

**SLATE**

\* A PRETTY GOOD RUN LATELY

JURISPRUDENCE

## How Far Will the Supreme Court's Conservatives Go in Dismantling Anthony Kennedy's Legacy?

BY BRIANNE GOROD

SEPT 13, 2022 • 3:20 PM



Brett Kavanaugh at his swearing-in ceremony to replace retiring Justice Anthony Kennedy at the White House on Oct. 8, 2018. Brendan Smialowski/Getty Images

When the Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization* in June—overruling *Roe v. Wade* and rolling back the constitutional right to access abortion—one thing was clear: A big part of Justice Anthony Kennedy's legacy had just been dismantled. And as a new Supreme Court term is about to begin, many other remnants of Kennedy's jurisprudence are on the chopping block. The court this term has on its docket huge cases on issues such as affirmative action, LGBTQ equality, voting rights, and the environment. All of these issues were ones on which Kennedy's vote was often key,

and all of these cases now offer the court's conservative supermajority a chance to move the law radically to the right of where Kennedy had helped place it, as happened in *Dobbs*. Whether they choose to do so will depend on their willingness to jettison not only Supreme Court precedent, but also constitutional text and history.

Perhaps the most high-profile cases on the court's docket this term are *SFFA v. Harvard* and *SFFA v. University of North Carolina*. In these, the court is being asked to consider whether the use of race as part of a holistic university admissions process violates the 14<sup>th</sup> Amendment's equal protection clause. Just six years ago, the court confronted this very question and held that the affirmative action policy of the University of Texas–Austin was constitutional. But in that case, Kennedy provided the critical fifth vote.

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