

## Fewer See Balance in Court's Decisions

Bush Nominees Have Made Panel 'Too Conservative' for Many, Poll Indicates

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About half of the public thinks the Supreme Court is generally balanced in its decisions, but a growing number of Americans say the court has become "too conservative" in the two years since [President Bush](#) began nominating justices, according to a new [Washington Post-ABC News](#) poll.

Nearly a third of the public -- 31 percent -- thinks the court is too far to the right, a noticeable jump since the question was last asked in July 2005. That's when Bush nominated [John G. Roberts Jr.](#) to the court and, in the six-month period that followed, the Senate approved Roberts as chief justice and confirmed [Justice Samuel A. Alito Jr.](#)

The two have proved to be reliably conservative justices, and the increasingly polarized court this year moved to uphold restraints on abortion, restrict student speech rights and limit the ability of school districts to use race in student assignments, among other issues.

The public seems to have noticed the shift. The percentage who said the court is "too conservative" grew from 19 percent to 31 percent in the past two years, while those who said it is "generally balanced in its decisions" declined from 55 percent to 47 percent.

"I think it shows that we're at a tipping point in time," said Ralph G. Neas, president of the liberal People for the American Way. "And it's why a major priority for us over the next 16 months will be to emphasize the importance of the Supreme Court and why it should be an important factor in voting for president."

But conservative activists looking at the political consequences of the past term say the public is ambivalent about the two rulings that have most marked the court's turn to the right -- upholding the ban on the procedure sometimes called partial-birth abortion and restricting the use of race in school assignments.

The difference could lie in which side is most successful in framing the court's actions to a public that pays more attention to the president and Congress.

"As a political strategist, I'd take those two decisions any day of the week," said Gregory R. Mueller, a public relations consultant who has advised political candidates and represents some conservative judicial organizations. He said that racial classifications remind Americans of quotas, and that even the majority of the public that thinks abortion should generally be available favors some restrictions.

Liberals, on the other hand, portray the court's decision to uphold the federal Partial-Birth Abortion Ban Act, passed by Congress in 2003, as the first step toward overruling *Roe v. Wade* and see the race decision as a retreat from civil rights.

Both sides will find support for their views in the Post-ABC poll results, which asked about the two key cases of the term.

Fifty-five percent of those polled -- including majorities of both women and men -- approved of the court's abortion ruling. The decision significantly shifted the court's abortion jurisprudence, marking the first time justices have upheld a restriction on a specific abortion procedure and one that does not include an exception for a woman's health.

But a majority disagreed with the court's decision that sharply restricted the ability of local school boards to use race when making school assignments to achieve diverse student bodies. Fifty-six percent of those polled disapproved of the decision; 40 percent approved.

Three out of four blacks disapproved of the court's ruling in the race case, as did a narrow majority of whites. Seven out of 10 Democrats disagreed with the ruling, while Republicans and independents both were evenly split.

"People really don't want to go backwards on civil rights," said Nan Aron, president of the liberal Alliance for Justice, which focuses on judicial nominations.

The increasing view of the court as more conservative than liberal, and angry rhetoric from Senate Democrats about the role of Roberts and Alito in moving the court in that direction, have energized liberal activist groups that focus on the judiciary.

People for the American Way launched a fundraising drive this month with an e-mail missive sent to 400,000 activists; in the message, [Norman Lear](#), one of the group's founders, warned, "Only you and I stand between the new Supreme Court and the continued chiseling away at the rights and freedoms we Americans hold dear."

The group urges activists to sign online petitions to "Correct the Court" by legislatively overturning some of the court's decisions.

But activists on the right have found in recent years that their supporters are the ones for whom changing the federal judiciary has become a movement.

"It's a unifying issue in many ways for Republicans," Mueller said. For the [GOP](#), nominating conservatives to the federal judiciary, he added, "is one of those issues that has almost become like anti-communism was during the Cold War."

Mueller and his colleague Keith Appell point to the presidential race, where, among Republican candidates, former [New York](#) mayor [Rudolph W. Giuliani](#) and former [Massachusetts](#) governor [Mitt Romney](#) have already named "justice advisory committees" for counsel on issues and nominations.

For Giuliani, a candidate seen in some Republican circles as too moderate, endorsements from conservative favorites such as former solicitor general Theodore B. Olson and Steven Calabresi, one of the founders of the [Federalist Society](#), a conservative legal organization, were important.

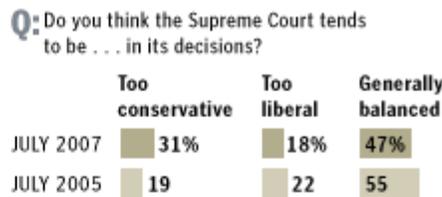
The specter of "liberal activist judges" is still a strong rallying point for conservatives, despite the fact that, because of the Republican hold on the [White House](#), seven of the nine justices on the Supreme Court were appointed by Republican presidents and GOP appointees are in the majority on 10 of the 13 U.S. courts of appeals.

Aron and Neas note that it was conservative anger over court decisions that fueled the right's interest in the federal courts, and they hope that this term's decisions similarly upset activists on the left. "Before, it was hypothetical," Neas said.

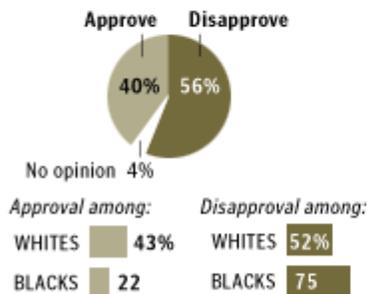
**Graphic**

**Washington Post - ABC News Poll  
Split Decision**

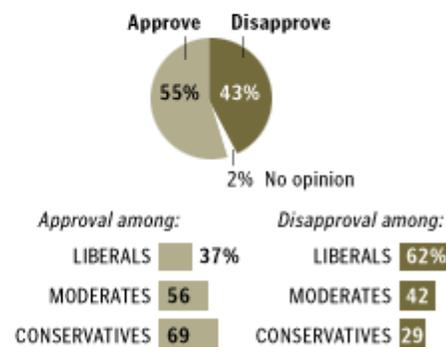
More Americans now see the Supreme Court as "too conservative," compared with when Chief Justice John G. Roberts Jr. was nominated. And opinion is evenly divided on two of the court's recent marquee decisions.



**Q:** As you may know, the Supreme Court recently restricted how local school boards can use race to assign children to schools. Some argue this is a significant setback for efforts to diversify public schools; others say race should not be used in school assignments. On balance, do you approve or disapprove of this decision?



**Q:** The Supreme Court also recently upheld a federal restriction on the procedure known as partial birth abortion, banning the procedure except when a woman's life is at risk. Do you approve or disapprove?



This poll was conducted by telephone July 18-21, among a random national sample of 1,125 adults, including additional interviews with randomly selected African Americans, for a total of 210 black respondents. The results from the full survey have an error margin of plus or minus three percentage points. Sampling, data collection and tabulation by TNS of Horsham, Pa.

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