

Supreme Court Review Act

The Supreme Court continues to eviscerate longstanding precedents and constitutional protections in multiple areas of the law. This past term, it eliminated the constitutional right to an abortion and strictly curtailed the EPA's power to fight climate change. Next term, it could further gut the Voting Rights Act and undermine federal environmental protections.

Congressional action is more important than ever to rein in an activist Court. Justice Thomas's opinion in *Dobbs* made clear that the Court isn't done eliminating constitutional protections. Without congressional action, harmful Court opinions will continue to usurp policymaking by elected officials and curtail important rights. Recent examples of these decisions include:

- Dobbs v. Jackson Women's Health Organization (overturning *Roe v. Wade* and eliminating any federal right to an abortion);
- Brnovich v. DNC (rewriting Section 2 of the Voting Rights Act contrary to clear congressional intent);
- West Virginia v. EPA (misreading federal law to limit EPA authority to regulate greenhouse gas emissions); and
- Alabama Association of Realtors v. HHS (invalidating the Biden administration's COVID-19 eviction moratorium due to purported lack of clear authority from Congress).

Congress can respond to each of these cases by clarifying federal law or creating new statutory protections, but plodding and cumbersome Senate procedures as well as the politicization of the judiciary have undermined Congress's ability to react quickly to the Court. As a result, egregious interpretations of the Voting Rights Act remain on the books, and Congress is unable to pass legislation like the Women's Health Protection Act.

Congress can check the Supreme Court's erroneous interpretation of federal law and once again ensure equal rights for all. Congress already created a process for expeditiously reacting to agency rules under the Congressional Review Act, and it could do the same for Supreme Court decisions. This bill:

- Mirrors the Congressional Review Act by codifying a process for passing new laws in response to Supreme Court decisions that interpret federal statutes or roll back constitutional rights;
- Includes expedited procedures for the Senate to pass these laws by a simple majority;
- Prevents abuse of the process by excluding any "extraneous" changes to federal law, similar to the "Byrd Rule" during the reconciliation process; and
- Ensures that members of the minority party in the Senate have an opportunity to propose alternative updates to the law.

Critically, this bill would not purport to authorize Congress to "overrule" all Supreme Court decisions. Congress can always amend the law in response to the Court's interpretation of a statute or provide greater federal statutory protections than the Supreme Court says are required under the Constitution. Indeed, Congress has done both on numerous occasions under both parties (see, e.g., the Lilly Ledbetter Fair Pay Act and RFRA).