Louisiana's use of a constitutional "interpretation test" to disenfranchise Black voters.²⁴ Four Republican appointees joined five Democratic appointees in holding that Louisiana's constitutional interpretation test violated the Fifteenth Amendment.²⁵ In addition, three Republican appointees joined the five Democratic appointees in holding that Louisiana's disenfranchisement of Black voters violated the Fourteenth Amendment.²⁶

The bipartisan trend continued throughout the 20th century. In fact, the few exceptions proved the rule. One of the rare cases to find only appointees of one party joining the majority and concurring opinions was the famous 1976 case of *First National Bank of Boston v. Bellotti*.²⁷ With four Republican appointees forming a plurality, and one Republican appointee writing a concurring opinion, the Court held that the First Amendment applied to corporations engaged in expenditures related to state ballot measures.²⁸ Yet, fourteen years later a bipartisan majority on the Court took a far different approach to corporate political speech. In the 1990

20. *Williams v. Mississippi*, 170 U.S. 213, 225 (1898) ("[The provisions of the Mississippi Constitution, with regard to elections,] do not on their face discriminate between the races, and it has not been shown that their actual administration was evil, only that evil was possible under them.").

21. *Giles v. Harris*, 189 U.S. 475, 482 (1903).

22. Richard H. Pildes, *Democracy, Anti-Democracy, and the Canon*, 17 CONST. COMMENT. 295, 297 (2000).

23. NANCY J. WEISS, *FAREWELL TO THE PARTY OF LINCOLN: BLACK POLITICS IN THE AGE OF F.D.R.* 180 (1983) ("In 1936, with the political choices made clear-cut, blacks joined the massive migration to the Democratic party."); *Id.* at 288 ("Nationwide, the President was estimated to be the choice of 67 percent of black Americans in 1940, as compared with 71 percent in 1936.").

24. *Louisiana v. United States*, 380 U.S. 145, 152–53 (1965).

25. *Id.* at 147, 156.

26. *Id.* at 152, 156.

27. *First Nat'l Bank v. Bellotti*, 435 U.S. 765 (1978).

28. *Id.* at 784 ("We thus find no support in the First or Fourteenth Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation . . .").

case of *Austin v. Michigan State Chamber of Commerce*,²⁹ the Court upheld the constitutionality of Michigan's ban on corporations using general treasury funds for independent expenditures in state candidate elections.³⁰ Two Democratic appointees joined two Republican appointees in the plurality opinion³¹ and two Republican appointees concurred with the holding.³²

Moreover, in the late 1940s and early 1950s when only Democratic appointees sat on the Court, the justices went to great lengths to avoid issuing rulings that gave the Democratic Party a competitive advantage. For example, in *Terry v. Adams*,³³ the Supreme Court barred a Democratic Party organization from using white supremacist tactics that had kept it in power for decades.³⁴ Similarly, in *United States v. Congress of Industrial Organizations ("C.I.O.")*,³⁵ the Court's Democratic appointees went out of their way to issue a ruling beneficial to both parties. The *C.I.O.* case arose from federal prosecutors' effort to enforce a ban on in-house political expenditures by labor unions, a key Democratic constituency.³⁶ The government claimed that the ban was necessary to prevent "the aggregate wealth of entities, organized primarily for nonpolitical purposes . . . to exercise a disproportionate influence on federal elections. . . ."³⁷ The Supreme Court unanimously rejected the government's arguments, holding that the statute in question did not prohibit the in-house publications of labor unions *or* corporations, a key Republican constituency.³⁸ Moreover, the Court warned that in any case the Constitution did not permit Congress to ban political advocacy by in-house publications of labor unions and corporations.³⁹ Thus, although Democrats

29. *Austin v. Mich. State Chamber of Com.*, 494 U.S. 652 (1990).

30. *Id.* at 666 ("we hold that § 54(1) does not violate the First Amendment"), 668 ("We therefore hold that the Act does not violate the Equal Protection Clause. . . . Michigan identified as a serious danger the significant possibility that corporate political expenditures will undermine the integrity of the political process, and it has implemented a narrowly tailored solution to that problem.").

31. *Id.* at 653.

32. *Id.* at 669 (Brennan, J., concurring), 678 (Stevens, J., concurring).

33. *Terry v. Adams*, 345 U.S. 461 (1953).

34. *Id.* at 469 ("The Democratic primary and the general election have become no more than the perfunctory ratifiers of the choice that has already been made in Jaybird elections . . .").

35. *United States v. Cong. of Indus. Orgs.*, 335 U.S. 106 (1948).

36. See ROBERT E. MUTCH, *BUYING THE VOTE: A HISTORY OF CAMPAIGN FINANCE REFORM* 106–12 (2014).

37. *Id.* at 109. See also *C.I.O.*, 335 U.S. at 122, 124.

38. *C.I.O.*, 335 U.S. at 107, 123 ("It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication. . . . We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an 'expenditure in connection with any election' of candidates for federal office intended to outlaw such a publication").

39. *Id.* at 121 ("If § 313 were construed to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising their members, stockholders or customers of danger or advantage to their interests from the adoption of measures, or the election to office of men espousing such measures, the gravest doubt would arise in our minds as to its constitutionality.").

dominated the Court, the justices issued a ruling that did not disturb the competitive balance between the parties.

By any measure, therefore, the 20th century Supreme Court adjudicated election law cases in a meticulously bipartisan manner.

III. THE *BUSH V. GORE* TURNING POINT

As table 2 below demonstrates, the trend reversed itself dramatically in the 21st century. The turning point was the case of *Bush v. Gore*. In the decades since that controversial ruling, election law cases have divided the justices along partisan lines to an unprecedented degree. In the 20th century, only 12.5% of cases saw majorities and concurrences made up of only Republican appointees or only Democratic appointees. But from *Bush v. Gore* in 2000 to *Citizens United v. Federal Election Commission* in 2010, the percentage of cases involving majorities and concurrences consisting exclusively of appointees of one party shot up to 35%.

TABLE 2: Election Law Cases, 2000 to 2010

Case	Year	Majority/ Plurality	Concur	Part Concur/ Dissent	Dissent
<i>Bush v. Gore</i>	2000	2R	3R		2D, 2R
<i>Cook v. Gralike</i>	2001	2D, 3R	4R		
<i>Easley v. Cromartie</i>	2001	2D, 3R			4R
<i>FEC v. Colorado Republican Federal Campaign Committee</i>	2001	2D, 3R			4R
<i>Republican Party of Minnesota v. White</i>	2002	3R	2R		2D, 2R
<i>McConnell v. FEC</i>	2003	4R*		2D, 3R	
<i>FEC v. Beaumont</i>	2003	2D, 4R	1R		2R
<i>Vieth v. Jubelirer</i>	2004	4R	1R		2D, 2R
<i>Clingman v. Beaver</i>	2005	4R	1D, 1R		1D, 2R
<i>Purcell v. Gonzalez</i>	2006	2D, 6R	1R		
<i>Randall v. Sorrell</i>	2006	1D, 1R	4R		1D, 2R
<i>League of United Latin American Citizens v. Perry</i>	2006	3R		1D, 3R**	1D, 1R
<i>Davenport v. Washington Educ. Ass'n.</i>	2007	1D, 5R	1D, 2R		
<i>FEC v. Wisconsin Right to Life</i>	2007	1R	4R		2D, 2R
<i>New York State Bd. of Elections v. Lopez Torres</i>	2008	1D, 4R	1D, 3R		
<i>Washington State Grange v. Washington Republican Party</i>	2008	2D, 3R	2R		2R
<i>Crawford v. Marion County Election Board</i>	2008	3R	3R		2D, 1R
<i>Davis v. FEC</i>	2008	5R		2D, 2R	
<i>Citizens United v. FEC</i>	2010	1R	3R	3D, 2R***	
<i>Doe v. Reed</i>	2010	2R	3D, 3R		1R

*Two Republican appointees wrote part of the majority opinion but also partly concurred/dissented.

**Two Republican appointees viewed mid-decade partisan gerrymandering as non-justiciable and one Democratic appointee and one Republican appointee viewed mid-decade partisan gerrymandering as not unconstitutional per se.

***One Republican appointee concurred on the independent expenditures holding and dissented on the disclaimer and disclosure holding; three Democratic appointees and one Republican appointee dissented on the independent expenditures holding and concurred on the disclaimer and disclosure holding.

SUMMARY OF SURVEY RESULTS (2000–2010)

- **Total number of cases in table 2 survey period (2000–2010): 20**
- **Number (percentage) of cases with both Democratic and Republican appointees in the majority/concurring: 13 (65%)**
- **Number (percentage) of cases with only Democratic or only Republican appointees in the majority/concurring: 7 (35%)**
- **Total number (percentage) of cases with *complete polarization* along partisan lines: 0 (0%)**

Discussion

As table 2 demonstrates, the *Bush v. Gore* case represented a historic turning point.⁴⁰ It ushered in a new era in which the justices were increasingly divided along partisan lines. The *Bush* case arose from the 2000 presidential election controversy over Texas Governor George W. Bush's 537-vote lead over Vice President Al Gore in the decisive state of Florida.⁴¹ In a 5-4 decision, the United States Supreme Court ruled that the Florida Supreme Court's failure to include standards for ascertaining voter intent in ordering manual recounts of the state's presidential election violated the Fourteenth Amendment.⁴² One day after the Court's ruling, Gore conceded the race to Bush.⁴³ The United States Supreme Court's decision was intensely controversial, with critics claiming that the Supreme Court had improperly ended the recount and delivered the election to Bush.⁴⁴ Fanning the flames of the controversy was the fact that only Republican appointees ruled in favor of Bush, the Republican candidate.⁴⁵

In the decade following *Bush v. Gore*, the Court would see six more major election law cases in which only Republican appointees joined the majority or

40. *Bush v. Gore*, 531 U.S. 98 (2000).

41. FOLEY, *supra* note 6, at 279–80.

42. *Bush*, 531 U.S. at 106 (“The want of those rules here has led to unequal evaluation of ballots in various respects.”), 110 (“[I]t is obvious that the recount cannot be conducted in compliance with the requirements of equal protection and due process without substantial additional work.”).

43. FOLEY, *supra* note 6, at 300.

44. Larry D. Kramer, *The Supreme Court in Politics*, in *THE UNFINISHED ELECTION OF 2000* 105 (Jack Rakove ed., 2001).

45. On the dispute over *Bush v. Gore*, see FOLEY, *supra* note 6, at 279–305; Pamela S. Karlan, *Equal Protection: Bush v. Gore and the Making of a Precedent*, in *THE UNFINISHED ELECTION OF 2000*, 159 (Jack Rakove ed., 2001).

concurring opinions: *Republican Party of Minnesota v. White*,⁴⁶ *Vieth v. Jubelirer*,⁴⁷ *Federal Election Commission v. Wisconsin Right to Life*,⁴⁸ *Crawford v. Marion County Election Board*,⁴⁹ *Davis v. Federal Election Commission*,⁵⁰ and *Citizens United v. Federal Election Commission*.⁵¹

The *Crawford* and *Citizens United* rulings generated partisan controversies as intense as *Bush v. Gore*. In *Crawford* the Court upheld Indiana's Voter ID law.⁵² The Republican-controlled state legislature had adopted the Voter ID measure in a party-line vote, with all Republicans voting in favor and all Democrats voting against.⁵³ In a majority made up exclusively of Republican appointees, the Supreme Court asserted that "[t]here is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process."⁵⁴

Although the majority conceded that "partisan interests" may have motivated Indiana Republicans, the Republican-appointed justices insisted that "on the basis of the record that has been made in this litigation, we cannot conclude that the statute imposes 'excessively burdensome requirements' on any class of voters."⁵⁵

The ruling generated a storm of controversy because of its potential impact on the competitive standing of the two parties.⁵⁶ Democrats feared that the *Crawford* ruling would depress turnout among Democratic core constituencies.⁵⁷ As Professor Joshua Douglas explained, "[t]he populations that are statistically less likely to possess a qualifying photo identification—racial and ethnic minorities, poor people, the elderly, and students—tend to vote for Democratic candidates.

46. *Republican Party of Minn. v. White*, 536 U.S. 765 (2002). *See id.* at 781 ("the notion that the special context of electioneering justifies an abridgment of the right to speak out on disputed issues sets our First Amendment jurisprudence on its head") (emphasis omitted), 788 ("The Minnesota Supreme Court's canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violates the First Amendment.").

47. *Vieth v. Jubelirer*, 541 U.S. 267 (2004). *See id.* at 305 ("We conclude that neither Article I, § 2, nor the Equal Protection Clause, nor (what appellants only fleetingly invoke) Article I, § 4, provides a judicially enforceable limit on the political considerations that the States and Congress may take into account when districting."); Lisa Marshall Manheim, *Belling the Cat: The Story of Vieth v. Jubelirer*, in *ELECTION LAW STORIES* 179 (Joshua A. Douglas & Eugene D. Mazo eds., 2016).

48. *FEC v. Wis. Right to Life*, 551 U.S. 449 (2007).

49. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202 (2008).

50. *Davis v. FEC*, 554 U.S. 724 (2008).

51. *Citizens United v. FEC*, 558 U.S. 310, 365, 371 (2010).

52. *Crawford*, 553 U.S. at 196, 202.

53. *Id.* at 203 ("all of the Republicans in the General Assembly voted in favor of SEA 483 and the Democrats were unanimous in opposing it").

54. *Id.* at 196.

55. *Id.* at 202.

56. *See* Joshua A. Douglas, *The History of Voter ID Laws and the Story of Crawford v. Marion County Election Board*, in *ELECTION LAW STORIES* 453 (Joshua A. Douglas & Eugene D. Mazo eds., 2016).

57. *Id.* at 456.

Thus, a photo ID requirement will likely hurt Democratic-leaning voters the most.”⁵⁸ Indeed, after the Court announced the *Crawford* decision, Democratic House Speaker Nancy Pelosi issued a press release asserting that “[t]he Court’s decision today places obstacles to the fundamental rights of American citizens—especially the poor, the elderly, and individuals with disabilities—to participate in the electoral process.”⁵⁹

The *Citizens United* case likewise gave rise to a sharp partisan divide.⁶⁰ In a 5-4 ruling in *Citizens United*, the Court held that the government could not ban or restrict electioneering communications by independent expenditure groups.⁶¹ The five justice majority consisted exclusively of Republican appointees.⁶² Although the justices also upheld the Bipartisan Campaign Reform Act’s disclaimer and disclosure requirements by an 8-1 vote,⁶³ the 5-4 independent expenditures ruling dominated the public’s attention. Indeed, Capitol Hill’s reaction to the independent expenditures component of the *Citizens United* ruling reflected an intense partisan divide in the country at large.⁶⁴ In celebrating what he described as the Court’s “monumental” ruling, Republican Senator Mitch McConnell asserted that “the Supreme Court took an important step in the direction of restoring the First Amendment rights of these groups by ruling that the Constitution protects their right to express themselves about political candidates and issues up until Election Day.”⁶⁵ In contrast, Democratic officeholders condemned the *Citizens United* decision’s invalidation of restrictions on outside groups. Democratic Senator Russ Feingold declared that as a result of the *Citizens United* decision “our elections are vulnerable to the influence of corporate power, which threatens to drown out the voices of individual Americans.”⁶⁶ Likewise, Democratic Senator John Kerry asserted that “the Supreme Court’s ruling in *Citizens United* will produce an even bigger tidal wave of special interest advertising

58. *Id.* (internal footnote omitted).

59. Press Release, Nancy Pelosi, Speaker of the House of Representatives, Pelosi Statement on Supreme Court Decision on Voter ID (Apr. 28, 2008).

60. *Citizens United v. FEC*, 558 U.S. 310 (2010).

61. *Id.* at 365 (“*Austin* should be and now is overruled. We return to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech on the basis of the speaker’s corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.”) (internal citation omitted).

62. *Id.* at 318, 365.

63. *Id.* at 371 (“We find no constitutional impediment to the application of BCRA’s disclaimer and disclosure requirements to a movie broadcast via video-on-demand. And there has been no showing that, as applied in this case, these requirements would impose a chill on speech or expression.”).

64. Chris Good, *Citizens United Decision: Republicans Like It, Liberals Don’t*, ATL. (Jan. 21, 2010), <https://www.theatlantic.com/politics/archive/2010/01/citizens-united-decision-republicans-like-it-liberals-dont/33935/>. See also Heather K. Gerken & Erica J. Newland, *The Citizens United Trilogy: The Myth, the True Tale, and the Story Still to Come*, in ELECTION LAW STORIES 359 (Joshua A. Douglas & Eugene D. Mazo eds., 2016).

65. Politico Staff, *Pols Weigh in on Citizens United Decision*, POLITICO (Jan. 21, 2010, 12:25 PM), <https://www.politico.com/story/2010/01/pols-weigh-in-on-citizens-united-decision-031798>.

66. 156 CONG. REC. 14,028 (2010).

funded by large faceless corporations, drowning out the views and opinions of our citizens.”⁶⁷

Crawford and *Citizens United* thus represented two particularly important cases in terms of their practical effect on campaigning. If anything, therefore, the statistics of the 2000s understated the extent to which the justices had polarized along partisan lines in the major election law cases. When it came to the biggest cases, the Court’s polarization was stark. Moreover, *Crawford* and *Citizens United* represented just the first phase of partisan polarization among the justices. The 2010s and early 2020s would see the Court’s polarization reach new and unprecedented levels of intensity in election law cases.

IV. A POLARIZED COURT

The Court’s polarization has become even more apparent since the 2011 *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett* ruling.⁶⁸ To be sure, in some election law cases, such as *Evenwel v. Abbott*⁶⁹ and *Harris v. Arizona Independent Redistricting Commission*,⁷⁰ the Court has managed to maintain a united front. But in many of the election law cases with the greatest potential to affect the parties’ competitive standing on Election Day, the votes of each Republican-appointed justice often mirror the position of the Republican Party and the votes of each Democratic-appointed justice often mirror the position of the Democratic Party.

TABLE 3: Election Law Cases, 2011–2022

Case	Year	Majority/ Plurality	Concur	Part Concur/ Dissent	Dissent
Arizona Free Enterprise Club’s Freedom PAC v. Bennett	2011	5R			4D
American Tradition Partnership v. Bullock	2012	5R			4D
Tennant v. Jefferson Co. Commission	2012	2D, 5R			
Arizona v. Inter-Tribal Council of Arizona, Inc.	2013	4D, 2R	1R		2R
Shelby County v. Holder	2013	4R	1R		4D
McCutcheon v. FEC	2014	4R	1R		4D
Arizona State Legislature v. Arizona Independent Redistricting Commission	2015	4D, 1R			4R

67. 156 CONG. REC. 14,029 (2010).

68. *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011).

69. *Evenwel v. Abbott*, 578 U.S. 54 (2016).

70. *Harris v. Ariz. Indep. Redistricting Comm’n*, 578 U.S. 253 (2016).

Alabama Legislative Black Caucus v. Alabama	2015	4D, 1R			4R
Evenwel v. Abbott	2016	4D, 2R	2R		
Harris v. Arizona Independent Redistricting Commission	2016	4D, 4R			
Heffernan v. City of Paterson	2016	4D, 2R			2R
Bethune-Hill v. Virginia State Bd. of Elections	2017	4D, 2R	1R	1R	
Cooper v. Harris	2017	4D	1R	3R	
Minnesota Voters Alliance v. Mansky	2018	2D, 5R			2D
Abbott v. Perez	2018	3R	2R		4D
Rucho v. Common Cause	2019	5R			4D
Chiafalo v. Washington	2020	4D, 3R	2R		
Brnovich v. Democratic National Committee	2021	4R	2R		3D
FEC v. Ted Cruz for Senate	2022	6R			3D

SUMMARY OF SURVEY RESULTS (2011–2022)

- **Total number of cases in table 3 survey period (2011–2022): 19**
- **Number (percentage) of cases with both Democratic and Republican appointees in the majority/concurring: 11 (58%)**
- **Number (percentage) of cases with only Democratic or only Republican appointees in the majority/concurring: 8 (42%)**
- **Total number (percentage) of cases with *complete polarization* along partisan lines: 8 (42%)**

Discussion

As table 3 demonstrates, the trends of the 2000s accelerated in the 2010s and early 2020s. In eight cases between 2011 and 2022, the Court completely polarized along partisan lines, with all Republican appointees in the majority or concurring, and all Democratic appointees in the dissent: *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*;⁷¹ *American Tradition Partnership, Inc. v. Bullock*;⁷² *Shelby County v.*

71. *Ariz. Free Enter. Club's Freedom Club PAC*, 564 U.S. at 721.

72. *Am. Tradition P'ship, Inc. v. Bullock*, 567 U.S. 516 (2012).

Holder,⁷³ *McCutcheon v. Federal Election Commission*,⁷⁴ *Abbott v. Perez*,⁷⁵ *Rucho v. Common Cause*,⁷⁶ *Brnovich v. Democratic National Committee*,⁷⁷ and *FEC v. Ted Cruz for Senate*.⁷⁸

Those eight cases represented the most important election law cases of the decade. For example, in a 5-4 ruling in *Arizona Free Enterprise*, the Court struck down an Arizona matching funds provision that increased public funding for candidates facing well-funded private opponents and outside groups.⁷⁹ Likewise, in a 5-4 ruling in *Shelby County*, the Court ruled that the outdated nature of the Voting Rights Act's ("VRA") preclearance coverage formula violated the Constitution.⁸⁰ The Court's ruling cleared the way for the adoption of new voting restrictions in red states that had previously been subject to preclearance under the VRA.⁸¹ And in a 5-4 ruling in *McCutcheon*, the Court struck down on First Amendment grounds the aggregate limits on the total amount of campaign contributions an individual donor may make.⁸²

The trend has become even more pronounced in the past four years. In a 5-4 ruling in the 2018 *Abbott* case, the Court largely upheld a Texas redistricting plan adopted by the Republican legislature against an equal protection and VRA challenge.⁸³ In a 5-4 ruling in the 2019 *Rucho* case, the Court held that partisan

73. *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).

74. *McCutcheon v. FEC*, 572 U.S. 185 (2014).

75. *Abbott v. Perez*, 138 S. Ct. 2305 (2018).

76. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019).

77. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321 (2021).

78. *FEC v. Ted Cruz for Senate*, No. 21-12, 2022 WL 1528348 (U.S. May 16, 2022).

79. *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 754–55 (2011) ("Arizona's program gives money to a candidate in direct response to the campaign speech of an opposing candidate or an independent group. It does this when the opposing candidate has chosen not to accept public financing, and has engaged in political speech above a level set by the State. The professed purpose of the state law is to cause a sufficient number of candidates to sign up for public financing, which subjects them to the various restrictions on speech that go along with that program. This goes too far; Arizona's matching funds provision substantially burdens the speech of privately financed candidates and independent expenditure groups without serving a compelling state interest.") (internal citation omitted).

80. *Shelby Cnty. v. Holder*, 570 U.S. 529, 551 (2013) ("Coverage today is based on decades-old data and eradicated practices."); *id.* at 553 ("Congress—if it is to divide the States—must identify those jurisdictions to be singled out on a basis that makes sense in light of current conditions. It cannot rely simply on the past."); *id.* at 557 ("Congress could have updated the coverage formula at that time, but did not do so. Its failure to act leaves us today with no choice but to declare § 4(b) unconstitutional. . . . Congress may draft another formula based on current conditions. . . . Our country has changed, and while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.").

81. See, e.g., Maggie Astor, *Seven Ways Alabama Has Made It Harder to Vote*, N.Y. TIMES (June 23, 2018), <https://www.nytimes.com/2018/06/23/us/politics/voting-rights-alabama.html>.

82. *McCutcheon v. FEC*, 572 U.S. 185, 193 (2014) ("The Government contends that the aggregate limits also serve that objective [of combatting corruption], by preventing circumvention of the base limits. We conclude, however, that the aggregate limits do little, if anything, to address that concern, while seriously restricting participation in the democratic process. The aggregate limits are therefore invalid under the First Amendment.").

83. *Abbott v. Perez*, 138 S. Ct. 2305, 2313–14 (2018).

gerrymandering claims presented non-justiciable political questions.⁸⁴ And, finally, in a 6-3 ruling in the 2021 *Brnovich* case (with the Republican appointee Justice Barrett replacing the late Justice Ginsburg, a Democratic appointee), the Court held that Arizona did not violate the Fifteenth Amendment or the VRA by rejecting out-of-precinct provisional ballots and criminalizing third party collection and delivery of early mail-in ballots.⁸⁵

There has been one recent and welcome exception to the polarization trend. During the 2020 election, the Supreme Court presented a mostly united front in the case of *Texas v. Pennsylvania*, a quixotic effort by Texas to challenge Democratic presidential nominee Joseph Biden's 2020 victories in the states of Wisconsin, Georgia, Arizona, and Pennsylvania.⁸⁶ Seven of the nine justices—four Republican appointees and three Democratic appointees—joined the majority in dismissing the lawsuit, holding that “Texas has not demonstrated a judicially cognizable interest in the manner in which another State conducts its elections.”⁸⁷ Justices Alito and Thomas, both Republican appointees, dissented with regard to the standing issue but emphasized that they “would not grant other relief.”⁸⁸ The Texas lawsuit thus saw Republican and Democratic appointees join together in rejecting Texas's effort to overturn the results of the 2020 presidential election. But the Texas lawsuit did not present the Court with serious legal issues. In the words of Professor Richard Hasen, one of the nation's leading election law scholars, the Texas lawsuit was “a press release masquerading as a lawsuit.”⁸⁹

Accordingly, with the exception of the largely-symbolic Texas lawsuit, the evidence suggests that the partisan divide on the Court has never been wider than it is now.

V. SUMMARY OF KEY ELECTION LAW TRENDS

The historical trend lines can thus be summarized in three overall data points.

84. *Rucho v. Common Cause*, 139 S. Ct. 2484, 2508 (2019).

85. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2344 (2021) (“Arizona’s out-of-precinct rule enforces the requirement that voters who choose to vote in person on election day must do so in their assigned precincts. Having to identify one’s own polling place and then travel there to vote does not exceed the ‘usual burdens of voting.’”); *id.* at 2349–50 (“The spark for the debate over mail-in voting may well have been provided by one Senator’s enflamed partisanship, but partisan motives are not the same as racial motives. . . . And while the District Court recognized that the ‘racially-tinged’ video helped spur the debate about ballot collection, it found no evidence that the legislature as a whole was imbued with racial motives.”); *id.* at 2350 (“HB 2023 was not enacted with a racially discriminatory purpose.”).

86. *Texas v. Pennsylvania*, 141 S. Ct. 1230 (Mem.); Nina Totenberg & Barbara Sprunt, *Supreme Court Shuts Door On Texas Suit Seeking To Overturn Election*, NPR (Dec. 11, 2020), <https://www.npr.org/2020/12/11/945617913/supreme-court-shuts-door-on-trump-election-prospects>.

87. *Texas*, 141 S. Ct. at 1230.

88. *Id.*; Totenberg & Sprunt, *supra* note 86.

89. Nina Totenberg, *Trump Asks Supreme Court To Let Him Join Widely Scorned Texas Election Lawsuit*, NPR (Dec. 9, 2020), <https://www.npr.org/2020/12/09/944744105/trump-asks-supreme-court-to-let-him-join-widely-scorned-texas-election-lawsuit>.

SUMMARY OF SURVEY RESULTS (1898–2022)

➤ **Number (percentage) of cases with both Democratic and Republican appointees in the majority/concurring:**

1898–2000: 102 of 120 (87%)

2000–2010: 13 of 20 (65%)

2011–2022: 11 of 19 (58%)

➤ **Number (percentage) of cases with only Democratic or only Republican appointees in the majority/concurring:**

1898–2000: 15 of 120 (13%)

2000–2010: 7 of 20 (35%)

2011–2022: 8 of 19 (42%)

➤ **Total number (percentage) of cases with *complete polarization* along partisan lines:**

1898–2000: 2 of 120 (2%)

2000–2010: 0 of 20 (0%)

2011–2022: 8 of 19 (42%)

By any measure, therefore, the Court has been far more polarized during the two decades since the *Bush v. Gore* decision than it was in the entire 20th century.

VI. IDEOLOGICAL REALIGNMENT OF THE PARTIES

Why has the 21st century Supreme Court divided along partisan lines in so many major election law cases? Any answer to that question must begin with the ideological realignment of the Republican and Democratic parties in the late 20th century. During those years, conservatives coalesced in the Republican Party and liberals coalesced in the Democratic Party.⁹⁰ By the 1980s and 1990s, Democratic presidential candidates campaigned on a platform of appointing progressive justices and Republican presidential candidates campaigned on a platform of

90. See Alan I. Abramowitz & Kyle L. Saunders, *Ideological Realignment in the U.S. Electorate*, 60 J. POL. 634, 637 (1998) (“The result was an increasingly liberal Democratic Party and an increasingly conservative Republican Party.”).

appointing conservative justices.⁹¹ As a result, presidential election outcomes predicted the Court's ideological make-up more than ever before.⁹²

A. Appointments More Ideologically Consistent

From the late 19th century until deep into the 20th century, the Democratic and Republican parties both contained large numbers of liberal, moderate, and conservative voters.⁹³ For instance, the Republican Party leadership into the 1970s included liberals like Nelson Rockefeller,⁹⁴ and liberal Republicans like Rhode Island Senator John Chafee served in the United States Senate as late as the 1990s.⁹⁵ The parties also had far different racial and geographic bases in the first half of the 20th century than they do in the 21st century. For example, prior to the 1960s, white southerners primarily supported the Democratic Party.⁹⁶ In contrast, prior to the 1930s and 1940s, African Americans primarily supported the Republican Party.⁹⁷

The parties' high degree of ideological diversity in the 20th century had a profound impact on judicial appointments. Democratic presidents sometimes nominated conservative justices and Republican presidents sometimes nominated liberal justices. For example, between the 1880s and 1930s, Democratic presidents

91. See Brandon L. Bartels, *The Sources and Consequences of Polarization in the U.S. Supreme Court*, in AMERICAN GRIDLOCK: THE SOURCES, CHARACTER AND IMPACT OF POLITICAL POLARIZATION 171–200 (James A. Thurber & Antoine Yoshinaka eds., 2015); Neal Devins & Lawrence Baum, *Split Decision: How Party Polarization Turned the Supreme Court into a Partisan Court*, 2016 SUP. CT. REV. 301.

92. See Richard L. Hasen, *Polarization and the Judiciary*, 22 ANN. REV. POL. SCI. 261, 263 (2019) (“The trend toward presidents choosing more ideologically reliable court appointments began with Democratic president Bill Clinton. . .”).

93. See Gary Miller & Norman Schofield, *The Transformation of the Republican and Democratic Party Coalitions in the U.S.*, 6 PERSPECTIVES ON POL. 433 (2008).

94. See RICHARD NORTON SMITH, ON HIS OWN TERMS: A LIFE OF NELSON ROCKEFELLER 559, 620 (2014).

95. Adam Clymer, *John Chafee, Republican Senator and a Leading Voice of Bipartisanship, Dies at 77*, N.Y. TIMES (Oct. 26, 1999), <https://www.nytimes.com/1999/10/26/us/john-chafee-republican-senator-and-a-leading-voice-of-bipartisanship-dies-at-77.html>.

96. WILLIAM J. COOPER, JR. & THOMAS E. TERRILL, THE AMERICAN SOUTH 467 (1990) (“The Democrats succeeded in making the South a one-party region and in making that party a white man’s party, although they often neglected the interests of many whites.”); *id.* at 747 (“Repelled by Johnson’s embrace of civil rights . . . white voters in the Deep South flocked to the Republican candidate[s]. . . . [Goldwater] received 54 percent of the vote in Georgia, 59 percent in South Carolina, almost 69.5 percent in Alabama, and 87 percent in Mississippi to become the first Republican candidate to win those states since Reconstruction.”).

97. WEISS, *supra* note 23, at 3 (“The Grand Old Party was the party of Lincoln—a party that had held black allegiance for more than half a century on the strength of its record in the Civil War and Reconstruction.”); *id.* at 180 (“The election of 1936 brought black Americans decisively into the Roosevelt coalition. . . . In 1936, with the political choices more clear-cut, blacks joined the massive migration to the Democratic party.”).

appointed a number of center-right justices including Rufus Peckham,⁹⁸ Melville Fuller,⁹⁹ James McReynolds,¹⁰⁰ Stanley Reed,¹⁰¹ and Harold Burton.¹⁰² Likewise, between the 1950s and 1990s, Republican presidents appointed a number of center-left justices, including Earl Warren,¹⁰³ William Brennan,¹⁰⁴ John Paul Stevens,¹⁰⁵ and David Souter.¹⁰⁶

However, the polarization of American politics in the late 20th century transformed the political parties. Ronald Reagan's victory in 1980 marked a key turning point in the ideological polarization of the two parties.¹⁰⁷ Conservatives around the country consolidated in the Republican Party and progressives coalesced in the Democratic Party.¹⁰⁸

The ideological consolidation of the parties had a sweeping impact on Supreme Court nominations. The Republican Party's conservative base—and the Democratic Party's progressive base—demanded that their presidents nominate

98. JAMES W. ELY, JR., *THE FULLER COURT: JUSTICES, RULINGS, AND LEGACY* 69 (2003) ("Peckham carried with him to the Supreme Court this deep-seated commitment to economic liberty and limited government.").

99. *Id.* at 3 ("The jurisprudence of the Fuller era was characterized by the principles of limited government, state autonomy, and respect for the rights of property owners.").

100. REBECCA S. SHOEMAKER, *THE WHITE COURT: JUSTICES, RULINGS, AND LEGACY* 26 (2004) (McReynolds "grew increasingly conservative as time passed, becoming eventually one of the Four Horsemen who made a concerted effort to dismantle many of Franklin D. Roosevelt's New Deal programs.").

101. PETER G. RENSTROM, *THE STONE COURT: JUSTICES, RULINGS, AND LEGACY* 56 (2001) (Reed "is labeled a judicial conservative by some . . . When viewed across the full range of issues that came before the Court on which he served, his record appears more moderate than conservative.").

102. MICHAL R. BELKNAP, *THE VINSON COURT: JUSTICES, RULINGS, AND LEGACY* 78 (2004) ("Burton was, according to his biographer, 'a middle-of-the-roader with a conservative slant' . . . Eschewing the liberal activism of Black, Douglas, Murphy, and Rutledge, Burton generally aligned himself with Reed and the chief justice.").

103. TINSLEY E. YARBROUGH, *THE BURGER COURT: JUSTICES, RULINGS, AND LEGACY* 268 (2000) ("Chief justice (1953–1969) during one of the most liberal-activist and controversial periods in the Supreme Court's history . . .").

104. *Id.* at 56 ("Brennan stood, in short, squarely at the Warren Court's center, resolutely liberal yet more flexible in his jurisprudence than other justices . . .").

105. *Id.* at 102 (Stevens "ultimately would become one of the most liberal justices on the Rehnquist Court.").

106. THOMAS R. HENSLEY, *THE REHNQUIST COURT: JUSTICES, RULINGS, AND LEGACY* 80 (2004) ("Souter's appointment turned out to be one of the most significant in Supreme Court history. Rather than expanding the conservative majority, Souter has become part of the moderate liberal wing of justices that has stymied the efforts of the most conservative justices. . . .").

107. See Abramowitz & Saunders, *supra* note 90, at 636 ("The election of Ronald Reagan, the most prominent leader of the conservative movement, resulted in a marked increase in ideological polarization among party leaders and activists in the United States.").

108. *Id.* at 637 ("The result was an increasingly liberal Democratic Party and an increasingly conservative Republican Party.").

judges who conformed to the parties' core ideological orientations.¹⁰⁹ Accordingly, beginning in the 1980s and 1990s, Republican presidents sought to put conservatives on the Court and Democratic presidents sought to put progressives on the Court.¹¹⁰

The ideological polarization of party nominations inevitably resulted in a significant degree of partisan polarization on the Court. Nothing illustrates the ideological realignment of the Court more clearly than the justices' Martin Quinn scores.¹¹¹ As late as the early 1990s, some Republican appointees had Martin Quinn scores to the left of some Democratic appointees. For example, when the Court heard the major 1992 election law case of *Burdick v. Takushi*,¹¹² the justices included Byron White, a Democratic appointee, who had a Martin Quinn score of 0.639, which placed him to the right of two Republican appointees on the Court: Justice Harry Blackmun (-1.438) and Justice John Paul Stevens (-2.16).¹¹³

But in 1993 White retired and President Clinton replaced the justice with Ruth Bader Ginsburg,¹¹⁴ a far more liberal justice. In White's last term on the Court, he had a Martin Quinn score of 0.585, which placed him well to the right of the Court's center.¹¹⁵ In contrast, by the end of her second term on the Court, Ginsburg had a Martin Quinn score of -0.452, which placed her well to the left of the Court's center.¹¹⁶

By 2010, the Court's ideological polarization along partisan lines was complete.¹¹⁷ When Justice Souter retired in 2009 and Justice Stevens retired in 2010, President Barack Obama replaced them with two liberal justices—Sonia Sotomayor and Elena Kagan—who stood to the left of every Republican appointee.¹¹⁸

Consequently, the parties' commitment to appointing justices who conformed to the parties' ideological bases inexorably resulted in the Court's partisan polarization. By the time the *Arizona Free Enterprise* case reached the Supreme Court in 2011, every Democratic appointee had a left-of-center Martin Quinn score and every Republican appointee had a right-of-center Martin Quinn

109. Devins & Baum, *supra* note 91, at 361 ("The growing ideological polarization of the parties at the elite level has given presidents stronger incentives to choose nominees whose ideological orientations match those of the president's own party."); Hasen, *supra* note 92, at 263–65.

110. Devins and Baum, *supra* note 91, at 338 ("The Reagan administration broke ranks with its predecessors by making ideological considerations 'the most important criteria' in the screening of judicial candidates . . ."); Hasen, *supra* note 92, at 263 ("The trend toward presidents choosing more ideologically reliable court appointments began with Democratic president Bill Clinton. . .").

111. See *Project Description*, *supra* note 12; Martin & Quinn, *supra* note 12 ("We recommend using the posterior mean (post_mn) as the estimate the ideal point of each justice in each term.").

112. 504 U.S. 428 (1992).

113. See Appendix A.

114. *Justices 1789 to Present*, SUP. CT. OF U.S., https://www.supremecourt.gov/about/members_text.aspx.

115. See Appendix A.

116. See Appendix A.

117. Devins & Baum, *supra* note 91, at 361.

118. *Id.*

score.¹¹⁹ With the term “conservative” having become synonymous with “Republican,” and with “progressive” having become synonymous with “Democrat,” the Court’s ideological polarization starkly reflected the parties’ polarization.

B. Ideology Not A Complete Explanation

But does ideology fully explain the Supreme Court’s partisan polarization in election law cases? A closer look at 20th century election law cases suggests the answer is no. To a significant degree, liberal and conservative justices in the 20th century often agreed on major election law issues.

The 1927 case of *Nixon v. Herndon*, which struck down Texas’s whites-only primary elections, provides a case in point.¹²⁰ The Court ruled that the whites-only primary system violated the Fourteenth Amendment.¹²¹ The unanimous Court included Louis Brandeis, a progressive justice active in liberal social causes, and the arch-conservative “Four Horsemen of the Apocalypse”—Justices Willis Van Devanter, James Clark McReynolds, Pierce Butler, and George Sutherland.¹²²

The pattern of liberal and conservative justices joining forces on major election law issues continued throughout the 20th century. For example, in the 1965 case of *Louisiana v. United States*, the Court unanimously held that Louisiana’s constitutional interpretation test for voting violated the 15th amendment¹²³ and 8 of 9 justices held that it violated the 14th Amendment.¹²⁴ On the 15th Amendment issue, the unanimous court included the Court’s most conservative justice, John Marshall Harlan (2.445 MQ), and its most liberal, William O. Douglas (-6.951 MQ).¹²⁵

In the 1985 case of *Hunter v. Underwood*,¹²⁶ the Supreme Court unanimously held that Alabama’s moral turpitude disenfranchisement clause violated the 14th Amendment.¹²⁷ The unanimous ruling included the Court’s most conservative

119. See Appendix A.

120. *Nixon v. Herndon*, 273 U.S. 536 (1927).

121. *Id.* at 541 (holding that, under the Fourteenth Amendment, “color cannot be made the basis of a statutory classification affecting the right” to vote).

122. See Appendix A. On Brandeis’s judicial philosophy, see Shoemaker, *supra* note 16, at 91–96. On the “Four Horsemen of the Apocalypse,” see MICHAEL E. PARRISH, *THE HUGHES COURT: JUSTICES, RULINGS, AND LEGACY* 13 (2002).

123. *Louisiana v. United States*, 380 U.S. 145, 152 (1965) (Louisiana’s constitutional amendment placed an “arbitrary power in the hands of election officers who have used it with phenomenal success” to disenfranchise Black voters.).

124. *Id.* at 156 (“Mr. Justice Harlan considers that the constitutional conclusions reached in this opinion can properly be based only on the provisions of the Fifteenth Amendment. In all other respects, he fully subscribes to this opinion.”).

125. See Appendix A.

126. *Hunter v. Underwood*, 471 U.S. 222 (1985).

127. *Id.* at 225, 228–29 (“Although understandably no ‘eyewitnesses’ to the 1901 proceedings testified, testimony and opinions of historians were offered and received without objection. These showed that the Alabama Constitutional Convention of 1901 was part of a movement that swept the post-Reconstruction South to disenfranchise blacks.”).

member, Justice William Rehnquist (3.827 MQ), and its most liberal member, Justice Thurgood Marshall (-3.963 MQ).¹²⁸

And in the 2000 case of *Nixon v. Shrink Missouri Government PAC*, a diverse ideological coalition on the Court upheld Missouri's low contribution limits in state election campaigns.¹²⁹ The plurality opinion¹³⁰ included the conservative justices William Rehnquist (1.741 MQ) and Sandra Day O'Connor (0.889 MQ) and the liberal justice David Souter (-0.942 MQ).¹³¹ In addition, the concurring opinions¹³² included the Court's three most liberal members: John Paul Stevens (-3.316 MQ), Stephen Breyer (-0.784 MQ), and Ruth Bader Ginsburg (-1.257 MQ).¹³³

Thus, although ideological polarization explains most of the Court's polarization along partisan lines, it does not explain everything. A full analysis of the Court's voting patterns requires consideration of two other factors: the Court's narrow conservative majority during the first two decades of the 21st century and the exceptionally close nature of 21st century presidential elections.

VII. A JUDICIAL CONFLICT OF INTEREST

For much of the 20th century, a Republican presidential victory could have potentially led to a liberal judicial nominee, and a Democratic presidential victory could potentially have led to a conservative nominee. But that is no longer the case. Presidential election outcomes in the 21st century have a highly predictable impact on the Court's ideological balance. Republican victories result in conservative appointments and Democratic victories result in progressive appointments. As Professors Neal Devins and Lawrence Baum have noted, "[t]he most direct consequence of this change is that presidential elections mean even more for the direction of the Supreme Court than they did in the past."¹³⁴

That fact is not lost on the justices themselves. Presidential election outcomes decide which justices will serve in the majority and which in the dissent. Perhaps not surprisingly, therefore, several justices have made clear in recent years that they care deeply about presidential election outcomes.

128. See Appendix A.

129. *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 396–97 (2000) (“Respondents seem to assume that *Buckley* set a minimum constitutional threshold for contribution limits, which in dollars adjusted for loss of purchasing power are now well above the lines drawn by Missouri. But this assumption is a fundamental misunderstanding of what we held We asked, in other words, whether the contribution limitation was so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless. Such being the test, the issue in later cases cannot be truncated to a narrow question about the power of the dollar, but must go to the power to mount a campaign with all the dollars likely to be forthcoming. As Judge Gibson put it, the dictates of the First Amendment are not mere functions of the Consumer Price Index.”).

130. *Id.* at 381.

131. See Appendix A.

132. *Nixon*, 528 U.S. at 398 (Stevens, J., concurring), 399 (Breyer, J., concurring).

133. See Appendix A.

134. Devins & Baum, *supra* note 91, at 361.

A. A Rooting Interest in Election Outcomes

When the Supreme Court decided *Bush v. Gore* 5-4 in favor of the Republican nominee George W. Bush, Republican appointees made up 7 of the Court's 9 justices. However, from an ideological perspective, the Court was much more narrowly divided. The *Bush v. Gore* court consisted of five conservative justices—O'Connor (Martin Quinn score of 0.603), Kennedy (0.972), Rehnquist (1.679), Scalia (3.54), and Thomas (3.799)—and four liberal justices—Souter (-1.207), Breyer (-1.241), Ginsburg (-1.501), and Stevens (-3.146).¹³⁵ Thus, the Court's ideological balance rested in no small part on the outcome of the 2000 presidential election.

Days after the Supreme Court's decision—with all conservatives ruling in the Republican Bush's favor and all liberals in the Democrat Gore's favor—several major national media outlets reported that Justice Sandra Day O'Connor had expressed public sentiments in favor of Bush on election night.¹³⁶ According to *Newsweek*, during an election night watch party with family and friends, Justice O'Connor declared "[t]his is terrible" when CBS News erroneously reported that Gore had won Florida.¹³⁷ As she explained to fellow partygoers, Gore's victory in Florida meant the election was "over."¹³⁸ The conservative *Wall Street Journal* reported a similar account, noting that O'Connor's husband told partygoers that his wife wanted to retire but would be reluctant to do so if a Democrat won the presidential election.¹³⁹ *USA Today* subsequently reported that "sources close to the justices" confirmed the accuracy of the accounts in *Newsweek* and the *Wall Street Journal*.¹⁴⁰

It was not the first time that Justice O'Connor took a rooting interest in the outcome of a presidential election. In 2013 the *New Republic* discovered a 1988 letter that O'Connor wrote to Senator Barry Goldwater.¹⁴¹ In the letter she revealed, "I will be thankful if [Republican presidential nominee] George B. [Bush] wins [against Democratic nominee Michael Dukakis]. It is vital for the Court and the nation that he does."¹⁴²

Justice O'Connor was not the only justice to take a strong rooting interest in the outcome of a presidential election. In an interview with the *New York Times*

135. See Appendix A.

136. Richard K. Neumann Jr., *Conflicts of Interest in Bush v. Gore: Did Some Justices Vote Illegally?*, 16 GEO. J. LEGAL ETHICS 375, 376–78 (2003).

137. Michael Isikoff, *The Truth Behind the Pillars*, NEWSWEEK (Dec. 24, 2000, 7:00 PM), <https://www.newsweek.com/truth-behind-pillars-155985>; Neumann Jr., *supra* note 136, at 376–77.

138. Isikoff, *supra* note 137.

139. Jess Bravin et al., *Bush v. Gore Has Personal Angle for Some Supreme Court Justices*, WALL ST. J. (Dec. 12, 2000, 12:08 AM), <https://www.wsj.com/articles/SB976572470116168521>.

140. Neumann Jr., *supra* note 136, at 377. See also JEFFREY TOOBIN, TOO CLOSE TO CALL: THE THIRTY-SIX DAY BATTLE TO DECIDE THE 2000 ELECTION 249 (1st ed. 2001) (confirming the account of Justice O'Connor's anti-Gore comments).

141. Linda Hirshman, *When Justice O'Connor Thought a Bush Was "Vital for the Court"*, NEW REPUBLIC (Apr. 30, 2013), <https://newrepublic.com/article/113079/sandra-day-oconnor-barry-goldwater-letter-bush-vital-court>.

142. *Id.*

during the 2016 campaign, Justice Ruth Bader Ginsburg declared, “I can’t imagine what this place would be — I can’t imagine what the country would be — with Donald Trump as our president.”¹⁴³ Justice Ginsburg went on to say, “For the country, it could be four years. For the court, it could be — I don’t even want to contemplate that.”¹⁴⁴ Later, in an interview with CNN, she described Trump as “a faker” with “no consistency about him.”¹⁴⁵ In response, Trump tweeted, “Justice Ginsburg of the U.S. Supreme Court has embarrassed all by making very dumb political statements about me. Her mind is shot - resign!”¹⁴⁶ Even the liberal *New York Times* editorial board condemned Ginsburg’s comments, asserting that “Justice Ruth Bader Ginsburg needs to drop the political punditry and the name-calling.”¹⁴⁷ Ginsburg later apologized, conceding that “[j]udges should avoid commenting on a candidate for public office.”¹⁴⁸

Justice O’Connor and Justice Ginsburg are clearly not the only justices to harbor strong feelings about presidential election results. As Justice Antonin Scalia explained in a 2012 interview with Fox News, “I would not like to be replaced by someone who immediately sets about undoing what I’ve tried to do for 25-26 years. I mean, I shouldn’t have to tell you that, unless you think I’m a fool.”¹⁴⁹

In a 2021 interview with the *New York Times*, Justice Stephen Breyer revealed that he shared Justice Scalia’s desire to be replaced by a like-minded justice.¹⁵⁰ Like Scalia, Breyer did not “want somebody appointed who will just reverse everything I’ve done for the last 25 years.”¹⁵¹ Breyer thus chose to retire at a time when Democrats held both the White House and the Senate.¹⁵²

143. Adam Liptak, *Ruth Bader Ginsburg, No Fan of Donald Trump, Critiques Latest Term*, N.Y. TIMES (July 10, 2016), <https://www.nytimes.com/2016/07/11/us/politics/ruth-bader-ginsburg-no-fan-of-donald-trump-critiques-latest-term.html>.

144. *Id.*

145. Joan Biskupic, *Justice Ruth Bader Ginsburg Calls Trump a ‘faker,’ He says She Should Resign*, CNN (July 13, 2016, 7:45 AM), <https://www.cnn.com/2016/07/12/politics/justice-ruth-bader-ginsburg-donald-trump-faker/>.

146. *Id.*

147. The Editorial Board, *Donald Trump Is Right About Justice Ruth Bader Ginsburg*, N.Y. TIMES (July 13, 2016), <https://www.nytimes.com/2016/07/13/opinion/donald-trump-is-right-about-justice-ruth-bader-ginsburg.html?ref=opinion>.

148. Jessica Taylor, *Ginsburg Apologizes For ‘Ill-Advised’ Trump Comments*, NPR (July 14, 2016, 10:44 AM), <https://www.npr.org/2016/07/14/486012897/ginsburg-apologies-for-ill-advised-trump-comments>.

149. Kerry Pickett, *Scalia 2012: I Would Not Like To Be Replaced By Someone Who Would Undo Everything I Did*, DAILY CALLER (Feb. 15, 2016, 12:22 AM), <https://dailycaller.com/2016/02/15/scalia-2012-i-would-not-like-to-be-replaced-by-someone-who-would-undo-everything-i-did/>.

150. Adam Liptak, *Justice Breyer on Retirement and the Role of Politics at the Supreme Court*, N.Y. TIMES (Aug. 27, 2021), <https://www.nytimes.com/2021/08/27/us/politics/justice-breyer-supreme-court-retirement.html>.

151. *Id.*

152. Matt Viser et al., *Inside the Campaign to Pressure Justice Stephen Breyer to Retire*, WASH. POST, <https://www.washingtonpost.com/politics/2022/01/29/inside-campaign-pressure-justice-stephen-breyer-retire/>.

No one should be surprised that justices have intense partisan sympathies. A conservative justice naturally wants to be replaced by another conservative, and a progressive justice naturally wants to be replaced by another progressive. Even for justices in the early days of their judicial careers, presidential election outcomes have an enormous impact on their professional lives. No justice wants to spend their career writing dissents. Justices make their mark on the Court—and in history—by writing majority opinions. Accordingly, Supreme Court justices want to see presidential elections won by candidates who will appoint like-minded colleagues to the bench.

Judicial partisan preferences have been a reality since the early days of the American republic. The author of *Marbury v. Madison* is a case in point.¹⁵³ Chief Justice John Marshall owed his career to President John Adams, who stacked the federal judiciary with Federalist judges before Thomas Jefferson could do the same with Jeffersonian Republican judges.¹⁵⁴

But judicial partisanship poses a uniquely dangerous risk in the 21st century. At a time of ideological polarization and razor-thin elections, Supreme Court justices face an acute conflict of interest in election law rulings without precedent in modern American history.

B. Landslide elections the norm in 20th century

Even if 20th century justices had exhibited partisan voting patterns in election law cases, their rulings would have had little impact if any on the partisan balance. The one-sided nature of 20th century election outcomes blunted the impact of judicial election law rulings. As demonstrated in detail by Appendix B, 19 of the 25 presidential elections in the 20th century resulted in landslide outcomes both in the Electoral College and the popular vote:¹⁵⁵

1900: William McKinley (292-155 in the Electoral College)
 1904: Theodore Roosevelt (336-140)
 1908: William Howard Taft (321-162)
 1912: Woodrow Wilson (435-88)
 1920: Warren G. Harding (404-127)
 1924: Calvin Coolidge (382-136)
 1928: Herbert Hoover (444-37)
 1932: Franklin Roosevelt (472-59)
 1936: Franklin Roosevelt (523-8)
 1940: Franklin Roosevelt (449-82)
 1944: Franklin Roosevelt (432-99)
 1952: Dwight Eisenhower (442-89)
 1956: Dwight Eisenhower (457-73)

153. See William W. Van Alstyne, *A Critical Guide to Marbury v. Madison*, 1969 DUKE L. J. 1 (1969); Michael Stokes Paulsen, *The Irrepressible Myth of Marbury*, 101 MICH. L. REV. 2706 (2003).

154. BERNARD SCHWARTZ, *A HISTORY OF THE SUPREME COURT* 32-35 (1993).

155. For popular vote data in the battlefield states, see Appendix B.

1964: Lyndon Johnson (486-52)
 1972: Richard Nixon (520-17)
 1980: Ronald Reagan (489-49)
 1984: Ronald Reagan (525-13)
 1996: Bill Clinton (379-159)

Only six of the twenty-five presidential elections in the 20th Century were decided by relatively small margins: 1916, 1948, 1960, 1968, 1976, and 1992.¹⁵⁶ In those six races, the victorious candidate's Electoral College majority rested on a popular vote margin of one percent or less in the decisive battleground states.¹⁵⁷

The first truly close race of the 20th century came in 1916.¹⁵⁸ Woodrow Wilson defeated Charles Evans Hughes by an Electoral College margin of 277 to 254.¹⁵⁹ But with the great majority of states awarding their Electoral votes on a winner-take-all basis, Wilson's twenty-three vote margin in the Electoral College obscured how close the election really was.¹⁶⁰ In 1916 there were a total of 531 Electoral votes, which meant a candidate had to win 266 electors to capture an Electoral College majority.¹⁶¹ Wilson owed his Electoral College majority to his 4,387 cumulative vote victory over Hughes in the three closest states: New Hampshire, North Dakota, and New Mexico.¹⁶² In other words, if Hughes had managed to win about 4,400 additional votes in those three states, he would have won the 1916 presidential election.¹⁶³

Thirty years passed before the United States saw another close presidential election. Although Harry Truman's 1948 Electoral College majority rested on a larger margin than Wilson's 1916 majority, the 1948 presidential election still represented a fairly close race in the battleground states. In the ten crucial battleground states that decided the election, Truman defeated Tom Dewey by 211,646 votes.¹⁶⁴ Put another way, Truman's margin of victory in the battleground states constituted only 0.4% of the nationwide popular vote of 48.69 million.¹⁶⁵

The two decades between 1960 and 1980 saw the country see-saw between alternating close elections and blowout elections. In 1960, John F. Kennedy's

156. *Id.*

157. *Id.*

158. *Id.*

159. *See* Appendix B.

160. Katherine Florey, *Losing Bargain: Why Winner-Take-All Vote Assignment Is the Electoral College's Least Defensible Feature*, 68 CASE W. RES. L. REV. 317, 322 (2017) ("Forty-eight states award electoral votes on a pure winner-take-all basis—the candidate who gets the most votes in that state receives the state's entire slate of electoral votes, regardless of margin of victory or overall percentage. Two states, Maine and Nebraska, use what might be called a modified winner-take-all system under which some electoral votes are awarded at large to the overall winner while others are awarded to the winner of each congressional district.").

161. *See* Appendix B.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

Electoral College majority rested on a cumulative margin of only 36,528 votes over Richard Nixon in the battleground states.¹⁶⁶ Those 36,528 votes constituted only 0.0005% of the nationwide popular vote total of 68.8 million, which meant that 1960 was one of the closest presidential elections in American history.¹⁶⁷

Four years later, Lyndon Johnson defeated Barry Goldwater in one of the largest landslides in American history. Johnson carried 60% of the popular vote and won 486 Electoral votes to only fifty-two for Goldwater.¹⁶⁸ For Goldwater to have won an Electoral College majority, he would have needed 4.4 million more votes in the decisive battleground states.¹⁶⁹ By any measure, 1964 was one of the most lopsided presidential races of all-time.

In 1968, however, the margins narrowed again. Richard Nixon's Electoral College majority rested on his 476,386 cumulative vote margin over Hubert Humphrey in fifteen states.¹⁷⁰ Although far larger than Kennedy's victory margin in 1960, Nixon's 1968 victory margin in the battleground states was one of the closest elections of the century, representing 0.7% of the nationwide popular vote total of 73.2 million.¹⁷¹

The alternating cycle of lopsided elections followed by close elections continued in the 1970s. Richard Nixon won reelection in 1972 by a staggering margin, carrying forty-nine of fifty states and 60% of the popular vote.¹⁷² But four years later, the 1976 election outcome was even closer than the 1960 election. Jimmy Carter's Electoral College majority rested on his 31,253 cumulative vote margin over Gerald Ford in three states: Hawaii, Ohio, and Delaware.¹⁷³ Carter's victory margin constituted only 0.0004% of the nationwide popular vote of 81.5 million.¹⁷⁴ In the 20th century, only Woodrow Wilson's 1916 victory over Charles Evans Hughes was closer than Carter's 1976 victory over Ford.¹⁷⁵

The remainder of the 20th century saw blowout elections with one modest exception. In 1992, Bill Clinton's Electoral College majority rested on his 880,800 cumulative vote margin over George Bush in seventeen states.¹⁷⁶ Although Clinton won a huge Electoral College victory, his popular vote margin in the battleground states only represented 0.8% of the nationwide popular vote total of 104.4 million.¹⁷⁷ Nevertheless, Bush would have had to improve his vote total by nearly 900,000 votes in seventeen states to have changed the outcome.¹⁷⁸ The 1992

166. *Id.*

167. *Id.*

168. *Id.*

169. *See* Appendix B.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

election was thus close only in comparison to the landslide outcomes that characterized most 20th century presidential races.

But things changed dramatically in 2000. The Bush-Gore race ushered in a new era of extraordinarily close elections, one that also coincided with a much more partisan era of Supreme Court election law rulings.

C. 21st Century: Era of Razor Thin Elections

Unlike the 20th century, when most races ended in landslides, every presidential election in the 21st century has been closely contested.

The 2000 presidential election set the tone for the two decades that followed. George W. Bush defeated Al Gore by 271 electoral votes to 266 despite losing the nationwide popular vote by more than 500,000 votes.¹⁷⁹ The 2000 election marked the first time a candidate had won an Electoral College majority without winning the popular vote since Benjamin Harrison defeated Grover Cleveland in 1888.¹⁸⁰ Most remarkable of all, Bush's Electoral College majority rested on a staggeringly slim 537 vote margin in Florida out of 6 million votes cast in the state.¹⁸¹ To put it in a larger context, Bush's 537 vote margin of victory represented 0.000005% of 105 million cast nationwide.¹⁸²

Four years later, Bush won the 2004 election by a larger margin than he did in 2000. But his 2004 victory still represented a close margin by historic standards. Bush defeated John Kerry in the Electoral College by a 286-251 margin.¹⁸³ But Bush's Electoral College majority rested on his 117,411-vote cumulative margin in four states: New Mexico, Iowa, Nevada, and Alaska.¹⁸⁴ In lieu of winning those four states, Kerry could also have won an Electoral College majority had he flipped Ohio and its twenty electoral votes, a state that Bush carried by only 118,601 votes out of 5.6 million cast statewide.¹⁸⁵ Bush's margin of victory in the swing states represented 1.0% of the 122 million votes cast nationwide.¹⁸⁶

Barack Obama won the largest victories of the first two decades of the 21st century in 2008 and 2012. But even his victory margins were close by historic standards. Obama's Electoral College majority in 2008 rested on a smaller popular vote margin (1.6%) in battleground states as a percentage of the nationwide popular vote than all but seven 20th century races: 1900, 1916, 1948, 1960, 1968, 1976, and 1992.¹⁸⁷ And Obama's Electoral College majority in 2012 rested on a

179. See Appendix B.

180. John Milton Cooper, Jr., *"The Leaving It": The Election of 2000 at the Bar of History*, in *THE UNFINISHED ELECTION OF 2000* 3, 6–8 (ed. Jack N. Rakove, 2001).

181. See Appendix B.

182. *Id.*

183. *Id.*

184. *Id.*

185. See AM. PRESIDENCY PROJECT, *2004 Election*, UC SANTA BARBARA, <https://www.presidency.ucsb.edu/statistics/elections/2004> (Ohio results).

186. See Appendix B.

187. *Id.*

smaller popular vote margin in the battleground states (0.6%) than all but five 20th century races: 1900, 1916, 1948, 1960, and 1976.¹⁸⁸

The two most recent presidential elections have been exceedingly close by any standard. In 2016, Donald Trump defeated Hillary Clinton in the Electoral College despite losing the popular vote by almost three million votes.¹⁸⁹ Trump's electoral majority rested on his cumulative 77,744 vote margin in three states: Michigan, Wisconsin, and Pennsylvania.¹⁹⁰ Trump's margin of victory in the three decisive battleground states constituted 0.0006% of 136 million cast nationwide.¹⁹¹

The 2020 presidential race was even closer. Joseph Biden prevailed over Donald Trump in the Electoral College by a 306 to 232 margin, and Biden carried the nationwide popular vote by over seven million votes.¹⁹² But his Electoral College majority rested on 65,009 votes in three states—Arizona, Georgia, and Wisconsin—and the Omaha congressional district, where Biden received one of Nebraska's Electoral College votes.¹⁹³ Biden's 65,009 vote margin of victory in the battleground states and the Omaha congressional district constituted 0.0004% of the 158 million votes cast nationwide.¹⁹⁴ But Biden's actual margin of victory was even closer than that. Had Trump won Arizona, Georgia, and Wisconsin—states which Biden carried by a combined total of about 44,000 votes—the Electoral College race would have been deadlocked at 269 to 269.¹⁹⁵ Under the Twelfth Amendment, if no candidate receives a majority in the Electoral College, the House of Representatives decides the presidency by a vote of each House delegation, with each state receiving a single vote.¹⁹⁶ Republicans held a majority of House delegations, which meant that if Trump had come up with about 45,000 more votes in Arizona, Georgia, and Wisconsin, he would likely have been reelected president in a contingent election in the House.¹⁹⁷

The lesson is clear. In an era of razor-thin presidential margins, the Supreme Court's election law rulings can mean the difference between victory and defeat. When 45,000 votes out of 158 million decide who wins the presidency, Court decisions on campaign finance, voter ID requirements, early voting periods, and precinct locations have immense importance. They can tip the election outcome in favor of one candidate or the other.

188. *Id.*

189. *Id.*

190. *Id.*

191. *See* Appendix B.

192. *Id.*

193. *Id.*

194. *Id.*

195. Domenico Montanaro, *President-Elect Joe Biden Hits 80 Million Votes In Year Of Record Turnout*, NPR (Nov. 25, 2020), <https://www.npr.org/2020/11/25/937248659/president-elect-biden-hits-80-million-votes-in-year-of-record-turnout> (“[J]ust 44,000 votes in Georgia, Arizona and Wisconsin separated Biden and Trump from a tie in the Electoral College.”).

196. Nathan L. Colvin & Edward B. Foley, *The Twelfth Amendment: A Constitutional Ticking Time Bomb*, 64 U. MIA L. REV. 475 (2010).

197. William A. Galston, *The Electoral College is a Ticking Time Bomb*, BROOKINGS (Dec. 9, 2020), <https://www.brookings.edu/blog/fixgov/2020/12/09/the-electoral-college-is-a-ticking-time-bomb/>.

The Supreme Court justices understand that fact just as well as other informed observers of American politics.¹⁹⁸ It thus strains credulity to claim that the Supreme Court's partisan divide on election law rulings has no connection to the rise of extremely close presidential elections.¹⁹⁹ Indeed, the American people—including a majority of both Republicans and Democrats—have concluded that the justices have succumbed to improper partisan influences.

VIII. THE COURT'S DECLINING REPUTATION IN A POLARIZED ERA

As the justices have taken an increasingly partisan approach to election law cases, national polls have found a steep decline in public confidence in the Supreme Court.

In September 2000—three months before the *Bush v. Gore* ruling—the Gallup Poll found that 62% of Americans approved of the Supreme Court's job performance.²⁰⁰ But in the past two decades the Supreme Court's standing in public opinion has fallen precipitously. A September 2021 Gallup Poll found that only 40% of Americans approved of the Court's job performance.²⁰¹ The decline in the Court's approval has occurred among both Republicans and Democrats.²⁰² The Supreme Court's 40% approval rating in 2021 was the lowest ever measured by the Gallup Poll.²⁰³

Republican and Democratic elected officials have begun to warn of the consequences if the Court's reputation continues to slide. Republican Senator Lisa Murkowski told the *Washington Post* she worried “a great deal” about the decline in public confidence in the Supreme Court.²⁰⁴ She warned that “the public needs to be able to trust that the judiciary will be that independent, unbiased check” on Congress and the White House.²⁰⁵ Democratic Senator Richard Blumenthal went even further, asserting that “these last few years have really been very dangerous and potentially devastating to the Supreme Court's credibility because the public is seeing the court as increasingly political, and the public is right.”²⁰⁶

Some of the justices have pushed back against their critics. In a 2021 speech, Justice Amy Coney Barrett declared, “My goal today is to convince you that this

198. See Richard L. Hasen, *The Supreme Court's Pro-Partisanship Turn*, 100 GEO. L.J. ONLINE 50 (2020).

199. See *infra* Section VII.

200. Supreme Court, GALLUP, <https://news.gallup.com/poll/4732/supreme-court.aspx>. (last visited Mar. 10, 2022).

201. Jeffrey M. Jones, *Approval of U.S. Supreme Court Down to 40%, a New Low*, GALLUP (Sept. 23, 2021), <https://news.gallup.com/poll/354908/approval-supreme-court-down-new-low.aspx>.

202. *Id.*

203. *Id.*

204. Robert Barnes & Seung Min Kim, *Supreme Court Observers See Trouble Ahead as Public Approval of Justices Erodes*, WASH. POST (Sept. 26, 2021), https://www.washingtonpost.com/politics/courts_law/supreme-court-public-opinion/2021/09/25/379b51ec-1c6c-11ec-bcb8-0eb135811007_story.html.

205. *Id.*

206. *Id.*

court is not comprised of a bunch of partisan hacks.”²⁰⁷ Likewise, when President Donald Trump in 2018 condemned Democratic judicial appointees as “Obama judges,” Chief Justice Roberts responded by declaring, “[W]e do not have Obama judges or Trump judges, Bush judges or Clinton judges. What we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them.”²⁰⁸ But in a Tweet, President Trump responded, “Sorry Chief Justice John Roberts, but you do indeed have ‘Obama judges,’ and they have a much different point of view than the people who are charged with the safety of our country.”²⁰⁹

Trump was not the only recent president to question the integrity of the federal judiciary. In his 2010 State of the Union Address, President Barack Obama condemned the Court’s *Citizens United* decision in remarkably harsh terms.²¹⁰ Obama asserted:

With all due deference to separation of powers, last week the Supreme Court reversed a century of law that I believe will open the floodgates for special interests—including foreign corporations—to spend without limit in our elections. I don’t think American elections should be bankrolled by America’s most powerful interests, or worse, by foreign entities. They should be decided by the American people.²¹¹

Whether criticized by a Republican like Trump or a Democrat like Obama, the Supreme Court cannot be blamed when presidents choose to score political points by condemning the integrity of justices with whom they disagree. But the justices’ polarized approach to election law cases makes the Court increasingly vulnerable to such criticism.

Indeed, the most recent polls indicate that a large majority of Americans think that the justices’ political views have become the dominant factor in Supreme Court rulings. For example, an October 2021 Selzer poll found that over 60% of Americans—including a bipartisan majority of Trump and Biden voters—believe that “the Supreme Court bases its decisions more on the justices’ political views than on the Constitution and law.”²¹² As noted by Professor Peter Hanson, one

207. *Id.*

208. Pete Williams & Associated Press, *In Rare Rebuke, Chief Justice Roberts Slams Trump for Comment About ‘Obama Judge’*, NBC NEWS (Nov. 21, 2018), <https://www.nbcnews.com/politics/supreme-court/rare-rebuke-chief-justice-roberts-slams-trump-comment-about-obama-n939016>.

209. William Cummings, *US Does Have ‘Obama Judges’: Trump Responds to Supreme Court Justice John Roberts’ Rebuke*, USA TODAY (Nov. 21, 2018), <https://www.usatoday.com/story/news/politics/2018/11/21/john-roberts-trump-statement/2080266002/>.

210. Alan Silverlieb, *Gloves Come Off After Obama Rips Supreme Court Ruling*, CNN (Jan. 28, 2010), <http://www.cnn.com/2010/POLITICS/01/28/alito.obama.sotu/index.html>.

211. President Barack Obama, President of the United States, *State of the Union Address*, WHITE HOUSE (Jan. 27, 2010), <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-state-union-address>.

212. John Kruzell, *Solid Majority Believes Supreme Court Rulings Based More on Politics Than Law*, THE HILL (Oct. 20, 2021), <https://thehill.com/regulation/court-battles/577444-solid-majority-believes-supreme-court-rulings-based-more-on-politics>.

of the poll's directors, Chief Justice Roberts has "worked very hard trying to protect the courts as an apolitical institution, and that's failed."²¹³

It is a disturbing fact that one of the few things unifying Republicans and Democrats is their shared belief that the justices place partisan agendas over the law and the Constitution. The public's increasingly cynical view of the Supreme Court is a dangerous and corrosive development. But through their partisan voting patterns, the justices have themselves contributed to the collapse in public confidence in the Court's role as a neutral arbiter of justice.

IX. CONCLUSION

The justices of the United States Supreme Court did not create the conflict-of-interest problem in election law cases. The Constitution itself creates the problem. By giving the power to nominate federal judges to the president, the Constitution's drafters made the Court's composition contingent upon the outcome of presidential elections. But when the Framers established the judicial appointment system in 1787, they did not anticipate the rise of the two-party political system.²¹⁴ The rise of party politics thus inevitably politicized Supreme Court appointments from the Republic's earliest days.

But the ideological diversity that prevailed in the two major parties for much of the 20th century insulated the Court from partisan pressures. Conservative Democratic appointees like James McReynolds and liberal Republican appointees like Earl Warren and William Brennan viewed issues through an ideological lens rather than a partisan lens. Neither party therefore had grounds to accuse them of partisan favoritism.

However, as the parties polarized along ideological lines in the late 20th century, ideology and partisanship became interchangeable. By the 21st century, conservative views aligned with Republican interests and progressive views aligned with Democratic. The judicial divide between right and left thus began to resemble the broader political divide between Republicans and Democrats. The extraordinarily close elections of the first two decades of the century compounded the problem by making election law disputes of pressing—and potentially decisive—importance. With judicial vacancies and retirements hanging in the balance, every election law ruling had the potential to shape presidential election outcomes. The fusing of ideology and partisanship thus created a perfect storm. As the justices have become more ideologically polarized, they have inadvertently undermined the public's confidence in their neutrality and objectivity.

In this era of hyperpolarization, it has never been more important for the justices to avoid giving the impression of partisan bias.²¹⁵ In *Williams-Yulee v. Florida Bar*, Chief Justice Roberts rightfully declared that "judges are not

213. *Id.*

214. BRUCE ACKERMAN, THE DECLINE AND FALL OF THE AMERICAN REPUBLIC 16 (2010) (observing that "the Founding vision was shattered by the rise of a proto-modern party system in the 1790s").

215. See Richard L. Hasen, *Polarization and the Judiciary*, 22 ANN. REV. OF POL. SCI. 261 (2019).

politicians.”²¹⁶ But judges must also take care to not act like politicians. As Justice Felix Frankfurter once asserted, “justice must satisfy the appearance of justice.”²¹⁷ To that end, conservative and progressive justices would be wise to find middle ground on election law cases. The Court’s public standing as a neutral arbiter of justice depends on it. If in the years ahead “progressive” interpretations of the Constitution continue to align with the Democratic Party’s positions on election law issues, and if “conservative” interpretations of the Constitution continue to align with the Republican Party’s positions on election law issues, the Court risks permanently damaging its reputation for impartiality. To avoid that unwelcome development, the Supreme Court justices of the 21st century should follow the example of their 20th century predecessors and build bipartisan coalitions in election law cases.

APPENDIX A: ELECTION LAW CASES, 1898–2022²¹⁸

Williams v. Mississippi, 170 U.S. 213 (April 25, 1898)

Position	Justice	President	Starting page
Majority	McKenna	McKinley R	219
Majority	Fuller	Cleveland D	
Majority	Harlan	Hayes R	
Majority	Gray	Arthur R	
Majority	Brewer	Harrison R	
Majority	Brown	Harrison R	
Majority	Shiras	Harrison R	
Majority	White	Cleveland D	
Majority	Peckham	Cleveland D	

Taylor and Marshall v. Beckham (No. 1), 178 U.S. 548 (May 21, 1900)

Position	Justice	President	Starting page
Majority	Fuller	Cleveland D	570
Majority	Gray	Arthur R	
Majority	Shiras	Harrison R	
Majority	White	Cleveland D	
Majority	Peckham	Cleveland D	
Concur	McKenna	McKinley R	581

216. 575 U.S. 433, 437 (2015).

217. *Offutt v. United States*, 348 U.S. 11, 14 (1954).

218. *Justices 1789 to Present*, *supra* note 114 (for presidential appointment information); Martin & Quinn, *supra* note 12 (current data available at <https://mqscores.lsa.umich.edu/measures.php>) (2020 justice data files); AM. PRESIDENCY PROJECT, *National Political Party Platforms*, UC SANTA BARBARA, <https://www.presidency.ucsb.edu/documents/presidential-documents-archive-guidebook/party-platforms-and-nominating-conventions-3> (last visited May 29, 2020).

Dissent	Brewer	Harrison R	581
Dissent	Brown	Harrison R	
Dissent	Harlan	Hayes R	585

Wiley v. Sinker, 179 U.S. 58 (October 15, 1900)

Position	Justice	President	Starting page
Majority	Gray	Arthur R	61
Majority	Fuller	Cleveland D	
Majority	Harlan	Hayes R	
Majority	Brewer	Harrison R	
Majority	Brown	Harrison R	
Majority	Shiras	Harrison R	
Majority	White	Cleveland D	
Majority	Peckham	Cleveland D	
Majority	McKenna	McKinley R	

Giles v. Harris, 189 U.S. 475 (April 27, 1903)

Position	Justice	President	Starting page
Majority	Holmes	Roosevelt R	482
Majority	White	Cleveland D	
Majority	Peckham	Cleveland D	
Majority	McKenna	McKinley R	
Majority	Day	Roosevelt R	
Majority	Fuller	Cleveland D	
Dissent	Brewer	Harrison R	488
Dissent	Brown	Harrison R	
Dissent	Harlan	Hayes R	493

Pope v. Williams, 193 U.S. 621 (April 4, 1904)

Position	Justice	President	Starting page
Majority	Peckham	Cleveland D	631
Majority	Fuller	Cleveland D	
Majority	Harlan	Hayes R	
Majority	Brewer	Harrison R	
Majority	Brown	Harrison R	
Majority	White	Cleveland D	
Majority	McKenna	McKinley R	
Majority	Holmes	Roosevelt R	
Majority	Day	Roosevelt R	

Guinn v. United States, 238 U.S. 347 (June 21, 1915)

Position	Justice	President	Starting page
Majority	White	Cleveland D	354
Majority	Holmes	Roosevelt R	
Majority	McKenna	McKinley R	
Majority	Day	Roosevelt R	
Majority	Hughes	Taft R	
Majority	Van Devanter	Taft R	
Majority	Lamar	Taft R	
Majority	Pitney	Taft R	
Did not participate	McReynolds	Wilson D	368

Myers v. Anderson, 238 U.S. 368 (June 21, 1915)

Position	Justice	President	Starting page
Majority	White	Cleveland D	375

Majority	McKenna	McKinley R	
Majority	Holmes	Roosevelt R	
Majority	Day	Roosevelt R	
Majority	Hughes	Taft R	
Majority	Van Devanter	Taft R	
Majority	Lamar	Taft R	
Majority	Pitney	Taft R	
Did not participate	McReynolds	Wilson D	383

United States v. Mosley, 238 U.S. 383 (June 21, 1915)

Position	Justice	President	Starting page
Majority	Holmes	Roosevelt R	385
Majority	White	Cleveland D	
Majority	McKenna	McKinley R	
Majority	Day	Roosevelt R	
Majority	Hughes	Taft R	
Majority	Van Devanter	Taft R	
Majority	Pitney	Taft R	
Did not participate	McReynolds	Wilson D	388
Dissent	Lamar	Taft R	389

Ohio ex rel. Davis v. Hildebrandt, 241 U.S. 565 (June 12, 1916)

Position	Justice	President	Starting page
Majority	White	Cleveland D	566
Majority	McKenna	McKinley R	
Majority	Holmes	Roosevelt R	
Majority	Hughes	Taft R	
Majority	Van Devanter	Taft R	
Majority	Pitney	Taft R	
Majority	McReynolds	Wilson D	
Confirmed June 1, took seat June 5, 1916	Brandeis	Wilson	iii
Died Jan. 2, 1916	Lamar	Taft R	iii
Absent due to illness	Day	Roosevelt R	iii

Newberry v. United States, 256 U.S. 232 (May 2, 1921)

Position	Justice	President	Starting page
Plurality	McReynolds	Wilson D	243
Plurality	Holmes	Roosevelt R	
Plurality	Day	Roosevelt R	
Plurality	Van Devanter	Taft R	
Concur	McKenna	McKinley R	258
Concur	Pitney	Taft R	275
Concur	Brandeis	Wilson D	
Concur	Clarke	Wilson D	
Part concur/dissent	White	Cleveland D	258

Nixon v. Herndon, 273 U.S. 536 (March 7, 1927)

Position	Justice	President	Starting page
Majority	Holmes	Roosevelt R	539
Majority	Van Devanter	Taft R	
Majority	McReynolds	Wilson D	
Majority	Brandeis	Wilson D	
Majority	Sutherland	Harding R	
Majority	Butler	Harding R	

Majority	Sanford	Harding R	
Majority	Stone	Coolidge R	
Majority	Taft	Harding R	

Smiley v. Holm, 285 U.S. 355 (April 11, 1932)

Position	Justice	President	Starting page
Majority	Hughes	Hoover R	361
Majority	Van Devanter	Taft R	
Majority	McReynolds	Wilson D	
Majority	Brandeis	Wilson D	
Majority	Sutherland	Harding R	
Majority	Butler	Harding R	
Majority	Stone	Coolidge R	
Majority	Roberts	Hoover R	
Did not participate	Cardozo	Hoover R	375

Nixon v. Condon, 286 U.S. 73 (May 2, 1932)

Position	Justice	President	Starting page
Majority	Cardozo	Hoover R	81
Majority	Brandeis	Wilson D	
Majority	Stone	Coolidge R	
Majority	Roberts	Hoover R	
Majority	Hughes	Hoover R	
Dissent	McReynolds	Wilson D	89
Dissent	Van Devanter	Taft R	
Dissent	Sutherland	Harding R	
Dissent	Butler	Harding R	

Burroughs v. US, 290 U.S. 534 (January 8, 1934)

Position	Justice	President	Starting page
Majority	Sutherland	Harding R	540
Majority	Hughes	Hoover R	
Majority	Van Devanter	Taft R	
Majority	Brandeis	Wilson D	
Majority	Butler	Harding R	
Majority	Stone	Coolidge R	
Majority	Roberts	Hoover R	
Majority	Cardozo	Hoover R	
Dissent	McReynolds	Wilson D	548

Grove v. Townsend, 295 U.S. 45 (April 1, 1935)

Position	Justice	President	Starting page
Majority	Roberts	Hoover R	46
Majority	Hughes	Hoover R	
Majority	Van Devanter	Taft R	
Majority	McReynolds	Wilson D	
Majority	Brandeis	Wilson D	
Majority	Sutherland	Harding R	
Majority	Butler	Harding R	
Majority	Stone	Coolidge R	
Majority	Cardozo	Hoover R	

Breedlove v. Suttles, 302 U.S. 277 (December 6, 1937)

Position	Justice	President	Starting page	Term MQS
Majority	Butler	Harding R	279	2.069

Majority	Hughes	Hoover R		-0.357
Majority	Black	Roosevelt D		-2.913
Majority	McReynolds	Wilson D		3.445
Majority	Brandeis	Wilson D		-0.607
Majority	Sutherland	Harding R		1.586
Majority	Roberts	Hoover R		0.015
Majority	Stone	Coolidge R		-0.765
Majority	Cardozo	Hoover R		-1.601

Lane v. Wilson, 307 U.S. 268 (May 22, 1939)

Position	Justice	President	Starting page	Term MQS
Majority	Frankfurter	Roosevelt D	269	-1.356
Majority	Hughes	Hoover R		-0.181
Majority	Roberts	Hoover R		0.352
Majority	Black	Roosevelt D		-3.231
Majority	Stone	Coolidge R		-0.69
Majority	Reed	Roosevelt D		-1.122
Did not participate	Douglas	Roosevelt D	277	-2.817
Dissent	McReynolds	Wilson D	277	3.577
Dissent	Butler	Harding R		2.379

United States v. Classic, 313 U.S. 299 (May 26, 1941)

Position	Justice	President	Starting page	Term MQS
Majority	Stone	Coolidge R	307	-0.216
Majority	Roberts	Hoover R		1.641
Majority	Vacancy*			
Majority	Reed	Roosevelt D		-0.734
Majority	Frankfurter	Roosevelt D		-0.725
Did not participate	Hughes	Hoover R	329	0.94
Dissent	Douglas	Roosevelt D	329	-3.165
Dissent	Black	Roosevelt D		-3.34
Dissent	Murphy	Roosevelt D		-1.575

* (Byrnes replaced McReynolds [3.365 MQS] in 1941)

Smith v. Allwright, 321 U.S. 649 (April 3, 1944)

Position	Justice	President	Starting page	Term MQS
Majority	Reed	Roosevelt D	650	0.151
Majority	Stone	Coolidge R		0.24
Majority	Black	Roosevelt D		-2.723
Majority	Rutledge	Roosevelt D		-1.166
Majority	Douglas	Roosevelt D		-2.486
Majority	Murphy	Roosevelt D		-1.725
Majority	Jackson	Roosevelt D		0.137
Concur	Frankfurter	Roosevelt D	666	0.612
Dissent	Roberts	Hoover R	666	2.421

Colegrove v. Green, 328 U.S. 549 (June 10, 1946)

Position	Justice	President	Starting page	Term MQS
Plurality	Frankfurter	Roosevelt D	550	0.656
Plurality	Burton	Truman D		0.513

Plurality	Reed	Roosevelt D		0.082
Deceased	Stone*	Coolidge R		0.732
Absent from bench whole term	Jackson	Roosevelt D	iii	0.627
Concur	Rutledge	Roosevelt D	564	-1.201
Dissent	Black	Roosevelt D	566	-2.151
Dissent	Douglas	Roosevelt D		-1.742
Dissent	Murphy	Roosevelt D		-1.399

*Stone died in April before the case was decided

United States v. CIO, 335 U. S. 106 (June 21, 1948)

Position	Justice	President	Starting page	Term MQS
Plurality	Reed	Roosevelt D	107	0.532
Plurality	Vinson	Truman D		0.54
Plurality	Burton	Truman D		0.831
Plurality	Jackson	Roosevelt D		1.214
Concur	Frankfurter	Roosevelt D	124	0.95
Concur	Rutledge	Roosevelt D	129	-1.765
Concur	Black	Roosevelt D		-1.792
Concur	Douglas	Roosevelt D		-1.501
Concur	Murphy	Roosevelt D		-1.687

Terry v. Adams, 345 U.S. 461 (May 4, 1953)

Position	Justice	President	Starting page	Term MQS
Plurality	Black	Roosevelt D	462	-1.095
Plurality	Douglas	Roosevelt D		-2.175
Plurality	Burton	Truman D		1.277
Separate opinion	Frankfurter*	Roosevelt D	470	0.006
Concur	Clark	Truman D	477	1.168
Concur	Reed	Roosevelt D		1.377
Concur	Jackson	Roosevelt D		0.898
Concur	Vinson	Truman D		1.486
Dissent	Minton	Truman D	484	1.279

*Wrote a separate opinion from the majority but it is not labeled a concurrence or dissent

United States v. Automobile Workers, 352 U. S. 567 (March 11, 1957)

Position	Justice	President	Starting page	Term MQS
Majority	Frankfurter	Roosevelt D	568	0.924
Majority	Burton	Truman D		1.158
Majority	Clark	Truman D		0.158
Majority	Harlan	Eisenhower R		1.235
Majority	Brennan	Eisenhower R		-0.7
Retired	Reed*	Roosevelt D		0.792
Dissent	Douglas	Roosevelt D	593	-4.687
Dissent	Warren	Eisenhower R		-1.326
Dissent	Black	Roosevelt D		-2.183

*Reed retired Feb. 25, 1957 before the case was decided.

Lassiter v. Northampton County Board of Elections, 360 U.S. 45 (June 8, 1959)

Position	Justice	President	Starting page	Term MQS
Majority	Douglas	Roosevelt D	45	-5.473
Majority	Warren	Eisenhower R		-1.665
Majority	Black	Roosevelt D		-2.091
Majority	Frankfurter	Roosevelt D		1.485
Majority	Whittaker	Eisenhower R		1.28
Majority	Clark	Truman D		0.529

Majority	Harlan	Eisenhower R		1.494
Majority	Brennan	Eisenhower R		-0.85
Majority	Stewart	Eisenhower R		0.829

Gomillion v. Lightfoot, 364 U.S. 339 (November 14, 1960)

Position	Justice	President	Starting page	Term MQS
Majority	Frankfurter	Roosevelt D	340	1.787
Majority	Warren	Eisenhower R		-1.464
Majority	Black	Roosevelt D		-1.942
Majority	Douglas*	Roosevelt D		-6.044
Majority	Clark	Truman D		0.76
Majority	Harlan	Eisenhower R		1.888
Majority	Brennan	Eisenhower R		-0.878
Majority	Stewart	Eisenhower R		0.452
Concur	Whittaker	Eisenhower R	349	1.203

*Joined majority opinion but “adheres to dissents in *Colgrove v. Green* and *South v. Peters*”

Baker v. Carr, 369 U.S. 186 (March 26, 1962)

Position	Justice	President	Starting page	Term MQS
Plurality	Brennan	Eisenhower R	187	-0.847
Plurality	Warren	Eisenhower R		-1.578
Plurality	Black	Roosevelt D		-1.875
Did not participate	Whittaker	Eisenhower R	237	1.137
Concur	Douglas	Roosevelt D	241	-6.29
Concur	Clark	Truman D	251	0.46
Concur	Stewart	Eisenhower R	265	0.264
Dissent	Frankfurter	Roosevelt D	266	1.787
Dissent	Harlan	Eisenhower R	330	2.271

Gray v. Sanders, 372 U.S. 368 (March 18, 1963)

Position	Justice	President	Starting page	Term MQS
Majority	Douglas	Roosevelt D	370	-6.509
Majority	Warren	Eisenhower R		-1.518
Majority	Black	Roosevelt D		-1.768
Majority	Brennan	Eisenhower R		-1.238
Majority	White	Kennedy D		-0.301
Majority	Goldberg	Kennedy D		-1.148
Concur	Stewart	Eisenhower R	381	0.264
Concur	Clark	Truman D		0.339
Dissent	Harlan	Eisenhower R	382	2.559

Anderson v. Martin, 375 U.S. 399 (January 13, 1964)

Position	Justice	President	Starting page	Term MQS
Majority	Clark	Truman D	400	0.045
Majority	Warren	Eisenhower R		-1.467
Majority	Black	Roosevelt D		-1.489
Majority	Douglas	Roosevelt D		-6.718
Majority	Harlan	Eisenhower R		2.656
Majority	Brennan	Eisenhower R		-1.223
Majority	Stewart	Eisenhower R		0.166
Majority	White	Kennedy D		-0.218
Majority	Goldberg	Kennedy D		-1.288

Wesberry v. Sanders, 376 U.S. 1 (February 17, 1964)

Position	Justice	President	Starting page	Term MQS
Majority	Black	Roosevelt D	2	-1.489
Majority	Warren	Eisenhower R		-1.467
Majority	Douglas	Roosevelt D		-6.718
Majority	Brennan	Eisenhower R		-1.223
Majority	White	Kennedy D		-0.218
Majority	Goldberg	Kennedy D		-1.288
Part concur/dissent	Clark	Truman D	18	0.045
Dissent	Harlan	Eisenhower R	20	2.656
Dissent	Stewart	Eisenhower R	50	0.166

Wright v. Rockefeller, 376 U.S. 52 (February 17, 1964)

Position	Justice	President	Starting page	Term MQS
Majority	Black	Roosevelt D	53	-1.489
Majority	Warren	Eisenhower R		-1.467
Majority	Clark	Truman D		0.045
Majority	Brennan	Eisenhower R		-1.223
Majority	Stewart	Eisenhower R		0.166
Majority	White	Kennedy D		-0.218
Concur	Harlan	Eisenhower R	58	2.656
Dissent	Douglas	Roosevelt D	59	-6.718
Dissent	Goldberg	Kennedy D	67	-1.288

Reynolds v. Sims, 377 U.S. 533 (June 15, 1964)

Position	Justice	President	Starting page	Term MQS
Majority	Warren	Eisenhower R	536	-1.467
Majority	Black	Roosevelt D		-1.489
Majority	Douglas	Roosevelt D		-6.718
Majority	Brennan	Eisenhower R		-1.223
Majority	White	Kennedy D		-0.218
Majority	Goldberg	Kennedy D		-1.288
Concur	Clark	Truman D	587	0.045
Concur	Stewart	Eisenhower R	588	0.166
Dissent	Harlan	Eisenhower R	589	5.656

Lucas v. 44th General Assembly of Colorado, 377 U.S. 713 (June 15, 1964)

Position	Justice	President	Starting page	Term MQS
Majority	Warren	Eisenhower R	715	-1.467
Majority	Black	Roosevelt D		-1.489
Majority	Douglas	Roosevelt D		-6.718
Majority	Brennan	Eisenhower R		-1.223
Majority	White	Kennedy D		-0.218
Majority	Goldberg	Kennedy D		-1.288
Dissent	Harlan	Eisenhower R	741	2.656
Dissent	Clark	Truman D	741	0.045
Dissent	Stewart	Eisenhower R	744	0.166

Forston v. Dorsey, 379 U.S. 433 (January 18, 1965)

Position	Justice	President	Starting page	Term MQS
Majority	Brennan	Eisenhower R	434	-1.043
Majority	Warren	Eisenhower R		-1.295
Majority	Black	Roosevelt D		-0.933

Majority	Clark	Truman D		-0.206
Majority	Stewart	Eisenhower R		0.361
Majority	White	Kennedy D		-0.251
Majority	Goldberg	Kennedy D		-0.786
Concur	Harlan	Eisenhower R	439	2.445
Dissent	Douglas	Roosevelt D	440	-6.951

Carrington v. Rash, 380 U.S. 89 (March 1, 1965)

Position	Justice	President	Starting page	Term MQS
Majority	Stewart	Eisenhower R	89	0.361
Majority	Black	Roosevelt D		-0.933
Majority	Douglas	Roosevelt D		-6.951
Majority	Clark	Truman D		-0.206
Majority	Brennan	Eisenhower R		-1.043
Majority	White	Kennedy D		-0.251
Majority	Goldberg	Kennedy D		-0.786
Dissent	Harlan	Eisenhower R	97	2.445
Did not participate	Warren	Eisenhower R	97	-1.295

United States v. Mississippi, 380 U.S. 128 (March 8, 1965)

Position	Justice	President	Starting page	Term MQS
Majority	Black	Roosevelt D	130	-0.933
Majority	Warren	Eisenhower R		-1.295
Majority	Douglas	Roosevelt D		-6.951
Majority	Clark	Truman D		-0.206
Majority	Brennan	Eisenhower R		-1.043
Majority	Stewart	Eisenhower R		0.361
Majority	White	Kennedy D		-0.251
Majority	Goldberg	Kennedy D		-0.786
Concur	Harlan	Eisenhower R	144	2.445

Louisiana v. United States, 380 U.S. 145 (March 8, 1965)

Position	Justice	President	Starting page	Term MQS
Majority	Black	Roosevelt D	147	-0.933
Majority	Douglas	Roosevelt D		-6.951
Majority	Clark	Truman D		-0.206
Majority	Brennan	Eisenhower R		-1.043
Majority	Stewart	Eisenhower R		0.361
Majority	White	Kennedy D		-0.251
Majority	Goldberg	Kennedy D		-0.786
Majority	Warren	Eisenhower R		-1.295
Concur	Harlan	Eisenhower R	156	2.445

South Carolina v. Katzenbach 383 U.S. 301 (March 7, 1966)

Position	Justice	President	Starting page	Term MQS
Majority	Warren	Eisenhower R	307	-1.293
Majority	Douglas	Roosevelt D		-7.161
Majority	Clark	Truman D		-0.102
Majority	Harlan	Eisenhower R		2.351
Majority	Brennan	Eisenhower R		-1.135
Majority	Stewart	Eisenhower R		0.503

Majority	White	Kennedy D		-0.196
Majority	Fortas	Johnson D		-1.328
Part concur/dissent	Black	Roosevelt D	355	-0.56

Harper v. Virginia State Board of Elections, 383 U.S. 663 (March 24, 1966)

Position	Justice	President	Starting page	Term MQS
Majority	Douglas	Roosevelt D	664	-7.161
Majority	Clark	Truman D		-0.102
Majority	Warren	Eisenhower R		-1.293
Majority	Brennan	Eisenhower R		-1.135
Majority	White	Kennedy D		-0.196
Majority	Fortas	Johnson D		-1.328
Dissent	Black	Roosevelt D	670	-0.56
Dissent	Harlan	Eisenhower R	680	2.351
Dissent	Stewart	Eisenhower R		0.503

Burns v. Richardson, 384 U.S. 73 (April 25, 1966)

Position	Justice	President	Starting page	Term MQS
Majority	Brennan	Eisenhower R	75	-1.135
Majority	Warren	Eisenhower R		-1.293
Majority	Black	Roosevelt D		-0.56
Majority	Douglas	Roosevelt D		-7.161
Majority	Clark	Truman D		-0.102
Majority	White	Kennedy D		-0.196
Concur	Harlan	Eisenhower R	98	2.351
Concur	Stewart	Eisenhower R	99	0.503
Didn't participate	Fortas	Johnson D	98	-1.328

Mills v. Alabama, 384 U.S. 214 (May 23, 1966)

Position	Justice	President	Starting page	Term MQS
Majority	Black	Roosevelt D	215	-0.56
Majority	Warren	Eisenhower R		-1.293
Majority	Clark	Truman D		-0.102
Majority	Stewart	Eisenhower R		0.503
Majority	White	Kennedy D		-0.196
Majority	Fortas	Johnson D		-1.328
Concur	Douglas	Roosevelt D	220	-7.161
Concur	Brennan	Eisenhower R		-1.135
Concur	Harlan	Eisenhower R	222	

Katzenbach v. Morgan, 384 U.S. 641 (June 13, 1966)

Position	Justice	President	Starting page	Term MQS
Majority	Brennan	Eisenhower R	343	-1.135
Majority	Warren	Eisenhower R		-1.293
Majority	Black	Roosevelt D		-0.56
Majority	Clark	Truman D		-0.102
Majority	White	Kennedy D		-0.196
Majority	Fortas	Johnson D		-1.328
Concur	Douglas	Roosevelt D	658	-7.161
Dissent	Stewart	Eisenhower R		0.503
Dissent	Harlan	Eisenhower R	659	2.351

Fortson v. Morris, 385 U.S. 231 (December 12, 1966)

Position	Justice	President	Starting page	Term MQS
Majority	Black	Roosevelt D	232	-0.412
Majority	Clark	Truman D		0.106
Majority	Harlan	Eisenhower R		2.048
Majority	Stewart	Eisenhower R		0.593
Majority	White	Kennedy D		-0.017
Dissent	Douglas	Roosevelt D	236	-7.333
Dissent	Fortas	Johnson D	242	-1.519
Dissent	Brennan	Eisenhower R		-1.154
Dissent	Warren	Eisenhower R		-1.225

Swann v. Adams, 385 U.S. 440 (January 9, 1967)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	441	-0.017
Majority	Warren	Eisenhower R		-1.225
Majority	Black	Roosevelt D		-0.412
Majority	Douglas	Roosevelt D		-7.333
Majority	Clark	Truman D		0.106
Majority	Brennan	Eisenhower R		-1.154
Majority	Fortas	Johnson D		-1.519
Dissent	Harlan	Eisenhower R	447	2.048
Dissent	Stewart	Eisenhower R		0.593

Kilgarlin v. Hill, 386 U.S. 120 (February 20, 1967)

Position	Justice	President	Starting page	Term MQS
Majority	Warren	Eisenhower R	120	-1.225
Majority	Black	Roosevelt D		-0.412
Majority	Brennan	Eisenhower R		-1.154
Majority	White	Kennedy D		-0.017
Majority	Fortas	Johnson D		-1.519
Concur	Douglas	Roosevelt D	126	-7.333
Dissent	Clark	Truman D	126	0.106
Dissent	Harlan	Eisenhower R		2.048
Dissent	Stewart	Eisenhower R		0.593

Moody v. Flowers, 387 U.S. 97 (May 22, 1967)

Position	Justice	President	Starting page	Term MQS
Majority	Douglas	Roosevelt D	99	-7.333
Majority	Warren	Eisenhower R		-1.225
Majority	Black	Roosevelt D		-0.412
Majority	Clark	Truman D		0.106
Majority	Harlan	Eisenhower R		2.048
Majority	Brennan	Eisenhower R		-1.154
Majority	Stewart	Eisenhower R		0.593
Majority	White	Kennedy D		-0.017
Majority	Fortas	Johnson D		-1.519

Dusch v. Davis, 387 U.S. 112 (May 22, 1967)

Position	Justice	President	Starting page	Term MQS
Majority	Douglas	Roosevelt D	113	-7.333
Majority	Warren	Eisenhower R		-1.225
Majority	Black	Roosevelt D		-0.412

Majority	Clark	Truman D		0.106
Majority	Brennan	Eisenhower R		-1.154
Majority	White	Kennedy D		-0.017
Majority	Fortas	Johnson D		-1.519
Concur	Harlan	Eisenhower R	117	2.048
Concur	Stewart	Eisenhower R		0.593

Avery v. Midland County, 390 U.S. 474 (April 1, 1968)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	475	0.249
Majority	Warren	Eisenhower R		-1.289
Majority	Black	Roosevelt D		-0.096
Majority	Douglas	Roosevelt D		-7.487
Majority	Brennan	Eisenhower R		-1.255
Did not participate	Marshall	Kennedy D	486	-1.166
Dissent	Harlan	Eisenhower R	486	1.472
Dissent	Fortas	Johnson D	495	-1.361
Dissent	Stewart	Eisenhower R	509	-0.100

Williams v. Rhodes, 393 U.S. 23 (October 15, 1968)

Position	Justice	President	Starting page	Term MQS
Plurality	Black	Roosevelt D	24	0.102
Plurality	Brennan	Eisenhower R		-1.078
Plurality	Fortas	Johnson D		-1.103
Plurality	Marshall	Johnson D		-1.099
Concur	Douglas	Roosevelt D	35	-7.605
Concur	Harlan	Eisenhower R	41	0.762
Part concur/dissent	Stewart	Eisenhower R	35, 48	0.337
Part concur/dissent	White	Kennedy D	61	0.083
Dissent	Warren	Eisenhower R	63	-1.314

Hunter v. Erickson, 393 U.S. 385 (January 20, 1969)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	386	0.083
Majority	Warren	Eisenhower R		-1.314
Majority	Douglas	Roosevelt D		-7.605
Majority	Brennan	Eisenhower R		-1.078
Majority	Fortas	Johnson D		-1.103
Majority	Marshall	Johnson D		-1.099
Concur	Harlan	Eisenhower R	393	0.762
Concur	Stewart	Eisenhower R		0.337
Dissent	Black	Roosevelt D	396	0.102

Allen v. State Board of Elections, 393 U.S. 544 (March 3, 1969)

Position	Justice	President	Starting page	Term MQS
Majority	Warren	Eisenhower R	547	-1.314
Majority	Brennan	Eisenhower R		-1.078
Majority	Stewart	Eisenhower R		0.337
Majority	White	Kennedy D		0.083
Majority	Fortas	Johnson D		-1.103
Part concur/dissent	Harlan	Eisenhower R	582	0.762

Part concur/dissent	Marshall	Johnson D	594	-1.099
Part concur/dissent	Douglas	Roosevelt D		-7.605
Dissent	Black	Roosevelt D	595	0.102

Kirkpatrick v. Preisler, 394 U.S. 526 (April 7, 1969)

Position	Justice	President	Starting page	Term MQS
Majority	Brennan	Eisenhower R	527	-1.078
Majority	Black	Roosevelt D		0.102
Majority	Douglas	Roosevelt D		-7.605
Majority	Marshall	Johnson D		-1.099
Majority	Warren	Eisenhower R		-1.314
Majority	Stewart	Eisenhower R		0.337
Concur	Fortas	Johnson D	536	-1.103
Dissent	White	Kennedy D	536	0.083
Dissent	Harlan	Eisenhower R	536	0.762

Wells v. Rockefeller, 394 U.S. 542 (April 7, 1969)

Position	Justice	President	Starting Page	Term MQS
Majority	Brennan	Eisenhower R	543	-1.078
Majority	Black	Roosevelt D		0.102
Majority	Douglas	Roosevelt D		-7.605
Majority	Warren	Eisenhower R		-1.314
Majority	Marshall	Johnson D		-1.099
Concur	Fortas	Johnson D		1.103
Dissent	Harlan	Eisenhower R	549	0.762
Dissent	Stewart	Eisenhower R		0.337
Dissent	White	Kennedy D	553	0.083

McDonald v. Bd. of Election Comm'rs of Chicago, 394 U.S. 802 (April 28, 1969)

Position	Justice	President	Starting page	Term MQS
Majority	Warren	Eisenhower R	803	-1.314
Majority	Black	Roosevelt D		0.102
Majority	Douglas	Roosevelt D		-7.605
Majority	Fortas	Johnson D		-1.103
Majority	Brennan	Eisenhower R		-1.078
Majority	Marshall	Johnson D		-1.099
Majority	White	Kennedy D		0.083
Concur	Harlan	Eisenhower R	811	0.762
Concur	Stewart	Eisenhower R		0.337

Moore v. Ogilvie, 394 U.S. 814 (May 5, 1969)

Position	Justice	President	Starting page	Term MQS
Majority	Douglas	Roosevelt D	815	-7.605
Majority	Brennan	Eisenhower R		-1.078
Majority	Warren	Eisenhower R		-1.314
Majority	Black	Roosevelt D		0.102
Majority	White	Kennedy D		0.083
Majority	Fortas	Johnson D		-1.103
Majority	Marshall	Johnson D		-1.099
Dissent	Stewart	Eisenhower R	819	0.337
Dissent	Harlan	Eisenhower R		0.762

Red Lion Broadcasting Co. v. FEC, 395 U.S. 367 (June 9, 1969)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	369	0.083
Majority	Warren	Eisenhower R		-1.314
Majority	Black	Roosevelt D		0.102
Majority	Harlan	Eisenhower R		0.762
Majority	Brennan	Eisenhower R		-1.078
Majority	Stewart	Eisenhower R		0.337
Majority	Marshall	Johnson D		-1.099
Resigned	Fortas*	Johnson D		-1.103
Did not participate	Douglas	Roosevelt D	401	-7.605

*Fortas resigned May 14, 1969 before the case was decided.

Oregon v. Mitchell, 400 U.S. 112 (December 21, 1970)

Position	Justice	President	Starting page	Term MQS
Plurality	Black	Roosevelt D	117	-0.002
Part concur/dissent	Douglas	Roosevelt D	135	-7.752
Part concur/dissent	Harlan	Eisenhower R	152	0.774
Part concur/dissent	Brennan	Eisenhower R	229	-1.055
Part concur/dissent	White	Kennedy D		0.449
Part concur/dissent	Marshall	Johnson D		-0.967
Part concur/dissent	Burger	Nixon R	281	2.174
Part concur/dissent	Blackmun	Nixon R		1.561
Part concur/dissent	Stewart	Eisenhower R		0.482

Monitor Patriot Co. v. Roy, 401 U.S. 265 (February 24, 1971)

Position	Justice	President	Starting page	Term MQS
Majority	Stewart	Eisenhower R	266	0.482
Majority	Burger	Nixon R		2.174
Majority	Harlan	Eisenhower R		0.774
Majority	Brennan	Eisenhower R		-1.055
Majority	Marshall	Johnson D		-0.967
Majority	Blackmun	Nixon R		1.561
Separate opinion	Black	Roosevelt D	277	-0.002
Separate opinion	Douglas	Roosevelt D		-7.752
Concur	White	Kennedy D	277	0.449

Ocala Star-Banner Co. v. Damron, 401 U.S. 295 (February 24, 1971)

Position	Justice	President	Starting page	Term MQS
Majority	Stewart	Eisenhower R	295	0.482
Majority	Burger	Nixon R		2.174
Majority	Harlan	Eisenhower R		0.774
Majority	Brennan	Eisenhower R		-1.055
Majority	Marshall	Johnson D		-0.967
Majority	Blackmun	Nixon R		1.561
Concur	White	Kennedy D	301	0.449
Part concur/dissent	Black	Roosevelt D	301	-0.002
Part concur/dissent	Douglas	Roosevelt D		-7.752

Whitcomb v. Chavis, 403 U.S. 124 (June 7, 1971)

Position	Justice	President	Starting page	Term MQS
Plurality	White	Kennedy D	127	0.449

Plurality	Burger	Nixon R		2.174
Plurality	Black	Roosevelt D		-0.002
Plurality	Blackmun	Nixon R		1.561
Part concur/dissent	Stewart	Eisenhower R	163	0.482
Part concur/dissent	Harlan	Eisenhower R	165	0.774
Part concur/dissent	Douglas	Roosevelt D	171	-7.752
Part concur/dissent	Brennan	Eisenhower R		-1.055
Part concur/dissent	Marshall	Johnson D		-0.967

Abate v. Mundt, 403 U.S. 182 (June 7, 1971)

Position	Justice	President	Starting page	Term MQS
Majority	Marshall	Johnson D	183	-0.967
Majority	Burger	Nixon R		2.174
Majority	Black	Roosevelt D		-0.002
Majority	White	Kennedy D		0.449
Majority	Blackmun	Nixon R		1.561
Concur	Harlan	Eisenhower R	187	0.774
Concur	Stewart	Eisenhower R	187	0.482
Dissent	Brennan	Eisenhower R	187	-1.055
Dissent	Douglas	Roosevelt D		-7.752

Jenness v. Fortson, 403 U.S. 431 (June 21, 1971)

Position	Justice	President	Starting page	Term MQS
Majority	Stewart	Eisenhower R	432	0.482
Majority	Burger	Nixon R		2.174
Majority	Douglas	Roosevelt D		-7.752
Majority	Brennan	Eisenhower R		-1.055
Majority	Blackmun	Nixon R		1.561
Majority	White	Kennedy D		0.449
Majority	Marshall	Johnson D		-0.967
Concur	Black	Roosevelt D	442	-0.002
Concur	Harlan	Eisenhower R		0.774

Dunn v. Blumstein, 405 U.S. 330 (March 21, 1972)

Position	Justice	President	Starting page	Term MQS
Majority	Marshall	Johnson D	331	-1.081
Majority	Douglas	Roosevelt D		-7.817
Majority	Brennan	Eisenhower R		-1.184
Majority	Stewart	Eisenhower R		0.086
Majority	White	Kennedy D		0.634
Concur	Blackmun	Nixon R	360	1.626
Dissent	Burger	Nixon R	363	2.406
Did not participate	Powell	Nixon R	360	1.398
Did not participate	Rehnquist	Nixon R	360	3.59

Pipefitters Local Union No. 562 v. U.S., 407 U.S. 385 (June 22, 1972)

Position	Justice	President	Starting page	Term MQS
Majority	Brennan	Eisenhower R	387	-1.184
Majority	Douglas	Roosevelt D		-7.817
Majority	Stewart	Eisenhower R		0.086
Majority	White	Kennedy D		0.634
Majority	Marshall	Johnson D		-1.081
Majority	Rehnquist	Nixon R		3.59
Dissent	Powell	Nixon R	442	1.398
Dissent	Burger	Nixon R		2.406

Did not participate	Blackmun	Nixon R	442	1.626
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O'Brien v. Brown, 409 U.S. 1 (July 7, 1972)

Position	Justice	President	Starting page	Term MQS
Majority	Burger	Nixon R	2	2.406
Majority	Stewart	Eisenhower R		0.086
Majority	Blackmun	Nixon R		1.626
Majority	Powell	Nixon R		1.398
Majority	Rehnquist	Nixon R		3.59
Concur	Brennan	Eisenhower R	5	-1.184
Part concur/dissent	White	Kennedy D	6	0.634
Dissent	Douglas	Roosevelt D	6	-7.817
Dissent	Marshall	Johnson D	6	-1.081

Mahan v. Howell, 410 U.S. 315 (February 21, 1973)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	317	4.001
Majority	Burger	Nixon R		2.195
Majority	Stewart	Eisenhower R		0.137
Majority	White	Kennedy D		0.967
Majority	Blackmun	Nixon R		1.441
Part concur/dissent	Brennan	Eisenhower R	333	-1.411
Part concur/dissent	Douglas	Roosevelt D		-7.852
Part concur/dissent	Marshall	Johnson D		-1.365
Did not participate	Powell	Nixon R	333	1.176

Marston v. Lewis, 410 U.S. 679 (March 19, 1973)

Position	Justice	President	Starting page	Term MQS
Majority	Burger	Nixon R	679	2.195
Majority	Stewart	Eisenhower R		0.137
Majority	White	Kennedy D		0.967
Majority	Blackmun	Nixon R		1.441
Majority	Powell	Nixon R		1.176
Majority	Rehnquist	Nixon R		4.001
Dissent	Marshall	Johnson D		-1.365
Dissent	Douglas	Roosevelt D		-7.852
Dissent	Brennan	Eisenhower R	682	-1.411

Gaffney v. Cummings, 412 U.S. 735 (June 18, 1973)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	735	0.967
Majority	Burger	Nixon R		2.195
Majority	Stewart	Eisenhower R		0.137
Majority	Blackmun	Nixon R		1.441
Majority	Rehnquist	Nixon R		4.001
Majority	Powell	Nixon R		1.176
Dissent	Marshall	Johnson D		-1.365
Dissent	Douglas	Roosevelt D		-7.852
Dissent	Brennan	Eisenhower R	754	-1.411

White v. Regester, 412 U.S. 755 (June 18, 1973)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	756	0.967
Majority	Stewart	Eisenhower R		0.137
Majority	Blackmun	Nixon R		1.441
Majority	Powell	Nixon R		1.176
Majority	Rehnquist	Nixon R		4.001
Majority	Burger	Nixon R		2.195
Part concur/dissent	Brennan	Eisenhower R	772	-1.411
Part concur/dissent	Douglas	Roosevelt D		-7.852
Part concur/dissent	Marshall	Johnson D		-1.365

White v. Weiser, 412 U.S. 783 (June 18, 1973)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	784	0.967
Majority	Douglas	Roosevelt D		-7.852
Majority	Brennan	Eisenhower R		-1.411
Majority	Stewart	Eisenhower R		0.137
Majority	Blackmun	Nixon R		1.441
Concur	Powell	Nixon R	798	1.176
Concur	Burger	Nixon R		2.195
Concur	Rehnquist	Nixon R		4.001
Concur	Marshall	Johnson D	798	-1.365

U.S. Civil Service Comm'n v. National Ass. of Letter Carriers, 413 U.S. 548 (June 25, 1973)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy R	550	0.967
Majority	Burger	Nixon R		2.195
Majority	Stewart	Eisenhower R		0.137
Majority	Blackmun	Nixon R		1.441
Majority	Powell	Nixon R		1.176
Majority	Rehnquist	Nixon R		4.001
Dissent	Douglas	Roosevelt D	595	-7.852
Dissent	Brennan	Eisenhower R		-1.411
Dissent	Marshall	Johnson D		-1.365

Storer v. Brown, 415 U.S. 724 (March 26, 1974)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	726	0.561
Majority	Burger	Nixon R		2.205
Majority	Stewart	Eisenhower R		0.49
Majority	Blackmun	Nixon R		1.302
Majority	Powell	Nixon R		1.159
Majority	Rehnquist	Nixon R		4.272
Dissent	Brennan	Eisenhower R	755	-1.728
Dissent	Douglas	Roosevelt D		-7.896
Dissent	Marshall	Johnson D		-1.471

Richardson v. Ramirez, 418 U.S. 24 (June 24, 1974)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	26	4.272
Majority	Burger	Nixon R		2.205
Majority	Stewart	Eisenhower R		0.49

Majority	White	Kennedy D		0.561
Majority	Blackmun	Nixon R		1.302
Majority	Powell	Nixon R		1.159
Dissent	Marshall	Johnson D	56	-1.471
Dissent	Brennan	Eisenhower R		-1.728
Dissent	Douglas	Roosevelt D	86	-7.896

Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (June 25, 1974)

Position	Justice	President	Starting page	Term MQS
Majority	Burger	Nixon R	243	2.205
Majority	Douglas	Roosevelt D		-7.896
Majority	Stewart	Eisenhower R		0.49
Majority	Marshall	Johnson D		-1.471
Majority	Blackmun	Nixon R		1.302
Concur	Powell	Nixon R		1.159
Concur	Brennan	Eisenhower R	258	-1.728
Concur	Rehnquist	Nixon R		4.272
Concur	White	Kennedy D	259	0.561

Cousins v. Wigoda, 419 U.S. 477 (January 15, 1975)

Position	Justice	President	Starting page	Term MQS
Majority	Brennan	Eisenhower R	478	-1.924
Majority	Douglas	Roosevelt D		-7.948
Majority	White	Kennedy D		0.605
Majority	Marshall	Johnson D		-1.489
Majority	Blackmun	Nixon R		1.038
Concur	Rehnquist	Nixon R	491	4.366
Concur	Burger	Nixon R		2.115
Concur	Stewart	Eisenhower R		0.352
Part concur/dissent	Powell	Nixon R	496	1.103

Buckley v. Valeo, 424 U. S. 1 (January 30, 1976) Expenditure Limits

Position	Justice	President	Starting page	Term MQS
Majority	Marshall	Johnson D	39	-2.047
Majority	Burger	Nixon R		1.974
Majority	Brennan	Eisenhower R		-2.428
Majority	Stewart	Eisenhower R		0.491
Majority	Powell	Nixon R		0.927
Majority	Stevens	Ford R		0.077
Majority	Blackmun	Nixon R		0.853
Majority	Rehnquist	Nixon R		4.474
Dissent	White	Kennedy D	257	0.495

Buckley v. Valeo, 424 U. S. 1 (January 30, 1976) Contribution Limits

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	23	0.495
Majority	Marshall	Johnson D		-2.047
Majority	Brennan	Eisenhower R		-2.428
Majority	Stewart	Eisenhower R		0.491
Majority	Powell	Nixon R		0.927
Majority	Stevens	Ford R		0.077
Majority	Rehnquist	Nixon R		4.474
Dissent	Burger	Nixon R	235	1.974
Dissent	Blackmun	Nixon R	290	0.853

Buckley v. Valeo, 424 U. S. 1 (January 30, 1976) Mandatory Reporting/Disclosure

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	60	0.495
Majority	Marshall	Johnson D		-2.047
Majority	Brennan	Eisenhower R		-2.428
Majority	Stewart	Eisenhower R		0.491
Majority	Powell	Nixon R		0.927
Majority	Stevens	Ford R		0.077
Majority	Blackmun	Nixon R		0.853
Majority	Rehnquist	Nixon R		4.474
Dissent	Burger	Nixon R	235	1.974

Buckley v. Valeo, 424 U. S. 1 (January 30, 1976) Public Financing

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	85	0.495
Majority	Marshall	Johnson D		-2.047
Majority	Brennan	Eisenhower R		-2.428
Majority	Stewart	Eisenhower R		0.491
Majority	Powell	Nixon R		0.927
Majority	Stevens	Ford R		0.077
Majority	Rehnquist	Nixon R		4.474
Dissent	Burger	Nixon R	235	1.974
Dissent	Blackmun	Nixon R	290	0.853

Elrod v. Burns, 427 U.S. 347 (June 28, 1976)

Position	Justice	President	Starting page	Term MQS
Plurality	Brennan	Eisenhower R	349	-2.428
Plurality	White	Kennedy D		0.495
Plurality	Marshall	Johnson D		-2.047
Concur	Stewart	Eisenhower R	374	0.491
Concur	Blackmun	Nixon R		0.853
Dissent	Burger	Nixon R	375	1.974
Dissent	Powell	Nixon R	376	0.927
Dissent	Rehnquist	Nixon R		4.474
Did not participate	Stevens	Ford R	374	0.077

United Jewish Org. of Williamsburgh v. Carey, 430 U.S. 144 (March 1, 1977)

Position	Justice	President	Starting page	Term MQS
Plurality	White	Kennedy D	147	0.348
Plurality	Stevens	Ford R		-0.178
Part concur/dissent	Brennan	Eisenhower R	168	-2.654
Part concur/dissent	Blackmun	Nixon R		0.677
Part concur/dissent	Rehnquist	Nixon R		4.446
Concur	Stewart	Eisenhower R	179	0.472
Concur	Powell	Nixon R		0.681
Dissent	Burger	Nixon R	180	1.923
Did not participate	Marshall	Johnson D	168	-2.381

First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (April 26, 1978)

Position	Justice	President	Starting page	Term MQS
Plurality	Powell	Nixon R	767	0.458
Plurality	Stewart	Eisenhower R		0.316
Plurality	Blackmun	Nixon R		0.322

Plurality	Stevens	Ford R		-0.079
Concur	Burger	Nixon R	795	1.526
Dissent	White	Kennedy D	802	-0.004
Dissent	Brennan	Eisenhower R		-2.665
Dissent	Marshall	Johnson D		-2.716
Dissent	Rehnquist	Nixon R	822	4.451

Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60 (November 28, 1978)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	61	4.488
Majority	Burger	Nixon R		1.409
Majority	Stewart	Eisenhower R		0.51
Majority	Blackmun	Nixon R		0.146
Majority	Powell	Nixon R		0.827
Concur	Stevens	Ford R	75	-0.303
Dissent	Brennan	Eisenhower R	79	-2.572
Dissent	White	Kennedy D		-0.054
Dissent	Marshall	Johnson D		-3.067

City of Mobile v. Bolden, 446 U.S. 55 (April 22, 1980)

Position	Justice	President	Starting page	Term MQS
Plurality	Stewart	Eisenhower R	58	0.484
Plurality	Burger	Nixon R		1.243
Plurality	Powell	Nixon R		0.825
Plurality	Rehnquist	Nixon R		4.515
Concur	Blackmun	Nixon R	80	-0.048
Concur	Stevens	Ford R	83	-0.242
Dissent	Brennan	Eisenhower R	94	-2.479
Dissent	White	Kennedy D	94	0.244
Dissent	Marshall	Johnson D	103	-3.341

City of Rome v. United States, 446 U.S. 156 (April 22, 1980)

Position	Justice	President	Starting page	Term MQS
Plurality	Marshall	Johnson D	159	-3.341
Plurality	Burger	Nixon R		1.243
Plurality	Brennan	Eisenhower R		-2.479
Plurality	White	Kennedy D		0.244
Concur	Blackmun	Nixon R	187	-0.048
Concur	Stevens	Ford R	190	-0.242
Dissent	Powell	Nixon R	193	0.825
Dissent	Rehnquist	Nixon R	206	4.515
Dissent	Stewart	Eisenhower R		0.484

Democratic Party of the United States v. Wisconsin ex rel. La Follette, 450 U.S. 107 (February 25, 1981)

Position	Justice	President	Starting page	Term MQS
Majority	Stewart	Eisenhower R	109	0.734
Majority	Burger	Nixon R		1.512
Majority	Brennan	Eisenhower R		-2.338
Majority	White	Kennedy D		0.222
Majority	Marshall	Johnson D		-3.489
Majority	Stevens	Ford R		-0.224
Dissent	Powell	Nixon R	126	0.871
Dissent	Blackmun	Nixon R		-0.075
Dissent	Rehnquist	Nixon R		4.372

Brown v. Hartlage, 456 U.S. 45 (April 5, 1982)

Position	Justice	President	Starting page	Term MQS
Majority	Brennan	Eisenhower R	46	-2.338
Majority	White	Kennedy D		0.265
Majority	Marshall	Johnson D		-3.622
Majority	Blackmun	Nixon R		-0.244
Majority	Powell	Nixon R		1.035
Majority	Stevens	Ford R		-0.219
Majority	O'Connor	Reagan R		1.664
Concur	Burger	Nixon R	62	1.693
Concur	Rehnquist	Nixon R	62	4.221

Clements, Governor of Texas, et al. v. Fashing et al., 457 U.S. 957 (June 25, 1982)

Position	Justice	President	Starting page	Term MQS
Plurality	Rehnquist	Nixon R	959	4.221
Plurality	Burger	Nixon R		1.693
Plurality	Powell	Nixon R		1.035
Plurality	O'Connor	Reagan R		1.664
Concur	Stevens	Ford R	973	-0.219
Dissent	Brennan	Eisenhower R	976	-2.338
Dissent	Marshall	Johnson D		-3.622
Dissent	Blackmun	Nixon R		-0.244
Dissent	White	Kennedy D		0.265

Washington v. Seattle School District No. 1, 458 U.S. 457 (June 30, 1982)

Position	Justice	President	Starting page	Term MQS
Majority	Blackmun	Nixon R	459	-0.244
Majority	Brennan	Eisenhower R		-2.338
Majority	White	Kennedy D		0.265
Majority	Marshall	Johnson D		-3.622
Majority	Stevens	Ford R		-0.219
Dissent	Powell	Nixon R	488	1.035
Dissent	Burger	Nixon R		1.693
Dissent	Rehnquist	Nixon R		4.221
Dissent	O'Connor	Reagan R		1.664

Rogers v. Lodge, 458 U.S. 613 (July 1, 1982)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	614	0.265
Majority	Burger	Nixon R		1.693
Majority	Brennan	Eisenhower R		-2.338
Majority	Marshall	Johnson D		-3.622
Majority	Blackmun	Nixon R		-0.244
Majority	O'Connor	Reagan R		1.664
Dissent	Powell	Nixon R	628	1.035
Dissent	Rehnquist	Nixon R		4.221
Dissent	Stevens	Ford R	631	-0.219

Brown v. Socialist Workers '74 Campaign Committee, 459 U.S. 87 (December 8, 1982)

Position	Justice	President	Starting page	Term MQS
Majority	Marshall	Johnson D	88	-3.794
Majority	Burger	Nixon R		1.582

Majority	Brennan	Eisenhower R		-2.129
Majority	White	Kennedy D		0.674
Majority	Powell	Nixon R		1.256
Part concur/dissent	Blackmun	Nixon R	102	-0.301
Part concur/dissent	O'Connor	Reagan R	107	1.813
Part concur/dissent	Rehnquist	Nixon R		4.153
Part concur/dissent	Stevens	Ford R		-0.531

FEC v. Nat'l Right to Work Comm., 459 U.S. 197 (December 13, 1982)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	198	4.153
Majority	Brennan	Eisenhower R		-2.129
Majority	Burger	Nixon R		1.582
Majority	White	Kennedy D		0.674
Majority	Marshall	Johnson D		-3.794
Majority	Blackmun	Nixon R		-0.301
Majority	Powell	Nixon R		1.256
Majority	Stevens	Ford R		-0.531
Majority	O'Connor	Reagan R		1.813

Anderson v. Celebrezze, 460 U.S. 780 (April 19, 1983)

Position	Justice	President	Starting page	Term MQS
Majority	Stevens	Ford R	782	-0.531
Majority	Burger	Nixon R		1.582
Majority	Brennan	Eisenhower R		-2.129
Majority	Marshall	Johnson D		-3.794
Majority	Blackmun	Nixon R		-0.301
Dissent	Rehnquist	Nixon R	806	4.153
Dissent	White	Kennedy D		0.674
Dissent	Powell	Nixon R		1.256
Dissent	O'Connor	Reagan R		1.813

Karcher v. Daggett, 462 U.S. 725 (June 22, 1983)

Position	Justice	President	Starting page	Term MQS
Plurality	Brennan	Eisenhower R	727	-2.129
Plurality	Marshall	Johnson D		-3.794
Plurality	O'Connor	Reagan R		1.813
Plurality	Blackmun	Nixon R		-0.301
Concur	Stevens	Ford R	744	-0.531
Dissent	White	Kennedy D	765	0.674
Dissent	Burger	Nixon R		1.582
Dissent	Powell	Nixon R	784	1.256
Dissent	Rehnquist	Nixon R		4.153

Brown v. Thomson, 462 U.S. 835 (June 22, 1983)

Position	Justice	President	Starting page	Term MQS
Plurality	Powell	Nixon R	837	1.256
Plurality	Burger	Nixon R		1.582
Plurality	Rehnquist	Nixon R		4.153
Concur	O'Connor	Reagan R	848	1.813
Concur	Stevens	Ford R		-0.531
Dissent	White	Kennedy D		0.674
Dissent	Marshall	Johnson D		-3.794
Dissent	Brennan	Eisenhower R	850	-2.129
Dissent	Blackmun	Nixon R		-0.301

FEC v. Nat'l Conservative Pol. Action Comm., 470 U.S. 480 (March 18, 1985)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	482	3.827
Majority	Burger	Nixon R		2.115
Majority	Blackmun	Nixon R		-0.077
Majority	Powell	Nixon R		0.85
Majority	O'Connor	Reagan R		1.583
Part concur/dissent	Stevens	Ford R	501	-0.464
Part concur/dissent	Brennan	Eisenhower R		-2.585
Dissent	White	Kennedy D	502	1.08
Dissent	Marshall	Johnson D	518	-3.963

Hunter v. Underwood, 471 U.S. 222 (April 16, 1985)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	223	3.827
Majority	Burger	Nixon R		2.115
Majority	Brennan	Eisenhower R		-2.585
Majority	White	Kennedy D		1.08
Majority	Marshall	Johnson D		-3.963
Majority	Blackmun	Nixon R		-0.077
Majority	Stevens	Ford R		-0.464
Majority	O'Connor	Reagan R		1.583
Did not participate	Powell	Nixon R	233	0.85

Thornburg v. Gingles, 478 U.S. 30 (June 30, 1986)

Position	Justice	President	Starting page	Term MQS
Plurality	Brennan	Eisenhower R	34	-2.549
Concur	White	Kennedy D	82	1.299
Concur	O'Connor	Reagan R	83	1.371
Concur	Burger	Nixon R		2.226
Concur	Powell	Nixon R		0.942
Concur	Rehnquist	Nixon R		3.606
Part concur/dissent	Stevens	Ford R	106	-0.457
Part concur/dissent	Marshall	Johnson D		-4.077
Part concur/dissent	Blackmun	Nixon R		-0.689

Davis v. Bandemer, 478 U.S. 109 (June 30, 1986)

Position	Justice	President	Starting page	Term MQS
Plurality	White	Kennedy D	113	1.299
Plurality	Brennan	Eisenhower R		-2.549
Plurality	Marshall	Johnson D		-4.077
Plurality	Blackmun	Nixon R		-0.689
Concur	O'Connor	Reagan R	144	1.371
Concur	Burger	Nixon R		2.226
Concur	Rehnquist	Nixon R		3.606
Part concur/dissent	Powell	Nixon R	161	0.942
Part concur/dissent	Stevens	Ford R		-0.457

Munro v. Socialist Workers Party, 479 U.S. 189 (December 10, 1986)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	190	1.274
Majority	Rehnquist	Nixon R		3.347
Majority	Blackmun	Nixon R		-0.821

Majority	Powell	Nixon R		0.886
Majority	Stevens	Ford R		-0.589
Majority	O'Connor	Reagan R		1.454
Majority	Scalia	Reagan R		1.391
Dissent	Marshall	Johnson D	200	-4.285
Dissent	Brennan	Eisenhower R		-2.803

Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (December 10, 1986)

Position	Justice	President	Starting page	Term MQS
Majority	Marshall	Johnson D	210	-4.285
Majority	Brennan	Eisenhower R		-2.803
Majority	White	Kennedy D		1.274
Majority	Blackmun	Nixon R		-0.821
Majority	Powell	Nixon R		0.886
Dissent	Stevens	Ford R	230	-0.589
Dissent	Scalia	Reagan R	234	1.391
Dissent	Rehnquist	Nixon R		3.347
Dissent	O'Connor	Reagan R		1.454

FEC v. Massachusetts Citizens for Life, Inc., 479 U.S. 238 (December 15, 1986)

Position	Justice	President	Starting page	Term MQS
Plurality	Brennan	Eisenhower R	241	-2.803
Plurality	Marshall	Johnson D		-4.285
Plurality	Powell	Nixon R		0.886
Plurality	Scalia	Reagan R		1.391
Concur	O'Connor	Reagan R	265	1.454
Part concur/dissent	Rehnquist	Nixon R	266	3.347
Part concur/dissent	Stevens	Ford R		-0.589
Part concur/dissent	Blackmun	Nixon R		-0.821
Part concur/dissent	White	Kennedy D	271	1.274

Meyer v. Grant, 486 U.S. 414 (June 6, 1988)

Position	Justice	President	Starting page	Term MQS
Majority	Stevens	Ford R	415	-0.487
Majority	Rehnquist	Nixon R		2.897
Majority	Brennan	Eisenhower R		-2.916
Majority	White	Kennedy D		1.029
Majority	Marshall	Johnson D		-4.428
Majority	Blackmun	Nixon R		-0.882
Majority	O'Connor	Reagan R		1.61
Majority	Scalia	Reagan R		1.644
Majority	Kennedy	Reagan R		1.223

Eu v. San Francisco County Democratic Central Committee, 489 U.S. 214 (February 22, 1989)

Position	Justice	President	Starting page	Term MQS
Majority	Marshall	Johnson D	216	-4.487
Majority	Brennan	Eisenhower R		-3.074
Majority	White	Kennedy D		1.114
Majority	Blackmun	Nixon R		-0.925
Majority	O'Connor	Reagan R		1.539
Majority	Scalia	Reagan R		1.815
Majority	Kennedy	Reagan R		1.488
Concur	Stevens	Ford R	233	-0.583
Did not participate	Rehnquist	Nixon R	233	2.77

Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (March 27, 1990)

Position	Justice	President	Starting page	Term MQS
Plurality	Marshall	Johnson D	654	-4.462
Plurality	Rehnquist	Nixon R		2.62
Plurality	White	Kennedy D		0.882
Plurality	Blackmun	Nixon R		-0.858
Concur	Brennan	Eisenhower R	669	-3.18
Concur	Stevens	Ford R	678	-0.997
Dissent	Scalia	Reagan R	679	1.998
Dissent	Kennedy	Reagan R	695	1.359
Dissent	O'Connor	Reagan R		1.54

Rutan v. Republican Party of Illinois, 497 U.S. 62 (June 21, 1990)

Position	Justice	President	Starting page	Term MQS
Plurality	Brennan	Eisenhower R	64	-3.18
Plurality	White	Kennedy D		0.882
Plurality	Marshall	Johnson D		-4.462
Plurality	Blackmun	Nixon R		-0.858
Concur	Stevens	Ford R	79	-0.997
Dissent	Scalia	Reagan R	92	1.998
Dissent	Rehnquist	Nixon R		2.62
Dissent	Kennedy	Reagan R		1.359
Dissent	O'Connor	Reagan R		1.54

Burson v. Freeman, 504 U.S. 191 (May 26, 1992)

Position	Justice	President	Starting page	Term MQS
Plurality	Blackmun	Nixon R	193	-1.438
Plurality	Rehnquist	Nixon R		2.133
Plurality	White	Kennedy D		0.639
Concur	Kennedy	Reagan R	211	0.86
Concur	Scalia	Reagan R	214	2.513
Dissent	Stevens	Ford R	217	-2.16
Dissent	O'Connor	Reagan R		0.699
Dissent	Souter	GHW Bush R		0.603
Did not participate	Thomas	GHW Bush R	211	2.742

Burdick v. Takushi, 504 U.S. 428 (June 8, 1992)

Position	Justice	President	Starting page	Term MQS
Majority	White	Kennedy D	430	0.639
Majority	Rehnquist	Nixon R		2.133
Majority	O'Connor	Reagan R		0.699
Majority	Scalia	Reagan R		2.513
Majority	Souter	GHW Bush R		0.603
Majority	Thomas	GHW Bush R		2.742
Dissent	Kennedy	Reagan R	442	0.86
Dissent	Blackmun	Nixon R		-1.438
Dissent	Stevens	Ford R		-2.16

Voinovich v. Quilter, 507 U.S. 146 (March 2, 1993)

Position	Justice	President	Starting page	Term MQS
Majority	O'Connor	Reagan R	149	0.858
Majority	Rehnquist	Nixon R		2.072
Majority	White	Kennedy D		0.585
Majority	Blackmun	Nixon R		-1.652
Majority	Stevens	Ford R		-2.366
Majority	Scalia	Reagan R		2.551

Majority	Kennedy	Reagan R		1.031
Majority	Souter	GHW Bush R		0.258
Majority	Thomas	GHW Bush R		3.045

Shaw v. Reno, 509 U.S. 630 (June 28, 1993)

Position	Justice	President	Starting page	Term MQS
Majority	O'Connor	Reagan R	633	0.858
Majority	Rehnquist	Nixon R		2.072
Majority	Scalia	Reagan R		2.551
Majority	Kennedy	Reagan R		1.031
Majority	Thomas	GHW Bush R		3.045
Dissent	White	Kennedy D	658	0.585
Dissent	Blackmun	Nixon R		-1.652
Dissent	Stevens	Ford R		-2.366
Dissent	Souter	GHW Bush R	679	0.258

McIntyre v. Ohio Elections Commission, 514 U.S. 334 (April 19, 1995)

Position	Justice	President	Starting page	Term MQS
Majority	Stevens	Ford R	336	-3.008
Majority	O'Connor	Reagan R		0.838
Majority	Kennedy	Reagan R		0.851
Majority	Souter	GHW Bush R		-0.336
Majority	Breyer	Clinton D		-0.333
Concur	Ginsburg	Clinton D	358	-0.452
Concur	Thomas	GHW Bush R	358	3.645
Dissent	Scalia	Reagan R	371	2.889
Dissent	Rehnquist	Nixon R		1.879

U.S. Term Limits v. Thornton, 514 U.S. 779 (May 22, 1995)

Position	Justice	President	Starting page	Term MQS
Plurality	Stevens	Ford R	782	-3.008
Plurality	Souter	GHW Bush R		-0.336
Plurality	Ginsburg	Clinton D		-0.452
Plurality	Breyer	Clinton D		-0.333
Concur	Kennedy	Reagan R	838	0.851
Dissent	Thomas	GHW Bush R	845	3.645
Dissent	Rehnquist	Nixon R		1.879
Dissent	O'Connor	Reagan R		0.838
Dissent	Scalia	Reagan R		2.899

Miller v. Johnson, 515 U.S. 900 (June 29, 1995)

Position	Justice	President	Starting page	Term MQS
Plurality	Kennedy	Reagan R	903	0.851
Plurality	Rehnquist	Nixon R		1.879
Plurality	Scalia	Reagan R		2.899
Plurality	Thomas	GHW Bush R		3.645
Concur	O'Connor	Reagan R	928	0.838
Dissent	Ginsburg	Clinton D	934	-0.452
Dissent	Stevens	Ford R		-3.008
Dissent	Breyer	Clinton D		-0.333
Dissent	Souter	GHW Bush R		-0.336

Wisconsin v. City of New York, 517 U.S. 1 (March 20, 1996)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	3	1.848

Majority	Stevens	Ford R		-3.267
Majority	O'Connor	Reagan R		0.873
Majority	Scalia	Reagan R		3.187
Majority	Kennedy	Reagan R		0.747
Majority	Souter	GHW Bush R		-0.379
Majority	Thomas	GHW Bush R		3.74
Majority	Ginsburg	Clinton D		-0.529
Majority	Breyer	Clinton D		-0.505

Morse v. Republican Party, 517 U.S. 186 (March 27, 1996)

Position	Justice	President	Starting page	Term MQS
Plurality	Stevens	Ford R	190	-3.267
Plurality	Ginsburg	Clinton D		-0.529
Concur	Breyer	Clinton D	235	-0.505
Concur	O'Connor	Reagan R		0.873
Concur	Souter	GHW Bush R		-0.379
Dissent	Scalia	Reagan R	241	3.187
Dissent	Thomas	GHW Bush R	253	3.74
Dissent	Rehnquist	Nixon R		1.848
Dissent	Kennedy	Reagan R	247	0.747

Shaw v. Hunt, 517 U.S. 899 (June 18, 1996)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	901	1.848
Majority	O'Connor	Reagan R		0.873
Majority	Scalia	Reagan R		3.187
Majority	Kennedy	Reagan R		0.747
Majority	Thomas	GHW Bush R		3.74
Dissent	Stevens	Ford R	918	-3.267
Dissent	Souter	GHW Bush R	951	-0.379
Dissent	Ginsburg	Clinton D		-0.529
Dissent	Breyer	Clinton D		-0.505

Bush v. Vera, 517 U.S. 952 (June 13, 1996)

Position	Justice	President	Starting page	Term MQS
Plurality	Rehnquist	Nixon R	956	1.848
Concur	O'Connor	Reagan R	990	0.873
Concur	Kennedy	Reagan R	996	0.747
Concur	Thomas	GHW Bush R	999	3.74
Concur	Scalia	Reagan R		3.187
Dissent	Stevens	Ford R	1003	-3.267
Dissent	Souter	GHW Bush R	1045	-0.379
Dissent	Ginsburg	Clinton D		-0.529
Dissent	Breyer	Clinton D		-0.505

Colorado Republican Federal Campaign Comm. v. FEC, 518 U.S. 604 (June 26, 1996)

Position	Justice	President	Starting page	Term MQS
Plurality	Breyer	Clinton D	608	-0.505
Plurality	O'Connor	Reagan R		0.873
Plurality	Souter	GHW Bush R		-0.379
Part concur/dissent	Kennedy	Reagan R	626	0.747
Part concur/dissent	Rehnquist	Nixon R		1.848
Part concur/dissent	Scalia	Reagan R		3.187
Part concur/dissent	Thomas	GHW Bush R	631	3.74
Dissent	Stevens	Ford R	648	-3.267

Dissent	Ginsburg	Clinton D		-0.529
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Timmons v. Twin Cities Area New Party, 520 U.S. 351 (April 28, 1997)

Position	Justice	President	Starting page	Term MQS
Majority	Rehnquist	Nixon R	353	1.694
Majority	O'Connor	Reagan R		0.99
Majority	Scalia	Reagan R		3.407
Majority	Kennedy	Reagan R		0.835
Majority	Thomas	GHW Bush R		3.813
Majority	Breyer	Clinton D		-0.751
Dissent	Stevens	Ford R	370	-3.379
Dissent	Ginsburg	Clinton D		-0.602
Dissent	Souter	GHW Bush R	382	-0.32

Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (January 12, 1999)

Position	Justice	President	Starting page	Term MQS
Majority	Ginsburg	Clinton D	186	-0.799
Majority	Stevens	Ford R		-3.372
Majority	Scalia	Reagan R		3.463
Majority	Kennedy	Reagan R		0.958
Majority	Souter	GHW Bush R		-0.488
Concur	Thomas	GHW Bush R	206	3.826
Part concur/dissent	O'Connor	Reagan R	215	0.996
Part concur/dissent	Breyer	Clinton D		-0.747
Dissent	Rehnquist	Nixon R	226	1.881

Lopez v. Monterey County, 525 U.S. 266 (January 20, 1999)

Position	Justice	President	Starting page	Term MQS
Majority	O'Connor	Reagan R	268	0.996
Majority	Stevens	Ford R		-3.372
Majority	Scalia	Reagan R		3.463
Majority	Souter	GHW Bush R		-0.488
Majority	Ginsburg	Clinton D		-0.799
Majority	Breyer	Clinton D		-0.747
Concur	Kennedy	Reagan R	288	0.958
Concur	Rehnquist	Nixon R		1.881
Dissent	Thomas	GHW Bush R	289	3.826

Nixon v. Shrink Missouri Government PAC, 528 U.S. 377 (January 24, 2000)

Position	Justice	President	Starting page	Term MQS
Plurality	Souter	GHW Bush R	381	-0.942
Plurality	Rehnquist	Nixon R		1.741
Plurality	O'Connor	Reagan R		0.889
Concur	Stevens	Ford R	398	-3.316
Concur	Breyer	Clinton D	399	-0.784
Concur	Ginsburg	Clinton D		-1.257
Dissent	Kennedy	Reagan R	405	1.093
Dissent	Thomas	GHW Bush R	410	3.777
Dissent	Scalia	Reagan R		3.54

Rice v. Cayetano, 528 U.S. 495 (February 23, 2000)

Position	Justice	President	Starting page	Term MQS
Majority	Kennedy	Reagan R	498	1.093

Majority	Rehnquist	Nixon R		1.741
Majority	O'Connor	Reagan R		0.889
Majority	Scalia	Reagan R		3.54
Majority	Thomas	GHW Bush R		3.777
Concur	Breyer	Clinton D	524	-0.784
Concur	Souter	GHW Bush R		-0.942
Dissent	Stevens	Ford R	527	-3.316
Dissent	Ginsburg	Clinton D	547	-1.257

California Democratic Party v. Jones, 530 U.S. 567 (June 26, 2000)

Position	Justice	President	Starting page	Term MQS
Majority	Scalia	Reagan R	569	3.54
Majority	Rehnquist	Nixon R		1.741
Majority	O'Connor	Reagan R		0.889
Majority	Breyer	Clinton D		-0.784
Majority	Souter	GHW Bush R		-0.942
Majority	Thomas	GHW Bush R		3.777
Concur	Kennedy	Reagan R	586	1.093
Dissent	Stevens	Ford R	590	-3.316
Dissent	Ginsburg	Clinton D		-1.257

Bush v. Gore, 531 U.S. 98 (December 12, 2000)

Position	Justice	President	Starting page	Term MQS
Plurality	O'Connor	Reagan R	100	0.603
Plurality	Kennedy	Reagan R		0.972
Concur	Rehnquist	Nixon R	111	1.679
Concur	Scalia	Reagan R		3.54
Concur	Thomas	GHW Bush R		3.799
Dissent	Stevens	Ford R	123	-3.146
Dissent	Souter	GHW Bush R	129	-1.207
Dissent	Ginsburg	Clinton D	135	-1.501
Dissent	Breyer	Clinton D	144	-1.241

Cook v. Gralike, 531 U.S. 510 (February 28, 2001)

Position	Justice	President	Starting page	Term MQS
Majority	Stevens	Ford R	513	-3.146
Majority	Scalia	Reagan R		3.54
Majority	Ginsburg	Clinton D		-1.501
Majority	Breyer	Clinton D		-1.241
Majority	Souter	GHW Bush R		-1.207
Concur	Kennedy	Reagan R	527	0.972
Concur	Rehnquist	Nixon R	530	1.679
Concur	O'Connor	Reagan R		0.603
Concur	Thomas	GHW Bush R	530	3.799

Easley v. Cromartie, 532 U.S. 234 (April 18, 2001)

Position	Justice	President	Starting page	Term MQS
Majority	Breyer	Clinton D	237	-1.241
Majority	Stevens	Ford R		-3.146
Majority	O'Connor	Reagan R		0.603
Majority	Souter	GHW Bush R		-1.207
Majority	Ginsburg	Clinton D		-1.501
Dissent	Thomas	GHW Bush R	259	3.799
Dissent	Rehnquist	Nixon R		1.679

Dissent	Scalia	Reagan R		3.54
Dissent	Kennedy	Reagan R		0.972

FEC v. Colorado Republican Federal Campaign Comm., 533 U.S. 431 (June 25, 2001)

Position	Justice	President	Starting page	Term MQS
Majority	Souter	GHW Bush R	437	-1.207
Majority	Stevens	Ford R		-3.146
Majority	O'Connor	Reagan R		0.603
Majority	Ginsburg	Clinton D		-1.501
Majority	Breyer	Clinton D		-1.241
Dissent	Thomas	GHW Bush R	465	3.799
Dissent	Scalia	Reagan R		3.54
Dissent	Kennedy	Reagan R		0.972
Dissent	Rehnquist	Nixon R		1.679

Republican Party of Minnesota v. White, 536 U.S. 765 (June 27, 2002)

Position	Justice	President	Starting page	Term MQS
Plurality	Scalia	Reagan R	768	3.384
Plurality	Rehnquist	Nixon R		1.429
Plurality	Thomas	GHW Bush R		3.755
Concur	O'Connor	Reagan R	788	0.369
Concur	Kennedy	Reagan R	792	1.06
Dissent	Stevens	Ford R	797	-3.037
Dissent	Souter	GHW Bush R		-1.4
Dissent	Ginsburg	Clinton D	803	-1.621
Dissent	Breyer	Clinton D		-1.317

FEC v. Beaumont, 539 U.S. 146 (June 16, 2003)

Position	Justice	President	Starting page	Term MQS
Majority	Souter	GHW Bush R	149	-1.514
Majority	Rehnquist	Nixon R		1.261
Majority	Stevens	Ford R		-2.918
Majority	O'Connor	Reagan R		0.262
Majority	Ginsburg	Clinton D		-1.683
Majority	Breyer	Clinton D		-1.317
Concur	Kennedy	Reagan R	163	0.905
Dissent	Thomas	GHW Bush R	164	3.889
Dissent	Scalia	Reagan R		3.084

McConnell v. FEC, 540 U.S. 93 (December 10, 2003)

Position	Justice	President	Starting page	Term MQS
Part concur/dissent	Ginsburg	Clinton D		-1.753
Part concur/dissent	Breyer	Clinton D		-1.233
Part majority/concur/dissent	Stevens	Ford R	114	-2.904
Majority	O'Connor	Reagan R		0.224
Majority	Souter	GHW Bush R		-1.663
Part concur/dissent	Scalia	Reagan R	247	2.914
Part concur/dissent	Thomas	GHW Bush R	264	3.911
Part concur/dissent	Kennedy	Reagan R	286	0.771
Part majority/concur/dissent	Rehnquist	Nixon R	224, 350	1.395

Vieth v. Jubelirer, 541 U.S. 267 (April 28, 2004)

Position	Justice	President	Starting page	Term MQS
Plurality	Scalia	Reagan R	271	2.914

Plurality	Rehnquist	Nixon R		1.395
Plurality	O'Connor	Reagan R		0.224
Plurality	Thomas	GHW Bush R		3.911
Concur	Kennedy	Reagan R	306	0.771
Dissent	Stevens	Ford R	317	-2.904
Dissent	Souter	GHW Bush R	343	-1.663
Dissent	Ginsburg	Clinton D		-1.753
Dissent	Breyer	Clinton D	355	-1.233

Clingman v. Beaver, 544 U.S. 581 (May 23, 2005)

Position	Justice	President	Starting page	Term MQS
Plurality	Thomas	GHW Bush R	584	3.946
Plurality	Rehnquist	Nixon R		1.455
Plurality	Scalia	Reagan R		2.713
Plurality	Kennedy	Reagan R		0.543
Concur	O'Connor	Reagan R	598	0.114
Concur	Breyer	Clinton D		-1.064
Dissent	Stevens	Ford R	608	-2.894
Dissent	Ginsburg	Clinton D		-1.684
Dissent	Souter	GHW Bush R		-1.614

Randall v. Sorrell, 548 U.S. 230 (June 26, 2006)

Position	Justice	President	Starting page	Term MQS
Plurality	Breyer	Clinton D	236	-1.232
Plurality	Roberts	GW Bush R		1.392
Concur	Alito	GW Bush R	263	1.428
Concur	Kennedy	Reagan R	264	0.5
Concur	Thomas	GHW Bush R	265	3.973
Concur	Scalia	Reagan R		2.624
Dissent	Stevens	Ford R	273	-2.851
Dissent	Souter	GHW Bush R	281	-1.529
Dissent	Ginsburg	Clinton D		-1.573

League of United Latin American Citizens v. Perry, 548 U.S. 399 (June 28, 2006)

Position	Justice	President	Starting page	Term MQS
Plurality	Kennedy	Reagan R	408	0.5
Part concur/dissent	Stevens	Ford R	447	-2.851
Part concur/dissent	Souter	GHW Bush R	483	-1.529
Part concur/dissent	Ginsburg	Clinton D		-1.573
Part concur/dissent	Breyer	Clinton D	491	-1.232
Part concur/dissent	Roberts	GW Bush R	492	1.392
Part concur/dissent	Alito	GW Bush R		1.428
Part concur/dissent	Scalia	Reagan R	511	2.624
Part concur/dissent	Thomas	GHW Bush R		3.973

Purcell v. Gonzalez, 549 U.S. 1 (October 20, 2006)

Position	Justice	President	Starting page	Term MQS
Majority	Roberts	GW Bush R	2	1.426
Majority	Scalia	Reagan R		2.593
Majority	Kennedy	Reagan R		0.461
Majority	Souter	GHW Bush R		-1.427
Majority	Thomas	GHW Bush R		3.929
Majority	Ginsburg	Clinton D		-1.689
Majority	Breyer	Clinton D		-1.362

Majority	Alito	GW Bush R		1.458
Concur	Stevens	Ford R	6	-2.812

Davenport v. Washington Educ. Ass'n, 551 U.S. 177 (June 14, 2007)

Position	Justice	President	Starting page	Term MQS
Majority	Scalia	Reagan R	180	2.593
Majority	Stevens	Ford R		-2.812
Majority	Kennedy	Reagan R		0.461
Majority	Souter	GHW Bush R		-1.427
Majority	Thomas	GHW Bush R		3.929
Majority	Ginsburg	Clinton D		-1.689
Concur	Breyer	Clinton D	192	-1.362
Concur	Roberts	GW Bush R		1.426
Concur	Alito	GW Bush R		1.458

FEC v. Wisconsin Right to Life, 551 U.S. 449 (June 25, 2007)

Position	Justice	President	Starting page	Term MQS
Plurality	Roberts	GW Bush R	455	1.426
Concur	Alito	GW Bush R	482	1.458
Concur	Scalia	Reagan R	483	2.593
Concur	Kennedy	Reagan R		0.461
Concur	Thomas	GHW Bush R		3.929
Dissent	Souter	GHW Bush R	504	-1.427
Dissent	Stevens	Ford R		-2.812
Dissent	Ginsburg	Clinton D		-1.689
Dissent	Breyer	Clinton D		-1.362

New York State Board of Elections v. Lopez Torres, 552 U.S. 196 (January 16, 2008)

Position	Justice	President	Starting page	Term MQS
Majority	Scalia	Reagan R	198	2.437
Majority	Roberts	GW Bush R		1.413
Majority	Thomas	GHW Bush R		3.785
Majority	Ginsburg	Clinton D		-1.681
Majority	Alito	GW Bush R		1.552
Concur	Stevens	Ford R	209	-2.689
Concur	Souter	GHW Bush R		-1.503
Concur	Kennedy	Reagan R	209	0.412
Concur	Breyer	Clinton D		-1.273

Washington State Grange v. Washington Republican Party, 552 U.S. 442 (March 18, 2008)

Position	Justice	President	Starting page	Term MQS
Majority	Thomas	GHW Bush R	444	3.785
Majority	Stevens	Ford R		-2.689
Majority	Souter	GHW Bush R		-1.503
Majority	Ginsburg	Clinton D		-1.681
Majority	Breyer	Clinton D		-1.273
Concur	Roberts	GW Bush R	459	1.413
Concur	Alito	GW Bush R		1.552
Dissent	Scalia	Reagan R	462	2.437
Dissent	Kennedy	Reagan R		0.412

Crawford v. Marion County Election Board, 553 U.S. 181 (April 28, 2008)

Position	Justice	President	Starting page	Term MQS
Plurality	Stevens	Ford R	185	-2.689
Plurality	Roberts	GW Bush R		1.413

Plurality	Kennedy	Reagan R		0.412
Concur	Scalia	Reagan R	204	2.437
Concur	Thomas	GHW Bush R		3.785
Concur	Alito	GW Bush R		1.552
Dissent	Souter	GHW Bush R	209	-1.503
Dissent	Ginsburg	Clinton D		-1.681
Dissent	Breyer	Clinton D	237	-1.273

Davis v. FEC, 554 U.S. 724 (June 26, 2008)

Position	Justice	President	Starting page	Term MQS
Majority	Alito	GW Bush R	728	1.552
Majority	Roberts	GW Bush R		1.413
Majority	Scalia	Reagan R		2.437
Majority	Kennedy	Reagan R		0.412
Majority	Thomas	GHW Bush R		3.785
Part concur/dissent	Stevens	Ford R	749	-2.689
Part concur/dissent	Souter	GHW Bush R		-1.503
Part concur/dissent	Ginsburg	Clinton D	758	-1.681
Part concur/dissent	Breyer	Clinton D		-1.273

Citizens United v. FEC, 558 U.S. 310 (January 21, 2010)

Position	Justice	President	Starting page	Term MQS
Plurality	Kennedy	Reagan R	318	0.521
Concur	Roberts	GW Bush R	372	1.387
Concur	Alito	GW Bush R		1.841
Concur	Scalia	Reagan R	385	2.295
Part concur/dissent	Stevens	Ford R	393	-2.859
Part concur/dissent	Ginsburg	Clinton D		-1.682
Part concur/dissent	Breyer	Clinton D		-1.323
Part concur/dissent	Sotomayor	Obama D		-1.61
Part concur/dissent	Thomas	GHW Bush R	480	3.395

Doe v. Reed, 561 U.S. 186 (June 24, 2010)

Position	Justice	President	Starting page	Term MQS
Plurality	Roberts	GW Bush R	190	1.387
Plurality	Kennedy	Reagan R		0.521
Concur	Breyer	Clinton D	202	-1.323
Concur	Alito	GW Bush R	202	1.841
Concur	Sotomayor	Obama D	212	-1.61
Concur	Stevens	Ford R		-2.859
Concur	Ginsburg	Clinton D		-1.682
Concur	Scalia	Reagan R	219	2.295
Dissent	Thomas	GHW Bush R	228	3.395

Arizona Free Enterprise Club's Freedom PAC v. Bennett, 564 U.S. 721 (June 27, 2011)

Position	Justice	President	Starting page	Term MQS
Majority	Roberts	GW Bush R	727	1.394
Majority	Scalia	Reagan R		2.127
Majority	Kennedy	Reagan R		0.579
Majority	Thomas	GHW Bush R		3.225
Majority	Alito	GW Bush R		1.982
Dissent	Kagan	Obama D	755	-1.44
Dissent	Ginsburg	Clinton D		-2.085
Dissent	Breyer	Clinton D		-1.404
Dissent	Sotomayor	Obama D		-1.696

American Tradition Partnership v. Bullock, 567 U.S. 516 (June 25, 2012)

Position	Justice	President	Starting page	Term MQS
Majority	Roberts	GW Bush R	516	1.203
Majority	Scalia	Reagan R		2.05
Majority	Kennedy	Reagan R		0.302
Majority	Thomas	GHW Bush R		3.199
Majority	Alito	GW Bush R		1.998
Dissent	Breyer	Clinton D	517	-1.4
Dissent	Ginsburg	Clinton D		-2.368
Dissent	Sotomayor	Obama D		-1.882
Dissent	Kagan	Obama D		-1.43

Tennant v. Jefferson County Commission, 567 U.S. 758 (September 25, 2012)

Position	Justice	President	Starting page	Term MQS
Majority	Roberts	GW Bush R	759	1.203
Majority	Scalia	Reagan R		2.05
Majority	Kennedy	Reagan R		0.302
Majority	Thomas	GHW Bush R		3.199
Majority	Ginsburg	Clinton D		-2.368
Majority	Breyer	Clinton D		-1.4
Majority	Alito	GW Bush R		1.998
Majority	Sotomayor	Obama D		-1.882
Majority	Kagan	Obama D		-1.43

Ariz. v. Inter Tribal Council of Arizona, Inc., 570 U.S. 1 (June 17, 2013)

Position	Justice	President	Starting page	Term MQS
Majority	Scalia	Reagan R	4	1.727
Majority	Roberts	GW Bush R		1.109
Majority	Kagan	Obama D		-1.671
Majority	Ginsburg	Clinton D		-2.468
Majority	Sotomayor	Obama D		-2.341
Majority	Breyer	Clinton D		-1.39
Concur	Kennedy	Reagan R	20	0.245
Dissent	Thomas	GHW Bush R	22	3.151
Dissent	Alito	GW Bush R	38	1.99

Shelby County v. Holder, 570 U.S. 529 (June 25, 2013)

Position	Justice	President	Starting page	Term MQS
Plurality	Roberts R	GW Bush	534	1.09
Plurality	Scalia R	Reagan		1.727
Plurality	Alito R	GW Bush		1.99
Plurality	Kennedy R	Reagan		0.245
Concur	Thomas R	GHW Bush	557	3.151
Dissent	Ginsburg D	Clinton	559	-2.468
Dissent	Breyer D	Clinton		-1.39
Dissent	Sotomayor D	Obama		-2.341
Dissent	Kagan D	Obama		-1.671

McCutcheon v. FEC, 572 U.S. 185 (April 2, 2014)

Position	Justice	President	Starting page	Term MQS
Plurality	Roberts	GW Bush R	191	0.804
Plurality	Scalia	Reagan R		1.583
Plurality	Kennedy	Reagan R		0.067

Plurality	Alito	GW Bush R		1.923
Concur	Thomas	GHW Bush R	228	3.176
Dissent	Breyer	Clinton D	232	-1.468
Dissent	Ginsburg	Clinton D		-2.46
Dissent	Sotomayor	Obama D		-2.672
Dissent	Kagan	Obama D		-1.626

Alabama Legislative Black Caucus v. Alabama, 575 U.S. 254 (March 25, 2015)

Position	Justice	President	Starting page	Term MQS
Majority	Breyer	Clinton D	258	-1.569
Majority	Ginsburg	Clinton D		-2.545
Majority	Kennedy	Reagan R		-0.224
Majority	Sotomayor	Obama D		-2.975
Majority	Kagan	Obama D		-1.669
Dissent	Scalia	Reagan R	282	1.519
Dissent	Alito	GW Bush R		1.739
Dissent	Roberts	GW Bush R		0.595
Dissent	Thomas	GHW Bush R	294	3.177

Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n, 576 U.S. 787 (June 29, 2015)

Position	Justice	President	Starting page	Term MQS
Majority	Ginsburg	Clinton D	791	-2.545
Majority	Kennedy	Reagan R		-0.224
Majority	Breyer	Clinton D		-1.569
Majority	Sotomayor	Obama D		-2.975
Majority	Kagan	Obama D		-1.669
Dissent	Roberts	GW Bush R	824	0.595
Dissent	Alito	GW Bush R		1.739
Dissent	Scalia	Reagan R	854	1.519
Dissent	Thomas	GHW Bush R	859	3.177

Evenwel v. Abbott, 578 U.S. 54 (April 4, 2016)

Position	Justice	President	Starting page	Term MQS
Majority	Ginsburg	Clinton D	57	-2.66
Majority	Kennedy	Reagan R		-0.27
Majority	Breyer	Clinton D		-1.48
Majority	Sotomayor	Obama D		-3.211
Majority	Kagan	Obama D		-1.54
Majority	Roberts	GW Bush R		0.33
	vacancy			
Concur	Thomas	GHW Bush R	75	3.204
Concur	Alito	GW Bush R	92	1.646

Harris v. Ariz. Indep. Redistricting Comm'n, 578 U.S. 253 (April 20, 2016)

Position	Justice	President	Starting page	Term MQS
Majority	Breyer	Clinton D	255	-1.48
Majority	Roberts	GW Bush R		0.33
Majority	Kennedy	Reagan R		-0.27
Majority	Thomas	GHW Bush R		3.204
Majority	Ginsburg	Clinton D		-2.66
Majority	Alito	GW Bush R		1.646
Majority	Sotomayor	Obama D		-3.211
Majority	Kagan	Obama D		-1.54
	vacancy			

Heffernan v. City of Paterson, 578 U.S. 266 (April 26, 2016)

Position	Justice	President	Starting page	Term MQS
Majority	Breyer	Clinton D	268	-1.48
Majority	Roberts	GW Bush R		0.33
Majority	Kennedy	Reagan R		-0.27
Majority	Ginsburg	Clinton D		-2.66
Majority	Sotomayor	Obama D		-3.211
Majority	Kagan	Obama D		-1.54
Dissent	Thomas	GHW Bush R	275	3.204
Dissent	Alito	GW Bush R		1.646
	vacancy			

Bethune-Hill v. Virginia State Bd. of Elections, 137 S. Ct. 788 (March 1, 2017)

Position	Justice	President	Starting page	Term MQS
Majority	Kennedy	Reagan R	794	-0.046
Majority	Roberts	GW Bush R		0.347
Majority	Ginsburg	Clinton D		-2.756
Majority	Breyer	Clinton D		-1.55
Majority	Sotomayor	Obama D		-3.416
Majority	Kagan	Obama D		-1.575
	vacancy			
Concur	Alito	GW Bush R	803	1.841
Part concur/dissent	Thomas	GHW Bush R	803	3.217

Cooper v. Harris, 137 S. Ct. 1455 (May 22, 2017)

Position	Justice	President	Starting page	Term MQS
Plurality	Kagan	Obama D	1463	-1.575
Plurality	Ginsburg	Clinton D		-2.756
Plurality	Sotomayor	Obama D		-3.416
Plurality	Breyer	Clinton D		-1.55
Concur	Thomas	GHW Bush R	1485	3.217
Part concur/dissent	Alito	GW Bush R	1486	1.841
Part concur/dissent	Roberts	GW Bush R		0.347
Part concur/dissent	Kennedy	Reagan R		-0.046
Did not participate	Gorsuch	Trump R	1504	1.14

Minnesota Voters Alliance v. Mansky, 138 S. Ct. 1876 (June 14, 2018)

Position	Justice	President	Starting page	Term MQS
Majority	Roberts	GW Bush R	1882	0.408
Majority	Alito	GW Bush R		2.04
Majority	Kennedy	Reagan R		0.399
Majority	Thomas	GHW Bush R		3.149
Majority	Gorsuch	Trump R		1.064
Majority	Ginsburg	Clinton D		-2.809
Majority	Kagan	Obama D		-1.596
Dissent	Sotomayor	Obama D	1893	-3.636
Dissent	Breyer	Clinton D		-1.753

Abbott v. Perez, 138 S. Ct. 2305 (June 25, 2018)

Position	Justice	President	Starting page	Term MQS
Plurality	Alito	GW Bush R	2313	2.04
Plurality	Roberts	GW Bush R		0.408
Plurality	Kennedy	Reagan R		0.399

Concur	Thomas	GHW Bush R	2335	3.149
Concur	Gorsuch	Trump R		1.064
Dissent	Sotomayor	Obama D	2335	-3.636
Dissent	Ginsburg	Clinton D		-2.809
Dissent	Breyer	Clinton D		-1.753
Dissent	Kagan	Obama D		-1.596

Rucho v. Common Cause, 139 S. Ct. 2484 (June 27, 2019)

Position	Justice	President	Starting page	Term MQS
Majority	Roberts	GW Bush R	2491	0.423
Majority	Thomas	GHW Bush R		3.189
Majority	Alito	GW Bush R		1.967
Majority	Gorsuch	Trump R		0.986
Majority	Kavanaugh	Trump R		0.604
Dissent	Kagan	Obama D	2509	-1.559
Dissent	Ginsburg	Clinton D		-2.854
Dissent	Breyer	Clinton D		-1.81
Dissent	Sotomayor	Obama D		-3.756

Chiafalo v. Washington, 140 S. Ct. 2316 (July 6, 2020)

Position	Justice	President	Starting page	Term MQS
Majority	Kagan	Obama D	2319	-1.581
Majority	Roberts	GW Bush R		0.339
Majority	Alito	GW Bush R		2.152
Majority	Ginsburg	Clinton D		-2.836
Majority	Sotomayor	Obama D		-3.855
Majority	Kavanaugh	Trump R		0.56
Majority	Breyer	Clinton D		-1.862
Concur	Thomas	GHW Bush R	2329	3.168
Concur	Gorsuch	Trump R		0.933

Bromovich v. Democratic National Committee, 141 S. Ct. 2321 (July 1, 2021)

Position	Justice	President	Starting page	Term MQS
Majority	Alito	GW Bush R	2330	2.162
Majority	Kavanaugh	Trump R		0.548
Majority	Barrett	Trump R		1.011
Majority	Roberts	GW Bush R		0.506
Concur	Gorsuch	Trump R	2350	1.11
Concur	Thomas	GHW Bush R		3.03
Dissent	Kagan	Obama D	2350	-1.508
Dissent	Breyer	Clinton D		-1.901
Dissent	Sotomayor	Obama D		-3.959

FEC v. Ted Cruz for Senate, No. 21-12, 2022 WL 1528348 (U.S. May 16, 2022)

Position	Justice	President	Starting page	Term MQS
Majority	Roberts	GW Bush R	3	
Majority	Thomas	GHW Bush R		
Majority	Alito	GW Bush R		
Majority	Gorsuch	Trump R		
Majority	Kavanaugh	Trump R		
Majority	Barrett	Trump R		
Dissent	Kagan	Obama D	12	
Dissent	Breyer	Clinton D		
Dissent	Sotomayor	Obama D		

APPENDIX B: PRESIDENTIAL ELECTIONS, 1900–2020²¹⁹

1900	Total	W. McKinley (R)	W. Bryan (D)
Popular Vote (PV)	13,972,525	7,219,193	6,357,698
Electoral Vote (EV)	224/447	292	155
Close Margin Battleground States (EV) to Flip Electoral College Results	69		UT (3), DE (3), WY (3), NE (8), WA (4), OR (4), MD (8), RI (4), SD (4), ND (3), NH (4), WV (6), KS (10), IN (15) = 79
PV Margin in Decisive Battleground States			192,187
Battleground PV Margin as % of Nationwide PV			1.4%
1904	Total	T. Roosevelt (R)	A. Parker (D)
Popular Vote (PV)	13,519,139	7,625,599	5,083,501

219. AM. PRESIDENCY PROJECT, *National Political Party Platforms*, UC SANTA BARBARA, <https://www.presidency.ucsb.edu/documents/presidential-documents-archive-guidebook/party-platforms-and-nominating-conventions-3> (last visited May 29, 2020).

Electoral Vote (EV)	239/476	336	140
Close Margin Battleground States (EV) to Flip Electoral College Results	99		NV (3), DE (3), WY (3), MT (3), RI (4), NH (4), MO (18), UT (3), ID (3), VT (4) WV (7), CO (5), ME (6), CT (7), ND (4), OR (4), SD (4), WA (5), NJ (12) = 102
PV Margin in Decisive Battleground States			608,733
Battleground PV Margin as % of Nationwide PV			4.5%

*MD awarded 7 EV to Parker and 1 to Roosevelt

1908	Total	W. Taft (R)	W. Bryan (D)
Popular Vote (PV)	14,884,098	7,676,598	6,406,874
Electoral Vote (EV)	242/483	321	162
Close Margin Battleground States (EV) to Flip Electoral College Results	80		MO (18), DE (3), MT (3), WY (3), IN (15), ID (3), UT (3), RI (4), NH (4), OR (4), ND (4), WV (7), SD (4), VT (4), ME (6) = 85
PV Margin in Decisive Battleground States			259,773
Battleground PV Margin as % of Nationwide PV			1.7%

*MD awarded 6 EV to Bryan and 2 to Taft

1912	Total	W. Wilson (D)	T. Roosevelt (P)
Popular Vote (PV)	15,043,030	6,294,327	4,120,207
Electoral Vote (EV)	266/531	435	88
Close Margin Battleground States (EV) to Flip Electoral College Results	178		NV (3), ME (6), AZ (3), ND (5), MT (4), WY (3), ID (4), OR (5), NM (3), RI (5), DE (3), NH (4), IL (29), KS (10), IA (13), MA (18), FL (6), NJ (14), WV (8), NE (8), CT (7), CO (6), SC (9), AR (9) = 185
PV Margin in Decisive Battleground States			459,330
Battleground PV Margin as % of Nationwide PV			3.1%

*CA awarded 2 EV to Wilson and 11 to Roosevelt

1912	Total	W. Wilson (D)	W. Taft (R)
Popular Vote (PV)	15,043,030	6,294,327	3,486,343
Electoral Vote (EV)	266/531	435	8
Close Margin Battleground States (EV) to Flip Electoral College Results	258		WY (3), ID(4), NH (4), RI (5), NM (3), NV (3), CT (7), ND (5), DE (3), AZ (3), MT (4), OR (5), MA (18), ME (6), OK (10), FL (6), WI (13), AR (9), SC (9), NE (8), CO (6), MS (10), WV

			(8), LA (10), MD (8), IA (13), VA (12), KS (10), TN (12), AL (12), GA (14), NJ (14), KY (13) = 270
PV Margin in Decisive Battleground States			1,255,668
Battleground PV Margin as % of Nationwide PV			8.3%

1916	Total	W. Wilson (D)	C. Hughes (R)
Popular Vote (PV)	18,535,445	9,126,063	8,547,030
Electoral Vote (EV)	266/531	277	254
Close Margin Battleground States (EV) to Flip Electoral College Results	12		NH (4), ND (5), NM (3) = 12
PV Margin in Decisive Battleground States			4,387
Battleground PV Margin as % of Nationwide PV			0.0002%

1920	Total	W. Harding (R)	J. Cox (D)
Popular Vote (PV)	26,768,457	16,151,916	9,134,074
Electoral Vote (EV)	266/531	404	127
Close Margin Battleground States (EV) to Flip Electoral College Results	139		NV (3), AZ (3), NM (3), TN (12), DE (3), WY (3), UT (4), OK (10), NH (4), ID (4), VT (4), MT (4), RI (5), MD (8), WN (8), OR (5), CO (6), SD (5), ME (6), CT (7), ND (5), NE (8), WA (7), MO (18) = 145
PV Margin in Decisive Battleground States			1,399,890
Battleground PV Margin as % of Nationwide PV			5.2%

1924	Total	C. Coolidge (R)	J. Davis (D)
Popular Vote (PV)	29,099,380	15,724,310	8,386,532
Electoral Vote (EV)	266/531	382	136
Close Margin Battleground States (EV) to Flip Electoral College Results	130		AZ (3), NV (3), NM (3), MD (8), DE (3), KY (13), WY (3), UT (4), WV (8), MT (4), NH (4), ID (4), RI (5), VT (4), MO (18), SD (5), OR (5), ND (5), NE (8), ME (6), CO (6), CT (7), WA (7), IN (15) = 151
PV Margin in Decisive Battleground States			1,529,935
Battleground PV Margin as % of Nationwide PV			5.3%

1928	Total	H. Hoover (R)	A. Smith (D)
Popular Vote (PV)	36,801,510	21,432,823	15,004,336
Electoral Vote (EV)	266/531	444	87
Close Margin Battleground States (EV) to Flip Electoral College Results	179		NV (3), UT (4), AZ (3), NM (3), WY (3), VA (12), ND (5), TX (20), DE (3), NH (4), MT (4), TN (12), FL (6), CT (7), VT (4), ID (4), SD (5), NC (12), MD (8), WI (13), OR (5), ME (6), NY (45) = 191
PV Margin in Decisive Battleground States			1,060,691
Battleground PV Margin as % of Nationwide PV			2.9%

1932	Total	F. Roosevelt	H. Hoover
Popular Vote (PV)	39,747,783	22,818,740	15,760,425
Electoral Vote (EV)	266/531	472	59
Close Margin Battleground States (EV) to Flip Electoral College Results	207		WY (3), NV (3), NJ (16), RI (4), UT (4), ID (4), NW (3), AZ (3), MT (4), CO (6), MA (17), OH (26), WV (8), KS (9), OR (5), SD (4), SC (8), ND (4), VA (11), MD (8), MI (19), TN (11), MS (9), FL (7), WA (8), NE (7) = 211
PV Margin in Decisive Battleground States			1,389,819
Battleground PV Margin as % of Nationwide PV			3.5%

1936	Total	F. Roosevelt	A. Landon
Popular Vote (PV)	45,646,991	27,750,866	16,679,683
Electoral Vote (EV)	266/531	523	8
Close Margin Battleground States (EV) to Flip Electoral College Results	258		NH (4), DE (3), NV (3), WY (3), SD (4), RI (4), NM (3), AZ (3), ID (4), KS (9), UT (4), ND (4), MT (4), NE (7), CT (8), SC (8), CO (6), AR (9), IA (11), VA (11), OR (5), MS (9), MD (8), FL (7), KY (11), MA (17), WV (8), TN (11), AL (11), GA (12), IN (14), WA (8), OK (11), LA (10), MI (19) = 273
PV Margin in Decisive Battleground States			4,523,592
Battleground PV Margin as % of Nationwide PV			9.9%

1940	Total	F. Roosevelt (D)	W. Wilkie (R)
Popular Vote (PV)	49,817,149	27,243,218	22,334,940

Electoral Vote (EV)	266/531	449	82
Close Margin Battleground States (EV) to Flip Electoral College Results	184		WY (3), NV (3), DE (3), NH (4), ID (4), NM (3), WI (12), OR (5), AZ (3), RI (4), MT (4), MN (11), CT (8), UT (4), NJ (16), MO (15), SC (8), IL (29), MD (8), AR (9), WV (8), OK (11), VA (11) = 186
PV Margin in Decisive Battleground States			1,409,569
Battleground PV Margin as % of Nationwide PV			2.8%

1944	Total	F. Roosevelt (D)	T. Dewey (R)
Popular Vote (PV)	47,976,670	25,612,610	22,014,160
Electoral Vote (EV)	266/531	432	99
Close Margin Battleground States (EV) to Flip Electoral College Results	167		NV (3), ID (4), NH (4), NM (4), DE (3), MT (4), MI (19), MD (8), OR (6), AZ (4), NJ (16), CT (8), MO (15), RI (4), UT (4), MN (11), WV (8), KY (11), OK (10), AR (9), SC (8), VA (11) = 174
PV Margin in Decisive Battleground States			941,031
Battleground PV Margin as % of Nationwide PV			2.0%

1948	Total	H. Truman (D)	T. Dewey (R)
Popular Vote (PV)	48,691,494	24,105,810	21,970,064
Electoral Vote (EV)	266/531	303	189
Close Margin Battleground States (EV) to Flip Electoral College Results	77		NV (3), WY (3), ID (4), OH (25), AZ (4), CA (25), MT (4), UT (4), NM (4), CO (6) = 82
PV Margin in Decisive Battleground States			211,686
Battleground PV Margin as % of Nationwide PV			0.4%

1952	Total	D. Eisenhower (R)	A. Stevenson (D)
Popular Vote (PV)	61,550,918	33,777,945	27,314,992
Electoral Vote (EV)	266/531	442	89
Close Margin Battleground States (EV) to Flip	177		TN (11), DE (3), RI (4), NV (3), NM (4), MO (13), WY (3), AZ (4), MT (4), UT (4), NH (4), VT (3), VA (12), ID (4), OK (8), FL (10), MD (9), WA (9), SD (4), ME (5), ND (4), CT (8), TX (24), CO (6), OR (6), MN (11) = 180
PV Margin in Decisive Battleground States			2,011,170

Battleground PV Margin as % of Nationwide PV			3.3%
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1956	Total	D. Eisenhower (R)	A. Stevenson (D)
Popular Vote (PV)	62,026,908	35,590,472	26,022,752
Electoral Vote (EV)	266/531	457	73
Close Margin Battleground States (EV) to Flip Electoral College Results	193		TN (11), NV (3), DE (3), WY (3), MT (4), NM (4), SD (4), ND (4), ID (4), RI (4), AZ (4), WV (8), VT (3), OR (6), LA (10), NH (4), OK (8), KY (10), UT (4), WA (9), MN (11), VA (12), CO (6), ME (5), FL (10), NE (6), MD (9), TX (24) = 193
PV Margin in Decisive Battleground States			2,459,496
Battleground PV Margin as % of Nationwide PV			4.0%

1960	Total	J. Kennedy (D)	R. Nixon (R)
Popular Vote (PV)	68,838,219	34,226,731	34,108,157
Electoral Vote (EV)	269/537	303	219
Close Margin Battleground States (EV) to Flip Electoral College Results	50		HI (3), NM (4), NV (3), DE (3), IL (27), SC (8), MO (13) = 61
PV Margin in Decisive Battleground States			36,528
Battleground PV Margin as % of Nationwide PV			0.0005%

1964	Total	L. Johnson (D)	B. Goldwater (R)
Popular Vote (PV)	70,644,592	43,129,566	27,178,188
Electoral Vote (EV)	270/538	486	52
Close Margin Battleground States (EV) to Flip Electoral College Results	218		ID (4), WY (3), AK (3), NV (3), NE (5), SD (4), UT (4), ND (4), FL (14), DE (3), MT (4), VT (3), NM (4), AR (6), VA (12), KS (7), NH (4), OK (8), HI (4), TN (11), DC (3), ME (4), NC (13), CO (6), OR (6), RI (4), IN (13), IA (9), WV (7), KY (9), WA (9), MD (10), WI (12), MN (10) = 225
PV Margin in Decisive Battleground States			4,411,294
Battleground PV Margin as % of Nationwide PV			6.2%

1968	Total	R. Nixon (R)	H. Humphrey (D)
Popular Vote (PV)	73,211,875	31,785,480	31,275,166

Electoral Vote (EV)	270/538	301	191
Close Margin Battleground States (EV) to Flip Electoral College Results	79		AK (3), DE (3), NV (3), VT (3), MO (12), NH (4), MT (4), WY (3), SD (4), NM (4), ND (4), OR (6), SC (8), WI (12), NJ (17) = 90
PV Margin in Decisive Battleground States			476,386
Battleground PV Margin as % of Nationwide PV			0.7%

1972	Total	R. Nixon (R)	G. McGovern (D)
Popular Vote (PV)	77,718,554	47,169,911	29,170,383
Electoral Vote (EV)	270/538	520	17
Close Margin Battleground States (EV) to Flip Electoral College Results	253		AK (3), RI (4), SD (4), DE (3), VT (3), NV (3), WY (3), MT (4), HI (4), ND (3), OR (6), NM (4), ME (4), MN (10), NH (4), ID (4), WI (11), UT (4), AZ (6), WV (6), IA (8), NE (5), AR (6), CT (8), CO (7), WA (9), SC (8), KY (9), MD (10), KS (7), MS (7), LA (10), TN (10), MO (12), AL (9), MI (21), OK (8), VA (11)* = 258
PV Margin in Decisive Battleground States			8,336,956
Battleground PV Margin as % of Nationwide PV			10.7%

*VA awarded 1 EV to Libertarian candidate J. Hoppers

1976	Total	J. Carter (D)	G. Ford (R)
Popular Vote (PV)	81,555,889	40,830,763	39,147,793
Electoral Vote (EV)	270/538	297	240
Close Margin Battleground States (EV) to Flip Electoral College Results	30		HI (4), OH (25), DE (3) = 32
PV Margin in Decisive Battleground States			31,253
Battleground PV Margin as % of Nationwide PV			0.0004%

1980	Total	R. Reagan (R)	J. Carter (D)
Popular Vote (PV)	86,513,813	43,904,153	35,483,883
Electoral Vote (EV)	270/538	489	49
Close Margin Battleground States (EV) to Flip Electoral College Results	221		MA (14), TN (10), AR (6), DE (3), SC (8), MS (7), VT (3), AL (9), ME (4), KY (9), NC (13), AK (3), WY (3), NM (4), LA (10), NV (3), MT (4), SD (4), WI (11), NH (4), OR (6), ND (3), CT (8), MO (12), NY (41),

			IA (8), ID (4), WA (9) = 223
PV Margin in Decisive Battleground States			2,148,477
Battleground PV Margin as % of Nationwide PV			2.5%

1984	Total	R. Reagan (R)	W. Mondale (D)
Popular Vote (PV)	92,652,842	54,455,075	37,577,185
Electoral Vote (EV)	270/538	525	13
Close Margin Battleground States (EV) to Flip Electoral College Results	257		RI (4), HI (4), VT (3), DE (3), MA (13), AK (3), WV (6), WY (3), SD (3), MT (4), MD (10), ND (3), NV (4), IA (8), NM (5), ME (4), NH (4), OR (7), ID (4), AR (6), WI (11), MS (7), WA (10), SC (8), NE (5), TN (11), KY (9), UT (5), AL (9), CT (8), KS (7), AZ (7), PA (25), GA (12), CO (8), LA (10), MO (11) = 264
PV Margin in Decisive Battleground States			7,234,535
Battleground PV Margin as % of Nationwide PV			7.8%

1988	Total	G. Bush (R)	M. Dukakis (D)
Popular Vote (PV)	91,594,809	48,886,097	41,809,074
Electoral Vote (EV)	270/538	426	111
Close Margin Battleground States (EV) to Flip Electoral College Results	159		VT (3), SD (3), MT (4), NM (5), DE (3), ND (3), WY (3), AK (3), MD (10), ME (4), NV (4), CT (8), MO (11), IL (24), PA (25), ID (4), CO (8), AR (6), NH (4), KS (7), NE (5), KY (9), LA (10) = 166
PV Margin in Decisive Battleground States			1,814,628
Battleground PV Margin as % of Nationwide PV			2.0%

1992	Total	W. Clinton (D)	G. Bush (R)
Popular Vote (PV)	104,425,014	44,909,326	39,103,882
Electoral Vote (EV)	270/538	370	168
Close Margin Battleground States (EV) to Flip	102		NH (4), MT (3), NV (4), GA (13), DE (3), HI (4), VT (3), KY (8), NM (5), ME (4), CO (8), NJ (15), IA (7), RI (4), LA (9), WV (5), OH (21) = 120
PV Margin in Decisive Battleground States			880,800
Battleground PV Margin as % of Nationwide PV			0.8%

1992	Total	B. Clinton (D)	R. Perot (I)
Popular Vote (PV)	104,425,014	44,909,326	19,741,657
Electoral Vote (EV)	270/538	370	0
Close Margin Battleground States (EV) to Flip Electoral College Results	270		MT (3), NV (4), ME (4), DE (3), VT (3), NH (4), RI (4), HI (4), NM (5), DC (3), WV (5), CO (8), OR (7), IA (7), CT (8), AR (6), WA (11), MN (10), KY (8), WI (11), MO (11), LA (9), MA (12), GA (13), MD (10), TN (11), NJ (15), OH (21), MI (18), PA (23), IL (22) = 283
PV Margin in Decisive Battleground States			4,728,796
Battleground PV Margin as % of Nationwide PV			4.5%

1996	Total	W. Clinton (D)	R. Dole (R)
Popular Vote (PV)	96,277,223	47,402,357	39,198,755
Electoral Vote (EV)	270/538	379	159
Close Margin Battleground States (EV) to Flip Electoral College Results	111		NV (4), KY (8), AZ (8), NM (5), DE (3), TN (11), NH (4), VT (3), HI (4), WV (5), OR (7), ME (4), IA (7), RI (4), MO (11), DC (3), AR (6), LA (9), WI (11) = 117
PV Margin in Decisive Battleground States			1,604,774
Battleground PV Margin as % of Nationwide PV			1.7%

2000	Total	G. W. Bush (R)	A. Gore (D)
Popular Vote (PV)	105,396,627	50,455,156	50,992,335
Electoral Vote (EV)	270/538	271	266
Close Margin Battleground States (EV) to Flip Electoral College Results	1 (25 EV)		FL (25) = 25
PV Margin in Decisive Battleground States			537
Battleground PV Margin as % of Nationwide PV			0.000005%

2004	Total	G. W. Bush (R)	J. Kerry (D)
Popular Vote (PV)	122,295,345	62,040,610	59,028,444
Electoral Vote (EV)	270/538	286	251
Close Margin Battleground States (EV) to Flip Electoral College Results	4 states (20 EV)	NM (5), IA (7), NV (5), AK (3) = 20	
PV Margin in Decisive Battleground States		117,411	

Battleground PV Margin as % of Nationwide PV		1.0%	
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2008	Total	B. Obama (D)	J. McCain (R)
Popular Vote (PV)	131,278,107	69,456,897	59,934,814
Electoral Vote (EV)	270/538	365	173
Close Margin Battleground States (EV) to Flip Electoral College Results	97	NC (15), IN (11), NH (4), DE (3), VT (3), NV (5), NM (5), ME (4), RI (4), IA (7), HI (4), CO (9), DC (3), VA (13), FL (27) = 117	
PV Margin in Decisive Battleground States		2,104,825	
Battleground PV Margin as % of Nationwide PV		1.6%	

2012	Total	B. Obama (D)	W.M. Romney (R)
Popular Vote (PV)	129,067,662	65,899,660	60,932,152
Electoral Vote (EV)	270/538	332	206
Close Margin Battleground States (EV) to Flip Electoral College Results	64	NH (4), NV (6), FL (29), DE (3), NM (5), IA (6), VT (3), ME (4), RI (4) = 64	
PV Margin in Decisive Battleground States		768,376	
Battleground PV Margin as % of Nationwide PV			0.6%

2016	Total	D. Trump (R)	H. Clinton (D)
Popular Vote (PV)	136,381,696	62,955,340	65,788,564
Electoral Vote (EV)	270/538	306	232
Closest-Margin Decisive Battleground States (EV) (i.e., if carried by Trump would have given Trump 270 EC)	46	MI (16), WI (10), PA (20) = 46	
PV Margin in Decisive Battleground States		77,744	
Battleground PV Margin as % of Nationwide PV		0.0006%	

2020	Total	J. Biden (D)	D. Trump (R)
Popular Vote (PV)	158,376,434	81,268,773	74,216,728
Electoral Vote (EV)	270/538	306	232
Closest-Margin Decisive Battleground States (EV) (i.e., if carried by Trump would have given Trump 270 EC)	3 states/1 CD (38 EV)	AZ (11), GA (16), WI (10), NE (1)* = 38	
PV Margin in Decisive Battleground States		65,009	
Battleground PV Margin as % of Nationwide PV		0.0004%	

* CD-2 in Nebraska awarded its EV to Biden, CD-1 and CD-3 awarded theirs to Trump.