

Supreme Court Legitimacy

Why is Legitimacy Important?

“... when a government institution or organization lacks legitimacy, it may no longer be worthy of respect or obedience.”¹ Legitimacy is an especially thorny issue for the Supreme Court today.

Background

In *Marbury v. Madison* (1803), the Supreme Court, for the first time, struck down an act of Congress as unconstitutional for the first time in US history. Since then, the Court has been the chief interpreter of the Constitution, with authority to overrule actions of the other two branches of government. Yet, it has no power to enforce its decisions. Recall the story of President Andrew Jackson, in response to an unfavorable ruling in 1834: “Chief Justice John Marshall has made his decision; now let him enforce it.”²

If the Supreme Court cannot enforce its decisions, what happens? Occasionally, the executive branch has intervened to enforce controversial Supreme Court decisions. In historical examples, federal intervention was needed to enforce *Brown v. Board of Education* (1954), which ordered states to desegregate public schools. Some states complied; others did not. In 1957, President Eisenhower issued Executive Order 10730³ for federal armed forces to aid in the desegregation of Arkansas schools. In 1960, US Federal Marshals Service⁴ escorts provided six-year-old Ruby Bridges protection from enraged protestors at her New Orleans elementary school.

A recent example of defiance of a Court ruling was resolved without executive action. In *Allen v. Milligan* (2023), the Supreme Court upheld Section 2 of the *Voting Rights Act* and ruled that Alabama’s 2021 congressional map illegally diluted the voting power of Black

¹ [The Supreme Court’s Legitimacy Dilemma](#)

² Whether this is historically accurate has been questioned, but it illustrates the point very well.

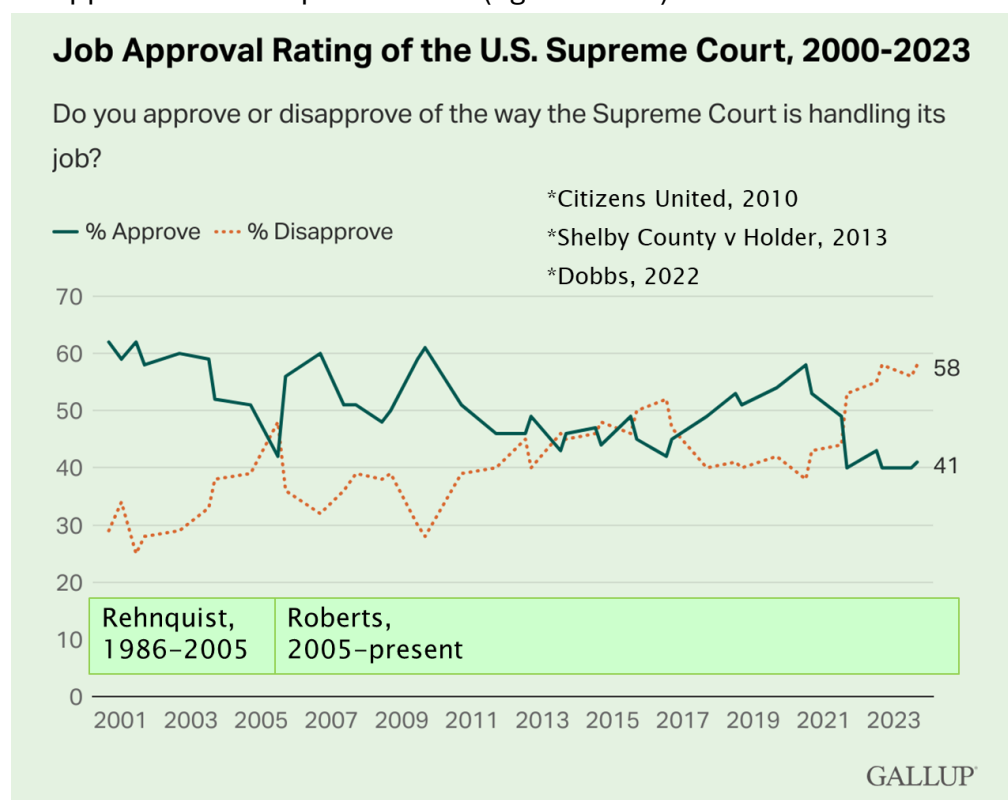
³ [Executive Order 10730: Desegregation of Central High School \(1957\) | National Archives.](#)

⁴ [Deputy U.S. Marshals Escort Ruby Bridges to School in 1960](#)

Alabamians. Because of timing, Alabama was permitted to use the illegal maps to vote in 2022. Then, unexpectedly, the final ruling on the case in 2023 ordered Alabama to draw a new map. The Alabama state legislature redrew a map, which did not comply with the Court’s order. As a remedy, the district court appointed a special master to draw three new versions of a compliant map, which were sent to Alabama for adoption.⁵ In another attempt not to comply, the Alabama Legislature appealed to the Supreme Court to reverse its original decision — the Supreme Court rejected Alabama’s appeal. Ultimately, the district court, selected the map to be used in subsequent elections. Now, similar cases continue to move through the pipeline, incentivized by the Supreme Court’s 2013 ruling in *Shelby v. Holder*, which invalidated Section 4(b) of the *Voting Rights Act*.⁶

How is Legitimacy Measured?

Current calls for Supreme Court reform are an indicator — or for some, a flashing red light — that the Court’s legitimacy is under siege. Polling data from Gallup illustrates how public disapproval of the Supreme Court (figure below) has risen.



⁵ [Judges reject Alabama’s congressional lines, will draw new districts to increase Black voting power | AP News](#); [Court appointee proposes Alabama congressional districts to provide representation to Black voters | AP News](#)

⁶ LWVUS Blog, [What’s Happening with Alabama’s Redistricting Post-Milligan?](#) Dec 2023.

Polling results reported by The Pew Research Center show similar unfavorable trends.⁷

By 2024, disapproval of the Supreme Court reached an all-time high. Some attribute this as a reaction to the *Dobbs* decision (2022) which overruled *Roe v. Wade* (1973). However, the Roberts era includes other controversial decisions that preceded *Dobbs*. The disapproval curve appears to have begun its steep rise about the time of *Citizens United* (2010) and *Shelby v Holder* (2013).

But many other reasons, apart from disagreements over specific rulings, underlie the Court’s legitimacy problems and current calls for reform. These include, but certainly are not limited to:

- Politicization of the Court and the nomination process, which manifests in shifts from longstanding legal doctrine;
- Ethics scandals;
- Lack of transparency in Court rulings (from increased reliance on the shadow docket); and
- Failure of the Court to acknowledge and respond to its growing crisis of legitimacy.

Principles to Consider

LWVUS positions on the Congress and the Presidency, the other two branches of government, pay little attention to specific policy approaches; instead, they focus on principles. Those principles were designed for evaluating future policy proposals and ensure a durable foundation for advocacy. Similarly, for the Supreme Court, issues of legitimacy focus not on particular rulings but on principles:

<ul style="list-style-type: none">● Judicial accountability● Transparency● Ethics● Decision-making capability	<ul style="list-style-type: none">● Legitimacy● Nonpartisanship● Stability of law
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⁷ [Favorable views of Supreme Court remain near historic low](#)