

Marquette University: New poll finds nationwide support both for upholding abortion rights and for placing restrictions on abortions

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Please note: Complete Poll results and methodology information can be found online at law.marquette.edu/poll

MILWAUKEE – As the U.S. Supreme Court is set to decide cases this term concerning laws restricting abortions in Texas and Mississippi, the public has a complicated range of opinions about those laws and whether the Court should overturn the landmark 1973 *Roe v. Wade* decision, which made abortion legal nationwide.

The latest Marquette Law School Poll focusing on the Supreme Court finds that more respondents oppose overturning *Roe* than would like to see the ruling struck down. But, at the same time, more are in favor of a ban on abortions after 15 weeks of a pregnancy than are opposed.

Despite the intense debate over abortion since the 1970s, nearly a third say they haven't heard enough about *Roe v. Wade* to have an opinion.

The results are from a nationwide survey of 1,004 adults in the period Nov. 1-10, 2021. After an annual such survey in both 2019 and 2020, the Marquette Law School Poll has begun surveying public opinion about the Court, this year, approximately every two months, as major decisions loom and as public attention to the Court has heightened. The margin of error in the current poll is +/-3.9 percentage points.

A new Texas law, known as Senate Bill 8 (SB-8), which bans abortions after about six weeks of pregnancy, once fetal cardiac activity can be detected, and which authorizes individual citizens to sue those who aid others in getting an abortion, is favored by 25% and opposed by 59%, while 16% say they don't know.

Opinion is sharply divided along ideological lines. Almost three-quarters of those who consider themselves "very conservative" favor the Texas law, while 9-in-10 of those saying they are "very liberal" are opposed to the law. Table 1 shows the full results by ideological self-description.

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: Favor or oppose Texas law SB-8, by ideological self-placement, Nov. 2021

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The partisan divide is less strong. Among Republicans, 50% favor the law and 33% are opposed. Among independents who lean to the Republican party, 42% favor the law and 37% are opposed. Majorities of Democrats, independents who lean Democratic, and independents (those who do not lean) are opposed to the law, as shown in Table 2.

Table 2: Favor or oppose Texas law SB-8, by party identification, Nov. 2021

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Just less than half, 48%, of those who describe themselves as “born again” favor the Texas law, while 28% are opposed. Majorities of the other religious groups measured in the survey are opposed to the law, as shown in Table 3.

Table 3: Favor or oppose Texas law SB-8, by religious identification, Nov. 2021

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Support for overturning *Roe v. Wade*, the 1973 ruling that established a constitutional right to an abortion, remains a minority view. Twenty-one percent favor overturning *Roe*, while 47% are opposed to ending this right to abortion. Despite the intensity of political arguments over *Roe* for nearly 50 years, 32% say they haven't heard anything or haven't heard enough about this issue to have an opinion. This is twice the percentage who said they hadn't heard enough about Texas SB-8, which was 16%.

In the September 2021 Marquette Law School Poll surveying national opinion about the Supreme Court, 20% favored overturning *Roe* and 50% were opposed, while 29% said they didn't know enough about it to have an opinion.

Awareness of the issue of *Roe* varies with age, while awareness of Texas SB-8 does not. Table 4 shows that those 60 years old or more are much more familiar with *Roe* than are those younger, especially those 18-29. More than twice as many young adults than older adults say they haven't heard enough about *Roe*.

In contrast, the Texas SB-8 law is equally familiar to young and old, as shown in Table 5. While *Roe v. Wade* has remained controversial for half a century, it seems to have made more of a lasting impression on those old enough to have lived through its immediate aftermath. Among those born after it was decided, there is less familiarity with it. In contrast, the Texas SB-8 law has been hotly contested over the last 3 months and has made an equal, and substantial, impression on all age groups.

Table 4: Favor or oppose overturning Roe v. Wade, by age, Nov. 2021

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Table 5: Favor or oppose Texas SB-8, by age, Nov. 2021

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As with SB-8, self-described ideology is strongly related to opinion of *Roe*, with those calling themselves “very liberal” especially likely to have an opinion, as shown in Table 6.

Table 6: Favor or oppose overturning Roe v. Wade, by ideological self-placement,

Nov. 2021

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As with SB-8, party differences, shown in Table 7, are less sharp than ideological ones (Table 6), though still substantial. The high rates of “haven’t heard enough” responses across party groups is notable, especially among Republicans where more say they haven’t heard enough than say they favor overturning *Roe*.

Table 7: Favor or oppose overturning Roe v. Wade, by party identification, Nov. 2021

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Variation in opinion of overturning *Roe*, by religious group, is shown in Table 8. Again, there are many who say they haven't heard enough, across all the groups. More favor than oppose overturning *Roe* among those who say they are "born again," while more oppose overturning it among other groups.

Table 8: Favor or oppose overturning Roe v. Wade, by religious identification, Nov. 2021

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The Supreme Court is set to hear *Dobbs v. Jackson Women's Health Organization* on Dec. 1, which concerns a Mississippi law that bans most abortions after 15 weeks of pregnancy. It is regarded as an opportunity for the Court to overrule *Roe v. Wade* if it wishes to do so.

Thus, survey respondents were asked if they would favor or oppose a ruling to “uphold a state law that (except in cases of medical emergencies or fetal abnormalities) bans abortions after the 15th week of pregnancy” or if they haven’t heard enough about this to have an opinion. Thirty-seven percent favor a decision upholding such a law, while 32% would oppose such a ruling and 30% say they haven’t heard enough. In September, 40% favored upholding such a law, 34% opposed such a law, and 27% said they hadn’t heard enough.

Respondents prefer not to overturn *Roe*, by greater than a 2-1 ratio (47%-21%), but, at the same time, are slightly more willing to accept a 15-week ban than they are opposed to doing so. This is in line with much national polling on abortion over the years, which consistently finds support for maintaining *Roe* and a right to an abortion but accepts a variety of restrictions including on the timing of abortions, as in this case.

There are ideological differences on the *Dobbs* issue, with both very conservative and very liberal respondents equally aware of the possible decision. Those who are less ideological are twice as likely to say they haven’t heard enough, as shown in Table 9.

Table 9: Favor or oppose upholding 15-week abortion ban, by ideological self-

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Party differences in opinion of the *Dobbs* issue are shown in Table 10.

Table 10: Favor or oppose upholding 15-week abortion ban, by party identification, Nov. 2021

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Religious groups in Table 11 show substantial variation in views of an abortion ban after the 15th week of pregnancy, with those who say they are “born again” the most in favor of upholding the ban and the non-religious most opposed.

Table 11: Favor or oppose upholding 15-week abortion ban, by religious identification, Nov. 2021

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On Nov. 1, the Supreme Court heard arguments in two cases concerning the ability of the federal government and of abortion providers in Texas to bring lawsuits challenging SB-8, given the unusual structure of the Texas law which relies on enforcement through suits brought by individual citizens and excludes state officials from enforcing the law. These cases as presented to the Court involve procedural issues and issues of standing rather than abortion policy per se. We asked, concerning one of these cases, if the respondent would favor or oppose a ruling “that the United States government has the right to bring suit in federal court to try to prohibit Texas Senate Bill 8, the law that bans almost all abortions in the state after about six weeks of pregnancy, from being enforced,” or if the respondent hadn’t heard enough about this.

Thirty-eight percent favor allowing the federal government to bring suit against SB-8, while 30% oppose allowing the suit and 31% say they haven’t heard enough about this.

Of those who say they favor the Texas law, 18% say the Court should allow the federal government to bring suit against SB-8 and 51% say the suit should not be allowed, with 31% saying they haven’t heard enough about this case.

Among those who oppose Texas SB-8, 54% say the Court should allow the federal government to bring suit against SB-8 and 24% say the suit should not be allowed, with 22% saying they haven’t heard enough about this case.

Gun rights

On Nov. 3, the Court heard oral arguments in *New York State Rifle & Pistol Association Inc. v. Bruen*. This case considers whether a New York denial of an application for concealed-carry licenses 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-six percent say they favor such a ruling, while 25% are opposed and 27% say they haven’t heard enough to form an opinion. In September, 44% favored such a ruling, 26% were opposed, and 29% said they hadn’t heard enough.

Those with a gun in the household are much more supportive of a right to carry a gun outside the home, as shown in Table 12. Those without a gun in the household are about evenly split, while a large majority of gun householders support a right to carry. Gun owners are also more likely to have an opinion on the issue than are those without guns in their home.

Table 12: Favor or oppose right to carry a gun, by gun in the household, Nov. 2021

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Approval of the Supreme Court

Approval of the U.S. Supreme Court rose slightly to 54% in November, up from 49% in September. Disapproval declined to 46% in November from 50% in September. In the September 2020 survey, 66% approved and 33% disapproved of the way the Court was handling its job.

Approval rose among Democrats, after falling sharply in September, while there was little change among independents and Republicans. Independents remain below their higher approval levels of July 2021. Table 13 shows approval by party over four Marquette Law School surveys since September 2020.

Table 13: Approval of the Supreme Court, by party, Sept. 2020-Nov. 2021

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While approval of the Court has fluctuated, it remains the branch of the federal government with the most positive responses when people were asked which branch they trust the most, as shown in Table 14.

Table 14: Trust in branches over time

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Perceptions of the basis of decisions

Several justices have recently given speeches or public remarks arguing that the Court is not a political body and are not “politicians in robes” or the like. A majority of the public, 70%, say the justices decide cases based on “mainly the law,” while 30% say decisions are based on “mainly politics.” The percentage saying “mainly the law” rose in July, compared to 2019 and 2020 data, but fell by 10 points in September. In the new survey, it has returned to the July level, as shown in Table 15.

Table 15: In general, what most often motivates Supreme Court justices’ decisions?

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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 16. There has been little change in perceptions among partisans over time, as shown in Table 17, although the share of Democrats saying decisions are mostly political rose from 2019 through September 2021 but then fell in the November poll. At least 60 percent of each partisan group have said “mainly the law” in each survey, with a single exception at 57%.

Table 16: Are justices’ decisions based mainly on the law or mainly on politics, by party identification, Nov. 2021

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Table 17: Are justices' decisions based mainly on the law or mainly on politics, by party identification over time

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Those who disapprove of the Court’s handling of its job are much more likely to say decisions are based on politics than are those who approve of the Court’s handling of its job. The percentage saying “mainly politics” or “mainly the law” has fluctuated over time, as shown in Table 18.

Table 18: Are justices’ decisions based mainly on the law or mainly on politics, by approval of the Court’s handling of its job, over time

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Changes to the Court

The Presidential Commission on the Supreme Court, appointed by President Joe Biden, has recently held hearings and released draft reports on potential changes to the Court, including expansion of the number of justices, limiting the terms of justices, and possible limits on judicial review of acts of Congress, among other topics.

The work of the commission has been largely invisible to the general public. In the new poll, 45% say they've heard nothing at all about it, and 42% say they've heard only a little. Just 10% have heard a fair bit, and only 2% say they've heard a lot.

Since 2019, the Marquette Law School Supreme Court survey has asked about support for Court expansion, limiting the justices' terms, and limiting judicial review (the latter two were not asked in July 2021). There has been little change in any of these opinions since 2019. Tables 19-21 show these trends for each of the potential changes. While a substantial majority has consistently supported limiting the current lifetime tenure, a smaller majority has opposed limiting judicial review of acts of Congress. Expansion of the number of justices has been the most evenly

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Table 20: Favor or oppose fixed terms for justices, rather than life terms, 2019-2021

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Table 21: Favor or oppose limiting ability of the Court to review and set aside acts of Congress as unconstitutional (judicial review)

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About the Marquette Law School Poll

The survey was conducted Nov. 1-10, 2021, interviewing 1,004 adults nationwide, with a margin of error of +/-3.9 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 at <https://law.marquette.edu/poll/category/results-and-data/>. Some items from this survey are held for later release.

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 striking 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 to uphold a state law that (except in cases of medical emergencies or fetal abnormalities) bans abortions after the 15th week of pregnancy.
- Rule that the United States government has the right to bring suit in federal court to try to prohibit Texas Senate Bill 8, the law that bans almost all abortions in the state after about six weeks of pregnancy, from being enforced.