In February 2016, Supreme Court justice Antonin Scalia died unexpectedly. Scalia had been a prominent and influential justice during his three decades on the Court and one who took conservative positions in most cases. With the Court closely divided between conservatives and liberals, it probably would have its first liberal majority in nearly half a century if President Barack Obama could appoint Scalia’s successor.

The problem for Obama was that any nominee he chose would have to win confirmation in a Senate that had a Republican majority. And only a few hours after Scalia’s death was announced, Senate Majority Leader Mitch McConnell declared that Senate Republicans would not consider confirming any Obama nominee in order to leave the vacancy on the Court for a new president to fill. Obama tried to overcome this resistance by nominating Merrick Garland, a respected court of appeals judge who was a moderate liberal and older than most nominees. But Senate Republicans remained adamant, and Garland’s nomination was never considered in the Senate.

Meanwhile, the 2016 presidential election campaign was underway, and the Supreme Court vacancy became an issue in the campaign. As Donald Trump moved toward winning the Republican nomination, he sought to use that vacancy to win support from Republicans who were unfavorable toward him. In May he announced a list of eleven lower-court judges from whom he pledged to choose the new justice; each of the prospective nominees was someone with a reputation as a strong conservative. And in his appeals to conservatives he emphasized a theme that he expressed in a speech in July: “If you really like Donald Trump, that’s great, but if you don’t, you have to vote for me anyway. You know why? Supreme Court judges. Supreme Court judges. Have no choice, sorry, sorry, sorry.”

This theme seemed to be effective, helping to secure endorsements of Trump from conservative leaders and to solidify support for him among Republican voters. In exit polls in the November election, 21 percent of the voters cited Supreme Court appointments as the most important factor in their vote. Among those voters, 56 percent voted for Trump and 41 percent for Hillary Clinton. Thus, concern for the Court was probably one factor in Trump’s victory.
After Trump became president, he nominated federal court of appeals judge Neil Gorsuch to fill Scalia’s seat. Senate Democrats fought against Gorsuch’s confirmation, some of them calling his nomination illegitimate because of the Republicans’ refusal to consider Garland the year before. But Republicans had maintained a small Senate majority in the 2016 election. When Senate Democrats tried to block Gorsuch’s confirmation with a filibuster that would prevent a confirmation vote, the Republican majority changed the filibuster rule so that only a regular majority was needed to consider a Supreme Court nomination. With that obstacle overcome, Gorsuch was confirmed in April by a 54–45 vote, winning approval from all fifty-one Republicans who voted but only three Democrats. That outcome restored the Court’s conservative majority.

This long episode underlines the importance of the Supreme Court in the life of the United States. The Court is a highly visible institution, and many people care a great deal about it. That is especially true of people who are active in politics and government. They have good reason to care about the Court. It addresses important issues that range from abortion to gun rights to affirmative action. Its rulings on issues such as voting rules and campaign funding shape the political process. Indeed, one of its decisions ensured that President Richard Nixon would leave office in 1974, and another ensured that George W. Bush would become president in 2001.3

Because the Supreme Court plays a key role in American life, it is impossible to understand American government and society without understanding the Court. In this book, I seek to contribute to that understanding. Who serves on the Court, and how do they get there? What determines which cases and issues the Court decides? In resolving the cases before it, how does the Court choose between alternative decisions? In what policy areas does the Court play an active role, and what kinds of policies does it make? Finally, what happens to the Court’s decisions after they are handed down, and what impact do those decisions have?

Each of these sets of questions is the subject of a chapter in the book. As I focus on each question, I try to show not only what happens in and around the Court but also why things work the way they do. This first chapter is an introduction to the Court, providing background for the chapters that follow.

A PERSPECTIVE ON THE COURT

The Supreme Court’s place in government is complicated, so it is useful to begin by considering the Court’s attributes as an institution and its work as a policymaker.

The Court in Law and Politics

The Supreme Court is, first of all, a court—the highest court in the federal judicial system. Like other courts, it has jurisdiction to hear and decide certain kinds of cases. And like other courts, it can decide legal issues only in cases that are brought to it.
As a court, the Supreme Court makes decisions within a legal framework. Congress writes new law, but the Court interprets existing law. In this respect the Court operates within a constraint from which legislators are free.

In another respect, however, the justices have more autonomy than most other policymakers. This is because the widespread belief that courts should be insulated from the political process gives the Court a degree of actual insulation. In particular, the justices’ appointments for life allow them some freedom from concerns about whether political leaders and voters approve of their decisions.

The Court’s insulation from politics is far from total, however. People sometimes speak of courts as if they are, or at least ought to be, “nonpolitical.” In a literal sense, this is impossible: As a part of government, courts are political institutions by definition. What people really mean when they refer to courts as nonpolitical is that courts are separate from the political process and that their decisions are affected only by legal considerations. This too is impossible for courts in general and certainly for the Supreme Court.

The Court is political in this sense primarily because it makes important decisions on major issues. People care about those decisions and want to influence them. As a result, political battles regularly arise over appointments to the Court. As the episode of 2016 and 2017 illustrates, those battles are especially fierce in the current era. Interest groups bring cases and present arguments to the Court in an effort to help shape its policies. Members of Congress pay attention to the Court’s decisions and hold powers over the Court, and for that reason the justices may take Congress into account when they decide cases. Finally, the justices’ political values affect the votes they cast and the opinions they write in the Court’s decisions. If a majority of the justices are on the conservative side of the ideological spectrum, the Court’s decisions are likely to lean in a conservative direction.

Thus, the Supreme Court is both a legal institution and a political institution. The political process and the legal system each influence what the Court does. This ambiguous position adds to the Court’s complexity. It also makes the Court an interesting case study in political behavior.

The Court as a Policymaker

This book examines the Supreme Court broadly. But it emphasizes the Court’s role in making public policy, the authoritative rules by which people in government institutions seek to influence government itself and to shape society as a whole. Legislation to fund schools, a trial court’s ruling in an auto accident case, and a Supreme Court decision on labor law are all examples of public policy. Thus, the Court is part of a policymaking system that includes lower courts and the other branches of government.

As I have noted, the Supreme Court makes public policy by interpreting provisions of law. Issues of public policy come to the Court in the form of legal questions. The Court does not rule on these questions in the abstract. Rather, it addresses them in the process of settling specific controversies between parties (sometimes
called litigants) that bring cases to it. In a sense, then, every decision by the Court has three aspects: It is a judgment about the specific dispute brought to the Court, an interpretation of the legal issues in that dispute, and a position on the policy questions that are raised by the legal issues.

These three aspects of the Court's rulings are illustrated by a 2017 decision, *Impression Products v. Lexmark International*. Lexmark makes toner cartridges for printers, and it holds a number of patents relating to those cartridges. It offered a discount on the cartridges to customers who agreed to use a cartridge only once and not to transfer a cartridge to anyone but Lexmark itself. But Impression Products and other companies obtained empty Lexmark cartridges from people who had bought them, refilled them with toner, and resold them. Lexmark sued these companies for patent infringement. Impression Products argued that a patent owner cannot use its patent rights to restrict what a buyer of a patented product does with that product. The Supreme Court ultimately agreed with this argument.

In the first aspect of its decision, the Supreme Court reversed the decision in favor of Lexmark by the Court of Appeals for the Federal Circuit and remanded—sent back—the case to that court to follow the Supreme Court's lead. In light of the Supreme Court's opinion, the Federal Circuit could be expected to issue a final ruling in favor of Impression Products.

The Court's decision was also a judgment about the meaning of provisions of Title 35 of the United States Code, which deals with patent law. The Court reaffirmed the "exhaustion doctrine" that it had established in an 1853 decision, a doctrine under which a patent owner's control over a product based on the patent
ends with the sale of that product. Lower courts were obliged to follow that rule in any future case to which it was relevant.

Finally, the Supreme Court’s decision established government policy on a significant issue. Patent owners could no longer enforce restrictions on buyers of patented products, and that would be the legal rule unless Congress chose to overturn the Court’s decision by amending Title 35. Thus, by making its decision the Court acted as a policymaker on patent law.

Like most of the Court’s decisions, the ruling in Impression Products received little coverage from the news media and little notice from the general public. In contrast, some decisions receive widespread attention and become the subjects of heated debate. Through both types of decisions, the Court contributes to the content of government policy.

This role for the Court reflects the fact that controversies over politics and policy in the United States are likely to end up in the courts in one form or another. In part, this is because the United States has a written constitution that can be used to challenge the legality of government actions. It also reflects the willingness of judges, including Supreme Court justices, to address many of those controversies rather than putting them aside. For both reasons, it is not surprising that the Court decided three cases arising from the health care law sponsored by President Obama or that conflicts between the political parties over election rules have led to a long series of federal court cases in recent years.

Substantial as the Court’s role in policymaking is, it is limited by several conditions. Two of those conditions are especially important. First, the Court can do only so much with the relatively few decisions it makes in a year. The Court currently issues decisions with full opinions in an average of fewer than eighty cases each year. In deciding such a small number of cases, the Court addresses only a select group of policy issues. Inevitably, there are whole fields of policy that it barely touches. Even in the areas in which the Court does act, it deals with only a limited number of the issues that exist at a given time.

Second, the actions of other policymakers often narrow the impact of the Court’s decisions. Early in the nation’s history, the Court gained broad acceptance of its standing as the authoritative interpreter of federal law, including the Constitution. Still, the Court is seldom the final government institution to deal with the policy issues it addresses. Its decisions are implemented by federal and state judges and administrators, who often have considerable discretion over how they put a ruling into effect. Congress and the president influence how the Court’s decisions are carried out. They can also overcome its interpretations of federal statutes, laws enacted by Congress, simply by amending those statutes. As a result, there may be a great deal of difference between what the Court rules on an issue and the public policy that ultimately results from government actions on that issue.

For these reasons, the Supreme Court surely is not the dominant force in U.S. government. But the Court does contribute a good deal to the making of public policy through its decisions.
The Supreme Court is part of a court system, and its place in that system structures its role by determining what cases it can hear and the routes those cases take.

State and Federal Court Systems

The United States has a federal court system and a separate court system for each state. Federal courts can hear only those cases that Congress has put under their jurisdiction. Nearly all of the federal courts' jurisdiction falls into three categories.

First are the criminal and civil cases that arise under federal laws, including the Constitution. All prosecutions for federal crimes are brought to federal court. Some types of civil cases based on federal law, such as those involving antitrust and bankruptcy, must go to federal court. Other types can go to either federal or state court, but most are brought to federal court.

Second are cases to which the U.S. government is a party. When the federal government brings a lawsuit, it nearly always does so in federal court. When someone sues the federal government, the case must go to federal court.

Third are civil cases involving citizens of different states in which the amount in question is more than $75,000. If this condition is met, either party may bring the case to federal court. If a citizen of New Jersey sues a citizen of Texas for $100,000 for injuries from an auto accident, the plaintiff (the New Jersey resident) might bring the case to federal court, or the defendant (the Texan) might have the case “removed” from state court to federal court. If neither does so, the case will be heard in state court—generally in the state where the accident occurred or the defendant lives.

Only a small proportion of all court cases fit in any of those categories. The most common kinds of cases—criminal prosecutions, personal injury suits, divorces, actions to collect debts—typically are heard in state court. The courts of a single populous state such as Illinois or Florida hear far more cases than the federal courts. However, federal cases are more likely than state cases to raise major issues of public policy.

State court systems vary considerably in their structure, but some general patterns exist (see Figure 1-1). Each state system has courts that are primarily trial courts, which hear cases initially as they enter the court system, and courts that are primarily appellate courts, which review lower-court decisions that are appealed to them. Most states have two sets of trial courts—one to handle major cases and the other to deal with minor cases. Major criminal cases usually concern what the law defines as felonies. Major civil cases are generally those involving large sums of money. Most often, appeals from decisions of minor trial courts are heard by major trial courts.

Appellate courts are structured in two ways. Ten states, mostly with small populations, have a single appellate court—usually called the state supreme court. All appeals from major trial courts go to this supreme court. The other forty states have
intermediate appellate courts below the supreme court. These intermediate courts initially hear most appeals from major trial courts. In those states, supreme courts have discretionary jurisdiction over most challenges to the decisions of intermediate courts. Discretionary jurisdiction means that a court can choose which cases to hear; cases that a court is required to hear fall under its mandatory jurisdiction.

The structure of federal courts is shown in Figure 1-2. At the base of the federal court system are the federal district courts. The United States has ninety-four district courts. Each state has between one and four district courts, and there is a district court in the District of Columbia and in some of the territories, such as Puerto Rico and Guam. District courts hear all federal cases at the trial level, with the exception of a few types of cases that are heard in specialized courts.

Above the district courts are the twelve courts of appeals, each of which hears appeals in one of the federal judicial circuits. The District of Columbia constitutes
Figure 1-2  Basic Structure of the Federal Court System

Note: Arrows indicate the most common routes of appeals. Some specialized courts of minor importance are excluded.

a. These courts also hear appeals from administrative agencies.
one circuit; each of the other eleven circuits covers three or more states. The Second Circuit, for example, includes Connecticut, New York, and Vermont. Appeals from the district courts in one circuit generally go to the court of appeals for that circuit, along with appeals from the Tax Court and from some administrative agencies. Patent cases and some claims against the federal government go from the district courts to the specialized Court of Appeals for the Federal Circuit, as do appeals from three specialized trial courts. The Court of Appeals for the Armed Forces hears cases from lower courts in the military system.

The Supreme Court’s Jurisdiction

The Supreme Court stands at the top of the federal judicial system. Its jurisdiction, summarized in Table 1-1, is of two types. First is the Court’s original jurisdiction: The Constitution gives the Court jurisdiction over a few categories of cases as a trial court, so these cases may be brought directly to the Court without going through lower courts. The Court’s original jurisdiction includes some cases to which a state is a party and cases involving foreign diplomatic personnel.

Most cases within the Court’s original jurisdiction can be heard alternatively by a district court. Lawsuits between two states can be heard only by the Supreme Court, and these lawsuits account for most decisions that are based on the Court’s original jurisdiction. These cases often involve disputes over state borders, and water rights have become a common issue in recent years. The Court frequently refuses to hear cases under its original jurisdiction, even some lawsuits by one state

<table>
<thead>
<tr>
<th>Types of jurisdiction</th>
<th>Categories of cases</th>
</tr>
</thead>
</table>
| Original              | Disputes between states
|                       | Some types of cases brought by a state
|                       | Disputes between a state and the federal government
|                       | Cases involving foreign diplomatic personnel
| Appellate             | All decisions of federal courts of appeals and specialized federal appellate courts
|                       | All decisions of the highest state court with jurisdiction over a case, concerning issues of federal law
|                       | Decisions of special three-judge federal district courts (mandatory)

a. It is unclear whether these cases are mandatory, and the Court treats them as discretionary.

b. Some minor categories are not listed.
against another. Justice Clarence Thomas questioned this practice in a 2016 opinion, but only one other justice joined his opinion.\footnote{In part for this reason, full decisions in these cases are not plentiful—fewer than 200 in the Court’s history. When the Court does accept a case under its original jurisdiction, it ordinarily appoints a “special master” to gather facts and propose a decision to the Court. These cases can take a long time to resolve, and the Court sometimes addresses them multiple times.} All the other cases that come to the Court are under the second type of jurisdiction, appellate jurisdiction. Under its appellate jurisdiction, the Court hears cases brought by parties that are dissatisfied with the lower-court decisions in their cases. Within the federal court system such cases can come from the federal courts of appeals and from the two specialized appellate courts. Cases may also come directly from special three-judge district courts; most of these cases involve voting and election issues.

State cases can come to the Supreme Court after decisions by state supreme courts if they involve claims based on federal law, including the Constitution. If a state supreme court chooses not to hear a case, the losing party can then go to the Supreme Court. Table 1-2 shows that a substantial majority of the cases that come to the Court and of the cases it hears originated in federal court rather than in state court.

The rule under which state cases come to the Supreme Court may be confusing, because cases based on federal law ordinarily start in federal court. But cases brought to state courts on the basis of state law sometimes contain issues of federal law as well. This situation is common in criminal cases. A person accused of burglary under state law will be tried in a state court. During the state court proceedings, the defendant may argue that the police violated rights protected by the U.S. Constitution during a search. The case eventually can be brought to the Supreme Court on that issue. If it is, the Court will have the power to rule only on the federal issue, not on the issues of state law involved in the case. Thus, the Court cannot rule on whether the defendant actually committed the burglary.

Nearly all cases brought to the Court under its appellate jurisdiction also are under its discretionary jurisdiction, so it can choose whether or not to hear them. With occasional exceptions discretionary cases come to the Court in the form of petitions for a writ of certiorari, a writ through which the Court calls up a case for decision from a lower court. The cases that the Court is required to hear are called appeals. In a series of steps culminating in 1988, Congress converted the Court’s jurisdiction from mostly mandatory to almost entirely discretionary. Today, appeals can be brought in only the few cases that come directly from three-judge district courts.

The Supreme Court hears only a tiny fraction of the cases brought to federal and state courts. As a result, courts other than the Supreme Court have ample opportunities to make policy on their own. Moreover, their decisions help determine the ultimate impact of the Court’s policies. Important though it is, the Supreme Court certainly is not the only court that matters.
Table 1-2  Sources of Supreme Court Cases in Recent Periods (in percentages)

<table>
<thead>
<tr>
<th>Federal courts</th>
<th>Courts of appeals</th>
<th>District courts</th>
<th>Specialized courts</th>
<th>State courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases brought to the Court&lt;sup&gt;a&lt;/sup&gt;</td>
<td>73</td>
<td>0</td>
<td>1</td>
<td>26</td>
</tr>
<tr>
<td>Cases decided on the merits&lt;sup&gt;b&lt;/sup&gt;</td>
<td>66</td>
<td>4</td>
<td>7</td>
<td>24</td>
</tr>
</tbody>
</table>


Note: Original jurisdiction cases are not included. Nonfederal courts of the District of Columbia and of U.S. territories are treated as state courts. For cases heard by the Court, each oral argument is counted once unless it involves consolidated cases from two different categories of courts.

<sup>a</sup> Cases in which the Court ruled on petitions for hearings, October 2, 2017 (1,382 cases).

<sup>b</sup> Cases that the Court decided on the merits, including summary reversals, 2015 and 2016 terms (157 cases).

AN OVERVIEW OF THE COURT

Several attributes of the Court should be examined to provide an understanding of the Court as an institution. Especially important are the activities of justices and the people who help them do their work.

The Court’s Building

The Supreme Court did not move into its own building until 1935. In its first decade, the Court met first in New York and then in Philadelphia. The Court moved to Washington, D.C., with the rest of the federal government at the beginning of the nineteenth century. For the next 130 years, it sat in the Capitol, a tenant of Congress. In 1808, during renovation work in the Capitol, the Court’s hearings were moved temporarily to a nearby tavern.<sup>6</sup>

The Court’s accommodations in the Capitol were not entirely adequate. Among other things, the lack of office space meant that justices did most of their work at home. After an intensive lobbying effort by Chief Justice William Howard Taft, Congress appropriated money for the Supreme Court building in 1929. The five-story structure occupies a full square block across the street from the Capitol. Because the primary material in the impressive building is marble, it has been called a “marble palace.”
The building houses all the Court’s facilities. Formal sessions are held in the courtroom on the first floor. Behind the courtroom is the conference room, where the justices meet to decide cases. Also near the courtroom are the chambers that contain offices for the associate justices and their staffs. The chief justice’s chambers are attached to the conference room.

People who want to attract attention to their causes sometimes use the area around the Court building to publicize those causes. In 1983, the Court struck down the part of a federal statute that prohibited an array of such activities on the sidewalks around the building. But in 2015, a federal court of appeals upheld the provision of the statute that prohibited the same activities in the building and grounds of the Court, and the Court made that decision final by choosing not to hear the case. Occasionally people are arrested for violating that statute, and protesters who disrupted two proceedings in the courtroom in 2015 were also arrested.

**Personnel: The Justices**

Under the Constitution, Supreme Court justices are nominated by the president and confirmed by the Senate. If a nominee is confirmed, the president then appoints the successful nominee to the Court. When the chief justice leaves the Court, the president can elevate an associate justice to chief and also appoint a new associate justice (as President Ronald Reagan did in 1986 when he named William Rehnquist as chief justice) or appoint a chief justice from outside the Court (as President George W. Bush did in 2005 when he chose John Roberts).

By long-established Senate practice, a simple majority is required for confirmation. But as noted earlier, a supermajority was required to end a filibuster and thus allow a vote on a nomination until Senate rules were changed in 2017. The Constitution says that justices will hold office “during good behavior”—that is, for life unless they relinquish their posts voluntarily or they are removed through impeachment proceedings. Beyond these basic rules, questions such as the number of justices, their qualifications, and their duties have been settled by federal statutes and by tradition.

The Constitution says nothing about the number of justices. The Judiciary Act of 1789 provided for six justices. Later statutes changed the number successively to five, six, seven, nine, ten, seven, and nine. The changes were made in part to accommodate the justices’ duties in the lower federal courts, in part to serve partisan and policy goals of the president and Congress. The most recent change to nine members was made in 1869, and any further changes in size seem quite unlikely.

In 2018, each associate justice received an annual salary of $255,300, and the chief justice received $267,000. The justices gained raises of more than $30,000 in 2014 after a lower court ruled in favor of six federal judges who challenged congressional action that blocked cost-of-living adjustments to judicial salaries. There are limits on the amount of outside income that justices can receive from activities such as teaching (about $28,000 in 2018), but there are no limits on income from books. Clarence Thomas earned about $1.5 million from his memoir and Sonia Sotomayor
about $3 million from hers. Some of the current justices, including John Roberts and Stephen Breyer, were wealthy when they came to the Court. Thomas and Sotomayor were far from wealthy, and their book earnings improved their financial status enormously.9

The primary duty of the justices is to participate in the collective decisions of the Court: determining which cases to hear, deciding cases, and writing and contributing to opinions. Ordinarily, the Court’s decisions are made by all nine members, but exceptions occur. At times, the Court has only eight members because a justice has left the Court and a replacement has not been appointed. That was true for the fourteen months between Antonin Scalia’s death in 2016 and Neil Gorsuch’s appointment in 2017. A justice’s poor health may leave the Court temporarily shorthanded, or a justice may decide not to participate in a case because of a perceived conflict of interest. A federal statute lists circumstances under which judges should withdraw from cases—recuse themselves—but it has never been determined whether Congress has power to apply that statute to the Court. In any event, the Court leaves this decision to the individual justice.

If all the cases that are brought to the Court for consideration are included, recusals are common. According to one count, there were 204 recusals in the Court’s 2016 term (from October 2016 to June 2017), though only 4 of them occurred in cases that the Court agreed to hear. Justices seldom explain the reasons for their recusals, but those reasons often can be discerned. In the 2016 term, the most common reason was prior involvement in a case—by Justice Elena Kagan as solicitor general, legal representative of the federal government in the Court, and by Sonia Sotomayor and Neil Gorsuch as lower-court judges. Second most common was a justice’s ownership of stock in a company that was a litigant.10

Controversies about justices’ recusal decisions have arisen in recent years, spurred primarily by public statements by justices about matters related to pending or future cases and by interactions between justices and people who have an interest in the outcome of a case.11 Litigants and others who care about particular cases have sought recusals on those grounds, sometimes in formal requests. For instance, in 2015 conservative groups said that Justice Kagan and Justice Ruth Bader Ginsburg should not participate in challenges to state prohibitions of same-sex marriage because of things they had said about the issue and because each had presided over same-sex marriages. As justices almost always do when asked to recuse, Kagan and Ginsburg participated in the cases.12

The Court may have a tie vote when only eight justices participate in a decision. A tie vote affirms the lower-court decision. If the tie applies to the whole decision, the votes of individual justices are not announced and no opinions are written. After Justice Scalia’s death, there were four tie votes in the 2015 term. In one of those cases, United States v. Texas (2016), the effect of affirmance by a tie vote was to block President Obama’s plan to protect several million undocumented immigrants from deportation.

It appears that the justices tried to avoid tie votes in the 2016 term before Justice Gorsuch’s arrival by turning down some cases in which a 4–4 split seemed
likely and postponing arguments in some others. In *Trinity Lutheran Church v. Comer* (2017), oral argument was held fifteen months after the Court accepted the case—in the month that Gorsuch joined the Court. As it turned out, however, the Court’s vote was 7–2 rather than 5–4.

Similarly, the lower-court decision in a case is affirmed if the Court cannot reach a quorum of six members. When this happens, it is almost always because a litigant named at least four justices as defendants in a lawsuit, as litigants did in two 2017 cases.\(^\text{13}\)

In addition to their participation in collective decisions, the justices make some decisions individually as circuit justices. The United States has always been divided into federal judicial circuits. Originally, most appeals within a circuit were heard by ad hoc courts composed of a federal trial judge and two members of the Supreme Court who were assigned to that geographical area as circuit justices. The circuit duties were arduous, especially at a time when travel was difficult. Some justices even suffered health problems from what was called circuit riding. Actions by Congress and by the justices themselves gradually reduced the extent of their circuit riding, and this duty ended altogether when Congress created the courts of appeals in 1891.

The justices today retain some duties as circuit justices, with each justice assigned to one or more circuits. As circuit justices, they deal with applications for special action, such as a request to stay a lower-court decision (prevent it from taking effect) until the Court decides whether to hear the case. Such an application generally must go first to the circuit justice. That justice may rule on the application as an individual or refer the case to the whole Court. If the circuit justice rejects an application, it can then be made to a second justice. That justice ordinarily refers it to the whole Court, with five votes required to issue a stay or to vacate (remove) a stay that a lower court established. In practice, stays on important matters almost always are decided by the full Court. Occasionally, if there are four votes for a stay, a fifth justice will provide a “courtesy vote” to issue the stay, as Chief Justice Roberts and Stephen Breyer each did once in 2016.\(^\text{14}\) Their actions may have been influenced by the absence of a ninth justice at the time, so that four votes for a stay constituted half the Court’s membership.

Probably the most common subject of stay requests is the death penalty. The Court is confronted with numerous requests to stay executions or vacate stays of execution, many of which come near the scheduled execution time. The Court grants only a small proportion of requests for stays of execution. Because five votes are required for a stay but only four votes to hear a case, it is possible that a prisoner will be executed even though the Court would have heard his case. Indeed, that happened in 2015 to a man who was one of four prisoners challenging the mix of drugs used for executions in Oklahoma. His application for a stay of execution was denied by a 5–4 vote, he was executed later that day, and eight days later the Court agreed to hear the case with the three remaining prisoners. (The Court ultimately ruled against those prisoners, by the same 5–4 vote.)\(^\text{15}\)
Stays in other kinds of cases sometimes involve significant political and policy issues. In the weeks before the 2016 presidential election, the Court dealt with several requests for stays or vacating of stays relating to state election rules. In 2017, the Court stayed three district court orders in cases about the drawing of legislative districts; in each case, the Court’s four liberal justices dissented from the stays.\footnote{In that year, after President Trump issued an executive order temporarily barring entry into the United States of people from six nations, lower courts issued two preliminary injunctions that blocked enforcement of the order. The Trump administration asked the Supreme Court to stay the injunctions, and the Court granted a partial stay that allowed the order to go into effect in some respects. Later in the year, at the request of the administration, the Court twice issued stays of follow-up rulings on versions of its “travel ban.”}\textsuperscript{16}

All but one of the nine justices are equal in formal power. The exception is the chief justice, who is the formal leader of the Court. The chief justice presides over the Court’s conferences and public sessions and assigns the Court’s opinion whenever the chief voted with the majority. The chief also supervises administration of the Court with the assistance of committees.

One justice—by tradition, the most junior in seniority—sits with other Court employees on the cafeteria committee. In 2010, a review in the \textit{Washington Post} gave the cafeteria a grade of \textit{F} and said that “this food should be unconstitutional.” Justice Sotomayor, then a member of the committee, reported that “I got a note from the chief justice the next day. It said: ‘You’re fired.’” Justice Kagan joined the Court and the committee later that year. In 2011, Chief Justice Roberts reported that Kagan had “succeeded in getting a new frozen yogurt machine in the cafeteria. No one at the court can remember any of the prior justices on the committee doing anything.” Kagan and her fellow committee members were unable to achieve more fundamental improvements, and in 2014 she acknowledged that “it’s not a very good cafeteria.”\textsuperscript{18} After Justice Gorsuch joined the committee in 2017, he reported that “on my very first day, the major issue of the day was the meatball subs. The marinara sauce had been somehow replaced by shrimp cocktail sauce.”\textsuperscript{19}

The chief justice has additional administrative responsibilities as head of the federal court system, a role reflected in the official title of Chief Justice of the United States. In that role, the chief justice appoints judges to administrative committees and some specialized courts. The most important of those courts is the Foreign Intelligence Surveillance Court, which rules secretly on requests by the federal government for electronic surveillance for national security purposes. For the first thirty-six years of its operation, from 1978 to 2013, more than two-thirds of the district judges appointed to serve part-time on it had been chosen as federal judges by Republican presidents. That pattern might reflect the desire of the conservative chief justices during that period to have the surveillance court staffed primarily by conservative judges.\textsuperscript{20} Between 2014 and 2017, after disclosures of information about decisions by the surveillance court focused greater attention on the court and its membership, four of the six judges that Chief Justice Roberts appointed to the court had been selected as judges by Democratic presidents.
Since 1975, the chief has issued a “Year-End Report on the Federal Judiciary,” which usually includes recommendations to Congress about matters such as court budgets and the creation of additional judgeships.21 Roberts, who makes such recommendations less often than Warren Burger and William Rehnquist, gave primary attention in his 2017 report to praise for the work of federal court personnel in response to disastrous weather events in several judicial districts.

The job of Supreme Court justice brings with it both satisfactions and burdens. The extent of the burdens is a matter of disagreement. Some observers see the justices’ workload as relatively light. They point to the relatively small number of cases that the Court now hears, the excellent support that the justices get from their law clerks, and the time that the justices are able to spend in activities outside the Court. One law professor, exaggerating for emphasis, said that in many ways “it’s the cushiest job in the world.”22

In contrast, justices often refer to the time their work requires, especially the volume of material they must read in the cases that come to the Court. At least some justices spend very long hours on the job. But in the current era, when justices typically stay on the Court until they reach an advanced age, the satisfactions of serving as a justice appear to outweigh the burdens of the job by a substantial margin.

**Personnel: Law Clerks and Other Support Staff**

A staff of about 500 people, serving in several units, supports the justices. Most of the staff members carry out custodial and police functions under the supervision of the marshal of the Court. The clerk of the Court handles the clerical processing of all the cases that come to the Court. The reporter of decisions supervises preparation of the official record of the Court’s decisions, the United States Reports. The librarian is in charge of the libraries in the Supreme Court building. The Court’s public information office responds to inquiries and distributes information about the Court.

Of all the members of the support staff, the law clerks have the most direct effect on the Court’s decisions.23 Associate justices may employ four clerks each, the chief justice five (though the chief almost always hires only four). A retired justice has one clerk, who often works primarily with one of the sitting justices. Clerks usually serve for only one year. The typical clerk is a recent, high-ranked graduate of a prestigious law school. The clerks who served in the 2013–2017 terms came from two dozen law schools, but more than half had gone to Harvard or Yale.24 The great majority had clerked in a federal court of appeals before coming to the Supreme Court, and some had spent a short time in legal practice after their service in a court of appeals. Justices, especially those who are conservative, tend to draw clerks from court of appeals judges who share the justices’ ideological positions.25

Clerks typically spend much of their time on the petitions for hearings by the Court, reading the petitions and the lower-court records and summarizing them for the justices. Clerks also work on cases that have been accepted for decisions. This work includes analysis of case materials and issues, discussions of cases with
their justices, and drafting opinions. Justice Samuel Alito reported that his clerks “always do a draft for me,” and it appears that all the other current justices have similar practices. Justice Kagan said that clerks also “wander around the building and find out a lot about what other people are thinking,” and one reason is to help justices develop positions in cases that will win support from their colleagues. The extent of law clerks’ influence over the Court’s decisions is a matter of considerable interest and wide disagreement. Observers who depict the clerks as quite powerful probably underestimate the justices’ ability to maintain control over their decisions. Still, the jobs that justices give to their clerks ensure significant influence. Drafting opinions, for instance, allows clerks to shape the content of those opinions, whether or not they seek to do so. The same is true of the other work that clerks do.

After leaving the Court, law clerks are in great demand among law firms that do Supreme Court litigation, receiving a “signing bonus” of as much as $350,000 in addition to substantial salaries. Over the long run, they take a variety of career paths, and often they have distinguished careers. Among the clerks who served in 1996–1997, twenty years later many were partners at major law firms or law professors (including the dean of the Stanford law school), several had served in high government positions, Neal Katyal was a leading advocate for clients in the Court, and Ted Cruz was a U.S. senator who had been a strong candidate for the Republican presidential nomination in 2016. Some former clerks return to the Court as justices, including John Roberts, Stephen Breyer, Elena Kagan, and Neil Gorsuch on the 2017–2018 Court.
The Court and the Outside World

Since early in its history, the Court and its members have attracted wide interest from people in government and politics and, at least on occasion, from the general public. Major decisions and appointments of justices have received considerable attention.

For their part, justices have long engaged with the outside world in a variety of ways. They give speeches, visit law schools, and go to meetings of legal groups. Some write books and articles, and some participate in Washington social life.

All that is true today. But in some ways, the relationship between the Court and the outside world has intensified. Interest in the Court has grown, in part because of the development of new media that provide more information about its work and about the justices. Public activity by justices outside the Court has probably increased, and some justices have become active outside the Court in ways that were less common in past eras. Together, these developments have intensified what one legal scholar called “celebrity justice.” Expressing the same idea, another legal scholar said that “we live in a world now where all the Supreme Court justices are rock stars.”

Fascination with the Court and its members today is quite evident. There are long lines of people who seek the limited numbers of seats available in the courtroom for oral argument sessions, even on days when the Court will hear only unexciting cases. In the last few weeks of the Court’s annual term, when announcements of major decisions are expected, thousands of people watch the feed of information on SCOTUSblog to learn of the Court’s rulings as quickly as possible; on one day, there were a million watchers. The lawyers and other people who subscribe to a journal called The Green Bag prize the bobbleheads of justices that the journal issues to its readers.

News media devote considerable attention to the Court. Some of its decisions receive extensive coverage in newspapers, television broadcasts, and blogs. Justices are satirized in stories and cartoons. Their activities are extensively chronicled: seemingly ordinary events such as Clarence Thomas’s attendance at a pop music concert are subjects of news stories. Beyond the news media, individual justices and the Court as a whole have been the subjects of a series of books for a general audience over the years, and in recent years there has been a theatrical play about one of the Court’s decisions, a play about Antonin Scalia, an opera about Scalia and Justice Ginsburg (good friends and serious opera fans), and a movie about Ginsburg’s pre-Court work litigating against sex discrimination (with Felicity Jones playing Ginsburg and Armie Hammer playing her husband, Martin Ginsburg).

On the whole, the Court and its decisions are portrayed favorably in the news media, at least compared with other government bodies. In the legal community and well beyond it, justices are accorded considerable respect and honor. They are highly sought after for personal appearances. Public schools have been named after Sandra Day O’Connor and Sonia Sotomayor, among others, and law schools have been named after O’Connor (Arizona State) and Scalia (George Mason in Virginia).
Scalia was a folk hero among conservatives, and in recent years, Ginsburg has achieved a similar status among liberals. Dubbed “The Notorious RBG” by admirers (a play on the name of a leading rapper), she was the subject of a 2015 book with that title. That book was described by a reviewer as “a frank and admiring piece of fan nonfiction.”

The next year, both a compilation of her writings and a children’s book about her life were published. Still another book, published in 2017, was titled *The RBG Workout: How She Stays Strong . . . and You Can Too*. In the same year, a store offered a replica of Ginsburg’s “dissent collar,” which she wears “when she dissents from a Supreme Court opinion.”

Justices have responded to this interest in them in different ways. At one end of the spectrum, David Souter, who retired in 2009, kept his distance from the news media and seldom made public appearances. In contrast, Scalia made frequent public appearances, gave interviews to reporters, and wrote or co-wrote several books. He delighted in the interest and admiration he received, as Ginsburg does as well.

Along with Ginsburg, the current justices with the most visible presence outside the Court are Stephen Breyer and Sonia Sotomayor. Like Scalia, Breyer has written several books and gone on tours to speak about the books and to promote them. Sotomayor received attention as the first justice from the Latino community, and she has engaged with the public through her best-selling memoir (Clarence Thomas’s memoir was also a best-seller) and her frequent appearances at public events and in the mass media. A year after she joined the Court in 2009, she estimated that what a friend called “her celebrity” took up about 40 percent of her time.
Justices engage in a variety of other public activities, both the traditional ones and others that have become common more recently. The box below provides examples of those activities. Beyond those examples, Sonia Sotomayor and Samuel Alito have thrown out the first pitch at major league baseball games. Ginsburg has appeared in operas, as did Scalia. Five of the current justices have presided at weddings. By no means are these activities limited to the Court’s summer recess; by one incomplete count, justices made 115 public appearances between October 2016 and June 2017. (Sotomayor, Ginsburg, Breyer, and Alito accounted for about 80 percent of those appearances.) Justices occasionally are absent from Court sessions at which opinions are announced because of travel for public appearances, and only five of the justices were present at one 2018 session.

### EXAMPLES OF PUBLIC ACTIVITIES BY JUSTICES DURING 2017

- Co-teaching a seminar at Creighton University School of Law, Omaha, Nebraska (Clarence Thomas)
- Delivering the Rathbun Lecture on a Meaningful Life at Stanford University, Stanford, California (Ruth Bader Ginsburg)
- Speaking at a meeting of the Tau Epsilon Rho Law Society, Sarasota, Florida (Stephen Breyer)
- Receiving the Statesmanship Award and speaking at the Annual Claremont Institute Dinner in Honor of Sir Winston Churchill, Newport Beach, California (Samuel Alito)
- Providing commentary for scenes and arias from operas at the Washington National Opera, Washington, D.C. (Ruth Bader Ginsburg)
- Presiding over a mock trial based on an episode in Mark Twain’s *Tom Sawyer*, sponsored by Washington University School of Law in St. Louis, Washington, D.C. (John Roberts)
- Speaking on the importance of civic engagement at the Aspen Institute Latinos and Society Program, Washington, D.C. (Sonia Sotomayor)
- Speaking at the American Bar Association Grassroots Advocacy Award ceremony, Washington, D.C. (Elena Kagan)
- Speaking at the Seventh Circuit Bar Association Annual Meeting, Indianapolis, Indiana (Elena Kagan)
- Launch of Italian translation of memoir, *My Beloved World*, Universita di Macerata, Macerata, Italy (Sonia Sotomayor)
The justices’ activities outside the Court sometimes involve them in politics and public policy, at least indirectly. Justices no longer serve as informal advisers to presidents, as some justices did in the past, but they sometimes interact with public officials and political activists. Justices occasionally take positions on policy issues, including issues that have implications for actual and potential cases in the Court. For instance, Alito has spoken out about what he sees as threats to religious liberty.

In this respect, too, Scalia and Ginsburg have stood out. In two interviews in July 2016, Ginsburg went even further by calling Donald Trump a “faker” and lamenting the possibility that he would become president. Ginsburg was heavily criticized for her remarks, and a few days later she said that she regretted making them. Even so, a year later, fifty-eight congressional Republicans wrote a letter asking Ginsburg to recuse from the Court’s review of President Trump’s order barring entry into the United States of people from six countries, because of her earlier criticism of Trump. Ginsburg did not recuse. Less visibly, several justices participate in events held by legal groups that share their ideological orientation, primarily the Federalist Society for conservatives and the American Constitution Society for liberals.

There has been some change in the way that the Court as an institution responds to the outside world. Until recently, the Court provided little information about its work to the public. Oral arguments and other public proceedings were available only to those who could attend them, and information about the decision-making process such as preliminary votes on the outcomes of cases was kept secret. At least in part, this paucity of information may have been aimed at fostering the impression that the Court stands apart from ordinary politics.
In recent years, the Court has become more willing to provide information to the public. Its website includes a good deal of information, including transcripts and audio recordings of oral arguments that are posted soon after the arguments are held. But the decision-making process itself generally remains hidden from public view. The Court has also refused to allow oral arguments to be televised, despite pressure from Congress and broad public support for televised arguments. At least some justices worry that lawyers or justices will grandstand for the cameras and that justices will be ridiculed for things they say during arguments. They may also want to maintain a degree of anonymity outside the Court. One commentator said that justices are in an enviable position: “Almost nobody knows what you look like, but you always get the reservation you want.”

One aspect of the relationship between the Court and the outside world is the attitudes of the general public toward the Court. Many justices see these attitudes as important, in part because they think that the Court’s ability to gain acceptance of its decisions depends on public support for it.

Among the public as a whole, understandably, knowledge about the Court is not extensive. For instance, a 2017 survey found that less than half the respondents could name any member of the Court (Ginsburg, Roberts, and Thomas were the best known). But the same survey showed a widespread recognition of the Court’s importance and considerable interest in it. And three months after Justice Scalia’s death, a majority of the public correctly identified him as conservative, and only one in five respondents thought he was liberal or moderate.

Surveys regularly ask people for their evaluations of the Court. The Court usually garners positive ratings from the public, considerably more positive than the other branches of government. But public attitudes fluctuate over time. Approval “of the way the Supreme Court is handling its job” was considerably lower in 2015 and 2016 than it had been between 2000 and 2002, though it rebounded a little in 2017.

Increasing disapproval of the Court seemed to reflect growing unhappiness with government in general, with all three branches garnering more negative reactions from the public than they did in the past. Chief Justice Roberts said of the Court’s approval ratings in 2012 that “I think we’re low because people’s view of government is low.” Certainly, the Court has remained far more popular than Congress. In one 2017 survey, people who approved of the Court’s work outnumbered those who disapproved of it by 9 percentage points; for Congress, disapproval won out over approval by 64 percentage points.

Approval of the Court varies by political party, based on which party holds the presidency and recent developments in the Court. In a 2015 survey during the Obama presidency, which was taken shortly after the Court’s decision striking down state prohibitions of same-sex marriage, 76 percent of Democrats approved of the Court’s work but only 18 percent of Republicans did so. Two years later, with a Republican president who had appointed a new justice after a Democratic nominee for that seat was blocked by Republican senators, 65 percent of Republicans approved compared with 40 percent of Democrats.
The Court’s Schedule

The Court has a regular annual schedule. It holds one term each year, lasting from the first Monday in October until the beginning of the succeeding term a year later. The term is designated by the year in which it begins: The 2018 term began in October 2018. (However, the clerk’s office treats a term as ending when the Court finishes its work in June.) The Court does nearly all its collective work from late September to late June. This work begins when the justices meet to act on the petitions for hearings that have accumulated during the summer and ends when the Court has issued decisions in all the cases it heard during the term.

Most of the term is divided into sittings of about two weeks, when the Court holds sessions to hear oral arguments in cases and to announce decisions in cases that were argued earlier in the term, and recesses of two weeks or longer. In May and June, the Court hears no arguments but holds one or more sessions nearly every week to announce decisions. It issues few decisions early in the term because of the time required after oral arguments to write opinions and reach final positions, and a large minority of all decisions—about 40 percent in the 2016 term—are issued in June. The justices scramble to meet the internal deadline of June 1 to circulate drafts of all majority opinions to their colleagues and to reach final decisions by the end of June. The scramble is especially frenetic for cases argued in April and for the most consequential and controversial cases. It is not surprising that a high proportion of the Court’s major decisions are announced in the last few days of the Court’s term.

When the Court has reached and announced decisions in all the cases it heard during the term, the summer recess begins. Cases that the Court accepted for hearing but that were not argued during the term are carried over to the next term. In summer, the justices generally spend time away from Washington but continue their work on the petitions for hearings that arrive at the Court. During that time, the Court and individual circuit justices respond to applications for special action. When the justices meet at the end of summer to dispose of the accumulated petitions, the annual cycle begins again.

The schedule of weekly activities, like the annual schedule, is fairly regular. During sittings, the Court generally holds sessions on Monday through Wednesday for two weeks and on Monday of the next week. The sessions begin at ten o’clock in the morning. Oral arguments usually are held during each session except on the last Monday of the sitting. They may be preceded by several types of business. On Mondays, the Court announces the filing of its order list, which reports the Court’s decisions on petitions for hearing and other actions taken at its conference the preceding Friday. On Tuesdays, as well as the last Monday of a sitting, justices announce their opinions in any cases the Court has resolved. In May and June, however, opinions may be announced on any day of the week.

The oral arguments consume most of the time during sessions. The usual practice is to allot one hour for arguments in a case. On most argument days, the Court hears two cases.
During sittings, the Court holds two conferences each week. At the Wednesday afternoon conference, justices discuss the cases that were argued on Monday. In a longer conference on Friday, the justices discuss the cases argued on Tuesday and Wednesday, along with petitions for certiorari and other matters the Court must decide. In May and June, after oral arguments have ended for the term, the Court has weekly conferences on Thursdays.

The Court also holds a conference on the last Friday of each recess to deal with the continuing flow of business. The remainder of the justices’ time during recess periods is devoted to their individual work: study of petitions for hearing and cases scheduled for argument, writing of opinions, and reaction to other justices’ opinions. This work continues during the sittings.

HISTORICAL DEVELOPMENTS

This book is concerned primarily with the Supreme Court at present and in the recent past, but I frequently refer to the Court’s history to provide perspective on the current Court. Thus, a brief examination of some major developments in that history will provide background for later chapters.

One key development was a strengthening of the Court as an institution. In its first decade, it was not viewed as an important institution. Several people rejected offers to serve on the Court, and two justices—including Chief Justice John Jay—resigned to take more attractive positions in state government. But John Marshall, chief justice from 1801 to 1835, used his position to strengthen the Court’s standing. Marshall asserted the Court’s power to rule that federal statutes are unconstitutional in his opinion for the Court in *Marbury v. Madison* (1803), and a few years later, the Court claimed the same power of judicial review over state acts. Although the Court did not strike down another federal law until 1857, *Marbury* has been regarded as the foundation for its frequent use of judicial review in later eras.

The Court’s aggressiveness brought denunciations and threats, including an effort by President Thomas Jefferson to have Congress remove at least one justice through impeachment. Marshall’s skill in minimizing confrontations helped protect the Court from a successful attack. The other branches of government and the general public gradually accepted the powers that he claimed for the Court. Those powers are challenged from time to time, and the Court is frequently denounced for decisions that critics see as overstepping its proper role. But the Court’s position as the ultimate interpreter of federal law, with the power to strike down actions by other government institutions, is firmly established.

The Court has been strengthened in other respects as well. The elimination of the justices’ circuit-riding duties in 1891 allowed them to focus on their duties in the Court, and the shift in the Court’s jurisdiction from mostly mandatory to nearly all discretionary gave it control over its agenda. The Court’s move from the Capitol to its own building in 1935 was an important symbolic step that also improved the
justices’ working conditions. The gradual growth in the size of the Court’s staff, especially the law clerks, has also enhanced the justices’ ability to do their work.

A second development has been evolution in the subjects of the Court’s work. In the period when the Court had little control over its agenda, the subject matter of its work reflected the cases that came to it. But even then, the justices could emphasize some types of cases over others, especially in their interpretations of the Constitution. After 1925, when the Court gained substantial control over its agenda, the justices had even greater ability to determine what kinds of issues they would address.

In the nineteenth century, up to the Civil War, the primary emphasis was federalism, the division of power between the federal government and the states. That emphasis reflected the heated battles in government and politics over federalism and the justices’ efforts to develop constitutional principles relating to the federal-state balance. In the late nineteenth and early twentieth centuries, as government increasingly enacted legislation to regulate economic activity, constitutional challenges to that regulation became the most prominent element of the Court’s agenda.

After a confrontation between the Court and President Franklin Roosevelt over a series of decisions that struck down several of Roosevelt’s New Deal programs, the Court in 1937 retreated from the limits that it had put on government power to regulate the economy. Beginning in the 1940s, the Court gave greater attention to civil liberties. Since the 1960s, that has been the most prominent area of the Court’s work. Its decisions address a wide range of civil liberties issues, including freedom of expression, privacy, equality, and the procedural rights of criminal defendants. The Court’s decisions in this field have embroiled it in conflicts with critics in government and society. But as has been true in other eras, the Court also plays a significant role in other fields, and it addresses a range of economic issues such as labor–management relations and environmental protection.

A third development is change in the legal policies that the Court makes on the issues it addresses. In the eras when the Court focused on federalism and economic regulation, its policies shifted over time. The same has been true of the Court in the second half of the twentieth century and the early twenty-first century.

In the 1960s, the Court became highly liberal, by the usual meaning of that term, in both economic policy and civil liberties. Its civil liberties policies were especially noteworthy, with major rulings expanding defendants’ rights, supporting freedom of expression, and favoring racial equality.

A series of appointments by Republican presidents beginning in 1969 shifted the Court’s ideological balance. Since the early 1970s the Court has almost always had a conservative majority, although usually by only a small margin. With some major exceptions, the Court’s policies have become distinctly more conservative on both economic and civil liberties issues. The close balance between liberals and conservatives has raised the stakes in the selection of new justices, and those high stakes have been reflected in battles over Supreme Court appointments.
One constant in the Court’s history is that the Court is shaped in powerful ways by events and trends elsewhere in government and society. The most important change in American politics over the last few decades has been a growth in polarization: The views of people in politics have moved toward more extreme positions, the ideological distance between the Republican and Democratic parties has grown considerably, and there is greater hostility between party and ideological camps. Polarization has affected the Court in powerful ways, ways that are discussed later in the book. Its most direct effect has been on the nomination and confirmation of justices, which I discuss in the next chapter.

NOTES

3. These decisions were United States v. Nixon (1974) and Bush v. Gore (2000).
6. Adam Winkler, We the Corporations: How American Businesses Won Their Civil Rights (New York: W. W. Norton, 2018), 57.
9. The justices’ annual financial disclosure reports list the (very) approximate values of their financial assets at the end of each calendar year. They also list the justices’ outside income, including book royalties. The reports for the justices since 2002 are posted at https://www.opensecrets.org/pfds.
14. The cases were Gloucester County School Board v. G.G. (2016) (Breyer); and Arthur v. Dunn (2016) (Roberts).


24. This figure was calculated from information sheets provided by the Supreme Court and from postings at *Above the Law*, https://abovethelaw.com/.


49. The survey was taken by the Gallup Organization in September 2017 (USGAL-LUP092817). The findings were obtained from the iPoll archive of the Roper Center for Public Opinion Research.


51. McCarthy, “GOP Approval of Supreme Court Surges, Democrats’ Slides.”


