



United States Supreme Court

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Plan

- Term by the numbers
- Review of some 2022-23 Term cases
- Coming attractions

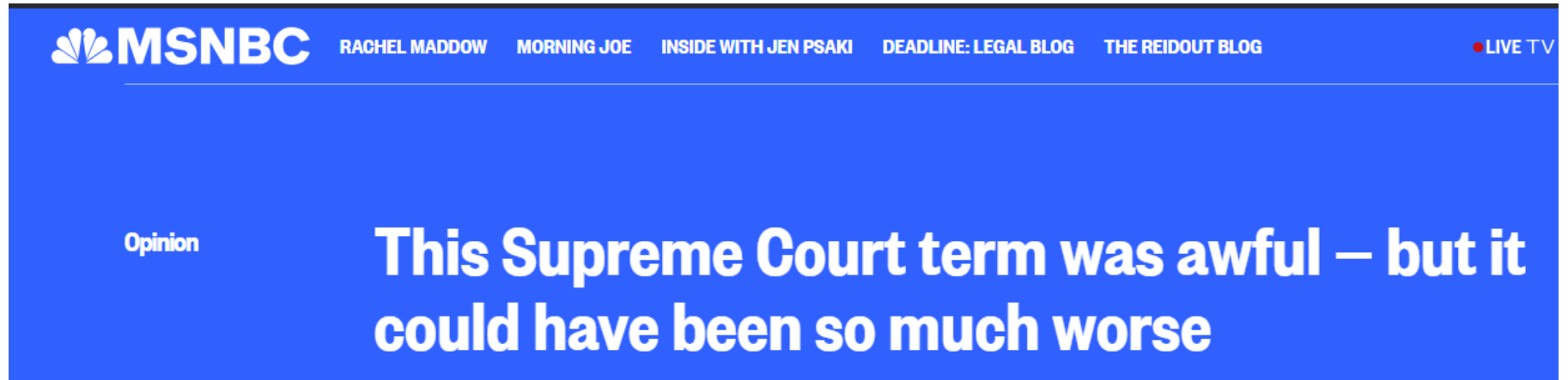
Progressive Summary

Progressive Summary

The Supreme Court term could have been a lot worse, but it was still pretty bad. For humans.

The term could have been a lot worse, but it was pretty bad.

BY [DAHLIA LITHWICK](#)

A screenshot of an MSNBC article header. The top navigation bar is blue with white text for the MSNBC logo and several program names: RACHEL MADDOW, MORNING JOE, INSIDE WITH JEN PSAKI, DEADLINE: LEGAL BLOG, and THE REIDOUT BLOG. A red dot and the text 'LIVE TV' are on the right. Below the navigation bar, the word 'Opinion' is on the left, and the main headline 'This Supreme Court term was awful – but it could have been so much worse' is in large white text on a blue background.

MSNBC RACHEL MADDOW MORNING JOE INSIDE WITH JEN PSAKI DEADLINE: LEGAL BLOG THE REIDOUT BLOG ● LIVE TV

Opinion **This Supreme Court term was awful – but it could have been so much worse**

U.S. Supreme Court



Sotomayor



Kagan



Jackson



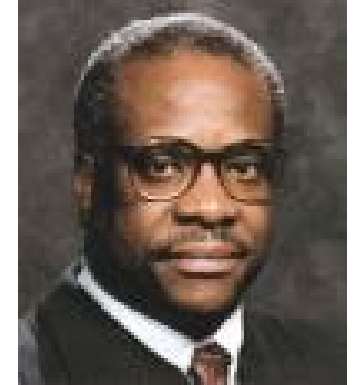
Roberts



Kavanaugh



Gorsuch



Thomas



Barrett



Alito

Winners and Losers: Percent in Majority in Divided Cases

Justice	2022-2023	2021-2022
Kavanaugh		93%
Roberts		93%
Barrett		87%
Alito		78%
Thomas		72%
Gorsuch		65%
Jackson		
Kagan		57%
Sotomayor		41%



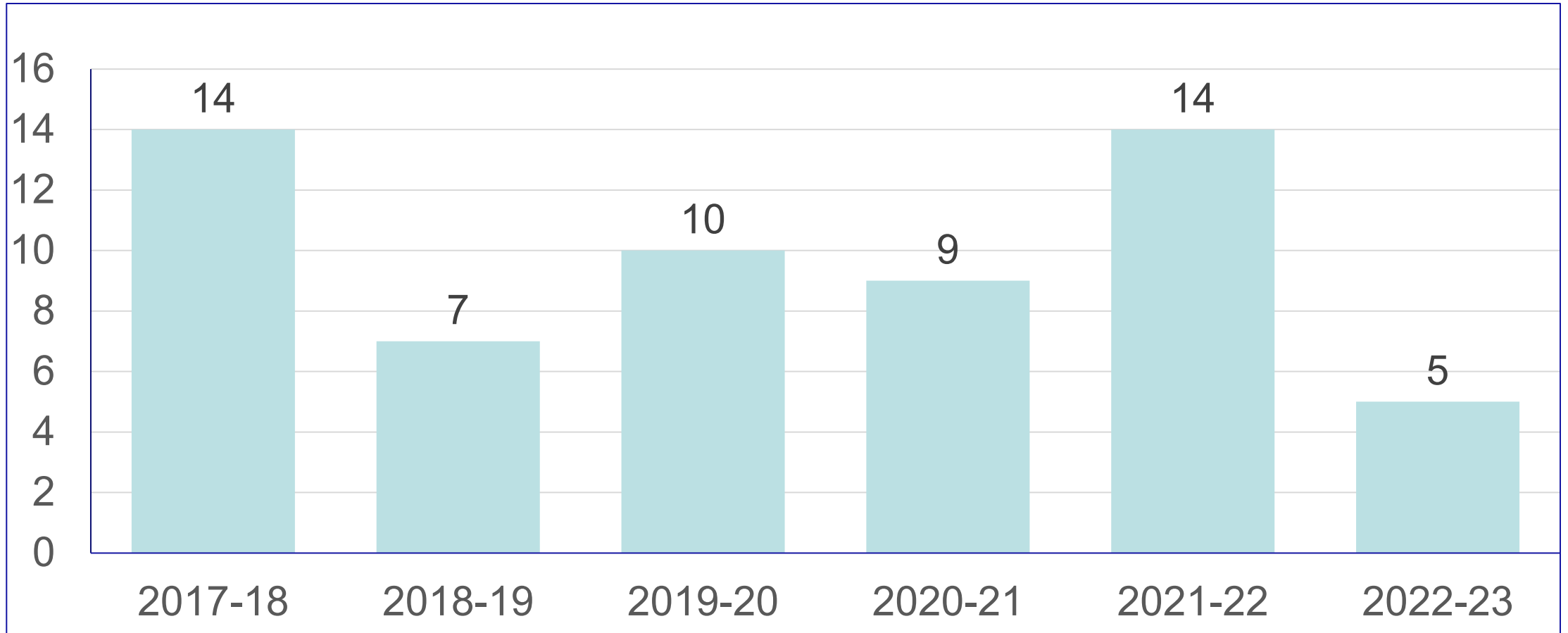
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Jackson		
Kagan		57%
Sotomayor		41%

Winners and Losers: Percent in Majority in Divided Cases

Justice	2022-2023	2021-2022
Kavanaugh	90%	93%
Roberts	87%	93%
Barrett	83%	87%
Alito	57%	78%
Thomas	57%	72%
Gorsuch	63%	65%
Jackson	67%	
Kagan	63%	57%
Sotomayor	67%	41%

Ideologically Divided Cases By Term



(5-4, 5-3, 6-3)





Allen v. Milligan (2023)

Sec. 2 of Voting Rights Act of 1965

“No . . . standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner **which results in** a denial or abridgement of the right of any citizen of the United States to vote on account of race”

- Do not need to prove intent



Allen v. Milligan (2023)

Alabama Redistricting

- 27% population Black
- 1 of 7 districts (14%) majority Black
- 3-judge court finds vote dilution in violation of Voting Rights Act



Allen v. Milligan (2023)

- Does Sec. 2 of Voting Rights Act require consideration of race?
- If so, is Sec. 2 of Voting Rights Act unconstitutional?
 - *Shelby v. Holder* (2013) held Sec. 4 unconstitutional



Allen v. Milligan (2023)



Sotomayor



Kagan



Roberts



Jackson



Kavanaugh

5-4 Uphold Voting Rights Act Claim

- Apply *Gingles* (1986) precedent
- Reject requirement of “race-neutral” benchmark (proof that deviation from “race-neutral” map could only result from discrimination)
- Rely on precedent to reject constitutional challenge to Voting Rights Act

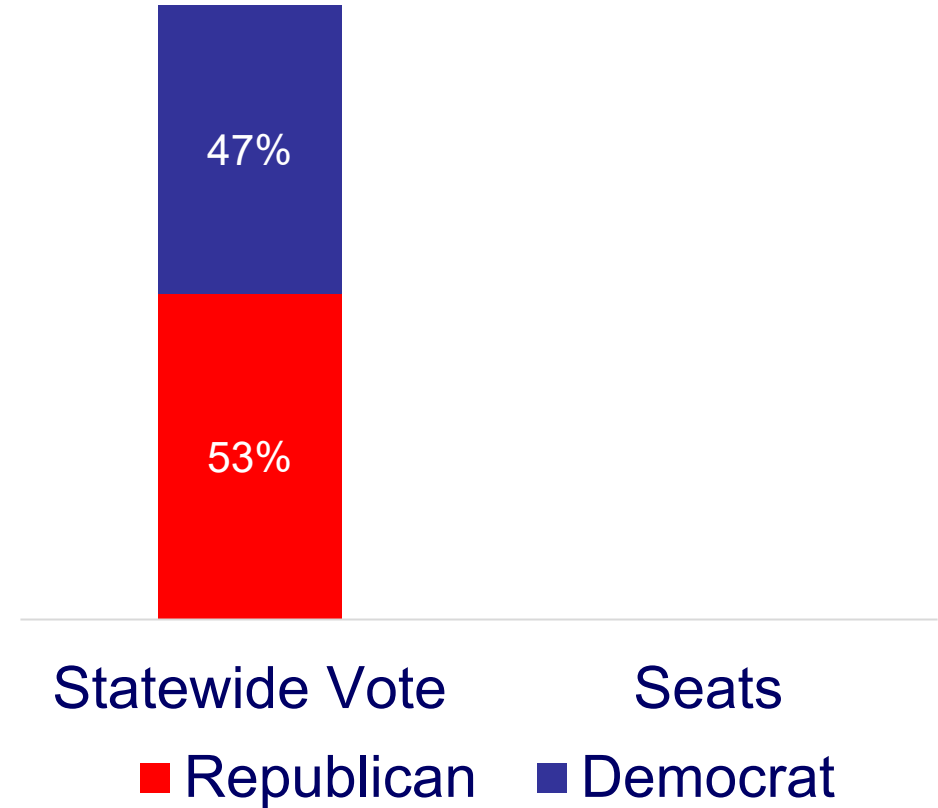
Gerrymandering



Rucho v. Common Cause (2019)

North Carolina

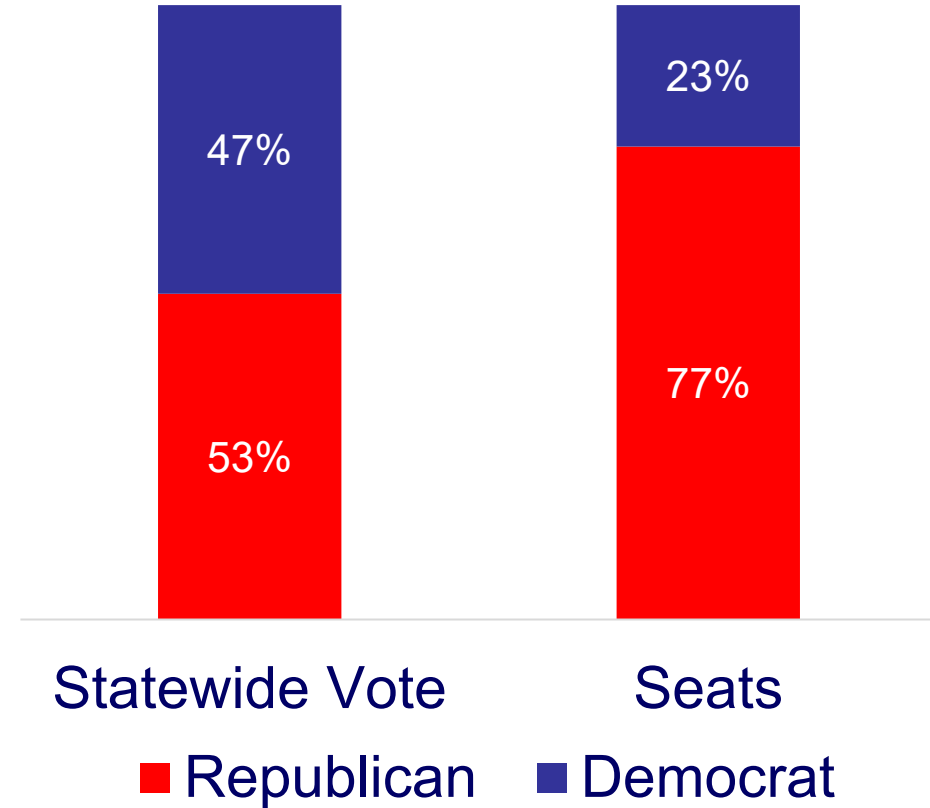
2016 U.S. Congress



Rucho v. Common Cause (2019)

North Carolina

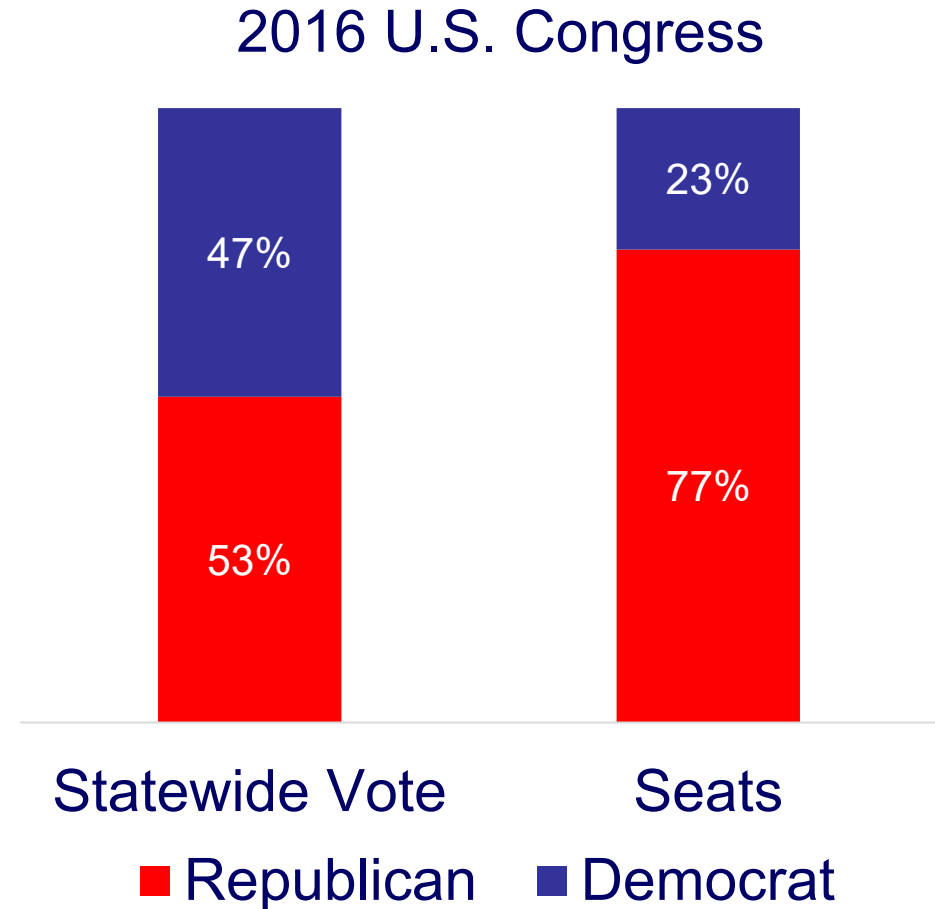
2016 U.S. Congress



Rucho v. Common Cause (2019)

North Carolina

- 3 Democratic seats
 - 70%, 73%, 75%
- Lower federal court found unconstitutional gerrymander



Rucho v. Common Cause (2019)

5-4 Reverse

- Non-justiciable—no federal court review of partisan gerrymandering

“Nor does our conclusion condemn complaints about districting to echo into a void. The **States**, for example, are actively addressing the issue on a number of fronts. . . [T]he **Supreme Court of Florida** struck down that State’s congressional districting plan as a violation of the. . . **Florida Constitution.**”



Chief Justice Roberts

Moore v. Harper (2023)

- North Carolina legislative redistricting (2021)
 - U.S. House of Representatives - 71% Republican (10 of 14 seats)
- N.C. Supreme Court (4-3)
 - Partisan gerrymander violates N.C. Constitution



North Carolina Supreme Court

Moore v. Harper (2023)

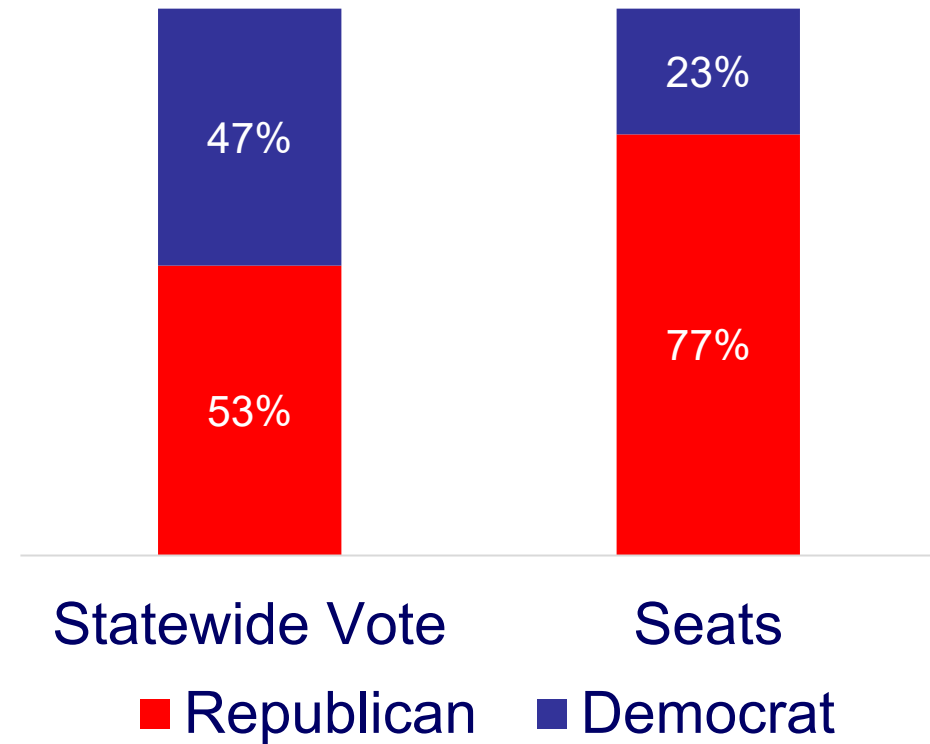
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North Carolina Supreme Court

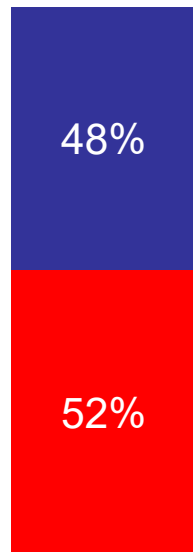
Impact of Districting in North Carolina

2016 U.S. Congress
Legislative Map

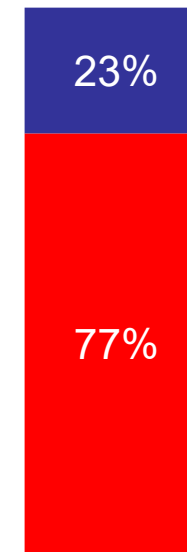
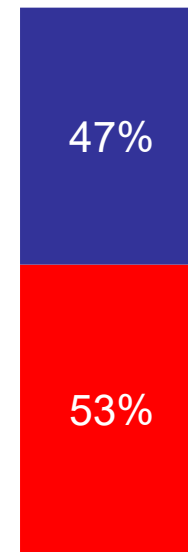


Impact of Districting in North Carolina

2022 U.S. Congress
Judicial Map



2016 U.S. Congress
Legislative Map



Statewide Vote

Seats

■ Republican ■ Democrat

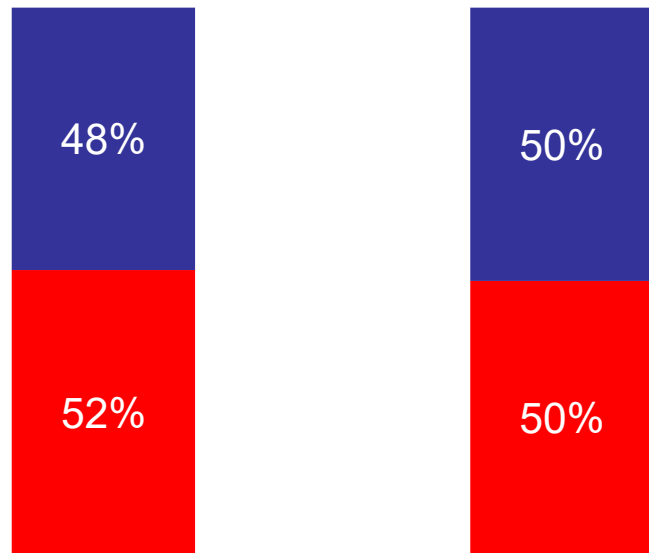
Statewide Vote

Seats

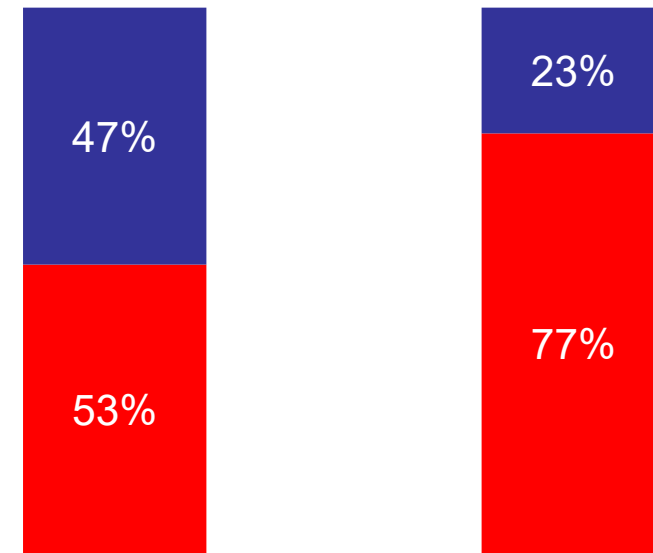
■ Republican ■ Democrat

Impact of Districting in North Carolina

2022 U.S. Congress
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2016 U.S. Congress
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Statewide Vote

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Moore v. Harper (2023)

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 - U.S. House of Representatives - 71% Republican (10 of 14 seats)
- N.C. Supreme Court (4-3)
 - Partisan gerrymander violates N.C. Constitution

U.S. Constitution, Art. I, § 4

“The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the **legislature** thereof”

2022 North Carolina Supreme Court Election



North Carolina Supreme Court

2022 North Carolina Supreme Court Election



North Carolina Supreme Court

Moore v. Harper (2023)

- North Carolina legislative redistricting
 - U.S. House of Representatives - 71% Republican (10 of 14 seats)
- N.C. Supreme Court (4-3)
 - Partisan gerrymander violates N.C. Constitution
- April 28, 2023: N.C. Supreme Court (5-2) reverses prior ruling and rejects gerrymander claim
- May 4, 2023: U.S. Supreme Court requests further briefing

Moore v. Harper (2023)

6-3 (Roberts)



Chief Justice Roberts

Moore v. Harper (2023)

6-3 (Roberts) Rejects Independent State Legislature Theory

- “The Elections Clause does not insulate state legislatures from the ordinary exercise of state judicial review.”
- State court judicial review predates *Marbury* (1803)
- BUT “state courts may not transgress the ordinary bounds of judicial review”



Roberts



Kavanaugh



Barrett



Kagan



Sotomayor



Jackson

Native American Rights



Haaland v. Brackeen (2023)

Indian Child Welfare Act 1978

- Motivated by history of abusive practices separating Indian children from family and tribe
- In adoption or foster care, preference for own tribe/other Indian placement



Genoa Industrial School for Indian Youth in Nebraska (1910)

Haaland v. Brackeen (2023)

Indian Child Welfare Act 1978

- Motivated by history of abusive practices separating Indian children from family and tribe
- In adoption or foster care, preference for own tribe/other Indian placement
- Challengers argue
 - Unconstitutional federal intrusion into family law
 - Violate Equal Protection in discriminating based on race

Haaland v. Brackeen (2023)



Justice Barrett

- 7-2 Uphold ICWA
 - Special federal power over Indian matters
 - No standing for Equal Protection challenge
 - No “redressability”
 - Adoptive parents sued federal officials not state officials
 - States have no standing

Terrorists love social media



Gonzales v. Google (2023) *Twitter v. Taamneh (2023)*

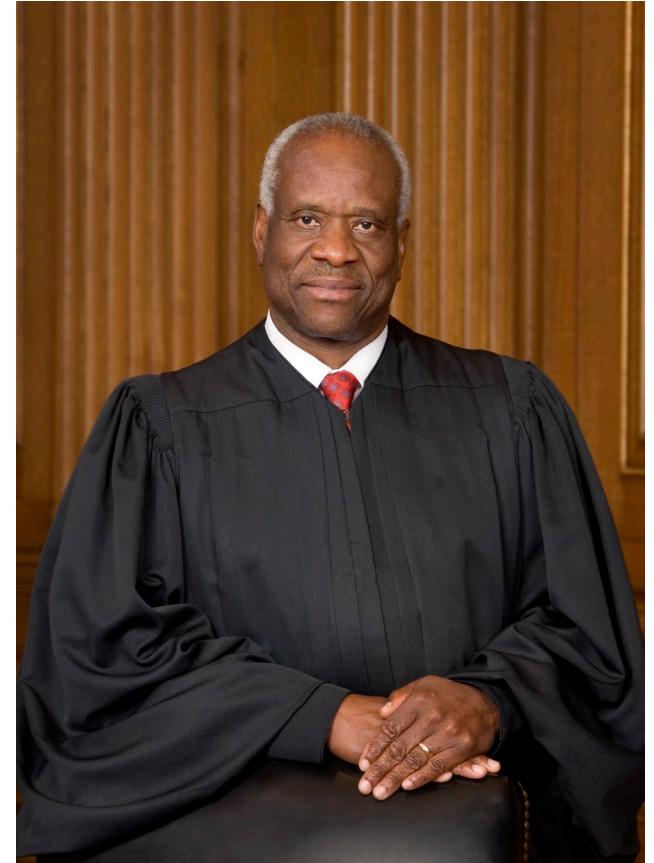
- Terrorist attacks in Paris (2015) and Istanbul (2017)
- Social media company liability
 - “Aiding and abetting” terrorism for not preventing terrorist content
 - Section 230 (CDA 1996)
 - Shields from liability for mere publication
 - But what about algorithm promoting content?



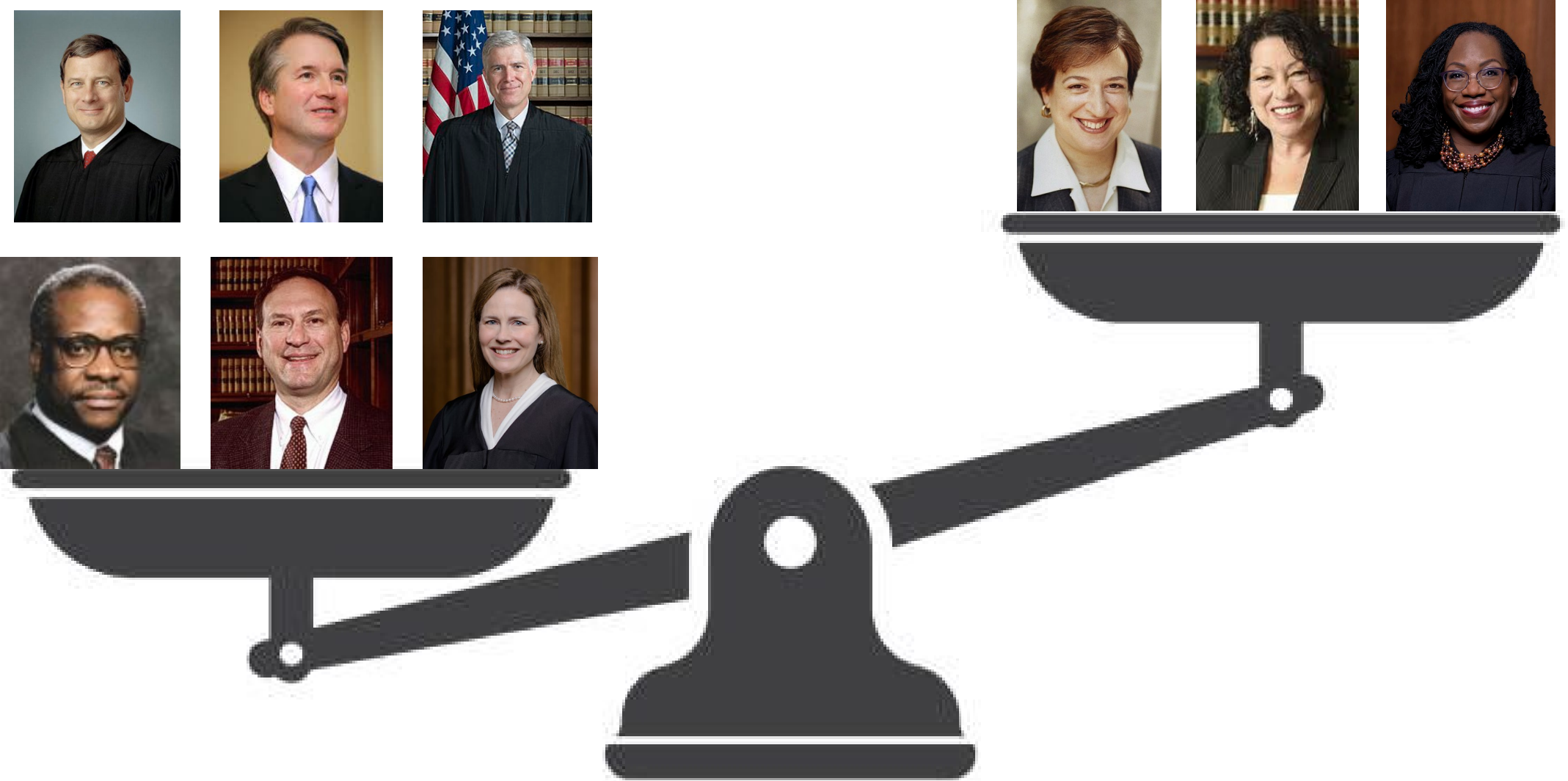
Gonzales v. Google (2023) *Twitter v. Taamneh* (2023)

9-0 No “aiding and abetting” liability

- Providing general platform, algorithms insufficient
- Mere “passive nonfeasance”: failure to remove content
- Little connection between platforms and attacks
- Do not need to decide Section 230 liability shield



Justice Thomas



303 Creative v. Elenis (2023)

- Lorie Smith wants to create wedding websites
 - But not for same-sex weddings
 - Violates her religious beliefs
- Refusal allegedly violates Colorado anti-discrimination law
- Does Colorado law force her to speak in violation of First Amendment?



Lorie
Smith



303 Creative v. Elenis (2023)

6-3 Colorado law violates First Amendment

- Compelled speech



Justice Gorsuch

303 Creative v. Elenis (2023)

6-3 Colorado law violates First Amendment

- Compelled speech
- Cite
 - *Barnette* (1943) (flag salute)



Justice Gorsuch

303 Creative v. Elenis (2023)

6-3 Colorado law violates First Amendment

- Compelled speech
- Cite
 - *Barnette* (1943) (flag salute)
 - *Hurley* (1995) (St. Patrick parade)



303 Creative v. Elenis (2023)

6-3 (Gorsuch) Colorado law violates First Amendment

- Compelled speech
- Cite
 - *Barnette* (1943) (flag salute)
 - *Hurley* (1995) (St. Patrick parade)
 - *Dale* (2002) (Boy Scout leader)



303 *Creative v. Elenis* (2023)



Justice Sotomayor

Dissent (Sotomayor, Kagan, Jackson)

“Today, the Court, for the first time in its history, grants a business open to the public a constitutional right to refuse to serve members of a protected class.”

- Regulation of commercial conduct, only incidental burden on speech
- Passes strict scrutiny: narrowly tailored to advance compelling government interest

Affirmative Action

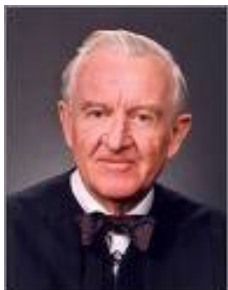


Grutter v. Bollinger (2003)

- Uphold use of race in admissions at University of Michigan School of Law
- Diversity is a compelling governmental interest
- Narrow tailoring
 - No quota or racial balancing
 - Need no exhaust “every conceivable race neutral alternative”



Grutter v. Bollinger (2003)



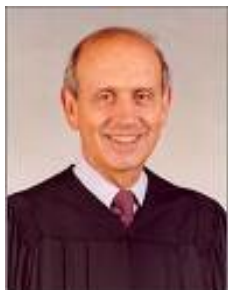
Stevens



Souter



Ginsburg



Breyer



O'Connor

“It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. . . . We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.”

Fisher v. University of Texas (Fisher II) (2016)

- 4-3 Uphold affirmative action plan at University of Texas
- Reaffirm *Grutter*



Ongoing Debate at Supreme Court on Use of Race



Roberts

“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”

Parents Involved (2007)

“The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination.”

Schuetz (2014)



Sotomayor

Students for Fair Admissions v. Harvard (2023)

- Challenge affirmative action at Harvard and UNC
- Arguments
 - Overrule *Grutter*
 - Violate 14th Amendment (public)
 - Violate Title VI of the Civil Rights Act of 1964 (private and public)
 - Other ways to achieve diversity



Students for Fair Admissions v. Harvard (2023)

6-3 Plans violate equal protection

- Purport to apply precedent
- Plans fail strict scrutiny
 - No measurable connection to goals
 - No logical end point



Chief Justice Roberts

Students for Fair Admissions v. Harvard (2023)

6-3 Plans violate equal protection

“[N]othing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise. . . . A benefit to a student who overcame racial discrimination . . . must be tied to that student’s courage and determination.”



Chief Justice Roberts

Students for Fair Admissions v. Harvard (2023)



Justice Sotomayor

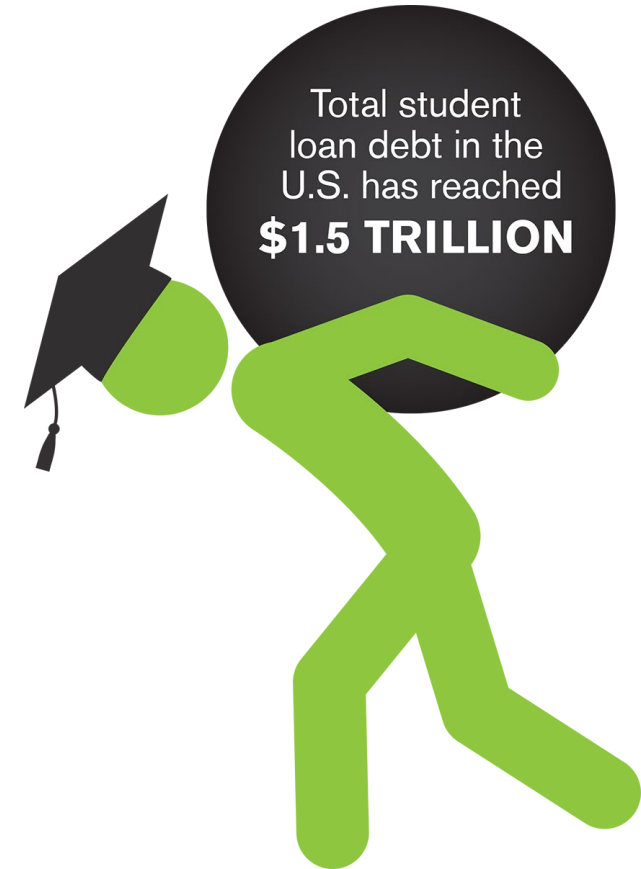
Sotomayor (Kagan, Jackson) dissent

“Ignoring race will not equalize a society that is racially unequal.”

“At bottom, the six unelected members of today’s majority upend the status quo based on their policy preferences about what race in America should be like, but is not, and their preferences for a veneer of colorblindness in a society where race has always mattered and continues to matter in fact and in law.”

Biden v. Nebraska (2023)

- March 20, 2020 Secretary DeVoss suspends student loan repayment and interest
 - HEROES Act
 - National emergency
 - “waive or modify any statutory or regulatory provision” of student loan program
- Suspension continuously renewed



Biden v. Nebraska (2023)

August 2022

- Final extension of suspension through December 31, 2022
- Cancel \$10,000
 - Income below \$125,000
- Cancel additional \$10,000 for Pell grant recipients
- Estimated cost of over \$400 billion over 10 years



Biden v. Nebraska (2023)

6-3 Strike Down Plan as
Unauthorized



Chief Justice Roberts

Biden v. Nebraska (2023)

6-3 Strike Down Plan as Unauthorized

- Standing?

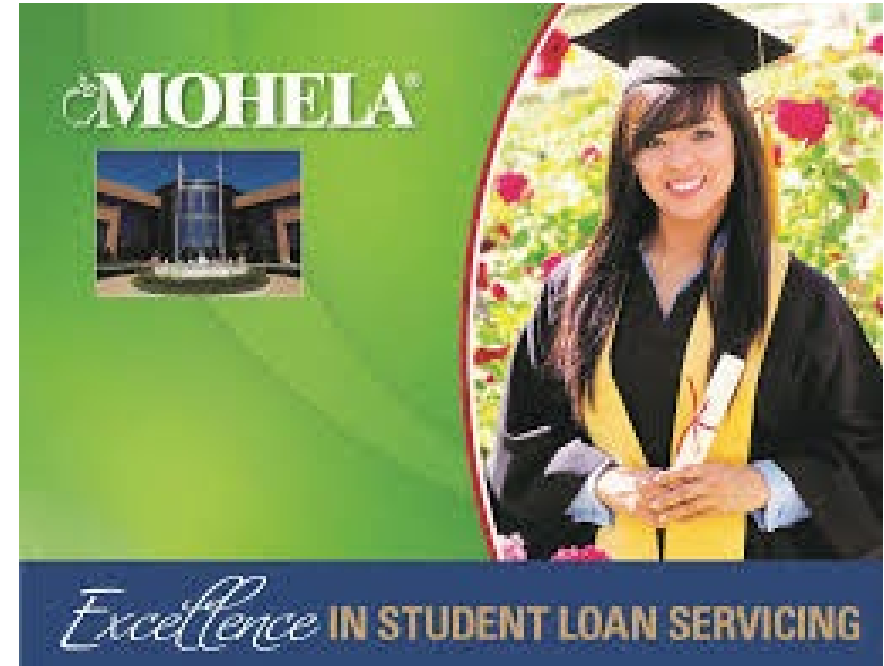


Chief Justice Roberts

Biden v. Nebraska (2023)

6-3 Strike Down Plan as Unauthorized

- Standing?
- “Waive or modify” does not authorize debt cancellation
- “Major question” requiring clear congressional authorization



Biden v. Nebraska (2023)

6-3 Strike Down Plan as Unauthorized

- Standing?
- “Waive or modify” does not authorize debt cancellation
- “Major question” requiring clear congressional authorization

Dissent (**Kagan**, Sotomayor, Jackson)

- MOHELA is not a party
- “Waive or modify” is broad language allowing cancellation
- Statute is designed to give broad power to address unforeseen emergencies



United States v. Rahimi

- Civil protective order after allegedly assaulted girlfriend
- Rahimi involved in 5 shootings in Texas, December 2020-January 2021
- Convicted under federal law (1996) that bans gun possession if under domestic violence protective order



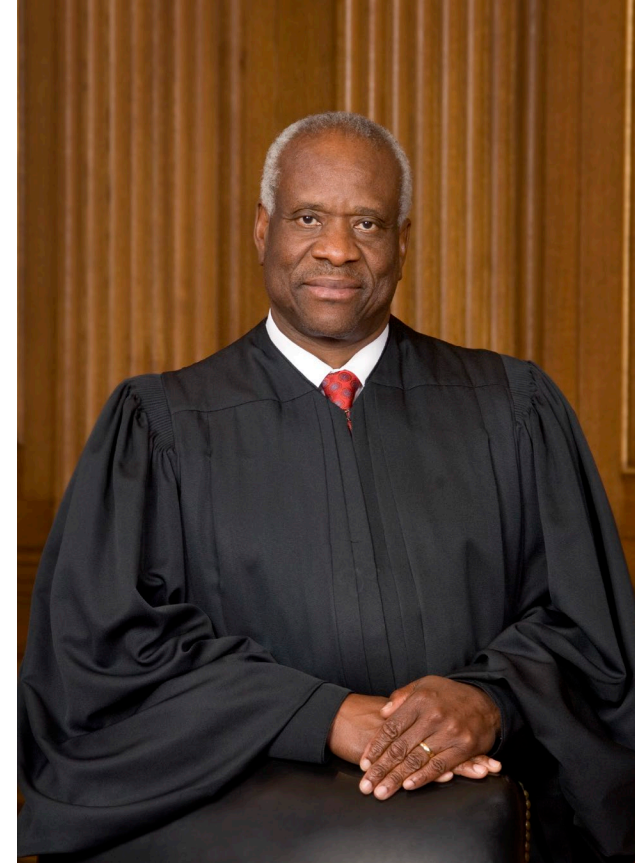
United States v. Rahimi

- Civil protective order after allegedly assault girlfriend
- Rahimi involved in 5 shootings in Texas, December 2020-January 2021
- Convicted under federal law(1996) that bans gun possession if domestic violence protective order
- U.S. Court of Appeals for 5th Cir. Affirmed
 - Reject Second Amendment argument

New York State Rifle & Pistol Assoc. v. Bruen (2022)

Thomas 6-3

- Only permissible gun restrictions are those analogous to historical restrictions
 - Comparable burden and justification
- Reject strict scrutiny
 - Means-ends analysis (“compelling interest”) not sufficiently protective



Justice Thomas

United States v. Rahimi

- Civil protective order after allegedly assault girlfriend
- Rahimi involved in 5 shootings in Texas, December 2020-January 2021
- Convicted under federal law(1996) that bans gun possession if domestic violence protective order
- U.S. Court of Appeals for 5th Cir. issues new opinion
 - Federal law is unconstitutional
 - No similar law in founding period

Loper Bright Enterprises v. Raimondo

- National Marine Fisheries Service rule requires fishing industry to pay costs of observers
- Challenged as unauthorized
- Upheld by D.C. Circuit, citing *Chevron* (1984)
 - Reasonable interpretation of ambiguous statute



Loper Bright Enterprises v. Raimondo

- National Marine Fisheries Service rule requires fishing industry to pay costs of observers
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 - Reasonable interpretation of ambiguous statute

Granted Cert.

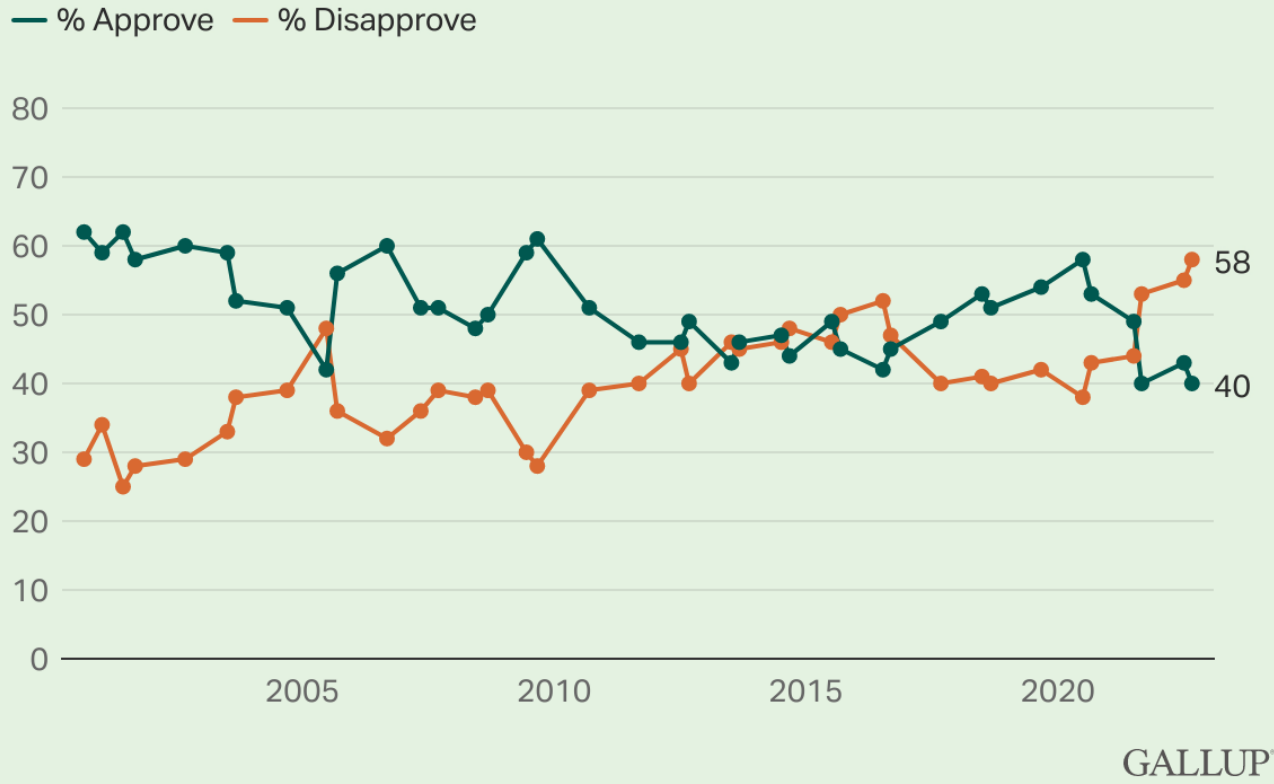
“Whether the Court should overrule *Chevron*”

Supreme Court and Public Opinion



Job Approval Rating of the U.S. Supreme Court

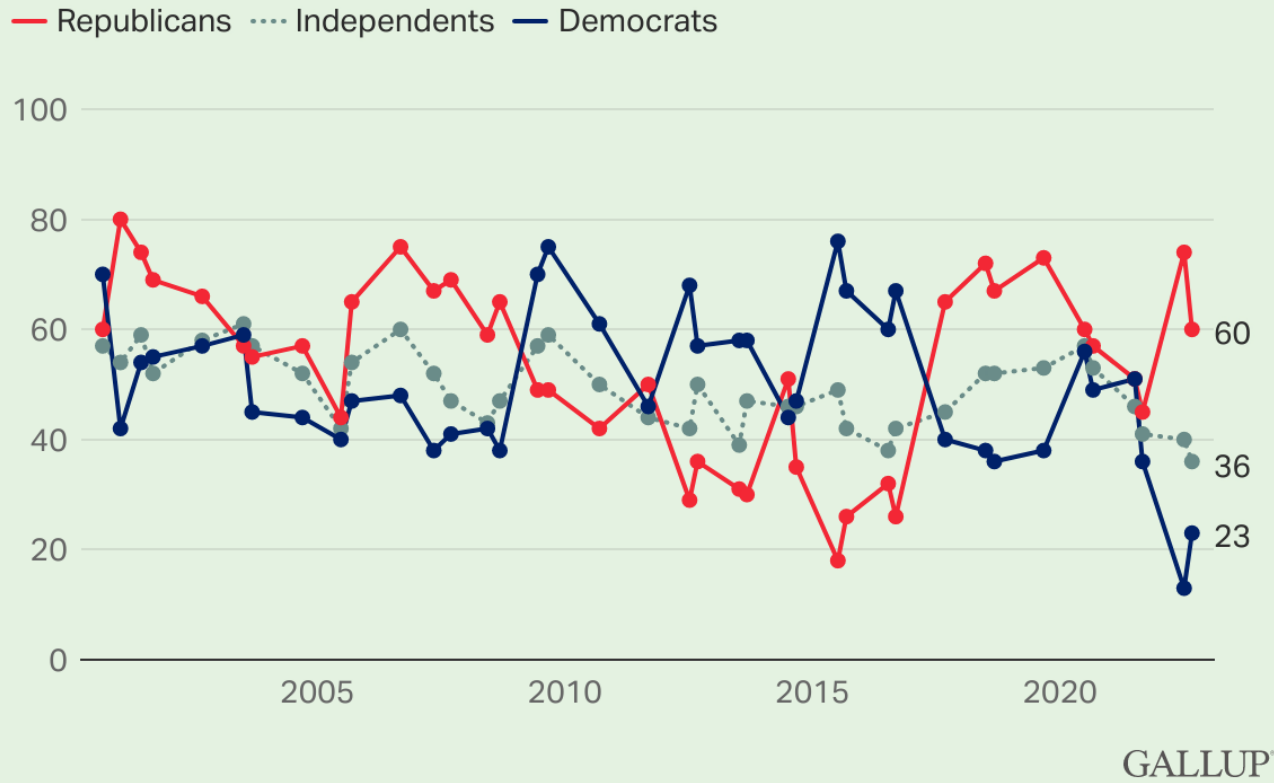
Do you approve or disapprove of the way the Supreme Court is handling its job?



September 2022

Supreme Court Job Approval, by Political Party

Figures are the percentage who approve of the job the Supreme Court is doing



September 2022

Job Approval Rating of Supreme Court

	Gallup Sept. 2022	Quinnipiac June 2023
Approve	40%	
Disapprove	58%	

Job Approval Rating of Supreme Court

	Gallup Sept. 2022	Quinnipiac June 2023
Approve	40%	30%
Disapprove	58%	59%

Lowest approval ever in Quinnipiac Poll (2004-)

Supreme Court Mainly Motivated By

	Quinnipiac June 2023
Law	
Politics	

Supreme Court Mainly Motivated By

	Quinnipiac June 2023
Law	25%
Politics	

Supreme Court Mainly Motivated By

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Politics	68%