## SOCIAL SCIENCES

# Has the Supreme Court become just another political branch? Public perceptions of court approval and legitimacy in a post-*Dobbs* world

Matthew Levendusky[1,2]*, Shawn Patterson Jr.[2], Michele Margolis[1], Josh Pasek[3], Kenneth Winneg[2], Kathleen H. Jamieson[2,4]

Have perceptions of the U.S. Supreme Court polarized, much like the rest of American politics? Because of the Court's unique role, for many years, it remained one of the few institutions respected by both Democrats and Republicans alike. But the Court's dramatic shift to the right in recent years—highlighted by its *Dobbs* decision in 2022—potentially upends that logic. Using both eight waves of panel data and 18 nationally representative surveys spanning two decades, we show that while there was little evidence of partisan polarization in earlier years, in 2022 and 2023, such patterns are clear in favorability, trust, legitimacy, and support for reform. Factors that used to protect the Court—like knowledge about it and support for key democratic values—no longer do so. The Court has also become more important to voters, and will likely remain a political flashpoint, with disquieting implications for the Court's place in our polity.

## INTRODUCTION

Even as trust in other U.S. institutions declined sharply in recent decades, the Supreme Court has remained an outlier. The public has perceived the Court as a legal institution more than a political one, bolstered by its norms, processes, symbols, and independence, and therefore has granted it greater trust and legitimacy than the other branches (*1*, *2*). Democrats and Republicans alike have shared this assessment (*3*), which has long made the Court a bulwark against the polarization and Balkanization that dominates so much of contemporary American political life.

But no more. Since 2020, the Court's special status has evaporated, with trust in it plummeting by 20 percentage points (Fig. 1). The year 2022 saw the lowest levels ever recorded by Gallup in the 50-year history of this question, and 2023 saw almost no change in the public's assessment of the Court.

What explains this dramatic volte-face? The most likely cause is that public perceptions of the Court have become politicized. Between the 2018–2019 and 2021–2022 terms, the number of polarized partisan decisions—where all the justices nominated by Republican presidents voted as a bloc against all those nominated by Democratic ones—tripled, from 9% of cases (7 of 74) to 29% (17 of 58), while the number of unanimous rulings fell markedly (*4*). In the 2022–2023 term, while there were more unanimous rulings, many of the Court's highest profile decisions—on affirmative action, religious freedom, and Biden's student loan plan—were decided along polarized partisan lines, underscoring the contemporary Court's deep divisions. Perhaps no case better illustrates this than 2022's *Dobbs* v. *Jackson Women's Health Organization*, which overturned the half-century-old—and very popular—*Roe* v. *Wade* precedent. Many commentators concurred with Justice Sotomayor's remarks during oral arguments: The Court might not "survive the stench" of *Dobbs*, as much of the public

would perceive it to be politically, rather than legally, motivated (*5*). When the Court is seen as a political, rather than a legal, institution, voters and politicians alike become more likely to curb its power and independence (*6*–*7*). Understanding whether the Court's recent rulings have polarized its approval and legitimacy is therefore of critical importance.

We show that the public's evaluations of the Court—their approval of it, trust in it, perceptions of its legitimacy, and support for substantial reforms of it—have polarized sharply along partisan lines after *Dobbs*. We provide two sets of analyses to support this claim. First, using eight waves of an original panel study, we show that the *Dobbs* leak and decision polarized the Court's approval and trust, and those divisions have persisted since then: This was not just a temporary decline, but rather has been longer-lasting. Further, we show that those whose favorability of the Court dropped after *Dobbs* also perceived the Court as less legitimate and were more supportive of substantial reforms to it. Second, we use 18 nationally representative surveys spanning nearly two decades to situate these findings historically. We show that the partisan polarization we observed after *Dobbs* is anomalous. In earlier years, there were few significant partisan differences in views of the Court, but in 2022 and 2023, we show consistent, and sizable ones: Democrats today trust the Court less, think it is more political, and are more willing to restrict its jurisdiction. Further, we show that knowledge of the Court, and support for key democratic values, no longer protect the Court after *Dobbs* in the way they once did. These findings suggest that at least part of the public increasingly sees the Court as politicians in robes, with troubling implications for its role in our democracy.

The Supreme Court's unique role, and the sense that it is above politics, has historically sustained high levels of public approval and trust, as well as legitimacy. Approval and trust are more short-term factors, grounded in the Court's decisions, while legitimacy stems from the Court's constitutional role (*7*–*9*). Legitimacy implies that "those connected to it [an institution] to believe that it is appropriate, proper, and just" [(*10*), p. 375], akin to the concept of diffuse support (*11*). Here, that implies that people respect the Court's role

[1]Department of Political Science, University of Pennsylvania, Philadelphia, PA 19104, USA. [2]Annenberg Public Policy Center, University of Pennsylvania, Philadelphia, PA 19104, USA. [3]Department of Communication and Media, University of Michigan, Ann Arbor, MI 48109, USA. [4]Annenberg School for Communication, University of Pennsylvania, Philadelphia, PA 19104, USA.
*Corresponding author. Email: mleven@sas.upenn.edu

**Fig. 1. Trust in institutions over time, Gallup data.** Percent of the public who has a great deal or fair amount of trust in political institutions; for original data through 2022 available in (*57*). Court data for 2023 available in (*58*).

as the arbiter of the U.S. Constitution, and obey its rulings, even when they do not agree with them (*7–9*).

All these factors matter, but legitimacy is the most crucial. As Hamilton noted in *Federalist 78* more than 230 years ago, the Court has "neither force nor will, but merely judgment"—it cannot enforce its decisions, but instead must persuade the other branches and the public to obey them, something that can only come from legitimacy. When this legitimacy erodes, politicians and the public are more likely to curb the Court's power and constrain its independence through substantial reforms (*6–7*).

The most prominent account of legitimacy argues that it is grounded in people's core democratic values and support for norms (*12*), not support for specific decisions. While particular decisions might lower approval of the Court, especially among those who disagree with them (*13*), even highly politicized decisions like *Bush* v. *Gore* do not tarnish its institutional legitimacy (*14*). To the extent that approval or disapproval of a particular decision affects legitimacy at all, these effects are modest and short-lived (*15–16*).

More recently, scholars have challenged this view, arguing that Court decisions affect not only approval but also legitimacy (*17–19*). Resolving whether decisions affect legitimacy has particular importance given the Court's rightward shift in recent years (*20*). If Court decisions vary ideologically (with some liberal and some conservative), then approval and legitimacy will not polarize along partisan or ideological lines (*3*), especially if most Court decisions accord with public opinion (*21*). But as Justice Kagan put it, when the Court "acts like an extension of the political process" (*22*)—and judges are seen as political actors rather than legal ones—it jeopardizes its legitimacy (*1*).

The risk of politicization—and of a loss of legitimacy—is especially acute when a change in the Court's composition affects the outcome of a case. When Justice Ruth Bader Ginsburg died in September 2020, many noted that the Court would likely curtail abortion rights in the future, as President Trump had promised to appoint justices who would vote to overturn *Roe* (*23*). This is exactly what happened when Justice Amy Coney Barrett was appointed to replace Justice Ginsburg. But ironically, almost a decade before she joined the Court, then-Professor Coney Barrett wrote a law review article explaining why this sort of shift would undermine the Court's legitimacy: "If the Court's opinions change with its membership, public confidence in the Court as an institution might decline. Its members might be seen as partisan rather than impartial and case law as fueled by power rather than reason" [(*24*), pp. 1725–1726].

*Dobbs* was exactly the sort of case that might have affected not just the Court's approval, but its broader legitimacy as well, for both procedural and substantive reasons. Procedurally, a draft opinion in the case was leaked to *Politico*, which published it online approximately 6 weeks before the final ruling was issued. This was a shocking occurrence, as there had only been a handful of leaks in the Court's history, and none previously had involved leaking the text of a draft opinion (*25*). The justices have historically prized the secrecy of their deliberations as it allows them to hide the politicking and between-justice persuasion behind closed doors. The Court's norm of secrecy is so sacrosanct that Justice Thomas said that the *Dobbs* leak was equivalent to "an infidelity" in a marriage (*26*). Further, the leak appeared to be strategic, driven by a desire to reach a particular outcome (*27*), a fact confirmed by later reporting (*28*). This breach of Court norms undermines the belief that the Court is simply neutrally interpreting

the law (*29–30*) and instead portrays it as a political body. Fair and impartial procedures reinforce the belief that the institution is just, especially when it makes unpopular decisions (*10*), so the leak will erode the public's trust in the Court.

But the content of the *Dobbs* decision matters as well. Not only did it overturn a half-century old precedent supported by a super-majority of the public (*31*), it seemingly contradicted what several justices had stated during their confirmation hearings [e.g., Justice Kavanaugh's remark to Senator Collins that *Roe* was "settled law," see (*32*)], it enacted a long-term goal of one political party, and Justice Thomas's concurrence suggested that this was just the beginning of challenges to other core rights [for more on this point, see (*33*)]. As we noted above, it was made possible by a shift in the Court's composition, further signaling to the public that politics, as much as law, was likely behind the decision. Further, as we show below, the media coverage of *Dobbs* is unprecedented, with it receiving far more press coverage than any other salient case in at least the past decade.

But how do citizens learn about a decision like *Dobbs* and use that information to update their beliefs about the Court? Few people aside

from academics and lawyers read the Supreme Court's decisions themselves. When scholars say that the public reacted to a decision, what they mean is that the public reacted to the media's coverage and framing of it. To understand how and why *Dobbs* might shift views of the Court, we undertook a content analysis of the *New York Times*'s coverage of the Supreme Court from January 2008 to June 2023 (see section F of the Supplementary Materials for details). We chose the *Times* because it is "the most important and influential newspaper" [(*34*), p. 361], one whose coverage shapes other outlets both because of its agenda setting power as well as the fact that few other outlets have reporters focused on the Court, as the *Times* does. Further, it has also been used by numerous other scholars studying coverage of the Court [e.g., (*35*)], making it an appropriate choice here.

Three important findings emerged from this content analysis, all of which underscore why *Dobbs* mattered. First, the *Times* published far more stories about the Supreme Court in 2022 than in any earlier year in our data. Not only that, *Dobbs*, and the issue of abortion, received a simply unprecedented share of that coverage (Fig. 2D). To put this *Dobbs* coverage into context, we tracked how often four other
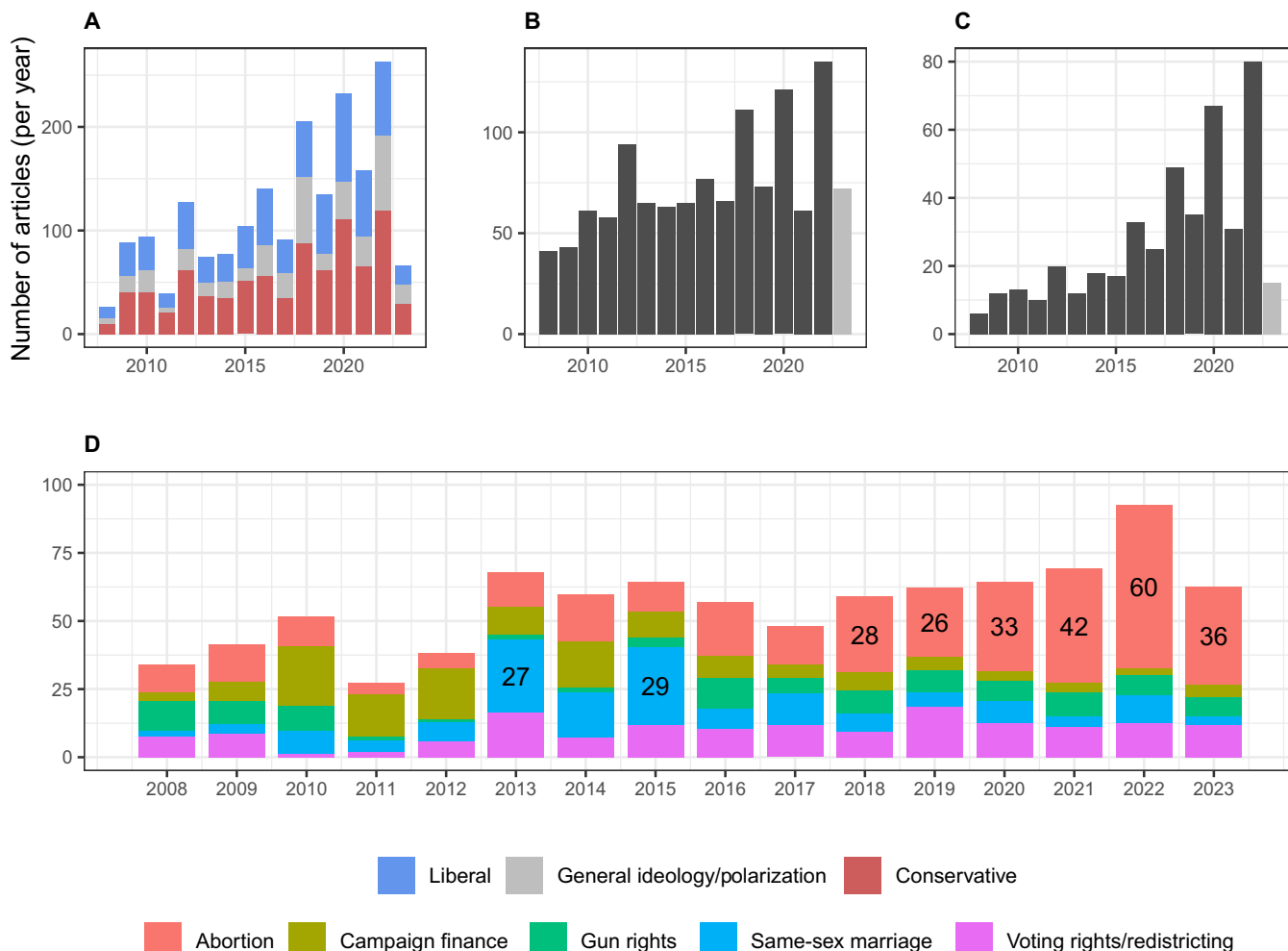


**Fig. 2. Content analysis of the *New York Times* coverage of the Supreme Court, 2008–2023.** (**A**) Number of articles per year referring to the court with ideological terms. (**B**) Number of articles discussing the Court's legitimacy and calling for reform. (**C**) Number of articles referencing partisanship in relation to the justices. (**D**) Number of articles discussing various salient cases over time. Issue shares less than 25% are suppressed for clarity. Note that 2023 data are incomplete and run through 20 June 2023.

landmark decisions were mentioned in stories about the Court: *Citizens United* v. *FEC* (campaign finance), *District of Columbia* v. *Heller* (gun rights), *Shelby County* v. *Holder* (voting rights), and *Obergefell* v. *Hodges* (same-sex marriage). We searched both for the cases themselves, as well as the substantive issues they raised, since some articles may talk about one or the other (in fig. S1, we show that the patterns replicate when we look at them separately as well). Before 2022, no issue or case had ever been the focus of more than 15 to 20% of Supreme Court coverage in a given year, with the exception of same-sex marriage around the time of the *Obergefell* decision. After 2016, abortion has been that important every year, and when *Dobbs* was handed down in 2022, fully 6 in 10 stories about the Supreme Court discussed that decision or abortion. This level of attention occurs with no other case/issue, and tightly links the case with the Court in the public's mind, even among voters who might normally pay little attention to these topics.

Second, coverage of the Court increasingly depicts the Court in ideological (Fig. 2A) and partisan terms (Fig. 2C). Articles increasingly focus on the fact that the current Court has six Republican-nominated justices to three Democratic-nominated ones, and that the nominating president's partisanship increasingly predicts how justices vote. This coverage also conveys that the court tilts to the right ideologically. The number of articles discussing the Court's slant in 2022 has more than doubled relative to 2010 (*Citizens United*) or 2015 (*Obergefell*). This spike likely contributes to the public's growing perception that the Court leans conservative (*36*), even if Americans still underestimate its ideological slant (*20*). Because *Dobbs* and other similar salient cases have clear partisan implications—with Republicans (Democrats) celebrating (decrying) them—the political implications of the current Court's rulings are clear and work to politicize the Court in the public's eyes (*30*).

Last, there have also been an increasing number of media stories about challenges to the Court's legitimacy (Fig. 2B). In 2022, such discussion became increasingly common after *Dobbs*, and many stories explicitly linked the *Dobbs* decision to threats to the Court's legitimacy because it seemed more political than legal and was so markedly out of step with public sentiment [see, e.g., (*37*, *38*)]. Similarly, several prominent Democratic politicians have now challenged the Court's legitimacy as well, often pointing to *Dobbs* and similar rulings. For example, Democratic senator Jeff Merkley of Oregon argued that the "activist, extremist MAGA court faces a legitimacy crisis…And a legitimacy crisis for the court is a crisis for our democratic republic" (*39*). All of this provides citizens with clear partisan cues about how to perceive the Court (*40*), and citizens' views, we argue, will follow suit.

Thus, we expect Dobbs to reshape how the public perceives the Court for several interrelated reasons. The fact that *Dobbs* was markedly out of step with public opinion—a fact that was prominently conveyed to the public via the mass media—lowers the public's trust and favorability of the Court, especially among those who disagreed with this decision (*13*, *41*). Further, because coverage of *Dobbs* emphasized the politicization of the Court (i.e., the sense that *Dobbs* was politically motivated, an argument reinforced by the leak of the decision), that undermines the Court's legitimacy (*41*) and therefore increases the public's willingness to curb its power (*7*). Because the partisan valence of this coverage is quite clear (with Democrats criticizing the Court and Republicans defending it), this implies that favorability, trust, legitimacy, and support for reform should polarize sharply along partisan lines after *Dobbs* (*40*, *42*). So not only should

*Dobbs* lower the Court's favorability, trust, and legitimacy overall, it should do so in a particularly polarized fashion. One might argue that the partisan polarization would cancel out, leaving net attitudes unchanged. However, because reactions to Court decisions have a negativity bias [whereby those who disagree change much more so than those who agree; see (*13*)], we expect that even with polarization, aggregate support will drop. Put slightly differently, because Democrats and Independents should react much more strongly than Republicans, overall approval and trust should fall.

But how long will these shifts last? Past work finds that even when a decision shapes views of the Court, its effects persist only for short periods of time (*16*). This is because "value-based regeneration" occurs: The Court's enduring symbols and norms, and its unique place in our government, overtake the effects of unpopular decisions, and hence approval and legitimacy rebound [(*21*), p. 1124]. This would suggest that even if views of the Court polarize sharply immediately after *Dobbs*, these differences should wane in subsequent months. That said, however, we suspect that this may well not occur here, given the continued media coverage of *Dobbs*, its significance in the 2022 midterm elections, and the discussion of threats to the Court's legitimacy grounded in that decision. While there will be some diminution of partisan polarization over time, that effect should be quite modest. We expect much of the effect of *Dobbs* on broader perceptions of the Court to endure.

There is one other related wrinkle to all of this. As views of the Court have polarized, and the topic has become more salient, the Supreme Court should have become a more important voting issue for the public (*43*). Much of the coverage around *Dobbs* highlighted how the decision became possible because of President Trump's ability to appoint three justices to the Court (*44*). While a few commentators argued that *Dobbs* would make the Court's role in our politics less contentious (*45*), we argue that it actually will have done the opposite, heightening the Court's importance by reminding Americans of its substantial power to affect their lives. Rather than calming the political waters, this decision will have roiled them.

## MATERIALS AND METHODS: PANEL STUDY

To understand whether public perceptions of the Court have polarized, we turn to two different data sources. First, we use eight waves of a unique panel study that allows us to unpack the effects of the *Dobbs* leak and decision on Court favorability and legitimacy (section A of the Supplementary Materials contains our preregistration for this panel study; section B contains our deviations from it). Second, we pair that with an analysis of 18 nationally representative surveys tracking perceptions of the Court's legitimacy since 2005. The panel data allow us to say something especially well-identified about the short-term factors; the overtime analysis allows us to situate these findings about the past few years in a broader decades-long context.

To unpack the effects of the *Dobbs* leak and decision, we turn to the Annenberg Institutions of Democracy (hereafter, AIOD) panel data, an ongoing survey of approximately 3800 Americans living in Pennsylvania, Michigan, and Wisconsin that began in 2020. These subjects are random samples of these states, initially recruited via address-based sampling (section C of the Supplementary Materials provides full survey details; section E provides full question wordings). In multiple waves, this survey asked how favorably respondents viewed the Court, how much they trusted the Court, their

perceptions of the Court's legitimacy (46), and their support for reforms that would weaken the Court's independence (e.g., judicial term limits or a mandatory retirement age for justices). Together, this gives us a rich ability to assess how much *Dobbs* affected approval, trust, legitimacy, and support for reform.

While we are not the first to examine the effects of *Dobbs* on Court approval and legitimacy (33, 47), our study makes three important advances over earlier efforts to study these questions. First, we bring panel data—rather than simply repeated cross sections—to study these effects. While the usual concern with panel data is attrition, our study is unique in that our retention rate is extremely high, with wave-to-wave retention rates hovering around 80% (see table S1). While we have only residents of three states, and not a nationally representative sample, there is no comparable nationally representative panel survey that would allow us to study these questions.

Second, the timing of the panel waves allows us to differentiate the effects of the leaked draft opinion on May 2 from the final *Dobbs* opinion on June 24. At the beginning of their study in 2020, AIOD randomly assigned respondents to one of three identical replicates, held constant across waves, that varied when respondents were asked to complete each survey (see section C of the Supplementary Materials). Given this, we can compare otherwise identical respondents who completed the survey before the leak (April 14 to 20; replicate 1), just after the May 2 leak but before the June 24 decision (May 12 to 18; replicate 2), and following the decision (July 5 to 11; replicate 3). As we argued above, it is not simply the content of the decision that matters, but the fact that it was leaked—which exposed the Court's internal negotiations—that will undermine trust in the Court here.

Third, because our panel extends into 2023, we can study the over-time effects of *Dobbs* and look not only at the immediate post-*Dobbs* effect [see also (48)]. As we noted above, we expect some modest diminution of partisan polarization over time, but given the nature of the decision and the continued prominence of the Court, we expect most of these changes to endure.

## RESULTS: PANEL STUDY

Figure 3, A and C, shows how trust in the Court and favorability toward the Court (Fig. 3, B and D) have evolved over the past few years. In the top row, we show the aggregate effects among all respondents (Fig. 3, A and B), and in the bottom row, we show how these effects differ by the respondent's partisanship, with Democrats shown in blue, Independents in gray, and Republicans in red (Fig. 3, C and D). Regression analyses of the data are provided in tables S4 to S6.

Begin first with the trust patterns. In the aggregate, after *Dobbs*, trust in the Court fell by approximately one-half a scale point, or nearly one-half of a standard deviation. This aggregate decline is notable, but the partisan patterns are even more stark. In the summer of 2020, when we first asked this question, there was functionally no partisan difference, and if anything, in 2021, it was Democrats—not Republicans—who were the most trusting of the Court (although the gap was tiny). But after *Dobbs*, trust sharply polarized, with Democrats and Republicans now 0.29 points apart on a 0 to 1 scale, a nearly 10-fold increase from the 2020 baseline.

Favorability shows, if anything, an even starker pattern. Again, we see a broad aggregate decline after *Dobbs*, one that persists with little change into 2023. Before *Dobbs*, there was a modest partisan favorability gap, but it dramatically ballooned after that decision. Fascinatingly, we see that while the leak had a large effect, the decision also

moved attitudes even further. The pattern for Democrats is particularly striking: Before the leak (replicate 1), they were "neither favorable nor unfavorable" toward the Court; after the leak (replicate 2), they became "somewhat unfavorable" toward it and fell half-way to "very unfavorable" after the decision (replicate 3). Two possibilities might explain why the decision itself, and not just the leak, changed Democrats' attitudes. First, coverage of the leak stressed that the ruling was not yet final, perhaps leading some to hope that the final decision would leave *Roe* in place (a possibility removed by the decision itself). Further, the fact that providers stopped performing abortions in some states after the decision highlighted its consequences in a way that the leak had not. But the overall finding is clear: both the leak and the decision polarized the public's trust and favorability of the Court.

In the year since *Dobbs*, the partisan polarization in favorability has declined a bit. This may be because of the values-based regeneration noted above, but it may also stem from the fact that the Court's decisions were less lopsidedly conservative than in the 2021–2022 term (49) and were more in line with public opinion (50). Nevertheless, however, the two parties remain quite far apart. Between 2021 and 2023, the partisan gap in favorability doubled—a stunning shift. There may have been some values-based regeneration (21), but as the Court continues to be a source of controversy with partisan implications, divisions remain. This suggests that these divides are likely to endure [see also (48)].

But this raises an even more important question: Did views of the Court's legitimacy decline, and did support for Court-curbing reforms increase after *Dobbs*? If the public sees the Court as illegitimate, or is more willing to curtail its power, then the Court's position as a branch apart would be in jeopardy. Unfortunately, AIOD did not add these items to their study until the fall 2022 wave, after the *Dobbs* decision, so we cannot use this same pre-post design. But we can still estimate the effect of *Dobbs*. If it harmed the Court's legitimacy and increased support for reform, then reduced trust and favorability after *Dobbs* should predict lower legitimacy and higher support for reform (33). That is, we can estimate $\text{Legit}_{i2} = \beta_0 + \beta_1 \text{trust}_{i1} + \beta_2 \Delta\text{trust}_i + \varepsilon_{it}$, where $\text{Legit}_{i2}$ is respondent *i*'s views of the Court's legitimacy or support for reform after *Dobbs*, $\text{trust}_{i1}$ is the respondent's pre-*Dobbs* trust in or favorability of the Court (to control for floor/ceiling effects), and $\Delta\text{trust}_i$ is that respondent's change in trust or favorability before to after *Dobbs*; we also control for demographics likely to predict legitimacy (age, education, gender, partisanship, and race/ethnicity). Our expectation is that $\beta_2$ is positive when predicting legitimacy and negative when predicting reform. That is, when trust/favorability increased after *Dobbs*, legitimacy should have increased and support for reform should have decreased, but when trust/favorability fell, then the opposite should have occurred. Table 1 presents these results.

In Table 1, we use indices of perceived legitimacy (α = 0.79) and support for reform (α = 0.75), where higher values indicate greater legitimacy and greater support for reforms of the Court. In tables S7 and S8, we show the item-by-item results, which are substantively identical. We see in columns 1 and 3 that as favorability rose, so too did legitimacy, while support for reform efforts fell. Similar results for trust in the Court can be seen in columns 2 and 4, exactly as we predicted. To bolster this logic, we can also test whether legitimacy (measured in the fall 2022 wave) predicted support for reform (in the winter 2023 wave)—Those who question
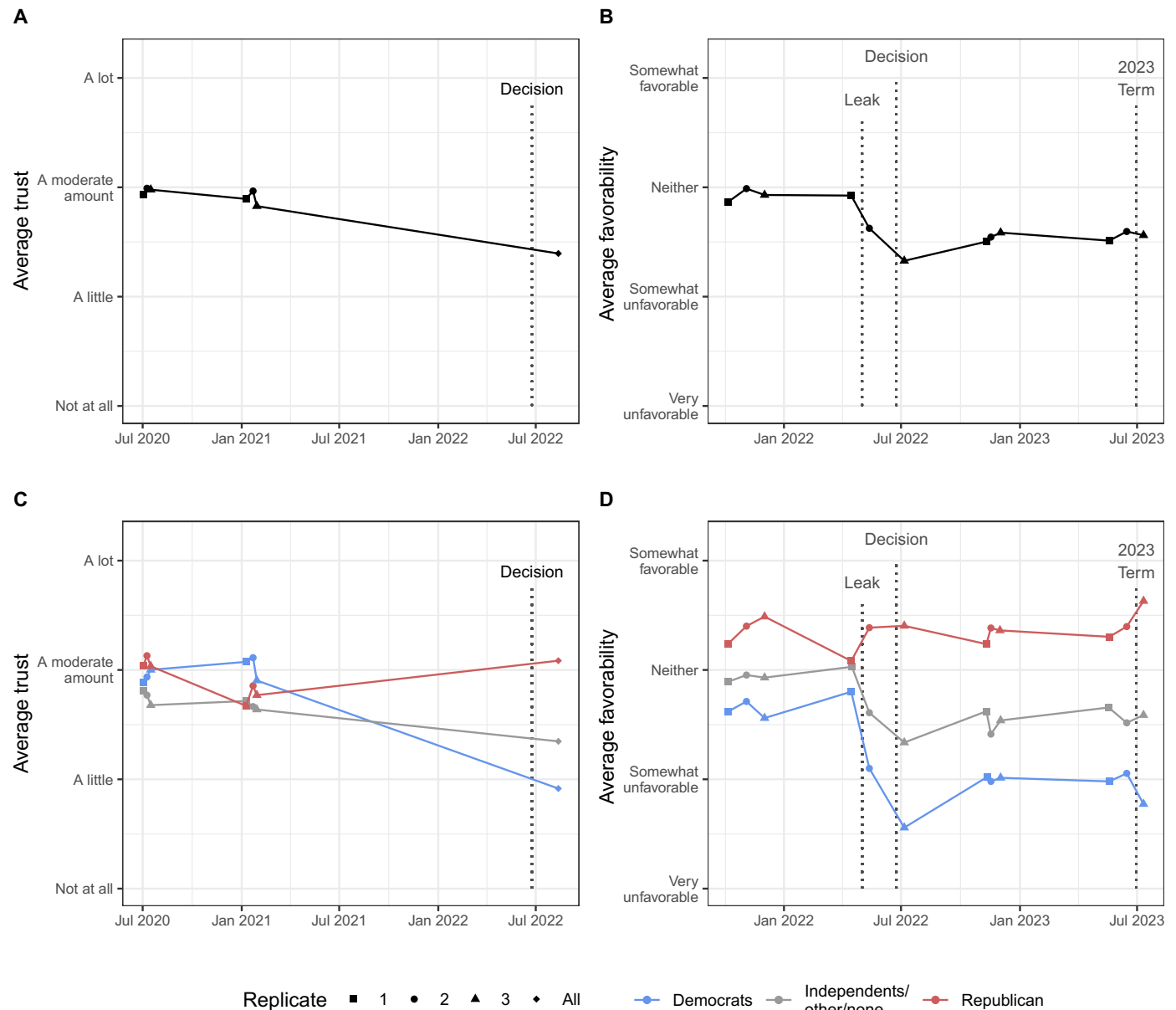
**Fig. 3. Trust and favorability of the U.S. Supreme Court 2021–2023, AIOD panel data.** (**A**) and (**B**) show the overall aggregate trends and (**C**) and (**D**) show them by the respondent's partisanship, with Independent leaners treated as partisans [see (*59*)].

that Court's legitimacy should favor curbing its power (*7*). We find that it did so (column 5): Those who thought that the Court was more legitimate were less likely to want to reform it. But because *Dobbs* lowered the Court's trust and favorability for most people (Figs. 1 and 3), our results demonstrate that it also undercut the Court's deeper reserve of legitimacy. In addition, as we saw in Fig. 3, because favorability and trust polarized by party, this implies that legitimacy, and support for reform, do so as well. The Court is no longer the exception to the rule of partisan polarization in American politics.

We re-asked these legitimacy and reform items in the spring 2023 wave, and find little change from the 2022 baseline, suggesting that the Court's 2023 decisions did not further polarize legitimacy

or support for reform, but they likewise did not reduce these gaps either (see table S21). The stark polarization that existed in 2022 endures, and this is quite worrying. A notable part of the public now sees the Court as just another political branch, not a legal institution above politics.

We also asked respondents how important potential U.S. Supreme Court nominations were to their presidential vote choice both before and after *Dobbs*. Figure 4 depicts these trends between 2020 and 2023. Here, we observed increases in the salience of nominations for respondents following the 2021 to 2022 Court term, especially for Democrats. Note that, paralleling Fig. 3 above, the Court's importance increased after both the *Dobbs* leak and the decision, although this declined a tiny bit in 2023 (table S9 provides the regression results).

**Table 1. Improved favorability and trust before to after *Dobbs* predicts Supreme Court legitimacy and support for reform, AIOD panel data.** Cell entries are ordinary least squares coefficient estimates, with standard errors in parentheses.  ***$P < 0.001$. RMSE, Root Mean Squared Error.

| | Legitimacy | | Reform | | |
|---|---|---|---|---|---|
| Legitimacy | | | | | −0.462*** |
| | | | | | (0.014) |
| Favorability 2021 | 0.414*** | | −0.364*** | | |
| | (0.018) | | (0.017) | | |
| ΔFavorability | 0.345*** | | −0.290*** | | |
| | (0.017) | | (0.017) | | |
| Trust 2021 | | 0.337*** | | −0.253*** | |
| | | (0.018) | | (0.018) | |
| ΔTrust | | 0.310*** | | −0.266*** | |
| | | (0.016) | | (0.015) | |
| Demographics | Yes | Yes | Yes | Yes | Yes |
| N | 3155 | 2989 | 2989 | 2849 | 3441 |
| $R^2$ | 0.328 | 0.293 | 0.371 | 0.306 | 0.404 |
| $R^2$ adj. | 0.325 | 0.290 | 0.368 | 0.302 | 0.402 |
| RMSE | 0.21 | 0.21 | 0.21 | 0.22 | 0.20 |
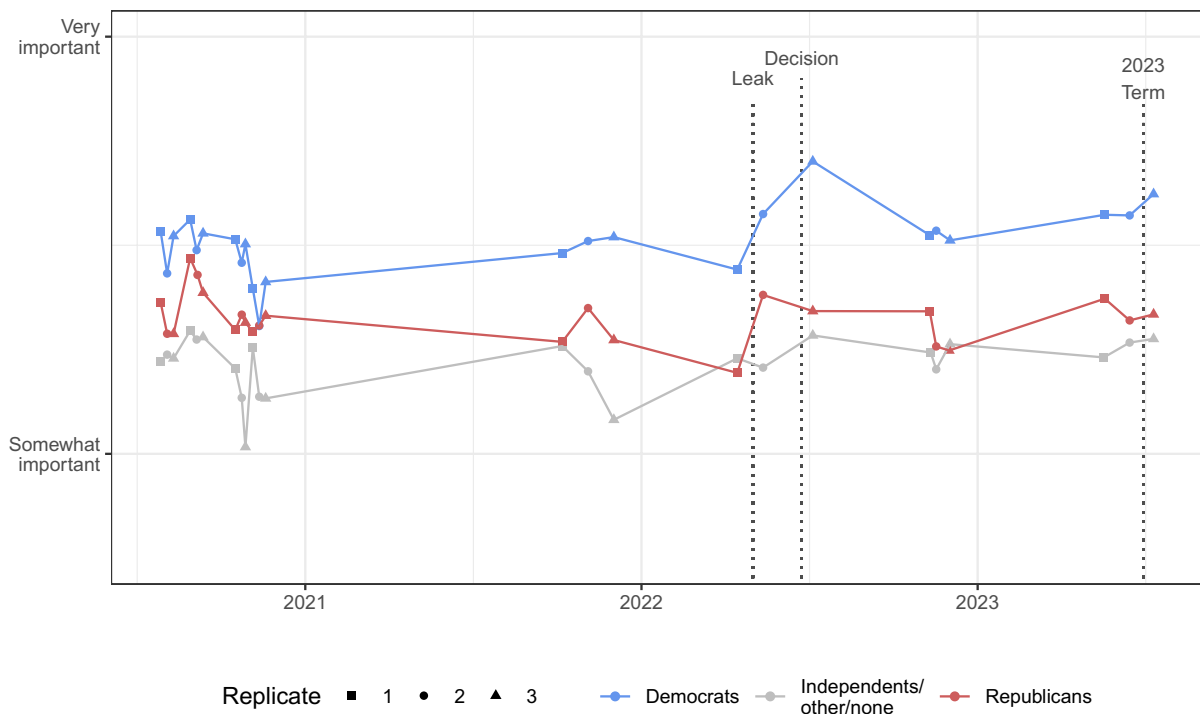


**Fig. 4. Importance of Supreme Court nominations to presidential vote 2021–2023, AIOD panel data.**

But note that part of this is a ceiling effect: Even before *Dobbs*, most respondents argued that Court nominations were "very important" (the scale maximum) to their vote, and hence could not increase further in later periods. Far from cooling passions about the Court, *Dobbs* served to remind the public that Court has real power and importance, in our system, and hence it is likely to remain a flashpoint in the years to come.

## MATERIALS, METHODS, AND RESULTS: OVERTIME STUDY

The analyses above provide strong evidence that the *Dobbs* decision was especially consequential to the Court's favorability, trust, and legitimacy, as well as to support for reforming the Court. But because those data only cover a 2-year period, it is helpful to put them into a larger context. We do so by turning to 18 surveys conducted over a nearly two-decade period: 13 cross-sectional surveys conducted by

the Annenberg Public Policy Center (APPC) from 2005 to 2023, which we supplemented with five waves of the American Panel Survey (TAPS) conducted between 2013 and 2017 for years when APPC did not ask the appropriate items, allowing us to study the evolution of public opinion toward the Court over a much longer period (section D of the Supplementary Materials provides the details on both surveys).

Both APPC and TAPS have asked a set of items measuring the Court's legitimacy, similar to those used in our analysis above. The upside of this analysis is that we can analyze views of the Court over decades instead of years. But the downside is that most of these data are repeated cross sections (albeit of high-quality, nationally representative samples), and we have fewer independent variables asked consistently across these surveys. Here, our strategy is to predict both an index of the available legitimacy items, as well as each measure of legitimacy, as a function of partisanship, age, education, gender, and race. We do so separately by year and plot the coefficients over time, allowing us to detect temporal changes (*51*). Here, we focus on the coefficients for partisanship (specifically, identifying as a Republican or Democrat). The key test here is whether partisanship is increasingly

predictive of legitimacy over time, especially in 2022 and 2023. Figure 5 presents our results; tables S10 to S18 provide the full regression results.

The results here are striking. In earlier years, partisanship had a weak effect on views of the Court's legitimacy. Partisanship was typically insignificant, and when it was not, there was no clear pattern: Sometimes Democrats saw the Court as more legitimate, but at other times, it was Republicans who did so. Figure 5A presents the relationship between partisanship and an index of these legitimacy items, where higher scores indicated greater institutional support (table S3 provides the list of variables used by year; table S10 provides the alpha for each year). In 2021, we saw that both parties became somewhat more hostile toward the Court, but 2022 marked a significant shift. In that year, we saw pronounced partisan polarization emerge for the first time in our data, and it held in 2023. Very consistently, Democrats saw the Court as less legitimate, and Republicans saw it as more so. Democrats thought that the Court was too mixed up in politics (Fig. 5D), favored stripping its jurisdiction on certain issues (Fig. 5, B and H; also note the sharp swing between 2021 and 2022 for Republicans), thought that its power should be reduced (Fig. 5F), thought that
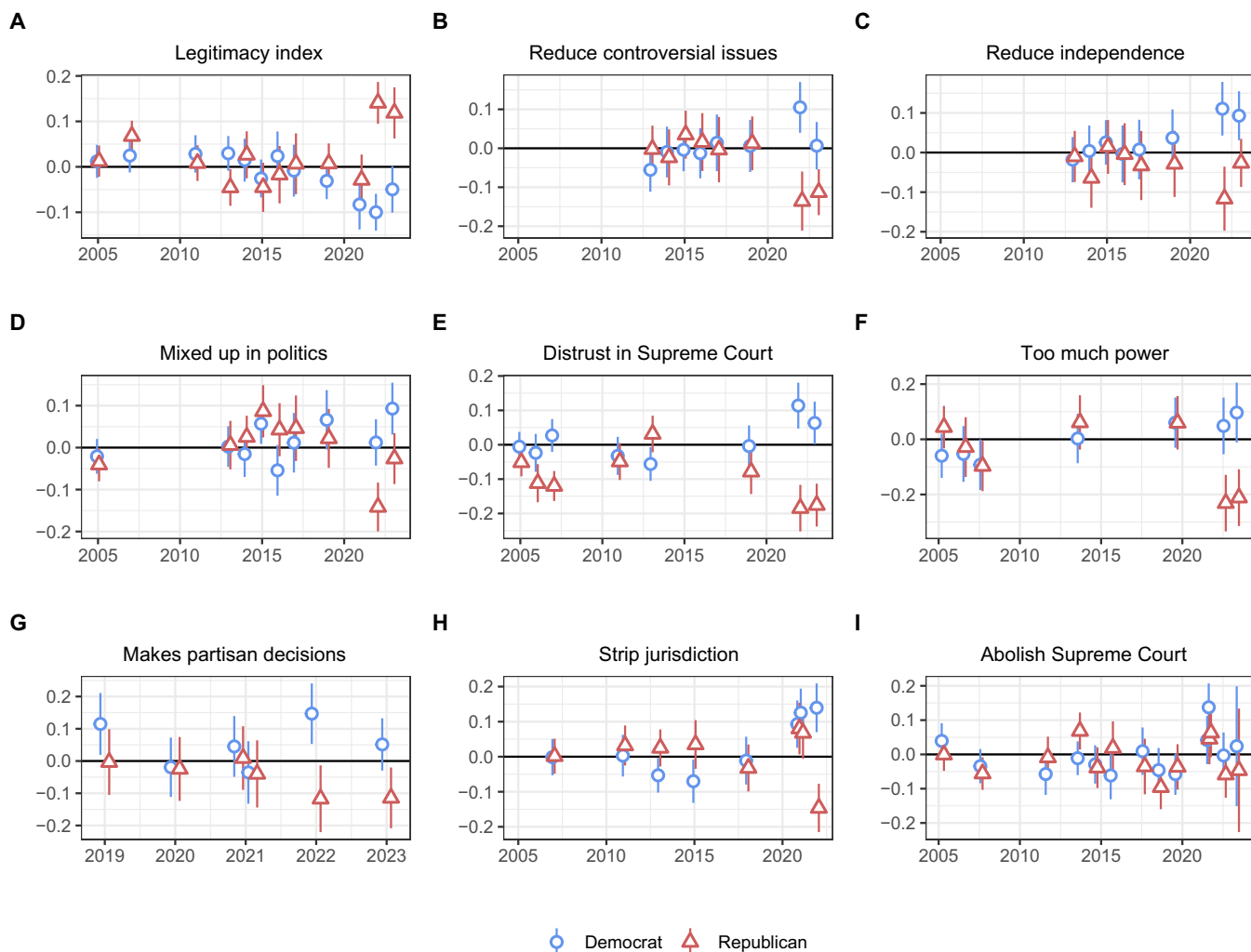


**Fig. 5. Overtime partisan polarization in Supreme Court legitimacy.** (**A**) Index of items. (**B** to **I**) Individual items. Each panel contains point estimates and 95% confidence intervals for the effects of partisanship on each outcome variable controlling for age, education, partisanship, and race. Data from APPC surveys and the TAPS data.

it should be less independent (Fig. 5C), and thought that justices used their political beliefs—not the law—to decide cases (Fig. 5G). Democrats were not more likely to want to do away with the Court altogether, controlling for other factors (Fig. 5I), but otherwise, they dramatically soured on it. Consistent with our argument above, in 2022, Republicans also became more likely to trust the Supreme Court to act in the best interest of the American people (Fig. 5E) and were less likely to view the Court as too powerful (Fig. 5F). Unlike earlier years, the Court no longer escapes partisan polarization, reinforcing our panel-based findings above.

Two other shifts in our data also underscore the extent to which *Dobbs* upended the conventional logic undergirding support for the Court. For many years, scholars have argued that "to know courts is to love them" [(*52*), p. 344]: Those who are the most knowledgeable about the Court see it as the most legitimate, because they are the most familiar with the Court's unique role in our polity. If this is the case, then we should see that higher-knowledge individuals are more supportive of the Court, and this is true in both parties (i.e., knowledge of the Court dampens down political polarization in views of the

Court). In 2007, 2011, 2019, and 2022, APPC asked an extensive battery of knowledge items in their survey, which allows us to test these claims. Figure 6 shows these patterns graphically; regression results are provided in table S19.

As we can see in Fig. 6, until 2019, knowledge performed as expected, and in both parties, higher-knowledge individuals perceived the Court as more legitimate (Fig. 6, A to C). But in 2022, this was no longer the case (Fig. 6D). While there was some very modest partisan polarization in 2019 at the highest levels of knowledge (Fig. 6C), the slope was still positive for Democrats, Republicans, and Independents alike. In 2022, knowledge of the Court increased perceptions of legitimacy for Republicans (red line) and Independents (gray line), but not for Democrats (blue line). For Democrats, knowledge of the Court no longer predicted legitimacy, and instead, all Democrats—regardless of knowledge—saw the Court as less legitimate. Party, more so than knowledge, drove perceptions of legitimacy.

Second, scholars have also argued that democratic values are another factor central to promoting legitimacy (*53*), as these, too, remind individuals of the Court's unique role in our polity, and this
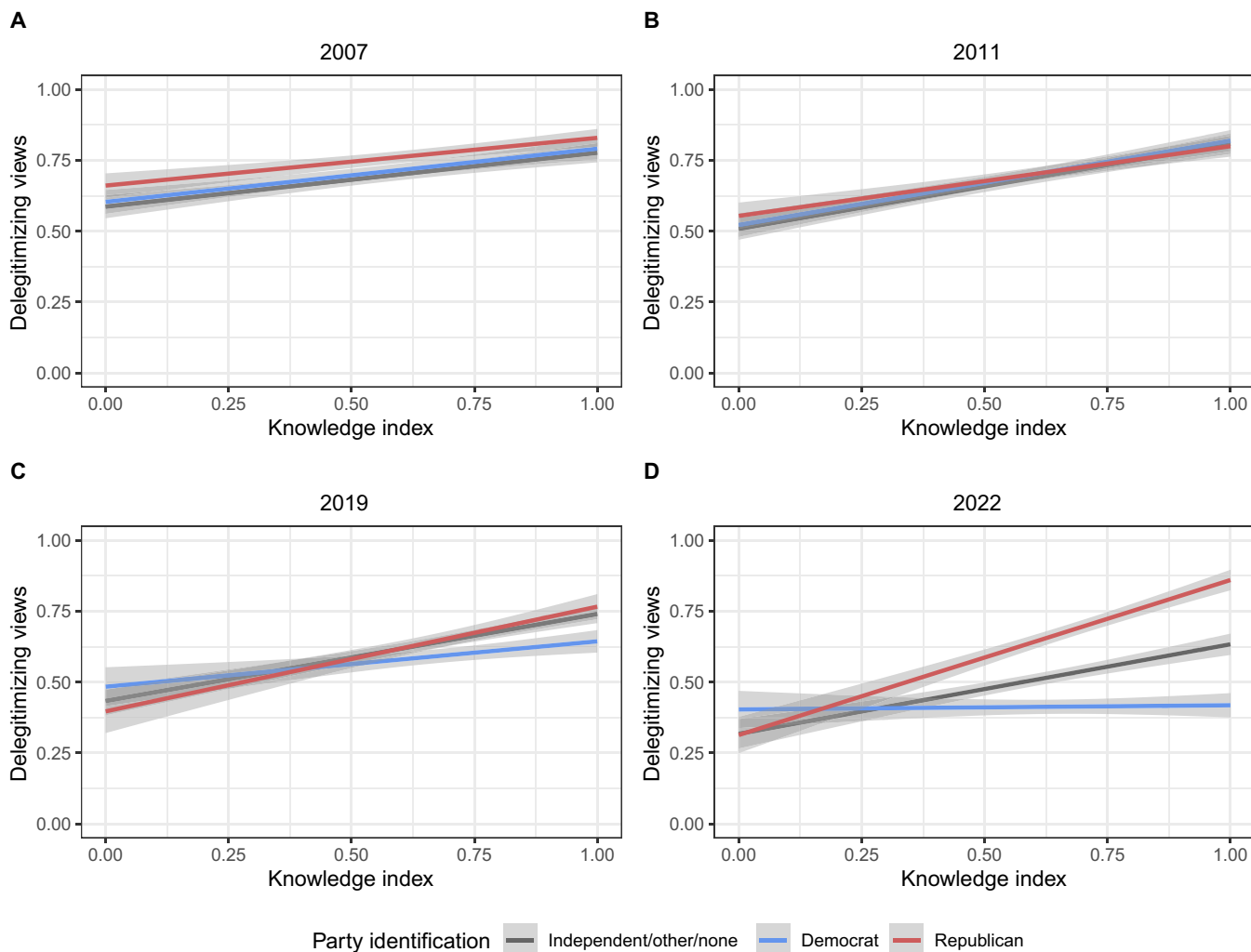


**Fig. 6. Knowledge about the Court and Supreme Court legitimacy, 2007–2022.** (**A**) to (**D**) show, by year, the predicted values of legitimacy as knowledge varies (by party), holding all other values constant; gray-shaded areas are 95% confidence intervals. Data from APPC surveys.

effect should occur for members of both parties. Several items measuring support for the rule of law, a core value underlying legitimacy, were included in a 2015 TAPS wave and the 2023 APPC survey, allowing us to test this argument before and after *Dobbs*. As shown in Fig. 7, respondents with higher support for the rule of law viewed the Court more legitimately in both periods (Fig. 7, A and B; full regression results are in table S20). However, in 2023, gaps in legitimacy by party emerge even after controlling for support for the rule of law (Fig. 7B). Much like knowledge of the Court, it is those with the highest support for the rule of law that are most polarized in their perceptions of legitimacy.

Together, these findings underscore how much predictors of Court legitimacy have shifted. Not only does party reliably predict views of the Court's legitimacy, but it is also those who are most knowledgeable, and most supportive of key democratic norms, that are the most divided. Much like many other areas of American life, partisan polarization has come to the Supreme Court.

## DISCUSSION

Has the Court's sharp turn to the right in recent years polarized its public approval and legitimacy? Using both eight waves of an original panel dataset, as well as 18 nationally representative surveys spanning the past two decades, we show that it has. In earlier years, partisanship was a weak predictor of the Court's approval or legitimacy, but in 2022 and 2023, that changed sharply, with Democrats seeing the Court as less legitimate using a variety of different measures. Those who are the most knowledgeable and most supportive of democratic values are the most polarized, not the least, suggesting that these are no longer reservoirs of legitimacy for the Court. Together, our data make it clear that *Dobbs*, and the broader set of decisions in the 2021–2022 term, fundamentally undercut the Court's reservoir of legitimacy, polarized views of the Court along partisan lines, and increased support for reforming the Court. This was not just a short-term decline, but instead

has persisted since then. Given that this decision heightened, rather than diminished, the salience of the Court in our politics, these shifts are likely to only worsen over time.

These findings are problematic given the Court's unique role in American politics. While Democrats do not want to abolish the Court altogether, they trust it less, see it as more politicized, and are more willing to limit its jurisdiction. The Court's unique role long insulated it from partisan polarization (3)—We saw few consistent differences between Democrats and Republicans in earlier years in our study. But it was the ideological diversity of the Court, and its ability to have both liberal and conservative rulings, that minimized such divides [(3), p. 209]. When the Court's salient rulings all move in one direction, this check weakens considerably, as Justices Kagan and Sotomayor have noted in their public remarks.

A number of Democratic senators have recently introduced legislation to explicitly curb the Court's powers, arguing that the Court is too out-of-step with the public and needs to be constrained. When introducing legislation to limit Supreme Court justices to 18-year terms (S.3096), Senator Cory Booker argued that "The Supreme Court is facing a crisis of legitimacy that is exacerbated by radical decisions at odds with established legal precedent, ethical lapses of sitting justices, and politicization of the confirmation process. This crisis has eroded faith and confidence in our nation's highest court. Fundamental reform is necessary to address this crisis and restore trust in the institution" (54). Not to be outdone, several Democrats in the House of Representatives introduced a bill to expand the Court to 13 members, again grounding the necessity of reform in the Court's lack of legitimacy (55). Of course, this potentially sets Congress and the Court on a collision course. Justice Alito has publicly argued that "No provision in the Constitution gives them [Congress] the authority to regulate the Supreme Court—period" (56), setting up the possibility of clash between Congress and the Court—and the specter of a constitutional crisis.
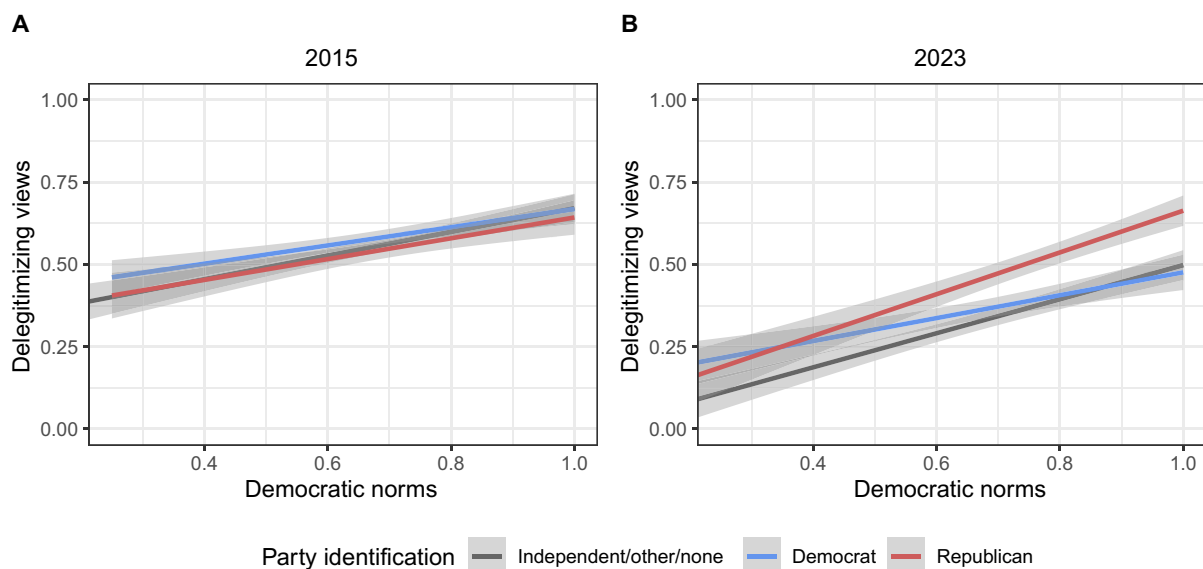
**Fig. 7. Support for democratic values and Supreme Court legitimacy, 2015 and 2023.** (**A**) Results from 2015 TAPS data. (**B**) Results from 2023 APPC data. Both panels show the predicted values of legitimacy as support for values varies (by party), holding all other values constant; gray-shaded areas are 95% confidence intervals.

To be clear, this is far from happening and remains quite unlikely to occur. But *Dobbs* opened the door to this sort of possibility for the first time in decades, perhaps for the first time since the Roosevelt era. What the Court does next—whether it continues to issue mostly conservative decisions or returns to promulgating a more ideologically mixed set of them as it did, at least somewhat, in the 2022–2023 term—will determine the shape of its future approval and legitimacy. But if the Court issues more starkly counter-majoritarian decisions, the consequences for its public standing are very grim indeed.

## Supplementary Materials

**This PDF file includes:**

Sections A to F
Tables S1 to S22
Fig. S1
References

## REFERENCES AND NOTES

1. J. Gibson, G. Caldeira, *Citizens, Courts, and Confirmations* (Princeton Univ. Press, 2009).
2. J. Hibbing, E. Theiss-Morse, *Congress as Public Enemy* (Cambridge Univ. Press, 2012).
3. J. Gibson, M. Nelson, The legitimacy of the US Supreme Court: Conventional wisdoms and recent challenges thereto. *Annu. Rev. Law Soc. Sci.* **10**, 201–219 (2014).
4. A. Gou, E. Erskine, J. Romoser, SCOTUSblog: Stat Pack for the Supreme Court's 2021-2022 Term; https://bit.ly/3TgJw5t.
5. D. Gregorian, "Sotomayor suggests Supreme Court won't 'survive the stench' of overturning *Roe v. Wade*," NBC News, 1 December 2021.
6. T. Clark, *The Limits of Judicial Independence* (Cambridge Univ. Press, 2012).
7. B. Bartels, C. Johnston, *Curbing the Court: Why the Public Constrains Judicial Independence* (Cambridge Univ. Press, 2020).
8. J. Gibson, Performance evaluations are not legitimacy judgements. *Wash. Univ. J. Law Policy* **54**, (2017).
9. J. Gibson, The legitimacy of the U.S. Supreme Court in a polarized polity. *J. Empir. Leg. Stud.* **4**, 507–538 (2007).
10. T. Tyler, Psychological perspectives on legitimacy and legitimation. *Annu. Rev. Psychol.* **57**, 375–400 (2006).
11. D. Easton, A re-assessment of the concept of political support. *Br. J. Polit. Sci.* **5**, 435–457 (1975).
12. G. Caldeira, J. Gibson, The etiology of public support for the Supreme Court. *Am. J. Polit. Sci.* **36**, 635–664 (1992).
13. A. Grosskopf, J. Mondak, Do attitudes toward specific Supreme Court decisions matter? The impact of *Webster* and *Texas v. Johnson* on public confidence in the Supreme Court. *Polit. Res. Q.* **51**, 633–654 (1998).
14. J. Gibson, G. Caldeira, L. Spence, The Supreme Court and the U.S. presidential election of 2000: Wounds, self-inflicted or otherwise? *Br. J. Polit. Sci.* **33**, 535–556 (2003).
15. V. Baird, Building institutional legitimacy: The role of procedural justice. *Polit. Res. Q.* **54**, 333–354 (2001).
16. M. Nelson, P. Tucker, The stability and durability of the U.S. Supreme Court's legitimacy. *J. Polit.* **83**, 767–771 (2021).
17. B. Bartels, C. Johnston, On the ideological foundations of Supreme Court legitimacy in the American public. *Am. J. Polit. Sci.* **57**, 184–199 (2013).
18. D. Christenson, D. Glick, Chief Justice Roberts's health care decision disrobed: The microfoundations of the Supreme Court's legitimacy, *Am. J. Polit. Sci.* **59**, 403–418 (2015).
19. L. Strother, S. K. Gadarian, Public perceptions of the Supreme Court: How policy disagreement affects legitimacy. *Forum* **20**, 87–126 (2022).
20. S. Jessee, N. Malhotra, M. Sen, A decade-long longitudinal survey shows that the Supreme Court is now much more conservative than the public. *Proc. Natl. Acad. Sci. U.S.A.* **119**, e2120858119 (2022).
21. J. Mondak, S. I. Smithey, The dynamics of public support for the Supreme Court. *J. Polit.* **59**, 1114–1142 (1997).
22. J. Bravin, "*Kagan v. Roberts*: Justices spar over Supreme Court's legitimacy," *Wall Street Journal*, 28 September 2022.
23. D. Mangan, "Trump: I'll appoint Supreme Court justices to overturn *Roe v. Wade* abortion case," *CNBC*, 19 October 2016.
24. A. Coney Barrett, Precedent and jurisprudential disagreement, *Tex. L. Rev.*, **91**, 1711 (2013).
25. J. Gerstein, "How rare is a Supreme Court breach? Very rare," *Politico*, 2 May 2022.
26. R. Barnes, "Clarence Thomas says Supreme Court leak has eroded trust in institution," *Washington Post*, 14 May 2022.
27. A. Liptak, "A Supreme Court in disarray after an extraordinary breach," *New York Times*, 24 June 2022.
28. J. Kantor, A. Liptak, "Behind the scenes at the dismantling of *Roe v. Wade*," *New York Times*, 15 December 2023.
29. N. Carrington, L. Strother, Plugging the pipe? Evaluating the (null) effects of leaks on Supreme Court legitimacy. *J. Empir. Leg. Stud.* **20**, 669–712 (2023).
30. V. Baird, A. Gangl, Shattering the myth of legality: The impact of the media's framing of Supreme Court procedures on perceptions of fairness. *Polit. Psychol.* **27**, 597–614 (2006).
31. Pew Research Center, Majority of public disapproves of Supreme Court's decision to overturn *Roe v. Wade*; https://pewrsr.ch/45p4wx4.
32. B. Sullivan, Becky, What conservative justices said—and didn't say—about *Roe* at the confirmations, NPR; https://n.pr/3OmRTvH.
33. J. Gibson, Losing legitimacy: The challenges of the Dobbs ruling to conventional legitimacy theory (2023); https://dx.doi.org/10.2139/ssrn.4206986.
34. W. Benoit, K. Stein, G. Hansen, New York Times coverage of presidential campaigns. *J. Mass Commun. Q.* **82**, 356–376 (2005).
35. L. Epstein, J. Segal, Measuring issue salience. *Am. J. Polit. Sci.* **44**, 66–83 (2000).
36. K. Lin, C. Doherty, Favorable views of Supreme Court fall to all-time low, Pew Research Center; https://pewrsr.ch/3qdNuTT.
37. P. Coy, "The politicization of the Supreme Court is eroding its legitimacy," *New York Times*, 27 June 2022.
38. S. Bokat-Lindell, "Is the Supreme Court facing a legitimacy crisis?," *New York Times*, 29 June 2022.
39. D. Leonhardt, "Supreme Court criticism," *New York Times: The Morning Newsletter*, 22 May 2023.
40. J. Zaller, *The Nature and Origins of Mass Opinion* (Cambridge Univ. Press, 2012).
41. J. Gibson, M. Nelson, Reconsidering positivity theory: What roles do politicization, ideological disagreement, and legal realism play in shaping U.S. Supreme Court legitimacy? *J. Empir. Leg. Stud.* **14**, 592–617 (2017).
42. M. Nelson, J. Gibson, How does hyperpoliticized rhetoric affect the US Supreme Court's legitimacy? *J. Polit.* **81**, 1512–1516 (2019).
43. A. Badas, E. Simas, The Supreme Court as an electoral issue: Evidence from three studies. *Polit. Sci. Res. Methods* **10**, 49–67 (2022).
44. M. Thiesen, "For the fall of *Roe v. Wade*, thank Donald Trump," *Washington Post*, 24 June 2022.
45. P. Noonan, "The end of *Roe v. Wade* will be good for America," *Wall Street Journal*, 5 May 2022.
46. J. Gibson, G. Caldeira, L. Spence, Measuring attitudes toward the United States Supreme Court. *Am. J. Polit. Sci.* **47**, 354–367 (2003).
47. C. Clark, E. L. Paluck, S. J. Westwood, M. Sen, N. Malhotra, S. Jessee, Effects of a US Supreme Court ruling to restrict abortion rights. *Nat. Hum. Behav.* **8**, 63–71 (2024).
48. J. Gibson, Do the effects of unpopular Supreme Court rulings last? The Dobbs decision rescinding abortion rights (2023); https://dx.doi.org/10.2139/ssrn.4503240.
49. A. Liptak, A. Parlapiano, "Along with conservative triumphs, signs of New caution at Supreme Court," *New York Times*, 1 July 2023.
50. A. Liptak, E. Murray, "The major Supreme Court decisions in 2023," *New York Times*, 29 June 2023.
51. A. Gelman, Z. Huang, Estimating incumbency advantage and its variation, as an example of a before–after study. *J. Am. Stat. Assoc.* **103**, 437–446 (2008).
52. J. Gibson, G. Caldeira, V. Baird, On the legitimacy of national high courts. *Am. Polit. Sci. Rev.* **92**, 343–358 (1998).
53. J. Gibson, M. Nelson, Is the U.S. Supreme Court's legitimacy grounded in performance satisfaction and ideology? *Am. J. Polit. Sci.* **59**, 162–174 (2015).
54. N. Robertson, "Democratic senators introduce bill establishing Supreme Court term limits," *The Hill*, 10 October 2023.
55. D. Smith, "Democrats fight to expand a 'broken and illegitimate' Supreme Court," *The Guardian*, 21 May 2023.
56. D. Rivkin, J. Taranto, "Samuel Alito: The Supreme Court's plain-spoken defender," *Wall Street Journal*, 28 July 2023.
57. J. Jones, Trust in federal government branches continues to falter, Gallup, press release (11 October 2022).
58. M. Brenan, Views of Supreme Court remain near record lows, Gallup, press release (29 September 2022).
59. B. Keith, D. Magelby, C. Nelson, E. Orr, M. Westyle, R. Wolfinger, *The Myth of the Independent Voter* (University of California Press, 1992).
60. Annenberg IOD Collaborative, *Democracy Amid Crises* (Oxford Univ. Press, 2023).