TO: Interested Parties
FROM: Sarah Lipton-Lubet, Take Back the Court
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SUBJECT: 8 Supreme Court Cases to Watch This Fall (And After)

In assembling its October docket, the Supreme Court's right-wing supermajority has once again given itself the opportunity to roll back our rights and freedoms and undermine our democracy — all while grabbing more power for itself. In the context of snowballing ethics scandals, the right-wing justices have made clear that they view themselves as an untouchable panel of overlords operating above the checks and balances of American democracy. That self-conception also permeates the illegitimate supermajority's jurisprudence, where it is increasingly brazen about discarding precedent and the rule of law in favor of its own policy preferences. This term, the Court has given itself opportunities to do the following:

ENDANGER ABUSE SURVIVORS TO ARM DOMESTIC ABUSERS

- ***United States v. Rahimi*:** This case could put firearms in the hands of people subject to domestic violence restraining orders if the justices strike down a decades-old federal regulation. Last term, the Supreme Court struck down a 100-year old gun safety law in *New York State Rifle & Pistol Association, Inc. v. Bruen* and instituted a new and radical "history and tradition test" — which requires even basic gun safety regulations to have direct historical analogues in order to survive a constitutional challenge, despite the fact that modern firearms themselves have no analogue in the 18th century. Now, not even two years later, the Court could put countless intimate partner violence survivors' lives at risk by upholding the radical Fifth Circuit's ruling that a federal protection against gun ownership by domestic violence abusers violates the Supreme Court's new history and tradition test because, according to the court, there were no analogous protections in place in the 18th Century — when women were not allowed to vote.

UNDERMINE DEMOCRACY TO REWARD RACIAL GERRYMANDERING

- ***Alexander v. South Carolina State Conference of NAACP*:** The Court has resumed efforts to disenfranchise voters of color in *Alexander* as part of its decades-long campaign to dismantle democracy. In this case, the right-wing Court will decide whether South Carolina can "pack and crack" Black voters — concentrating their voting power into just one congressional district to dilute their strength at the ballot box. In 2019's *Rucho v. Common Cause*, the Court ruled 5-4 on partisan lines that partisan gerrymandering claims could no longer be brought in federal court; in *Alexander,* the right-wing supermajority has an opportunity to functionally boot racial gerrymandering claims from federal court as well. An adverse ruling could make it next to impossible for voters to assert their constitutional rights to equal, meaningful representation.

EMPOWER ITSELF AND FURTHER ENRICH BIG BUSINESS BY DISMANTLING THE GOVERNMENT'S ABILITY TO FUNCTION

- ***Consumer Financial Protection Bureau (CFPB) v. Community Financial Services Association (CFSA):*** From *Citizens United* to *Glacier Northwest v. Teamsters,* the Court has time and again sold out workers and consumers in order to help wealthy corporations — and in *CFPB vs. CFSA,* the justices have granted themselves yet another opportunity to hand more power to corporate interests. CFSA is a group of predatory payday lenders whose entire business model depends on and perpetuates poverty. At face, the suit revolves around a CFPB rule disciplining payday lenders. But the case is far broader. CFSA is calling into question the constitutionality of CFPB's entire funding mechanism, since Congress funded the CFPB through the Federal Reserve rather than the annual congressional appropriations process. The CFSA — represented by Trump's former solicitor general — argues that the funding mechanism, which has long been used to fund a variety of government services, is unconstitutional and thus ***every regulation and rule promulgated by the CFPB ought to be struck down.*** *CFPB v. CFSA* threatens not only the very existence of the CFPB — the sole agency whose central responsibility is ensuring consumers aren't exploited by the multi-trillion dollar financial services industry — but potentially every other government program whose funds are not allocated through annual congressional appropriations, including Social Security, Medicare, USPS, and the U.S. Mint, among others. Once again, an adverse ruling in the case would be a major blow to the government's ability to function and could even lead to a second Great Depression

- ***Loper Bright Enterprises v. Raimondo*****:** In *Loper Bright*, the Court has given itself another opportunity to dismantle the government's ability to function. In this case, the Court has the chance to overturn a 40-year-old precedent established in *Chevron v. NRDC* — known as Chevron deference — which requires courts to defer to expert federal agencies when their regulations are challenged. This precedent makes sense for two key reasons: agency staff have more expertise, and are held more publicly accountable, than judges. Taking up the case signals that the right-wing Court is making moves that could shatter precedent to stop President Biden — and any other executive leader the justices don't agree with — from governing. An adverse ruling would have particularly devastating impacts on environmental regulations and other crucial safeguards that protect communities. Koch network attorneys are representing *Loper Bright* in the case, and despite Clarence Thomas' attendance at at least two Koch donor summits over the years, Thomas has refused to recuse himself from the case. Notably, Thomas has already flip flopped from his previous support of the doctrine, and now opposes it.

SLASH DISABILITY RIGHTS TO APPEASE RICH CORPORATIONS

- ***Acheson Hotels v. Laufer*****:** In this case, the plaintiff suing Acheson Hotels alleges that the hotel chain failed to post accessibility information about its facilities online, in violation of the Americans with Disabilities Act (ADA). But the right-wing Court has an opportunity in *Acheson Hotels* to not only block Laufer's individual claim, but establish a precedent that prevents people across the country from bringing "tester" cases — cases brought by people with disabilities against businesses that discriminate and violate accommodations

laws — when their civil rights are violated. Tester cases are crucial in ensuring that people with disabilities are not discriminated against with impunity, and that the marketplace is accessible to all. Given the efficacy of tester cases like this one in properly enforcing civil rights laws, an adverse ruling would be devastating for the future of Americans using the courts to access their civil rights.

ELIMINATE CERTAIN TAXES TO GIVE THE ULTRA-WEALTHY A WINDFALL

- ***Moore v. United States*:** As part of its ongoing campaign to give wealthy donors and the ruling class anything they ask for, the Supreme Court will decide in *Moore v. U.S.* whether to eliminate certain taxes on foreign-earned income. But the implications of the case go even further; an adverse ruling could be a step toward preemptively declaring wealth taxes or taxes on unrealized gains — like the wealth hoarded in the stock market — unconstitutional and permanently untaxable. The case is entangled in the Court's recent ethics scandals: After news broke of alleged ethical misconduct by Samuel Alito, the Justice sat down for multiple sympathetic interviews with two of the Wall Street Journal's opinion editorial writers to defend his actions. One interviewer, David B. Rivkin Jr., is one of the lead attorneys for the plaintiff in *Moore* — inviting even *more* questions about the lack of ethics and transparency in Alito's behavior amidst his efforts to defend himself.

Beyond these cases already on the docket for this fall, we expect that the upcoming term may bring additional troubling cases before the Court, including ones that could:

DRAMATICALLY CURB ABORTION ACCESS IN ALL 50 STATES

- ***Alliance for Hippocratic Medicine v. FDA:*** In a suit organized and represented by the radical conservative groupAlliance Defending Freedom (ADF), anti-abortion groups have sued to revoke FDA approval for mifepristone. Mifepristone is a safe, effective, and essential part of medication abortions, which accounted for 53% of abortions pre-*Dobbs* and have become more in demand since the Court overturned *Roe v. Wade*. Revoking FDA approval would dramatically curb abortion access in all 50 states. The Court issued a full stay of extremist Trump judge Matthew Kascmaryk's decision overturning FDA approval of mifepristone in April of this year, but it has yet to review the case on its merits. An adverse ruling would not only limit access to abortion across the country, but could also threaten the FDA's expert authority and approval process for other medications.

ATTACK AFFIRMATIVE ACTION PROGRAMS TO FURTHER ENTRENCH WHITE SUPREMACY

- ***Coalition for TJ v. Fairfax County School Board:*** The Court may soon take up *Coalition for TJ v. Fairfax County School Board,* in which the plaintiff alleges that the public high school's selective admissions policy discriminates against Asian plaintiffs by using zip codes as a proxy for race. Last term, the Court issued a ruthless ban on the use of affirmative action policies in public and private universities last term. If the Court chooses to take up the case, an adverse ruling could not only block race-conscious admissions in K-12 education, but extend the ban into fair housing, environmental permitting, and social welfare policies.