

Along With Conservative Triumphs, Signs of New Caution at Supreme Court

Chief Justice Roberts delivered both landmark victories for the right and significant rulings in which he forged alliances with the liberal justices.



By Adam Liptak Graphics by Alicia Parlapiano
Reporting from Washington

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October Term 2022

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The Supreme Court ended its term this week in familiar fashion, issuing blockbuster conservative decisions on affirmative action, gay rights and student loans that divided along partisan lines, with the court’s three Democratic appointees in dissent.

While not quite as stunning as last June’s decisions eliminating the right to abortion and expanding gun rights, the new rulings were of a piece with them and were a further indication that the court remains receptive to the conservative legal movement’s agenda, including cutting back on a progressive conception of civil rights and frustrating President Biden’s initiatives.

But the entire story of the most recent term is considerably more complicated than that of the previous one, which had seemed to establish an unyielding conservative juggernaut characterized by impatience and ambition — and built to last.

A year later, the court remains deeply conservative but is more in tune with the fitfully incremental approach of Chief Justice John G. Roberts Jr., who is attentive to his court’s legitimacy, than with the take-no-prisoners approach of Justice Clarence Thomas. The chief justice’s strategy — and votes — produced a fair number of liberal victories.

“Chief Justice Roberts seems to be getting at least some of the conservative majority back into harness on incremental moves,” said Pamela S. Karlan, a law professor at Stanford.

Indeed, the term that just ended was something of a triumph for the chief justice, who just a year ago seemed to be losing power, having failed to persuade a single colleague to join his compromise position in the case that did away with the constitutional right to abortion.

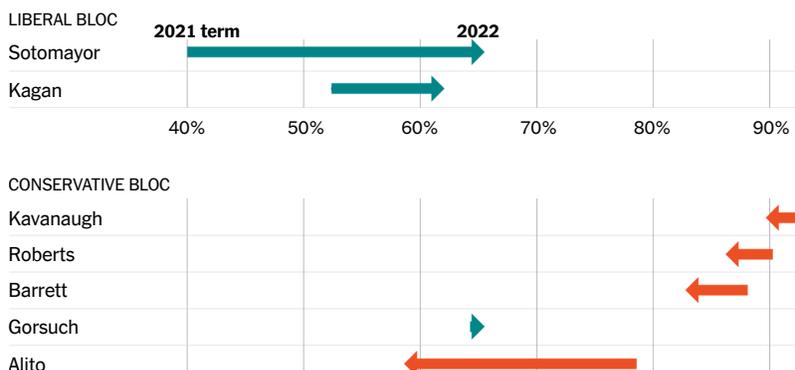
When the latest term started in October, Justice Thomas appeared to have gained control of the court for the first time in his more than 30-year tenure, said Richard J. Lazarus, a law professor at Harvard.

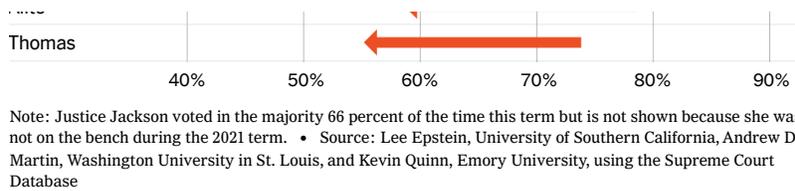
“Those tables have dramatically turned,” Professor Lazarus said. “Although the chief justice has struggled mightily under rising public expectations to address ethical issues within the court, mostly focused on Justice Thomas, the chief rather than Thomas remains the most influential justice on the court in terms of the outcomes in the court’s opinions.”

Indeed, Chief Justice Roberts was in the majority in divided cases decided by signed opinions 86 percent of the time, second only to Justice Brett M. Kavanaugh, at 90 percent. Justice Thomas was last by this measure, at 55 percent.

How Often Each Justice Was in the Majority, This Term and Last

This term, the court’s liberal justices were significantly more likely than last term to be in the majority in nonunanimous decisions.





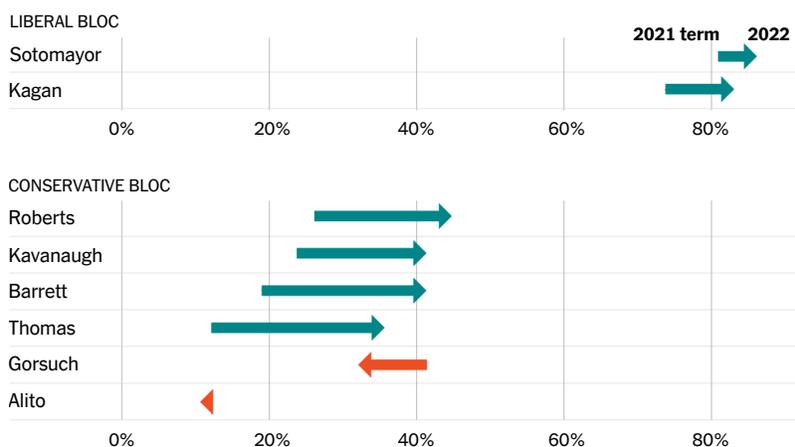
Thanks largely to alliances with Chief Justice Roberts and one or more of President Donald J. Trump’s three appointees — Justices Kavanaugh, Neil M. Gorsuch and Amy Coney Barrett — the court’s three liberals were in the majority in a considerable number of important cases. They included ones on the Voting Rights Act, immigration, the role of state legislatures in elections and Native American rights.

The three liberals were on the winning side more often than the court’s two most conservative members, Justices Thomas and Samuel A. Alito Jr.

“Looking across the entire docket — not just the term’s last two days — the data show a shift from the most conservative and aggressive court in modern history to one that has moderated,” said Lee Epstein, a law professor and political scientist at the University of Southern California. “Perhaps the justices — especially Roberts, Barrett and Kavanaugh — have faced up to the public’s waning confidence and decided to self-adjust. The red team versus the blue team in case after case isn’t a good look.”

How Often Each Justice Took a Liberal Position, This Term and Last

All but two of the most conservative justices voted more liberally in nonunanimous decisions this term.



Note: Justice Jackson voted for a liberal outcome 79 percent of the time this term but is not shown because she was not on the bench during the 2021 term. • Source: Lee Epstein, University of Southern California, Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, Emory University, using the Supreme Court Database

The percentage of unanimous decisions grew, by a large margin, to 47 percent from last term’s 28 percent. That, too, is evidence of efforts to forge consensus.

Some conservatives have been frustrated. Gov. Ron DeSantis of Florida, a Republican and a rival to Mr. Trump for the Republican presidential nomination, recently said that none of Mr. Trump’s three appointees “are at the same level of Justices Thomas and Justice Alito.”

Josh Blackman, a law professor at South Texas College of Law Houston, said the critique had force from a conservative perspective, and he questioned the adequacy of the Trump administration’s vetting process, which relied on lists of potential nominees compiled by lawyers with ties to conservative legal groups like the Federalist Society and the Heritage Foundation.

“For different reasons, Justices Gorsuch, Kavanaugh and Barrett have and will continue to disappoint conservatives,” Professor Blackman said. “I don’t know that future ‘short lists’ are worth much if they are made by the same people who generated the last batch of lists.”

Still, some of the biggest victories for liberals came in cases where the court rejected assertive arguments and merely maintained the status quo.

“There were instances where conservative litigants overplayed their hand and lost out,” said Elizabeth Wydra, the president of the Constitutional Accountability Center, a liberal group.

And even some of those victories came with caveats.

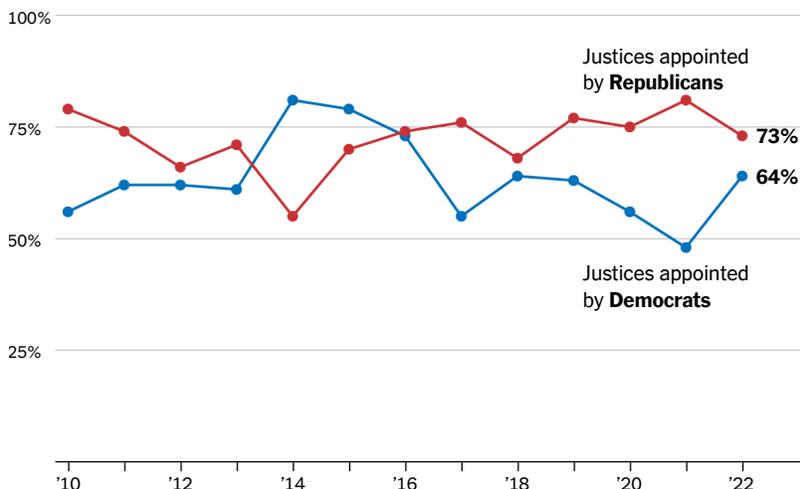
In one, Justice Barrett, writing for seven justices, rejected an equal protection challenge to the Indian Child Welfare Act, a federal law that seeks to keep Native American children with their tribes. But she did so on the ground that the challengers lacked standing. In a concurring opinion, Justice Kavanaugh stressed that the issue remained alive and that the court could address it in a later case.

Similarly, in a surprise win for minority voters in Alabama in which Chief Justice Roberts was joined by Justice Kavanaugh and the three liberals in rejecting a challenge to the Voting Rights Act, Justice Kavanaugh issued a concurring opinion saying that it was possible that “the authority to conduct race-based redistricting cannot extend indefinitely into the future.”

Regardless, data compiled by Professor Epstein, Andrew D. Martin of Washington University in St. Louis and Kevin Quinn of Emory University all point in the same direction: In the scheme of things, the liberal wing had a reasonably good term.

How Often Conservative and Liberal Justices Were in the Majority

While the justices nominated by Republicans continued to be in the majority more often on average, the gap with liberal justices was much smaller than last term.



Source: Lee Epstein, University of Southern California, Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, Emory University, using the Supreme Court Database

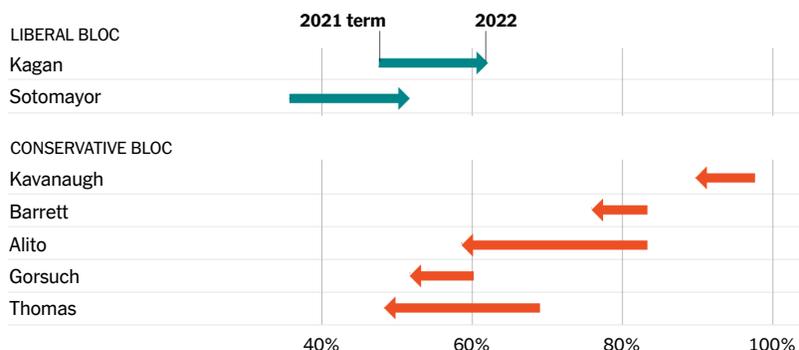
The three liberals as a group were in the majority in divided decisions at a rate of 64 percent, compared with 73 percent for the six conservatives. In the previous term, the liberals trailed the conservatives by 34 percentage points, the largest gap in at least a decade.

Alliances shifted. Chief Justice Roberts voted with Justice Elena Kagan, a liberal, about 62 percent of the time, a 14 percentage-point jump from the last term, and with Justice Thomas just 48 percent of the time, a 21-point drop. Justice Kavanaugh voted with Justice Ketanji Brown Jackson, appointed to the court by President Biden, about 62 percent of the time and with Justice Thomas less than 45 percent of the time.

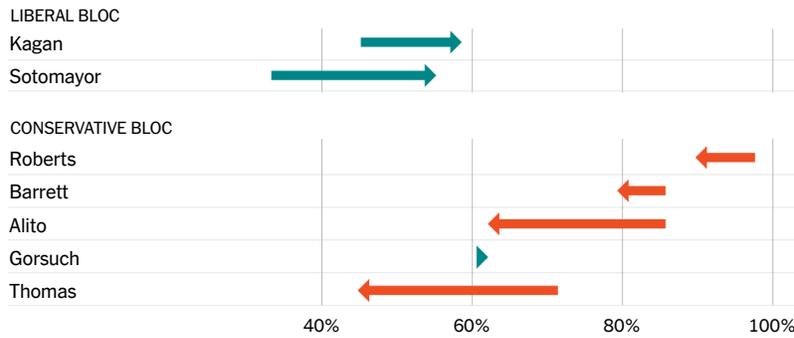
How Alliances Shifted

Chief Justice Roberts and Justice Kavanaugh, who represent the court’s ideological middle, tended to agree more with the liberal justices and less with their fellow conservatives than they did last term.

How often Roberts agreed with ...



How often Kavanaugh agreed with ...



Note: Justice Jackson agreed with Justice Kavanaugh 62 percent of the time, and with Justice Roberts 59 percent of the time. She is not shown because she was not on the bench during the 2021 term. • Source: Lee Epstein, University of Southern California, Andrew D. Martin, Washington University in St. Louis, and Kevin Quinn, Emory University, using the Supreme Court Database

Roman Martinez, a Supreme Court specialist with Latham & Watkins, said that “members of the conservative bloc — and especially the chief justice and Justice Kavanaugh — found common cause with the more liberal justices on a surprising range of issues.”

Another way to assess the term is to look at the American Civil Liberties Union’s success rate. The group filed briefs in 18 argued cases and was on the winning side in 11 of them.

David Cole, the group’s national legal director, said losses in the affirmative action and gay rights cases were “unprecedented setbacks for equality.”

“But beyond that,” he said, “civil liberties and civil rights fared surprisingly well this term — far better than anyone predicted. The court avoided partisan divides and reached rights-protective results in important cases involving redistricting, Native American rights, victims of discrimination, prisoners’ access to court, social media, free speech and immigration enforcement.”

“What we saw,” he said, “was a reversion to the mean.”



The Supreme Court issued blockbuster conservative decisions on affirmative action, student loans and gay rights, but the court’s liberals ended up in the majority in several significant decisions. Erin Schaff/The New York Times

Most of the data in this article concerns signed decisions issued by the court after full briefing and argument. But the court also grew more cautious in the terse orders it issued in response to emergency application on what critics call the shadow docket.

The court allowed a commonly used abortion pill to remain available, blocking a ruling from a federal judge in Texas over the dissents of Justices Thomas and Alito. It let a transgender girl compete on the girls’ cross country and track teams at her middle school in West Virginia while her appeal moved forward. Again, Justices Thomas and Alito dissented.

The docket for the court’s next term, which starts in October, is still taking shape. On Friday, the court agreed to decide whether the Second Amendment allows the government to disarm people subject to restraining orders for domestic violence.

The court is also set to decide two important administrative-law cases. One asks the court to overrule the Chevron doctrine, which requires courts to defer to administrative agencies’ interpretations of federal statutes. The other could hobble the Consumer Financial Protection Bureau.

In the last decision of the current term, on student loans, Chief Justice Roberts concluded his majority opinion, which rejected a key initiative of the Biden administration, with an appeal to the public that seemed to reflect a mix of optimism, naïveté and deep attachment to a court under siege.

He said that sharp exchanges among the justices were the products of good-faith disputes.

“We do not mistake this plainly heartfelt disagreement for disparagement,” he wrote. “It is important that the public not be misled either. Any such misperception would be harmful to this institution and our country.”

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A version of this article appears in print on , Section A, Page 1 of the New York edition with the headline: IN COURT RULINGS, THE CHIEF JUSTICE EXHIBITS HIS SWAY

The Major Supreme Court Decisions in 2023

By Adam Liptak and Eli Murray Updated June 29, 2023

The Supreme Court — dominated by a 6-to-3 conservative majority, including three justices appointed by President Donald J. Trump — lurched to the right last June in blockbuster decisions on abortion, guns, religion and climate change. Its record in the current term, which started in October, has so far been more mixed, with the court’s three liberal members voting with the majority, for instance, in important cases on Native American adoptions and minority voting rights. Still, its conservative supermajority prevailed in blockbuster decisions on affirmative action, student loans and gay rights.

According to a survey conducted in April by researchers at Harvard, Stanford and the University of Texas, the public is often — but hardly always — divided along partisan lines on how the court should rule in the term’s major cases.

Affirmative Action

6-3

DECIDED
JUNE 29

The court ruled that race-conscious admissions policies at Harvard, a private institution, and the University of North Carolina, a public one, were unlawful.

Liberal bloc



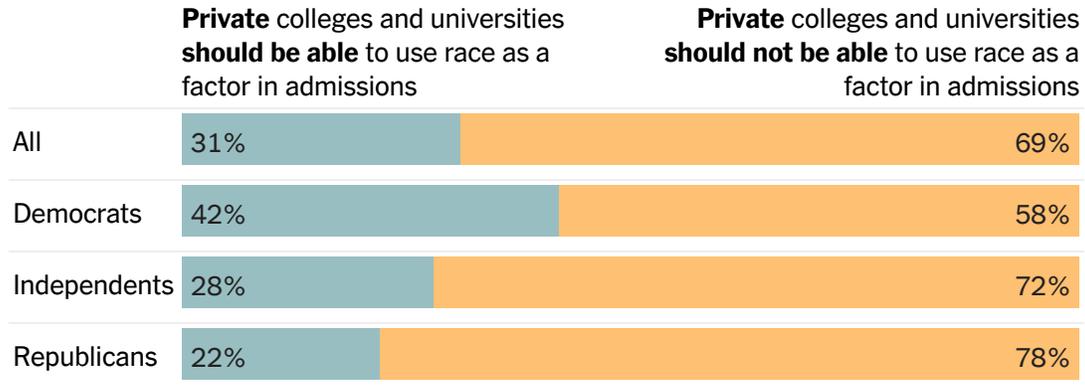
Conservative bloc



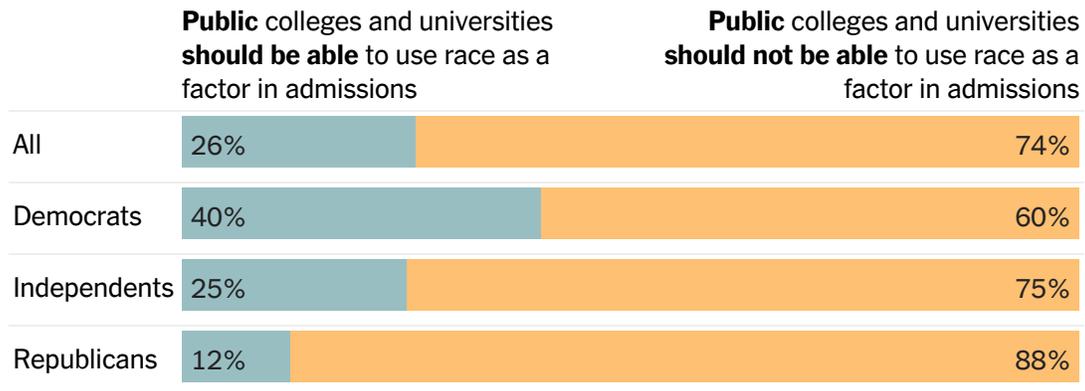


Roberts Kavanaugh Barrett Gorsuch Alito Thomas

Where the public stands



Question wording: 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? | Source: SCOTUSPoll



Question wording: 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? | Source: SCOTUSPoll

Student Loans

6-3

DECIDED
JUNE 30

The court ruled that the Biden administration’s plan to wipe out more than \$400 billion in student debt was not authorized by Congress.

Liberal bloc



Sotomayor



Jackson



Kagan

Conservative bloc



Roberts



Kavanaugh



Barrett



Gorsuch

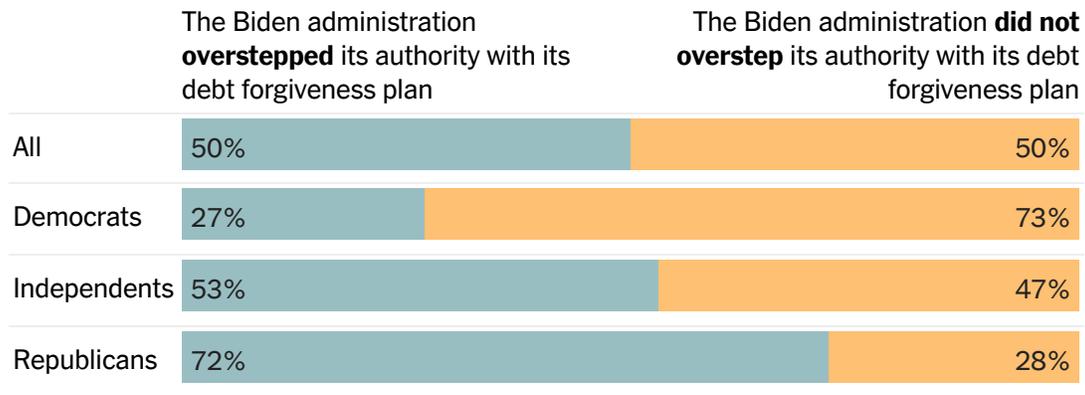


Alito



Thomas

Where the public stands



Question wording: 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 the Biden administration did not overstep its authority. What do you think? | Source: SCOTUSPoll

Religion, Free Speech and Gay Rights

6-3

DECIDED
JUNE 30

The court decided that the First Amendment allows a web designer who objects to same-sex marriages to violate a state law that prohibits discrimination based on sexual orientation.

Liberal bloc

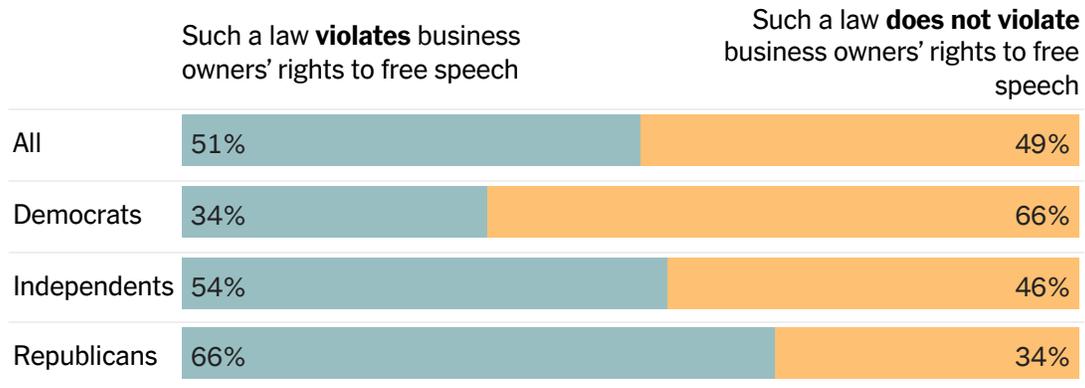


Sotomayor Jackson Kagan

Conservative bloc



Where the public stands



Question wording: 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? | Source: SCOTUSPoll

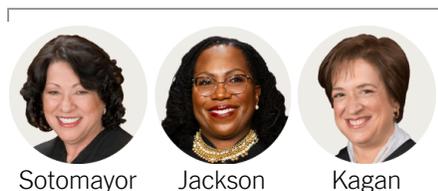
State Legislatures and Federal Elections

6-3

DECIDED
JUNE 27

The court rejected a legal theory that would have given state legislatures largely unchecked power to set the rules for federal elections.

Liberal bloc



Conservative bloc



Roberts

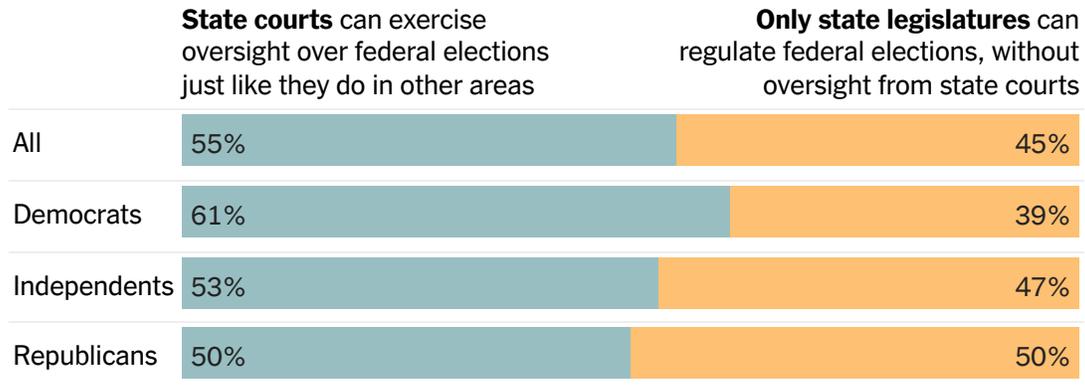
Barrett Gorsuch

Thomas



Kavanaugh

Where the public stands



Question wording: 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? | Source: SCOTUSPoll

Race and Voting Maps

5-4

DECIDED
JUNE 8

The court ruled that Alabama had diluted the power of Black voters by drawing a congressional voting map with a single district in which they made up a majority.

Liberal bloc

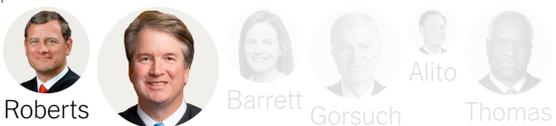


Sotomayor

Jackson

Kagan

Conservative bloc



Roberts

Kavanaugh

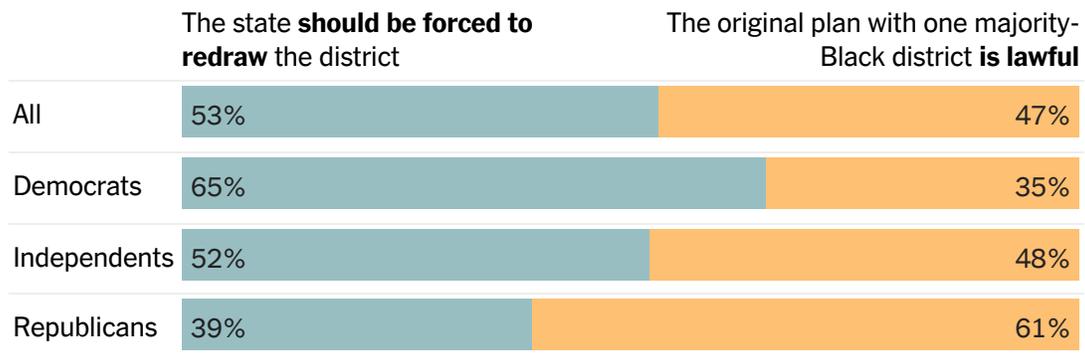
Barrett

Gorsuch

Alito

Thomas

Where the public stands



Question wording: 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 that 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? | Source: SCOTUSPoll

Tribal Rights

7-2

DECIDED
JUNE 15

The court upheld the Indian Child Welfare Act, a 1978 law that seeks to keep Native American children with their tribes and preserve their heritage. But the ruling did not resolve the question of whether the law discriminated against non-Native families based on race.

Liberal bloc



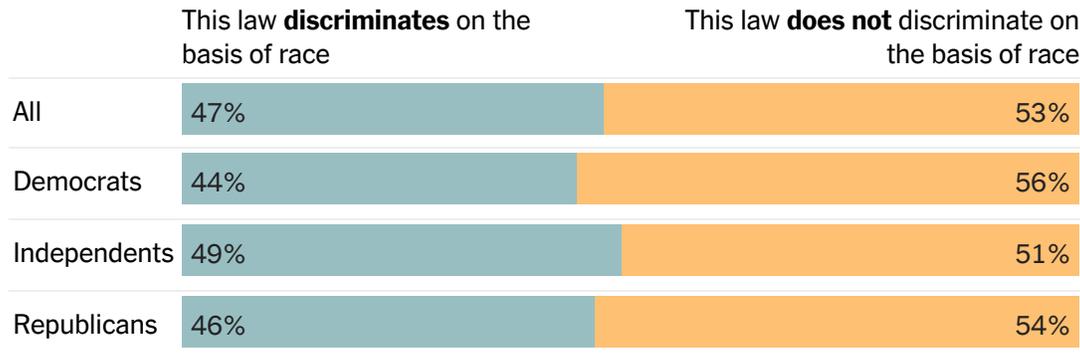
Sotomayor Jackson Kagan

Conservative bloc



Roberts Kavanaugh Barrett Gorsuch Alito Thomas

Where the public stands



Question wording: 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? | Source: SCOTUSPoll

Religious Employees

9-0

DECIDED
JUNE 29

The court broadened accommodations employers must make for workers' religious practices after a postal worker refused to work on Sundays for religious reasons.

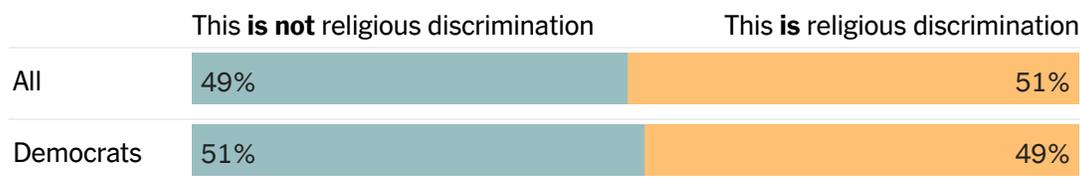
Liberal bloc



Conservative bloc



Where the public stands





Question wording: A postal worker refused to work on Sundays for religious reasons. The Postal Service agreed to help him find co-workers to swap shifts with, but when he could not find any co-workers 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. | Source: SCOTUSPoll

Environmental Protection

5-4

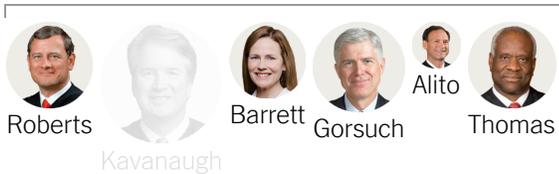
DECIDED
MAY 25

The court ruled that the Clean Water Act does not allow the Environmental Protection Agency to regulate discharges into wetlands near bodies of water unless they have “a continuous surface connection” to those waters. Four of the justices also voted against the E.P.A., but on narrower grounds.

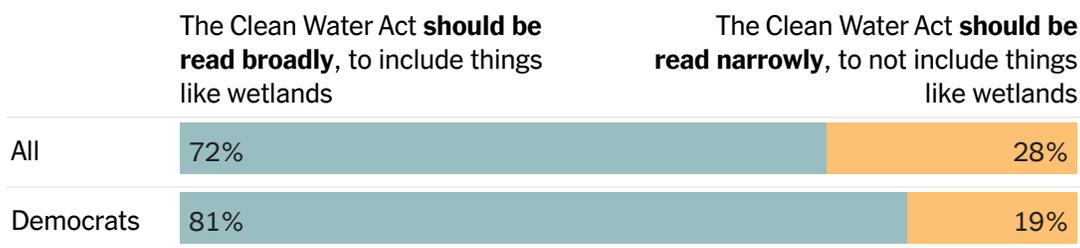
Liberal bloc



Conservative bloc



Where the public stands





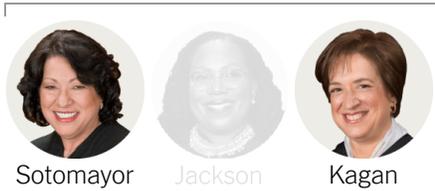
Question wording: The Clean Water Act is a federal law that prohibits the “discharge of pollutants” into “navigable waters.” Some people think that this should be read broadly, to include things like wetlands. Other people think that this should be read narrowly, to include only things like streams, rivers and lakes. What do you think? | Source: SCOTUSPoll

Animal Cruelty and Interstate Commerce

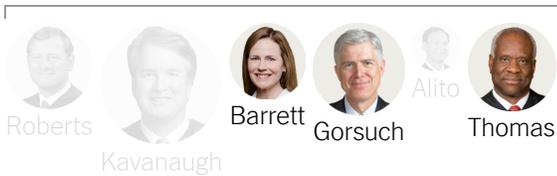
5-4
DECIDED
MAY 11

The court upheld a California law that sought to address cruelty to animals, saying the state could require pork sold there but produced elsewhere to come from breeding pigs housed in spaces that allow them to move around freely.

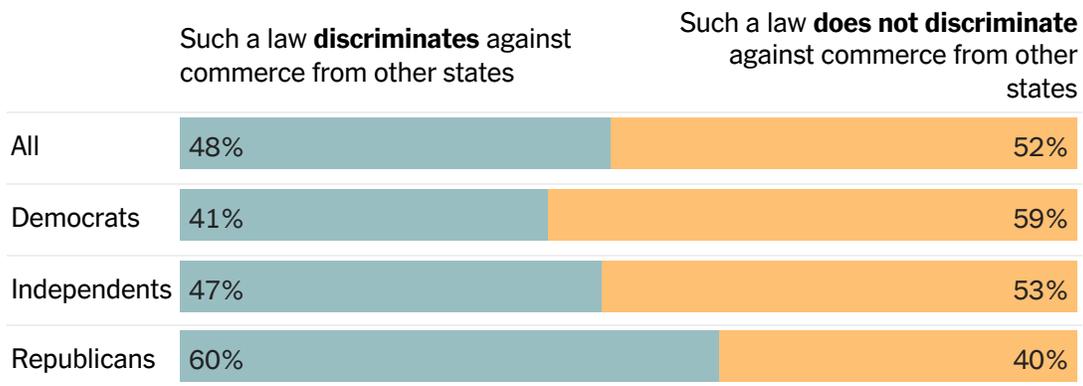
Liberal bloc



Conservative bloc



Where the public stands



Question wording: 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 California. Other people think that such a law does not discriminate against commerce from other states. What do you think? | Source: SCOTUSPoll

Fair Use of Copyrighted Works

7-2

DECIDED
MAY 18

The court ruled that Andy Warhol had improperly drawn on a prominent photographer's portrait of Prince for an image of the musician that his estate licensed to a magazine.

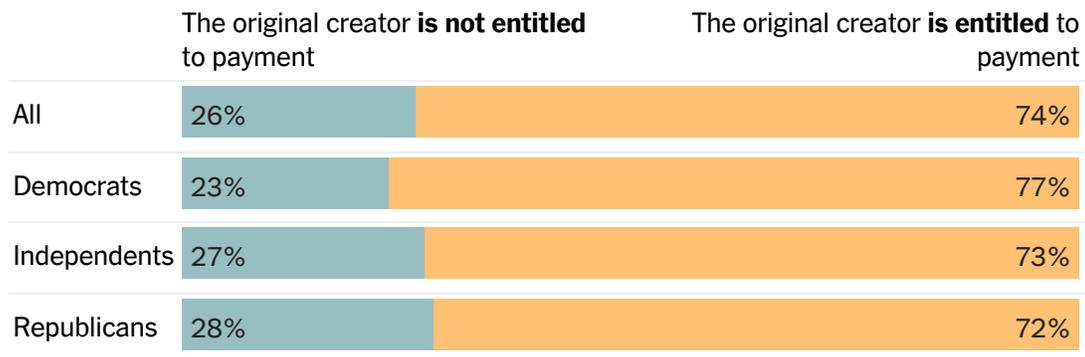
Liberal bloc



Conservative bloc



Where the public stands



Question wording: 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? | Source: SCOTUSPoll

Scope of Tech Platforms' Liability Shield

9-0

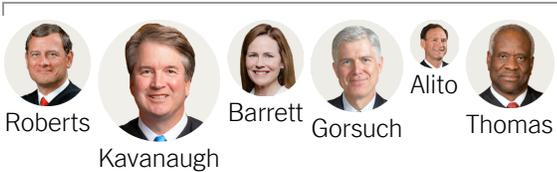
DECIDED
MAY 18

The court sidestepped ruling on whether a law that protects social media platforms from lawsuits shields YouTube from a suit over videos supporting terrorism.

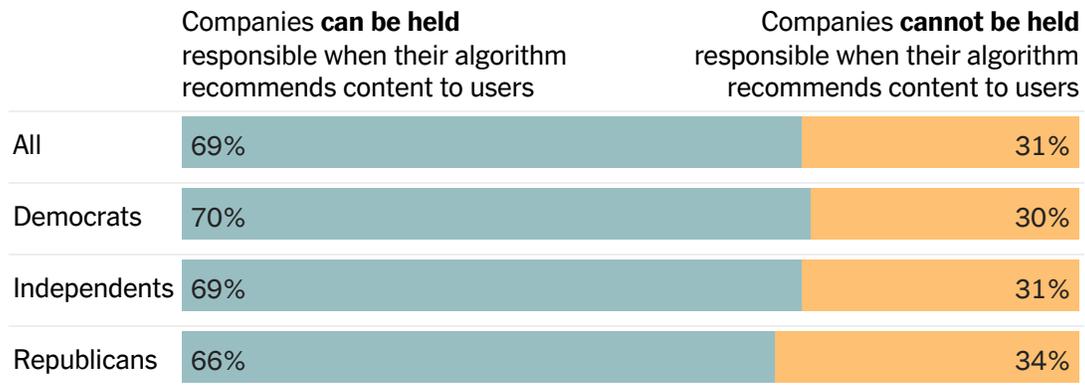
Liberal bloc



Conservative bloc



Where the public stands



Question wording: 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? | Source: SCOTUSPoll

Tech Platforms and Terrorism

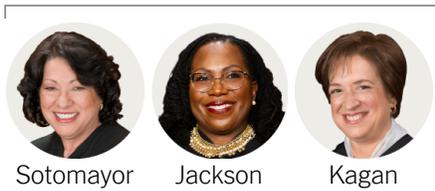
9-0

The court ruled that internet platforms may not be sued for aiding and abetting international terrorism by failing to

DECIDED
MAY 18

remove videos supporting the Islamic State.

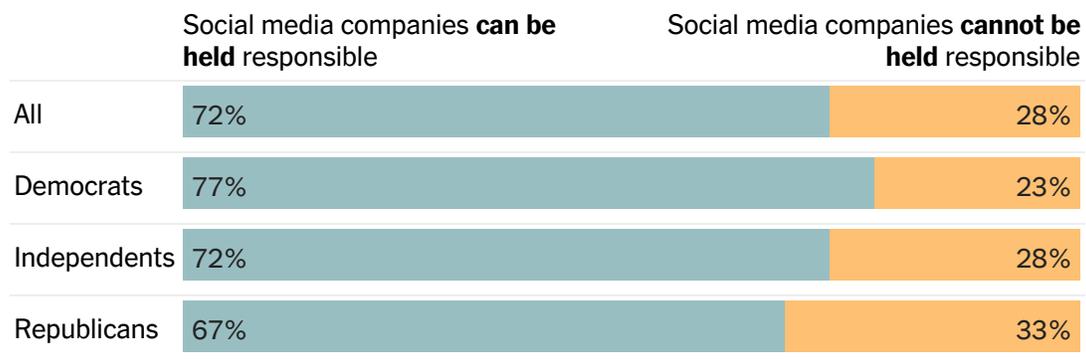
Liberal bloc



Conservative bloc



Where the public stands



Question wording: 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? | Source: SCOTUSPoll

Sources: SCOTUSPoll project by Stephen Jessee, University of Texas at Austin; Neil Malhotra, Stanford University; and Maya Sen, Harvard University | Note: The polling data is based on a survey conducted online by YouGov from April 5 to 11 using a representative sample of 2,029 American adults.