

Sen. Mitch McConnell (R-Ky.) Interview on Recent Supreme Court Rulings

- ❖ Question 1: You arguably played the biggest role in forming the current conservative majority on the Supreme Court, which, as a result, has recently ruled on several major cases in favor of conservative causes. Do you take credit for these Republican wins?
 - Recent conservative Supreme Court rulings:
 - *Dobbs v. Jackson Women's Health Organization* (Decided June 24, 2022)
 - 6-3 vote. Majority: Alito, joined by Thomas, Gorsuch, Kavanaugh, Barrett, & Roberts. Dissent: Breyer, Sotomayor, & Kagan.
 - Overruled decisions made under *Roe v. Wade (1973)* and *Planned Parenthood v. Casey (1992)*, ending the constitutional right to an abortion and returning regulatory power to individual states. (NPR)
 - *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (Decided June 29, 2023)
 - 6-3 vote. Majority: Roberts, joined by Thomas, Alito, Gorsuch, Kavanaugh, & Barrett. Dissent: Sotomayor, Kagan, & Jackson (Jackson recused herself from Harvard case & dissented in UNC case).
 - Declared that affirmative action programs at Harvard and the University of North Carolina were unlawful. (NYT)
 - *Biden v. Nebraska* (Decided June 30, 2023)
 - 6-3 vote. Majority: Roberts, joined by Thomas, Alito, Gorsuch, Kavanaugh, & Barrett. Dissent: Kagan, Sotomayor, & Jackson.
 - Invalidated President Biden's student loan debt relief plan. (NBC)
 - *303 Creative LLC v. Elenis* (Decided June 30, 2023)
 - 6-3 vote. Majority: Gorsuch, joined by Roberts, Thomas, Alito, Kavanaugh, & Barrett. Dissent: Sotomayor, Kagan, & Jackson.
 - Ruled in favor of an evangelical Christian web designer from Colorado who refused to work on same-sex weddings based on religious grounds, stating that "creative businesses can refuse to sell certain products and services if they disagree with the message the customer wishes to convey." (NBC)
 - McConnell, acting as Senate Majority Leader, stalled the confirmation vote for Obama's Supreme Court nominee Merrick Garland after the late conservative Justice Scalia's death left a seat on the high court vacant in 2016. McConnell argued that the next president should appoint the next Supreme Court Justice, with the upcoming presidential election still 9 months away. That seat subsequently went to conservative Justice Neil Gorsuch after Trump won the 2016 election. Then, after Justice Ginsburg's death in 2020, McConnell ignored "cries of blatant hypocrisy" and pushed through President Trump's nominee Justice Coney Barrett less than 2 months before the next presidential election. (NYT)

- ❖ Question 2: What is your response to critics who say your actions are hypocritical and damage the legitimacy of the court? Follow up: Do you believe that this court is still apolitical/nonpartisan?
 - McConnell 2016 quote: “The American people should have a voice in the selection of their next Supreme Court Justice. Therefore, this vacancy should not be filled until we have a new president.” ([Tweet](#))
 - McConnell says the difference between 2016 and 2020 is that during Trump’s last year in office, the same party controlled both the Senate and the White House, whereas during Obama’s last year Democrats had the presidency while Republicans had the Senate. However, “at the time [in 2016], that was not a main element of the Republican argument.” ([NYT](#))
 - In September 2022, during an event at Northwestern University School of Law, Justice Elena Kagan warned that “unsound reasoning and politically convenient conclusions have infected the Supreme Court’s recent opinions and are doing damage to the court’s standing with the American public.” These remarks came just days after Chief Justice John Roberts voiced that the court’s reputation is being unfairly battered: “I don’t understand the connection between opinions people disagree with and the legitimacy of the court . . . If the court doesn’t retain its legitimate function, I’m not sure who would take up that mantle . . . Simply because people disagree with an opinion is not a basis for questioning the legitimacy of the court.” ([Politico](#))
 - In September 2021, Justice Amy Coney Barrett delivered remarks at the University of Louisville that “pushed back against media characterizations of the court’s decision-making as politically motivated, insisting that ‘judicial philosophies are not the same as political parties.’ She urged the public and the media ‘to evaluate what the court is doing on its own terms,’ noting the distinction between criticizing the court’s reasoning and accusing the justices of ‘acting in a partisan manner.’” ([NBC](#))
 - [Politico](#): “. . . the idea of an apolitical court is a fairly recent development. For the better part of American history, the U.S. Supreme Court was a much more partisan and political institution than we remember. The justices who sat on its bench were once and future elected officials, advisers to presidents and even presidential aspirants themselves.”

- ❖ Question 3: Many people have criticized the court’s recent decisions, saying that it’s rolling back long-standing and hard-fought laws and rights. You’ve been a proponent of following legal precedent in the past and used this argument both when you blocked Obama’s nomination of Merrick Garland in 2016 and when you fast-tracked Amy Coney Barrett’s nomination just weeks before the 2020 election. So, is this court meant to uphold long-standing legal precedents or has it become another partisan playing field?
 - The Hill: [The Supreme Court’s surprising overturn of a 47-year-old precedent on religious accommodation](#)
 - “Title VII requires employers to accommodate the religious needs of employees if they can do so without ‘undue hardship on the conduct of the employer’s business.’ In a landmark 1977 case, TWA v. Hardison, the Supreme Court interpreted ‘undue hardship’ to mean more than a ‘de

minimis' or minimal cost. Religious rights activists have long criticized this decision, arguing that the court interpreted undue hardship incorrectly. Regardless of whether the criticism of the 'de minimis' standard is valid, the fact remained that until last week this standard was the law."

- The New Yorker: [The Supreme Court Overturns Fifty Years of Precedent on Affirmative Action](#)
 - "As the standard that the Court uses to determine whether the government's use of racial classification is permissible, strict scrutiny involves asking whether the practice furthers a 'compelling interest' and is 'narrowly tailored' to achieve that interest. In the S.F.F.A. cases, Roberts said that affirmative action fails both parts of the test. For around fifty years, the Court has understood a university's pursuit of the educational benefits of a racially diverse student body as a compelling interest, but Roberts made clear, writing for the 6–3 majority on Thursday, that from now on it will not be treated that way."
- CBS: [Justice Elena Kagan warns Supreme Court can forfeit legitimacy when overturning precedent](#)
 - Kagan: "Judges create legitimacy problems for themselves . . . when they instead stray into places where it looks like they're an extension of the political process or when they're imposing their own personal preferences."
- The New York Times: [In 6-to-3 Ruling, Supreme Court Ends Nearly 50 Years of Abortion Rights](#)
 - "Justice Alito's majority opinion not only sustained the Mississippi law [that banned abortion past 15 weeks] but also said that Roe and Planned Parenthood v. Casey, the 1992 decision that affirmed Roe's core holding, should be overruled." *Roe v. Wade* was decided on January 22, 1973.
- McConnell 2016 quote [on Garland's nomination]: "All we are doing is following the long-standing tradition of not fulfilling a nomination in the middle of a presidential year." ([Fox](#))
- McConnell 2020 quote [on Barrett's nomination]: "This confirmation process falls squarely within history and precedent. Neither falsehoods nor strong feelings change the facts." ([Statement](#))

❖ Question 4: In response to the recent court ruling over affirmative action, you stated that: "Today's Supreme Court rulings make clear that students will get a fair shot at college and the American dream based on merit and not illegal social engineering." Do you believe Harvard legacy and donor students are admitted solely based on merit and not so-called "social engineering?"

- [McConnell's tweet and statement](#) on the ruling
- Days after the ruling, 3 civil rights groups, The Chica Project, the African Community Economic Development of New England (ACEDONE), and the Greater Boston Latino Network (GBLN), "filed a federal civil rights complaint against Harvard College, challenging its discriminatory practice of giving preferential treatment in the admissions process to applicants with familial ties to wealthy donors and alumni ('legacy applicants')." The complaint was filed by

Lawyers for Civil Rights, a Boston-based nonprofit. ([Statement](#)).

- According to the complaint, “nearly 70% of Harvard applicants with family ties to donors or alumni are white and are about six times more likely to be admitted than other applicants. About 28% of Harvard's class of 2019 were legacies, the groups said in the complaint. That means fewer admissions slots were available for non-white applicants who are far less likely to have family ties to the school, they said.” ([Reuters](#))

❖ Question 5: Do you believe this court accurately represents the will of the American people?

- An April 2023 poll shows that 59% of US adults say they oppose the Supreme Court’s decision to overturn Roe v. Wade, and 64% oppose a law which bans access to a medication abortion. ([Poll](#))
- A June 2023 poll shows that 50% of US adults disapprove of selective colleges and universities taking prospective students’ racial and ethnic backgrounds into account when making admissions decisions. ([Poll](#))
- A June 2023 poll found that 71% of US adults opposed allowing businesses to deny service to LGBTQ people based on religious beliefs. ([Poll](#))
- Of the court's 6 member conservative majority, 5 were appointed by presidents who lost the popular vote (Alito & Roberts-GW Bush; Gorsuch, Kavanaugh, & Coney Barrett-Trump).
- A 2022 poll found that 40% of Americans disapprove of the way the Supreme Court is handling its job, down from about 60% twenty years ago. ([Poll](#))
- [Supreme Court government site](#): “Hamilton had written that through the practice of judicial review the Court ensured that the will of the whole people, as expressed in their Constitution, would be supreme over the will of a legislature, whose statutes might express only the temporary will of part of the people.”
- McConnell: “The Supreme Court exists to protect unpopular views . . . Virtually everything in the Constitution is designed to defend the minority against the majority. It is not a majoritarian institution in the sense that it needs to follow public opinion. That’s our job.” ([NYT](#))

❖ Question 6: There’s speculation that these recent rulings are going to mobilize Democrats in full force ahead of the 2024 election. Are you worried at all that these decisions will affect the conservative vote?

- [The Hill](#): “Democrats say each of the court’s controversial decisions will mobilize multiple key constituencies in Senate battlegrounds ranging from younger women and minorities to LGBTQ voters and people with student loan debts . . . Steve Jarding, a Democratic strategist who previously served as an advisor to the Democratic Senatorial Campaign Committee, said the court’s recent decisions ‘are changing decades of precedent’ impacting ‘millions of Americans.’ He said ‘if the Democrats use it right as an issue’ they can move voters to support Senate Democrats in key races . . . Jarding said voters who don’t like the court ‘fundamentally changing the fabric of America’ can ‘express outrage about it at the ballot box.’ . . . Whit Ayres, a prominent Republican pollster, said the court’s

decision to overturn the right to an abortion will have the most impact on the 2024 election and questioned whether decisions on student debt relief and affirmative action will move the needle much in Senate battlegrounds . . . ‘It’s hard to make the Supreme Court itself an issue unless you’re talking about a presidential campaign with a new president who’s going to nominate justices. The way it becomes an issue is through the abortion ruling,’ he said.”

- After the recent rulings, Democrats are again pushing to expand the Supreme Court from 9 to 13 members. The legislation, backed by members of the Congressional Progressive Caucus, was first introduced in 2021 by Sen. Edward Markey (D-Mass.), former Rep. Mondaire Jones (D-N.Y.) and Reps. Hank Johnson (D-Ga.) and Jerrold Nadler (D-N.Y.). However, President Biden has repeatedly said he is against changing the structure of the court over fears it would become too politicized. ([Forbes](#))

- ❖ Question 7: The Supreme Court has recently been rocked by several ethics scandals involving the conservative judges. How do you expect the American people to trust in the court’s rulings if there are clearly conflicts of interest at hand?
 - [ProPublica](#) reported in early April 2023 that Justice Clarence Thomas failed to disclose luxury vacations over 20 years that were paid for by billionaire Republican donor Harlan Crow.
 - [Business Insider](#) reported in April 2023 that Chief Justice John Roberts’ wife, Jane Roberts, reportedly made more than \$10 million as a head-hunter for a host of elite law firms, at least one of which argued a case before the Justice after paying his wife hundreds of thousands of dollars.
 - [Politico](#) reported in April 2023 that Justice Neil Gorsuch failed to disclose the identity of the individual who purchased one of his properties in Colorado. The purchaser turned out to be Brian Duffy, CEO of Greenberg Traurig, one of the nation’s biggest law firms that has been involved in at least 22 cases before or presented to the court.
 - McConnell: “The left . . . want the American people to gasp in horror — in horror — that one Supreme Court justice vacations with his friends, that another one sold his house when he moved . . .” ([Tweet](#))

- ❖ Question 8: Do you agree with Democrats’ calls to enact a code of ethics to the Supreme Court?
 - Senate Democrats held a hearing in May on [Supreme Court Ethics Reform](#)
 - Only one GOP senator has come out in support of any type of ethics reforms, Sen. Lisa Murkowski of Alaska. She introduced a bill with Sen. Angus King (I-Maine) “that would require the justices to create a code of conduct for themselves and make it public on the court’s website. In other words, the bare minimum.” ([HuffPost](#))
 - McConnell: “Look, the Supreme Court, in my view, can’t be dictated to by Congress. I think the chief justice will address these issues. Congress should stay out of it, because we don’t, I think, have the jurisdiction to tell the Supreme Court how to handle the issue.” ([The Hill](#))