

# **What Do The American People Think About the 2021-2022 Supreme Court Cases?**

**Results from SCOTUSPoll, a collaboration between researchers at the Harvard Kennedy School of Government, the Stanford Graduate School of Business, and the University of Texas**

**June 6, 2022**

**Stephen Jessee  
The University of Texas at Austin**

**Neil Malhotra  
Stanford University**

**Maya Sen  
Harvard University**

This memo reports results from the 2022 SCOTUSPoll, a nationally representative survey of Americans' attitudes on the major Supreme Court cases argued during the 2021-2022 term. The survey was conducted by YouGov using a nationally representative sample of 2,158 U.S. adult residents interviewed online between March 30 - April 6, 2022. The poll's margin of error is  $\pm 2.4\%$ .

The goal of the survey is to gauge how Americans feel about the major topics being decided by the Supreme Court in advance on the Court issuing decisions in the summer. Regular surveys of Americans report whether they agree or disagree with decisions made by Congress and by the President; this survey applies the same attention to Americans' attitudes on issues handled by the Court. This kind of investigation is critical: Given the Court's 6-3 conservative majority as well as our highly polarized political landscape, it is possible that the Court will be out of step with the Americans' attitudes, thus undermining its public standing and legitimacy. Although the Court is not designed to be a majoritarian institution, these data help us understand the extent to which Court decisions are in step with Americans' attitudes.

## **Summary of Results**

The purpose of the survey is to assess how people would feel about the actual case outcomes as opposed to the legal arguments or jurisprudential considerations. We therefore selected major cases from the 2021-2022 term as identified by important media outlets and other Court observers. For all questions, half the respondents received the questions as worded below, whereas half received versions where the options were reversed.

Looking at responses over the cases asked about, the public is slightly more likely to take the liberal (51.5%) than the conservative (48.5%) position.<sup>1</sup> The case where the highest percentage of Americans back the liberal position involves the question of whether the President can block

---

<sup>1</sup> These percentages do not include two cases in which the views of Democratic and Republican respondents were nearly identical, suggesting the public did not view them as particularly ideological.

the release of White House records on executive privilege grounds (67% of respondents said yes, including 85% of Democrats and 43% of Republicans).

The public is narrowly divided on several prominent ideologically charged issues such as abortion, gun control, immigration, and whether public funds can be used to pay for private religious education.

Some of the cases included in this term's SCOTUSpoll showed large partisan differences in respondents' views, but others — on topics such as Native American sovereignty or whether a death row inmate's pastor should be allowed to accompany him as he is executed — yielded similar levels of support across party identifications.

**Issue: Abortion Restrictions**

**Cases #1. *Dobbs v. Jackson***

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?

Banning nearly all abortions after 15 weeks of pregnancy is unconstitutional

Banning nearly all abortions after 15 weeks of pregnancy is constitutional

	All Respondents	Democrats	Republicans	Independents/Other
UNCONSTITUTIONAL	51.4%	72.6%	31.0%	47.8%
CONSTITUTIONAL	48.6	27.4	69.0	52.2

*N* = 2,132

**Issue: Overturn Roe v. Wade**

**Cases #2. *Dobbs v. Jackson***

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?

Yes, Roe v. Wade should be overturned

No, Roe v. Wade should NOT be overturned

	All Respondents	Democrats	Republicans	Independents/Other
OVERTURNED	37.8%	21.2%	59.2%	37.4%
NOT OVERTURNED	62.3	78.8	40.8	62.6

*N* = 2,130

**Issue: Gun Restrictions**

**Cases #3. *NY State Rifle and Pistol Association v. Bruen***

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?

New York requiring a person to show a need for self-protection to receive a license to carry a concealed firearm outside the home violates people’s Second Amendment rights

New York requiring a person to show a need for self-protection to receive a license to carry a concealed firearm outside the home does NOT violate people’s Second Amendment rights

	All Respondents	Democrats	Republicans	Independents/Other
DOES VIOLATE	52.6%	32.2%	76.6%	53.6%
DOES NOT VIOLATE	47.4	67.8	23.5	46.4

*N* = 2,133

**Issue: Government Tuition Payment for Religious Education**

**Cases #4. *Carson v. Makin***

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?

Maine prohibiting state funds from being used at religious schools is a violation of the First Amendment protections of the free exercise of religion

Maine prohibiting state funds from being used at religious schools is a valid policy to maintain the separation between church and state

	All Respondents	Democrats	Republicans	Independents/Other
VIOLATES	48.7%	31.5%	68.3%	49.9%
DOES NOT VIOLATE	51.3	68.5	31.7	50.1

*N = 2,130*

**Issue: State Secrets and Rules of Evidence**

**Cases #5. *US v. Zubaydah***

A terrorism suspect currently being held in Guantanamo Bay says the CIA 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?

The government has a right to protect state secrets in the name of national security and is not compelled to provide evidence

The government must provide evidence in such situations

	All Respondents	Democrats	Republicans	Independents/Other
RIGHT TO PROTECT	54.9%	47.8%	69.3%	51.6%
MUST PROVIDE	45.1	52.2	30.7	48.4

*N* = 2,132

**Issue: Free Speech and Censure of Elected Officials**

**Cases #6. *Houston Community College System v. Wilson***

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?

An elected body censoring the speech of an elected member violates the First Amendment  
An elected body censoring the speech of an elected member does NOT violate the First Amendment

	All Respondents	Democrats	Republicans	Independents/Other
VIOLATES	61.7%	53%	73.3%	61.3%
DOES NOT VIOLATE	38.3	47	26.7	38.7

*N* = 2,133



**Issue: Religious Exercise**

**Cases #7. *Ramirez v. Collier***

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?

Barring religious clergy from entering the execution chamber and touching death row inmates violates the First Amendment protections of the free exercise of religion

Barring religious clergy from entering the execution chamber and touching death row inmates does NOT violate the First Amendment protections of the free exercise of religion

	All Respondents	Democrats	Republicans	Independents/Other
VIOLATES	57.9%	56%	59.1%	58.6%
DOES NOT VIOLATE	42.1	44	40.9	41.4

*N* = 2,132

**Issue: First Amendment Rights and Establishment Clause**

**Cases #8. *Shurtleff v. Boston***

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?

Boston’s refusal to fly a private religious organization’s flag violated the organization’s First Amendment rights

Boston’s refusal to fly a private religious organization’s flag did NOT violate the organization’s First Amendment rights

	All Respondents	Democrats	Republicans	Independents/Other
VIOLATED	44.3%	31.2%	59.7%	45%
DID NOT VIOLATE	55.7	68.8	40.4	55

*N* = 2,132

**Issue: Covid Policy and Federal Agency Authority**

**Cases #9. *National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration***

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?

OSHA’s vaccination or testing mandate is NOT lawful

OSHA’s vaccination or testing mandate is lawful

	All Respondents	Democrats	Republicans	Independents/Other
NOT LAWFUL	49.8%	22.9%	72.4%	56.5%
LAWFUL	50.2	77.1	27.6	43.5

*N* = 2,133

**Issue: Covid Policy and Federal Agency Authority**

**Cases #10. *Biden v. Missouri***

The federal Department of Health and Human Services (HHS) 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 HHS’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?

HHS’s vaccination mandate is NOT lawful

HHS’s vaccination mandate is lawful

	All Respondents	Democrats	Republicans	Independents/Other
NOT LAWFUL	47%	23.8%	68.6%	51.4%
LAWFUL	53	76.2	31.4	48.6

*N* = 2,133

**Issue: EPA Authority**

**Cases #11. *West Virginia v. EPA***

Under federal law, the Environmental Protection Agency (EPA) has the authority to set emissions standards using "the best system of emission reduction."

Some people think this means that the EPA 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 EPA can set limits on individual power plants but cannot more broadly regulate emissions across the entire energy sector.

What do you think?

The EPA can set emissions limits on individual power plants and CAN also more broadly regulate emissions across the entire energy sector

The EPA can set limits on individual power plants but CANNOT more broadly regulate emissions across the entire energy sector

	All Respondents	Democrats	Republicans	Independents/Other
CAN BROADLY REGULATE	58.7%	72.7%	46.9%	55.2%
CAN NOT BROADLY REGULATE	41.3	27.3	53.2	44.8

*N* = 2,132

**Issue: Executive Privilege**

**Cases #12. *Trump v. Thompson***

Former President Donald Trump attempted to block the release of documents concerning his role in the events of January 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?

A former president CAN block the release of White House records

A former president CANNOT block the release of White House records

	All Respondents	Democrats	Republicans	Independents/Other
CAN BLOCK	33.2%	15.3%	57.1%	32.3%
CAN NOT BLOCK	66.8	84.7	42.9	67.7

*N* = 2,133

**Issue: Free Exercise and Establishment Clause**

**Cases #13. *Kennedy v. Bremerton School District***

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?

The school district was right to suspend the coach  
The school district was NOT right to suspend the coach

	All Respondents	Democrats	Republicans	Independents/Other
RIGHT TO SUSPEND	44.1%	62.4%	26.3%	40.9%
NOT RIGHT TO SUSPEND	55.9	37.6	73.7	59.1

*N* = 2,133

**Issue: Immigration**

**Cases #14. *Biden v. Texas***

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?

The Biden Administration should be able to end the "remain in Mexico" program  
The Biden Administration should NOT be able to end the "remain in Mexico" program

	All Respondents	Democrats	Republicans	Independents/Other
SHOULD BE ABLE TO END	48.5%	76.6%	20%	44.3%
SHOULD NOT BE ABLE TO END	51.5	23.4	80	55.7

*N* = 2,130



**Issue: Native American Sovereignty**

**Cases #15. *Oklahoma v. Castro-Huerta***

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?

States should NOT be able to prosecute non-Native Americans who commit crimes against Native Americans on Native American land

States should be able to prosecute non-Native Americans who commit crimes against Native Americans on Native American land

	All Respondents	Democrats	Republicans	Independents/Other
SHOULD NOT	33.6%	32%	30%	36.9%
SHOULD	66.4	68	70	63.1

*N* = 2,132