

the Court—packed with three Trump-appointed justices and six conservatives—had begun to implement its deeply conservative principles in its decision-making soon after the end of Trump’s first term. Most significantly, it struck down *Roe v. Wade*, constitutionally discarded higher education admissions policies on affirmative action and suggested it was prepared to expand presidential power significantly.

So, how should we evaluate the election results within the context of these decisive decisions? One might argue that Trump’s victory shows the democracy gap is not as significant as I argue in *A Supreme Court Unlike Any Other*. After helping to deliver a conservative Court, he performed better than he had in previous campaigns. However, this assumes that the Court was a significant issue during the campaign. And somewhat surprisingly, it was not, largely because Democratic nominee and Vice President Kamala Harris chose not to emphasize the Court in her short campaign. This was surprising for two main reasons. First, the Court’s popularity was at an historical low. Second, before he dropped out of the race, President Joe Biden clearly signaled that an anti-Court message would be a highlight, if not a centerpiece, of his campaign. But Harris didn’t grab the baton, choosing instead to focus on the issue of abortion as a means of critiquing the Court.

This update helps me to respond to Bridge’s question about the “deviant” nature of judicial review from a regime politics perspective. At the very least, Trump’s victory shows voters were not self-motivated to reject a Supreme Court that is more distant from American democracy than its predecessors. But exit polls suggest that the Court didn’t matter much in the election, and—much to Harris’s chagrin—abortion didn’t matter enough to alter the results. So, while judicial review is still politically constructed, it has not recently been constructed under the terms of majoritarianism. And for the counter-majoritarian nature of the Court to matter at election time, the case needs to be made to the people. In 2024, Democrats didn’t succeed in making that case.

This leads to Bridge’s convincing concern that an 18-year term might undermine the Supreme Court’s independence. With Trump’s victory, talk of limiting life tenure for the justices is yesterday’s news. Instead, the focus has turned to whether judicial independence has already been sufficiently diminished by a Court ideologically aligned with a president intent on institutional disruption—or if that Court will challenge some of his more aggressive actions. In the last sentence of my book, I write about the need for the Supreme Court to “restore its standing across the land at a time when we may need it most.” That time may very well have arrived. If it has, we will soon know the state of the Court’s independence without the need to worry about the potential effects of an 18-year term for the justices.

Pushback: The Political Fallout of Unpopular Supreme Court Decisions. By Dave Bridge. Columbia: University of Missouri Press, 2024. 388p.

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— Kevin J. McMahon, *Trinity College*
kevin.mcmahon.1@trincoll.edu

In *Pushback*, Dave Bridge asks a straightforward question that’s difficult to answer: Can success lead to failure? More specifically, can Supreme Court decisions ultimately harm the members of the dominant political coalition who appointed and approved the (ideologically aligned) justices who issued them? Bridge is writing in the tradition of the regime politics scholarship, and he does much to advance its cause.

He does so by carefully outlining how members of the minority party and the minority faction of the majority party seek to take advantage of unpopular Supreme Court decisions, like those of the 1950s dealing with communism. After outlining the assumptions of the “regime politics paradigm” in the first chapter, Bridge develops “observable expectations” for what might follow “a countermajoritarian” Supreme Court decision in chapter 2 (p. 31). He identifies three expectations: surface-level indicators (e.g., public opinion polls showing the unpopularity of a decision); a nonleading faction response (e.g., the introduction of court-curbing proposals by members of Congress who represent a minority faction of the majority party); and a minority party response, such as changes to “its *focus, rhetoric, and strategy* on issues raised by the Supreme Court” (p. 40). From there, Bridge searches for three types of pushback: grassroots, congressional, and electoral. In the next four issue-based chapters, he documents how opposition forces targeted unpopular Supreme Court rulings on school prayer, crime, busing, and abortion to delegitimize the Court and to undermine the New Deal coalition. In the last three areas, he finds evidence to support that the dominant political coalition suffered electorally due to politically divisive rulings from an ideologically aligned Court.

In Chapter 7, Bridge summarizes the lessons learned from those political battles. One, in particular, is worth highlighting. The “irony” and “tragedy” is that “liberal Democrats wanted the Supreme Court to hand down liberal decisions on social issues,” he writes. “When those very opinions came to pass, the fallout likely played a role in dethroning the Democratic Party from the seats of government” (p. 183). In Chapter 8, he examines four contemporary issues before the Court—good governance, Obamacare, same-sex marriage, and religious liberty—and assesses whether the lessons of the past are useful for today. The final chapter looks to the future and puts Bridge’s findings to the test. He does so by examining the political consequences of the 2022 *Dobbs* ruling. He argues that the

atmosphere is ripe for Democrats to take electoral advantage of the Court's decision uprooting *Roe v. Wade* and jeopardizing abortion rights.

One of the strengths of Bridge's book lies in his decision to highlight a group within the New Deal coalition that typically attracts little attention, namely, Catholics. Too often those discussing the dissolution of the New Deal coalition focus on white southerners and highlight efforts by southern Democrats and Republicans to disrupt liberalism in hopes of constructing a conservative party under the GOP banner. Bridge also includes issues not defined by the politics of race, another frequent point of emphasis. For example, his first issue-focused chapter discusses school prayer and the Court's ruling in *Engel v. Vitale* that public schools could not host prayers. As Bridge shows, that decision elicited an avalanche of scorn from devotees of different religions, including Roman Catholics. In discussing *Engel*, he uncovers significant grassroots and congressional pushback. Electoral pushback, however, is more difficult to show. In exploring why there were limited electoral consequences to such an unpopular decision, he makes an essential point about the reaction to *Engel*—namely, that many schools simply ignored it. And somewhat ironically this open violation of the Court's order undercut organized political opposition to the decision. Why expend the time and resources necessary to overturn a Supreme Court ruling via constitutional amendment—which is unlikely to succeed—when the practical impact of that decision was quite limited?

Curiously, however, in this chapter we do not read anything about the most prominent Catholic at that time: President John F. Kennedy. Recall, in mid-September 1960, then-Senator Kennedy appeared before the Greater Houston Ministerial Association. He did so seeking to dispel concerns that he would be a mouthpiece for the Pope (or for the Catholic hierarchy in the United States) once in the White House. Those very accusations had helped sink the 1928 candidacy of Alfred E. Smith, the first Catholic presidential nominee of a major political party. In Houston, JFK outlined his belief “in an America where the separation of church and state is absolute—where no Catholic prelate would tell the President (should he be Catholic) how to act.” In making that statement, Kennedy explicitly referenced the Court's 1947 decision in *Everson*, which placed significant constitutional limitations on aid to parochial schools. In turn, the Court's decision in *Engel v. Vitale*—delivered less than two years later—could easily be interpreted as seeking to “confer legitimacy” on candidate Kennedy's position—to borrow a phrase from Robert Dahl's seminal 1957 article, “Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker,” outlining a regime politics theory. Not surprisingly, in response to a question about congressional efforts to overturn *Engel* via constitutional amendment, now President Kennedy emphasized the

need “to support the Supreme Court decisions even when we may disagree with them.”

I emphasize the absence of any discussion of Kennedy because presidents play an important role in the politics surrounding Supreme Court decisions. Consider two areas Bridge discusses where the Court later altered its doctrine: crime and busing. These were the very two issues President Richard Nixon concentrated on in constructing his policy toward the judiciary. Contrast that to his response to *Roe*, which was feeble at best. Indeed, it was not until the 1980s, as Bridge notes, that Republican presidents vigorously advocated for overturning *Roe*. And even then, the effort was an inconsistent one. Recall that President George H.W. Bush said he “welcomed” the 1992 *Casey* decision in which five of the eight Republican-appointed justices—including two of the three named by Ronald Reagan—refused to overturn that 1973 ruling. Of course, Kennedy's defense of a liberal decision on school prayer was quite different than Nixon's opposition to liberal ones on criminal procedure and busing. Nevertheless, the opinion of a popular president, even on an unpopular Supreme Court ruling, is bound to limit the effectiveness of the opposition forcing pushing back on Court decisions.

In Chapter 4, Bridge provides very compelling evidence that the Court consciously backtracked in deciding cases later in the 1960s in response to some of its earlier criminal procedure cases like *Mapp* (1962) and *Miranda* (1966). And it seemingly worked. According to Bridge, “cases such as *Warden v. Hayden* (1967) and *Terry v. Ohio* (1968) made the court's jurisprudence more acceptable to conservatives, who in turn eased their criminal rights assault on the judiciary.” He rightfully adds: “Still, Nixon's 1968 election was directly traceable to liberal crime decisions” (p. 108).

The final chapter of the book is both the most unusual and the most useful. To begin, it is organized differently than most of the other chapters in that it is structured in a question-and-answer format. More importantly, in it, Bridge applies the lessons of the reaction to the most politically salient “countermajoritarian” decisions of the 1950s, 1960s, and 1970s to the politics following the 2022 *Dobbs* decision. For Bridge, *Dobbs* holds out hope for Democrats. But there is also a lesson for them, one learned from Richard Nixon. Particularly on the issue of busing, Nixon didn't mind losing in court as long as it allowed him to blame the federal judiciary for any disorder in schools under desegregation orders. In the same vein, Bridge notes that Democrats may not want to “preemptively fix the [abortion] problem.” That's because, he continues, if abortion “is no longer a problem in a particular state or region, then voters of that state or region might disregard voting on the basis of abortion” (p. 261).

I end with a question. Are all unpopular decisions countermajoritarian? Bridge seems to think so. I'm not

so sure. I am not convinced that we should focus on public opinion polls when considering whether the actions of today's Court are consistent with majoritarianism. Rather, it is more appropriate to determine whether the political construction of the Supreme Court is consistent with majoritarianism, not whether a specific ruling on a divisive issue is. As Bridge points out, poll results may be extraordinarily unclear and change over time. As he writes about the reaction to the Court's 2023 decision in *Students for Fair Admissions, Inc. v. Harvard College*, "unpacking public opinion on affirmative action is difficult... the wording of the questions seems to impact the results" (p. 226). He then suggests that affirmative action may very well be a case of "nonmajoritarian difficulty," where "the American public has conflicting views on a very complex issue" (p. 227). While this may be true, Bridge might have also mentioned that referenda on affirmative action do not perform well, even in bright blue states like California. Recall that, in 2020, Californians voted down Proposition 16, which would have amended the state's constitution to repeal a 1996 referendum (Proposition 209) banning the use of race, sex, or ethnicity in the public sector, including in public education. Notably, Proposition 16 was defeated by nearly 15% on the very same Election Day Democrat Joe Biden won the Golden State by nearly 30%. This result suggests that the *Students for Fair Admissions* decision may be neither countermajoritarian nor nonmajoritarian. It is simply hard to know.

To sum up, Dave Bridge has written an important book that makes a valuable contribution to the regime politics literature. His final chapter on the political landscape following *Dobbs* should be one that readers return to year after year to assess the predictive powers of his pushback theory.

**Response to Kevin J. McMahon's review of
*Pushback: The Political Fallout of Unpopular
Supreme Court Decisions***

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— Dave Bridge 

After the 2024 election, a common critique of *Pushback* has been that the book misevaluated abortion. So I was encouraged that Kevin McMahon highlighted the "don't fix the problem" dynamic. In short, after *Dobbs*, the Democratic Party moved quickly to pass legislation and introduce state referenda to protect abortion. In many states, liberals preemptively fixed the problem. Then Democrats lost at the polls, in part because they could not credibly claim that their election was the only solution to *Dobbs*. Compare this to how the Republican Party

treated the issue from 1973 to 2022—nipping at the pro-life margins, but understanding that overturning *Roe* would be to kill the golden goose that delivered Catholic and evangelical voters.

This is a major, generalizable takeaway, and I am grateful to McMahon for pointing it out. It underscores how rarely a party can use a Supreme Court case to expand its coalition. A decision must be salient and unpopular/countermajoritarian to a cross-partisan base. Even then, it is not inevitable that a party will capitalize. They must signal voters "but not be too successful in reversing judicial policies" (p. 201). Democrats did not reverse *Dobbs*, of course. But in enough places, they provided enough access to abortion to ease voters' fears. Once pro-choice policies and referenda passed, voters felt comfortable voting Republican. Similarly, Democrats may have done too much to address student debt relief (e.g., deferrals, rate reductions) after the Court struck it down. Strictly in terms of electoral strategy, the DNC would have been better off allowing debt to pile up, blaming the Republican-appointed Court and promising to work to eliminate again the \$10,000 per borrower that the six conservative Justices reinstated.

McMahon's big question is: are all unpopular decisions countermajoritarian? This is a fair question and perhaps stems from approach. Methodologically, I push regime politics to speak to a broader audience by clearly outlining what we should see if hypotheses hold. But focusing on countermajoritarian rulings might overlook decisions that are majoritarian, but unpopular to some. Consider *Roe* in the 21st century: supported by more than 50%, yet intensely opposed by an active pro-life minority, who nevertheless falsely claimed that *Roe* was countermajoritarian. "Sad though it sounds," the book reads, "the truthfulness of these claims is less important than the sheer fact that they were made" (p. 191) because "sometimes the *perception* of the Court is more important than the reality" (p. 296, emphasis in original). Returning to McMahon's question—must a case be countermajoritarian to be unpopular and electorally significant? My answer: No. But I focus on countermajoritarian cases because they push the boundaries of regime politics theory.

In doing so, *Pushback* seeks to engage a wider audience about the way in which the Court is part of, and bound by, the complexity of pluralism, policy, and politics. It is an effort to "bring the courts back in" to the study of American politics; and to do so with rigorous qualitative methods. For those seeking another book—one grounded in paradigmatic assumptions, sound approaches, observable measures, good data, and relevant cases—*A Supreme Court Unlike Any Other* is a worthy choice.