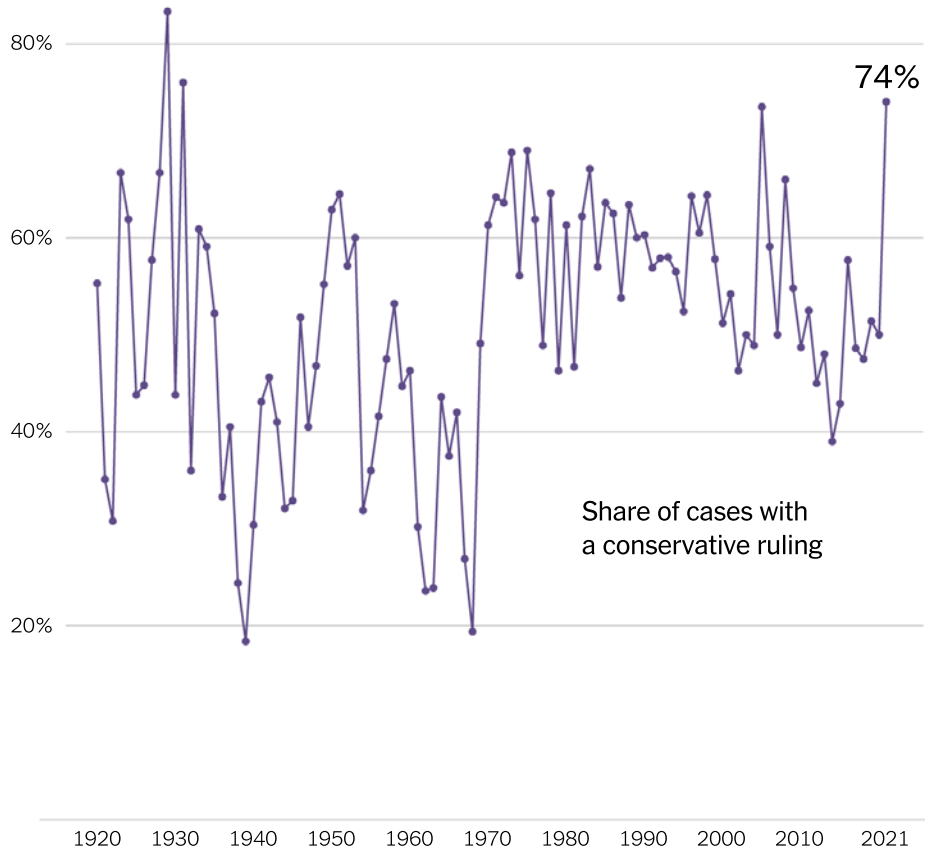
The New York Times https://www.nytimes.com/2022/07/01/us/supreme-court-term-roe-guns-epa-decisions.html

# *A Transformative Term at the Most Conservative Supreme Court in Nearly a Century*

## October Term 2021

The blockbuster decisions — on abortion, guns, religion and climate — told part of the story. But the court's abrupt rightward shift ran through its entire docket.




Note: Data includes nonunanimous, signed decisions in argued cases. • Source: The Supreme Court Database by Lee Epstein, University of Southern California; Andrew D. Martin, Washington University in St. Louis; and Kevin Quinn, University of Michigan.

**By Adam Liptak Graphics by Alicia Parlapiano**

July 1, 2022

WASHINGTON — The Supreme Court moved relentlessly to the right in its first full term with a six-justice conservative majority, issuing far-reaching decisions that will transform American life. It eliminated the constitutional right to abortion, recognized a Second Amendment right to carry guns outside the home, made it harder to address climate change and expanded the role of religion in public life.

But those blockbusters, significant though they were, only began to tell the story of the conservative juggernaut the court has become. By one standard measurement used by political scientists, the term that ended on Thursday was the most conservative since 1931.

"The data provide stunning confirmation of the Republican-conservative takeover of the Supreme Court," said Lee Epstein, a law professor and political scientist at the University of Southern California who oversees the Supreme Court Database.

The last time the rate of conservative decisions even rivaled those in the term that ended Thursday was during Chief Justice John G. Roberts Jr.'s first term, which started in 2005.

Since then, the final days of Supreme Court terms have tended to end with a mix of decisions pointing in different ideological directions. That changed this week, with a string of outcomes that left conservatives jubilant and energized about the court's direction and liberals distraught.

"Every year since John Roberts became chief justice, the court's results at the end of the term have been less conservative than many court watchers feared they would be at the term's outset," said David Cole, the national legal director of the American Civil Liberties Union. "This time, the doomsayers got it exactly right, as the court traded caution for raw power."

That can only be the consequence of the three justices President Donald J. Trump named to the court and particularly of his appointment of Justice Amy Coney Barrett, who joined the court after the death in 2020 of Justice Ruth Bader Ginsburg.

### The Justices, From Left to Right

Justices are sorted from left to right by their Martin-Quinn scores, which estimate ideology based on voting patterns.


Source: The Supreme Court Database by Lee Epstein, University of Southern California; Andrew D. Martin, Washington University in St. Louis; and Kevin Quinn, University of Michigan.

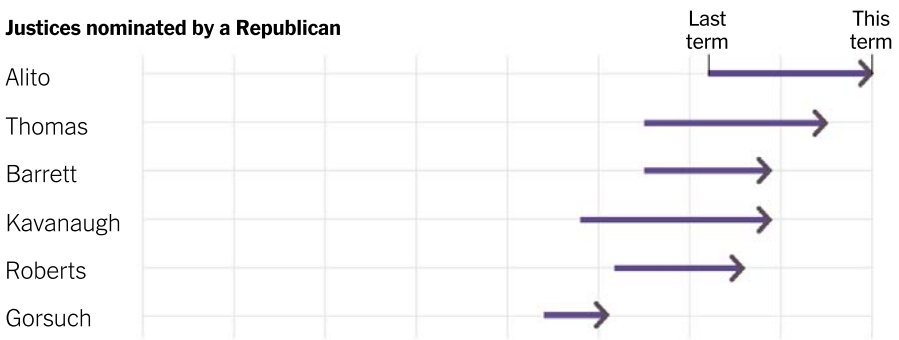
In the decades before Justice Barrett's arrival, the court was closely divided. That meant the member of the court at its ideological center — Justice Anthony M. Kennedy and then Chief Justice Roberts — wielded enormous power. They both leaned right, but they tended to deliver a couple of major liberal victories each term.

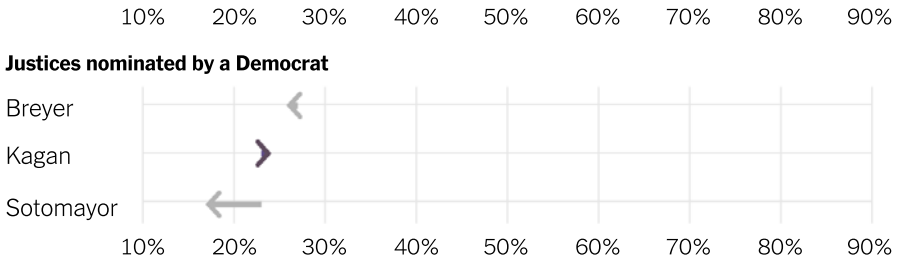
The dynamic on the new court is different and lopsided, with six Republican appointees and three Democratic ones. The median justice appears to be Justice Brett M. Kavanaugh, appointed by Mr. Trump to replace the more liberal Justice Kennedy. In the term that just ended, Justice Kavanaugh moved to the right, voting in a conservative direction 79 percent of the time in divided cases in which the court heard arguments and issued signed opinions. In the prior term, that number was 58 percent.

### Change in Conservative Voting

Each of the justices nominated by Republican presidents voted much more conservatively this term, but Justice Brett M. Kavanaugh shifted the most to the right.

**Percentage of votes that were conservative**



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The court's shift to the right included all sorts of legal issues, said Melissa Murray, a law professor at New York University.

"Although most Americans will focus on the cataclysmic abortion decision, there were actually a number of consequential decisions this term," she said. "On critical questions like gun rights, religious liberty, federal remedies, government speech and federal regulatory authority, we saw a conservative bloc eager to make the most of its 6-3 supermajority."

The term was also notable for its divisiveness. There was at least one dissent in 71 percent of the court's signed decisions in argued cases, the highest rate in almost four decades, according to data compiled by Professor Epstein, Andrew D. Martin of Washington University in St. Louis and Kevin Quinn of the University of Michigan.

The court's three liberals were perfectly aware that they had been marginalized by what Justice Sonia Sotomayor called, in dissenting from a decision that made it harder to sue federal officials for constitutional violations, "a restless and newly constituted court."

In their joint dissent in the abortion case, the three liberal justices said the court had replaced reason with power.

"The majority has overruled Roe and Casey for one and only one reason: because it has always despised them, and now it has the votes to discard them," they wrote. "The majority thereby substitutes a rule by judges for the rule of law."

The court decided 58 cases, a slight uptick from the last two terms, which had been affected by the pandemic. But the number of signed decisions in argued cases was nonetheless the third lowest since 1937.

Nineteen decisions were decided by 6-to-3 votes, and in 13 of them all three Democratic appointees dissented. Those cases included ones on abortion, gun rights, climate change, school prayer, government aid to religious schools, the death penalty, campaign finance and limits on suits against government officials.

"The Supreme Court went a lot farther a lot faster than I expected it to this term," said Tara Leigh Grove, a law professor at the University of Texas at Austin.

There were, however, some divisions on the right. "The conservative wing of the court is not a monolith," said Roman Martinez, a Supreme Court specialist with Latham & Watkins, "and there are real and significant differences between how far to push the law in a more originalist direction, and how fast."

The most significant example of this was Chief Justice Roberts's opinion in the abortion case, which would have upheld the restrictive Mississippi law at issue but would have stopped short of overruling Roe in so many words. The chief justice's failure to attract a single vote for that approach was telling, Professor Epstein said.

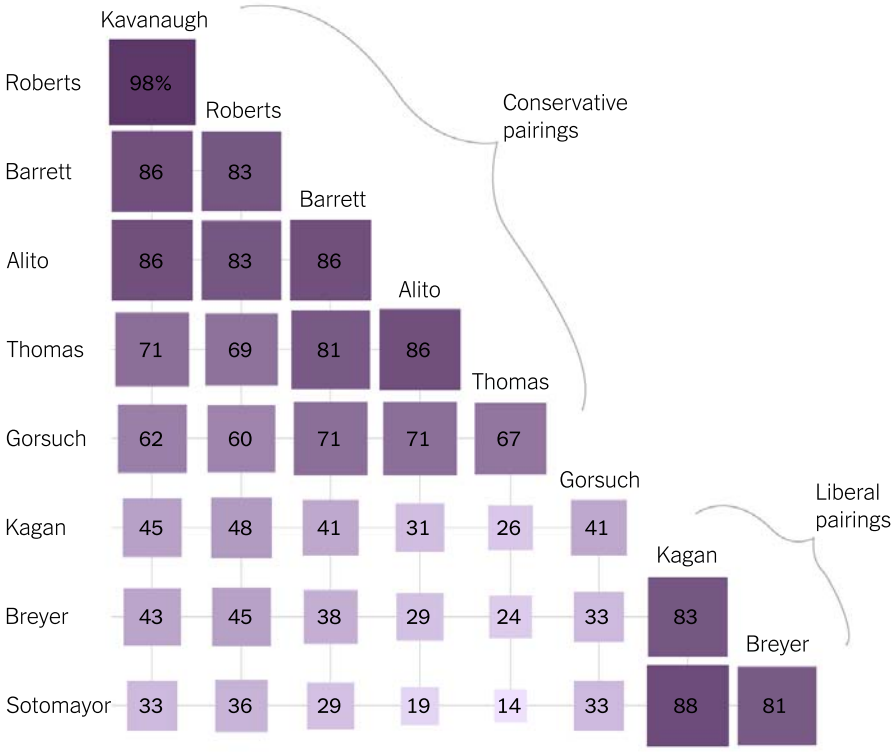
"The court has morphed into the divided, partisan, maximalist, activist court that Roberts has pushed back against for nearly two decades," she said. "At least for now he's lost the fight."

The members of the court who agreed most often in divided rulings were the chief justice and Justice Kavanaugh, at 98 percent. The two justices least apt to vote together in such cases were Justices Sotomayor and Clarence Thomas, at 14 percent.

Among appointees of presidents of different parties, the highest rate of agreement was between Chief Justice Roberts and Justice Elena Kagan, at 48 percent.

## How Often the Justices Agreed

Chief Justice John G. Roberts Jr. and Justice Brett M. Kavanaugh were the most likely to agree, voting together in 98 percent of nonunanimous cases.

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But the larger story of the term was the powerlessness of the court's liberals, who cast votes with the majority in divided cases just 48 percent of time. Conservative justices voted with the majority 81 percent of the time. The 33 percentage point gap between the two blocs is about double the average of previous terms.

The cases and statistics discussed so far concern the so-called merits docket, where the court receives full briefing, hears arguments and issues reasoned decisions. The court also decided scores of cases on what critics call its shadow docket, where the justices often issue terse but consequential orders soon after receiving emergency applications and without hearing oral arguments.

Cases on abortion, voting and vaccines all reached the court by way of emergency applications this term. So did a request from Mr. Trump to block the release of White House records concerning the Jan. 6 attack on the Capitol.

The court rejected Mr. Trump's emergency application in January, with only Justice Thomas noting a dissent. Two months later, it emerged that the justice's wife, Virginia Thomas, had been sending text messages to Mr. Trump's chief of staff urging him to take steps to overturn the vote. Experts in legal ethics said Justice Thomas should have recused himself.

Analyzing emergency applications is tricky, but one trend is clear: In significant cases referred to the full court, three of its members — Justices Thomas, Samuel A. Alito Jr. and Neil M. Gorsuch — voted in a conservative direction at a very high rate. "The suggestion here is one of extreme activism rushing to push through conservative interests and causes," Professor Epstein and Pablo Aabir Das, a recent graduate of the University of Southern California's law school, wrote in an analysis of the data.

The term was a triumph for the theory of constitutional interpretation known as originalism, which seeks to identify the original meaning of constitutional provisions using the tools of historians.

In a ruling that a coach at a public high school could pray on the 50-yard line after his team's games, the majority looked to "historical practices and understandings." In expanding gun rights, the majority told lower courts to "assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding."

And in ruling that there is no constitutional right to abortion, the majority focused on "how the states regulated abortion when the 14th Amendment was adopted" in 1868.

The court's three liberals dissented in all three cases, calling originalism cramped and wooden. In a joint opinion in the abortion case, they wrote that "the framers defined rights in general terms, to permit future evolution in their scope and meaning."

Mr. Martinez, the Supreme Court specialist at Latham & Watkins, said the developments were telling in two ways.

"First," he said, "it's clear a majority of the court is firmly committed to an originalist understanding of the Constitution rooted in the document's text and history. Second, that majority will act boldly to apply its originalist philosophy in ways that curb certain perceived excesses of 20th-century 'living constitutionalism,' even when doing so is controversial and at odds with public opinion polls."

Justice Alito, writing for the majority in the abortion case, said public opinion should play no role in the court's decision making. "We cannot allow our decisions to be affected by any extraneous influences such as concern about the public's reaction to our work," he wrote.

The court's public approval is certainly plummeting. In a Gallup poll taken after the leaked draft of the abortion opinion but before the formal decision, for instance, public confidence in the court fell to 25 percent, the lowest in the nearly 50 years over which the survey has been conducted.

Professor Grove said the court's authority could not withstand a lasting loss of public trust.

"When you lose enough institutional legitimacy, people just aren't going to obey your decisions," she said. "We're not close to that point yet. But we could get to that point."

The court is not slowing down. In its next term, which starts in October, it will decide the fate of affirmative action in higher education, how to interpret the Voting Rights Act in the context of redistricting and whether a web designer has a First Amendment right to refuse to work on projects involving same-sex weddings.

On Thursday, as they were about to begin their summer breaks, the justices agreed to hear one more blockbuster, one that could radically reshape American elections, on the power of state legislatures to set voting rules.

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A version of this article appears in print on , Section A, Page 1 of the New York edition with the headline: Court's Term Was Its Most Conservative Since 1931

The New York Times https://nyti.ms/3zWuU4W

# The Major Supreme Court Decisions in 2022

By Adam Liptak and Jason Kao Updated June 30, 2022



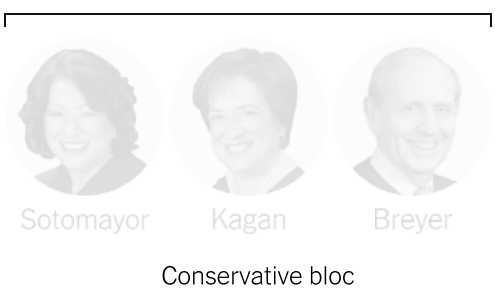
The leak in May of a draft of the decision overruling Roe v. Wade seemed to expose new fault lines at the Supreme Court in the first full term in which it has been dominated by a 6-to-3 conservative supermajority, including three justices appointed by President Donald J. Trump. The court's public approval ratings have been dropping, and its new configuration has raised questions about whether it is out of step with public opinion.

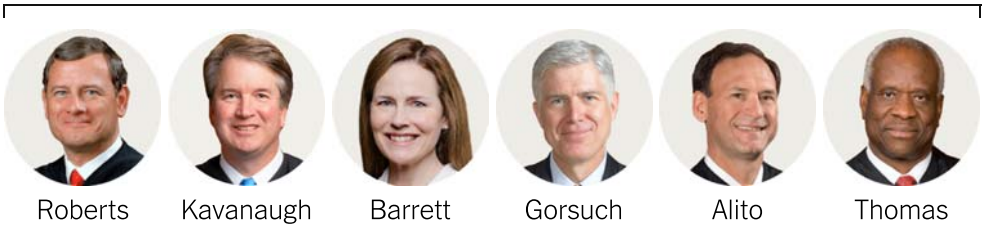
According to a recent survey from researchers at Harvard, Stanford and the University of Texas, the public is closely divided on how the court should rule in several major cases. In many of them, though, respondents held starkly different views based on their partisan affiliations. Here is a look at the major cases this term.

## Climate Change

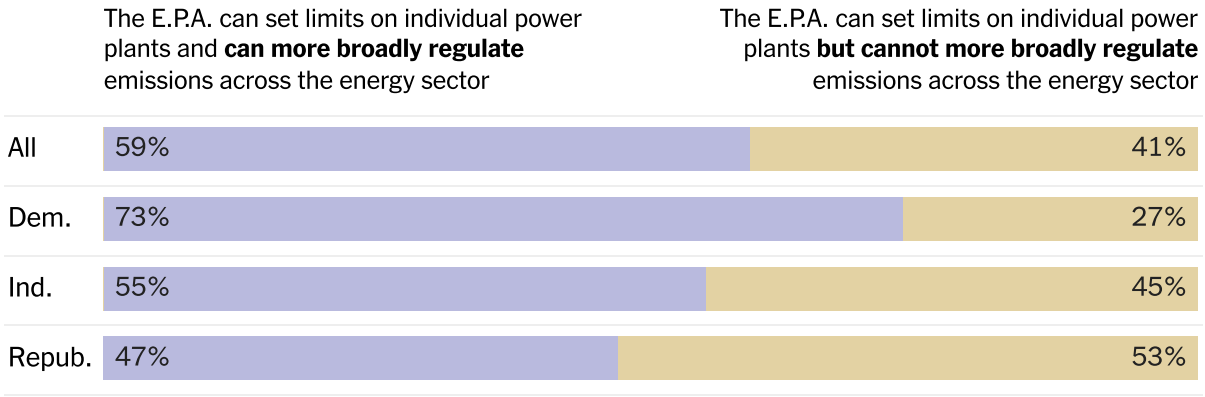
In West Virginia v. Environmental Protection Agency, the court's ruling curtailed the E.P.A.'s ability to regulate the energy sector, limiting it to measures like emission controls at individual power plants. The implications of the ruling could extend well beyond environmental policy.

6-3 DECIDED JUNE 30





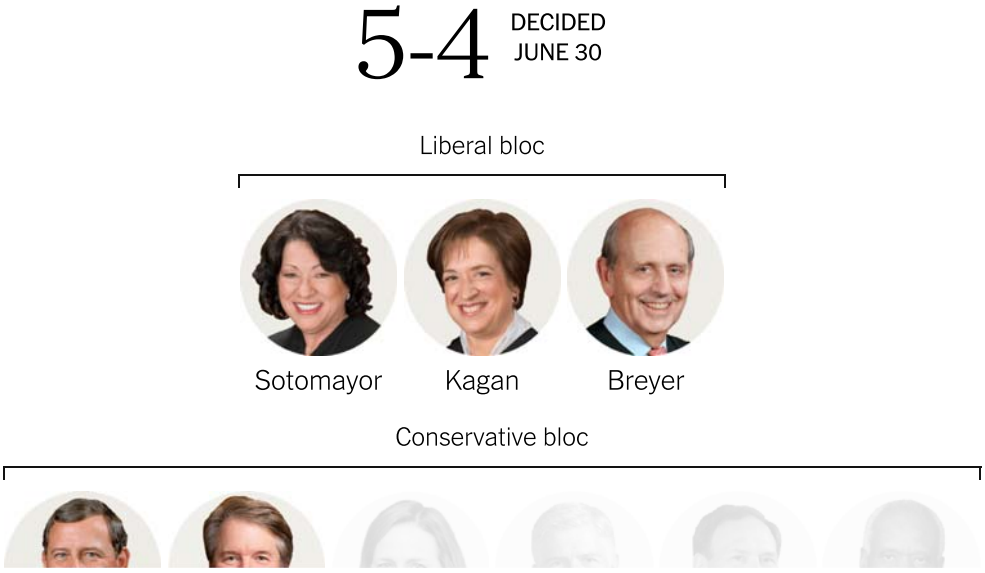

### Where the public stands




**Question wording:** Under federal law, the Environmental Protection Agency (E.P.A.) has the authority to set emissions standards using "the best system of emission reduction." Some people think this means that the E.P.A. can set emissions limits on individual power plants and can also more broadly regulate emissions across the entire energy sector. Other people think that the E.P.A. can set limits on individual power plants but cannot more broadly regulate emissions across the entire energy sector. What do you think? | Source: SCOTUSPoll

## Immigration

In Biden v. Texas, the court cleared the way for the Biden administration to end a Trump-era immigration program that forces asylum seekers arriving at the southwestern border to await approval in Mexico.



Roberts Kavanaugh Barrett Gorsuch Alito Thomas

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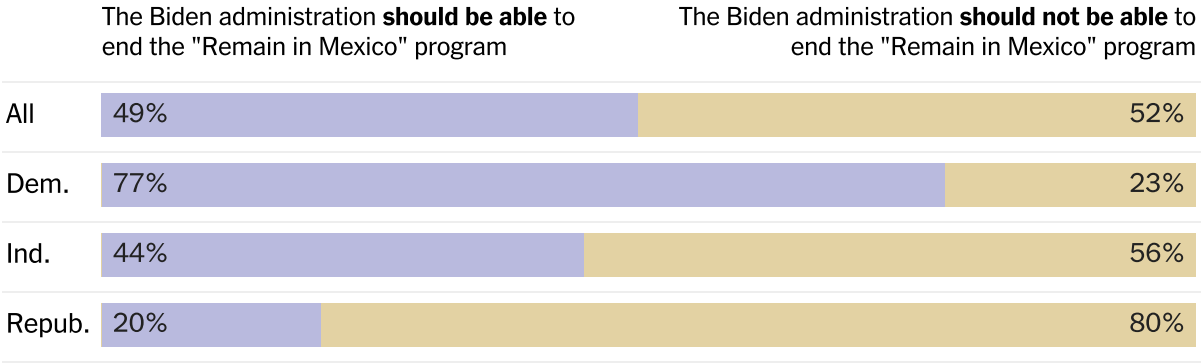
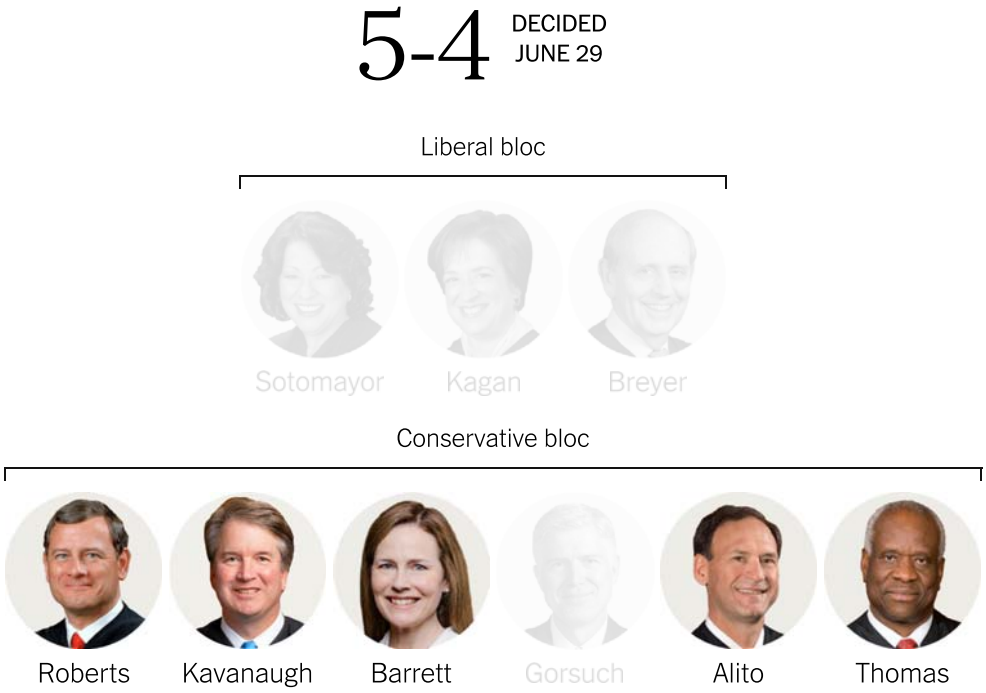



**Question wording:** The U.S. Department of Homeland Security required noncitizens trying to reside in the U.S. to wait in Mexico while immigration officials process their cases. The Biden administration issued an order ending this "Remain in Mexico" program. In response, several states sued, saying that the administration did not have adequate justification in ending the program. Some people think that the Biden administration should be able to end this program. Other people think that the Biden administration should not be able to do so. What do you think? | Source: SCOTUSPoll

## Native Americans

In Oklahoma v. Castro-Huerta, after ruling that much of Oklahoma falls within Indian reservations, the court ruled that state authorities may prosecute non-Indians who commit crimes against Indians on those reservations.



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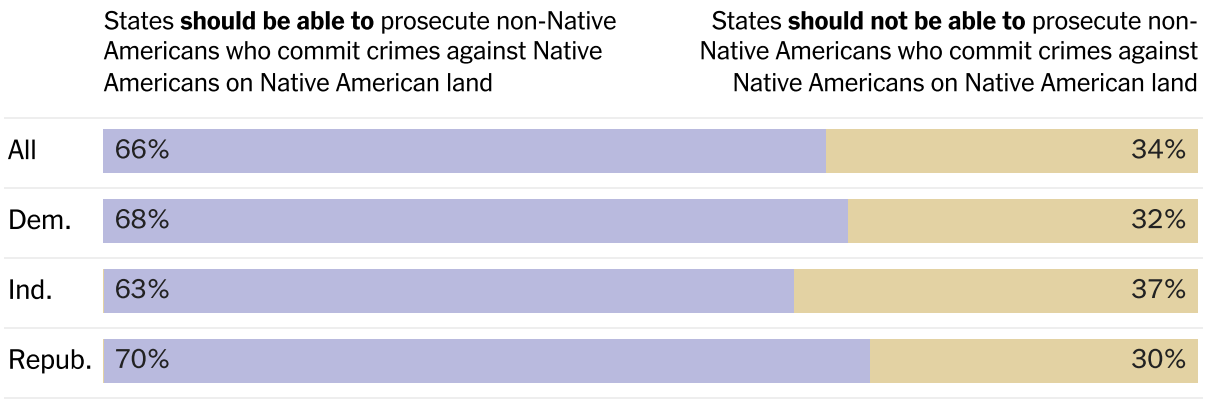
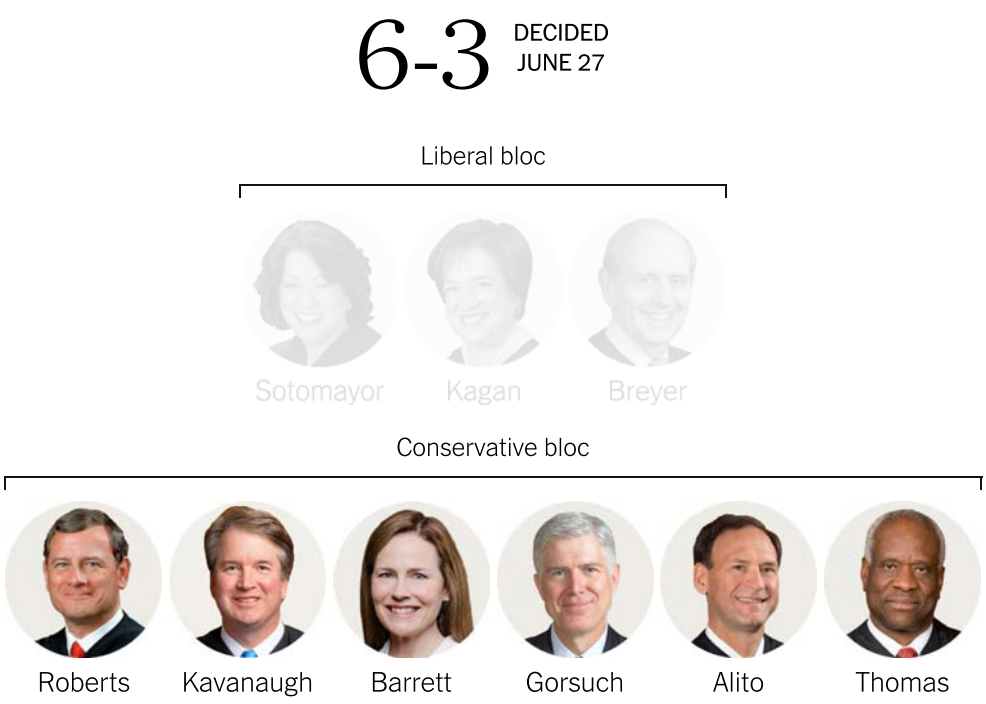



**Question wording:** The defendant, a non-Native American, committed a crime against a Native American on Native American land. The State of Oklahoma would like to pursue criminal charges against the defendant. The defendant says that the state cannot prosecute him because the crime occurred on Native American land, and so only the federal government can prosecute him. Some people think that states cannot prosecute crimes that happen on Native American land, even if the perpetrator is non-Native American. Others think that states should be able to prosecute such cases. What do you think? | Source: SCOTUSPoll

## School Prayer

In Kennedy v. Bremerton School District, the court ruled that a football coach at a public high school had a constitutional right to pray at the 50-yard line after his team's games.

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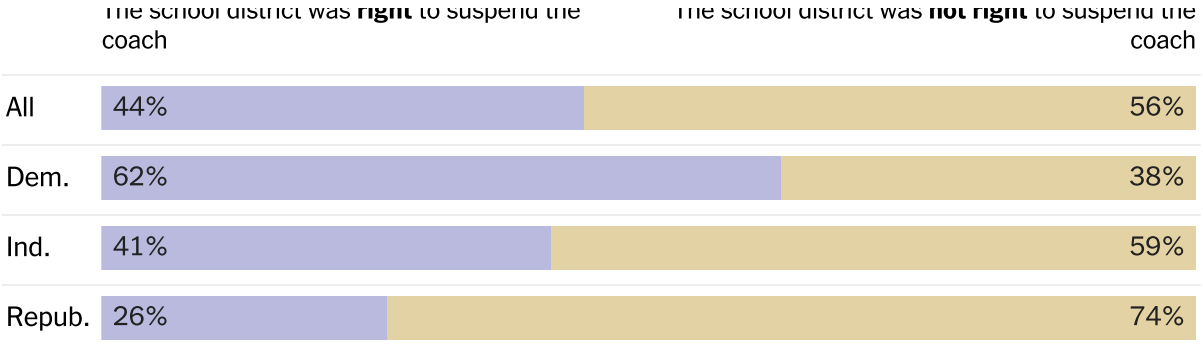
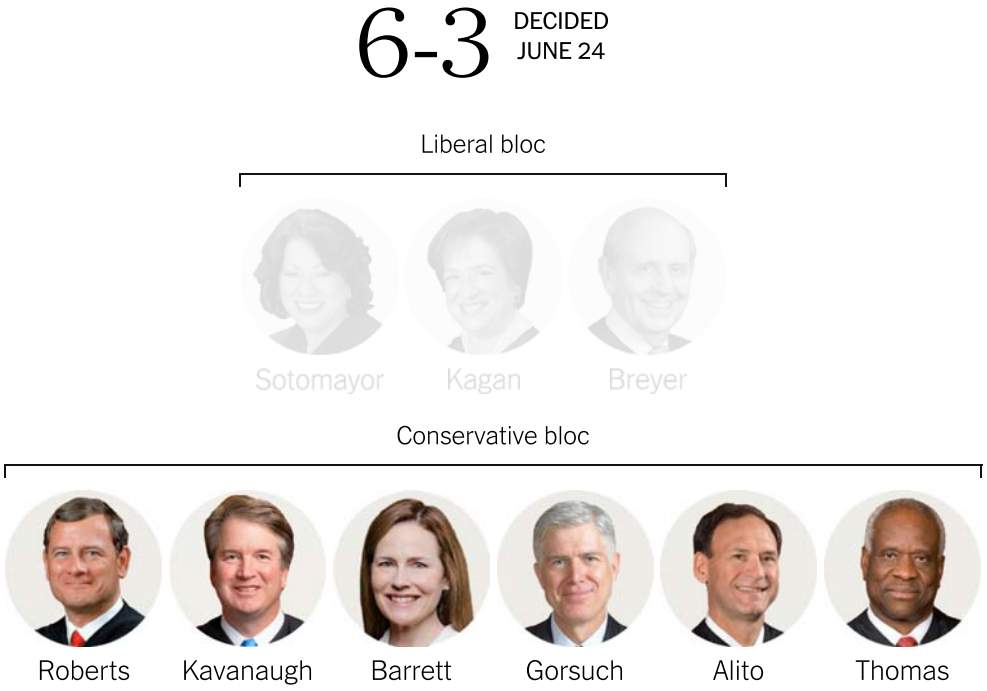



**Question wording:** The football coach at a public high school led prayers with players before and after games. The school district asked him to stop, and the coach refused. He was then suspended. Some people think the school district was right to suspend the coach because of the First Amendment's separation of church and state. Other people do not think the district was right to do so because of the coach's right to free exercise of religion. What do you think? | Source: SCOTUSPoll

## Abortion Rights

In Dobbs v. Jackson Women's Health Organization, the court ruled that a Mississippi law that bans most abortions after 15 weeks is constitutional and overturned the constitutional right to abortion established by Roe v. Wade in 1973.

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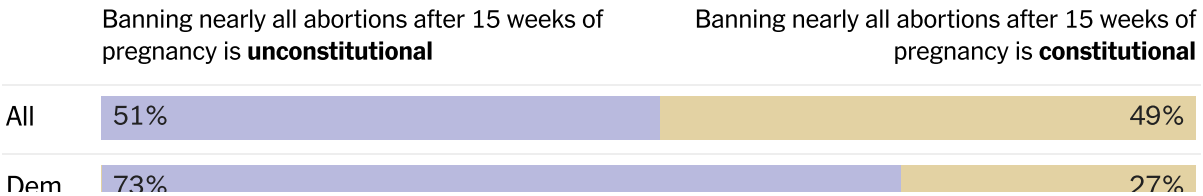
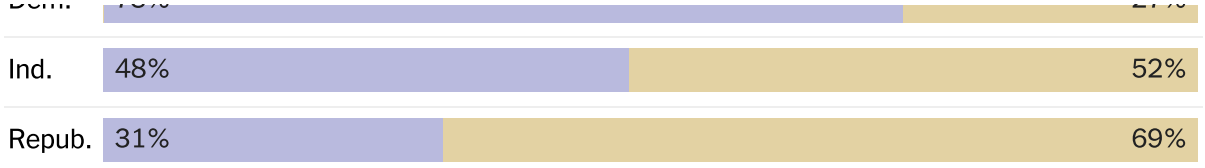
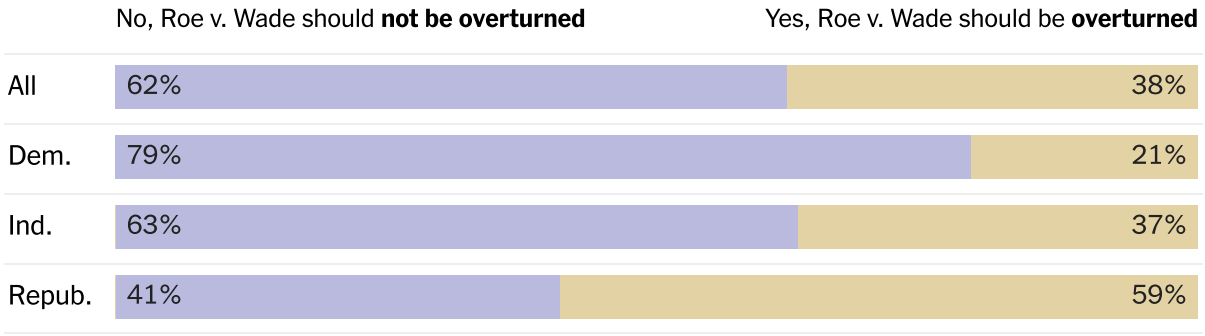




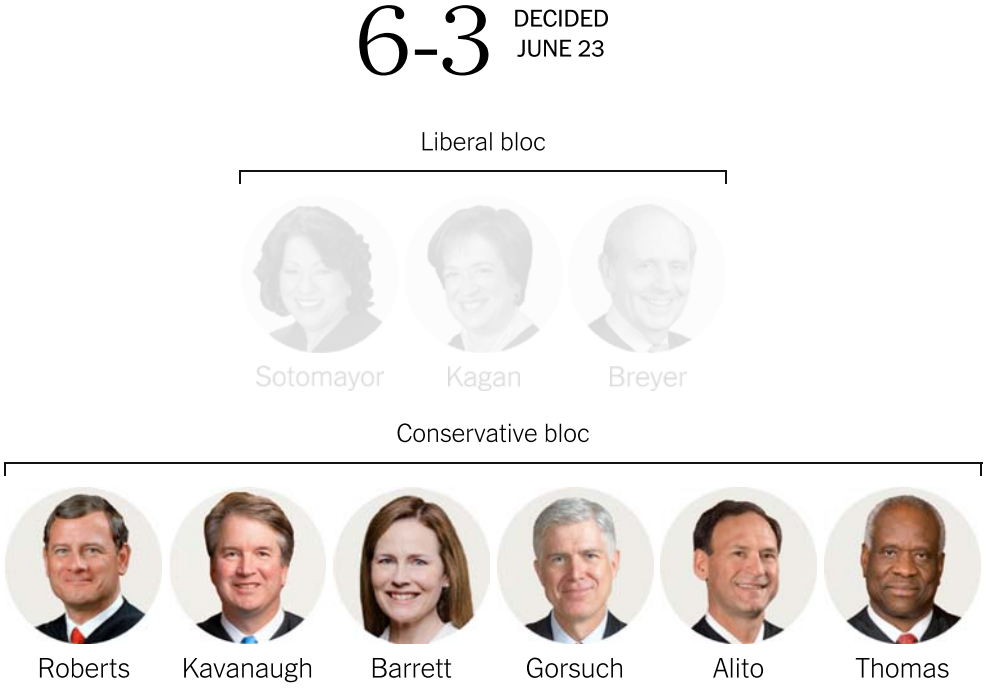

**Question wording:** A new law in Mississippi bans nearly all abortions after 15 weeks of pregnancy. Some people think that this law is unconstitutional. Others think it is constitutional. What do you think? | Source: SCOTUSPoll




**Question wording:** Should the Supreme Court overrule Roe v. Wade, the 1973 decision that established a constitutional right to abortion and prohibited states from banning abortion before the fetus can survive outside the womb, at around 23 weeks of pregnancy? | Source: SCOTUSPoll

## Second Amendment

In New York State Rifle & Pistol Association v. Bruen, the court ruled that states with strict limits on carrying guns in public violate the Second Amendment.

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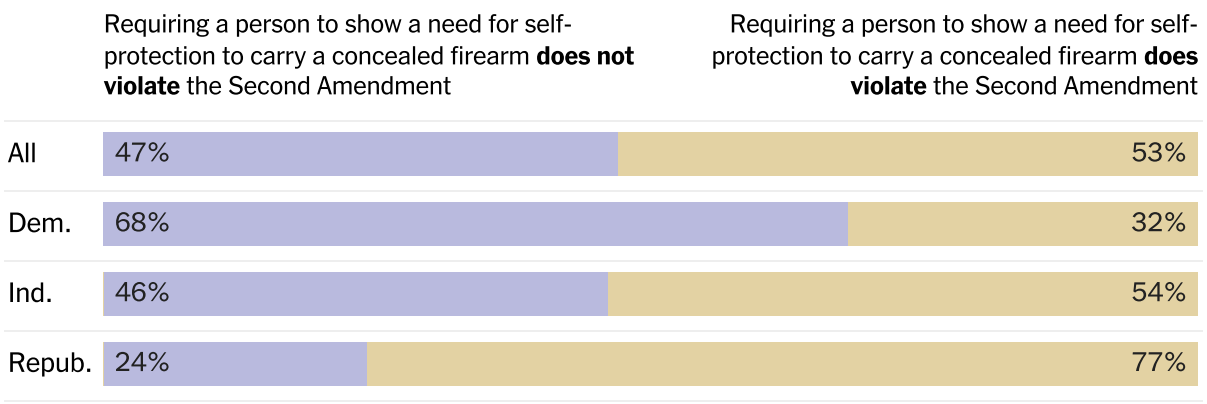
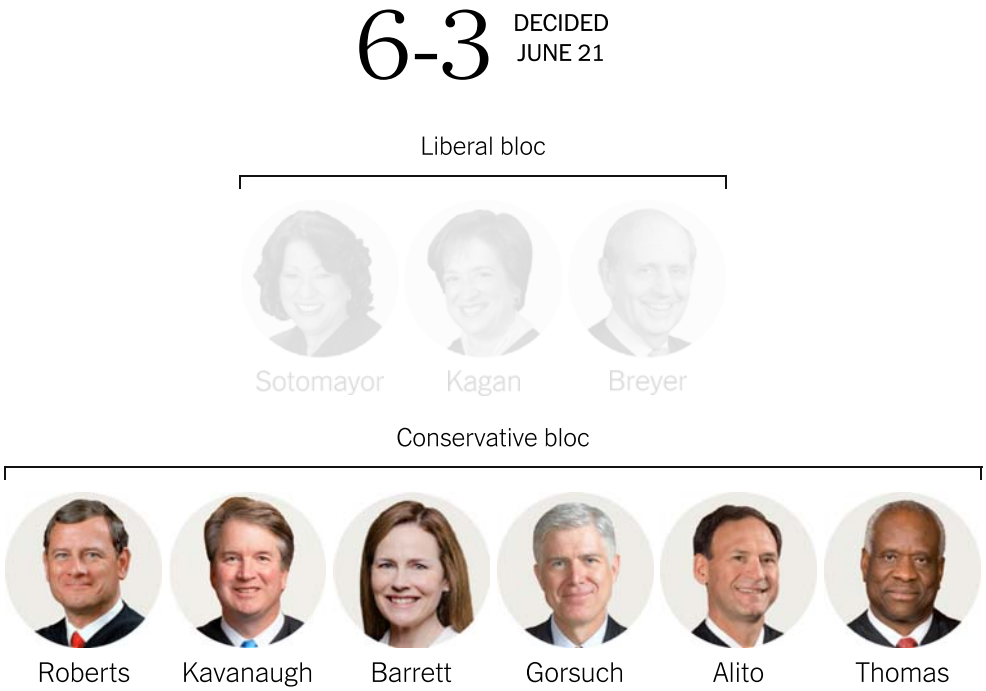



**Question wording:** New York requires a person to show a need for self-protection in order to receive a license to carry a concealed firearm outside the home. Some people think that this law violates people's Second Amendment rights. Others think it does not violate people's Second Amendment rights. What do you think? | Source: SCOTUSPoll

## Separation of Church and State

In Carson v. Makin, the court ruled that a Maine program that excludes religious schools from a state tuition program is a violation of the free exercise of religion.

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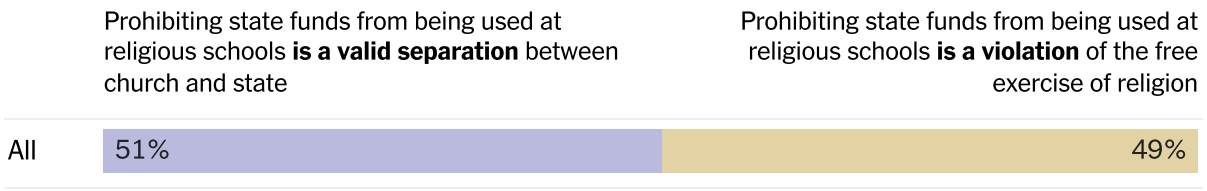
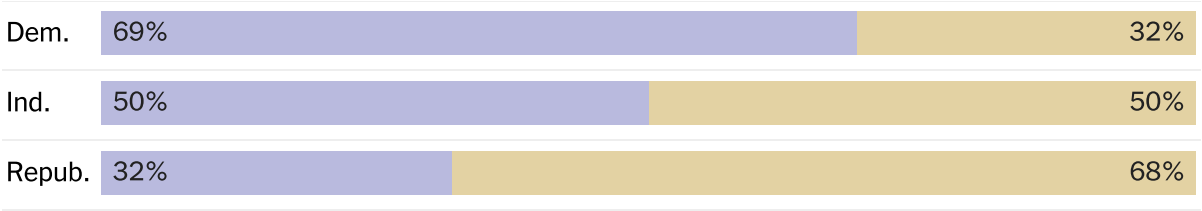
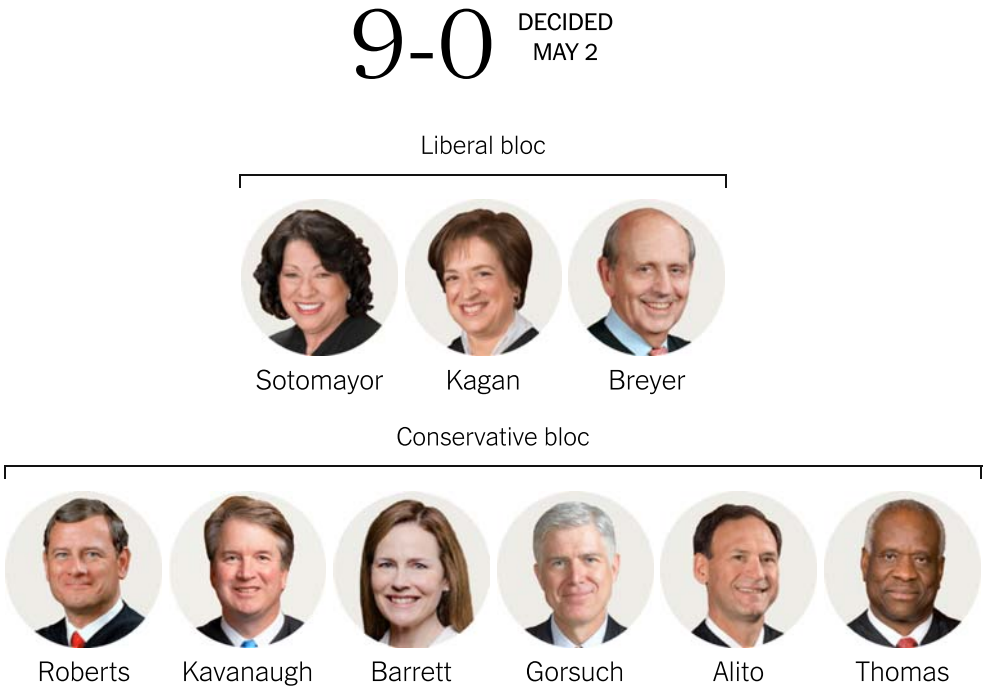





**Question wording:** The State of Maine pays private school tuition for students in rural areas that do not have public secondary schools. Maine prohibits students from using this public money to attend schools that are religious (or "sectarian"). Some people think that this is a violation of the First Amendment protections of the free exercise of religion. Other people think that this is a valid policy to maintain the separation between church and state. What do you think? | Source: SCOTUSPoll

## First Amendment and Public Forums

In Shurtleff v. Boston, the court ruled that the City of Boston had violated the First Amendment when it refused to let a private group raise a Christian flag in front of its City Hall, although it had allowed many other organizations to use the flagpole to celebrate various causes.

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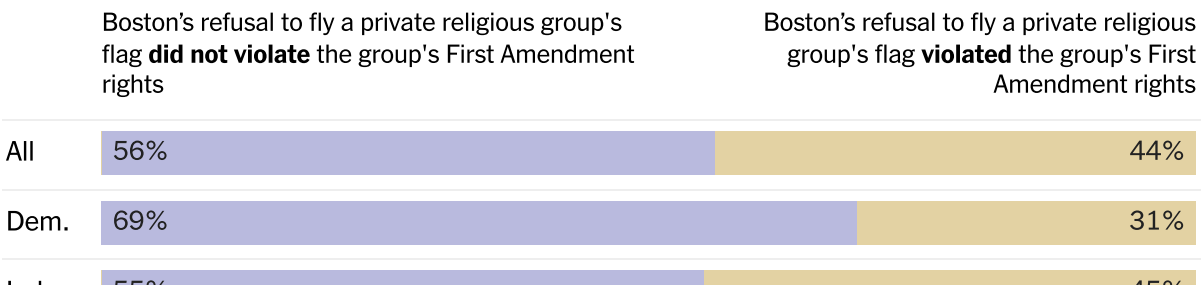
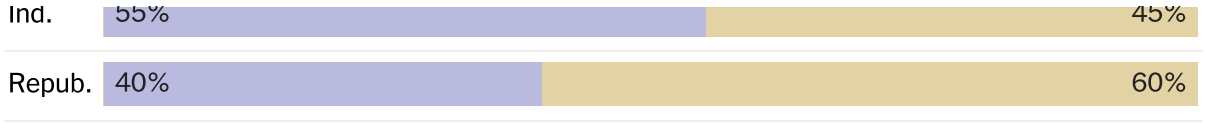


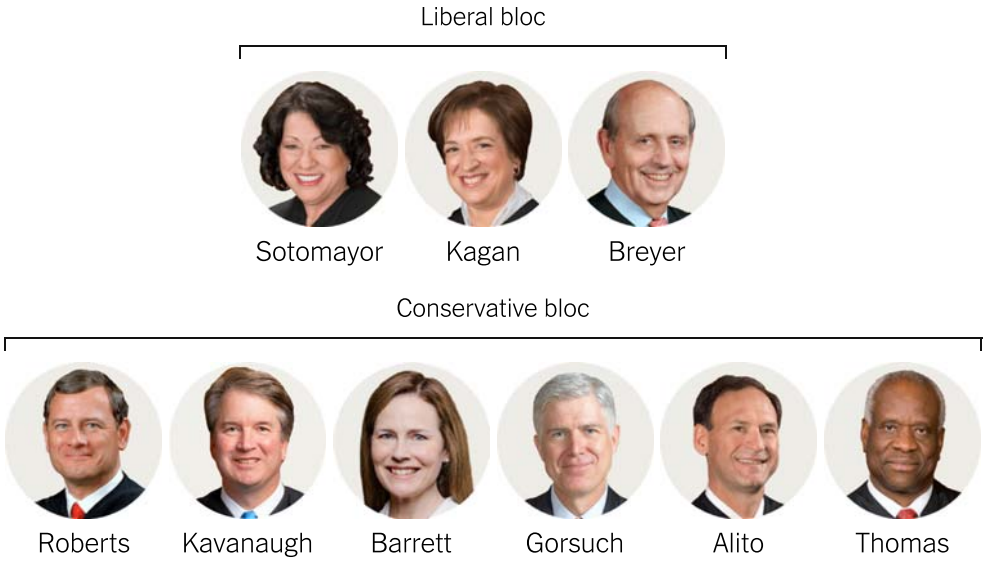



**Question wording:** Upon request, the City of Boston often flies flags of different organizations in front of its City Hall. The city refused to fly a religious organization's flag bearing a Christian cross. Some people say that Boston's refusal to fly a religious organization's flag violated the organization's First Amendment rights. Other people believe that it did not violate the organization's First Amendment rights. What do you think? | Source: SCOTUSPoll

## First Amendment and Censures

In Houston Community College System v. Wilson, the court ruled that elected bodies do not violate the First Amendment when they censure their members.

9-0 DECIDED MARCH 24

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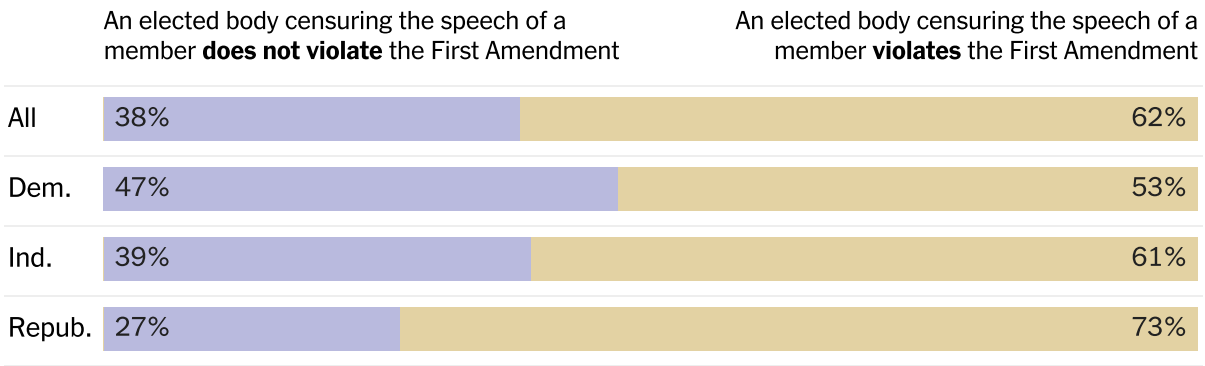


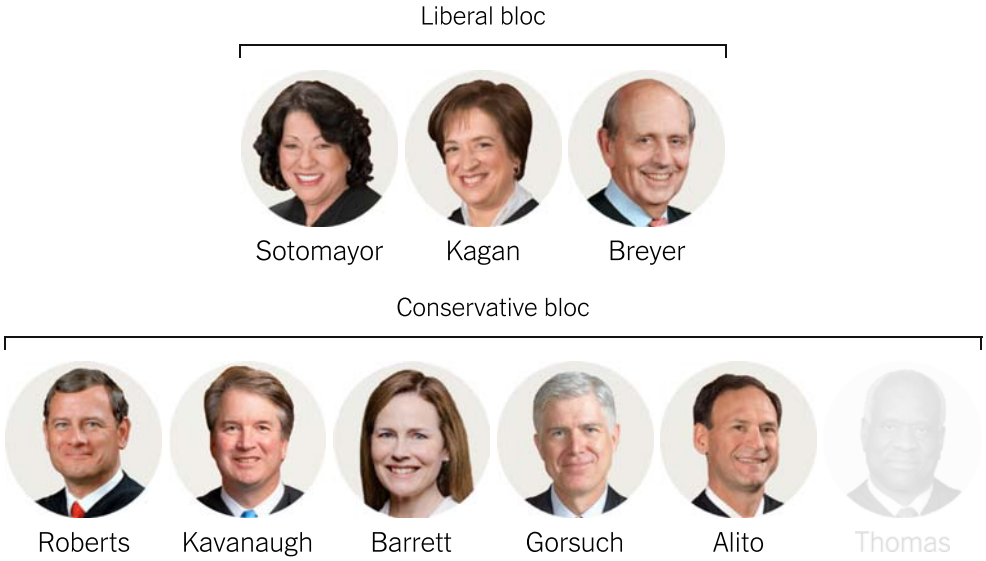

**Question wording:** An elected member of a community college board criticized other board members and was subsequently censured (given a formal reprimand). Some people think the board violated the First

Amendment rights of the elected member. Other people believe that the board did not violate the member's First Amendment rights. What do you think? | Source: SCOTUSPoll

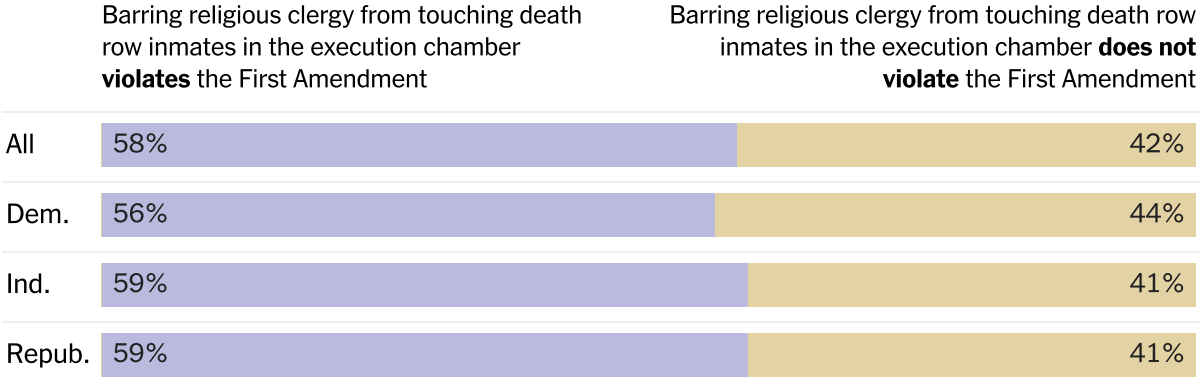
## Religion and the Death Penalty

In Ramirez v. Collier, the court ruled that Texas would violate a federal law protecting religious freedom if it executed a death row inmate without allowing his pastor to touch him and pray aloud in the execution chamber.

8-1 DECIDED MARCH 24



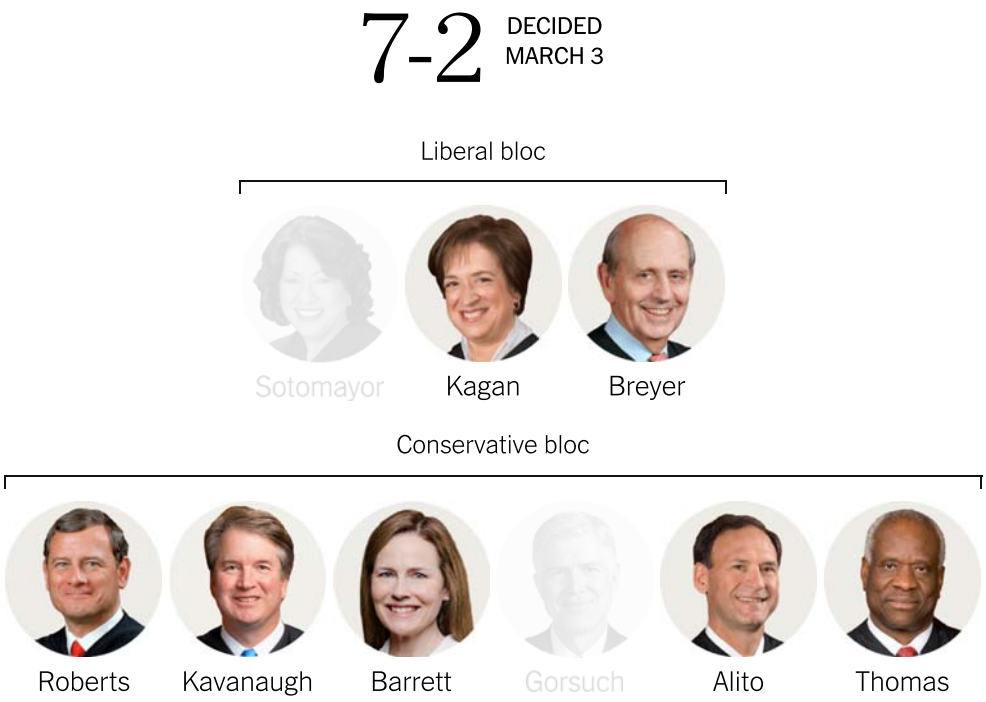

### Where the public stands



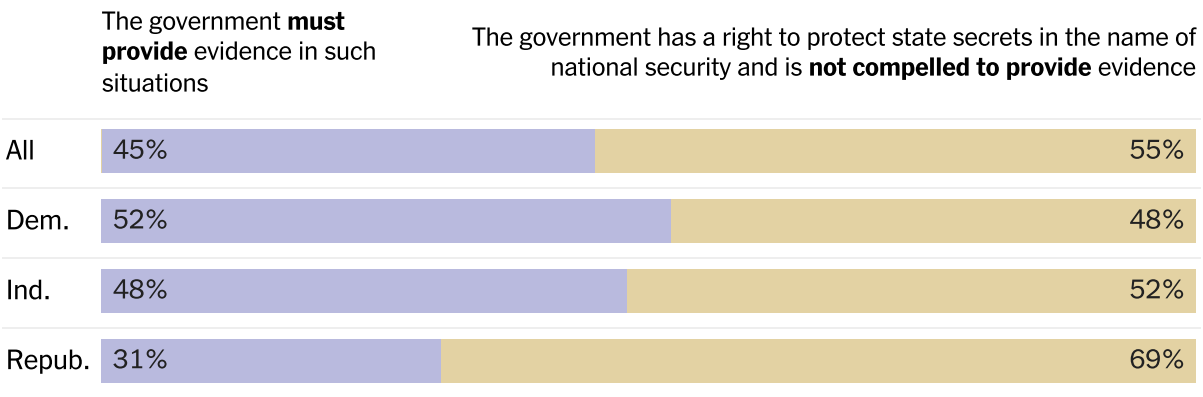

**Question wording:** Texas law barred a death row inmate from having his pastor in the chamber during his execution and placing his hands on him while praying out loud. Some people think that barring religious clergy from entering the execution chamber and touching death row inmates violates the First Amendment protections of the free exercise of religion. Other people think that it does not. What do you think? | Source: SCOTUSPoll

## State Secrets

In United States v. Zubaydah, the court ruled that the government was not required to disclose the location of a C.I.A. black site where a detainee at Guantánamo Bay, Cuba had been tortured.




### Where the public stands



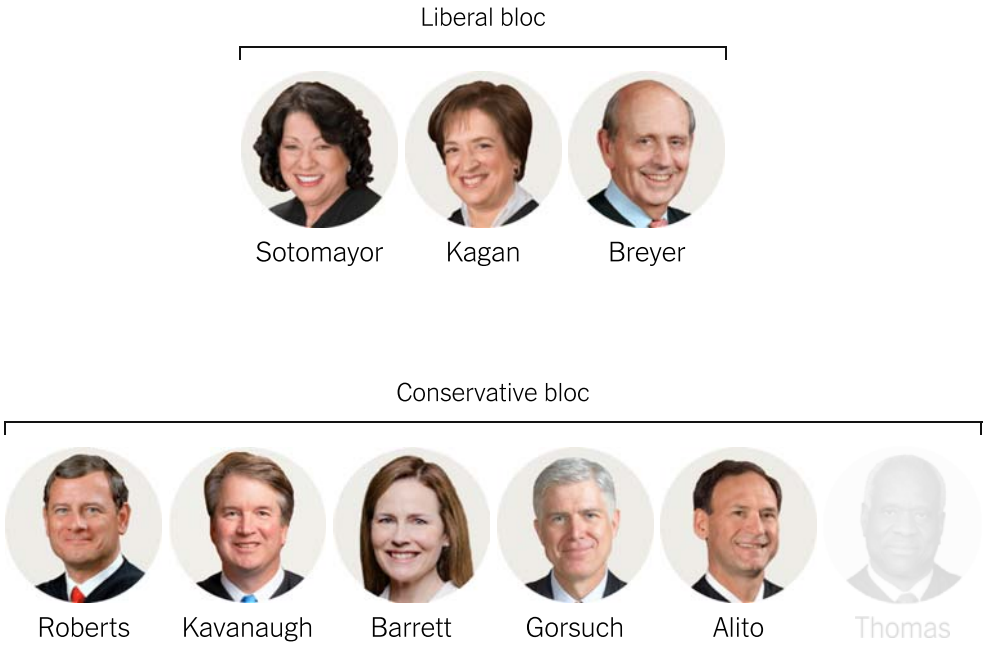

**Question wording:** A terrorism suspect currently being held in Guantánamo Bay says the C.I.A. used enhanced interrogation techniques and wants it investigated. The government has declassified some information, but it claims it has a right to protect state secrets in the name of national security and is not compelled to provide evidence connected to the investigation. Some people think that the government has a right to protect state secrets in the name of national security and is not compelled to provide evidence. Other people think that the government must provide evidence in such situations. What do you think? | Source: SCOTUSPoll

## Executive Privilege

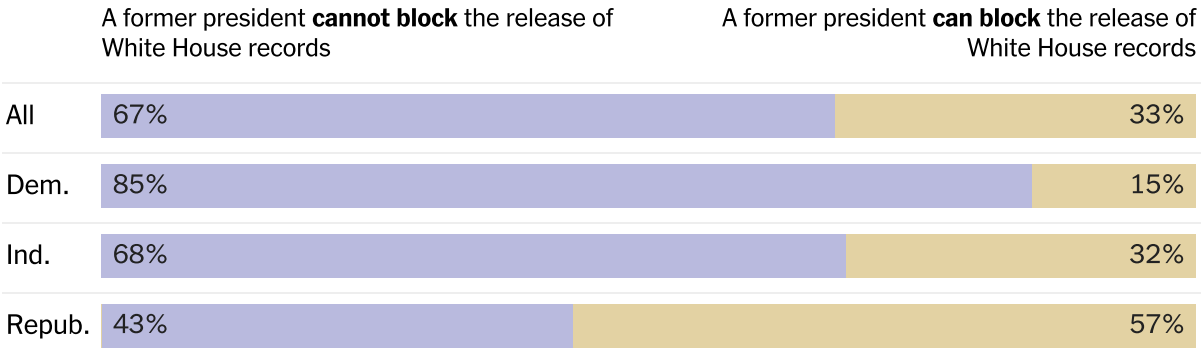
In Trump v. Thompson, the court ruled that former President Donald J. Trump could not block the release of White House records to a House committee investigating the Jan. 6 attack on the Capitol.

8-1

DECIDED JAN. 19



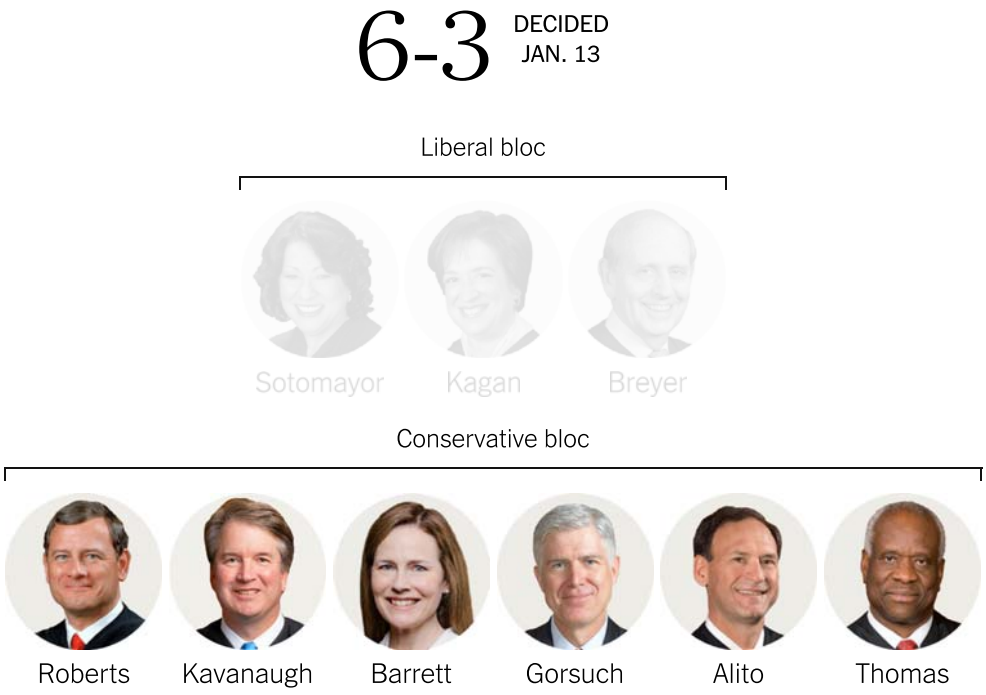

### Where the public stands



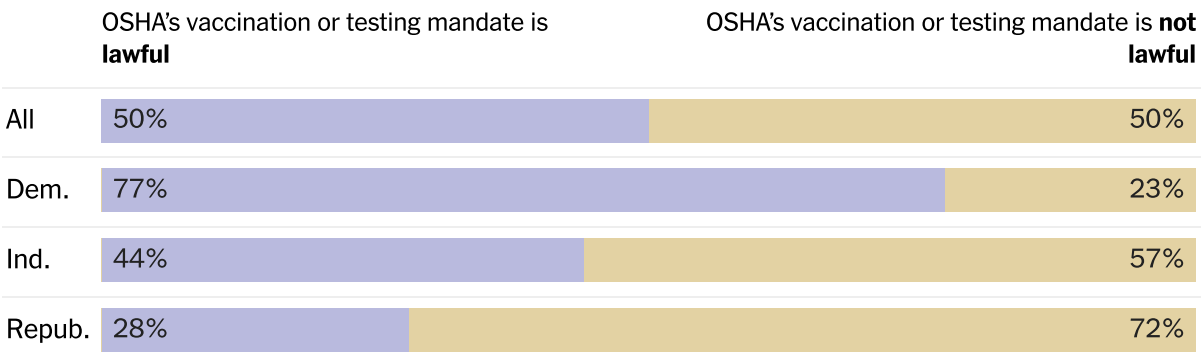

**Question wording:** Former President Donald Trump attempted to block the release of documents concerning his role in the events of Jan. 6, 2021, on the grounds that he has executive privilege. Some people think that executive privilege allows a former president to block the release of such records. Other people think that a former president does not have the authority to block the release of such records. What do you think? | Source: SCOTUSPoll

## Covid in the Workplace

In National Federation of Independent Business v. Department of Labor, the court found that the Biden administration's vaccine-or-testing mandate for large employers was not lawful.




### Where the public stands

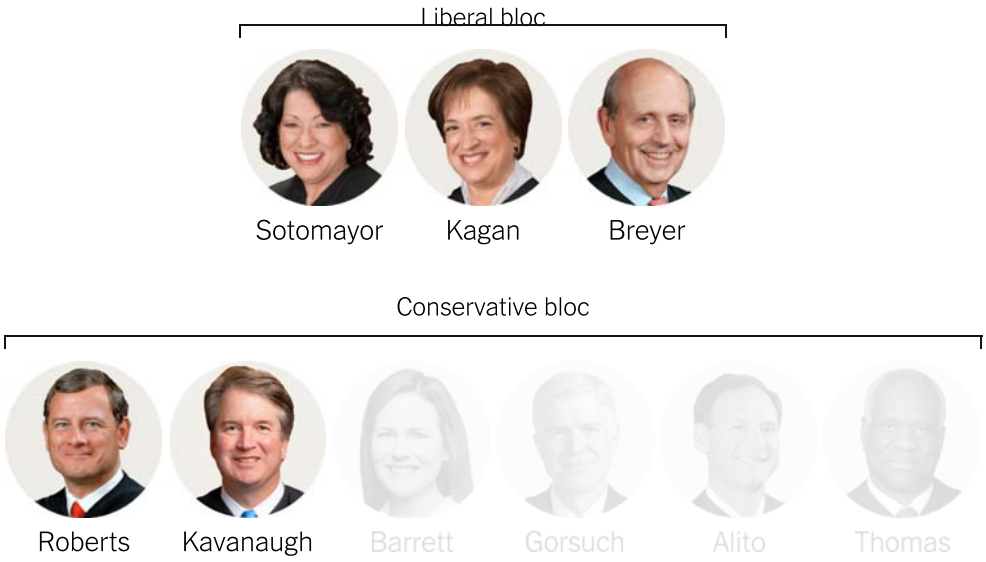



**Question wording:** The federal Occupational Safety and Health Administration (OSHA) has issued a rule mandating that all employers with at least 100 employees require that their employees either be vaccinated against Covid-19 or else be tested weekly and wear masks at work. Some people think this mandate is unlawful because it exceeds OSHA's authority. Other people think this is a reasonable use of the agency's authority to protect workplace safety and health. What do you think? | Source: SCOTUSPoll

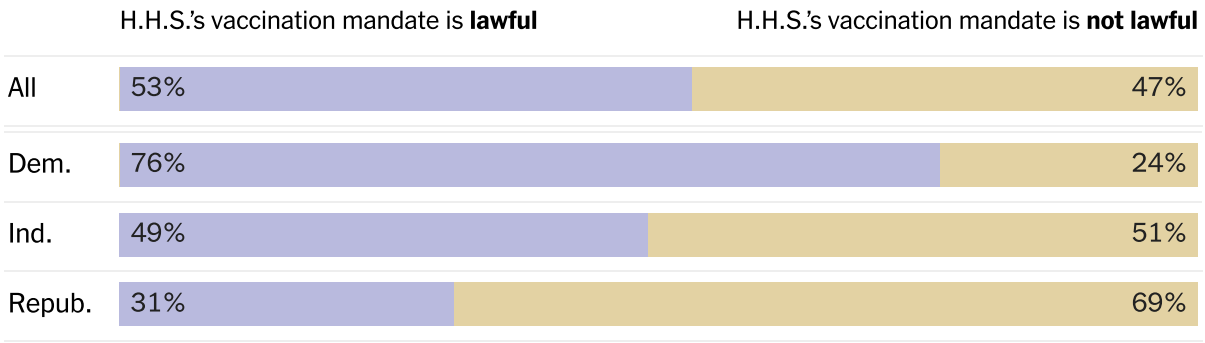
## Covid in Health Care Facilities

In Biden v. Missouri, the court found that the Biden administration's mandate to require health care workers at facilities receiving federal money to be vaccinated was lawful.

5-4 DECIDED JAN. 13




## Where the public stands




**Question wording:** The federal Department of Health and Human Services (H.H.S.) has issued a rule mandating that health care workers at hospitals and other facilities participating in Medicare and Medicaid be vaccinated against Covid-19 unless they qualify for religious or medical exemptions. Some people think this mandate is unlawful because it exceeds H.H.S.'s authority. Other people think this is a reasonable use of the agency's authority to ensure the safety of patients. What do you think? | Source: SCOTUSPoll

Polling data comes from the SCOTUSPoll project by Stephen Jessee, University of Texas at Austin; Neil Malhotra, Stanford University; and Maya Sen, Harvard University. It is based on a survey conducted online by YouGov from March 30 to April 6 using a representative sample of 2,158 American adults.

**Correction:** June 28, 2022

An earlier version of this article, relying on incorrect information provided by SCOTUSPoll, misstated the number of all respondents who believe the E.P.A. can set limits on individual power plants but cannot more broadly regulate emissions across the energy sector. It is 41 percent, not 45 percent.

# *June 24, 2022: The Day Chief Justice Roberts Lost His Court*

Outflanked by five impatient and ambitious justices to his right, the chief justice has become powerless to pursue his incremental approach.

Chief Justice John G. Roberts Jr. mostly has used his power to nudge the court to the right in measured steps. Credit...T.J. Kirkpatrick for The New York Times

Adam Liptak, The New York Times Online Edition, June 25, 2022.

WASHINGTON — In the most important case of his 17-year tenure, Chief Justice John G. Roberts Jr. found himself entirely alone.

He had worked for seven months to persuade his colleagues to join him in merely chipping away at Roe v. Wade, the 1973 decision that established a constitutional right to abortion. But he was outflanked by the five justices to his right, who instead reduced Roe to rubble.

In the process, they humiliated the nominal leader of the court and rejected major elements of his jurisprudence.

The moment was a turning point for the chief justice. Just two years ago, after the retirement of Justice Anthony M. Kennedy made him the new swing justice, he commanded a kind of influence that sent experts hunting for historical comparisons. Not since 1937 had the chief justice also been the court's fulcrum, able to cast the decisive vote in closely divided cases.

Chief Justice Roberts mostly used that power to nudge the court to the right in measured steps, understanding himself to be the custodian of the court's prestige and authority. He avoided what he called jolts to the legal system, and he tried to decide cases narrowly.

But that was before a crucial switch. When Justice Amy Coney Barrett, a conservative appointed by President Donald J. Trump, succeeded Justice Ruth Bader Ginsburg, the liberal icon, after her death in 2020, Chief Justice Roberts's power fizzled.

"This is no longer John Roberts's court," Mary Ziegler, a law professor and historian at the University of California, Davis, said on Friday.

The chief justice is now in many ways a marginal figure. The five other conservatives are impatient and ambitious, and they do not need his vote to achieve their goals. Voting with the court's three liberals cannot be a particularly appealing alternative for the chief justice, not least because it generally means losing.

Chief Justice Roberts's concurring opinion in Friday's decision, Dobbs v. Jackson Women's Health Organization, illustrated his present and perhaps future unhappy lot. He had tried for seven months to persuade a single colleague to join his incremental approach in the case, starting with carefully planned questioning when the case was argued in December. He failed utterly.

In the end, the chief justice filed a concurring opinion in which he spoke for no one but himself.

"It leaves one to wonder whether he is still running the show," said Allison Orr Larsen, a law professor at the College of William & Mary.

The chief justice will face other challenges. Though Justice Samuel A. Alito Jr., writing for the majority, said that "nothing in this opinion should be understood to cast doubt on precedents that do not concern abortion," both liberal and conservative members of the court expressed doubts.

Justice Clarence Thomas, for instance, wrote in a concurring opinion that the court should go on to overrule three "demonstrably erroneous decisions" — on same-sex marriage, gay intimacy and contraception — based on the logic of Friday's opinion.

In Friday's abortion decision, Chief Justice Roberts wrote that he was ready to sustain the Mississippi law at issue in the case, one that banned most abortions after 15 weeks of pregnancy. The only question before the court was whether that law was constitutional, and he said it was.

"But that is all I would say," he wrote, "out of adherence to a simple yet fundamental principle of judicial restraint: If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more."

He chastised his colleagues on both sides of the issue for possessing unwarranted self-confidence.

Demonstrators gathered outside the Supreme Court on Friday. Credit...Shuran Huang for The New York Times

“Both the court’s opinion and the dissent display a relentless freedom from doubt on the legal issue that I cannot share,” he wrote. “I am not sure, for example, that a ban on terminating a pregnancy from the moment of conception must be treated the same under the Constitution as a ban after 15 weeks.”


Chief Justice Roberts was sworn in in 2005.Credit...Doug Mills/ The New York Times

The failure of his proposed approach was telling, Professor Larsen said.

“It sounds like the justices are talking past each other,” she said. “There is very little evidence of moderation or narrowing grounds to accommodate another’s point of view.”

The chief justice acknowledged that his proposed ruling was at odds with the part of Roe v. Wade that said states may not ban abortions before fetal viability, around 23 weeks. He was prepared to discard that line. “The court rightly rejects the arbitrary viability rule today,” he wrote, noting that many developed nations use a 12-week cutoff.

But there was more to Roe than the viability line, Chief Justice Roberts wrote. The court should have stopped short, he wrote, of taking “the dramatic step of altogether eliminating the abortion right first recognized in Roe.”

Justice Alito rejected that approach.

“If we held only that Mississippi’s 15-week rule is constitutional, we would soon be called upon to pass on the constitutionality of a panoply of laws with shorter deadlines or no deadline at all,” he wrote. “The ‘measured course’ charted by the concurrence would be fraught with turmoil until the court answered the question that the concurrence seeks to defer.”

The chief justice’s proposal was characteristic of his cautious style, one that has fallen out of favor at the court.

“It is only where there is no valid narrower ground of decision that we should go on to address a broader issue, such as whether a constitutional decision should be overturned,” he wrote on Friday, citing his opinion in a 2007 campaign finance decision that planted the seeds that blossomed into the Citizens United ruling in 2010.

That two-step approach was typical of Chief Justice Roberts.

The first step of the approach in 2007 frustrated Justice Antonin Scalia, who accused him in a concurrence of effectively overruling a major precedent “without saying so.”

“This faux judicial restraint is judicial obfuscation,” Justice Scalia, who died in 2016, wrote at the time. But Justice Scalia did not have the votes to insist on speed. Chief Justice Roberts’s current colleagues do.

At his confirmation hearing in 2005, Chief Justice Roberts said the Supreme Court should be wary of overturning precedents, in part because doing so threatens the court’s legitimacy.

“It is a jolt to the legal system when you overrule a precedent,” he said. “Precedent plays an important role in promoting stability and evenhandedness.”

He used similar language in criticizing the majority on Friday.

“The court’s decision to overrule Roe and Casey is a serious jolt to the legal system — regardless of how you view those cases,” he wrote. “A narrower decision rejecting the

misguided viability line would be markedly less unsettling, and nothing more is needed to decide this case."

There are, to be sure, areas in which there is little or no daylight between Chief Justice Roberts and his more conservative colleagues, including race, religion, voting rights and campaign finance. In other areas, as in a death penalty decision on Thursday, he may be able to forge a coalition with the three liberals and Justice Brett M. Kavanaugh.

But Chief Justice Roberts, 67, may have a hard time protecting the institutional values he prizes. The court has been buffeted by plummeting approval ratings, by the leaked draft of Friday's majority opinion, by revelations about the efforts of Virginia Thomas, the wife of Justice Thomas, to overturn the 2020 election, and by Justice Thomas's failure to recuse himself from a related case.

Tensions are so high that federal officials arrested an armed man this month outside Justice Kavanaugh's home and charged him with trying to kill the justice. There have been protests outside the justices' homes in anticipation of the Roe ruling. Ten days ago, Congress approved legislation extending police protection to the justices' immediate families.

The climate — and a court that routinely divides along partisan lines in major cases — has increasingly undercut Chief Justice Roberts's public assertions that the court is not political.

"We don't work as Democrats or Republicans," he said in 2016. Two years later, he reiterated that position in an extraordinary rebuke of President Donald J. Trump after Mr. Trump responded to an administration loss in a lower court by criticizing the judge who issued it as an "Obama judge."

"We do not have Obama judges or Trump judges, Bush judges or Clinton judges," Chief Justice Roberts said in a sharp public statement that nonetheless went against substantial evidence to the contrary even then.

On Friday, all three Democratic appointees voted to strike down the Mississippi law and all six Republican ones voted to uphold it.

His concurring opinion and his institutionalist impulses notwithstanding, Chief Justice Roberts may have a hard time convincing the public that party affiliations say nothing about how the justices conduct their work.

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**A version of this article appears in print on June 25, 2022, Section A, Page 14 of the New York edition with the headline: Turning Point as Chief Justice Loses Grip on the Court.**