Congress has all but abandoned its constitutional role in helping to shape the Court's agenda. We may never agree on how to best strike the balance between congressional engagement with the Court and judicial independence (although my book offers some specific suggestions), but it seems clear, if nothing else, that the consequences of Court dockets left entirely to the justices' own devices are worth at least discussing.

MCFADDEN: Other than disagreeing with the merits of certain decisions and calling for the Court to elaborate on its orders, I don't understand what changes Professor Vladeck would suggest to the emergency docket. Surely he doesn't propose doing away with it altogether. That would virtually guarantee that future administrations would be governed by forum-shopped lower courts on an array of sensitive and urgent political matters. Lower court litigation can and frequently does outlast administrations, stymieing presidential initiatives.

Nor do I agree with suggestions that the Court is acting in a partisan manner. Professor Vladeck has elsewhere noted the Biden administration has had a "remarkably" positive record in requests for emergency relief. Given the number of lower court orders with sweeping political implications, solicitors general of both parties are likely to remain the primary beneficiaries of the emergency docket. Perhaps that is fitting for an officer often described as the "tenth justice."

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28 *See* Bryan A. Garner et al., The Law of Judicial Precedent 214–15 (2016).
29 *See id.* at 46, 217–18.
30 Indiana State Police Pension Tr. v. Chrysler LLC, 556 U.S. 960, 960 (2009) (per curiam).
31 S. Bay United Pentecostal Church v. Newsom, 141 S. Ct. 716 (2021) ("South Bay II").
32 *See, e.g.*, Gish v. Newsom, 141 S. Ct. 1290 (2021).
33 Gateway City Church v. Newsom, 141 S. Ct. 1460, 1460 (2021).
34 *See* Tandom v. Newsom, 593 U.S. 61, 64 (2021) (per curiam) (referring to principles established by the Court's prior "decisions" in the unsigned, unexplained orders cited in the last three endnotes).
35 *See* Ardoin v. Robinson, 142 S. Ct. 2892 (2022). For the lower court rulings, see Robinson v. Ardoin, 605 F. Supp. 3d 759 (M.D. La.), *stay denied*, 37 F.4th 208 (5th Cir. 2022).
36 South Bay II, 141 S. Ct. at 717–20.
37 *Id.* at 717.
38 Marks v. United States, 430 U.S. 188, 193 (1977).
39 Dep't of Homeland Security v. Texas, No. 23A607, 2024 WL 222180 (Jan. 22, 2024).
40 *See* Labrador v. Poe, No. 23A763, slip op. at 11–12 (Apr. 15, 2024) (Kavanaugh, J., concurring in the grant of stay) (discussing the "lock-in effect" of "[a] written opinion by this Court assessing likelihood of success on the merits at a preliminary stage"). A supermajority of the Court seems to agree that the rise in emergency docket relief is not ideal. *See* Labrador v. Poe, No. 23A763, slip op. at 10–13 (Apr. 15,2024) (Gorsuch, J., concurring in the grant of stay); *id.*, at 12–13 (Kavanaugh, J., concurring in the grant of stay); *id.* at 7–8 (Jackson, J., dissenting from grant of stay).
41 *See, e.g.*, Does 1-3 v. Mills, 142 S. Ct. 17, 17–18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief).
42 *See generally* Stephen I. Vladeck, *The Solicitor General and the Shadow Docket*, 133 Harv. L. Rev. 123 (2019); *see also id.* at 161–63 (collecting data through 2019).
43 *E.g.*, Whole Woman's Health v. Jackson, 142 S. Ct. 415, 415–16 (2021).