

# Marquette University: Law School Poll finds sharp decline since July in public opinion of the Supreme Court's job performance; change is driven by partisan differences

Posted on Tuesday, Sep 21, 2021

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*Please note: Complete Poll results and methodology information can be found online at [law.marquette.edu/poll](http://law.marquette.edu/poll)*

MILWAUKEE —A Marquette University Law School poll of adults nationwide finds approval of the U.S. Supreme Court fell to 49% in September, down from 60% in July. Disapproval rose to 50% in September, up from 39% in July. A year ago, in September 2020, 66% approved and 33% disapproved of the way the Court was handling its job.

Approval declined among independents and Democrats while remaining stable among Republicans. Tables 1-3 show approval by party over the three Marquette Law School surveys since September 2020.

All results in the tables below are stated as percentages; the precise wording of the questions can be found in the online link noted above.

*Table 1: Approval of the Supreme Court, by party, Sept. 2021*

<b>Party ID</b>	<b>Approve</b>	<b>Disapprove</b>	<b>Refused</b>	<b>n</b>
Republican	61	38	1	361
Independent	51	48	1	534

Democrat	37	62	1	412
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*Table 2: Approval of the Supreme Court, by party, July 2021*

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*Table 3: Approval of the Supreme Court, by party, Sept. 2020*

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While approval of the Court has declined, it remains the branch of the federal government with the most positive responses when people were asked which branch they trust the most.

*Table 4: Trust in branches, over time*

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In these four surveys, members of the president’s party have ranked the presidency as most trusted, while opposition partisans and independents consistently rank the Supreme Court as most trusted. Tables 5 and 6 show trust, by party, in September 2020 during President Trump’s tenure and in September 2021 during President Biden’s, with sharp swings in public trust between the presidency and the Court as party control changes.

*Table 5: Trust in branches, by party, September 2020*

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*Table 6: Trust in branches, by party, September 2021*

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## **Abortion cases**

The Court has accepted for argument *Dobbs v. Jackson Women's Health Organization*, a case challenging Mississippi legislation that limits abortions after 15 weeks of pregnancy, prior to fetal viability. Views on abortion rights are sensitive to the nature of particular restrictions, as polling has consistently shown.

Support for overturning *Roe v. Wade*, the 1973 ruling that established a right to abortion, remains a minority view, with 20% favoring overturning *Roe* and 50% opposed to such a ruling. While arguments over *Roe* have been intense for decades, 29% say they haven't heard anything or haven't heard enough about this issue to have an opinion.

When asked specifically about banning abortions after 15 weeks of pregnancy, as in the Mississippi legislation, 40% favor upholding the law while 34% favor the law's being declared unconstitutional. A substantial 27% say they haven't heard of or heard enough about this to have an opinion.

Limits on abortions after about six weeks of pregnancy, once a heart beat can be detected, as in a recent Texas law, have less support, with 30% in favor and 46%

opposed to this restriction and 23% saying they haven't heard enough about this.

Table 7 shows views on these three issues.

*Table 7: Views on abortion limits*

Case	Heard nothing at all	Heard of but not enough for an opinion	Favor Oppose	
Overturn <i>Roe</i>	11	18	20	50
Uphold 15-week limit ( <i>Dobbs</i> )	11	16	40	34
Uphold 6-week limit (Texas)	9	14	30	46

## Gun rights

The Court has set oral argument in *New York State Rifle & Pistol Association Inc. v. Bruen* for Nov. 3, 2021. This case considers whether a New York denial of an application for a concealed-carry license for self-defense violates the Second Amendment.

This survey asked if the respondent would favor or oppose a decision “that the Second Amendment right to ‘keep and bear arms’ protects the right to carry a gun outside the home.” Forty-four percent say they favor such a ruling, while 26% are opposed and 29% say they haven't heard enough to form an opinion.

Those with a gun in the household are very supportive of a right to carry a gun outside the home, with a large majority of such respondents favoring this, as shown in Table 8. Those without a gun in the household are about evenly split. Gun owners are also more likely to have an opinion on the issue than are those without a gun in their home.

*Table 8: Favor or oppose right to carry a gun, by gun in the household, Sept. 2021*

Gun household	Heard nothing at all	Heard of but not enough for an opinion	Favor Oppose	
Gun household	9	12	60	18
Not gun household	13	22	33	32

### State regulation of elections

With a number of state legislatures passing changes in voting laws since the 2020 election, the question of how much latitude states have to control the conduct of elections has become a substantially controverted question, as in the decision in *Brnovich v. Democratic National Committee* handed down July 1. In the immediately previous Marquette Law School Poll of national public opinion on the Supreme Court (conducted in July 2021), 23% favored that ruling, which upheld an Arizona law, 23% opposed the ruling and 53% hadn't heard enough to give an opinion.

In the September survey, respondents were asked if they would favor or oppose a ruling that "states have wide authority to regulate elections and voting requirements." Twenty-six percent say that they favor such a ruling, while 34% are opposed and 39% haven't heard enough about the issue.

Party differences are apparent, with a plurality of Republicans in favor and a majority of Democrats opposed to ruling for state authority. Substantial percentages of each party group say they haven't heard of the issue or haven't heard enough to have an opinion. Table 9 shows the responses by party.

*Table 9: Favor or oppose wide state authority to regulate elections, Sept. 2021*

Party ID	Heard nothing at all	Heard of but not enough for an opinion	Favor Oppose	
Republican	18	22	43	16
Independent	18	26	25	31
Democrat	14	18	13	54

## Public funding for students attending religious schools

The Court has accepted for argument a case concerning whether a state can deny financial support to students attending private schools that provide religious instruction when it makes that aid generally available to students attending other private schools. This is the latest in a series of cases that have addressed the issue of limitations on support for students attending religious schools. (The current case is *Carson v. Makin*.)

Respondents favor a ruling holding unconstitutional this limitation on aid, with 34% in favor of such a ruling, 15% opposed to it, and 50% saying they haven't heard enough.

## Affirmative action in college admissions

A majority of respondents, 53%, say the Court should rule that colleges cannot use race as one of the factors considered in admissions decisions, while 13% favor permitting this use of affirmative action, and 33% say they don't know enough about this.

## Regulation of social media

A ruling in favor of laws to prevent social media companies from banning public officials from their platforms is favored by 39%, while 26% are opposed to such a ruling and 34% say they don't know enough about this issue to offer an opinion.

## Perceptions of trends in Court rulings

While few citizens outside the legal profession read Supreme Court decisions, the public does develop an impression of the direction the Court takes over time. Across several topics, Table 10 shows how the public thinks the Court has expanded or reduced the rights of individuals in various groups over the "past 15 years or so."

Table 10: Perception of the expansion or reduction of rights for various groups

Rights of...	Expanded rights	Reduced rights	Net expanded	Has not changed much either way
LGBT people	77	8	69	15

Campaign donors	39	15	24	46
Minority voters	38	23	15	39
Religious people & organizations	33	21	12	45
Gun owners	27	27	0	45
Abortion seekers	23	45	-22	32

### Perceptions of the basis of decisions

A majority of the public, 61%, say the justices decide cases based “mainly on the law,” while 39% say decisions are based “mainly on politics.” The percentage saying “mostly the law” rose in July compared to 2019 and 2020 data, but returned to the earlier levels in the current September survey, as shown in Table 11.

*Table 11: Are justices’ decisions based mainly on the law or mainly on politics, over time*

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Partisan differences are modest in perceptions of the basis of decisions, with majorities of all groups saying decisions are mostly based on the law, as shown in

Table 12. There also has been relatively little change, over time, in perceptions among partisans, as shown in Table 13, although the share of Democrats saying decisions are mostly political has increased steadily, by a total of about 8 percentage points, since 2019, while independents and Republicans show variation but no clear trend.

*Table 12: Are justices' decisions based mainly on the law or mainly on politics, by party identification, Sept. 2021*

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*Table 13: Are justices' decisions based mainly on the law or mainly on politics, by party identification, over time*

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## Preferences for basis of decisions

A plurality of respondents, 47%, say the justices should “interpret the law as it applies to current circumstances,” while 32% say they should “read the text of the law as written” and 20% think justices should “use the commonly understood meaning at the time the law was written.”

There are substantial partisan differences over how the law should be interpreted. Two-thirds of Democrats say it should be interpreted as it applies to current circumstances while half of Republicans prefer the text’s being read as written. About one in five of each partisan group prefers the “original understanding” interpretation. These results are shown in Table 14.

*Table 14: Preference for decisions based on text, original meaning, or current circumstances, by party identification, Sept. 2021*

<b>Party ID</b>	<b>Read the text of the law as written</b>	<b>Use the commonly understood meaning at the time the law was written</b>	<b>Interpret the law as it applies to current circumstances</b>
Republican	51	21	27
Independent	33	22	45
Democrat	14	18	68

A large majority, 84%, say the justices should ignore the positions of political parties in reaching decisions, with 16% saying they should consider party positions.



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There is somewhat more support, 41%, for the justices to consider public opinion in making decisions (than there is for supporting party positions), although a majority, 59%, think the justices should “ignore public opinion” in deciding cases. Here there is a larger partisan gap, with a majority of Democrats thinking public opinion should play a role. Larger majorities of Republicans and independents say public opinion should not play a role. Table 16 shows these results.

*Table 16: Should justices consider public opinion, by party identification*

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The role of *stare decisis*, the principle of following precedent in decisions, has been a topic of debate in confirmation hearings. This is often stressed in debates as a reason to continue to uphold the *Roe v Wade* decision, while more recently Justice Clarence Thomas, among others, has argued that cases wrongly decided should be overturned, with less of a role for *stare decisis*.

A minority of the public, 26%, say the Court should “follow previous decisions whenever possible,” while a majority, 74%, say that a precedent should be overturned if a majority of the justices “think it was wrongly decided.”

Here the partisan lines are not sharply drawn, despite the arguments in public debates of the value of following precedent. More than two-thirds of each partisan group say the Court should overturn precedents if wrongly decided, as shown in Table 17.

*Table 17: Should justices follow precedent or overturn if wrongly decided, by party identification*



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Party divisions on Court expansion have grown over the past two years, with three-quarters of Republicans now opposed and almost three-quarters of Democrats now in favor. Independents are evenly split, a tightening of the gap over the last 12 months. These trends are shown in Table 19.

*Table 19: Favor or oppose Court expansion, by party identification, 2019-2021*

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Large majorities of the public favor fixed terms for Supreme Court justices instead of the current life-tenure terms. There has been little change in this over the past two years, as shown in Table 20.

*Table 20: Favor or oppose fixed terms for justices, 2019-2021*

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Majorities of each partisan group support such term limits, with Democratic support growing by some 10 percentage points since 2019 while Republican support has fluctuated and independent support has remained stable. These trends are shown in Table 21.

*Table 21: Favor or oppose fixed term for justices, by party identification, 2019-2021*

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OPPOSE LIMITING JUDICIAL REVIEW

A majority of the public opposes limiting the ability of the Court to “review and set aside acts of Congress as unconstitutional” (summarized in this release as “judicial review”). There has been little change in these views since 2019, as shown in Table 22.

*Table 22: Favor or oppose limiting judicial review*

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Party views of judicial review have shifted modestly in the last two years. Table 23

shows Democrats becoming a bit more willing thus to limit the Court and Republicans a bit more opposed to such a constraint on the Court.

*Table 23: Favor or oppose limiting judicial review, by party identification, 2019-2021*

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## **About the Marquette Law School Poll**

The survey was conducted Sept. 7-16, 2021, interviewing 1,411 adults nationwide, with a margin of error of +/-3.4 percentage points. Interviews were conducted using the SSRS Opinion Panel, a national probability sample with interviews conducted online. The detailed methodology statement, survey instrument, topline results, and crosstabs for this release are available on the [Marquette Law Poll website](#). Some items from this survey, on other topics, are held for release one day from now.

Wording of questions about possible future Supreme Court decisions: These items do not attempt to exactly frame the particular issues in specific cases but rather address the topic in more general terms.

### **Do you favor or oppose the following possible future Supreme Court decisions, or haven't you heard enough about this to have an opinion? ...**

- Overturn Roe versus Wade, thus strike down the 1973 decision that made abortion legal in all 50 states.
- Rule that the 2nd Amendment right to "keep and bear arms" protects the right to carry a gun outside the home.
- Rule that a state program that provides financial support for students attending private schools cannot exclude students attending private religious schools from receiving that support.
- Rule that colleges cannot use race as one of several factors in deciding which applicants to admit.
- Rule in favor of laws that restrict the ability of social media companies such as Facebook, Twitter or YouTube to exclude public officials from their platforms.
- Rule that states have wide authority to regulate elections and voting requirements.
- Rule to uphold a state law that (except in cases of medical emergencies or fetal abnormalities) bans abortions after the 15th week of pregnancy.
- Rule to uphold a state law that bans most abortions after about six weeks of pregnancy.