

The concurrence seizes on the federal precedent the Texas court's concurring judge cited. The United States Supreme Court has "never held that an unknowing use of false evidence violates due process," that judge wrote. Warner, 721 S.W.3d at 443 (Finley, J., concurring). The concurrence also cites Glossip v. Oklahoma, 604 U.S. 226 (2025), as confirming a knowledge requirement. But Glossip addressed a knowing-use case. It involved a prosecutor who knew. Id. at 228. It did not confront what shakes out when an entire branch of forensic science collapses.

That statement is not a boundary. Glossip described the precedent as it stood. It did not shut the door on cases like this one.

The concurrence's insistence that the prosecution's knowledge concession in Butler counsels adoption of Stone in this context, like its reliance on Glossip, ultimately depends on the premise that federal constitutional doctrine controls this court's interpretation of article I, section 5. It does not.

We interpret the Hawai'i Constitution on its own terms. The United State Supreme Court's construction of the federal Due Process Clause does not define the protections of our state's due process clause. This court "reason[s] independently, untethered from the Supreme Court's analysis of the United

States Constitution." State v. Wilson, 154 Hawai'i 8, 14, 543 P.3d 440, 446 (2024).

The Court that now defines federal due process does not honor the work of 1954. It revives the work of 1857. The work of 1896. The Constitution must be interpreted "according to its true intent and meaning when it was adopted." Dred Scott v. Sandford, 60 U.S. 393, 405 (1857).

Today's hubristic originalists use the same method to control modern life. See City & Cnty. of Honolulu v. Sunoco LP, 153 Hawai'i 326, 361, 537 P.3d 1173, 1208 (2023) (Eddins, J., concurring) ("A justice's personal values and ideas about the very old days suddenly control the lives of present and future generations.").

The Court overrides what Congress passed. It overrides what the people chose. All to serve its own ends.

What this Court has done to constitutional rights, democratic institutions, and the rule of law explains why Hawai'i's Constitution takes no instruction from it.

Article I, section 5 provides versatile and sovereign protection. This court does not anchor Hawai'i's due process rights to the federal floor. Especially one that keeps sinking.

We take no guidance on the meaning of due process from a court that gutted due process protections in Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022). Zuffante called it

straight. Dobbs erased a "generations-long constitutional right, stripping autonomy from half the population, and empowering states to force birth." State v. Zuffante, 157 Hawai'i 194, 200, 576 P.3d 243, 249 (2025).

Article I, section 5 does not import that results-driven approach to due process. We follow principles, not agendas.

The Supreme Court's imperious ideology does not stop at due process. The same jurisprudence has cratered democracy itself. Start with the Voting Rights Act.

The Roberts Court did what Congress never would. It rewrote the Voting Rights Act of 1965, a cornerstone of American civil rights, democratically enacted and repeatedly reauthorized. Shelby County v. Holder, 570 U.S. 529 (2013), began the judicial demolition, inventing a textually unsupported equal-sovereignty fiction and striking down preclearance on a hunch that the law worked too well. Brnovich v. Democratic National Committee, 594 U.S. 647 (2021), fabricated "guideposts" nowhere in Section 2 to greenlight racial discrimination in voting. Louisiana v. Callais, 608 U.S. ___, 146 S. Ct. 1131 (Apr. 29, 2026), buried what remained of the crown jewel of the civil rights movement. Pretend law for a real statute.

The Court then ditched its own thirty-two day default for releasing decisions and hustled out its judgment mid-primary, a favor granted over objection only twice in twenty-five years.

Callais v. Louisiana, 608 U.S. ___, 146 S. Ct. 1111, 1113 (May 4, 2026) (Jackson, J., dissenting). Weeks later, on its shadow docket, the Court tossed an eleven-day trial record built on fifty-one witnesses, 790 exhibits, 2,600 pages of testimony, and a 270-page opinion by a three-judge court. See Singleton v. Allen, 782 F. Supp. 3d 1092, 1115, 1355 (N.D. Ala. 2025). It resurrected a tainted congressional map the three-judge factfinders found deliberately entrenched racial bias against Black voters. Allen v. Milligan, 608 U.S. ___, 146 S. Ct. 1377 (June 2, 2026); see also Hilo Bay Marina, LLC v. State, 156 Hawai'i 478, 516, 575 P.3d 568, 606 (2025) (The "Court's frequent misrepresentation of the factual record and its throw-judges-under-the-bus disdain for district courts, the fact-finders of the federal judiciary, harm the justice system.").

The Roberts Court sees only white. It refuses to acknowledge who the Equal Protection Clause was written to protect. The freed people, their descendants, and all others denied equal citizenship. U.S. Const. amend. XIV, § 1. It turns its back on what is in plain sight. The Fourteenth Amendment is not colorblind. It never was.

The Court calls the Constitution colorblind while engineering the dilution of Black votes, the unraveling of hard-fought civil rights remedies, and the erasure of Black

history. That is not blindness. That is white sight, by design.

A Constitution interpreted this way is not colorblind. It is whatever the Court needs it to be. A way to advance its partisan project. The damage to democracy extends beyond the Voting Rights Act.

In Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010), the Court claimed fidelity to text, history, and tradition while invalidating yet another democratically vetted law, handing corporations the same speech rights as flesh-and-blood Americans and letting dollars talk louder than voters. See Sunoco, 153 Hawai'i at 362, 537 P.3d at 1209 (Eddins, J., concurring) (originalism applies selectively and vanishes inconveniently); Leo E. Strine, Jr. & Nicholas Walter, Originalist or Original: The Difficulties of Reconciling Citizens United with Corporate Law History, 91 Notre Dame L. Rev. 877 (2016) (Citizens United cannot be reconciled with corporate law history).

Other decisions followed. The Court abandoned partisan gerrymandering to the gerrymanderers, refusing for the first time to remedy a constitutional violation because it believed the task beyond judicial competence. Rucho v. Common Cause, 588 U.S. 684 (2019); see id. at 721 (Kagan, J., dissenting). It

placed a president above the law. Trump v. United States, 603 U.S. 593 (2024).

Last month, Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n, 609 U.S. ____ (June 30, 2026), made Citizens United look quaint, shredding coordinated spending limits Congress had enacted, and ensuring that those who bankroll elections drown out the ordinary person. Billionaires spend to be repaid. Everyone else just votes. The Roberts Court has made sure one's wealth counts more than another's vote.

Rulings run in one direction, time after time. Weakening protections for those with less power. Fortifying those with more. The pattern speaks for itself. A court that systematically dismantles democratic safeguards, steamrolls constitutional liberties, and tramples human dignity does not chart the course for the Hawai'i Constitution.

Our constitutional system was designed for times like these. Federalism is not a formality. It is the architecture. The framers built dual sovereignty into the structure of American government as an independent check against concentrated federal power. A Supreme Court driven by agenda and intent on swiping power that belongs to the people is exactly what that check was built for.

When six justices walk away from those they are supposed to protect, state constitutions hold the line. That is not defiance. That is the design.

State constitutionalism makes it easy to consider Roberts Court jurisprudence "white noise." See Hilo Bay Marina, 156 Hawai'i at 518, 575 P.3d at 608.

Add it all up. Draining due process. Rolling back voting rights. Flooding elections with money. Rubber-stamping gerrymandering. Crowning a president. Blessing discrimination in the name of the Constitution. Fulton v. City of Philadelphia, Pa., 593 U.S. 522 (2021); 303 Creative LLC v. Elenis, 600 U.S. 570 (2023). Looking at naked racism and seeing none of it. Mullin v. Doe, 609 U.S. ____ (June 25, 2026) (racist words not "overtly racial"). Making the country more dangerous with a Second Amendment unmoored from text or history and unrecognizable to the framers who wrote it. New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1 (2022); Wilson, 154 Hawai'i at 22, 543 P.3d at 454 ("disabl[ing] the states' responsibility to protect public safety, reduce gun violence, and safeguard peaceful public movement" with its deadly jurisprudence). Then striking down a careful law and showing disdain for Hawai'i's constitutional traditions. Wolford v. Lopez, 609 U.S. ____ (June 25, 2026).

Subverting congressional choices with a homemade “major questions” power grab that plays “get-out-of-text-free cards” to block agencies from doing what Congress told them to do. West Virginia v. Env’t Prot. Agency, 597 U.S. 697, 779 (2022) (Kagan, J., dissenting). Then commandeering the interpretive authority Congress gave federal agencies, overruling Chevron after forty years because, to this particular Court, precedent is advisory. Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).

This term, transmuting federal spending programs into private contracts, the Court forged the Spending Clause to “reduce[] some of Congress’s greatest legislative achievements.” Landor v. Louisiana Dep’t of Corr. & Pub. Safety, 609 U.S. ____ (June 23, 2026) (Jackson, J., dissenting). Days later, it freed the President to fire at will the very commissioners a law shielded from removal, discarding a unanimous opinion, Humphrey’s Executor, on a cherry-picked slice of history – a century of settled practice recast as a mistake, competent governance sacrificed to the partisan cause. Trump v. Slaughter, 609 U.S. ____ (June 29, 2026). The next morning, fair-weather textualists – living constitution originalists, really – deserted the text and our nation’s history the moment it promised citizenship, one vote from writing that right out of the Constitution. Trump v. Barbara, 609 U.S. ____ (June 30, 2026).

That's not all life tenure and zero accountability have produced lately. But it's enough.

Article I, section 5 needs no part of this. The Hawai'i Constitution was built to stand on its own. And so it does.

We hold that prosecution knowledge is not required to invoke the false evidence standard under article I, section 5.

The concurrence pushes harmless beyond a reasonable doubt because, in its view, materiality is too generous. That criticism mistakes the function each standard serves.

Harmless beyond a reasonable doubt asks how strong the State's other evidence looks once the constitutional error is set aside. Could the conviction stand without the tainted testimony? If yes, the error is harmless. The inquiry centers on the strength of what remains.

Materiality asks a different question. Could the false testimony have affected the jury's judgment? The focus is not on what remains in the State's case. It is on what the false evidence may have done to the verdict the jury actually returned.

The constitutional violation under article I, section 5 is a verdict built on false evidence, not weakness of the State's case. That is why materiality is the better fit. It asks the constitutional question. Harmless beyond a reasonable doubt asks a sufficiency question. The two are not the same.