

President Biden, the Supreme Court's Behavior Isn't So 'Outrageous'

While recently at a NATO conference, the first question President Biden was asked was why, according to a peer-reviewed poll, 85% of the U.S. public thinks the country is going in the wrong direction. He said, "They do not think that."

He went on to say, "The one thing that has been destabilizing is the outrageous behavior of the Supreme Court."

Let's test the president's claim of outrageous or shameful behavior. From January to June of 2022, the Supreme Court made 14 major rulings. The mainstream media would have you think that all the rulings were 6 to 3 from the conservative justices, yet only six, or 43%, were decided 6 to 3.

The high court ruled with a split of 5 to 4 in three instances, or 21% of the time. And two of those split decisions were liberal victories. Five of the rulings, or 36% of the 14 major decisions, were either 7 to 2 or 8 to 1 or 9 to 0. There were two unanimous decisions of major rulings in 2022.

Let's look at four of the rulings. On the environment, the court ruled 6 to 3 that the EPA can't make up laws as they go. In *West Virginia v. EPA*, the ruling limits the power of unelected and unaccountable bureaucrats from overregulating industry. The dissent argued that the EPA is the expert and should have the power to establish regulations. The conservative majority said no, a federal government agency can't act beyond what Congress could reasonably be understood to have granted.

There was a case on medical freedom—a 5 to 4 liberal win. Called *Biden vs. Missouri*, the question was, “Can the Biden administration require health care workers at facilities receiving federal money to be vaccinated?” Roberts and Kavanaugh joined the three liberal justices saying “Yes.”

The argument goes like this: If the facility that receives money from Medicare and Medicaid must already comply with numerous federal health and safety requirements, why not one more? The conservative dissent thinks the federal government should not be allowed to force health care workers to choose between losing their livelihoods and acquiescing to a vaccine they don’t believe works.

Another medical freedom ruling, on January 13, 2022, was called the *National Federation of Independent Business v. Department of Labor*. This was a conservative victory. The court found that the Biden administration’s vaccine-or-testing mandate for large employers was not lawful.

In this 6 to 3 ruling, the majority blocked the Biden administration from enforcing a vaccine-or-testing mandate for large employers. They argued that Congress has not authorized the executive branch to take sweeping actions against employers. The three in the minority wanted OSHA to have more power.

On immigration, in *Biden v. Texas*, the June 30, 2022, ruling was another win for the liberals. The question was, “Should the Remain in Mexico policy adopted during the Trump administration, which requires some migrants to wait in Mexico while their cases are heard, be held in place?”

Roberts and Kavanaugh joined the liberals for technical reasons. There are three statutory decisions that point in different directions. One said the federal government shall detain immigrants. But Congress never funded it.

The second said government may return migrants. The third

allowed the government to release migrants on a case-by-case basis. Since one of the laws said “may return migrants,” Roberts said that wasn’t conclusive enough. Alito, for the dissent, argued since we still have a removal process, and if the migrants went through the normal proceeding, a large number would be removed. Since the Remain in Mexico policy didn’t violate any law, and since the other clear terms of the law are complied with by having the Remain in Mexico policy, it should not have been overturned.

Complicated? Yes. Was the dissent outrageous? Shameful?

I offer a deeper dive on my podcast, but the truth of the matter is the president just doesn’t agree with the Originalists’ view of the Constitution. The Progressive view is that the Constitution should change through the modern lens.

That is one reason we should be grateful that we have three branches of government. It is the foundation of our Constitutional Republic. If anything is shameful, it is when the leader of one branch of government denigrates another branch of government on foreign soil because he didn’t get his way. {eoa}

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