

TO: Interested Parties

FROM: Court Accountability, Revolving Door Project, Take Back the Court, & True North Research

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SUBJECT: Is SCOTUS Avoiding Politically Sensitive Issues Before November?

On Friday, October 4, the Supreme Court added a number of cases to its docket, taking on issues ranging from the [authority of the Nuclear Regulatory Commission](#) to [whether Mexico can sue U.S. gun manufacturers](#). But for now, it appears the justices have mostly avoided taking up many of the most politically sensitive issues before them—at least until after the election.

The justices are political actors, and it is important that we view them as such. The *New York Times* recently [reported](#) that Chief Justice John Roberts took a majority opinion in a Jan. 6 insurrection case away from Justice Samuel Alito after it became public that Alito flew an insurrection-supporting flag. There is no evidence that Roberts pressured Alito to recuse from the case, however—even though a Justice who is not fit to author an opinion due to a conflict of interest is, realistically, also not fit to otherwise participate in the case.

The Court's right-wing majority appears to care about the *public perception* of its impropriety and partisanship much more than *actual* impropriety and partisanship. With the Court's [record-low approval ratings](#), these justices have an incentive to avoid putting certain kinds of issues on the docket just a month before an election, especially because they can just wait until after election day. With Trump having appointed three justices to cement the far-right faction, it also benefits Trump's campaign that the MAGA Court avoid taking up cases on issues that he is also avoiding. As Justice Jackson [noted](#) earlier this year in response to the Court's right-wing supermajority punting an abortion case until after the election, the Republican-appointed justices appear eager to delay controversial actions until a "more convenient point in time."

For example, the Supreme Court on Monday relisted a petition for a case concerning efforts by South Carolina Republicans to [defund Planned Parenthood](#), delaying the justices' consideration of an abortion case which could clearly resonate with the public and further raise the salience of the issue. (They did not, however, hesitate to [refuse](#) a Biden administration appeal of the Republican-driven abortion ban in Texas, which allowed them to rule against abortion rights without the drama of an oral argument at the Court.) Similarly, at a time when housing costs are top of mind for many Americans, the Court has delayed granting or denying cert in a case concerning [rent regulations in New York](#)—which the big business groups with which the right-wing justices often side, such as the [U.S. Chamber of Commerce](#), have [urged](#) the Court to strike down, which would result in dramatically higher rent charges for working Americans.

The Court has also relisted [Consumers' Research v. Consumer Product Safety Commission](#) and rescheduled [Consumers' Research v. Federal Communications Commission](#), both of which threaten to undermine executive branch agencies' authority to protect consumers following the right-wing justices' decision to [gut Chevron deference](#) this summer. Beyond the fact that many people like their consumer products to be regulated and safe, the petitioner in both cases is [backed](#) by one of the right-wing justices' major benefactors, [Leonard Leo](#)—a fact that could remind the public of the [Court's many corruption scandals](#) if either case was given the spotlight before the election.

The Court could very well grant some of these petitions after the election, when such a decision would no longer be an election issue. Relisted petitions are historically [more likely to be granted](#) than non-relisted petitions, although certainly it is no guarantee—some may also be decided before the election. Broadly, the fact that the Court has not yet indicated whether it will take up many of the most controversial questions presented to it this term should give us pause rather than comfort.



Throughout this term, we will have experts available to speak about the big issues and bad actors at the Court. Please don't hesitate to reach out to alexa@takebackthecourt.today, jeffhauser@gmail.com, and/or press@truenorthresearch.org to get in touch.

Our organizations have been tracking how the justices' wealthy friends and benefactors are lobbying the Court through amicus briefs. To learn more, visit SupremeTransparency.org.