

# **What Do The American People Think About the 2023 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**

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This memo reports results from the 2023 SCOTUSPoll, a nationally representative survey of American's attitudes on the major Supreme Court cases argued during the 2022-2023 term. The survey was conducted by YouGov using a nationally representative sample of 2,029 U.S. adult residents interviewed online between April 5-11, 2023. The poll's margin of error is  $\pm 2.3\%$ .

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. The question has increased in importance given the Court's unpopular *Dobbs* decision overturning *Roe v. Wade* in the 2021-2022 term. 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 2022-2023 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.

Unlike in previous waves of SCOTUSPoll, a striking feature of this year's docket is the few number of cases that have stark partisan differences that yield a closely divided public. Only five of the fourteen surveyed cases featured Republican respondents being on the opposite side of Democratic respondents. These were cases related to: (1) LGBTQ discrimination; (2) racial districting; (3) interstate commerce; (4) student loan forgiveness; and (5) union rights.

In two cases, there were bipartisan majorities in favor of the liberal position, which in these cases were (1) protecting the role of state courts in adjudicating federal elections and (2) a broad reading of the Clean Water Act to cover wetlands.

In the two cases related to affirmative action at private and public universities, there were bipartisan majorities in favor of the conservative position that affirmative action is unlawful.

There were a large number of cases (five out of fourteen) where there were no clear differences in the positions of Republicans and Democrats. Some of these cases resulted in broad, bipartisan consensus across the public, including cases related to copyright protection, and removing Section 230 protection for tech and social media companies.

For two cases, there was no partisan division, but the public was divided: (1) whether Native American children should be placed with Native American families for adoption, and (2) whether religious observance should allow a postal worker to not work on Sundays.

After a 2021-2022 term in which the Court was well to the right of public opinion (and received backlash from the *Dobbs* decision), it will be interesting to see whether the Court pivots and tacks back toward the center.

**Issue: Affirmative Action**

**Case #1: Students for Fair Admissions v. Harvard College**

Some people think that private colleges and universities should NOT be able to use race as a factor in admissions. Other people think that they should be able to.

What do you think?

Private colleges and universities should NOT be able to use race as a factor in admissions

Private colleges and universities should be able to use race as a factor in admissions

|                     | All Respondents | Democrats | Republicans | Independents/Other |
|---------------------|-----------------|-----------|-------------|--------------------|
| SHOULD NOT USE RACE | 69.2%           | 57.6%     | 78.4%       | 72.1%              |
| SHOULD USE RACE     | 30.8            | 42.4      | 21.6        | 27.9               |

*N* = 2,028

**Issue: Affirmative Action**

**Cases #2. Students for Fair Admissions v. University of North Carolina**

Some people think that public colleges and universities should be able to use race as a factor in admissions. Other people think that they should NOT be able to.

What do you think?

Public colleges and universities should be able to use race as a factor in admissions

Public colleges and universities should NOT be able to use race as a factor in admissions

|                     | All Respondents | Democrats | Republicans | Independents/Other |
|---------------------|-----------------|-----------|-------------|--------------------|
| SHOULD NOT USE RACE | 73.9%           | 60.2%     | 87.5%       | 75.3%              |
| SHOULD USE RACE     | 26.1            | 39.8      | 12.5        | 24.7               |

*N* = 2,029

**Issue: Federal Elections**

**Case #3. Moore v. Harper**

Some people think that the language in the Constitution means that only state legislatures can regulate federal elections, without oversight from state courts. Other people think that state courts can exercise this oversight as they do in other areas.

What do you think?

Only state legislatures can regulate federal elections, without oversight from state courts

State courts can exercise oversight over federal elections just like they do in other areas

|                                      | All Respondents | Democrats | Republicans | Independents/Other |
|--------------------------------------|-----------------|-----------|-------------|--------------------|
| ONLY STATE LEGISLATURES CAN REGULATE | 45.2%           | 38.6%     | 49.8%       | 47.2%              |
| COURTS CAN EXERCISE OVERSIGHT        | 54.8            | 61.4      | 50.2        | 52.8               |

*N* = 2,028

**Issue: LGBT Discrimination**

**Case #4. 303 Creative v. Elenis**

Colorado law prohibits businesses, including creative and artistic businesses, from discriminating against gay customers. Some people think this violates business owners' rights to free speech. Other people think this does NOT violate business owners' rights to free speech.

What do you think?

Such a law violates business owners' rights to free speech

Such a law does NOT violate business owners' rights to free speech

|                              | All Respondents | Democrats | Republicans | Independents/Other |
|------------------------------|-----------------|-----------|-------------|--------------------|
| VIOLATES FREE SPEECH         | 50.8%           | 33.8%     | 65.5%       | 53.6%              |
| DOSE NOT VIOLATE FREE SPEECH | 49.2            | 66.2      | 33.5        | 46.4               |

*N* = 2,029

**Issue: Racial Districting**

**Case #5. *Merrill v. Milligan***

One fourth of Alabama voters are Black. Alabama recently created seven Congressional districts, with only one of them being a majority-Black district.

Some people think the small number of districts in which Black voters are a majority violates Section 2 of the Voting Rights Act, which bans racial discrimination in voting policies, and that the state should be forced to redraw the districts. Other people disagree and say that the original plan with one majority-Black district is lawful.

What do you think?

The state should be forced to redraw the district

The original plan with one majority-Black district is lawful

|                   | All Respondents | Democrats | Republicans | Independents/Other |
|-------------------|-----------------|-----------|-------------|--------------------|
| SHOULD REDRAW     | 52.7%           | 64.6%     | 39.4%       | 52.3%              |
| SHOULD NOT REDRAW | 47.3            | 35.4      | 60.6        | 47.7               |

*N* = 2,029

**Issue: Environmental Protection**

**Case #6. *Sackett v. Environmental Protection Agency (Sackett II)***

The Clean Water Act is a federal law that prohibits the "discharge of pollutants" into "navigable waters."

Some people think that this should be read broadly, to include things like wetlands. Other people think that this should be read narrowly, to include only things like streams, rivers, and lakes.

What do you think?

The Clean Water Act should be read broadly, to include things like wetlands

The Clean Water Act should be read narrowly, to not include things like wetlands

|                         | All Respondents | Democrats | Republicans | Independents/Other |
|-------------------------|-----------------|-----------|-------------|--------------------|
| SHOULD BE READ BROADLY  | 72.4%           | 81.0%     | 66.0%       | 69.9%              |
| SHOULD BE READ NARROWLY | 27.6            | 19.1      | 34.0        | 30.1               |

*N* = 2,029



**Issue: Interstate Commerce**

**Case #7: *National Pork Producers Council v. Ross***

California law prohibits the sale of pork from pigs that are kept in small cages.

Some people think that such a law discriminates against commerce from other states because most pork comes from outside of California. Other people think that such a law does not discriminate against commerce from other states.

What do you think?

Such law discriminates against commerce from other states

Such a law does NOT discriminate against commerce from other states

|                                        | All Respondents | Democrats | Republicans | Independents/Other |
|----------------------------------------|-----------------|-----------|-------------|--------------------|
| DISCRIMINATE S AGAINST COMMERCE        | 48.3%           | 40.7%     | 59.6%       | 46.6%              |
| DOES NOT DISCRIMINATE AGAINST COMMERCE | 51.7            | 59.3      | 40.4        | 53.4               |

*N* = 2,029

**Issue: Copyright Protection**

**Case #8: *Warhol Foundation for Visual Arts v. Goldsmith***

In 1981, a photographer took a photo of the musician Prince. The artist Andy Warhol made changes to this photograph and used that to create a series of famous prints.

Some people think that when images are transformed like this, the original creator is not entitled to any payment. Other people think that the original creator is entitled to payment because the image is still recognizable.

What do you think?

The original creator is NOT entitled to payment

The original creator is entitled to payment

|              | All Respondents | Democrats | Republicans | Independents/Other |
|--------------|-----------------|-----------|-------------|--------------------|
| NOT ENTITLED | 26.0%           | 22.6%     | 28.2%       | 27.1%              |
| ENTITLED     | 74.0            | 77.4      | 71.8        | 72.9               |

*N* = 2,028

**Issue: Section 230**

**Case #9: *Gonzalez v. Google***

Some people think that large tech companies, such as Google, can be held responsible when their algorithm recommends certain content to users. Other people think that these companies cannot be held responsible for content recommended by the company’s algorithms if that content was posted by other users.

What do you think?

Companies CAN be held responsible when their algorithm recommends content to users

Companies CANNOT be held responsible when their algorithm recommends content to users

|                            | All Respondents | Democrats | Republicans | Independents/Other |
|----------------------------|-----------------|-----------|-------------|--------------------|
| CAN BE HELD RESPONSIBLE    | 68.5%           | 70.2%     | 66.4%       | 68.5%              |
| CANNOT BE HELD RESPONSIBLE | 31.5            | 29.8      | 33.6        | 31.5               |

*N* = 2,027

**Issue: Section 230**

**Case #10: *Twitter v. Taamneh***

Federal law states that social media companies are not responsible for hosting content that is posted by others.

Some people think that social media companies can be held responsible for aiding and abetting terrorism for not removing content and accounts promoting terrorism. Other people think that they cannot be held responsible.

What do you think?

Social media companies CAN be held responsible

Social media companies CANNOT be held responsible

|                            | All Respondents | Democrats | Republicans | Independents/Other |
|----------------------------|-----------------|-----------|-------------|--------------------|
| CAN BE HELD RESPONSIBLE    | 72.1%           | 76.7%     | 67.1%       | 71.8%              |
| CANNOT BE HELD RESPONSIBLE | 27.9            | 23.3      | 32.9        | 28.2               |

*N* = 2,029

**Issue: Student Loan Forgiveness**

**Case #11: *Biden v. Nebraska and Department of Education***

The Biden Administration announced plans to give up to \$20,000 in student loan forgiveness to people who make less than \$125,000 a year.

Some people think that the Biden Administration overstepped its authority with this debt forgiveness plan. Other people disagree and think that the Biden Administration did not overstep its authority.

What do you think?

The Biden Administration overstepped its authority with its debt forgiveness plan

The Biden Administration did NOT overstep its authority with its debt forgiveness plan

|                  | All Respondents | Democrats | Republicans | Independents/Other |
|------------------|-----------------|-----------|-------------|--------------------|
| OVERSTEPPED      | 49.9%           | 26.6%     | 72.1%       | 53.1%              |
| DID NOT OVERSTEP | 50.1            | 73.4      | 27.9        | 46.9               |

*N* = 2,029

**Issue: Unions**

**Case #12: *Glacier Northwest v. International Brotherhood of Teamsters Local Union 174***

Some people think that striking union workers can be held responsible for damage or loss caused to an employer’s property by employees stopping their work. Other people think that they cannot be held responsible because this would undermine the ability of union workers to strike.

What do you think?

Union workers CAN be held responsible for such damage

Union workers CANNOT be held responsible for such damage

|                            | All Respondents | Democrats | Republicans | Independents/Other |
|----------------------------|-----------------|-----------|-------------|--------------------|
| CAN BE HELD RESPONSIBLE    | 49.3%           | 39.5%     | 59.8%       | 50.0%              |
| CANNOT BE HELD RESPONSIBLE | 50.7            | 60.5      | 40.2        | 50.0               |

*N* = 2,029

**Issue: Native American Adoption**

**Case #13: *Haaland v. Brackeen***

In 1978, Congress enacted a law that says that Native American children who are removed from their families should be placed with extended family members or foster homes of people who are also Native American.

Some people think this law discriminates on the basis of race. Other people think it does NOT discriminate on the basis of race.

What do you think?

This law discriminates on the basis of race

This law does NOT discriminate on the basis of race

|                       | All Respondents | Democrats | Republicans | Independents/Other |
|-----------------------|-----------------|-----------|-------------|--------------------|
| DISCRIMINATE S        | 46.6%           | 43.7%     | 46.2%       | 49.2%              |
| DOES NOT DISCRIMINATE | 53.4            | 56.4      | 53.8        | 50.8               |

*N* = 2,028

**Issue: Religious Freedom**

**Case #14: *Groff v. DeJoy***

A postal worker refused to work on Sundays for religious reasons. The Postal Service agreed to help him find coworkers to swap shifts with, but when he could not find any coworkers to swap with and did not show up to work multiple times, he was disciplined and then quit.

Some people think that this is NOT religious discrimination. Other people think that this is religious discrimination and that the employer should have to accommodate his beliefs and should not have disciplined him.

What do you think?

This is NOT religious discrimination

This is religious discrimination

|                              | All Respondents | Democrats | Republicans | Independents/Other |
|------------------------------|-----------------|-----------|-------------|--------------------|
| NOT RELIGIOUS DISCRIMINATION | 49.4%           | 50.5%     | 48.4%       | 49.2%              |
| RELIGIOUS DISCRIMINATION     | 50.6            | 49.5      | 51.6        | 50.8               |

*N* = 2,028