

Q&A: Expert explains how recent Supreme Court decisions and a shift in judicial tactics are reshaping US politics

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In the wake of recent Supreme Court terms with controversial decisions on [presidential immunity](#), [abortion](#) and other hot-button issues, public trust in the court sits at [historic lows](#).

USC research, published in [The Forum](#), reveals that the current discontent is tied to a bigger shift—and irony—in U.S. politics: The

legal strategies once used to advance liberal causes are now being wielded by conservatives and others to block progressive policy in climate change and housing.

USC News spoke with Jeb Barnes, a professor of political science at the USC Dornsife College of Letters, Arts and Sciences and co-author of The Forum paper, for insights into how these judicial tools have evolved and what this means for the future, especially in the lead-up to the November election.

How has the relationship between liberals and judicial policymaking changed?

After a series of highly partisan confirmation processes and controversial high-profile decisions, like the [Dobbs](#) decision that overturned "Roe v. Wade," liberals have grown increasingly critical of the Supreme Court. Less attention, however, has been paid to growing structural tensions between changes in liberals' policy goals and the nature of judicial policymaking, which is often better suited to impeding action than facilitating change.

The result is often deeply ironic, as judicial policymaking tools developed by liberals to further their agenda in the 1960s and '70s are now being used against them.

What are some examples?

The most obvious example is that conservatives have taken a page from [civil rights](#) groups like the NAACP and built capacity to use constitutional law to further their policy goals, resulting in significant victories in campaign finance, gun rights, affirmative action and abortion.

A similar—but less visible—form of political jujitsu has occurred in administrative law. In the 1970s, liberals developed procedures aimed at forcing businesses to consider [environmental costs](#) and slow down large-scale developments. Now, in response to [climate change](#), environmentalists want to build a green energy infrastructure but face significant "not-in-my-backyard" resistance from local interests, which are using the same procedural obstacles liberals once used against polluters. We see a similar dynamic in housing.

How is this relevant to the upcoming elections?

The courts will be a key issue in the upcoming presidential election. Much of the media focus will be on judicial appointments and Supreme Court decisions. However, keep an eye out for Democrats' calling for initiatives to build things, such as Vice President Kamala Harris' campaign [promise](#) to construct 3 million starter homes by the end of her first term.

As Democrats continue to embrace what some have called "abundance" or "supply-side" liberalism, expect to see tensions between them and the courts grow beyond any discontent with specific Supreme Court justices or decisions.

More information: Thomas F. Burke et al, The Post-Brown Era in Judicial Policymaking, *The Forum* (2024). [DOI: 10.1515/for-2024-2008](https://doi.org/10.1515/for-2024-2008)

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