



Why Courts Matter

By Michele Jawando and Sean Wright

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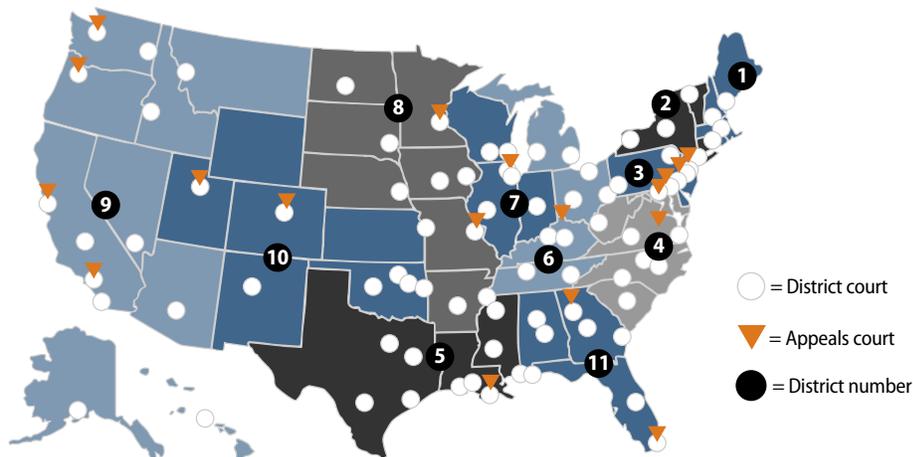
Introduction

No matter the issue—whether it’s marriage equality, voting rights, health care, or immigration—the U.S. federal courts play a vital role in the lives of all Americans. There are two types of courts: state and federal. The federal courts are those established to decide disagreements that concern the Constitution, congressional legislation, and certain state-based disputes.¹

Although most Americans are familiar with the lifetime appointment of justices on the U.S. Supreme Court, many are surprised to learn that more than 900 judges have lifetime appointments to serve on lower federal courts, where they hear many more cases than their counterparts on the Supreme Court. Each year, the Supreme Court reviews around 100 of the most significant cases out of the nearly 30 million cases resolved by state and federal courts.² These courts hear the majority of cases and, most of the time, they have the final say.

That is why, along with the Supreme Court’s justices, the judges who sit on the nation’s federal district and circuit courts are so important.

FIGURE 1
District and appeals court locations



Source: Federal Judicial Center, “Inside the Federal Courts: How the Federal Courts Are Organized,” available at <http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu3&page=/federal/courts.nsf/page/7B7E9A81C09BA2FA852568240052CFC8?opendocument> (last accessed April 2015).

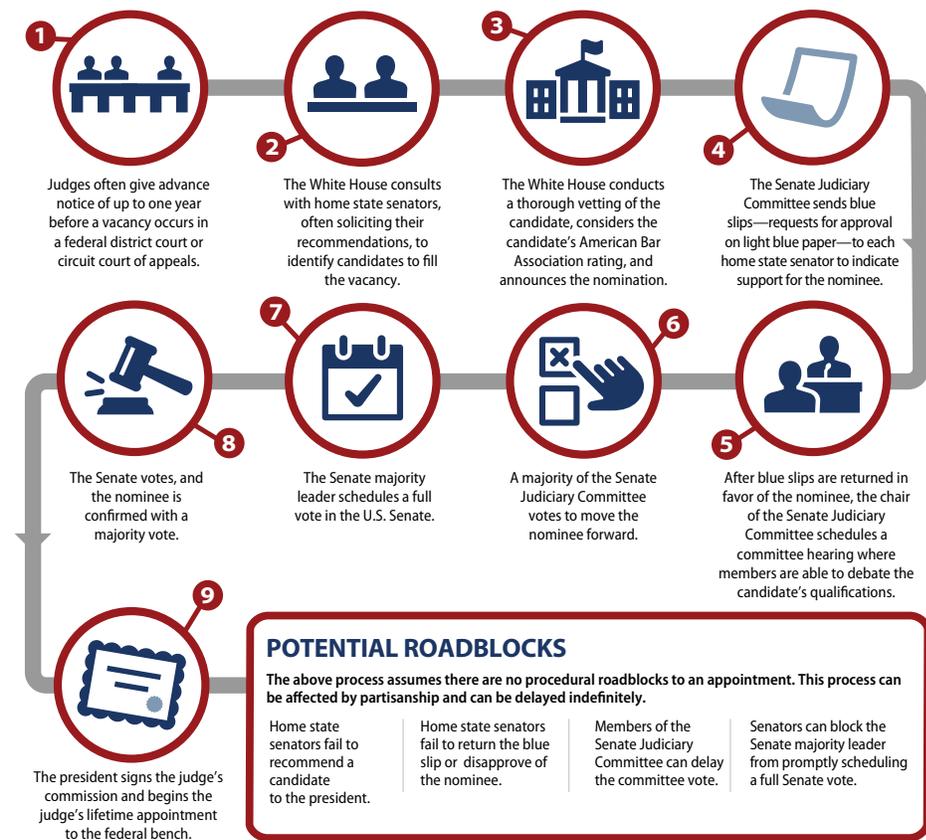
At any given time, there are vacancies on U.S. federal courts that need to be filled. If they are not filled, federal caseloads get backlogged, and as a result, Americans’ access to justice is limited. As of March 9, 2015, there were 50 current vacancies on U.S. federal courts. These seats have been vacant for a total of 22,222 days, resulting in a backlog of 29,892 cases.³

The Administrative Office of the United States Courts has designated 23 of these pending vacancies as judicial emergencies,⁴ meaning that filling them is a critical task. As the Center for American Progress has noted, “in practical terms,” these are the judicial districts “where judges are overworked and where justice is being significantly delayed for the American public.”⁵

FIGURE 2
An easy guide to federal judicial nominations

9 steps from vacancy to confirmation

Every day, federal judges make decisions that affect our lives. Not only do they hear cases affecting the environment, health care, Social Security benefits, and immigration, for example, but they often have the final say in determining who we can marry, whether our speech is protected, or how we can vote. Despite these important decisions, most Americans don’t know how or why a judge is chosen. Under the Constitution, the president nominates federal judges by and with the advice and consent of the Senate. Our simple step-by-step guide illustrates the process.

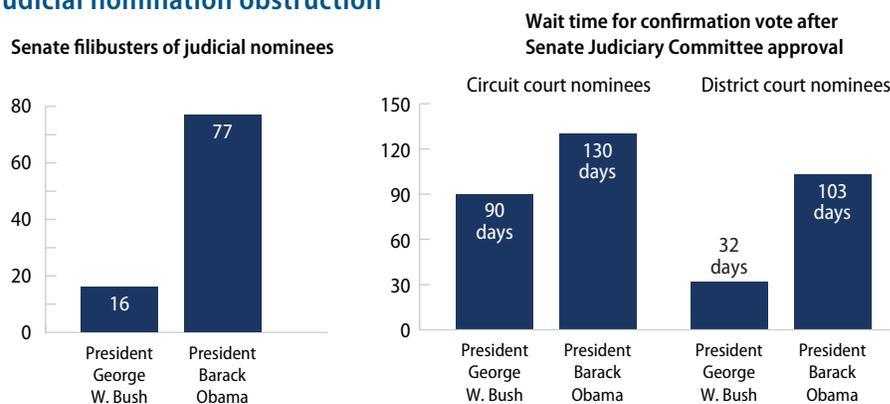


Sources: Sources: Personal communication from Jeremy Paris, former chief counsel for nominations and oversight, Sen. Patrick Leahy, October 23, 2012; U.S. Senate Committee on the Judiciary, “Nominations,” available at <http://www.judiciary.senate.gov/nominations> (last accessed April 2015); American Bar Association, “Standing Committee on the Federal Judiciary: What It Is and How It Works” (2009).

The Constitution dictates that the president appoints federal judges while the Senate advises and consents on these appointments. The result is a delicate balance between the desires of the White House, deference to home-state senators, and the power of the party that controls the Senate.

Recently, politics has played a big role in the pace at which judicial nominees are confirmed. In an attempt to slow President Barack Obama's effect on the federal courts, Senate Republicans have obstructed the president's judicial nominees at unprecedented levels by attempting to prevent or delay a vote through filibustering a record number of nominees and making them await confirmation for long periods of time.⁶

FIGURE 3
Judicial nomination obstruction



Source: People For the American Way, "Overloaded Courts, Not Enough Judges: The Impact on Real People" (2015), available at http://www.pfaw.org/sites/default/files/lower_federal_courts.pdf.

The reason many Senate Republicans have played politics with President Obama's judicial nominees is because they know the dramatic impact the judiciary can have on policies, including marriage equality and reproductive choice.⁷ The fewer judges that President Obama appoints to fill federal judicial vacancies, the greater leverage the next president will have in deciding the make-up of these courts.

Yet in the face of unprecedented obstruction,⁸ President Obama has made great strides to fill vacancies and to ensure that federal judges meaningfully reflect the dynamic diversity of the nation. A diverse federal bench improves the quality of justice and instills confidence that judges understand the real-world implications of their decisions. Americans have different backgrounds, as well as an assorted set of professional, educational, and life experiences. It is important that the federal courts reflect the diversity of the public they serve. As Supreme Court Justice Sonia Sotomayor once wrote, "The dynamism of any diverse community depends not only on the diversity itself but on promoting a sense of belonging among those who formerly would have been considered and felt themselves outsiders."⁹

Furthermore, scholars have found that judges often change their minds during the deliberative process.¹⁰ In one study, researchers concluded that having a woman on the panel affected “elements of both deliberation and bargaining—alternative perspectives, persuasive argument, and horse trading.”¹¹ Not only do the federal courts play a vital role in preserving democracy, but who sits on the courts has an effect too.

This issue brief examines the ways in which our federal courts influence important policy issues and illustrates how judges’ decisions are often aligned with the legal philosophy of the presidents who appoint them. This fact drives home one of the reasons why courts matter: The decisions of federal judges have repercussions on people’s lives. Through its review of how the federal courts affect three specific policy issues—gun violence, money in politics, and voting rights—this issue brief shines a light on how important the federal courts are for the progressive community.

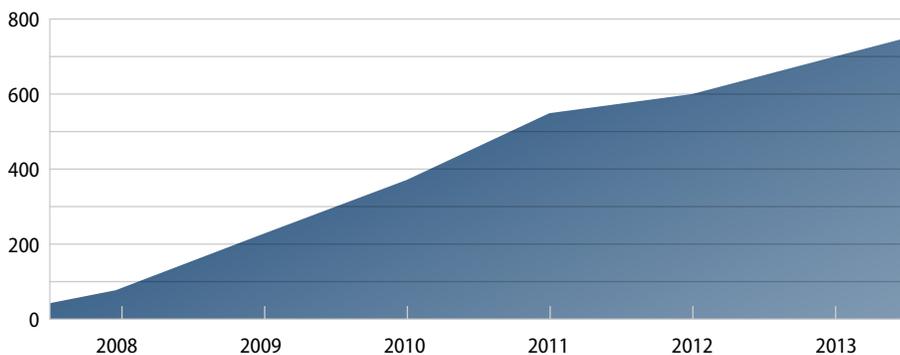
Federal courts affect the issues that progressives care about

Gun violence

Gun violence has become all too familiar in America. However, research shows that reasonable gun control efforts decrease its occurrence. In particular, the Center for American Progress has determined that there is “a clear link between high levels of gun violence and weak state gun laws,” and that “the 10 states with the weakest gun laws collectively have an aggregate level of gun violence that is more than twice as high—104 percent higher, in fact—than the 10 states with the strongest gun laws.”¹² In short, evidence shows that with more guns, there are more gun deaths.¹³ U.S. federal courts play a significant role in determining whether states can impose reasonable gun regulations.

FIGURE 4
The volume of Second Amendment litigation clogging America’s courts

Number of cases



Source: Law Center to Prevent Gun Violence, “Post-Heller Litigation Summary” (2013), available at <http://smartgunlaws.org/wp-content/uploads/2013/07/Post-Heller-Litigation-Summary-September.pdf>.

For 70 years, the Supreme Court never took a case that dealt with the Second Amendment and the right to bear arms. But in 2008, in *District of Columbia v. Heller*,¹⁴ five Supreme Court justices appointed by Republican presidents changed course, holding that the Second Amendment protects an individual's right to possess a firearm unconnected with militia service.¹⁵ Four justices appointed to the Court by Democratic presidents disagreed. Less than one day after the decision, gun rights activists began to flood courts with lawsuits that challenged any and all gun regulations.¹⁶ According to the Law Center to Prevent Gun Violence, since the *Heller* decision, federal and state courts have issued more than 700 decisions on Second Amendment challenges.¹⁷

In many of these cases, judges appointed by Republican presidents have struck down gun regulations, while judges appointed by Democratic presidents have interpreted the Supreme Court's decision less broadly and upheld them.

For example, there is an ongoing debate over the states' right to impose regulations on applicants for concealed-carry permits. Prior to *Heller*, many states required a permit applicant to show "good cause" or a "justifiable need" to carry a gun in public.¹⁸ After reviewing these common-sense laws, panels of the U.S. Courts of Appeals for the 7th and 9th Circuit struck them down.¹⁹

In *Peruta v. County of San Diego*, two judges appointed by Republican presidents struck down California's requirement that concealed-carry permit applicants show "good cause" before carrying guns in public,²⁰ with the majority interpreting the Second Amendment in an expansive manner. This prompted Judge Sidney Thomas, who was appointed by a Democratic president, to author a vigorous dissent:

*This case involves California's "presumptively lawful" and longstanding restrictions on carrying concealed weapons in public and, more specifically, an even narrower question: the constitutionality of San Diego County's policy of allowing persons who show good cause to carry concealed firearms in public. When we examine the justification provided for the policy, coupled with Heller's direction, our conclusion must be that the County's policy is constitutional. Unfortunately, the majority never answers the question posed. Instead, in a sweeping decision that unnecessarily decides questions not presented, the majority not only strikes down San Diego County's concealed carry policy, but upends the entire California firearm regulatory scheme. The majority opinion conflicts with Heller, the reasoned decisions of other Circuits, and our own case law. Therefore, I must respectfully dissent.*²¹

As Judge Thomas noted, other courts have upheld state laws that promote public safety. Judges on the Courts of Appeals for the 2nd, 3rd, and 4th Circuit have found that laws requiring permit applicants to show "good cause" do not interfere with the Second Amendment and instead promote balancing gun use with safety.²² In each of the decisions, judges appointed by Democratic presidents upheld longstanding permit regulations that are utilized by states across the country.²³

The *Heller* decision emboldened gun rights groups. One particular organization, the Second Amendment Foundation, or SAF, has adopted a legal strategy of “swinging for the fences and often making very broad constitutional arguments.”²⁴ Alan Gottlieb, the SAF’s founder, has said, “Our feeling is strike while the iron is hot ... [t]hen weave [the case law] into a spider web that’s strong enough so our opponents can’t get through it.”²⁵

Money in politics

America’s representative democracy rests on the notion that elected officials are responsive to the people who elect them. Currently, however, political campaigns and elections are dominated by large amounts of money from individuals, corporations, and special interests that politicians rely on to run for office.

During the 2014 election cycle, mega-donors dominated spending, with the top 100 campaign donors pouring in nearly enough money to match some 4.75 million small donors combined.²⁶ The Center for Responsive Politics found that “just 666,773 individuals had donated more than \$200 to campaigns, parties and political action committees in the 2014 election cycle.”²⁷ This means that only 0.2 percent of the population financed the midterm elections.²⁸

This is concerning because, as a recent study detailed, “the preferences of economic elites ... have far more independent impact upon policy change than the preferences of average citizens do.”²⁹ New research makes clear that members of Congress are more likely to meet with a constituent if they say they are a campaign donor.³⁰ As Adam Lioz wrote in *The American Prospect*, “[T]he wealthy prefer policies that make them even richer ... and government responds almost exclusively to their preferences. He who pays the piper calls the tune.”³¹

Why has the United States seen such an expansion of special interest money in its electoral system? One does not have to look much further than the federal courts. In a series of high-profile decisions, the Supreme Court has turned campaign finance law upside down.

In a 1976 case known as *Buckley v. Valeo*, the Supreme Court determined that spending money for political campaign purposes was a form of speech protected by the First Amendment.³² This money-is-speech rationale was used to strike down portions of the campaign finance reforms that followed the Watergate scandal.³³ It has also been used to open the floodgates for more money in politics.

In the now infamous *Citizens United v. Federal Election Commission*, five justices appointed by Republican presidents held that, although entities such as corporations could not contribute directly to individual political campaigns, they could contribute unlimited amounts of money to independent political action committees, or PACs.³⁴

This decision caused an “explosion of political money,” epitomized by the continued growth of super PACs— independent entities that can raise unlimited amounts of money from corporations, unions, and individuals but are prohibited from coordinating with a political candidate’s campaign.³⁵

This ruling prompted an impassioned dissent by Justice John Paul Stevens and three justices appointed by Democratic presidents. They lamented that, “While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.”³⁶

The Supreme Court continued to loosen restrictions on campaign funding in *McCutcheon v. Federal Election Commission*,³⁷ in which the same five justices appointed by Republican presidents struck down the aggregate campaign contribution limits, which restricted how much money a donor could contribute to all candidates for federal office combined. The Court held that this limitation was a violation of the First Amendment.³⁸

In *McCutcheon*, four justices appointed by Democratic presidents dissented and would have upheld the reasonable contribution limits that Congress imposed. The lower federal courts have been obligated to follow the decision, prompting one federal judge to exclaim, “Today’s reality is that the voices of ‘we the people’ are too often drowned out by the few who have great resources.”³⁹

These two opinions bookend the campaign finance revolution that has taken place under Chief Justice John Roberts. All told, the Roberts Court has struck down seven campaign finance regulations.⁴⁰

This revolution has had dire consequences. To campaign finance expert Richard Briffault, “[t]he rise of super PACs suggests that the real impact of *Citizens United* may be the re-validation of the unlimited use of private wealth generally in elections, not just spending by corporations and unions.”⁴¹

The last presidential election is a case in point. During the 2012 election cycle, super PACs “spent more than \$1 billion, including more than \$300 million contributed by donors whose identities were never disclosed.”⁴² These amounts triple the amounts spent by outside groups in either 2008 or 2010.⁴³ And it seems that the amount of money corporations and shady super PACs spend on elections will only continue to increase. Unfortunately, Justice Stephen Breyer’s concern in *McCutcheon* appears to be prophetic: “Where enough money calls the tune, the general public will not be heard.”⁴⁴

Voting rights

In the years of Jim Crow and segregation, voters faced overt challenges to their right to vote, including grandfather clauses, poll taxes, literacy tests, and blatant intimidation and violence. In response to these oppressive and undemocratic practices, legal protections, such as the Voting Rights Act, or VRA, of 1965,⁴⁵ were passed in order to help ensure that eligible voters could exercise their right to vote. The VRA has been called the nation's most powerful civil rights law. However, as a nation, we are still far from ensuring that all Americans have equal access to the polls.

According to the Brennan Center for Justice, in 2013 alone, 33 states introduced at least 92 restrictive voting bills.⁴⁶ On top of that, researchers found that higher voter turnout among minorities in a given state increased the likelihood that the state would propose restrictive voting laws.⁴⁷ These restrictive measures have been found to have a disproportionate effect on people of color, those for whom English is a second language, young people, the indigent, and the elderly.⁴⁸

U.S. federal courts play a large role in enforcing the laws that protect voters from discrimination and intimidation. In 2013, in *Shelby County v. Holder*, five Supreme Court justices appointed by Republican presidents gutted the VRA by ruling that the formula stipulated in Section 4(b) to determine which states were subject to Section 5 “preclearance” before the implementation of changes to state or local voting laws was unconstitutional.⁴⁹

The ruling made it harder for the federal government, including the courts, to hold states accountable for discriminatory voting practices. The four justices appointed by Democratic presidents wanted to keep the VRA protections in place.⁵⁰

Although *Shelby County* was a setback for voters, other sections of the VRA still exist and are being used to fight voting-related discrimination and to require states to provide appropriate assistance to large populations of eligible voters that speak foreign languages.⁵¹ Recently in Texas, a federal judge who was appointed by a Democratic president determined that the state's new voting law intentionally discriminated against communities of color, violated the VRA, and constituted an unconstitutional poll tax that could disenfranchise nearly 600,000 registered Texans.⁵²

For this reason, America's federal courts will continue to determine how to apply these protections in order to help ensure that all voters have an equal right to vote.

Conclusion

In 1929, legendary civil rights lawyer Charles Hamilton Houston said, “A lawyer’s either a social engineer or ... a parasite on society.”⁵³ He described a social engineer as “a highly skilled, perceptive, sensitive lawyer who [understands] the Constitution of the United States and [knows] how to explore its uses in the solving of problems of ... local communities” and in “bettering conditions of the underprivileged citizens.” In this light, Houston believed that lawyers should use their training and their prestige in the community to better society and to promote justice. When articulating the ideal temperament of a judge, President Obama evoked Houston’s sentiments by listing “empathy” as a key trait.⁵⁴

Collectively, this means that judges must understand the real-world implications of legal decisions. This is a critical ability because the federal courts have an impact on every issue that affects Americans’ daily lives. U.S. federal courts ensure equality, defend civil rights, protect the environment, affect the health of America’s democracy, and keep the nation safe. While Americans often feel that the federal courts are untouchable, it is important to know that they can play a large role in how these courts rule, as those responsible for filling the benches of U.S. federal courts are responsive to the democratic process and the input of American citizens.

Presidents nominate judges who share their beliefs and values. And because they serve for life, federal judges have a huge impact on the issues that affect the lives of all Americans. Control of the Senate also matters, as senators are responsible for confirming or rejecting the president’s nominees. Senators play a large role in identifying lawyers for the White House to nominate and can control the pace of the nomination process.

The first step in the process toward confirming judges who understand the real-world implications of legal decisions is to continue working to appoint judges who meaningfully reflect America’s diverse experiences. The United States needs its courts to be staffed with Houston’s social engineers—those who faithfully adhere to the rule of law but who are equally faithful to their constitutional obligations to promote justice and fairness. Instead of siding with ideological pursuits, America’s judges must uphold the Constitution and the nation’s laws.

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Endnotes

- 1 Federal Judicial Center, "Federal Courts and What They Do," available at [http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWhat.pdf/\\$file/FCtsWhat.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/FCtsWhat.pdf/$file/FCtsWhat.pdf) (last accessed April 2015).
- 2 Ibid.
- 3 Case backlog is calculated by taking the average daily caseload for both district and circuit court judges and multiplying that number by the total number of days current vacancies have sat vacant. For more information, see United States Courts, "Current Judicial Vacancies," available at <http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies/CurrentJudicialVacancies.aspx> (last accessed March 2015); United States Courts, "Federal Judicial Caseload Statistics 2014," available at <http://www.uscourts.gov/Statistics/FederalJudicialCaseloadStatistics/caseload-statistics-2014.aspx> (last accessed March 2015).
- 4 United States Courts, "Judicial Emergencies," available at <http://www.uscourts.gov/JudgesAndJudgeships/JudicialVacancies/JudicialEmergencies.aspx> (last accessed March 2015).
- 5 Andrew Blotky and Sandhya Bathija, "Federal Judicial Emergencies" (Washington: Center for American Progress, 2012), available at <https://www.americanprogress.org/issues/civil-liberties/report/2012/11/08/11914/federal-judicial-emergencies/>.
- 6 Jennifer Bendery, "Fate of Obama's Judicial Nominees Unclear Under GOP-Controlled Senate," *The Huffington Post*, October 16, 2014, available at http://www.huffingtonpost.com/2014/10/16/obama-judicial-nominations_n_5977816.html.
- 7 Chris Geidner, "Supreme Court Will Hear Four Cases Challenging Same-Sex Marriage Bans," *BuzzFeed*, January 16, 2015, available at <http://www.buzzfeed.com/chrisgeidner/supreme-court-will-hear-four-cases-challenging-same-sex-marriage>; National Women's Law Center, "Women's Rights at Stake: Why Federal Courts Matter to Women," September 29, 2014, available at <http://www.nwlc.org/resource/women%E2%80%99s-rights-stake-why-federal-courts-matter-women>; Also see *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014).
- 8 Alicia Bannon, "Obstruction of the Senate and the Future of Rules Reform on Nominations," *Brennan Center for Justice*, August 19, 2014, available at <https://www.brennancenter.org/analysis/obstruction-senate-and-future-rules-reform-nominations>.
- 9 Sonia Sotomayor, *My Beloved World* (New York: Alfred A. Knopf, 2013), p. 163.
- 10 Sean Farhang and Gregory Wawro, "Institutional Dynamics on the U.S. Court of Appeals: Minority Representation Under Panel Decision Making," *The Journal of Law, Economics, & Organization* 20 (2) (2004): p. 325, available at https://gspp.berkeley.edu/assets/uploads/research/pdf/article_5.pdf.
- 11 Ibid.
- 12 Arkadi Gerney, Chelsea Parsons, and Charlie Posner, "America Under the Gun: A 50-State Analysis of Gun Violence and Its Link to Weak State Gun Laws" (Washington: Center for American Progress, 2013), available at <http://www.americanprogress.org/wp-content/uploads/2013/04/AmericaUnderTheGun-4.pdf>.
- 13 Eric W. Fleegler and others, "Firearm Legislation and Firearm-Related Fatalities in the United States," *JAMA Internal Medicine* 173 (9) (2013): 732–740.
- 14 *District of Columbia v. Heller*, 554 U.S. 570 (2008).
- 15 Ibid.
- 16 Juliet A. Leftwich, "'Heller's Wake,'" *Los Angeles Daily Journal*, June 26, 2009, available at http://smartgunlaws.org/wp-content/uploads/2012/05/Op_Ed_Hellers_Wake.06.26.2009.pdf.
- 17 Law Center to Prevent Gun Violence, "Post-Heller Litigation Summary" (2013), available at <http://smartgunlaws.org/wp-content/uploads/2013/07/Post-Heller-Litigation-Summary-September.pdf>.
- 18 See Cal. Penal Code §§ 26150, 26155 (providing that to obtain a concealed-carry license, the applicant must meet several requirements, including demonstrating "good moral character," complete a specified training course, and establish "good cause."), available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=26001-27000&file=26150-26225>.
- 19 *Peruta v. Cnty. of San Diego*, 742 F.3d 1144 (9th Cir. 2014); *Moore v. Madigan*, 703 F.3d 933 (7th Cir. 2012). Both majority opinions were joined by two judges appointed by Republican presidents with one judge appointed by a Democratic judge dissenting from the decision.
- 20 *Peruta*, 742 F.3d at 1179.
- 21 Ibid., 742 F.3d at 1179 (Thomas, J. dissenting) (emphasis added).
- 22 *Drake v. Filko*, 724 F.3d 426 (3rd Cir. 2013); *Woollard v. Sheridan*, 712 F.3d 865 (4th Cir. 2013); *Kachalsky v. Cnty of Westchester*, 701 F.3d 81 (2nd Cir. 2012).
- 23 *Drake*, 724 F.3d at 432.
- 24 Christina Wilkie, "Second Amendment Lawsuits Expose Rift at the Top of the Gun Rights Movement," *The Huffington Post*, February 25, 2013, available at http://www.huffingtonpost.com/2013/02/25/second-amendment-foundation_n_2745038.html.
- 25 Wilkie, "Second Amendment Lawsuits Expose Rift at the Top of the Gun Rights Movement."
- 26 Kenneth P. Vogel, "Big money breaks out," *Politico*, December 29, 2014, available at <http://www.politico.com/story/2014/12/top-political-donors-113833.html#ixzz3OeK7FuUG>.
- 27 Chris Cillizza, "The 2014 election cost \$3.7 billion. We spend twice that much on Halloween," *The Washington Post*, November 6, 2014, available at <http://www.washingtonpost.com/blogs/the-fix/wp/2014/11/06/the-2014-election-cost-3-7-billion-we-spend-twice-that-much-on-halloween/>.
- 28 Ibid.
- 29 Martin Gilens and Benjamin I. Page, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens," *Perspectives on Politics* 12 (3) (2014): 564–581, available at http://scholar.princeton.edu/sites/default/files/mgilens/files/gilens_and_page_2014_testing_theories_of_american_politics.doc.pdf.
- 30 Joshua L. Kalla and David E. Broockman, "Congressional Officials Grant Access to Individuals Because They Have Contributed to Campaigns: A Randomized Field Experiment" (Berkeley, CA: University of California, Berkeley, 2014), available at http://www.ocf.berkeley.edu/~broockma/kalla_broockman_donor_access_field_experiment.pdf.
- 31 Adam Lioz, "More Than Corruption Threatens the Integrity of Our Democracy," *The American Prospect*, March 31, 2014, available at <http://prospect.org/article/more-corruption-threatens-integrity-our-democracy>.
- 32 *Buckley v. Valeo*, 424 U.S. 1 (1976).
- 33 Ibid.
- 34 *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010).
- 35 Peter Overby, "5 Years after 'Citizens United' SuperPACs Continue to Grow," *NPR*, January 13, 2015, available at <http://www.npr.org/2015/01/13/377024687/five-years-after-citizens-united-superpacs-continue-to-grow>.

- 36 *Citizens United*, 558 U.S. at 479 (Stevens, J., dissenting).
- 37 *McCutcheon v. Federal Election Comm'n*, 134 S. Ct. 1434 (2014).
- 38 *Ibid.*
- 39 *New York Progress and Protection PAC v. Walsh*, No. 13 Civ 6769, 2014 U.S. Dist. LEXIS 57477, at * 5., (S.D.N.Y. April 24, 2014) (emphasis added).
- 40 David Earley and Avram Billig, "The Pro-Money Court: How the Roberts Supreme Court Dismantled Campaign Finance Law," Brennan Center for Justice, April 2, 2014, available at <http://www.brennancenter.org/analysis/pro-money-supreme-court>.
- 41 Robert Barnes, "Super PAC Mania," *Columbia Law School Magazine*, Spring 2012, available at <http://www.law.columbia.edu/magazine/621141>.
- 42 Fred Wertheimer, "Legalized Bribery: Four Years on *Citizens United* is ruining democracy. Here's how to get it back," *Politico Magazine*, January 19, 2014, available at http://www.politico.com/magazine/story/2014/01/citizens-united-campaign-finance-legalized-bribery-102366_full.html#U9E18CTD_ct.
- 43 *Ibid.*
- 44 *McCutcheon*, 134 S. Ct. at 1467.
- 45 Voting Rights Act, 42 U.S.C. §§ 1973 to 1973aa-6 (2014), available at <http://www.law.cornell.edu/wex/cgi/wexlink?wexns=USC&wexname=42:chapter20>.
- 46 . Brennan Center for Justice, "Voting Law Roundup 2013," December 19, 2013, available at <http://www.brennancenter.org/analysis/election-2013-voting-laws-roundup>.
- 47 Keith Bentele and Erin O'Brien, "States with higher black turnout are more likely to restrict voting," *The Washington Post*, December 17, 2013, available at <http://www.washingtonpost.com/blogs/monkey-cage/wp/2013/12/17/states-with-higher-black-turnout-are-more-likely-to-restrict-voting/>.
- 48 Cohen, "The Voting Rights Act Becomes More Vital by the Day."
- 49 *Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013).
- 50 *Ibid.*, 133 S. Ct. at 2652 (Ginsburg, J., dissenting).
- 51 Joshua Field, "The Voting Rights Playbook: Why Courts Matter Post-Shelby County v. Holder." (Washington: Center for American Progress 2014), available at <https://www.americanprogress.org/issues/civil-liberties/report/2014/02/03/83264/the-voting-rights-playbook/>.
- 52 *Veasey v. Perry*, No. 13-193, 2014 U.S. Dist. LEXIS 144080 (S.D. Tex. Oct. 14, 2014).
- 53 Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (Philadelphia: University of Pennsylvania Press, 1983), p. 84.
- 54 Peter Baker, "In Court Nominees, Is Obama Looking for Empathy by Another Name?" *The New York Times*, April 25, 2010, available at <http://www.nytimes.com/2010/04/26/us/politics/26memo.html>.