

The SCOTUS 2021–2022 Term: Decisions and analysis

While abortion rights was the leadoff issue in this year’s Term, other important decisions also were in play, including COVID-19 vaccination, controlled substances liability, and Medicare reimbursement

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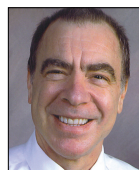
The 2021–2022 US Supreme Court Term was a blockbuster medical Term. The bookends of the Term were COVID-19 vaccinations and abortion rights. Between the bookends were Medicare reimbursement, criminal liability for prescribing controlled substances, gun control, and carbon dioxide emissions. In this article, we focus on the significant medical issues, briefly note other important decisions, and consider the implications of this Term.

Abortion decisions

*Dobbs v Jackson Women’s Health Organization*¹ was the most controversial decision



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and, for ObGyns, perhaps the most important decision in decades. The basic holding of the case can be stated simply: *Roe v Wade*² and *Planned Parenthood of Southeastern Pennsylvania v Casey*³ (which essentially created a constitutional right to abortion) are overruled. The law related to abortion is for the states and Congress to determine, not federal courts. (For a review of earlier reproductive freedom cases in the Court, see our previous article, “The Supreme Court and reproductive rights.”⁴)

Dobbs arose from a Mississippi statute that made it illegal to perform abortions after 15 weeks of gestation, well before viability. Six members of the Court held that the Mississippi law was constitutional and 3 would have struck down the state law. There were 5 opinions, covering a total of 213 pages in the *U.S. Reports*. The Court fell into 4 camps, ranging from the most to the least protective of abortion rights, as follows:

- Three justices (Breyer, Kagan, and Sotomayor) voted to strike down the Mississippi statute and uphold *Roe* and *Casey* and wrote a joint dissent. They believe the Constitution makes abortion an issue “off limits to majority rule.” They also warned that other areas of “substantive due process” (discussed below), including contraception and same-sex marriage, might be under threat.
- The Chief Justice voted to uphold the statute but wanted an incremental approach; that is, not to overturn *Roe* and *Casey*

entirely in this case because the *Dobbs* case required the Court only to determine the more limited question of whether the 15-week limit on abortion was constitutional. He found that the viability standard did not make sense, but he suggested that the Court “leave for another day” whether to overturn *Roe*.

- Five justices joined the opinion to uphold the statute and overturn *Roe*. Justice Alito wrote the decision joined by Justices Thomas, Kavanaugh, Gorsuch, and Barrett. They found that a right to abortion was not “deeply rooted in our Nation’s history,” as evidenced by the fact that when the 14th Amendment was adopted, abortion was a criminal offense in most states and not a protected right in any state. In 2 lengthy appendices, the Court reviewed the criminalization of abortion in the states in 1868 and in the territories that later became states. Even when *Roe* was decided in 1973, abortion was not “deeply rooted” because it was not generally legal in the states. Justice Kavanaugh joined this opinion and wrote separately to emphasize that the majority opinion does not outlaw abortion, but rather leaves the issue to “the people and their representatives.” He also emphasized that the case did not overturn all of the substantive due process cases.
- Justice Thomas would have gone further and abandoned “substantive due process” completely.

The constitutional issue

The majority said that the issue before the Court was *not* whether the law should permit or prohibit abortions—that is a question for the political branches. Rather, the question was only whether the Constitution precludes the political branches from allowing abortions. There is no mention of abortion in the Constitution and no specific reference to a right to privacy that includes medical decisions. A central constitutional question has been to identify where exactly in the Constitution the right to privacy resides. The Court has generally used “substantive due process” to locate privacy rights. The 14th Amendment

provides, in part, that no state may “deprive any person of life, liberty, or property, without due process of law.” “Process” generally refers to procedural protections, but the Court sometimes has used it to encompass substantive rights (for example, privacy)—hence, “substantive due process.”

Over the decades, the legitimacy of substantive due process has remained controversial. Justice Thomas called it an “oxymoron” to turn “process” into substantive rights. And its use has a somewhat checkered history. For nearly 50 years (1890–1937), it was used to preclude states from protecting employees (for example, hour and wage laws violated “the right to contract”) and was discredited. More recently the Court has used substantive due process to protect contraception access, abortion, and same-sex marriages.

A critical question is knowing what rights substantive due process protects. The Court sometimes has said that it protects rights “deeply rooted in the Nation’s history and traditions” and “implicit in the concept of ordered liberty,”⁵ although in other cases suggested a more ambiguous definition.⁶ The next constitutional question is how to state or define the right to be protected. For example, is it the right to intimately personal decisions, bodily integrity, reproductive choice, abortion, or late-term abortion? Some of those may be deeply rooted in history and traditions (intimate decisions), and others not so much (late-term abortion). Finally, a question is whether a substantive right is defined at the time the 14th Amendment was adopted (1868) or now—is it a “living Constitution” that, without much guidance, means whatever 5 justices believe at the moment, or is it a Constitution grounded in the distant past?

The future of substantive due process is uncertain following *Dobbs*. Although the majority said it was not disclaiming substantive due process, the dissent said it doubted that claim because other rights are “part of the same constitutional fabric” (substantive due process). The Court might, in future cases, find some other constitutional provision in which to ground rights. The source of those

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Additional interesting cases in 2021–2022

Among the other important cases this Term, the Court made these determinations:

- Held that the 2nd Amendment, as applied to the states through the 14th Amendment, includes a general right to carry a gun for self-defense outside the home.¹ It struck down a New York law that required people to show a special need to have and carry a gun.
- Determined that the US Environmental Protection Agency exceeded the authority Congress had granted it with a “Clean Power Plan” that was intended to reduce carbon dioxide emissions.² It is up to Congress, not the agency, to expand agency authority.
- Gave trial courts discretion in determining whether (and under what conditions) children in international custody disputes must be returned to their home countries where there is a serious risk of harm to them.³
- Held that there is an implied right of action to sue medical providers for disability discrimination, but under the Rehabilitation Act and the Affordable Care Act the damages do not include emotional harm.⁴
- Decided several “free exercise of religion” cases, and in each found the state had violated religious rights, holding that: A state improperly prevented religious schools from being eligible for a state tuition grant system,⁵ a coach was wrongfully fired for kneeling in prayer following football games,⁶ Boston denied free speech in allowing other organizations to fly their flags but denying a Christian flag to be displayed,⁷ and a state must permit prisoners to have a spiritual advisor to be present and pray and touch them during their execution.⁸
- Held that the administration’s rescission of the “stay in Mexico” immigration policy was permitted by existing statutes.⁹

References

1. *New York State Rifle & Pistol Association, Inc. v Bruen*, 20-843, decided June 23, 2022. https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf
2. *West Virginia v Environmental Protection Agency*, 20-1530, decided June 30, 2022. https://www.supremecourt.gov/opinions/21pdf/20-1530_new_1537.pdf
3. *Golan v Saada*, 20-1034, decided June 15, 2022. https://www.supremecourt.gov/opinions/21pdf/20-1034_b8dg.pdf
4. *Cummings v Premier Rehab Keller*, 20-219, decided April 28, 2022. https://www.supremecourt.gov/opinions/21pdf/20-219_1b82.pdf
5. *Carson v Makin*, 20-1088, decided June 21, 2022. https://www.supremecourt.gov/opinions/21pdf/20-1088_dbfi.pdf
6. *Kennedy v Bremerton School District*, 21-418, decided June 27, 2022. https://www.supremecourt.gov/opinions/21pdf/21-418_new_onkq.pdf
7. *Shurtleff v Boston*, 20-1800, decided May 2, 2022. https://www.supremecourt.gov/opinions/21pdf/20-1800_7lho.pdf
8. *Ramirez v Collier*, 21-5592, decided March 24, 2022. https://www.supremecourt.gov/opinions/21pdf/21-5592_feah.pdf
9. *Biden v Texas*, 21-9_54, decided June 30, 2022. https://www.supremecourt.gov/opinions/21pdf/21-954_7l48.pdf

rights might be the 9th Amendment (in addition to the Constitution’s enumerated rights, there are “others retained by the people”) or another provision of the 14th (“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...”). Each of these possibilities has its problems, many of which are similar to substantive due process, but they avoid the “oxymoron” issue.

ObGyn briefs in the case

The medical profession filed several *amicus curiae* briefs in the *Dobbs* case. (These are “friends of the court” briefs filed by nonparties to the litigation. The purpose is to give a court a perspective on the case not presented by the parties.) The American College of

Obstetricians and Gynecologists (ACOG) took the lead in filing an *amicus* brief.⁷ Nearly 2 dozen other medical organizations joined the brief, including the American Academy of Pediatrics, American College of Osteopathic Obstetricians and Gynecologists, American Gynecological and Obstetrical Society, American Society for Reproductive Medicine, Council of University Chairs of Obstetrics and Gynecology, North American Society for Pediatric and Adolescent Gynecology, Society for Academic Specialists in General Obstetrics and Gynecology, Society of Gynecologic Oncology, and Society of OB/GYN Hospitalists.

The brief argued that abortion is a safe procedure, an abortion ban would harm the health of pregnant patients, and it would undermine the physician-patient

relationship and interfere with patient autonomy. It also discussed the issue of fetal pain,⁸ telling the Court that “Every major medical organization that has examined the issue of fetal pain and peer-reviewed studies on the matter have consistently concluded that pre-viability abortion does not result in fetal pain perception.”⁹ The brief was cited in the dissent for the fact that “About 18 percent of pregnancies in this country end in abortion, and about one-quarter of American women will have an abortion before the age of 45.”¹⁰

The Court received a different view from an *amicus* brief filed by the American Association of Pro-Life Obstetricians and Gynecologists.¹¹ It told the Court that abortion, especially later-term, poses health risks: the abortion process itself may injure the woman, abortion puts women at risk for future preterm births, later-term abortion raises a woman’s risk of developing breast cancer, and abortions (especially those later in the pregnancy) are linked to a greater risk of psychological harm.¹² The brief also noted that 93% of obstetrician-gynecologists do not perform abortions, and “abortion has been deemed contrary to sound medicine for thousands of years” (citing the Hippocratic oath).¹³ The brief was not cited by the Court.

Many other medical and pro-life medical groups presented *amicus* briefs. A list of and links to all the briefs is available on the SCOTUSblog website at <https://www.scotusblog.com/case-files/cases/dobbs-v-jackson-womens-health-organization/>.

Ramifications

The Court decision does not make abortion illegal but allows states (and possibly Congress) to decide whether, when, and how abortions may be performed. Some states may ban most abortions (making it illegal to have or to perform abortions). Thirteen states had “trigger laws” to go into effect limiting abortion if the Court permitted such limitations. Most of those states were almost immediately entangled in lawsuits challenging the state laws. Some states, for example, have privacy provisions in their state constitution that state courts could interpret as allowing

abortion, thereby voiding the state statutes prohibiting abortion.

At least a few states have abortion laws still on the books that were passed decades ago (perhaps before *Roe*) and were never repealed. Those laws may once again be valid, although state courts might hold that those statutes were repealed by *Roe* and must be passed again to be valid. Some experts anticipate that 28 states will eventually have significant limitations on abortion.

The Guttmacher Institute maintains a frequently updated table on the abortion laws in each state.¹⁴ According to one estimate, 29 states are hostile to abortion rights (or lean that way), with about 40 million women aged 13 to 44 (58% of the United States) living in states with some hostility to abortion.¹⁵ Congress may pass some national abortion laws, but that seems unlikely and there may be some limits on its ability to control private medical practice within states.

An additional legal issue will arise from medication-induced abortions, generally through the use of mifepristone and misoprostol. They now account for the majority of abortions. These medications might be used for abortion, up to about 9 weeks of pregnancy, in states prohibiting abortion. The drugs once were available only with an in-person visit, but now the US Food and Drug Administration (FDA) permits mail-order delivery. The potential exists, therefore, to circumvent states’ prohibition on abortion through mail-order postal shipments. The FDA controls the licensing of pharmaceuticals in interstate commerce, but not the practice of medicine within a state. Therefore the ability of individuals (within a state) to possess or use drugs is unclear.

The abortion wars of the last 50 years gave rise to state laws related to abortion, including consent by minors, information to parents, special informed consent, and facilities requirements. If these laws were once struck down because they were inconsistent with *Roe*, but were never formally repealed, they may now become legal requirements.

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Farewell to Justice Breyer and welcome to Justice Jackson

On January 27, 2022, Justice Stephen Breyer informed President Biden of his intention to retire from the Court at the end of the Term. At age 84, he was the oldest member of the Court, but he continued to be among the most active of the justices and seemed to relish the work of the Court. He had been under pressure from liberal groups to retire earlier so a successor could be confirmed by a Democratic Senate. In many ways he was the Renaissance man of the Court: he spoke fluent French, wrote books, and famously sprinkled his questions with complex and funny hypotheticals.

Justice Breyer was a law professor before becoming a judge and enjoyed presentations to many groups, from children to law professors. He loved the Court and defended it—most recently against partisan attacks from both the right and the left. In the decisions of the Court, he was one of the more liberal justices. He had, for example, indicated that the death penalty is unconstitutional.

In his January retirement letter, he said that he would step down at the end of the Term if his replacement had been appointed and confirmed. She had. The new justice had clerked for Justice Breyer in 1999–2000.

Ketanji Brown Jackson was nominated by President Biden on February 28, confirmed by the Senate on April 7 by a 53–47 margin, and sworn in on June 30, 2022. Justice Jackson had previously been a federal district court judge and on the Court of Appeals for the D.C. Circuit. She attended Harvard-Radcliffe College and received her law degree from Harvard Law School. She worked as a criminal defense attorney and was active in the US Sentencing Commission.

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courts but by state law, generally legislatures. In legislative hearings, town hall meetings, and conversations with lawmakers, ObGyns should engage the topic of abortion with scientific expertise, reason, openness, and humility. It will be impossible for the profession to speak with a single voice, as the briefs filed this Term demonstrate. Where there are honest differences in science, the reasons for the different interpretations should be explainable to lay decision makers. The profession, who are not being pseudo-lobbyists, can contribute a great deal to the rational consideration of this emotional topic.

What is a practitioner to do?

For many practitioners, the *Dobbs* decision will have little effect because their state laws are consistent with *Roe*, and the legislature is not going to change the law. They may, of course, see an influx of patients from other states (that restrict abortion) seeking treatment. At the other extreme, in some states, most abortions will become prohibited. State courts may ease the restrictions. In many states, there will be an ongoing battle over when abortion is legal and when it is not, resulting in shifting laws and regulations. Keeping up with the shifts that affect practice will be a challenge.

All states are likely to permit abortions “to save the life of the mother,” and many will have a version of “to preserve the health of the mother.” Other exceptions may be for pregnancy resulting from rape or incest or in the case of serious fetal abnormality. ObGyns, of course, will be called on to certify that one of these exceptions exists. Determining that pregnancy resulted from rape or incest, of course, can be challenging. Before *Roe*, there was a cottage industry opining that pregnancy seriously affected the health of the mother, which often involved physical manifestations of mental health. ObGyns in some states may be asked once again to make such determinations.

Laws not directly related to abortions will, in some states, be changed as a way of discouraging abortion. For example, child abuse reporting laws may be modified to require reporting of any known or suspected abortion or attempted abortion, and medical licensing standards may make it a violation to participate in or facilitate abortion in any way.

Particularly in states where the rules keep shifting, practitioners must keep up with the current law. Professional organizations can help with that, but there is no substitute for practitioners having an ongoing professional

relationship with an attorney who has expertise in health law.

Other abortion decisions this Term

In other abortion decisions this Term, the Court refused to suspend a Texas law that prohibited abortions after a fetal heartbeat could be detected.¹⁶ The law has remarkable enforcement mechanisms that preclude state officers from enforcing it; instead, it creates what amounts to a private attorney general (PAG) provision that allows private citizens to file suit against anyone performing or assisting in performing abortions. This PAG made pre-enforcement challenges to the law difficult.¹⁷

In a Kentucky case, the Court allowed the Kentucky attorney general to intervene in a case that challenged a Kentucky law that prohibits physicians from using dilation and evacuation procedures to end second-trimester pregnancies.¹⁸

Criminal convictions for physicians' overprescription of controlled substances

Perhaps the least sympathetic of the physicians involved with the Court this Term were the 2 in *Ruan v U.S.*¹⁹ Their trials indicate that Dr. Ruan's clinic issued more than 300,000 controlled substance prescriptions over 4 years and was one of the most frequent prescribers of fentanyl. Dr. Kahn prescribed controlled substances without an examination, falsified notes, and sold controlled substances for cash and guns.²⁰

Both physicians were convicted of "knowingly or intentionally" dispensing a controlled substance without authorization.²¹ They were authorized to prescribe drugs, but only "for a legitimate medical purpose."²² Appeals to their respective Circuit courts confirmed their convictions. The Supreme Court, however, held that to convict them, the government must prove that they knowingly or intentionally acted in an unauthorized manner. That proof can be by circumstantial evidence, but it must be beyond a reasonable doubt.

Health care reimbursement

Hospitals won one and lost one Medicare-Medicaid reimbursement case that involved payments for low-income patients.

In the loss, the Court held that the US Department of Health and Human Services (HHS) properly calculated the disproportionate share adjustments (DSH), or Medicare fraction,²³ that provides a supplemental payment for hospitals with a large proportion of low-income patients. The lower DSH payments calculated by HHS were upheld, thereby reducing the number of hospitals receiving DSH payments and decreasing the amounts others will receive.

The win involved payments for prescription drugs that hospitals provide to outpatients in safety-net hospitals.²⁴ HHS determined that it was overpaying hospitals for drugs and cut the reimbursement rate. The Court held that before HHS can change the drug rate, it must conduct a survey of hospitals regarding actual costs. It had not done that, so the rate reduction was not permitted by the law.

An accidental disincentive to (some) malpractice suits

Medicaid requires states to obtain part of a tort recovery that recipients obtain if Medicaid is covering medical expenses related to their injuries. In implementing that law, a state may provide a disincentive for injured beneficiaries to file malpractice cases. At issue was a Florida law that provided the Medicaid state would take 37.5% of the beneficiary's total tort recovery (being one-half of the recovery after deducting 25% for attorney's fees and costs). In a 7-2 decision, the Court upheld the Florida law.²⁵

The disincentive to filing a lawsuit is that the state is taking 37.5%, plus contingency fee attorneys will typically take 33.3% (and there will be some fees). This is especially true when there is a state cap on noneconomic damages. In the case the Court decided, the plaintiff received a settlement of \$850,000. If we assume a typical contingency fee, less the state's Medicaid claim of \$300,000, the

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plaintiff possibly received \$266,667. That is not trivial, but it is only 31% of the settlement.

The Medicaid expectation of reimbursement and the Florida approach, however, impose heavy burdens on severely injured beneficiaries. The plaintiff had catastrophic injuries and was in a vegetative state. There are some things Medicaid does not pay for, as well as nonmedical expenses. The amount left for such expenses is likely well below what the family will need.

COVID-19 vaccinations

Had it not been for the abortion decisions, 2021–2022 might have been “the COVID Term.” Two of the most anticipated decisions involved mandatory vaccinations (or masking/testing instead). The question in each of these cases was whether Congress had authorized 2 federal agencies to issue the emergency regulations requiring vaccination. Emergency regulations are held to higher standards because they bypass the usual protections of the Administrative Procedure Act.

One case involved a regulation issued by the Occupational Safety and Health Administration (OSHA) that employers (with more than 100 employees) must require their employees to be vaccinated. In a 6-3 decision, the Court held that OSHA did not have the authority to enforce this as an emergency regulation. The other case was a regulation issued by HHS that health care institutions receiving Medicare and Medicaid funding must require all staff to be vaccinated.²⁶ In a 5-4 decision, the Court upheld this emergency regulation because of the very broad authority Congress had given HHS to ensure the safety of patients and the quality of Medicare- and Medicaid-funded programs.²⁷

In another case, in the shadow docket (orders and opinions in cases without full arguments), the Court struck down the Centers for Disease Control and Prevention’s eviction moratorium.²⁸ The Court said the government claimed “a breathtaking amount of authority” that Congress did not intend. In other shadow docket cases, the Court refused to hold unconstitutional state laws that

require COVID-19 vaccination but did not have religious exemptions.²⁹

Analysis of this Term

It was an extraordinary Term. The Court decided 66 cases (excluding most cases in the shadow docket), a low number historically. Not only were there many seminal cases but also the Court appears to be shifting toward a new direction. That direction may be oriented more toward the original understanding of the words of the Constitution and statutes and less toward policy; Congress rather than administrative agencies; racial nondiscrimination rather than preferences; and the free exercise rather than the establishment of religion. Whether there is such a shift or not, of course, only time will tell.

Chief Justice Roberts and Justice Kavanaugh were in the majority most often (95% of the cases), followed by Justices Barrett (90%), Alito (85%), Thomas (80%), and Gorsuch (75%). Justices Kagan (69%) and Breyer (68%) were not far behind. Justice Sotomayor was in the majority 58%. The Court was unanimous 29% of the time, well below the decade average (43%), and 6-3 accounted for 30% of the decisions.

A major, potentially scarring, event this Term was the leak of an early draft of the majority opinion in *Dobbs*. Although leaks have occurred before, the early leak of an opinion was unprecedented. It will almost inevitably change the openness and candor within the Court and the justices’ clerks. Although not unprecedented, the attempt on the life of Justice Kavanaugh and the organized efforts to harass some justices in their homes are likely to have lasting impact. Almost certainly it means that justices and their families will have constant security and their movements and connection with the general public will become less frequent, which is sad for the justices and our democracy.

Looking toward the next Term

When the Court next convenes, Justice Ketanji Brown Jackson will take her seat on the left end of the Court (the traditional seat for

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a new justice, not a commentary on judicial philosophy). The Court has already taken many cases, including issues about university affirmative action programs, web designers and same-sex couples, redistrict-

ing and voting rights, DNA testing in criminal cases, and overtime pay for someone making over \$200,000 per year. It begins Monday, October 3, and promises to be another interesting Term. ●

References

1. *Dobbs v Jackson Women’s Health Organization*, 19-1392, decided June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf
2. *Roe v Wade*, 410 U.S. 113, 163 (1973).
3. *Planned Parenthood of Southeastern Pennsylvania v Casey*, 505 U.S. 833 (1992).
4. Smith SR, Sanfilippo JR. The Supreme Court and reproductive rights. *OBG Manag*. 2022;34(1):36-41, 46. https://cdn.mdedge.com/files/s3fs-public/issues/articles/obgm0340136_smith.pdf
5. *Washington v Glucksberg*, 521 U.S. 702 (1997).
6. *Obergefell v Hodges*, 576 U.S. 644, 654-70 (2015).
7. Brief of amici curiae of American College of Obstetricians and Gynecologists, American Medical Association, et al, in *Dobbs v Jackson Women’s Health Organization*, in Support of Respondents (Sep. 2021). https://www.supremecourt.gov/DocketPDF/19/19-1392/193074/20210920174518042_19-1392%20bsacACOGetal.pdf
8. *Id.* at 8, 13-15.
9. *Id.* at 14.
10. Justices Breyer, Kagan, and Sotomayor, dissenting, at 48, note 22.
11. Brief for American Association of Pro-Life Obstetricians And Gynecologists as Amicus Curiae, in *Dobbs v Jackson Women’s Health Organization*, in Support of Petitioners (July 2021). https://www.supremecourt.gov/DocketPDF/19/19-1392/185350/20210729163532595_No.%2019-1392%20-%20American%20Association%20of%20Pro-Life%20Obstetricians%20and%20Gynecologists%20-%20Amicus%20Brief%20in%20Support%20of%20Petitioner%20-%207-29-21.pdf
12. *Id.* at 3-4, 7-29.
13. *Id.* at 30.
14. Guttmacher Institute. An overview of abortion laws. July 11, 2022. <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws>
15. Guttmacher Institute. State abortion policy landscape: from hostile to supportive. Dec. 2020. <https://www.guttmacher.org/article/2019/08/state-abortion-policy-landscape-hostile-supportive>
16. *Whole Woman’s Health v Jackson*, 21-463, decided Dec. 10, 2021. https://www.supremecourt.gov/opinions/21pdf/21-463_new_8o6b.pdf
17. *United States v Texas*, 21-588, decided Dec. 10, 2021. (Per curiam, Sotomayor dissenting). https://www.supremecourt.gov/opinions/21pdf/21-588_c07d.pdf
18. *Cameron v EMW Women’s Surgical Center*, 20-601, decided Mar. 3, 2022. https://www.supremecourt.gov/opinions/21pdf/20-601_new_g20h.pdf
19. *Xiulu Ruan v United States*, 20-1410, decided June 27, 2022. https://www.supremecourt.gov/opinions/21pdf/20-1410_1an2.pdf
20. Adam Liptak. Supreme Court sides with doctors accused of running pill mills. *The New York Times*. June 27, 2022. <https://www.nytimes.com/2022/06/27/us/politics/supreme-court-controlled-substance-act.html>
21. 84 Stat. 1260, 21 U.S.C. §841(a).
22. 21 CFR §1306.04(a) (2021).
23. *Becerra v Empire Health Foundation, For Valley Hospital Medical Center*, 20-1312, decided June 24, 2022. https://www.supremecourt.gov/opinions/21pdf/20-1312_j42l.pdf
24. *American Hospital Association v Becerra*, 20-1114, decided June 15, 2022. https://www.supremecourt.gov/opinions/21pdf/20-1114_09m1.pdf
25. *Gallardo v Marstiller*, 20-1263, decided June 6, 2022. https://www.supremecourt.gov/opinions/21pdf/20-1263_new_hfci.pdf
26. *National Federation of Independent Business v Department of Labor, Occupational Safety and Health Administration*, 21A244, decided Jan. 13, 2022. https://www.supremecourt.gov/opinions/21pdf/21a244_hgci.pdf
27. *Biden v Missouri*, 21A240, decided Jan. 13, 2022. https://www.supremecourt.gov/opinions/21pdf/21a240_d18e.pdf
28. *Alabama Association of Realtors v Department of Health and Human Services*, 21A23, decided Aug. 26, 2021. https://www.supremecourt.gov/opinions/20pdf/21a23_ap6c.pdf
29. *Does v Mills*, 21A90, decided Oct. 29, 2021. https://www.supremecourt.gov/opinions/21pdf/21a90_6j37.pdf