

# [***Supreme Court's Taking an Influx of Cases From One Circuit***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BN7-91B1-JBR6-9003-00000-00&context=1516831)

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**Highlight:** The lower court, with the highest number of 2023-2024 Supreme Court cases thus far, is also the nation's most conservative.

**Body**

The [*Supreme Court*](https://www.newsweek.com/topic/supreme-court?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) has heard oral arguments in more than 50 cases this term, and the plurality of them have come from the nation's most conservative appeals court: the U.S. Court of Appeals for the 5th Circuit.

The 5th Circuit, which covers Louisiana, Mississippi and Texas, far outnumbers other lower courts when it comes to getting a case before the High Court's justices. Of the cases that the Court has heard thus far, 10 have come from the 5th Circuit. Comparably, seven cases have come from the 2nd and 9th Circuits each and four from the 3rd, 8th and 11th Circuits each.

The 5th Circuit not only represents a higher volume of cases but is also the origin of major legal battles. The 2023-2024 cases that have come from the lower court thus far include the Supreme Court's first Second Amendment case since its landmark ruling in *State Rifle & Pistol Association Inc. v. Bruen* in 2022 and the Court's first abortion case since it overturned *Roe v. Wade* that year.

As more and more cases from the 5th Circuit land before the justices, some legal scholars are warning that conservative groups are increasingly bringing their cases to the appeals court in hopes of a better chance at litigating all the way to the Supreme Court.

"The conservative legal movement understands that the 5th Circuit is very conservative, and it is the Court of Appeals where they are most likely to get a favorable outcome," judicial ***politics*** expert Alex Badas told *Newsweek*. "So the conservative legal movement is more likely to file cases in District Courts that filter up to the 5th Circuit."

[*Donald Trump*](https://www.newsweek.com/topic/donald-trump?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships)'s mark on the federal judicial system is not only visible in the Supreme Court's conservative supermajority. Trump appointed three justices to that nine-justice bench while in office. The 5th Circuit court consists of 12 [*Republican*](https://www.newsweek.com/topic/republican?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) appointees and five Democratic appointees. Of the dozen [*Republicans*](https://www.newsweek.com/topic/republicans?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships), half were nominated by Trump.

Of the 10 5th Circuit cases that the Supreme Court has heard up to this point, all but one featured a Trump appointee. Appeals are normally decided by a randomly selected three-judge panel. Four of those cases were considered by a panel that included two Trump judges. One of those cases came before a panel of all Trump appointees. And one of those cases was reheard en banc, when all the judges on the court's bench sit to hear a case.

"The conservative legal movement and the conservative states that make up the 5th Circuit are essentially using the 5th Circuit to see how conservative the current Supreme Court is willing to go," Badas said. "These groups are able to get favorable rulings that are then appealed to the Supreme Court, and this allows them to see just how conservative the Court's Republican majority is willing to move policies."

"It seems clear what the 5th Circuit is doing with some of its more outlandish opinions in trying to goad SCOTUS to move the law in a more conservative direction," Gabe Roth, executive director of Fix the Court, a nonpartisan organization, told *Newsweek*.

But those efforts may not be as successful as conservative activists had hoped.

On Tuesday, the Supreme Court heard oral arguments in a pair of cases challenging the Food and Drug Administration's dispensing of mifepristone, a pill used in more than 60 percent of abortions in the U.S. Justices across the ideological spectrum suggested that they don't believe the anti-abortion Alliance for Hippocratic Medicine has standing to sue.

Justice [*Neil Gorsuch*](https://www.newsweek.com/topic/neil-gorsuch?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships), a Trump appointee, [*seemed particularly troubled*](https://www.newsweek.com/trump-supreme-court-justices-may-deal-blow-anti-abortion-movement-1883729?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) by the idea of a lawsuit that overturns what the government does. He asked attorneys for the anti-abortion group why there would need to be a nationwide ban on the medication.

"This case seems like a prime example of turning what could be a small lawsuit into a nationwide legislative assembly on an [*FDA*](https://www.newsweek.com/topic/fda?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) rule or any other government action," Gorsuch said.

With cases like the mifepristone one, the 5th Circuit can be seen "forcing the Supreme Court's hand," Badas said.

For example, because the 5th Circuit invalidated the FDA's approval for tele-health prescriptions of mifepristone, the appeals court created a situation where people in Louisiana, Mississippi and Texas were living under one policy while the rest of the country was living under a different one.

"The Supreme Court is then sort of forced to step in to ensure policies are uniform across the United States," Badas said.

The mifepristone case is just the latest 5th Circuit case that has faced skepticism from the Supreme Court's justices.

Last week, the justices looked unlikely to uphold a sweeping injunction from the 5fth Circuit in *Murthy v. Missouri*, a free speech case involving the Biden administration's efforts to pressure social media companies to remove content it said spread falsehoods about the pandemic and 2020 election. Justice [*Brett Kavanaugh*](https://www.newsweek.com/topic/brett-kavanaugh?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships), a Trump appointee, [*even defended the Biden administration at one point*](https://www.newsweek.com/justice-kavanaugh-defends-biden-admin-1880529?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships), saying the behavior from White House staffers was not "unusual."

"That makes two high-profile cases in two weeks in which justices from across the ideological spectrum have been vexed by the weakness of the plaintiffs' claims for standing," legal analyst Steve Vladek [*wrote in a post on X*](https://twitter.com/steve_vladeck/status/1772713200691069132) (formerly [*Twitter*](https://www.newsweek.com/topic/twitter?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships)). "Both cases were filed in single-judge divisions in the Fifth Circuit. That's...not a coincidence."

While conservative groups would interpret a Supreme Court win as a "clear victory" for them, it's not all bad news if the justices strike down their efforts.

"Even when these groups lose, they still receive valuable information," Badas said. "The Supreme Court's opinions tend to give information about what types of policies may be more acceptable to them. This allows these groups to better frame their next case to be better aligned with what the Supreme Court is willing to do."

Earlier this month, the policymaking body for the federal courts addressed the problems of judge shopping and detailed new guidance to the District Courts for assigning judges.

"The new guidance suggests that District Courts are supposed to randomly assign judges for civil cases with broader implications," Norm Eisen, an attorney and former U.S. ambassador, told *Newsweek*. "The problem is that this new policy is a recommendation and not a mandate, so in theory judge shopping can continue.

"But it is a good first step," he said. "The bottom line is that partisans are trying to game the judicial system, but luckily the judicial system is and will continue fighting back."

[*Link to Image*](https://d.newsweek.com/en/full/2369087/supreme-court-fifth-circuit.jpg)

**Graphic**

Supreme Court Fifth Circuit

Olivier Douliery/Getty Images

Justices of the US Supreme Court pose for their official photo at the Supreme Court in Washington, DC on October 7, 2022. The Supreme Court has heard 10 cases from the Fifth Circuit, thus far in the 2023-2024 term.

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