# The Roberts Court and the District Court

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## I. INTRODUCTION

The 2022 and 2023 Supreme Court terms were "blockbusters."[1] From the rousing dissents in *Trump v. United States*[2] to the death knell of *Chevron* deference[3] and the intense debates over the role of history

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1. *See* Jimmy Hoover, *'A Right Turn': Roberts Leaves Broad Consensus Behind in Blockbuster Supreme Court Term*, NAT'L L. J. (July 12, 2024).

2. Trump v. United States, 603 U.S. 593, 657–706 (2024).

3. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024).

in judicial decision-making encapsulated in *Vidal v. Elster*,[4] the past several terms have provided both significant insight into decision-making processes at the Court and substantial change to previously settled law. Its impacts are already the subject of a slew of writing, both in legal journals and the popular press.[5]

Largely missing from the conversation is discussion of the high Court's impacts on district courts. While academics extol the virtues of "percolation" of legal thought through the district courts,[6] the impact of Supreme Court decisions on the lower courts is often overlooked in scholarship.[7]

4. Vidal v. Elster, 602 U.S. 286, 311 (2024).

5. *See, e.g.*, Stephen Breyer, *Pragmatism or Textualism*, 138 HARV. L. REV. 717 (2025); Note, *The Paradox of Precedent About Precedent*, 138 HARV. L. REV. 797 (2024) (examining the impact of the reversal of *Casey* in *Dobbs* on the theory of *stare decisis* and precedent on precedent) [hereinafter *The Paradox of Precedent*]; Pratheepan Gulasekaram, *The Second Amendment's "People" Problem*, 76 VAND. L. REV. 1437 (2023) (discussing *Bruen* and its reinterpretation of *Heller*); Allison M. Whelan, Dobbs *and the Destabilization of Clinical Trials*, 77 VAND. L. REV. 1381 (2024); Michael P. Vandenbergh et al., *Filling the* Sackett *Gap: The Private Governance Option*, 109 MINN. L. REV. 2583 (2025) (discussing the impacts of *Sackett v. EPA*); Brittany Herrera, *Navigating Murky Waters: Strengthening Water Protections in a Post*-Sackett *Landscape,* 54 N. M. L. REV. 599 (2024); Michael C. Dorf, *Race Neutrality, Baselines, and Ideological Jujitsu After* Students for Fair Admissions, 103 TEX. L. REV. 269 (2024); MICHAEL WALDMAN, THE SUPERMAJORITY: HOW THE SUPREME COURT DIVIDED AMERICA (1st ed. 2023). A review published in *Science Advances* also found comparatively higher media coverage of the post-2022 Court, especially surrounding *Dobbs*. *See* Matthew Levendusky et al., *Has the Supreme Court Become Just Another Political Branch? Public Perceptions of Court Approval and Legitimacy in a Post*-Dobbs *World*, 10 SCI. ADVANCES 1, 3 (2024).

6. *See, e.g.*, Michael Coenen & Seth Davis, *Percolation's Value,* 73 STAN. L. REV. 363, 409 (2021) (discussing the institutional value of percolation from the perspective of several Supreme Court Justices).

7. *See* Jennifer Niles Coffin et al., *A Theory and Practice of Justice: A Selective Review of the Jurisprudence, Outlook, and Significant Cases of Judge Gilbert S. Merritt*, 91 TENN. L. REV. 537, n.61 (2024) ("[The] judicial profession [is] relentless in its focus on the [Supreme] [C]ourt."). *But see* Lisa Schultz Bressman, *Lower Courts After* Loper Bright, 31 GEO. MASON L. REV. 499 (2024) (predicting impacts of *Loper Bright* on lower courts after the overturning of *Chevron*); Thomas Moy, *By Scalpel or Chainsaw: The Status of Pre*-Bruen *Case Law in the Lower Courts*, 74 DUKE L.J. 1347 (2025) (discussing post-*Bruen* case law in the lower courts).

Critical analysis of how the Supreme Court's jurisprudence plays out at the district court level is especially important in the era of falling trust in the judiciary. District courts are where most people encounter the justice system. Compared to only 4,159 cases filed before the Supreme Court and 39,987 cases filed in federal courts of appeal in FY 2023, the district courts saw 339,731 filings.[8] The average American is unlikely to meet, speak to, or appear before a court of appeals, but over a quarter of the U.S. population will serve on a jury. This Article will assess the ways that the Roberts Courts' opinions increase workload at the district court level, leading to longer case disposition times, decreases in outcome predictability, and reduced individual attention that can decrease trust in the judicial system.

This Article draws three insights. Part II briefly defines "shortcuts" and how they are used to enhance administrability in district courts. Part III observes that over the last two terms, the Supreme Court has replaced these administrable "shortcuts" with fact- and time-intensive inquiries. Part IV argues that taken together with existing pressures on district courts, these decisions have the potential to decrease trust in the judiciary regardless of their merits by eroding the ability of district courts to handle cases in ways that promote judicial legitimacy. Part V explores the role that the lack of district court experience among the current Supreme Court supermajority may play a role in the Court's eschewing of district court administrability concerns.

This Article neither criticizes nor praises the substantive holdings of any of the Roberts Court's decisions.[9] Instead, it proposes that these cases, taken in aggregate, threaten to overwhelm district court workloads, and, in doing so risk contributing to the present decline in trust in the judiciary. While rejected "shortcuts" can themselves reduce confidence in courts, they provide administrability and docket management tools that assist in ensuring district court

8. CHIEF JUSTICE JOHN ROBERTS, 2023 YEAR-END REPORT ON THE FEDERAL JUDICIARY (Dec. 31, 2023), https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf.

9. *Cf.* Harvard Law Review, *Chapter One: Confusion and Clarity in the Case for Supreme Court Reform*, 137 HARV. L. REV. 1634, 1636 (2024) (claiming that the Court's recent decisions are egregiously wrong on a substantive level) [hereinafter *Confusion and Clarity*].

judges can handle their caseloads.[10] They also provide a level of predictability for litigants that is lost in the fact-intensive morass created by their replacements.[11] With district courts facing greater burdens and the under-resourcing of many of the busiest districts, replacing administrable "shortcuts" with more intensive tests will increase the average time-to-disposition for cases across the board and erode the capacity of judges to write well-defended opinions, compromising trust in the judiciary and equitable outcomes. Without greater capacity, district courts will be forced to develop new "shortcut" heuristics or face substantial backlogs, creating a vicious cycle and further eroding judicial legitimacy.

## II. DEFINING SHORTCUTS

Shortcuts are an essential element of judicial decision-making. Here, I define "shortcut" to mean a tool or heuristic that a court uses to simplify legal analysis and application of the law to complex, messy, and often amorphous fact set before them. Some shortcuts are inherent to the system of American law, like according precedential weight to the opinions of higher courts.[12] Others, such as evidentiary presumptions and burdens of proof, assist with fact-finding.[13] Still others remove cases from courts altogether, avoiding the resources

10. *See generally* Elodie Currier Stoffel, *The Myth of Anonymity: De-Identified Data as Legal Fiction*, 54 N.M. L. REV. 129 (2024) (discussing the risks of using heuristics based in legal fictions despite the need to do so to avoid data privacy litigation).

11. *See infra*, Part II (discussing the interplay of workability and shortcuts in *Dobbs v. Jackson Women's Health Organization*).

12. *Cf.* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 417–18 (2024) (Gorsuch, J., concurring) ("[T]he judge's task was to examine those pre-existing legal traditions and apply in the disputes that came to him those legal rules that were 'common to the whole land and to all Englishmen . . . .' And much like other forms of evidence, precedents at common law were thought to vary in the weight due them . . . . When examining past decisions as evidence of the law, common law judges did not, broadly speaking, afford overwhelming weight to any 'single precedent.'") (citations omitted).

13. *See, e.g.*, FED. R. EVID. 301 (describing the rebuttable presumption standard in civil cases).

required to decide particularly difficult questions of responsibility[14] or standing,[15] as well as cases where trying the case would be unduly burdensome due to loss of evidence over time[16] or insufficiently serious underlying disputes.[17]

While essential, shortcuts can reduce trust in courts. Dismissal of an issue on technical grounds can be seen as at best dodging a question and at worst improper interference.[18] The use of legal fictions or meanings that are at odds with reality or general use of a term in shortcuts reduces trust in the judiciary, democratic legitimacy, and fair case outcomes.[19] District court judges often note when shortcuts

14. For example, children often avoid criminal liability because of an irrebuttable presumption of incapacity. *See, e.g.*, N.Y. STATE UNIFIED. CT. SYS., *Crimes Committed by Children Between 7–18*, (last visited Mar. 22, 2025), https://www.nycourts.gov/courthelp/Criminal/crimesbyChildren.shtml (explaining how children cannot be brought to court if accused of committing a crime if they are under age seven).

15. *See* Currier Stoffel, *supra* note 10, at n.41 (discussing standing requirements for data breach cases).

16. *See* Suzette M. Malveaux, *Statutes of Limitations: A Policy Analysis in the Context of Reparations Litigation*, 74 GEO. WASH. L. REV. 68, at n.33 (2005) (collecting Supreme Court cases justifying statutes of limitation as necessary to prevent proof issues over time).

17. *See* 28 U.S.C. § 1322(a) (requiring an amount in controversy of over $75,000 to grant a federal court diversity jurisdiction).

18. *See* William Baude & Michael Stokes Paulsen, *Sweeping Section Three Under the Rug: A Comment on* Trump v. Anderson, 138 HARV. L. REV. 676, 708–09 (2025) (discussing the Court's fear of losing credibility after deciding election cases by stating that "declining to enforce the rules of the game—underenforcement of the Constitution—is just as much an improper interference with the proper functioning of the electoral process as investing new rules—overenforcement.").

19. *See generally* Currier Stoffel, *supra* note 10 (discussing the negative impacts of legal fictions used as shortcuts in the context of de-identified data); Elodie O. Currier, *Legal Syzygy*, FASPE J. (2023) ("When language becomes too distant from reality . . . dangers arise for more than just the parties to a case. Legal fictions—when judges incorporate assumptions of fact to reach a legal conclusion often at odds with the truth—can reduce confidence in judicial systems and mislead citizens. When the tension between truth and language goes further, beyond mere euphemism or legal fiction into a sort of doublespeak, these dangers become even more pressing."), https://www.faspe-ethics.org/2023-journal-elodie-o-currier.

required by precedent or by law bind them to unfair outcomes.[20] Similarly, some scholars have argued that shortcutting consideration of potentially relevant factors by limiting judicial inquiries strictly to text undermines democratic accountability for challenges to legislation.[21]

Shortcuts are, however, necessary for the functioning of the American court system. It would be absurd for each court to return to first principles each time a new case arises.[22] Many shortcuts have important policy goals.[23] Indeed, the post-2022 Supreme Court recognizes the need for shortcuts in its workability analysis of *Planned Parenthood of Southeastern Pa. v. Casey*[24] in *Dobbs v. Jackson Women's Health Organization*.[25] The Supreme Court in *Dobbs* justified their decision to overturn *Casey* in part on the fact that the standard promulgated by the plurality was unworkable.[26] The majority wrote that *Casey*'s standards contain a variety of "vague terms" which

20. *See, e.g.*, Erlinger. v. United States, 602 U.S. 821, 826 (2024) (discussing a district judge who claimed that a sentence was "too high" but that "it had 'no power' to order anything less").

21. *See* Breyer, *supra* note 5, at 717 (2025) ("[V]oters will have a general idea of whether a law a legislator supported worked well or badly. Insofar as the judicial interpretation of a law is consistent with its basic purposes, the voters will know whom to praise or blame. It is impossible to ask an ordinary citizen to draw any relevant electoral conclusion when courts reach a purpose-thwarting interpretation of a statute based upon the near-exclusive use of text.").

22. FED. JUD. CTR., JUDICIAL WRITING MANUAL (4th ed. 1991), https://www.fjc.gov/sites/default/files/2012/JudiWrit.pdf ("If a subject matter has been thoroughly aired in prior opinions, this one need not trace the origins of the rule and elaborate on its interpretation. Summary orders may be sufficient where clear existing law is simply being applied to facts that are undisputed or made indisputable on appeal[.]").

23. *See, e.g.*, Steven Gensler & Roger Michalski, *The Million-Dollar Diversity Docket,* 47 BYU L. REV. 1653, 1661–72 (2022) (discussing the policy rationale for the amount-in-controversy requirement at the founding and at various points afterwards); Malveaux, *supra* note 16, at 74–77 (discussing policy rationale for the statutes of limitation requirement generally).

24. Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 854 (1992).

25. 597 U.S. 215, 268 (2022).

26. *Id.* at 281 (quoting approvingly Justice Scalia's analysis in *Casey* that described the undue burden standard as "inherently standardless").

are "inconsistent" and "ha[ve] a range of meanings."[27] The Court then stated that

> "all three rules [in *Casey*] call on courts to examine a law's effect on women, but a regulation may have a different impact on different women for a variety of reasons, including their places of residence, financial resources, family situations, work and personal obligations, knowledge about fetal development and abortion, psychological and emotional disposition and condition, and the firmness of their desire to obtain abortions. In order to determine whether a regulation presents a substantial obstacle to women, a court needs to know which set of women it should have in mind and how many of the women in this set must find that an obstacle is 'substantial.' *Casey* provided no clear answer to these questions."[28]

While the workability analysis in *Dobbs* framed the question as one of consistency,[29] it makes clear the impact that the absence of a workable shortcut has. When the Court wrote that "*Casey* provide[s] no clear answer to"[30] a variety of questions on scope and analysis, and that *Casey*'s "'line between' permissible and unconstitutional restrictions 'has proved to be impossible to draw with precision[,]'"[31] it is noting the absence of a shortcut that lower courts can turn to for assistance in their undue burden determination. The language with which the Court critiques the vagueness of *Casey*'s test tracks similar concerns: absent a clear shortcut, or what the Court views as a workable standard, judges will be unable to make uniform decisions and will have to return to first principles.[32]

The irony of the Court's workability analysis in *Dobbs* is that its post-2022 work has, in many ways, presented the issues critiqued in

27. *Id.* at 282.

28. *Id.* at 282–83.

29. *Id.* at 281 (noting disagreement).

30. *Id.* at 283.

31. *Id.* at 284 (citations omitted).

32. In some cases, that leaves courts resorting to dictionary definitions. *Id.* at 281.

*Casey*: creating a variety of vague standards that may "'perpetuate give-it-a-try litigation' before judges assigned an unwieldy and inappropriate task."[33]

## III. THE POST-2022 SUPREME COURT

While the current Court is often referred to as the Roberts Court, some suggest it should be analyzed differently from the pre-2022 Roberts court. In May 2022, the Supreme Court suffered "the biggest confidentiality breach in high court history," firming up an already insular Court culture and leading to increased mistrust.[34] The term also marked the establishment of a "supermajority" on the Court, with Justice Amy Coney Barrett replacing Justice Ruth Bader Ginsburg. While Ginsburg was a traditionalist with an eye towards evolutionary principles of constitutional interpretation, Justice Barrett is a self-described originalist; the sixth such Justice on the Court.[35] Some Court watchers have distinguished between the pre-Barrett "Roberts Court" and the post-Barrett "supermajority Court."[36] Others mark the 2022

33. *Id.* at 286 (quoting Lehnert v. Ferris Faculty Ass'n., 500 U.S. 507, 551 (1991) (Scalia, J., concurring)).

34. Jimmy Hoover, *A Right Turn': Roberts Leaves Broad Consensus Behind in Blockbuster Supreme Court Term*, NAT'L L. J. (July 12, 2024), https://www.law.com/nationallawjournal/2024/07/12/a-right-turn-roberts-leaves-broad-consensus-behind-in-blockbuster-supreme-court-term.

35. Brian Naylor, *Barrett, An Originalist, Says Meaning of the Constitution 'Doesn't Change Over Time'* NPR (Oct. 13, 2020), https://www.npr.org/sections/live-amy-coney-barrett-supreme-court-confirmation/2020/10/13/923215778/barrett-an-originalist-says-meaning-of-constitution-doesn-t-change-over-time. It is worth noting, however, that while Barrett has been described by some commentators as part of an allegedly monolithic group of conservative jurists on the Court, her separate opinions and earlier scholarship carve out a precise and intellectually nuanced view of originalism that is very much her own. *See, e.g.*, Vidal v. Elster, 602 U.S. 286, 311 (2024) (Barrett, J., concurring) (describing disagreement with the originalist methods employed by the majority's authors); Amy Coney Barrett & John Copeland Nagle, *Congressional Originalism*, 19 U. PA. J. CONST. L. 1 (2016); Amy Coney Barrett, *Originalism and Stare Decisis*, 92 NOTRE DAME L. REV. 1921 (2017).

36. WALDMAN, *supra* note 5, at 98.

leak—and subsequent failure to discover the leaker[37]—as a "loss of control" by Chief Justice Roberts.[38]

In any view, the post-2022 period marked a period of profound change in Supreme Court jurisprudence. In fewer than three years, the Court announced a novel approach to assessing Second Amendment rights, reversed fifty years of settled precedent on abortion, and overturned a foundational pillar of the modern administrative state.

These decisions created a cascade of work for district courts. *Bruen* established new tests with intensive briefing and analysis requirements. Both *Bruen* and the one-two punch of *Loper Bright* and *Corner Post* opened the courts to a barrage of filings challenging previously settled principles.[39] While there are other cases that cut down on district court workloads by settling circuit splits or adopting increased clarity on legal principles, *Bruen*, *Loper Bright*, and *Erlinger* all dealt with issues common to district courts, adopting time- and fact-intensive tests over "shortcuts" that had been in place for decades. Across doctrines, the perceived erosion of stare decisis principles has

37. WALDMAN, *supra* note 5, at 246 (noting that the leaker was never discovered).

38. *See* Hoover, *supra* note 34. It is worth noting that a Chief Justice does not, in a traditional sense, "control" the Court beyond certain procedural forms, and choice of authorship on opinions. However, the creation of an originalist supermajority on the Court did remove Robert's from a position as a swing vote, which does give Justices a certain level of negotiating power in honing a final majority opinion.

39. *Dobbs* has also led to a wave of litigation challenging new state restrictions on abortion, but has primarily done so in state courts. *See, e.g.*, BRENNAN CTR. FOR JUST. & CTR. FOR REPROD. RTS., *State Court Litigation Tracker* (Jan. 11, 2024), https://www.brennancenter.org/our-work/research-reports/state-court-abortion-litigation-tracker (tracking litigation by two interest groups); Mabel Felix et al., *Legal Challenges to State Abortion Bans Since the* Dobbs *Decision*, KFF (Jan. 20, 2023), https://www.kff.org/womens-health-policy/issue-brief/legal-challenges-to-state-abortion-bans-since-the-dobbs-decision (categorizing legal challenges after *Dobbs*). Because these challenges are largely in state courts, they are beyond the scope of this Article. *But see* Laura Hu, Comment, *Telemedicine Abortion Restrictions and the Dormant Commerce Clause*, 91 U. CHI. L. REV. 1411 (2024) (proposing and predicting federal litigation related to dormant commerce clause arguments on telemedicine abortion bans); Stella Talmon, *The Post-*Dobbs *Legality of Out-of-State Abortion Travel Bans*, COLUM. UNDERGRADUATE L. REV. (Jan. 6, 2023), https://www.culawreview.org/journal/the-post-dobbs-legality-of-out-of-state-abortion-travel-bans (predicting federal litigation over travel for abortion purposes).

the potential to further decrease administrability at the district court level, should it continue.

This Part describes some of the ways in which the Roberts Court's post-2022 decisions may increase judicial workload. This list should not be taken as exhaustive, but rather as a set of illustrative examples.

### *A.* New York State Rifle & Pistol Assn., Inc. v. Bruen

After *District of Columbia v. Heller*, district and appellate courts "coalesced around a 'two-step' framework for analyzing Second Amendment challenges that combines history with means-end scrutiny." In *Bruen*, the majority of the Court found that "[d]espite the popularity of this two-step approach, it is one step too many."[40] Under *Bruen*, courts should instead presume that the Second Amendment protects individual conduct covered by the Amendment's plain text meaning, unless "the government [can] justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation."[41] While the majority framed their decision as reducing the work of the district court by reducing the required analysis from two steps to one, the Supreme Court's new test is fact-intensive and a poor fit for district court resources.

Under *Bruen*, "the government must affirmatively prove that its firearm regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."[42] The animating examples announced with this test failed to provide lower courts with decisional clarity on what this historical tradition is, or how it should be determined.[43] As Justice Barrett noted in concurrence, the majority did not resolve the appropriate time window for their historical analogy test.[44] Justice Breyer, who dissented in *Bruen*, has continued to critique the majority in retirement, writing that the *Bruen* majority opinion represents a "historical argument raging among different groups of

40. N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 19 (2022).

41. *Id.* at 24.

42. *Id.* at 19.

43. *See* Moy, *supra* note 7, at 1349–50; *see also* WALDMAN, *supra* note 5, at 201–02 (discussing early attempts by courts to analyze the Second Amendment under *Bruen*).

44. *Bruen*, 597 U.S. at 26–27 (Barrett, J., concurring).

judges who are not historians . . .” and presents district courts with a hodge podge of conflicting guidance on which laws could, or should, be analogized.[45] Further, the dissent notes that, “analogy often depends on the minor details of often very old laws . . . .”[46]

While the Court provided some clarification in *United States v. Rahimi*,[47] the majority expanded the analysis required of the district court instead of narrowing *Bruen*, writing that the law at issue “need not be a ‘dead ringer’ or ‘historical twin’” and district courts must instead analyze “[w]hy and how the regulation burdens the right” looking to “the principles that underpin our regulatory tradition.”[48] As Justice Ketanji Brown Jackson noted, this clarification was unlikely to lead to consistent analyses in the lower courts, given the span of unresolved questions.[49]

District court judges are well-equipped to face analogies dependent on precise gradations of factual detail. Such analysis is critical to the trial court’s role. These details, however, are usually ascertainable from the factual record before the court and described in the decision of courts past. Historical fact finding proves an awkward fit for the law/fact dichotomy that animates the practice of law.[50] Unsurprisingly, “courts applying *Bruen*’s methodology have come to conflicting conclusions on virtually every consequential Second Amendment issue to come before them.”[51]

45. Breyer, *supra* note 5, at 743–44 (“The majority thought these laws were not sufficiently analogous. Some were too old. Some were too recent. Some applied to too few people. Some did not involve generalized licensing. Some applied only after an individual had threatened the peace. Some regulated only concealed, not open, carrying. In light of this disagreement, the dissent observed that since analogy often depends on the minor details of often very old laws, the true answer to the analogy question is often, ‘who knows?’”).

46. *Id.* at 744 (citing N.Y. State Rifle & Pistol Ass’n v. Bruen, 597 U.S. 1, 130 (2022) (Breyer, J., dissenting)).

47. 602 U.S. 680 (2024).

48. *Id.* at 680, 692.

49. *Id.* at 745–46 (Jackson, J., concurring).

50. *See* Ryan C. Williams, *History, Tradition & Analogical Reasoning: Historical Fact*, 99 NOTRE DAME L. REV. 1585, 1586 (2024).

51. Brief for Second Amendment Law Scholars as Amici Curiae Supporting Petitioner at 5–6, United States v. Rahimi, 602 U.S. 680 (2024) (citation omitted); Rocky Mountain Gun Owners v. Bd. of Cnty. Comm’rs, No. 22-cv-02113, 2022 WL 4098998, at *2 (D. Colo. Aug. 30, 2022)).

*Bruen* also incentivized a litany of filings. Of the 64,124 cases reported to the United States Sentencing Commission in FY 2023, 8,040—or more than 12%—were brought under 18 U.S.C. § 922(g), whose nine subsections prohibit possession of a firearm for those with a variety of disabling criteria, each of which can be challenged under *Bruen*.[52] Of those cases, 88.5% were brought under § 18 U.S.C. § 922(g)(1),[53] which criminalizes possession of firearms by convicted felons.[54] The average sentence for those found guilty of a § 922(g) offense was 68 months' imprisonment.[55] Because of the relatively high penalties, and the substantial procedural bars to raising constitutional arguments after a plea has been entered, defendants facing charges under § 922(g) have strong incentives to file constitutional challenges. Given the particularity of the historical analogy test and the arguments that the analogy should be treated differently based on the status of the felon's prior crimes rather than the mere fact of the felony, deciding these motions places a substantial burden on district courts. Even where local rules empower magistrate judges to rule on these challenges, the murky division between fact and law in historical fact finding raises new issues when district courts review and adopt magistrate judges' reports and recommendations on these issues, which can create further backlog and diminish trust between litigants and courts.[56]

Taken together, *Bruen*'s mix of time- and fact-intensive analysis and incentives for repeat, particularized challenges have created a deluge of filings in district courts, many of which require particularized analysis using tools that are unusual to district courts. While one study

52. U.S. SENT'G COMM'N, *Section 922(g) Firearms* (last visited Mar. 1, 2025), https://www.ussc.gov/research/quick-facts/section-922g-firearms; 18 U.S.C. § 922(g)(1)–(9).

53. *Id.*

54. 18 U.S.C. § 922(g)(1).

55. *See supra*, note 52.

56. *See* UNITED STATES COURTS, *The Need for Additional Judgeships: Litigants Suffer When Cases Linger* (Nov. 18, 2024), https://www.uscourts.gov/data-news/judiciary-news/2024/11/18/need-additional-judgeships-litigants-suffer-when-ncases-linger (quoting The Honorable Chief Judge Colm F. Connolly, United States District Court for the District of Delaware) ("Oftentimes, using magistrate judges as a replacement for Article III judges creates more work for the court because the parties, especially in complex civil cases, file objections to their recommendations and request that district judges get involved anyway.").

identified only 424 analyses of the Second Amendment right on *Bruen* grounds in the year immediately following the decision, these cases only represent those which (1) reached Westlaw, and (2) contained substantive analysis, as opposed to an incorporation of the decision of a sister court within a district or circuit.[57] While the vitiation of a right outweighs concern for a district court's workload, *Bruen* served as one of the first waves in a wider tsunami threatening district court capacity. Other decisions by the Roberts Court further tax the system.

### *B.* Loper Bright Enterprises v. Raimondo *and* Corner Post Inc. v. Board of Governors of the Federal Reserve Bank

Since 1984, Courts have used a two-part test to interpret agency-administered statutes, the hallmark of which requires a court to give deference to the agency's interpretation of ambiguous language.[58] *Chevron* animated the modern administrative state, providing foundational principles to our systems of regulation and legislation.[59] Over the next decades, *Chevron* became the most-cited case in administrative law.[60] *Chevron* also developed a significant bench of detractors, including among Justices on the Supreme Court.[61] Regardless of its merits, *Chevron* provided an essential shortcut in law

57. *See* Eric Ruben, Rosanna Smart & Ali Rowhani-Rahbar, *One Year Post-*Bruen: An Empirical Analysis, 110 VA. L. REV. ONLINE 20 (2024).

58. Chevron U.S.A., Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 839 (1984).

59. Lisa Bressman & Kevin Stack, Chevron *is a Phoenix*, 74 VAND. L. REV. 465 (2021). Bressman & Stack also argue—prior to the grant of certiorari in *Loper Bright*—that the principles embodied in *Chevron* will endure and rise even if the case itself is overturned or written out of law. *Id.*

60. *Id.* at 473, n.48 (citing Peter M. Shane & Christopher J. Walker, Foreword: Chevron *at 30: Looking Back and Looking Forward*, 83 FORDHAM L. REV. 475, 475 (2014); Christopher J. Walker, *Inside the Regulatory State: An Empirical Assessment*, 83 FORDHAM L. REV. 703, 703 (2014) (noting that *Chevron* has generated an incredible number of articles, opinions, and briefs)).

61. *Id.* at 473 ("As [the *Chevron*-based administrative law] scheme became more intricate, it also became a flash point for disagreement. Justice Scalia's views proliferated in number and intensified in tone. Justice Breyer's voice often provided an equally forceful counterweight. Other Justices joined in with their own strongly worded opinions. Meanwhile, administrative law scholars fanned the flames, writing article upon article about what the *Chevron* framework did to the law. Now the debate among some Justices and scholars is whether *Chevron*'s run has come to end. To detractors, *Chevron*'s framework is nothing short of disaster.").

by allowing Courts to defer to the reasonable determination of expert agencies instead of wading through ambiguous drafting and the detailed layers of scientific evidence required to interpret them.

*Loper Bright* overruled *Chevron*.[62] Instead of deference to agency authority where statutory language fails to provide clarity, "courts need not and under the [Administrative Procedure Act] may not defer to an agency interpretation of law simply because a statute is ambiguous."[63] Instead, courts "effectuate the will of Congress" by "recognizing constitutional delegations, 'fix[ing] the boundaries of [the] delegated authority,' . . . and ensuring the agency has engaged in 'reasoned decision-making within those boundaries.'"[64] However, a court can exercise some degree of deference of agency interpretations under *Skidmore v. Swift & Co*.[65] The majority in *Loper Bright* terms this deference "respectful consideration," and is described by quoting from *Skidmore*:

> [T]he 'interpretations and opinions' of the relevant agency, 'made in pursuance of official duty' and 'based upon . . . specialized experience,' 'constituted a body of experience and informed judgment to which courts and litigants could properly resort for guidance, even on legal questions. 'The weight of such a judgment in a particular case,' the Court observed, would 'depend on the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it the power to persuade, if lacking power to control.[66]

In short, *Loper Bright* replaced a two-part, relatively straightforward test of statutory interpretation and reasonable understanding[67] with a

62. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024) ("*Chevron* is overruled.").

63. *Id.* at 413.

64. *Id.* at 395 (quoting Henry P. Monaghan, Marbury *and the Administrative State*, 83 COLUM. L. REV. 1, 27 (1983); Michigan v. EPA, 576 U.S. 743, 750 (2015)).

65. *Id.* at 388.

66. *Id.* (citations omitted).

67. Some may argue that working through *Chevron*'s various follow-on doctrines and exceptions could require as much as working through a *Skidmore*

complex, multi-factor test that requires looking to the records underlying a given agency determination; reassessing the underlying reasoning of its determination; reviewing the history of the regulation both before and after the date of the underlying facts; and any extraneous facts that the court—or controlling precedent from Circuit courts—determine are relevant.[68] Evaluating the validity of the reasoning underlying an agency decision puts district courts in the position of re-evaluating highly technical determinations, often outside the traditional body of knowledge of a legal professional.[69] As scholars have argued in the field of scientific evidence, these inquiries are both resource-intensive and a poor fit for the role of the district judge.[70]

*Loper Bright*, however, was not the only case to tax district courts administrative law dockets. In 2024, the Court decided *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*.[71] In *Corner Post*, the Court determined that the statute of limitations for challenging agency action under the Administrative Procedure Act begins to run not when the agency action becomes final but by when a regulated entity is injured.[72] *Corner Post* stands to doubly strain district courts. First, it replaces a rule which determined the statute of limitation period by setting a clear start and finish date, determined with reference to the Federal Register, with one in which a factual determination must be made as to the date on which a specific regulated entity was individually injured by a given regulation. The new inquiry

inquiry. However, as the Court noted in *Loper Bright*, courts invoke *Chevron* as a shortcut and "do not always heed the various steps and nuances of that evolving doctrine." *Id.* at 406.

68. Prior to *Chevron*, lower courts split on how to answer the question of whether implicit delegation had occurred. Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842–44 (1984).

69. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 456 (Kagan, J., dissenting).

70. *See* Edward K. Cheng et al., *Embracing Deference*, 67 VILL. L. REV. 855, 858–59 (2022); *see also* Edward K. Cheng, *Same Old, Same Old: Scientific Evidence Past and Present*, 104 MICH. L. REV. 1387, 1388–93 (2006) (discussing the history of scientific evidence and common critiques); Edward K. Cheng, *Independent Judicial Research in the* Daubert *Age*, 56 DUKE L.J. 1263 (2007) (discussing independent judicial research as a controversial but important reform for scientific research gatekeeping).

71. 603 U.S. 799 (2024).

72. *Id.* at 825.

requires analyzing the specific facts alleged to calculate a separate limitations period for each case, as opposed to having a set "rule of thumb" date after which cases under a given statute are unlikely to be brought. Second, *Corner Post* opens the doors to litigation previously time-barred: as Justice Jackson's dissent warns, legal claims previously resolved under *Chevron* "can [now] be brought before courts newly unleashed from the constraints of . . . deference."[73]

*Loper Bright* and *Corner Post*, taken together, have the potential to open district courts to waves of litigation. *Loper Bright* gives litigants incentives to attack agency interpretations and is likely to "be taken as an invitation to bring suit[s] to challenge agency interpretation."[74] While other scholars posit that in the wake of *Loper Bright*, courts will largely return to deference to agency, the return to *Skidmore* deference renders post-*Loper Bright* jurisprudence, like post-*Bruen*, fertile ground for swarms of new filings, each of which now requires significantly more complicated and timely consideration. While these cases, like *Bruen* and *Rahimi*, add to district courts' workload by increasing required analysis, others directly add to courts workloads by increasing jury trials.

### *C.* SEC v. Jarkesy *and* Erlinger v. United States

Both *SEC v. Jarkesy*[75] and *Erlinger v. United States*[76] addressed issues related to a defendant's trial right under the Constitution. In *Jarkesy*, the Court addressed the impact of the Seventh Amendment right to jury trial on fraud cases before administrative law judges. In *Erlinger*, the Court held that a jury, not a judge, must determine that a defendant's past offenses were committed on separate occasions in

73. *Id.* at 864 (Jackson, J., dissenting). It is worth noting that if cases substantively decided under *Chevron* are left untouched by the overturning of the doctrine, as dicta in *Loper Bright* suggested this prediction may not come to pass. However, assertive litigants may continue to bring claims in the hope of eroding that doctrine, distinguishing their case, or asserting that that holding was dicta without precedential weight.

74. Cass Sunstein, *The Consequences of* Loper Bright, at *9 (Working Paper July 1, 2024). While Sunstein notes that agencies may take fewer risks in drawing broad interpretations, it is unclear whether this would sufficiently counterbalance new challenges, especially given the door opened by *Corner Post*.

75. 603 U.S. 109 (2024).

76. 602 U.S. 821 (2024).

order for the Armed Career Criminal Act ("ACCA") to apply. While the impacts of both *Jarkesy* and *Erlinger* are yet to be seen, they both directly increase the workloads of district judges.

*Jarkesy* arose out of a Securities and Exchange Commission ("SEC") enforcement action against George Jarkesy, Jr. and Patriot28, LLC for alleged securities fraud.[77] The antifraud provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940 can be enforced through an action either within the SEC or in a federal court.[78] Under this statutory scheme, if the SEC elects to use its internal enforcement process, judicial review is available after the SEC or an Administrative Law Judge ("ALJ") announces their findings and conclusions.[79] The review is deferential to the agency's factual findings if they are sufficiently supported by the record.[80] This statutory process served as a shortcut for district courts—instead of trying every case that the SEC brings, district courts can defer to the factfinding of the expert agency and review for error. While review of often-extensive records is time-intensive, it is less so than administering the full slate of pre-trial motions, a complex securities fraud trial, and, if applicable, administering and ruling on post-trial relief. This shortcut is not limited to SEC fraud cases—as Michael Waldman notes, "[a]dministrative adjudication is a key aspect of how modern government functions" and similar procedures are proscribed by Congress for cases on "labor rights, race and sex discrimination, workplace safety, immigration, disability benefits, unfair trade practice, and much more."[81]

In *Jarkesy*, the Court found that the Seventh Amendment attaches to antifraud cases which parallel common law causes of action,

77. *Jarkesy*, 603 U.S. at 115.

78. *Id.* at 116. *See also* 15 U.S.C. §§ 77h-1, 78u-3, 80b-3 (detailing SEC adjudication rules ); 15 U.S.C. §§ 77t, 78u, 80b-9 (providing an option to file suit in federal court).

79. 15 U.S.C. §§ 77i(a), 78y(a)(1), 80b-13(a).

80. *Jarkesy*, 603 U.S. at 117 (citing Richardson v. Perales, 402 U.S. 389, 401 (1971)). Justice Gorsuch has criticized this kind of deference, writing "[I]sn't it fair to ask whether [a deferential standard of review] is appropriate when assessing the work of an interested party to a dispute, one with incentives to find the facts in its favor?"). *See* NEIL GORSUCH & JANIE NITZE, OVER RULED: THE HUMAN TOLL OF TOO MUCH LAW, 62, 90 (1st ed. 2024).

81. WALDMAN, *supra* note 5 at 240 (quoting UCLA Prof. Blake Emerson).

and that the "public rights" exception to the jury trial requirement did not apply. In analyzing whether the Seventh Amendment attached, the Court wrote that "the remedy is all but dispositive . . . . While monetary relief can be legal or equitable, money damages are the prototypical common law remedy."[82] The Court also considered whether "civil penalties [were] designed to punish and deter."[83] In rejecting the public rights exception, the Court wrote that "if a suit is in the nature of an action at common law, then the matter presumptively concerns private rights," requiring trial by an Article III court.[84] It noted that the public rights exception does not include cases for the collection of tariffs, certain federal revenue collection, immigration, relations with Indian tribes, the administration of public lands, public benefits (including those granted to veterans and via pensions), and patent rights.[85]

In *Jarkesy*, the Court expressly rejects workability as a rationale for deferring to Article I tribunals, emphasizing that the primacy of Article III courts are paramount to their legitimacy.[86] In this analysis narrowing the public rights exception, the Court effectively draws into question the role of Congressionally delegated administrative courts in any case where punitive money damages are applied to actions with common-law counterparts.[87] By applying a strong presumption in favor of Article III courts and limiting the public rights exception, the Court incentivizes agencies with the option to do so to file more of their cases in district courts in the first instance. Further, the Court shifts fraud cases directly to the district courts, with other doctrines potentially following if circuit courts read *Jarkesy* broadly.

In *Erlinger*, by contrast, the Supreme Court analyzes the Fifth and Sixth Amendments to shift a task typically done administratively during sentencing to the jury. Under the ACCA, defendants found guilty of 18 U.S.C. § 922(g) offenses can face a mandatory minimum punishment if they have "three prior convictions for 'violent felon[ies]' or 'serious drug offense[s]' that were 'committed on occasions

82. *Jarkesy*, 603 U.S. at 123.
83. *Id.* at 123.
84. *Id.* at 128 (citing Stern v. Marshall, 564 U.S. 462, 484 (2011)).
85. *Id.* at 177 (Sotomayor, J., dissenting).
86. *Id.* at 115.
87. *See id.* at 112.

different from one another.'"[88] These determinations were typically made by the sentencing judge.[89] *Erlinger* not only raised the burden of proof on the determination as to whether three prior convictions occurred on separate occasions, but requires that the assessment be made by a jury.[90] The Court conceded that "[t]he jury trial may 'never [have] been efficient'" and "require[s] assembling a group of the defendant's peers to resolve unanimously even seemingly straightforward factual questions."[91] It also notes that preventing prejudice from evidence of past claims "may require careful attention" by the judicial officer.[92] In doing so, it notes, and dismisses, the enhanced workload that *Erlinger* imposes on district courts, especially as compared to prior practice.

While *Jarkesy* and *Erlinger* have important dimensions in vitiating the Fifth, Sixth, and Seventh Amendments, they impose substantial burdens on district courts by shifting workloads directly from ALJs to judges and shifting a relatively rapid determination at sentencing into a strong incentive for trial. While party behavior and selection effects may mitigate some of the workload issues that *Jarkesy* and *Erlinger* create, both are likely to add stress to district court workloads.

### *D. Stare Decisis*

The post-2022 anti-shortcut trend at the Supreme Court cuts deeper than any given case or diptych of cases. The Court's questioning of stare decisis principles itself poses a threat to orderly functioning of the lower courts. In *Loper Bright*, Chief Justice Roberts addressed the thousands of cases decided based on the *Chevron* framework. Justice Roberts wrote that, despite overruling *Chevron*, the majority does "not call into question prior cases that relied on the *Chevron* framework[,]" instead noting that these cases "are still subject to statutory stare decisis despite our change in interpretive methodology."[93] The post-2022 Court, however, has drawn into

88. Erlinger v. United States, 602 U.S. 821, 825 (citing 18 U.S.C. § 924(e)(1)).
89. *Id.* at 839.
90. *Id.* at 849.
91. *Id.*
92. *Id.*
93. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 376 (2024).

question the role of both horizontal and vertical stare decisis[94] in American law.

In many ways, stare decisis is the ultimate judicial shortcut. Blackstone noted that "the doctrine of the law is that precedents and rules must be followed, unless flatly absurd or unjust."[95] Unlike foreign systems in which past cases are merely persuasive, stare decisis allows not only reasoning by analogy, but the progressive distillation of clarity on finer and finer principles of law. Already, horizontal and vertical stare decisis allow courts to buffet the flood of *Bruen* challenges, pointing litigants to prior rulings by which a given court is now bound. Stare decisis also prevents many cases with clear-cut answers from reaching the court: clear legal principles, clearly communicated and settled through stare decisis allow potential litigants to predict outcomes and conform their behavior accordingly through compliance or by settling claims out of court.

The post-2022 Supreme Court, however, has danced around the principles of stare decisis.[96] Writing for the majority in *Loper Bright*, Chief Justice Roberts writes that "[s]tare decisis is not an 'inexorable command,'" and emphasizes that stare decisis requires analysis of "the quality of the precedent's reasoning, the workability of the rule it established, and reliance on the decision."[97] *Dobbs* cast into doubt the

94. Horizontal stare decisis is the doctrine which encourages courts to adhere to their own precedent, as when the Supreme Court—or even a district court—follows its own precedents. Vertical stare decisis is the obligation of lower courts to adhere to the precedent promulgated by higher courts within its jurisdiction—as when a district court adheres to the precedent of the court of appeals which has jurisdiction over it—or when district and circuit courts adhere to Supreme Court precedent.

95. 1 WILLIAM BLACKSTONE, COMMENTARIES at *70.

96. Some commentators have accused Justice Thomas of campaigning to erode the principles of stare decisis, pointing to his arguments that reliance interests should not be a factor in determining whether to overturn "demonstrably erroneous precedent." Gamble v. United States, 587 U.S. 678, 718 (2019) (Thomas, J., concurring). *See also* Tom Goldstein, *Justice Thomas and Constitutional 'Stare Indecisis'*, SCOTUSBLOG (Oct. 8, 2007), https://www.scotusblog.com/2007/10/justice-thomas-and-constitutional-stare-indecisis. It is unclear how far these ideas have penetrated the Court's more textualist wing. *Cf.* Amy Coney Barrett, *Precedent and Jurisprudential Disagreement*, 91 TEX. L. REV. 1711, 1714 (2013) ("The doctrine has its greatest bite, however, when it constrains a justice from deciding a case the way she otherwise would.").

97. *Loper Bright*, 603 U.S. at 407 (quoting Payne v. Tennessee, 501 U.S. 808, 828 (1991); Knick v. Twp. of Scott, 588 U.S. 180, 203 (2019) (citation omitted)).

willingness of the court to honor principles of stare decisis. In its treatment of *Casey*, it also drew into question how courts test when and how prior decisions should be overturned.[98] In concurrence on *Dobbs*, Justice Thomas went further, stating that the Court should reconsider "*all* of [its] substantive due process precedents" and urging a remaking of several established rights under American constitutional law and the principles of stare decisis that have protected them for decades.[99] Justice Breyer, critiquing the Court's more recent decisions, notes that what he sees as a purposeful eschewing of stare decisis principles could "cause[s] the law to lose stability" as "virtually no case is safe . . . ."[100] Breyer notes that stare decisis "not only protects earlier cases that were decided correctly; it also prevents the continuous re-examination of cases that may as well be wrong,"[101] an approach that he contends "even were it practically possible, would reduce the law to shambles."[102]

The erosion of stare decisis creates two challenges for district court, both of which exacerbate the problems described above. The first centers on analysis: if stare decisis is eroded in the Supreme Court in favor of a pure textualist reasoning or a moral re-examination of existing law, what is the role of the district court in that re-evaluation? Do district courts have the ability to re-examine their own decisions? Those of courts over them? What principles should guide those re-examinations? Under current precedent (and the current paradox relating to precedent on precedent) district courts have little guidance on these questions. The second challenge is more practical: the prospect of revisiting settled caselaw creates incentives for more filings. Although district court judges respect for uniformity and fairness provides some consistency and stability in the law,[103] the shifting sands of precedent under even a *perceived* move away from

98. *The Paradox of Precedent*, *supra* note 5, at 801.

99. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 332 (Thomas, J., concurring) ("[I]n future cases, we should reconsider all of this Court's substantive due process precedents.").

100. Breyer, *supra* note 5 at 749.

101. *Id.* at 747.

102. *Id.*

103. *Cf.* DRURY R. SHERROD, THE JURY CRISIS 90–94 (2019) (describing variations in decisions among judges given the same mock cases, including one mock class certification where ten judges certified five different classes).

stare decisis principles incentivizes a mass of district court filings as advocates aim to push courts to reassess rules, or merely to capitalize on ambiguity to halt actions with which plaintiffs disagree.

A shift away from stare decisis at the Supreme Court, whether perceived or real, adds greater pressure to the dockets of district courts, both in terms of the incentives for filing and the new ambiguity district courts must now address. But the erosion of stare decisis also risks what Chief Justice Roberts identified as a key risk to judicial authority in *Loper Bright*: "a rule of law so wholly 'in the eye of the beholder' [that it] invites different results in like cases and is therefore 'arbitrary in practice.'"[104] If the trend away from stare decisis continues, the issues posed by *Dobbs* and *Loper Bright* will not resolve with time. If lasting, these changes pose a threat to judicial legitimacy by risking the ability of the district courts to engage with litigants and communities in ways that increase trust in the judiciary.

## IV. THE DISTRICT COURT AND THE POST-2022 ROBERTS COURT

The decisions of the post-2022 Roberts Court have had a profound effect on American law and have substantially increased the workload of federal district judges. These impacts have the potential to further decrease already-tenuous trust in the judiciary. Section A discusses the critical role that district courts play in communicating judicial legitimacy. Section B discusses why workload and time pressures are a threat to that legitimacy, especially given the role of the written decision in upholding judicial trust. Section C proposes that the dearth of experience the Roberts Court has with district court administration contributes to the erosion of district court capacity in post-2022 Supreme Court jurisprudence.

### *A. District Courts and Judicial Legitimacy*

Unique among branches, the judiciary is reliant on public trust to "protect its authority and independence."[105] This trust has long been

104. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 408 (2024) (citations omitted).

105. Shawn Patterson Jr. et al., *The Withering of Public Confidence in the Courts*, 108 JUDICATURE 1 (2024), https://judicature.duke.edu/articles/the-withering-of-public-confidence-in-the-courts.

unquestioned, and proposals to reform the Supreme Court have been largely met with public resistance.[106] In late 2023, however, public confidence in the Supreme Court reached a nadir.[107] Confidence in the judiciary broadly was even lower.[108] By 2024, President Joe Biden announced plans to reform the Supreme Court in response to allegations of widespread ethics violations.[109] Meanwhile, President

106. *Id.*

107. *Id.* (citing APPC Constitution Day Surveys from 2005–2023, which show that trust in the Supreme Court declined precipitously between 2019 and 2023). *See also Confusion and Clarity*, *supra* note 9, at 1645–46 (2024) (noting low faith in Supreme Court and suggested reasons for the decline). As some commentators have noted, this risk may be impacting the Justices' decision-making. William Baude & Michael Stokes Paulson, *Sweeping Section Three Under the Rug: A Comment on* Trump v. Anderson, 138 HARV. L. REV. 676, 708–09 (2025) ("[W]e credit the possibility that some or many [of the] members of the Court approached the case with a strong presumption that the Court should not be seen as interfering, or meddling, with the electoral process . . . . They might have feared for the Court's legitimacy. Indeed, they might even have feared that a judicial decision seen as interfering in the presidential election process would provoke unrest, resistance, or even political.").

108. In 2024, Gallup measured its lowest recorded level of faith in the judiciary, with only 35% of Americans confident in their judicial system. Gallup found that confidence levels declined regardless of whether respondents expressed support for the presidency of Joe Biden or Donald Trump. Benedict Vigers & Lydia Saad, *Americans Pass Judgment on Their Courts*, GALLUP (Dec. 17, 2024), https://news.gallup.com/poll/653897/americans-pass-judgment-courts.aspx. Similar research from Pew found more evidence of a partisan split—and slightly more favorable views—when respondents were asked about the *Supreme Court* in particular. Joseph Copeland, *Favorable Views of the Supreme Court Remain Near Historic Low*, PEW RSCH. CTR. (Aug. 8, 2024), https://www.pewresearch.org/short-reads/2024/08/08/favorable-views-of-supreme-court-remain-near-historic-low.

109. *See* Harvard Law Review, *Judicial Ethics*, 137 HARV. L. REV. 1677, 1677 (2024) ("Starting in the spring of 2023 and continuing into the summer, media outlets reported that some Supreme Court Justices had received undisclosed gifts valued at hundreds of thousands of dollars [and had] misused their positions and influence for personal gain. With each exposé, Supreme Court ethics gradually became a matter of public concern to a degree not seen since 1969."). *See also id.* at 1680 (discussing specific ethics allegations related to Justices Thomas, Gorsuch, Alito, and Sotomayor); Michael Waldman, *Term Limits and a Binding Ethics Code Can Save the Supreme Court from Itself*, BRENNAN CTR. (July 31, 2024), https://www.brennancenter.org/our-work/analysis-opinion/term-limits-and-binding-ethics-code-can-save-supreme-court-itself. Some—including Justice Thomas' attorneys—have accused the media of using the ethics allegations to undermine

Donald Trump and others within his administration have publicly questioned the integrity of the lower courts.[110]

Outside of media and public conversations over the decisions of the high courts, most Americans encounter the judicial systems in trial courts, whether at the federal, state, or local level. District courts are "the workhorses of the federal court system."[111] One author lists the role of district judges as including "presid[ing] at bench trials, administer[ing] jury trials, rul[ing] on which evidence can be presented in court, and sentenc[ing] criminals within limits set by Congress,"[112] but district court dockets are also weighed down with dispositive, evidentiary, scheduling, and administrative orders, as well as motions for injunctive and preliminary relief. Compared to only 4,223 cases filed before the Supreme Court and 39,788 cases filed in federal courts of appeal in the 2023 term, district courts saw 290,986 filings.[113] District courts are also the primary venues in which Americans have contact with the judiciary: over a quarter of the U.S. population will

certain Justices' political philosophies. *See* Harvard Law Review, *Judicial Ethics*, 137 HARV. L. REV. 1677, 1683.

110. *See, e.g.*, Charlie Savage & Minho Kim, *Vance Says 'Judges Aren't Allowed to Control' Trump's 'Legitimate Power'*, N.Y. TIMES (Feb. 9, 2025), https://www.nytimes.com/2025/02/09/us/politics/vance-trump-federal-courts-executive-order.html; Ty Roush, *Trump Says He Was 'Evilly and Illegally Treated' After Judge Upholds Hush Money Conviction*, FORBES (Jan. 5, 2025), https://www.forbes.com/sites/tylerroush/2025/01/04/trump-says-he-was-evilly-and-illegally-treated-after-judge-upholds-hush-money-conviction; Bart Jansen, *Trump Bristles at the Courts as White House Pushes Executive Power*, USA TODAY (Feb. 11, 2025), https://www.usatoday.com/story/news/politics/2025/02/10/trump-criticizes-judges-over-executive-power/78378595007.

111. SHERROD, *supra* note 103, at 105 (2019).

112. *Id.*

113. Chief Justice John Roberts, *2024 Year End Report on the Federal Judiciary,* 11, UNITED STATES SUPREME COURT (Dec. 2024), https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf. As Chief Justice Roberts notes, this marks a 14% decrease from the year prior, though the fluctuation is credited to a single multi-district litigation in the Northern District of Florida.

serve on a jury during their lifetimes,[114] and over 70,000 defendants per year are prosecuted for federal crimes.[115]

Despite increased contact between the population of the United States and federal district courts, faith in the judiciary and in the trial system measures lower than faith in the Supreme Court. Fifty-seven percent of respondents to a 2024 survey marked only "somewhat likely" when answering whether they believed "that they would receive a fair trial if they were accused of a crime they did not commit."[116] Only 19% believe that their chances of a fair trial are "very likely."[117] This lack of trust carries significant risk for judges, who face increasing threats to their safety and the safety of their families.[118] In February 2024, the director of the U.S. Marshals Service told the House Judiciary Committee's Crime and Federal Government Surveillance Subcommittee that "we are seeing a 'new normal' of highly volatile behavior that shows no signs of easing," with threats against federal judges more than doubling between 2021 and 2024.[119] Judges report feeling constrained in how they speak about these threats, balancing efforts to ensure their own safety against the duty to ensure public perception remains that they are neutral arbiters of conflicts as opposed to political actors.[120]

Some would attribute this decline in trust and rise in violence to increased mistrust in the Supreme Court. But many of the concerns animating falling trust in the high court, such as politicization of

114. Mona Chalabi, *What are the Chances of Serving on A Jury*, FIVETHIRTYEIGHT (June 5, 2015), https://fivethirtyeight.com/features/what-are-the-chances-of-serving-on-a-jury.

115. Over 90% of those defendants are convicted. John Gramlich, *Fewer than 1% of Federal Criminal Defendants Were Acquitted in 2022*, PEW RSCH. CTR. (June 14, 2023), https://www.pewresearch.org/short-reads/2023/06/14/fewer-than-1-of-defendants-in-federal-criminal-cases-were-acquitted-in-2022.

116. Patterson Jr. et al., *supra* note 105.

117. *Id.*

118. Lauren Berg, *Attys Have Duty to Defend Judges, ABA President Says*, LAW360 (Apr. 8, 2024).

119. *Id.*

120. Suzanne Monyak, *Judges Grapple with When to Speak Publicly Among Rising Threats*, BLOOMBERG LAW (Apr. 9, 2024), https://news.bloomberglaw.com/us-law-week/judges-grapple-with-when-to-speak-publicly-amid-rising-threats (quoting several judges).

Justices[121] and the confirmation process[122] and increased judicial attention to the most controversial issues of our day,[123] do not impact district courts in the same way. While some nationwide injunctions may implicate the first and second causes,[124] it seems unlikely that nationwide injunctions alone would be sufficient to cause the present crisis of confidence.

121. The fact that current procedural reforms assume the politicization of judges as a given, despite many examples of judges at each level who have ruled against their appointing party, even in high-stakes contexts, illustrates the problem. *See Confusion and Clarity*, *supra* note 9, at 1647 (summarizing partisan perceptions, political gamesmanship, and proposed procedural reforms); *see also* NINA TOTENBERG, DINNERS WITH RUTH 53 (2022) (detailing how Justice "Powell [Jr.] was expected to be a reliable conservative, but he turned out to be a staunch advocate of reproductive rights for women, starting with *Roe*"). As just one example of the rapid progression in partisan activity surrounding the court, between the 1993 nomination of Justice Ruth Bader Ginsburg and her 2020 death, Mitch McConnell moved from voting in favor of her confirmation to blocking her ability to lie in the Capitol Rotunda and refusing to attend services in her honor. *Id.* at 119–20 (2022).

122. Some have claimed that the nomination of Judge Robert Bork "legitimized scorched-earth ideological wars over nominations at the Supreme Court." TOTENBERG, *supra* note 121, at 103, 106–07, 232–34 (quoting Tom Goldstein) (discussing the contentious nomination processes surrounding Justice Thomas and Kavanaugh, respectively).

123. *Confusion and Clarity*, *supra* note 9, at 1643 ("In this moment, and in other notable moments in the last century, calls for reform resound powerfully because the Court is at the center of deep substantive disagreements about the future of American life."); *see also* GORSUCH & NITZE, *supra* note 80, at 23 (noting that courts are more involved in Americans' day-to-day lives).

124. *See* Harvard Law Review, *Chapter Four District Court Reform: Nationwide Injunctions*, 137 HARV. L. REV. 1701 (2024). As the authors point out, "nationwide injunctions have . . . grown more common, dramatically spiking during the Trump Administration [and] decreasing during [the first three years of the] Biden Administration." *Id.* at 1702. Nationwide injunctions are overwhelmingly—though not exclusively—issued by Judges appointed by the party opposite the presidential administration whose action is challenged. *Id.* at 1705–06. This, however, is likely an effect of selection bias. *Id.* at 1710–12 (discussing incentives for litigants to file aggressively, and to "target particular courts and forum shop for judges who are most likely to honor a request for injunctive relief").

Part of the problem arises out of a general decline in institutional trust[125] and an increase in political polarization.[126] In an era where scrutiny of elite institutions has increased, the judicial branch is an easy target for rancor. Unlike early democratic theorists who saw the attorney as a bridge between the people and the nobility,[127] lawyers and judges are now firmly lodged in the American aristocracy and seen as upholding its attendant ills.[128] As Michael Waldman summarizes, the current Supreme Court embodies this issue, crystallizing a pantheon of elite resumes:

> Today the Court is comprised of lawyers who are highly skilled but narrow in their professional background. Starting with Nixon and for the next fifty years, all but three of the seventeen appointees served as federal appeals court judges. On today's Supreme Court, eight of the nine justices were appeals court judges . . . . Eight of the nine attended Yale or Harvard law school. Eight had served as Supreme Court clerks. None ever ran for

125. *Confusion and Clarity*, *supra* note 9, at 1634 (2024) (citing Lydia Saad, *Historically Low Faith in U.S. Institutions Continues*, GALLUP (July 6, 2023), https://news.gallup.com/poll/508169/historically-low-faith-institutions-continues.aspx) ("Faith in public and private institutions ha[s] declined for Americans across the political spectrum."). This loss of trust has been trending for more than a decade. *See* Lydia Saad, *Historically Low Faith in U.S. Institutions Continues*, Gallup (July 6, 2023), https://news.gallup.com/poll/508169/historically-low-faith-institutions-continues.aspx (showing decline in public trust in different institutions). In assessing the comparative institutional strength of China and the United States in 2016, Gideon Rachman noted that over the preceding decades "real wages have stagnated in America, and opinion polls have consistently shown declining public faith in political institutions." GIDEON RACHMAN, EASTERNIZATION: ASIA'S RISE AND AMERICA'S DECLINE: FROM OBAMA TO TRUMP AND BEYOND 255 (1st ed. 2016).

126. GORSUCH & NITZE, *supra* note 80, at 207.

127. *See* WALDMAN, *supra* note 5, at 18 ("The lawyer belongs to the people by his interest and his birth and to aristocracy by his habits and his tastes, he is, so to speak, the natural link between these two things, as it were the hand that unites them.") (quoting Alexis de Tocqueville).

128. *See generally* MUSA AL-GHARBI, WE HAVE NEVER BEEN WOKE: THE CULTURAL CONTRADICTIONS OF THE NEW ELITE (1st ed. 2024) (arguing that attorneys are lodged firmly in the elite class of "symbolic capitalists," a group that espouses liberal ideology while contributing to systems of oppression that lead to mistrust from working class Americans of all backgrounds and ideologies).

> office. There are no graduates of public universities, but two graduates of one tony Catholic prep school in the Washington, D.C., suburbs.[129]

To be sure, Waldman's analysis misses the nuances of the Justices' experience and service. Many have long histories of public service as prosecutors,[130] attorneys general, or in executive branch roles. Two devoted substantial portions of their careers to teaching the next generation of attorneys. Justices Thomas and Sotomayor faced significant childhood adversity in Pin Point, Georgia, and the South Bronx neighborhood of New York City, respectively. But even with these *bona fides*, the Court is now perceived as an elite institution,[131] and—after years of exceptionalism[132]—has begun to face the mistrust of the American people in such institutions.

The problem is more pernicious, however, than perceptions of elitism within the judicial system. As mistrust in courts rises, there are

129. WALDMAN, *supra* note 5, at 78.

130. WALDMAN, *supra* note 5, at 170 (chronicling Justice Sonia Sotomayor's background as a prosecutor and closeness to the New York community).

131. *See, e.g.*, Lawrence Baum & Neal Devins, *Why the Supreme Court Cares About Elites, Not the American People,* 98 GEO. L. J. 1515 (2010) (arguing that "Justices seek both to advance favored policies and to win approval from audiences they care about. These audiences may include the public but are more likely to include elites—individuals and groups that have high socioeconomic status and political influence"). The Court's ethics scandals—and the ways in which they captured the attention of the American public—belie this point. Much of the uproar surrounding the Justice's alleged ethical lapses arose from their luxurious experiences rubbing elbows with billionaires—trips in private jets and quarter million dollar "loans" captured significantly more media attention than Justice Sotomayor's alleged use of staff time to promote her book. *Compare* Harvard Law Review, *Developments in the Law Court Reform: Chapter Three Judicial Ethics*, 137 HARV. L. REV. 1677, 1680–81 (describing and chronicling media coverage of Justice Gorsuch, Thomas, and Alito's alleged ethical violations) *with* Lawrence Baum & Neal Devins, *Why the Supreme Court Cares About Elites, Not the American People,* 98 GEO. L. J. 1515, 1682–83 (2010) (describing and chronicling media coverage of Justice Sotomayor's alleged ethical violations).

132. *Confusion and Clarity*, *supra* note 9, at 1634 ("Th[e] excitement [over Supreme Court reform] is out of the ordinary. Over at least the last fifty years, people have supported the Court more than they have Congress or the presidency, and movements to reform the Court rarely win the attention of politicians, let alone ordinary people.").

also fewer opportunities to correct that mistrust through democratic engagement. The Supreme Court recognizes the importance of district court engagement with communities to democratic legitimacy, writing in 1980 that "with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process."[133] This engagement with courts is important; as many have noted, courts can be perceived as antidemocratic because they have the power to override legislative processes and executive action.[134] But fewer cases than ever go to trial, reducing citizens' mandatory interaction with district courts through jury service.[135] Accordingly, most citizen-court contact arises from criminal prosecution or civil litigation,[136] situations in which there is at least one loser, and where district judges must balance expedient and just resolution for the parties with their duty as officers of the court to properly apply the law.

Compounding this problem is the lack of tools judges have few tools to communicate their legitimacy. For the most part, judges in the lower courts speak only from the bench and in written decisions.[137] As Aaron J. Walayat writes in a 2023 article, "[r]egardless of whether one believes judges merely find law or whether they actively make law, . . . judges are communicators of law and . . . the general public relies on

133. Powers v. Ohio, 499 U.S. 400, 407 (1991); *see also* Vikrim David Amar, *Jury Service as Political Participation Akin to Voting*, 80 CORNELL L. REV. 203, 207 (1995); GORSUCH & NITZE, *supra* note 80, at 62.

134. *See Confusion and Clarity*, *supra* note 9, at 1638 ("Because judicial supremacy gives the Court a trump card over the popularly elected legislative and executive branches, reformers object that it is antidemocratic and likely to slow the pace of change.").

135. *See, e.g.*, Sarah Staszak, *Explanations for the Vanishing Trial in the United States*, 18 ANNUAL REV. OF L. & SOC. SCI. 43 (2022) (discussing the "vanishing trial" as first coined by Marc Galanter, and the ABA's Vanishing Trials Project). This is true not just at federal district courts, but in state courts as well. SHERROD, *supra* note 103, at 114–15.

136. The district court touches not only jurors and litigants, however. Courtroom audiences also serve to translate the legitimacy of the judicial system to local communities, with scholars urging courts to "consider the ways in which judicial speech and action underscore—or undermine—[this] democratic function." *See* Jocelyn Simonson, *The Criminal Court Audience in a Post-Trial World*, 127 HARV. L. REV. 2173, 2230 (2014).

137. *See* FED. JUD. CTR, *supra* note 22, at vii.

judges as communicators of legal principles."[138] Accordingly, the time required to draft concise, understandable opinions that not only address and distinguish between the arguments of parties but also defend a judge's reasoning for decisions is essential to maintaining judicial legitimacy and preserving public trust in the judiciary.

In general, courts are inscrutable, semi-religious monuments[139] to legalism. Jurors, allowed into the outer sanctum of these temples and designated judges of the fact, do not gain insight into the judicial decision-making process. Judges' rationale, to the extent it is not encapsulated in a written opinion or captured in a court transcript, is protected not only by courts architecture and procedure,[140] but by judicial privilege.[141] Even clerks, given unique insight into judicial decision-making, only know as much about a judge's analysis and rationale for decisions as that judge is willing to disclose. Judges are increasingly separated from their communities,[142] so the "loose ties"[143]

138. Aaron J. Wayalat, *The Play's the Thing: A Response to Judge Benjamin Beaton*, 2023 PEPP. L. REV. 101, 104 (2023).

139. *See generally id.* at 109 (comparing the use of ritual in U.S. courts to certain religious and philosophical principles to "create a mystique regarding legal practice, an almost-mystical quality").

140. Heather Abraham et al., *Judicial Secrecy: How to Fix the Over-Sealing of Federal Court Records*, KNIGHT FIRST AMEND. INST. AT COLUM. UNIV. (Oct. 21, 2021), https://knightcolumbia.org/blog/judicial-secrecy-how-to-fix-the-over-sealing-of-federal-court-records.

141. *See generally* Note, *The Doctrine of Judicial Privilege: The Historical and Constitutional Basis Supporting a Privilege for the Federal Judiciary*, 44 WASH & LEE L. REV. 213 (1987) (discussing the origins and historical recognition of a judicial privilege, despite critiques).

142. *See* Daniel Connolly, *Judging is a Lonely Job, Federal Jurists Say*, LAW360 (Sept. 21, 2023), https://www.law360.com/pulse/articles/1724495/judging-is-a-lonely-job-federal-jurists-say; Isaiah M. Zimmerman, *Isolation in the Judicial Career*, CT. REV. (2009), https://louisianajlap.com/wp-content/uploads/2015/04/IsolationintheJudicialCareer.pdf. Even Nina Totenberg, in a book lauding her decades-long friendship with Justice Ginsburg, among others, mentions times in which their roles made a functional friendship difficult or impossible. While these incidents are minor in the flow of a profound friendship, they illustrate the challenges that many judges face in making friends. *See* TOTENBERG, *supra* note 121, at 127 (describing the necessity to distance from her friend during the confirmation process).

143. GORSUCH & NITZE, *supra* note 80, at 168 (noting that habits of associating in community assist in building trust).

that increase communal trust generally are not formed as strongly with judges.

Some have argued that gender and racial representation assist in buoying public confidence in the judiciary.[144] While, to be sure, Judges come from a variety of backgrounds and this lived experience may encourage litigants before them,[145] judges make more than three and a half times what the median American worker does.[146] Further, while Supreme Court Justices' backgrounds are usually widely publicized as a result of the increasingly rigorous confirmation process, the same is largely untrue for district and most circuit judges. To the extent that judges seek to share their background and lived experiences, it is largely by choice or through apparent representation of a given race or gender.

Others have pointed out that American courts' legitimacy is dependent on whether it "receive[s] a minimum amount of buy-in from citizens . . . even if [those citizens] disagree[] with it."[147] The lawmaking process described by jurists—distilling a *ratio decidendi* from past law and applying it to the unique facts of the case—is critical to the buy-in process. And the only way that this process can be defended is through the written opinion. As William W. Schwarzer, a

144. Justin Wise, *Jackson Touts Court Diversity as Boost to Public Confidence*, BLOOMBERG L. (Mar. 6, 2025), bloomberglaw.com/product/blaw/bloomberglawnews/business-and-practice/BNA%2000000195 (quoting Justice Jackson as stating that "to the extent that the law is governing behavior, and it is of the citizenry at large, it instills confidence in the rule of law when the people who are governed by it understand that the judiciary and the people interpreting it come from different walks of life."). WALDMAN, *supra* note 5 at 140–42.

145. This effect comes from both the representational impacts of having a Justice or judge who one expects can empathize with their experience, and from the actual impacts of that experience. *See, e.g.*, TOTENBERG, *supra* note 121, at 102 (describing the meaning to the Italian American community of Antonin Scalia as the first Italian American Justice); WALDMAN, *supra* note 5 at 137–38 (describing the role of Justice Ruth Bader Ginsberg's gender in her understanding of *Safford Unified School District v. Redding*).

146. *Compare* BUR. OF LABOR STATS., *Usual Weekly Earnings of Wage and Salary Workers Fourth Quarter 2024* (Jan. 22, 2025), https://www.bls.gov/news.release/pdf/wkyeng.pdf, *with* FED. JUD. CTR., *Judicial Compensation* (last visited Mar. 22, 2025), https://www.uscourts.gov/about-federal-courts/about-federal-judges/judicial-compensation.

147. *Confusion and Clarity*, *supra* note 9, at 1649 (2024).

district judge of the United States District Court for the Northern District of California, writes in his Foreword to the Federal Judicial Center's guide to judicial writing:

> [T]he written word . . . is the source and the measure of the court's authority. It is therefore not enough that a decision be correct—it must also be fair and reasonable and readily understood. The burden of judicial opinion is to explain and to persuade and to satisfy the world that the decision is principled and sound. What the court says, and how it says it, is as important as what the court decides. It is important to the reader [and] important to the author because in the writing lies the test of the thinking that underlies it.[148]

Justice Gorsuch, writing with former clerk Janie Nitze in 2022, similarly emphasized the critical role of readability in legitimating decisions, quoting Justice John Harlan Marshall's statement that "in a civilized state the least that can be expected of government is that it expresses its rules in language all can reasonably be expected to understand."[149]

The written text of decisions, then, is essential to judicial legitimacy. A judge cannot rely on a popular mandate to exercise his or her will, but instead must defend it through logical reasoning, in terms that others can understand. Past Supreme Courts have approached especially controversial decisions with an understanding that popular understanding and consumption of their opinions is a vital component of their legitimacy. Earl Warren famously ensured that the decision in *Brown v. Board of Education* was concise enough to be printed in full in newspapers of the day,[150] and Justices Ruth Bader

148. *See supra*, note 22.

149. GORSUCH & NITZE, *supra* note 80, at 117. While Justice Harlan's quote was initially in the context of textual readings, Gorsuch and Nitze write that it is essential to the due process right, noting that "[i]n the United States, th[e] fair notice promise was understood to inhere in the Constitution's guarantee of due process of law." *Id.*

150. Alden Whitman, *For 16 Years, Warren Saw the Constitution as Protector of Rights and Equality*, N.Y. TIMES ARCHIVES (July 10, 1974), https://www.nytimes.com/1974/07/10/archives/for-16-years-warren-saw-the-

Ginsberg and Antonin Scalia were "particularly focused on writing."[151] The tests described in Part III, however, require greater substantive engagement by eliminating logical short cuts. These require deeper consideration, greater evidentiary submission (as discussed in relation to *Loper Bright*) and, ultimately, more time to draft. With time pressures exerted by greater pressure from higher numbers of filings, district courts face significant challenges to the essential task of drafting well-defended opinions which increase trust in the courts.

### *B. Impacts of Time Pressures and Efforts at Remedy*

Getting the law "right" and communicating as much in writing requires time and resources. Writing in 2025, Justice Stephen Breyer summarized the *corpus* of Justices Holmes, Cardozo, and Brandeis, among other legal luminaries, as describing law as "an untidy body of understandings among groups and institutions, inherited from the past and open to change mostly at the edges."[152] Breyer eschews single theories, writing that law "communicates its vision . . . through detailed

constitution-as-protector-of-rights-and.html (quoting Justice Warren as stating "I assigned myself to write the decision, for it seemed to me that something so important ought to issue over the name of the Chief Justice of the United States. In drafting it, I sought to use low-key, unemotional language and to keep it short enough so that it could be published in full in every newspaper in the country."). While Warren's campaign within the court to ensure a digestible *per curiam* decision likely eased the backlash to *Brown v. Board*, it did not prevent critics of the time from framing the decision as an abuse of judicial power. MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE STRUGGLE FOR RACIAL EQUALITY 320 (1st ed. 2004).

151. *See* TOTENBERG, *supra* note 121, at 148 (2022). Totenberg notes that the Justices were "both very meticulous when it came to 'legal procedure,' and treasured each other's friendship in part because their arguments sharpened their own opinions." *Id.* at 146–48. Justice Thomas agreed, writing at the time of her death that Justice Ginsburg's "premium on civility and respect . . . facilitated a respectful environment in which disputes furthered our common enterprise of judging. Whether in agreement or disagreement, exchanges with her invariably sharpened our final work product." *Id.* at 119.

152. Breyer, *supra* note 5, at 719 (citing, OLIVER WENDELL HOLMES, JR., THE COMMON LAW (1881); BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 28 (1921); Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 193 (1890); HENRY M. HART, JR. & ALBERT M. SACKS, THE LEGAL PROCESS: BASIC PROBLEMS IN THE MAKING AND APPLICATION OF LAW 143 (1994)).

study of cases, institutions, history, and above all, the human needs that underlie them."[153] Distilling this untidy body and engaging in this sort of detailed, multi-factor consideration is, of course, time-intensive.[154]

It is somewhat rare for judges to give insight into the difficult process of judicial determinations. A retrospective by Sixth Circuit Judge Gilbert S. Merritt's former law clerks provides unique insight into just how time-intensive "getting the law right" can be. In one vignette, former clerk Janet Arnold Hart writes that "Judge Merritt could have easily dispensed with [a case on ADEA benefits remanded from the Supreme Court" by recommending to his fellow panel members that they rule in favor of Ms. Betts' employer. When the case was remanded, however, "he instructed [her] to review the ADEA carefully to determine whether, in fact, Ms. Betts should still be entitled to a higher level of benefits even in the case of the reversal [from the Supreme Court.]"[155] Judge Merritt wrote the majority opinion of the Court for Ms. Betts, and certiorari and en banc review were both

153. Breyer, *supra* note 5, at 719.

154. One could argue, of course, that the two-fold problem of legal flux described by Breyer is an overly expansive view of the role of a judge. *See, e.g.*, CASS R. SUNSTEIN, ONE CASE AT A TIME 210 (1999) ("Of all the criticisms leveled against textualism, the most mindless is that it is formalistic. The answer to that is, of course it's formalistic.") (quoting ANTONIN SCALIA, A MATTER OF INTERPRETATION 25 (1996)); Amy Coney Barrett, *Congressional Insiders and Outsiders*, 84 U. CHI. L. REV. 2193, 2193 (2017) ("There is a general consensus that the text constrains."); Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118, 2129 (2016) ("[A] critical difference between textualists and purposivists is that, for a variety of reasons, textualists tend to find language to be clear rather than ambiguous mor readily than purposivists do."). Cardozo, who Breyer cites approvingly, takes a more circumspect view of the role of a judge, urging the extraction of the *ratio decidendi* and the determination of "the path or direction along which the principle is to move and develop, if it is not to wither and die." BENJAMIN J. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 28 (1921). But Cardozo's articulation belies the point that taking an originalist view, even with firm views of the *ratio decidendi* formed from the founders' wisdom or original public meaning of the text, a district judge must determine whether the facts of each particular case are, in fact, distinguishable (carving out exceptions from the general rule) or not (expanding its scope). This decision requires consideration in all but the most clear-cut cases. And of course, as Justice Kavanaugh has written, "one judge's clarity is another's ambiguity," so different judges may disagree as to just how clear-cut a given fact pattern—or *ratio decidendi*—really is. Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118, 2137 (2016).

155. *See* Coffin et al., *supra* note 7, at 543 (2024).

denied.[156] Judge Merritt similarly eschewed judicial shortcuts[157] in *United States v. Cone*, a death penalty case where he castigated the Sixth Circuit Court of Appeals and his own prior opinions for "fail[ing] to understand the record correctly" when they found certain claims by a death row litigant procedurally defaulted.[158] The Supreme Court agreed.[159] Ms. Hart wrote that, even in a "mundane and somewhat tedious case[s] . . . [Judge Merritt] was a stickler when it came to adherence to statutory language and legislative history, [and] took care to recognize that his decisions had real-life implications for litigants."[160] Under time pressure or facing an increased trial workload required of district judges with fewer clerks,[161] however, it requires greater fortitude, organization, and diligence to make such a point of careful review.

To be sure, even judges with strong docket management statistics emphasize getting the law right.[162] And some may argue that the existence of Courts of Appeal should ensure that even when district court judges reach the wrong conclusion, the parties reach a just outcome through reversal or remand. These arguments, however, ignore the critical under-resourcing of trial courts (discussed later in

156. *Id.*

157. Judge Merritt so frequently eschewed the appellate "shortcut" of deferential review standards that "several noted Nashville lawyers nicknamed [him] "Judge De Novo" because of his perceived greater penchant to seek a wider de novo standard of review on appeals than others of his peers on the Sixth Circuit." *Id.* at 597.

158. *Id.* at 549.

159. *Id.* In a similar instance, a former Merritt clerk described the Judge pouring over American law in the 1874–1950 period to understand the Padrone system, a statute designed to repel it, and the impacts the system and its ban had on the interpretation of modern day slavery statutes. *Id.* While the Supreme Court rejected Merrit's reasoning, Congress, in response to the Supreme Court's decision, expanded the law to include Judge Merritt's proposed test. *Id.* at 585–86.

160. *Id.* at 544. Judge Merritt "made sure that law clerks pored over records in [Black Lung or Social Security disability cases] and scrutinized the opinions of Administrative Law Judges to ensure that each litigant was getting a fair hearing." *Id.*

161. Margie Alsbrook, *Untangling Unreliable Citations*, 37 GEO. J. OF LEGAL ETHICS 415, 422.

162. I had the great privilege of clerking for a judge who had excellent case resolution statistics and a resolute dedication to getting the law right and treating those who appeared before him with respect and fairness. In my experience, this judge was always willing to take the extra time necessary to balance these competing interests.

this Part), the institutional and procedural barriers to reversal, and the harm to litigants and judicial reputation when justice is done not on first review, but after appellate argument. Further, not every litigant has access to appellate review: time bars, financial restrictions, and the terms of settlement agreements may make district courts the final venue for most claims. Any pending cases likewise has a significant "emotional and financial toll" on litigants, and there is "inherent justice in reaching a just resolution as quickly as possible."[163]

The pressure to ensure rapid resolution[164] and the pressure to ensure a just result, well-defended in written opinions are not the only pressures facing district court judges. In the past twenty years, the number of cases decided through the time- and briefing-intensive summary judgment process has increased from 2% of all cases to nearly 10%.[165] Litigants in civil cases and the federal rules anticipate active case management by district judges, which requires judicial time and attention, especially at the outset of cases.[166] At the criminal level, sentencing processes are more time-intensive in the wake of *United States v. Booker*[167] and courts now handle nearly twice as many crimes as they did in 1994.[168] District courts also face external pressures,

163. Coffin et al., *supra* note 7, at 581.

164. This pressure can be especially sharp when federal district court rulings—or delays in waiting for rulings—impact surrounding communities or local economies. *See* U.S. COURTS, *The Need for Additional Judgeships: Litigants Suffer When Cases Linger*, (Nov. 18, 2024), https://www.uscourts.gov/data-news/judiciary-news/2024/11/18/need-additional-judgeships-litigants-suffer-when-cases-linger.

165. SHERROD, *supra* note 103, at 116–17 (2019). The author notes that some judicial districts resolve nearly a quarter of their caseloads via summary judgment. *Id.* at 117.

166. FED. JUD. CTR., BENCHBOOK FOR U.S. DISTRICT COURT JUDGES 189 (6th ed. 2013) ("The Civil Rules contemplate that the judge will be an active case manager . . . . Active judicial case management is an essential part of the civil pretrial process . . . . Many parties and lawyers want and welcome active judicial case management, viewing it as key to controlling unnecessary cost and delay.").

167. 543 U.S. 220 (2005); Jon P. McCalla, *Statement by Jon P. McCalla, Chief Judge, United States District Court for the Western District of Tennessee*, (Sept. 9, 2009), https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20090909-10/McCalla_testimony.pdf ("The return of discretion [post-*Booker*] has been welcomed by all of the judges in the court but has increased the workload and the time consumed in the sentencing process.").

168. GORSUCH & NITZE, *supra* note 80, at 107.

including an alarming increase in physical threats.[169] And they do so without the "research resources and personnel that are found at the appellate level . . . federal district courts move faster than the appellate courts and do not have the clerks or the timetables" of their circuit-level colleagues.[170]

Changing technologies are also stretching the capacity of district courts. Scholars predict that the coming decades will be one of rapid transformation in the legal industry.[171] Generative AI allows for faster legal writing and submissions, potentially increasing the pace of existing dockets. The uptake of new technologies, however, interacts with existing shortcuts in ways that incongruously create heavier

169. Between 2015 and 2021, the U.S. Marshals Service, which protects federal judges, prosecutors, and court officials, saw a 400% increase in threats. NAT'L CTR. FOR STATE COURTS, *NCSC Supports New Legislation to Protect State Court Judges From Escalating Threats* (last visited Mar. 22, 2025), https://www.ncsc.org/newsroom/at-the-center/2024/ncsc-supports-new-legislation-to-protect-state-court-judges-from-escalating-threats. These threats have increased further in the past four years. Luke Barr, *Threats to Federal Judges Increasing, U.S. Marshals Service Warns*, ABC NEWS (Mar. 21, 2025), https://abcnews.go.com/Politics/threats-federal-judges-increasing-us-marshals-service-warns/story?id=120019609. These threats are not mere puffery—New Jersey district judge Esther Salas lost her son, Daniel, when an attorney who had appeared before her only once came to her house and shot Daniel and Salas' husband. Nina Totenberg, *An Attacker Killed a Judge's Son. Now She Wants to Protect Other Families*, NPR (Nov. 20, 2020), https://www.npr.org/2020/11/20/936717194/a-judge-watched-her-son-die-now-she-wants-to-protect-other-judicial-families. A potential assassin reached the house of Supreme Court Justice Brett Kavanaugh carrying weapons. WALDMAN, *supra* note 5, at 173 ("Brett Kavanaugh lives in Chevy Chase, Maryland . . . . A man flew from California, carrying weapons, duct tape, and burglary tools. When he arrived at Kavanaugh's home in the middle of the night on June 8, he saw two armed U.S. Marshals standing guard and stepped away . . . . According to the FBI he had confided to friends his goal was to 'remove' at least one Justice.").

170. Alsbrook, *supra* note 161, at 422.

171. *See* Eugene Volokh, *Chief Justice Robots*, 68 DUKE L.J. 1135, 1138 (2019) (discussing the impact of artificial intelligence on judicial decision-making); Benjamin Alarie et al., *Law in the Future*, 66 U. TORONTO L.J. 423 (2016) (discussing the impact of AI more broadly in the legal field, albeit prior to the percolation of generative AI in common daily use); Kevin Frazier, *The Rise of the Interdisciplinary Lawyer: Defending the Rule of Law in the Age of AI*, U. S.F. L. REV. 19 (2024) (discussing the impacts of AI on rule of law); Jan Levine, *Forward: Artificial Intelligence: Thinking About Law, Legal Practice, and Legal Education*, 58 DUQ. L. REV. 1 (2020) (summarizing symposium contributions on the topic of AI in law).

workloads for the district court. Take the rise of the "cleaned up" citation, a shortcut initially intended to prevent courts drafting opinions from needing to retain brackets and ellipses, and to increase legibility for opinion readers.[172] After an explosion in popularity, "cleaned up" has been used to remove context and twist precedential language,[173] increasing the need for district court judges to trace back quoted language to its original source to ensure accuracy.[174] "Cleaned up" citations within large language models also train generative AI to play fast and loose with legal quotes, increasing the need for district courts to be particularly attentive to the accuracy of quoted language. The interaction of these two shortcuts therefore has the potential to increase judicial workload, especially as technology continues to be adopted by judges.

Given these pressures, state and federal judges have grown increasingly assertive in discussing the need for more resources and more trial court judges. Since 1990, district court filings have increased by 30%, but the number of district court judgeships has only increased by 4%.[175] Between 2021 and 2024, the number of civil cases pending more than three years rose 34%, to 81,617.[176] In testimony before Congress, Judge Timothy Tymkovich noted that these delays "chip away at the public's respect for the Judiciary and erode public confidence in the judicial process and the timely administration of justice[,]" and that "potential litigants may be avoiding federal court altogether, not having the resources or time to wait for their case to be heard or resolved."[177]

Many courts in the busiest districts in the country require visitors from other districts to help carry the load—the United States District Court for the District of Delaware, for example, has five currently-serving judges, but uses the work of thirty visiting judges to

172. Alsbrook, *supra* note 161, at 418–29.

173. *Id.* at 424–25.

174. *See id.* at 424–25, 428–29 (discussing the usage of the *cleaned up* citation by various courts "makes it more difficult for future legal readers and writers to trace the original precedents that form the basis for the resulting court opinions").

175. U.S. COURTS, *Courts Need More Judgeships, Judge Tells Congress*, (Feb. 25, 2025), https://www.uscourts.gov/data-news/judiciary-news/2025/02/25/courts-need-more-judgeships-judge-tells-congress.

176. *Id.*

177. *Id.*

keep cases moving forward.[178] Even so, Delaware courts have adopted practices that increase the opacity of their decision-making: patent claim construction, for example, are decided from the bench, often with little written explanation of the opinion. Delaware's judges are not any less capable or talented than their colleagues in other districts, but without the luxury of time, their decisions lack the same substantive explanations of reasoning. These explanations decrease opacity for both litigants and non-litigants, who use the court's written decisions and the contours of the court's logic to avoid litigation or settle claims without resorting to courts.

Expanding the judiciary requires an act of Congress, signed by the President. An act creating 66 new judgeships in district courts, and converting seven more temporary judgeships into permanent positions was passed in late 2024, but vetoed by the Biden administration.[179] The bill had hoped to avoid partisan concerns over the nomination of new judges by filling the newly created positions through appointments staggered over three presidential administrations.[180] It is unclear if, given the Trump Administration's policy priorities, a similar bill would be successful in the next four years.

While it seems unlikely that the rising pressure on trial court workloads will be alleviated by an Act of Congress, the lack of district court experience in the supermajority of the Supreme Court also threatens to continue increasing workability concerns in trial courts, especially if current trends in siloing and hiring continue.

### *C. The Roberts Court's Experience of the District Courts*

Despite the important role that district courts play in entrenching judicial legitimacy, the Roberts Court has little direct experience with the realities of district court workloads. This issue is exacerbated by the sharp division between the supermajority and the minority Justices, and by the hiring practices of each wing. Even if the current supermajority sought to consider the pressures on district courts in

178. DISTRICT OF DELAWARE, *Visiting Judges* (last visited Mar. 1, 2025), https://www.ded.uscourts.gov/visiting-judges.

179. Nate Raymond & Dan Burns, *Biden Delivers on Threat to Veto Bill to Expand US Judiciary* (Dec. 24, 2024), https://www.reuters.com/world/us/biden-vetoes-bill-adding-new-judges-courts-following-trumps-win-2024-12-24.

180. *Id.*

formulating its principles of law, the Justices may need to collaborate with their counterparts in the minority, or seek the assistance of *amici*, to do so.

As reported widely, the Court's wings have become less collaborative.[181] The judges in the current originalist supermajority collectively have one year of experience in district court chambers. The two Justices with experience on a district court bench—Jackson and Sotomayor—are relegated to the court's liberal wing.

Interestingly, the separation between district court experience on the supermajority and the minority extends to the Court's clerks.[182]

181. These tensions appear to be both ideological (though separating the justices strictly into "conservative" or "liberal" belies the nuance in many of the voting blocs that have formed on the court in relation to specific issues) and, on some level, personal. *See* Dr. Adam Feldman, *Charting the Justices Decisions Cutting Across Ideological Lines*, EMPIRICAL SCOTUS (Apr. 1, 2024), https://empiricalscotus.com/2024/04/01/charting-the-justices-decisions-cutting-across-ideological-lines; Steven Mazie, *The Supreme Court Justices Do Not Seem to be Getting Along*, THE ATLANTIC (Jan. 16, 2023), https://www.theatlantic.com/ideas/archive/2023/01/supreme-court-justices-public-conflict/672494; Joan Biskupic, *Tired, Testy, and Fractured: The Court Prepares for More Drama*, CNN (May 24, 2024), https://www.cnn.com/2024/05/24/politics/supreme-court-justices-tired-testy-fractured-analysis/index.html. *But see* Josh Gerstein, *Sotomayor and Barrett Stress Supreme Court Camaraderie*, POLITICO (Feb. 23, 2024), https://www.politico.com/news/2024/02/23/sotomayor-barrett-supreme-court-camaraderie-00143045. Court watchers have also noticed that Justice Sotomayor has dropped the traditional "respectfully" from her dissenting statements. While past courts have certainly had moments of tension, Justices formed strong friendships across ideological and interpretive divisions. *See, e.g.*, Michelle Friedland, *Lessons from My Mentor: Sandra Day O'Connor*, 133 YALE L. J. 2520 (2024); Christopher J. Scalia, *My Father's Relationship with Justice Ginsburg–'Best of Friends'*, AM. ENTER. INST. (Sept. 21, 2020), https://www.aei.org/articles/my-fathers-relationship-with-justice-ginsburg-best-of-friends. Justice Breyer writes that in his time on the Court, friendly relations were regarded as important and compromise essential. Breyer, *supra* note 5, at 770 (2025) (discussing the following unwritten rules among Justices: "lunchtime is not the time to talk about cases . . . each case is a new case, in that if we strongly disagreed about the first, we may strongly agree about the second . . . it is important to maintain friendly relations among colleagues; . . . it is worthwhile to try to see the other person's point of view; and . . . compromise, where compromise is possible, will prevent unnecessary disagreement").

182. The role of Supreme Court clerks is often overlooked in assessing the experience and perspective of the Justices. *See, e.g.*, Susan Fortney, *Promoting Judicial Clerk Transparency: A Proposal That Balances Hiring Prerogative and*

Between 2022 and 2024, clerks for the supermajority without district court experience outweighed their counterparts with district court experience 2-1. In other words, fewer than a third of supermajority clerks had spent time in a district court chambers, and some Justices spent several terms without any clerks with district court experience. By contrast, the ratios in the Court's more liberal wing are inverted. Among clerks for Justices Sotomayor, Kagan, and Jackson, clerks with district court experience outnumbered their counterparts without district court clerkships by as much as 5-1. Between 2022 and 2024, the gradation of district court clerk hiring neatly tracks to the gradations of originalist thinking on the court: Thomas, Alito, and Gorsuch were least likely to hire clerks with district court experience, while Roberts, Kavanaugh, and Barrett hired the bulk of the district-court experienced clerks within the supermajority.

The experience gap goes beyond first-hand knowledge of the district court caseload management practices or pressures. Experience on a district court also provides a more human window into the law. By contrast, appellate court judges and Supreme Court Justices have little contact with the world outside the bench.[183] To the extent that the Supreme Court sees litigants, they are as carefully honed sets of facts,[184] caricatures animated not by hopes, dreams, or life experience,

*Public Accountability*, ABA (Aug. 1, 2024), https://www.americanbar.org/groups/judicial/publications/judges_journal/2024/summer/promoting-judicial-clerkship-transparency.

183. *See* discussion *supra* note 142 on judicial loneliness. In her book, Nina Totenberg describes how even Justices' closest friendships were at times strained by their roles. TOTENBERG, *supra* note 121, at 127. The Justices were likewise separate from the world due to security concerns, an issue which has grown even more serious over the past five years. TOTENBERG, *supra* note 121, at 212. Interestingly, one could argue that the Supreme Court at least interacts with counsel for litigants more frequently than their brethren on the Courts of Appeals—the vanishing nature of oral arguments in some Circuits has rendered engagement with counsel primarily relegated to the papers. *See, e.g.*, Berry v. Experian Info. Servs., 115 F.4th 528, 542 (6th Cir. 2024) (Readler, J., concurring in part and dissenting in part) (citing U.S. COURTS, *U.S. Courts of Appeals—Cases Terminated on the Merits After Oral Argument or Submission on Briefs*, (Sept. 30, 2023) (noting oral argument is held in only 13.6% of the cases in the Sixth Circuit)) ("In our circuit, oral argument has become the exception, not the rule. The vast majority of cases are decided on the briefs.").

184. This can have tragic results. As Justice Gorsuch noted in a 2024 book, evidence gathered by historians indicates that Carrie Buck, whose case infamously led the Supreme Court to permit involuntary sterilization of persons with intellectual

but by the legal issues that their lives present. By contrast, district court judges regularly see and engage with both litigants and jurors and are encouraged to engage with the bars in their local communities in line with the canons of judicial ethics.

Some of this separation is by design: to avoid the emotional heft of a live victim or irrelevant external considerations in determining the weight of the law.[185] But, emotion creeps in anyway, often in ways not present in the underlying facts. Advocates frame the factual record to best appeal to the Justice's senses of fairness and morality, and to their preferred legal and political strategies. The Roberts Court has several times found itself divided by how to assess critical facts[186] and accompanying appeals to pathos in deciding a case.[187] Accordingly,

disabilities. GORSUCH & NITZE, supra note 80, at 60 (1st ed. 2024) ("It wasn't 'her genes but society and the state that determined her destiny.' In fact, evidence gathered by historians suggests neither Carrie nor her relatives were 'feeble-minded' (whatever that means). Her trial had been a sham; her attorney had done much in his career to promote sterilization and a good deal less in his representation of Carrie to protect her from it."); *see also* Samantha A. Smith, *Buck as (Anti)Canon: The Misuse of Eugenics Rhetoric in Selective-Abortion Jurisprudence and the Dangers for Tort Law*, 73 AM. U. L. REV. 449 (2024).

185. *Cf.* Breyer, *supra* note 5, at 720 (noting that deciding any law "requires dedication, sensitivity, and an awareness of the variety of needs and relationships that underlie our American legal institutions as they seek to help now more than 330 million Americans live together peacefully and productively" beyond analysis of the text).

186. Take, for example, the disagreement between the justices in *Garland v. Cargill*, 602 U.S. 406 (2024). In *Garland*, the Court examined the scope of coverage of the statutory term "machine gun" where a "machine gun" can "automatically" shoot "more than one shot . . . by the single function of the trigger." *See* 26 U.S.C. § 5845. Justice Thomas, writing for the Court, found the relevant factual basis for his opinion in the technical underpinnings of the gun's structure and use, including two different charts in the opinion to illustrate his point and emphasizing that because "[a] shooter must . . . actively maintain just the right amount of forward pressure on the rifle's grip with his non-trigger hand" a bump stock does not shoot automatically. *Cargill*, 602 U.S. at 424. By contrast, Justice Sotomayor's dissent viewed the facts differently, noting that "[a]ll a shooter must do is rest his finger and press forward on the front grip or barrel for the rifle to fire continuously." *Id.* at 441–42 (Sotomayor, J., dissenting). We leave issues on the role of this kind of appellate fact-finding at the Supreme Court, and in appellate courts more broadly, for another day.

187. *See, e.g.*, Yates v. United States, 574 U.S. 528 (2015). Justice Gorsuch describes what he sees as the sympathetic tale of government overreach related to John and Sandra Yates' issues with the Sarbanes-Oxley act and a certain undersized

the lack of district court experience among the supermajority fails to prevent the emotional weight of facts from reaching the Justices, but may still create a blind spot into not only the ways in which Supreme Court decisions impact the administration of district courts, but how they impact the legitimacy of the courts in the eyes of those directly before them.

## V. CONCLUSION

The embrace of the common-law method is not new to the Supreme Court,[188] but the tremendous pressure placed on American trial courts from all sides is unusual. The Court's common-law method, as described in *County of Maui*, would be to provide clarity though principles illustrated by examples. The cases announced by the post-2022 Supreme Court, however, failed to bring clarity while directly increasing trial court workloads. In *Jarkesy* and *Erlinger*, the Court added substantial administrative demands by shifting the burden of trials to district courts. In cases like *Bruen*, the Court announced entirely new rules for the district courts as interpreters of founding-era history, a task typically left to the appellate courts, who benefit from the able assistance of a variety of *amici*. *Bruen* was also lacking in the "considerable guidance" supplied by many common law precedents.[189] Meanwhile, the sharp reversal of decades of precedent in *Dobbs* and

grouper. GORSUCH & NITZE, supra note 80, at 1–14 (1st ed. 2024). But, as Ruth Marcus points out in her review in the Washington Post, Gorsuch omits potentially critical facts from his telling. Ruth Marcus, *Justice Gorsuch's Book of Fish Tales*, WASH. POST (Aug. 22, 2024), https://www.washingtonpost.com/opinions/2024/08/22/justice-gorsuch-book-incomplete-facts. Disagreement over relevant facts—and their weight—also reflects in the interplay between dissent and majority opinion in *Bruen*, *Sackett*, and *Obergefell*, among others. *See also* WALDMAN, *supra* note 5 at 168–170 (discussing the gaps between dissent and majority in *Masterpiece Cakeshop v. Colorado Civil Rights Commission* and *Kennedy v. Bremerton School District*).

188. Cnty. of Maui v. Haw. Wildlife Fund, 590 U.S. 165, 185 (2020) (Thomas, J., dissenting) (noting that leaving gaps for district courts is "the common-law method, making decisions that provide examples . . . leading to ever more refined principles").

189. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 418 (Gorsuch, J., concurring) ("[M]uch like other forms of evidence, precedents at common law were thought to vary in the weight due them. Some past decisions might supply future courts with considerable guidance.").

*Loper Bright* leaves district courts untethered and requires more exhaustive briefing than the application of settled law to facts.

To be sure, this resubmission to the district courts of first principles is not a universal ill, nor is it necessarily a lasting crisis. If the Roberts Court has embraced Justice Thomas' skepticism of stare decisis to the extent suggested by commentators,[190] however, it is likely to continue to pile on work for district judges. Judges are not ill-prepared for this work, but the system of judges and courts established by Congress does not have the capacity to handle this confluence of factors in perpetuity without sacrificing the elements of judicial service that render faith in the courts. Drafting well-written,[191] well-theorized decisions, especially in the immediate aftermath of the reversal of binding precedent, takes time.[192] Evaluation of comprehensive debriefs takes time. Pouring over administrative records takes time. Jury trials, especially, demand time. Most importantly, time is required to deal with the attorneys and litigants present in a courtroom with compassion and fairness: to listen to a Defendant's story and tailor a sentence under the federal sentencing guidelines, to evaluate whether a

190. *See, e.g.*, WALDMAN, *supra* note 5, at 173 (quoting Justice Thomas as saying "[w]e use *stare decisis* as a mantra when we don't want to think"); Jeremy Rozansky, *Precedent and the Conservative Court*, 46 NAT'L AFFS., at 34, 37 (Winter 2021), https://nationalaffairs.com/publications/detail/precedent-and-the-conservative-test.

191. *See, e.g.*, RUDOLPH FLESCH, THE ART OF READABLE WRITING 49–55, 219–28 (1974) (discussing the importance of taking time to digest materials before writing, and of taking time to edit, respectively). *See* FED. JUD. CTR, *supra* note 22, at vii; *id.* at 24–26 (discussing the need for extensive editing and taking time in revising, more broadly).

192. This is not to say, of course, that courts should go picking through administrative records or formulate their own arguments from first principles if those arguments are not presented by counsel. *See* Berry v. Experian Info. Servs., 115 F.4th 528, 544 (6th Cir. 2024) (Readler, J., concurring in part and dissenting in part) (citing United States v. Sineneng-Smith, 590 U.S. 371, 375–76 (2020)) ("A fundamental principle is that we adjudicate cases based on the arguments the parties present."). But to the extent that parties, in the absence of binding precedent to serve as guardrails on the universe of potential arguments, submit principles that require deep examination and careful application of facts to law through the Court's new, fact-intensive inquiries, time pressure is a salient issue.

defendant must be referred for mental health evaluation,[193] and even to allow junior attorneys the opportunity to learn through argument.[194]

If the Justices continue to cut out shortcuts, a move to expand the capacity of district courts—whether through increasing the number of clerks allocated to district court judges, increasing the number of temporary or permanent judicial posts, or reassessing the role of magistrate judges—is vital. Absent a reassessment, the district courts and the Supreme Court seem forced to engage in a cat-and-mouse game: the district courts developing new judicial shortcuts to manage their growing dockets, and the Supreme Court chasing them back to highly fact-intensive alternatives. Without greater capacity from the district courts or greater acceptance of shortcuts on the high court the push-pull between them threatens the very ability of the courts to preserve their own legitimacy.

193. *See* Pate v. Robinson, 383 U.S. 375 (1966) (judges may order mental health evaluation sua sponte under certain circumstances); *see also* BRYAN STEVENSON, JUST MERCY: A STORY OF JUSTICE AND REDEMPTION 188 (1st ed. 2014) ("Today, over 50 percent of prison and jail inmates in the United States have a diagnosed mental illness, a rate nearly five times greater than that of the general adult population. Nearly one in five prison and jail inmates has a serious mental illness. In fact, there are more than three times the number of seriously mentally ill individuals in jail or prison than in hospitals; in some states that number is ten times.")

194. Many courts have adopted local rules allowing for greater time for argument or other minor procedural accommodations if an experienced attorney allows their junior colleagues to gain experience arguing. The ABA passed a resolution encouraging more courts to adopt the practice in 2023. *See* Karen Sloan, *ABA to Judges: Give Junior Lawyers Their Day in Court,* REUTERS (Feb. 6, 2025), https://www.reuters.com/legal/government/aba-judges-give-junior-lawyers-their-day-court-2023-02-06.