



## **Voters Concerned by the Power of Unelected Judges and the Recent Impact of SCOTUS, Support Reforms**

By **Molly Coleman** and **Isa Alomran**

### **Introduction**

As the 2023 Supreme Court term comes to a close, people throughout the United States are asking the questions that have come to be part of a familiar start-of-summer rundown: Which of my rights are still intact? What protections for the environment or a multiracial democracy have we lost over the last few weeks? In what ways have five or six elite lawyers serving in unelected, unaccountable lifelong positions on the Supreme Court undermined my ability to control my own future or our collective ability to build a better society?

As we begin to wrap our heads around the fallout of another year at the Supreme Court, the calls for reform have grown increasingly urgent. Advocates and legislators are pushing for [ethics reform](#) to address the justices' self-enrichment while in positions of public trust, [term limits](#) to ensure that no individual justice can serve for decades on end regardless of how out of step their jurisprudence is with the American public, and [expansion](#) of the court to rebalance the body after years of maneuvering to pack it with loyal conservative actors.

Increasingly, these calls for reform have included criticisms of the Supreme Court's accumulation of power into its own hands. Legal academics have drawn attention to the court's "[judicial power grab](#)" and ways that Congress might [reclaim the power](#) it was intended to have under our system of government by and for the people. There was never supposed to be this much power concentrated in the least democratically accountable branch of government, so the argument goes, and structural reform is needed to ensure that the people, through our elected officials in Congress, have responsibility for shaping the future of the nation.

In order to understand the nuances of public opinion on the future of the judiciary, Data for Progress and People's Parity Project conducted a late April 2023 [poll](#) looking at perceptions of the Supreme Court, gauging opinions on the balance of power between the judiciary and other political actors, and inquiring into whom voters want making the most important decisions facing the country.

### **Baseline Voter Attitudes Around SCOTUS**

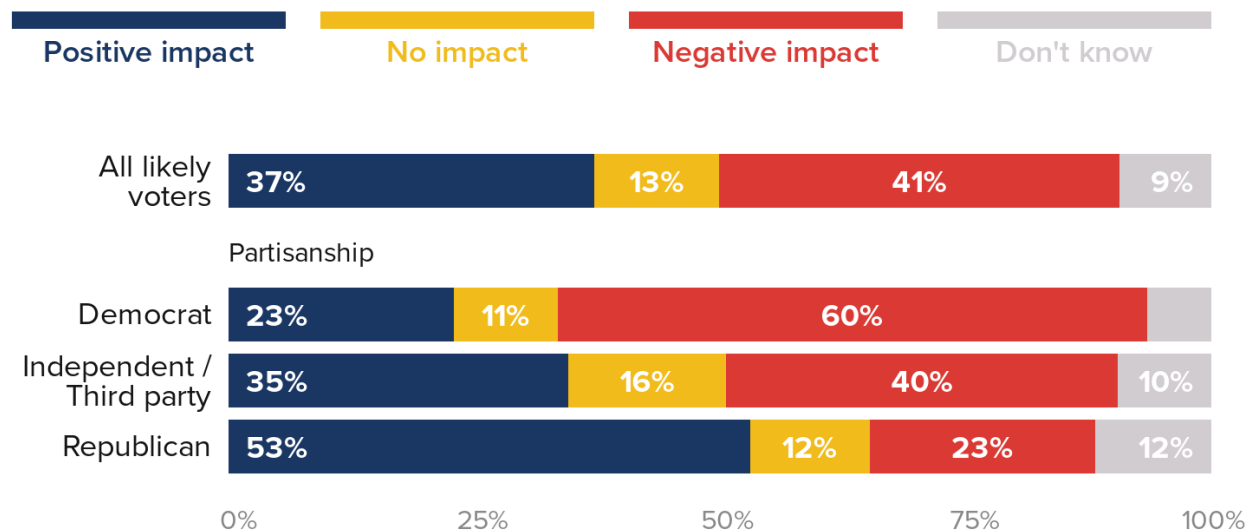
First, when examining voter attitudes toward the court, we find that a plurality of voters (41 percent) say that the court has had a negative impact on the everyday life of Americans.

Meanwhile, 37 percent say the court has had a positive impact, while 13 percent say the court has had no impact.

These attitudes diverge sharply across partisanship: 60 percent of Democrats say the court has had a negative impact, compared to 40 percent of Independents and 23 percent of Republicans. In fact, a majority of Republicans (53 percent) say the court has had a positive impact on Americans.

## A Plurality of Voters Say SCOTUS Has Had a Negative Impact on the Everyday Life of Americans

Generally speaking, do you think that the U.S. Supreme Court has a positive impact, negative impact, or no impact on the everyday life of Americans?



April 21–25, 2023 survey of 1,377 likely voters

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ID: H6204V

We also asked voters whether or not the court has made life better, worse, or if it's had no impact on Americans in recent years. We find that around half of all likely voters say the court has made life worse, 25 percent say it has made life better, and 18 percent say it's had no impact in recent years. This finding corresponds to an overall [decline](#) in SCOTUS approval ratings and trust in the judicial system as measured by Gallup over time.

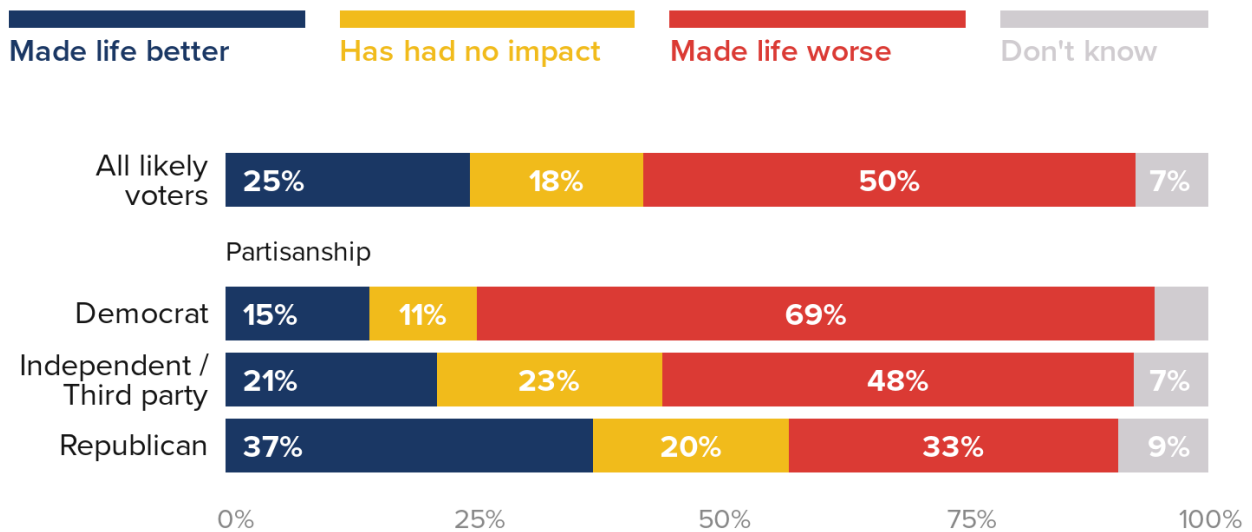


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Across partisanship, we find that over two-thirds of Democrats and a plurality (48 percent) of Independents say that the court has made life worse in recent years. In contrast, 33 percent of Republicans think the court has had a negative impact, while 37 percent say the court has made life better.

## Half of All Likely Voters Think SCOTUS Has Made Life Worse for Americans in Recent Years

In recent years, do you feel like the U.S. Supreme Court has made life better, worse, or has had no impact on the everyday life of Americans?



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We also measured voters' views on SCOTUS' ability to strike down legislation. Specifically, we presented voters with basic information about how court justices are nominated, confirmed, and appointed to serve until they retire or die, and we then asked how the court's ability to strike down legislation passed by elected branches of government would impact the U.S. in the long run. We find that half of all voters think the court's current ability to strike down legislation would have a negative impact in the long run, while 28 percent think it would have a positive impact, and 10 percent think it would have no impact.

We again notice a sharp divergence by partisanship: 64 percent of Democrats say this would have a negative impact, compared to a plurality (49 percent) of Independents. Republicans are



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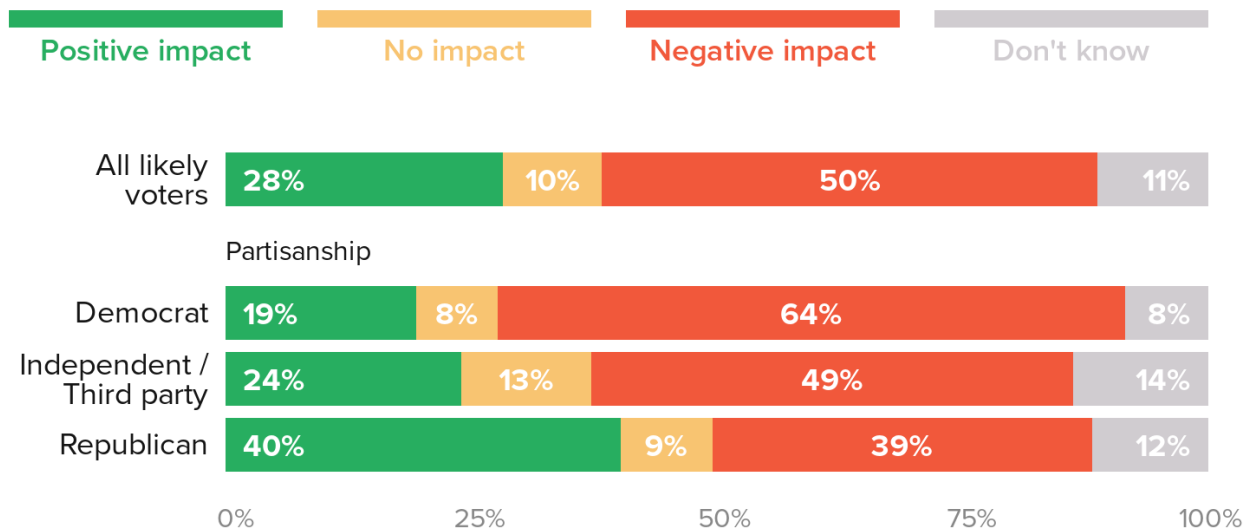
split, meanwhile, with 40 percent saying the court's ability to strike down legislation would have a positive impact, and 39 percent saying it would have a negative impact.

## Half of All Likely Voters Think SCOTUS' Ability to Strike Down Legislation Will Have a Negative Impact in the Long Run

U.S. Supreme Court justices are nominated by the president and confirmed by the U.S. Senate when there is a vacancy in the court.

Once appointed, Supreme Court justices may serve on the Court until they retire or pass away.

If the Supreme Court continues to have the ability to strike down legislation that has been passed by the elected branches of government, do you think that will have a positive impact, negative impact, or no impact on our country **in the long run**?



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These sentiments around the power of SCOTUS justices are reflected in voter views on whether elected officials or the judges they appoint to lifetime positions should have more of a say on laws passed in this country. We find that only 9 percent of voters say judges should have more of a say on laws and legislation, compared to 34 percent who say the same of elected representatives. A plurality of voters, however, think that both elected representatives and the

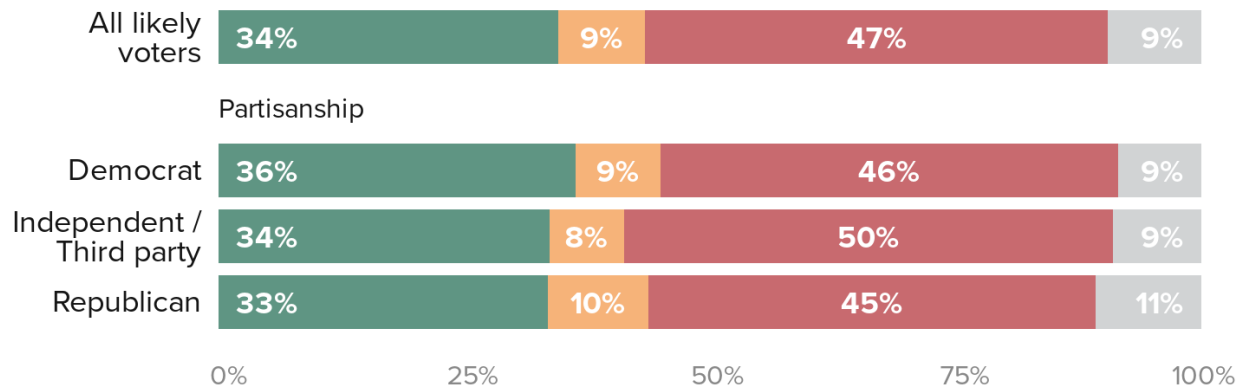
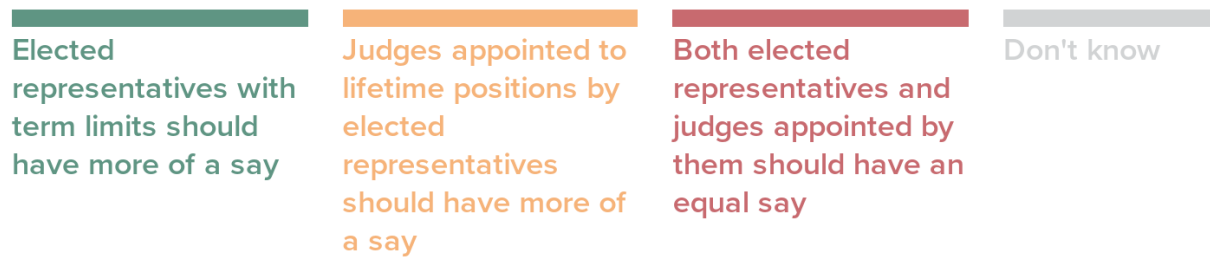


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judges they appoint should have an equal say on laws and legislation. This sentiment is shared across partisanship at consistent rates, as 46 percent of Democrats, 50 percent of Independents, and 45 percent of Republicans say elected officials and judges should have the same level of influence on laws.

## A Plurality of Voters Say Both Elected Officials and Judges Should Have an Equal Say on Laws in America

Who do you think should have more of a say on laws and legislation in this country?



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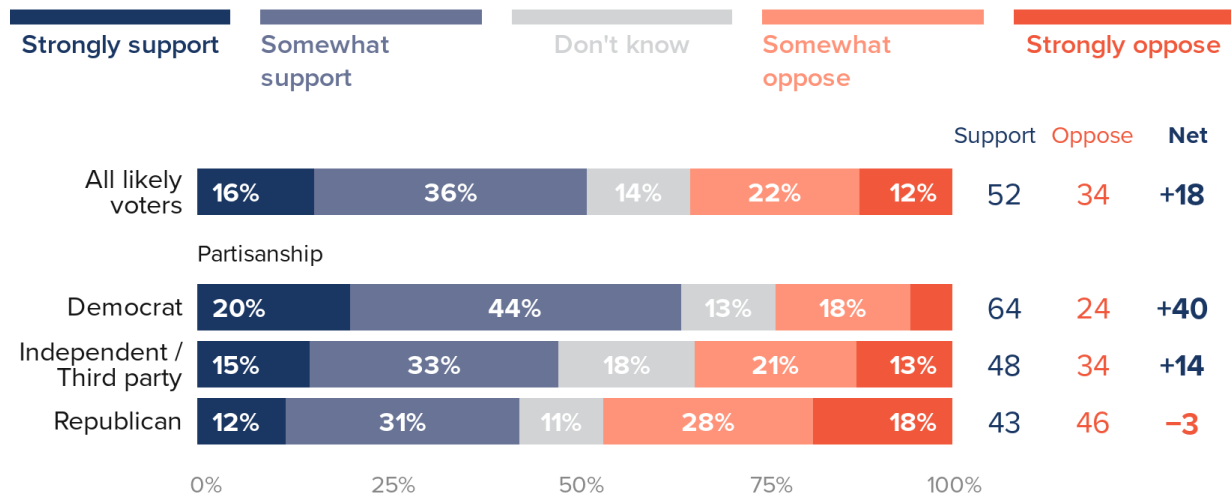
### Voter Attitudes on SCOTUS Reform

When asked whether they would support or oppose strengthening the power of elected representatives, even if it came at the expense of the judges they appoint, voters support such action by a +18-point margin (52 percent support, 34 percent oppose). Across partisanship, nearly two-thirds of Democrats and 48 percent of Independents share this sentiment, while Republicans are about split — 43 percent support it while 46 percent oppose it.



## A Majority of Voters Support Strengthening the Power of Elected Representatives Even if That Meant Weakening the Power of Unelected Judges

Would you support or oppose strengthening the power of democratically elected officials who face term limits in our political system, even if it meant weakening the power of unelected judges?



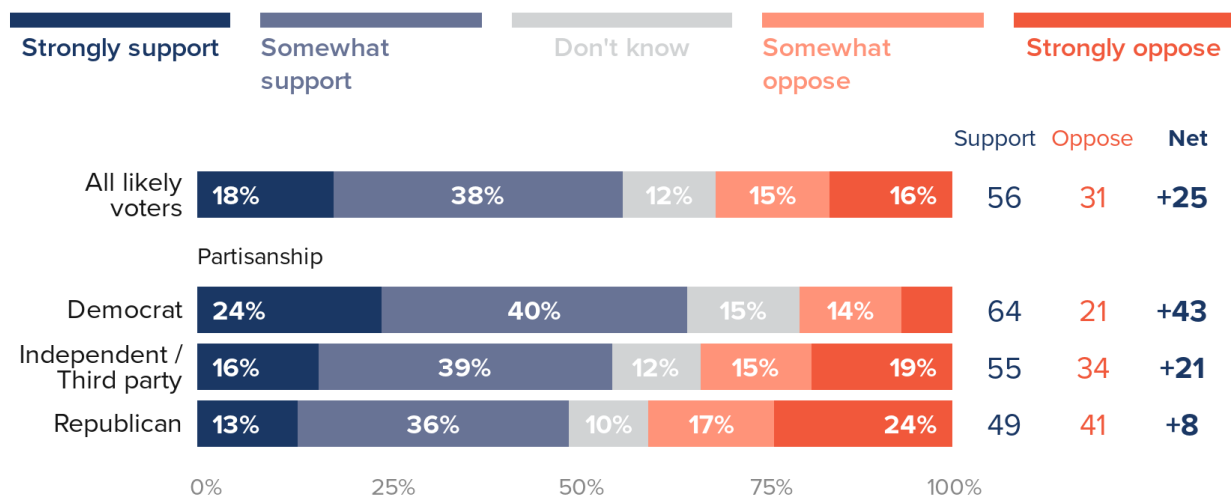
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We also measured voter support for a SCOTUS reform that would require a supermajority of justices to be in agreement in order to strike down federal legislation. We find that by a +25-point margin, a majority of voters support requiring supermajority justice agreement to rule that federal legislation is unconstitutional (56 percent support, 31 percent oppose). Voters across party lines are largely in agreement, albeit at different levels. Sixty-four percent of Democrats, 55 percent of Independents, and 49 percent of Republicans, a plurality, support this reform.

## A Majority of Voters Support Reforming the Supreme Court to Require a Supermajority to Strike Down Federal Legislation

Currently, only a majority of the justices on the Supreme Court, five out of the nine justices, can rule that federal legislation is unconstitutional, even if the remaining four justices believe that the legislation is constitutional.

Would you support or oppose reforming the Supreme Court so that it can only strike down legislation as unconstitutional if a **supermajority** of justices are in agreement?



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Moreover, we find that support for the supermajority requirement to strike down legislation remains consistent even when voters are exposed to messaging in favor of and against it. Specifically, we find that voters continue to support this reform by a +26-point margin (57 percent support, 31 percent oppose) overall. Sixty-nine percent of Democrats, 55 percent of Independents, and 47 percent of Republicans, a plurality, also continue to support this reform.

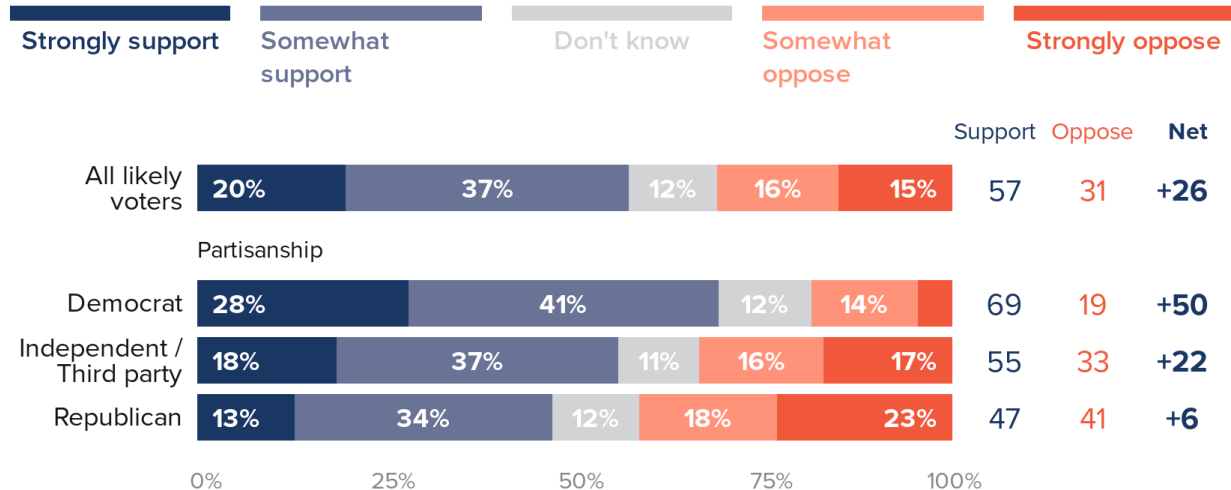
## After Reading Messaging for and Against It, a Majority of Voters Continue to Support Requiring a Supermajority in the Supreme Court to Strike Down Federal Legislation

Currently, only a majority of the justices on the Supreme Court, five out of the nine justices, can rule that federal legislation is unconstitutional, even if the remaining four justices believe that the legislation is constitutional.

Supporters of this system say that the Supreme Court has operated on a majority-rules basis for hundreds of years and that this is an efficient way of reaching the best outcome. Any efforts to change the system would be a waste of time and lawmakers should instead focus on other important issues.

Opponents of this system say that just like Congress is required to have a two-thirds majority in order to override a presidential veto, the Court should require a supermajority of justices to strike down actions of another branch of government to limit the influence of partisan politics.

**Having read more**, would you support or oppose reforming the Supreme Court so that it can only strike down legislation as unconstitutional if a **supermajority** of justices are in agreement?



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We also asked voters about a reform that would allow Congress to fast-track legislative responses to SCOTUS decisions with which the legislative body disagrees. We find that a plurality of voters support this reform by a +6-point margin (47 percent support, 41 percent oppose). Across partisanship, 64 percent of Democrats support this reform, while Independents

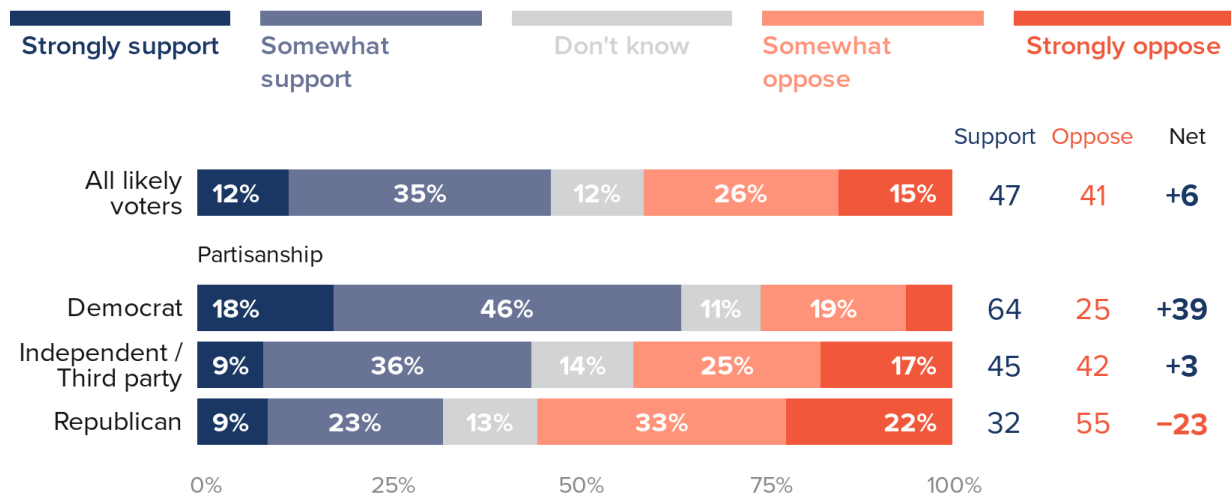


are about split – 45 percent support it, 42 percent oppose it. Meanwhile, 32 percent of Republicans back this reform.

## A Plurality of Voters Support Fast-Tracking Congress’s Ability to Enact Legislative Responses to Supreme Court Decisions

Congress currently has the power to overturn Supreme Court decisions by passing new laws.

Would you support or oppose efforts to fast-track Congress's ability to enact legislative responses to Supreme Court decisions that Congress disagrees with?



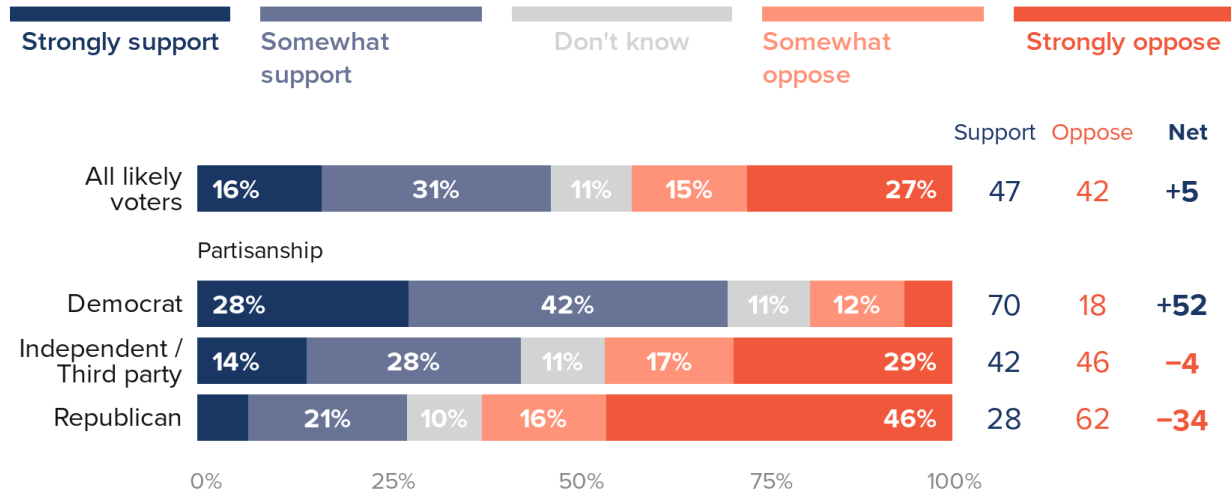
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This poll also measured voter attitudes around Supreme Court expansion. We find that a plurality of voters support expanding the Supreme Court by four justices, for a total of 13, by a +5-point margin (47 percent support, 42 percent oppose). Looking across partisanship, it’s unsurprising that Democrats support this expansion by a +52-point margin, given the court’s current ideological composition. Independents and Republicans, however, oppose this proposal by a -4-point margin and a -34-point margin, respectively.



## A Plurality of Voters Support Expanding the Supreme Court to 13 Justices

Would you support or oppose Congress expanding the Supreme Court by four justices, for a total of 13?



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### Conclusion

Conversations about the Supreme Court’s power are not new; presidents since Thomas Jefferson have [sounded the alarm](#) about what happens when judges, rather than the people themselves, become the ultimate decision-makers in a democracy. As the data shows, even after decades of public glorification of the judiciary, voters in the U.S. share much of this skepticism. The American people are skeptical, to say the least, about allowing an antidemocratic judiciary to threaten our fight for progress, and are making clear that the time for change is now.

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### Survey Methodology

From April 21 to 25, 2023, Data for Progress and the People's Parity Project conducted a survey of 1,377 likely voters nationally using web panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, geography, and voting history. The survey was conducted in English. The margin of error is ±3 percentage points.