

Chemerinsky, E. C. (2011). *The Supreme Court Closes the Door to Justice*. <http://www.latimes.com/news/opinion/commentary/la-oe-chemerinsky-scotus-20110706,0,6151331,print.story>, Retrieved July 7, 2011. Los Angeles Times, July 6, 2011. .

## Los Angeles Times

Op-Ed: [The Supreme Court closes the door to justice](#), The Supreme Court seems to have lost faith in the American court system.

by Erwin Chemerinsky, July 6, 2011



[The Supreme Court ruled for Wal-Mart Stores Inc. on June 20 in the largest sex-discrimination lawsuit in history, saying class-action status for female employees seeking billions of dollars had been improperly granted.](#) (Larry Downing / Reuters)

Has the Supreme Court lost faith in the American court system? That is a strange question to ask about the justices who sit at the top of the country's judicial hierarchy. But in case after case in the just-completed term, the court, usually in 5-4 decisions with the conservatives in the majority, denied access to the courts.

Consider just a few of the examples:

- The court ruled that patients who suffer devastating injuries from generic prescription drugs cannot sue the manufacturers for failing to provide adequate warnings even when drug companies making the non-generic versions of the same drugs can be sued on the same basis.

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- The court held that standard clauses in consumer contracts calling for arbitration preclude consumers from joining class-action suits even when the effect almost surely would be that no individual lawsuits would be filed because the amount involved was too small.
- The court decided that employees who claim to be victims of sex discrimination cannot sue in class actions when the employer has a policy that prohibits discrimination.
- The court concluded that a man who spent 18 years in prison for a murder that he did not commit could not sue the prosecutors who hid key evidence.
- The court said that taxpayers cannot bring an action in federal court arguing that a state impermissibly established religion by giving tax credits that go almost entirely to religious schools.
- The court held that prisoners convicted in state court cannot obtain a hearing in federal court even when they have new evidence that calls into question their convictions — because of matters such as ineffective defense counsel or failure of prosecutors to turn over evidence — notwithstanding a federal statute that expressly authorizes such hearings.

One way of interpreting these decisions, and others like them, is that the conservative justices are simply pro-business and pro-prosecutor and are denying access to the courts to consumers, employees and criminal defendants. That certainly explains the rulings. But something else that is even more disturbing seems to underlie these rulings: distrust of the courts.

In limiting class-action suits, Justice Antonin Scalia expressed the concern that such litigation terrorizes business and forces them to settle even non-meritorious claims. In precluding suits for money damages by those injured by prescription drugs or those wrongly incarcerated, the court gives little weight to the need for such damages to deter wrongdoing in the future. In denying prisoners the chance to prove the unconstitutionality of their convictions despite a statutory provision expressly allowing for such hearings, the Supreme Court seems distrustful of lower federal courts and worried that they will unjustifiably release dangerous individuals.

The distrust of the judiciary is not limited to this term and not limited to the Supreme Court's justices. In prior years, for example, the Supreme Court has dramatically limited the availability of punitive damages based on distrust of juries and on the ability of trial judges to control their awards. In a very different area, the desire to use military tribunals, rather than federal courts, to try those accused of terrorist acts is based on a lack of faith in federal judges to handle such matters and come to the desired results.

This trend, and the decisions of this term, are disturbing on so many levels. The conservatives on the high court have uncritically accepted the attacks on the courts with little evidentiary support or foundation. At the same time, they have failed to recognize that civil suits for money

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damages, including class actions, are essential to ensure that injured individuals gain recovery and that future misconduct is deterred. People wrongly convicted should have access to federal courts to gain redress. Constitutional rights are meaningless if there are no courts to enforce them.

What can be done about this? A first step is to acknowledge the troubling pattern and realize that these decisions in so many disparate areas share a common theme: The Supreme Court is closing the courthouse doors to those who have claims that should be heard.

Next, Congress can and must act to remedy many of these injustices. Many of the rulings from this term involved the Supreme Court restrictively interpreting federal statutes and rules. These decisions, since they are not interpreting the Constitution, can be fixed by new federal laws. For example, Congress can restore access to class actions, allow suits by those injured by generic drugs and make clear that federal courts may hear additional evidence for those who claim to have been unconstitutionally convicted.

No principle is more basic to our constitutional system than that a person who has been hurt deserves his or her day in court. The Supreme Court needs to believe this again, and to act accordingly.

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### **Letters to the editor: Profiling Justice Clarence Thomas; President Obama wants debt talks; the loss of union jobs at a BMW facility in Ontario**

*July 7, 2011*

#### **The case against Thomas**

Re "Clarence Thomas is his own man," July 3

Supreme Court Justice Clarence Thomas complains that his critics "demonize" the court without reading its opinions.

I hate to break it to Thomas, but I (and many of his other critics) have read dozens of his opinions. They consistently lack intellectual depth, replacing reason with a fanatical bias against anyone

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convicted of a crime and exhibiting blind prejudice and cherry-picked straw men where one ought to find solid legal logic.

In his confirmation hearings, Thomas claimed that he would be able to "walk in the shoes of the people who are affected by what the court does." Although he may have believed that statement, it was one of the greatest lies of the 20th century.

When a prisoner is kicked in the face so hard that his teeth crack, it is not walking in his shoes to call his injuries "insignificant harm."

*Geoff Kuening*

*Paremata, New Zealand*

This article somehow managed to completely ignore the serious ethical questions surrounding Thomas.

Not the least of these are the six years of income he failed to report from his wife's work with the right-wing Heritage Foundation, which applauded the court's Citizens United decision. And then there is his wife's work with Liberty Central, which opposes the Affordable Care Act, sure to come up before the court sometime soon.

These examples suggest that Thomas should not be in a decision-making position on the highest court in the land. Why The Times failed to write about any of this is a mystery to me.

*Russ Nichols*

*Los Angeles*

In 1819, the Supreme Court recognized "it is a Constitution we are expounding," intended to "endure for ages to come, and, consequently, to be adapted to the various crises of human affairs."

Thomas' theory of divining the "original intent" of the drafters of the Constitution is simply a disingenuous attempt to maintain the status quo and evade intelligent analysis of evolving threats to individual liberties. What would the Founding Fathers have thought of police placing a tracking device in an automobile without a warrant?

Original intent avoids the need for the Supreme Court to create protections against evolving threats to individual liberties.

*Mark Overland, Santa Monica*