

## Cozen Currents: The Politics of Democracy

### The Cozen Lens

The 2020 election and its aftermath were a major stress test of American democracy. There are more stress tests to come in this year's midterm election and in 2024.

While the Fed covets its traditional independence that has not kept it from increasingly being caught in the political crossfire.

The Supreme Court's Dobbs ruling last term raised concerns over politicization of the Court's decisions. Its conservative 6-3 majority is likely only to exacerbate those concerns in its new term.

### The Politics of Democracy

**All Politics (and Elections) are Local.** Elections are run at the state, not federal level. Once overlooked state positions of power that are responsible for the administration of elections are now ground zero for the fight over democracy as the electoral process becomes as contested as the races themselves.

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Most election denialists aren't gaining ground in gubernatorial races. However, some are. Election denialists like Doug Mastriano in Pennsylvania and Tudor Dixon in Michigan are running unconventional campaigns leaving them as conventional underdogs. Yet others like former TV anchor Kari Lake in Arizona have found ways to be real contenders.

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Election denialists are more successful in lower profile races such as secretary of state. A critical position to administer and certify elections, the Republican candidates in Arizona and Nevada are conspiracy theorists who are still active in trying to decertify and delegitimize the 2020 elections. Yet they are running as well or even better than other statewide Republican candidates.

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In a case currently pending before the Supreme Court, it could give state legislatures virtually unchecked power to oversee elections. Under the so-called "independent state legislature theory," only state legislatures have the authority to determine election rules under the Constitution, effectively ending the judiciary's role as an arbiter insulated from political influences, at least in theory, of electoral procedural battles.

**January 6<sup>th</sup>: Coup D'état or Coup de Grâce?** The January 6th attack on the US Capitol has only exacerbated the divides and trust deficit between Republicans and Democrats, including their respective faith in the electoral system. However, there remains bipartisan interest in trying to prevent a repeat of that fateful day at least at a minimum.

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President Biden wants to save democracy. However, can he? It was one of the overarching themes of his candidacy and now presidency. He wants to prove to anti-democratic sentiments at home and authoritarians abroad that democracy works.

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Election deniers are empowered, not rebuked at the federal level. Of the 419 Republican nominees for House seats, 56 percent are election deniers, according to a *Washington Post* report. Several are replacing Republicans who voted to impeach President Trump and certify the electoral count in 2020.

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There's broad bipartisan support within Congress for some changes to administering elections, even among those who challenged the 2020 election results. The Senate's Electoral Count Reform Act, which is likely to get a vote during the lame duck session, would prevent "alternate slates" of electors from each state, expedite the judicial review process for election challenges, and raise the bar for objecting to the counting of a state's electoral votes in Congress.

**Democracy is Not a Priority Among Voters.** Democrats are trying to elevate the issue of preserving democracy. However, voters, including even Democrats themselves, don't always seem to care.

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Americans don't believe elections are fair. The number of Americans distrustful of elections – more than a majority – has only grown since the January 6th insurrection. A majority also believe democracy is in crisis and the country is at risk of a civil war.

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Most Americans compartmentalize these risks and concerns about democracy though. According to a Gallup poll, just four percent of Americans view elections and democracy as the most important issue, with the economy remaining front-and-center.

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Democrats played with fire in spending millions to bolster election deniers in some Republican primaries. While it was meant to give Democrats a leg up in the general election, it could backfire in races like the Arizona gubernatorial election.

## The Politics of the Fed

**Powell in the Shadow of Volcker.** After a series of unprecedented economic challenges, Federal Reserve Chair Jerome Powell has found himself facing yet another difficult task: managing high inflation ahead of a significant election.

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As quickly as consumers have begun to adjust to the new "normal," today's inflation rates have not been experienced in nearly four decades. Then-Federal Reserve Chair Paul Volcker raised rates and was eventually successful in curbing high prices. The cost was a recession that saw the unemployment rate spike to over 10%.

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Volcker's policy was particularly frustrating to then-President Reagan and is seen as having cost the Republicans congressional seats in the 1982-midterm elections. Volcker had to take the criticism, but as the Fed is a politically independent institution, he himself did not pay any political cost for his policy actions.

**An Immediate Impact.** The impending midterms were already expected to be a problem for Democrats, but rising interest rates could pose an insurmountable challenge by compounding one of their weakest issues in voters' views.

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Inflation has consistently been a top issue for voters ahead of this election. Unfortunately, for

Democrats, Republicans have also been consistently seen as the more trustworthy party to handle economic issues.

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Declining gas prices have somewhat mitigated the focus on inflation, but increasing interest rates and the possibility of recession have come to the fore in its place. While it is hard to argue that the Fed made the wrong decision from a monetary policy perspective, albeit too late, raising rates is causing economic concern among voters, especially those with debt.

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The difficulty for Democrats in finding a winning economic message is that voters are split on whether there should be a focus on taming inflation quickly or avoiding a recession, but agree that the economy is headed in the wrong direction regardless. A focus on doing more of the same will not resonate, but arguing for a big reversal is also perceived as an admission of a previous mistake. The likely result has been varied local campaign strategies where candidates focus on what is most salient in their particular locales.

**The Elephant in the Room.** While higher rates are less likely to be an economic issue leading up to the 2024 presidential election, what would be a problem for President Biden is the recession that is anticipated as a result.

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If a recession does come, Biden will inevitably want to place the blame elsewhere, and the question would be how much he seeks to lay at the feet of Powell. The two appeared to be operating with a hand-in-glove relationship at the start of Biden's term, but as inflation spiraled, their sense of simpatico has faded as the Fed has been forced to act. Biden could resort to the bully pulpit and put public pressure on Powell to reverse course, just as President Trump sought to rhetorically browbeat Powell.

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The problem with this strategy is that Powell and the Fed are not on the ballot. Therefore, no matter how much of a scapegoat Powell becomes, Biden and the Democrats are more likely to be held responsible for a recession by voters in the 2024 election. History suggests that the odds of Democrats having a successful campaign if there is a recession are low as no Democratic president has been re-elected when a recession has started in their term since FDR. Of course, a lot of historical – and institutional – norms have been broken in recent years.

### **The Politics of the Supreme Court**

**The Supreme Court's 2022-23 Term.** The Supreme Court's 6-3 conservative majority is poised to shift American jurisprudence further rightward this term.

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Conservatives' supermajority allows them to go farther than what was possible with a 5-4 Court. Although Chief Justice John Roberts declined to join the majority in *Dobbs v. Jackson Women's Health Organization*, their opinion suggests a willingness on the part of the rest of the conservative justices to overrule precedent when they believe it was wrongly decided.

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Conservative decisions from the Court may spark a political backlash from the left. In the past, judicial appointments have been more of a motivation for Republican voters, as two University of Houston political scientists found in a 2020 paper. While no single case this term is likely to be as energizing as *Dobbs* for the Democratic base, a pattern of multiple conservative rulings could be seen by Democratic voters as overreach and serve as a rallying cry going into the 2024 election.

**Key Cases on Social Issues.** The Court will consider several cases this term on some of the

most polarizing issues in US politics.

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Students for Fair Admissions v. President and Fellows of Harvard College, Students for Fair Admissions v. University of North Carolina: These two cases challenge affirmative action admissions policies. The Court in the past has repeatedly affirmed the use of race as a factor in college admissions as constitutional. These cases give the Court's conservatives an opportunity to restrict affirmative action in admissions or rule that it is not permitted under the Constitution.

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303 Creative LLC v. Elenis: This case was brought by a Colorado website designer who seeks to enact a company policy of declining to provide services for same-sex weddings due to her religious beliefs, which is in conflict with Colorado state law. The Court issued a narrow ruling in a previous case involving a Colorado baker who refused to make a custom wedding cake for a same-sex couple rather than rule on religious liberty and nondiscrimination in public accommodations more broadly. This time, it may be poised to set a precedent on the issue.

**Key Elections Cases.** The Court will also hear two cases that could influence the future of US elections.

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Moore v. Harper: After the North Carolina Supreme Court struck down new district maps as a partisan gerrymander, GOP state lawmakers appealed to the Supreme Court, citing the independent state legislature theory. In a dissent earlier this year, Justices Samuel Alito, Neil Gorsuch, and Clarence Thomas indicated support for the theory, while Justice Brett Kavanaugh wrote that he thought there were "serious arguments" on both sides of the case. It's not clear if there is a majority on the Court willing to embrace it.

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Merrill v. Milligan: This case pertains to Section 2 of the Voting Rights Act, which prohibits racial discrimination in voting. Plaintiffs challenged Alabama's new district maps as a racial gerrymander, while the state argues that under the 14th and 15th Amendments, race should not be a primary consideration of redistricting. Conservatives on the Court could potentially weaken Section 2, but oral arguments held last week suggest that justices may not go so far as to overrule past precedent on racial gerrymandering as Alabama aimed to do.

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