

# 4

## WITH GREATER TRANSPARENCY COMES GREATER, BUT TEMPORARY, ENGAGEMENT

### An Analysis of C-SPAN's Live Audio Broadcasts of Supreme Court Oral Argument

*Rachael Houston and Timothy R. Johnson*

#### INTRODUCTION

At 10 a.m. on May 4, 2020, Chief Justice John Roberts introduced Justice Department attorney Erica L. Ross, who represented the Patent and Trademark Office in *Patent & Trademark Office v. Booking.com B.V.* (2020). She was given a couple of minutes to introduce her argument, defending the government's decision to refuse to register a trademark for the travel website Booking.com because "booking" is the generic term for hotel reservation services. Moments later, the justices plunged into the details of the legal dispute—all while thousands of people listened live.

Responding to the COVID-19 pandemic, this opportunity for the public to tune in to the Supreme Court's oral argument in real time was unprecedented.<sup>1</sup> Media outlets and pundits alike called the move a remarkable breakthrough in public access to America's highest court. (See, e.g., Dwyer, 2020; and Wylie et al., 2022.) Historically, the U.S. Supreme Court released audio recordings of its oral argument on Fridays after they were heard in person on Mondays, Tuesdays, and (some) Wednesdays. This delay meant only the few hundred people in the courtroom experienced live argument sessions, while the rest of the public waited several days until they could access the argument audio.<sup>2</sup> With the move to livestreamed argument, however, the courtroom doors have opened for everyone. As a result, the justices have garnered a vastly larger audience during argument

than usual, given the limited seats in the courtroom and the cost of traveling to Washington for most would-be observers. An unlimited number of people can simultaneously listen to an argument when it is livestreamed, compared to the 50 to 100 members of the public who, normally, are allowed to attend an argument session.<sup>3</sup> The Reporters Committee for Freedom of the Press estimated 100,000 people tuned in to listen during the first two weeks of argument in May 2020—which includes argument in *Patent & Trademark*—and over 2 million people listened to at least one livestreamed oral argument by November 2020.<sup>4</sup>

With this access and reach comes new opportunities for the public to *engage* with the U.S. Supreme Court. For our purposes, we examine engagement through the lens of online media, which we define as views, likes, shares, and comments on various online media platforms, including social media (Pancer et al., 2019; Swani & Labrecque, 2020). The research question we propose focuses on the extent to which the public relied on, and engaged with, C-SPAN through its website, Twitter, YouTube, and Facebook feeds as the Court streamed live argument. We focus on C-SPAN because the Court has provided direct audio to it during this period of live argument.<sup>5</sup> C-SPAN has also been the strongest media advocate for increased transparency at the Court, which we discuss later in this essay. In so doing, we seek to determine *whether the public was more likely to listen to argument and engage through likes, shares, and comments as a result of livestreaming*. The answer may seem intuitive because access should intuitively meet C-SPAN's mission of increasing transparency.<sup>6</sup> However, it is unclear whether greater transparency translates into greater public viewership and online engagement with the nation's high court.<sup>7</sup>

To make this assessment, this essay proceeds as follows. In this first section, we discuss the Court's reluctance to increase public access to its argument sessions. We then consider literature that speaks to why such access is important to the Court's legitimacy. From there we discuss C-SPAN and why it is important to examine the role it has played in helping increase access to the Court. Finally, we turn to data to determine the extent to which people took advantage of the newfound access to the opaque branch of the federal government.

## WHY ARE THE JUSTICES SO SHY?

According to Chief Justice John Roberts, the U.S. Supreme Court is the “most transparent branch in government” when it comes to observing their work and providing explanations for their actions (C-SPAN, n.d.a). His view is, in

some respects, satirical because for decades the Court has ignored most of the technological and transparency advancements adopted by other branches of government. The Court does not allow cameras in the courtroom during oral argument, has not released audio of its oral argument until the Friday after each argument (until now!), and still does not provide audio recordings of opinion announcements until the fall after cases are decided.<sup>8</sup> Even as lower federal and state courts have begun to make these advancements by offering livestreaming and broadcasting sessions for public consumption, the highest court in the land has remained largely secluded.<sup>9</sup> Cameras in the court? “Over my dead body,” former associate justice David Souter once said (“On Cameras in Supreme Court,” 1996).

Supreme Court justices have given many reasons over the years for why they want to stay hidden to the public during argument. The two most common concerns are that (1) the public does not understand the function of oral argument and (2) if the courtroom doors open, the media will use embarrassing sound bites in news segments, ultimately portraying the Court negatively to the public. As to the former, some justices, both former and current, have expressed their opposition to increased access to the Court in the form of live broadcasting. Their main reason is the belief that the public does not understand oral argument and its role in the outcome of a case. As a result, people might not fully grasp the strategic nature of the justices’ questions, such as when they play the role of a devil’s advocate. They may also overestimate the impact of lawyers’ oral advocacy skills based on what they see during argument. In essence, there is a risk that the public may perceive the argument stage as the sole decisive factor in the Court’s decision-making process. Former justice Antonin Scalia once remarked that the complexity of the law “is why *The University of Chicago Law Review* is not sold at the 7-Eleven” (Ford, 2020). In terms of oral argument, Scalia’s perspective implies that providing the public with access to these arguments might expose them to complex legal discussions they do not comprehend fully. Justice Sonia Sotomayor told a reporter that argument should not be televised in part because most viewers “don’t take the time to appreciate what the Court is doing” (Egelko, 2020). Like Scalia, Sotomayor believes that the public does not understand oral argument and its significance in the Court’s overall decision-making process. The bottom line is that many of the justices do not want transparency in the form of broadcasting arguments because they believe the public does not have the knowledge to fully appreciate what transpires during the hour-long arguments. Scalia put it this way: “If I really thought the American people would get educated, I’d be all for it” (Biskupic, 2011).

However, what the justices do not seem to grasp is that the public *has a genuine desire* to be educated about the workings of the high court; there is a genuine interest in learning more about its decision-making process. As Ariane de Vogue, Supreme Court correspondent for ABC News, aptly points out: “There’s a real hunger out there from people to know more about the Supreme Court and the justices” (*Holding Out*, n.d.). If the justices continue to hold on to these concerns, however, the public will remain unappreciative of the Court’s work.

The second primary concern among justices is that journalists will take quotes from arguments out of context and use them as sound bites on the news. Kennedy once said he does not want the Court to become part of “the national entertainment network” (*Holding Out*, n.d.). Likewise, Scalia told the Senate Judiciary Committee, “For every ten people who sat through our proceedings gavel to gavel, there would be 10,000 who would see nothing but a thirty-second takeout from one of the proceedings, which I guarantee you would not be representative of what we do” (Biskupic, 2011). Yet, members of the press suggest this concern is baseless. Former NBC News correspondent Pete Williams said reporters already use short quotes from the justices because the transcripts of arguments are available the same day and that doing so has not confused the public or, thus far, stirred up controversy (*Holding Out*, n.d.).<sup>10</sup>

The justices’ concerns (and the public and media responses them) came to a halt in early 2020. Indeed, when the COVID-19 pandemic struck the United States in the early months of 2020, the Supreme Court was forced to delay its March and April argument sessions from the October 2019 term (Ringsmuth et al., 2022). As cases continued to pile up for arguments, however, the justices were forced to decide how they would proceed with the Court’s business.<sup>11</sup> On April 13, 2020, the Court announced it would hear select arguments in May to finish out the term. Since it would “violate health and safety” for the Court to meet in person, the justices announced they would hear arguments over the telephone (Supreme Court of the United States, 2020). And, instead of only providing select personnel with access to these phone calls, the Court gave access to everyone by providing live audio to C-SPAN, CNN, and the Associated Press (Totenberg, 2020).

The decision allowed people to listen to arguments live *for the first time* in the Court’s history and was the biggest step toward increasing its transparency—even if it was a compromise largely out of the justices’ control. In what follows, we provide a brief discussion of why such access, despite the justices’ concerns about it, is crucial for the Court to maintain its legitimacy as an institution.

## WHY THE JUSTICES SHOULD NOT BE SO SHY

While the elected branches are held accountable to the public through elections, the U.S. Supreme Court is not subject to such accountability. Consequently, it becomes crucial for the public to demonstrate its support for the Court by recognizing it as a legitimate institution. In other words, the public's backing is essential; otherwise, there is a risk that the Court's decisions may be challenged, left unenforced, or simply disregarded. Scholars posit several factors that may influence public support for the Court, including exposure to it and gained knowledge about it (Gibson & Caldeira, 2009; Gibson et al., 2003).<sup>12</sup> Oral argument, and the livestreaming of it, can certainly influence people's support for the Court by exposing the public to the Court's decision-making process. Polling evidence further supports the notion that the public desires this exposure, particularly when it comes to oral argument. For instance, a poll conducted by Fix the Court and PBS finds that 83% of their sample agreed with the decision of the Court to provide live audio of its arguments during the pandemic, and 70% believed the Court should continue with live audio once things return to normal (Golde, 2020). These findings are reinforced by a nationally representative sample collected by Black et al. (2020). Many of their respondents (53%) agree that public access to the Court's work provides value to society, and 67% of respondents even support cameras in the courtroom. In addition, exposure to oral argument may lead people to develop more positive associations with the Court. The 2022 C-SPAN/Pierrepoint Supreme Court Survey finds that 46% of respondents in their sample knew the Court provided live audio of oral argument and, of those who had listened to the audio, 48% had a more positive view of the Court (C-SPAN, 2022a).

While these polling data examine public approval for increasing transparency at the Court and the positive feelings associated with such transparency, they do not directly reveal people's thoughts during the unfolding of arguments. The closest related study is Krewson (2019), who demonstrates that personal visits and speeches from the justices at law schools and community centers lead attendees to view the Court more favorably. This exposure to the justices prompts individuals to extend more support to the Court in the form of increased feelings of legitimacy (Gibson & Caldeira, 2009; Gibson et al., 2003). In our study, we seek to build upon Krewson's (2019) research by directly assessing people's responses to livestreamed oral argument through C-SPAN and its social media platforms. Before presenting these results, however, we first explore the role C-SPAN plays in advocating for increased transparency at the Court.

## C-SPAN'S ROLE IN SUPREME COURT TRANSPARENCY

To understand efforts to increase the Court's transparency, it is important to isolate C-SPAN. Specifically, we focus on C-SPAN's role for several reasons. First, for decades C-SPAN has been a pioneer—and the leading media force—in the fight for increasing access to the Court in the same way it provides “gavel-to-gavel” coverage of the U.S. House of Representatives and the U.S. Senate (C-SPAN, n.d.c). C-SPAN already provides live coverage of confirmation hearings (it began doing so with Justice Sandra Day O'Connor's hearings) and launched a program called *America and the Courts* to educate the public about the Court. Most generally, C-SPAN believes that providing the same kind of coverage of the federal judiciary as it provides for Congress (and the executive branch) will help build stronger public trust in the institution (C-SPAN, 2022a). Second, C-SPAN does not have a partisan or ideological bent, which means it is more broadly appealing than partisan news outlets. Its reach is also extremely impressive, perhaps precisely because of its appeal. In its 2021 quadrennial survey, C-SPAN found that an estimated 85 million U.S. adults accessed its content across all platforms in the past six months, 73 million in the past month, and 60 million in the past week from the time the sample was collected.<sup>13</sup> Third, C-SPAN is trusted by the U.S. Supreme Court and its justices. This is demonstrated by the many interactions between the Court and C-SPAN over the years.<sup>14</sup> In 1987, the Court accepted a proposal from C-SPAN that allowed it to originate live programs from the press room inside the Supreme Court building. This groundbreaking decision marked the first time television cameras were permitted inside the building, offering the public a glimpse of its interior for the first time (assuming they had never visited in person). Toward the end of 1988, C-SPAN joined an informal consortium of other news organizations that put on a demonstration inside the Court's chamber to show exactly how televised coverage would work for oral argument. After a 25-minute oral presentation, three justices who attended (and sat at their usual places on the bench) watched a playback on tape and asked a few questions. However, nothing came from the demonstration.

C-SPAN has also filed written requests for the Court be more transparent during specific cases, and the Court has actually granted some of those requests.<sup>15</sup> In 2000, C-SPAN made an emergency appeal to Chief Justice William Rehnquist to allow televised coverage of the Court's argument in *Bush v. Palm Beach County Canvassing Board* (2000). The justices demurred but they broke with tradition by offering, instead, to release audiotapes of the oral argument immediately upon their conclusion.<sup>16</sup> A few days later, when *Bush v. Gore* (2000) was to be argued,

C-SPAN again asked for permission to provide live broadcast coverage but, realizing that televised coverage was unlikely to be approved, asked for live radio coverage instead (or, for the younger generation, old-school livestreaming). Again the Court consented, but since these occasions the Court has not altered its stance against televised coverage. However, the justices have significantly relaxed their stance on releasing audio recordings of many important cases on the day of argument.<sup>17</sup>

In 2020, however, C-SPAN was able to stop its letter-writing campaigns as the Supreme Court took an unprecedented step by providing real-time telephonic access to its oral argument without any request from C-SPAN. Perhaps the Court chose this method of delivery because it had provided audio the day of in many salient cases in the past. According to C-SPAN, “COVID-19 was able to do in two months what C-SPAN has been trying to get the [C]ourt to do for 35 years” (Collins, 2007).

## THEORY AND EXPECTATIONS

Based on the confluence of literatures in the previous sections, we seek to answer two questions about public engagement with the Court’s arguments via C-SPAN. First, did viewership of the Court’s arguments increase as a result of livestreaming? We anticipate a surge in viewership of oral argument on C-SPAN when it initially offered livestreaming during May 2020. However, we also expect this increase to subside over time as the Court continues to livestream and the public, as well as the media, becomes accustomed to it as a regular practice. This expectation is grounded in the fact that media coverage in the 21st century is characterized by rapidly changing cycles with new stories and updates emerging every 24 hours or even sooner (Vasterman, 2005). Ritter (2020) further emphasizes that such advancements alter what people perceive as relevant and salient news. Consequently, people shift from one major news story to the next as they strive to keep up with relevant changes in the world.<sup>18</sup> Therefore, empirically, *we should observe the number of views, likes, comments, and shares to spike during the May 2020 session but gradually decline as the Court moves away from this initial session of livestreaming.* Next, we seek to uncover whether users who tuned in to oral argument live were engaged through online comment sections and, for our purposes, comment sections on YouTube.<sup>19</sup> Unlike the president and Congress, who the public holds accountable through elections, the Supreme Court does not have a direct line of communication with the public. This meant that,

historically, when citizens want to voice an opinion about the Court, they must do so through editorials in newspapers or magazines. However, online comment sections have created unprecedented opportunities for people to communicate with one another about the Court, playing an important role in shaping public discourse (Bennett, 2003). Through these sections, users are able to acquire information from one another about the Supreme Court and have different opportunities to participate in conversation. Thus, *we expect that many users will chime in with their thoughts about oral argument as it happens live*. To test these two expectations, we first turn to a discussion of the viewership data we collected from C-SPAN’s website.

## DATA AND RESULTS

### Viewership on C-SPAN’s Website

We are relying on engagement data (views, likes, shares, and comments) through C-SPAN’s website and its Facebook, YouTube, and Twitter social media channels. The first data points that interest us are C-SPAN’s website viewership data of oral argument (see, e.g., Dietrich & Yao, 2020). Unfortunately, C-SPAN’s website does not capture likes, shares, or comments for its posts. Therefore, we turn exclusively to its website to examine viewership data. We chose to focus on C-SPAN’s website data because (1) C-SPAN does not have television viewing data publicly available and (2) a majority (86%) of Americans obtain their news via online sources (Shearer, 2021).

To collect these data, we navigated to C-SPAN’s website and selected the page “The U.S. Supreme Court on C-SPAN.”<sup>20</sup> This page contains C-SPAN’s coverage of oral argument, both livestreamed and posted recordings, with a drop-down menu extending back to the Court’s oral argument during the 1960 term. In this essay, we are only interested in collecting oral argument viewership data from October 2019 to April 2022 (the 2019, 2020, and 2021 terms). This range provides us with 20 oral argument sessions and a total of 175 argued cases. It also provides us with a good set of cases heard before and after livestreaming began at the Court. For each of the 175 cases in our dataset, we determined whether C-SPAN provided coverage of the case on its website. Figure 4.1 displays an example of C-SPAN’s audio for the case *Arizona v. City and County of San Francisco* (2022).

Once we identified that C-SPAN covered the oral argument for a case, we then used the main search bar on C-SPAN’s website to locate the case by its title. We filtered the content to include only audio content and identified the same audio



FEBRUARY 23, 2022

Report Video Issi

**Arizona v. San Francisco Oral Argument**

The Supreme Court heard oral argument in *Arizona v. San Francisco*, a case on whether states can defend federal regulation in a court of law even if the... [read more](#) ▾

The screenshot shows a video player interface for a C-SPAN broadcast. The main video area displays the text "U.S. SUPREME COURT ORAL ARGUMENTS" over a background image of the Supreme Court building. A play button is centered over the video. In the bottom right corner of the video area, the C-SPAN logo and "c-span.org" are visible, along with a timestamp of "1:21:54". Below the video player, there is a navigation bar with icons for "Clip", "Bookmark To MyC-SPAN", "Embed", "Clipping Guide", and "Share This Video". Below this bar, there are search and filter controls. The "Text type" dropdown is set to "Text". The "Filter by Speaker" dropdown is set to "All Speakers". A search box contains the text "the honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States." To the right of the search box, there is a section titled "PEOPLE IN THIS VIDEO" listing "Samuel A. Alito Jr., Associate Justice U.S. Supreme Court" and "Amy Coney Barrett".

FIGURE 4.1 Example of oral argument audio on C-SPAN's website.

we had previously found using the page “The U.S. Supreme Court on C-SPAN.” This procedure allowed us to see how many people viewed each oral argument audio. As Figure 4.2 displays, *Arizona v. San Francisco* received 1,160 views.<sup>21</sup>

We followed this procedure for each of the cases in our dataset and found that, of these 175 cases, C-SPAN posted oral argument audio for 140. Figure 4.3 displays the results, with the dashed line indicating the split when the Court began livestreaming its argument sessions. This figure shows that C-SPAN was inconsistent with posting oral argument audio on its web page before the May 2020 session (October 2019–February 2020 sessions). Of the cases in these earlier sessions, it posted audio for fewer than half of the cases. This suggests C-SPAN was not going back to post the audio after the Court released it at the end of an argument week. However, this changed instantaneously with the introduction of livestreaming. Starting in May 2020, with *Patent & Trademark v. Booking.com*, C-SPAN provided audio coverage for every single case, and it has not stopped to date.<sup>22</sup>

But our first phenomenon of interest, the extent to which viewership of oral argument increased because of livestreaming, is to where we now turn. Figure 4.4 provides the average number of views for each of our sessions of interest. The

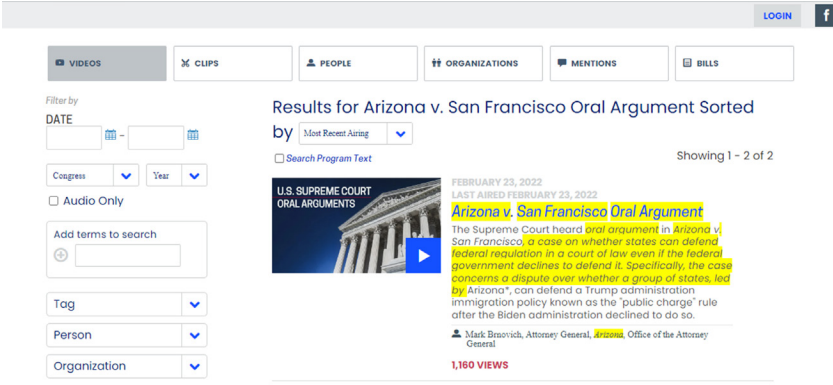


FIGURE 4.2 Example of viewership data on C-SPAN’s website.

dashed line indicates the split between the non-livestreamed and livestreamed arguments. Before livestreaming, the arguments C-SPAN posted averaged roughly 3,466 views. This average increased to about 4,121 views during May 2020 and the Court’s first arguments in *Patent & Trademark v. Booking.com* receiving 42,356 views on C-SPAN’s website. In comparison, however, if we remove the viewership data from the May 2020 session, the average drops to 3,408, which is quite

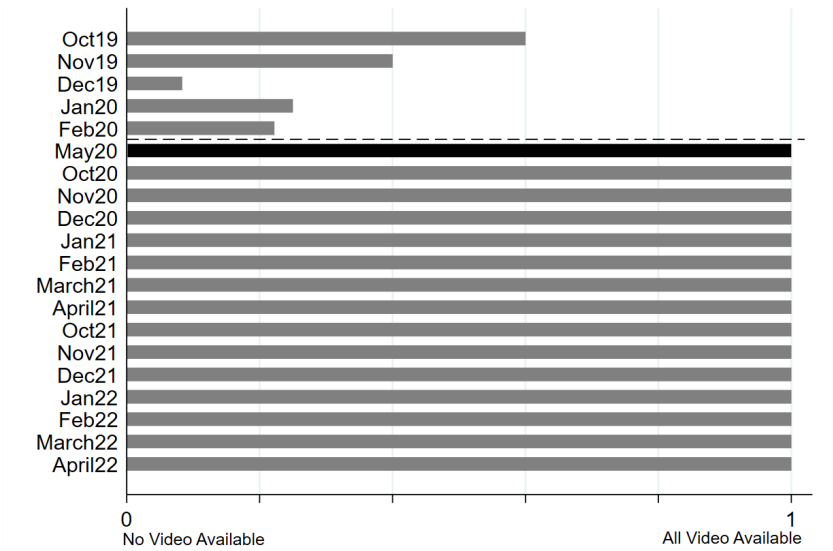


FIGURE 4.3 Audio availability on C-SPAN’s website by oral argument session. Dashed line indicates the split when the Court began livestreaming its argument sessions.

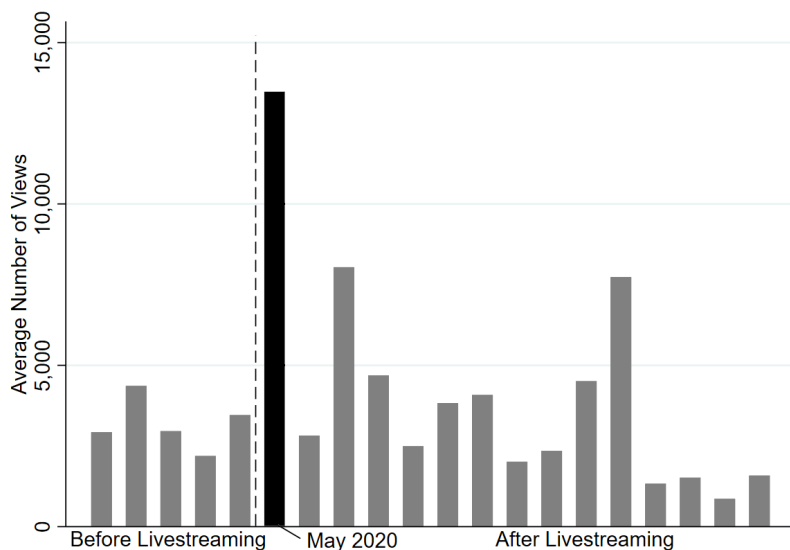


FIGURE 4.4 C-SPAN average viewership data by oral argument session. Dashed line indicates the split between the non-livestreamed and livestreamed arguments.

comparable to cases posted before the pandemic ( $p < 0.05$  for both comparisons—before livestreaming and May 2020, and after livestreaming and May 2020).

What is interesting as well is that the first arguments in *Patent & Trademark* had many more views even compared to arguments heard in the days shortly after. Table 4.1 displays case-level viewership data for the May 2020 session.

TABLE 4.1 Viewership of May 2020 Cases on C-SPAN's Website

Case name	Views
<i>Patent &amp; Trademark v. Booking.com B.V.</i>	42,356
<i>Usaid v. Alliance for Open Society International, Inc.</i>	8,157
<i>Little Sisters of the Poor v. Pennsylvania</i>	14,837
<i>Barr, Atty. Gen. v. American Assn. of Political Consultants, Inc.</i>	6,367
<i>McGirt v. Oklahoma</i>	15,760
<i>Our Lady of Guadalupe v. Morrissey-Berru</i>	5,138
<i>Trump v. Mazars / Trump v. Vance</i>	2,690
<i>Chiafalo v. Washington</i>	14,909
<i>Colorado Dept. of State v. BACA</i>	11,102

Perhaps, then, the availability of livestreaming initially caused argument viewership to increase, but then the “newness” of livestreaming seems to have dissipated—even in the May 2020 session. Collectively, the data in Figure 4.4 and Table 4.1 support our first expectation that there was an initial increase in viewership when the Court began livestreaming, but this increase did not last very long.

### Engagement on C-SPAN’s Social Media

Beyond the viewership data on C-SPAN’s website, recall that we are also interested in the extent to which C-SPAN provides audio of the Supreme Court’s oral argument through its social media channels, and how engagement data (views, likes, shares, and comments) may have changed because of livestreaming. Specifically, we examine how many people engage with live arguments on three platforms: Facebook, YouTube, and Twitter. We analyze these platforms for oral argument coverage because C-SPAN encourages visitors to follow it on these three platforms.<sup>23</sup> C-SPAN’s reach is also considerable; combined it has a total of 4.7 million followers or subscribers.

Consider, first, Facebook. We navigated to C-SPAN’s page and, once there, used the search bar and typed two search terms separately, “oral argument supreme court” and “oral argument,” and set the range for our dates of interest (October 2019–April 2022).<sup>24</sup> For each term we scrolled through the posts that appeared and coded when an oral argument audio of interest appeared. Interestingly, C-SPAN only cross-posted oral argument audio to Facebook three times in this time frame—*Dobbs v. Jackson Women’s Health Org.* (2022), *California v. Texas* (2021), and *Patent & Trademark v. Booking.com*—the latter of which was the Court’s first livestreamed argument. It goes without saying that the former two are highly salient cases. While Facebook does not provide viewership data, we did obtain the number of reactions, comments, and shares for each post. Table 4.2 displays these data.

TABLE 4.2 *Number of Reactions, Comments, and Shares on Facebook Posts*

Case name	Reactions	Comments	Shares
<i>Patent &amp; Trademark v. Booking.com</i>	1,200	434	524
<i>California v. Texas</i>	1,500	4,000	1,300
<i>Dobbs v. Jackson Women’s Health</i>	304	1,300	416

The data are clear: *California* and *Dobbs* received more comments than *Patent & Trademark*, perhaps because these are more salient to the public than the patent case *Patent & Trademark*. From these data, it is not clear whether *Patent & Trademark* received more views than the other posts, but the reactions, comments, and shares do not seem to point to this conclusion. But it is clear that C-SPAN did not start posting arguments to Facebook until livestreaming. However, because of C-SPAN's limited presence on Facebook when it comes to oral argument, we cannot say anything about our first expectation with these data.

We followed a similar set of procedures to collect oral argument audio engagement data on YouTube. We used the search bar on C-SPAN's YouTube page to separately run the two search terms "oral argument supreme court" and "oral argument."<sup>25</sup> We scrolled through the search results to identify oral argument audio for our 175 cases of interest. Like with Facebook, C-SPAN does not often post oral argument audio on YouTube. However, it did post live audio for *California v. Texas*, *Whole Women's Health v. Jackson* (2021), and *Dobbs v. Jackson Women's Health Org.*—all cases the Court heard after the transition to livestreaming. Of interest is that C-SPAN livestreamed these cases directly on YouTube and, possibly as a result, across all C-SPAN's platforms, these cases garnered the most viewership. Perhaps this is because people stumbled across these arguments on YouTube while they were on the platform for other reasons (e.g., entertainment), whereas an individual must want to engage with politics when navigating to C-SPAN's website (Prior, 2007).

As with Facebook, we do not have viewership data to compare pre-livestreaming cases to post-livestreaming cases on YouTube. What these viewership data can tell us in Table 4.3, however, is that, combined, the videos garnered a total of 953,329 views, which suggests, potentially, that almost a million users were exposed to the Court's arguments who otherwise may not have been exposed to them. Again, like with Facebook, this viewership data cannot speak to our first expectation since C-SPAN only posted three cases.

**TABLE 4.3** *Number of Views on YouTube Videos*

Case name	Views
<i>California v. Texas</i>	544,420
<i>Whole Women's Health v. Jackson</i>	39,225
<i>Dobbs v. Jackson Women's Health</i>	369,684

In addition to views, YouTube is the only social media platform of interest that allows researchers to scrape its webpages for content. Thus, using a web scraper tool, we collected all comments for these three cases and compiled them while filtering out replies. We did this because research suggests direct comments on a YouTube video (called threads) are more about the content of the video than are replies. In contrast, replies to comments are typically responses to a user thinking a comment is either positive or negative (Nawaz et al., 2019). With that caveat, we turn to the data.

*California v. Texas* is a case that dealt with the constitutionality of the 2010 Affordable Care Act, colloquially known as Obamacare. It was the third challenge to the ACA heard by the Court since its enactment. On C-SPAN's video of the live oral argument coverage of this case, there are 465 threads produced (i.e., 465 comments on the video). Of these comments, the most frequently used words in the discussion of these arguments are "people" (141), "insurance" (98), "law" (82), "care" (79), and "health" (69). Table 4.4 provides the list of the top 10 words from this argument.

These words were typically used when users were expressing their own opinions about the ACA. One said, "Think about those with little income, students from another country, people with medical conditions those who needs to intake medicine each day." Others made comments about the individual justices and their behavior: "Why is Justice Kagan interrupting Solicitor General Kyle Hawkins so much?" In the heat of arguments, another said, "Justice Barrett sounds awfully smart to me and fair-minded to me, now that all the shouting is over. :)" What is interesting about these comments is that users were chiming in as the proceedings were happening in real time.

The next two cases dealt with abortion—*Whole Woman's Health v. Jackson* and *Dobbs v. Jackson*. Both involved challenges to state laws that ban abortions after a certain period in Texas and Mississippi, respectively. *Whole Woman's Health* had

TABLE 4.4 *Top 10 Words Used to Discuss California v. Texas*

Term	Count	Term	Count
People	141	Court	66
Insurance	98	ACA	63
Law	82	Pay	57
Care	79	Like	57
Health	69	Just	55

218 threads, and the two most popular words used in the comments were “royal” (102) and “family” (74). A closer examination of the individual comments suggests many people were discussing a speech made that day (November 1, 2021) by Chancellor Angela Merkel at the World Leaders’ Summit. Once we filtered these comments, the next most popular words were “law” (60), “court” (60), “life” (59), and “abortion” (48). Similar to *California*, users staked out their charged positions about abortion: “Look, I don’t care if abortion stays or goes. Don’t really care, but it’s getting really annoying hearing people as well as JUSTICES say abortion is a constitutional right. It is not. It is a made up right.”

Of the three cases, *Dobbs* had 1,792 threads, the most of all three arguments. The most popular words were “abortion” (335), “court” (290), “life” (247), “people” (239), and “right” (231). A table of the top 10 words used across the comments for this argument appears in Table 4.5.

Users discussed their views on abortion generally, but also in direct response to the justices’ comments and questions during argument. One user quoted Justice Sotomayor in real time saying, “In response to Justice Sotomayor talking about the religious view of when life begins (circa 27:30), you began life as just one cell, and about 40 weeks later you were born . . .” Then, the user proceeded to support their claim with textbook evidence: “From *Psychology in Your Life* (Third Edition), 2019, p.132. A college psychology textbook that affirms LGBTQIA and same-sex marriage states that life begins at conception. This is not a religious idea.” Other users simply commented on the justices’ questions and behaviors: “How many times can Justice Thomas ask the same question, ‘What right grounds abortion? Privacy?’ Rikelman answered ‘liberty’ twice and then he asked Prelogar the same question. LOL.” Another user said, “Justice Sotomayor, shredding Stewart’s feeble argument!!!!” These comments show that users were, again, engaged while listening to the proceedings.

TABLE 4.5 *Top 10 Words Used to Discuss Dobbs v. Jackson*

Term	Count	Term	Count
Abortion	335	Right	231
Court	290	Law	211
Life	247	Would	185
People	239	One	184
Women	234	Like	173

Beyond the content of the arguments, users commented on the livestreaming component: “I think being able to listen to arguments in real time (or near real time) is a great way for the public to at least get a sense of those arguments” and praised C-SPAN. “Love cspan just the facts not opinion.” In particular, a user even pointed out that C-SPAN keeps its comments open during the livestreaming: “Also—props to Cspan for keeping the comments section open!” By C-SPAN keeping the comment section open for livestreaming, it is continuing to embrace its mission of transparency.

Collectively, these discussions highlight one main point: thousands of people watched oral argument live via C-SPAN’s YouTube channel, and as they watched, many craved more engagement with the cases. To fulfill this interest, users turned to the comment section on YouTube to contribute their thoughts about the arguments, their opinions of the justices, and everything in-between. This satisfies our second expectation that people contributed their thoughts about the proceedings as they took place. In other words, C-SPAN has given thousands of people the ability to engage with the Court through discussion.

Finally, we turn to C-SPAN’s Twitter account. We observe that C-SPAN appears to prioritize Twitter for posting livestream oral argument coverage, at least in comparison to YouTube and Facebook. We used Twitter’s advanced search tool to narrow tweets from C-SPAN that included the terms “oral argument supreme court” and “oral argument” for our dates of interest.<sup>26</sup>

Of the 175 cases in our dataset, C-SPAN provided live audio tweets for 126.<sup>27</sup> What is important is that these 126 arguments all occurred *after* the Court began offering livestreaming. Before livestreaming, C-SPAN did not post audio for the Court’s arguments at all, except when highlighting older salient cases like *Roe v. Wade* (see C-SPAN, 2022b). Now, however, C-SPAN tweets as soon as live arguments begin.

Across all 126 arguments, the C-SPAN Twitter feed provides the case name, a quick description of the case, and a link to listen to the live arguments. For each case C-SPAN tweeted, we collected the number of retweets and likes for each post. Specifically, Figure 4.5 depicts these quantities for our sessions of interest. These Twitter data can speak more about our first expectation than can Facebook and YouTube.

It is clear that Twitter posts from May 2020 received the most engagement in the form of likes and retweets across all sessions in our dataset. On average, in May 2020, C-SPAN’s Twitter posts about oral argument received 102 likes and



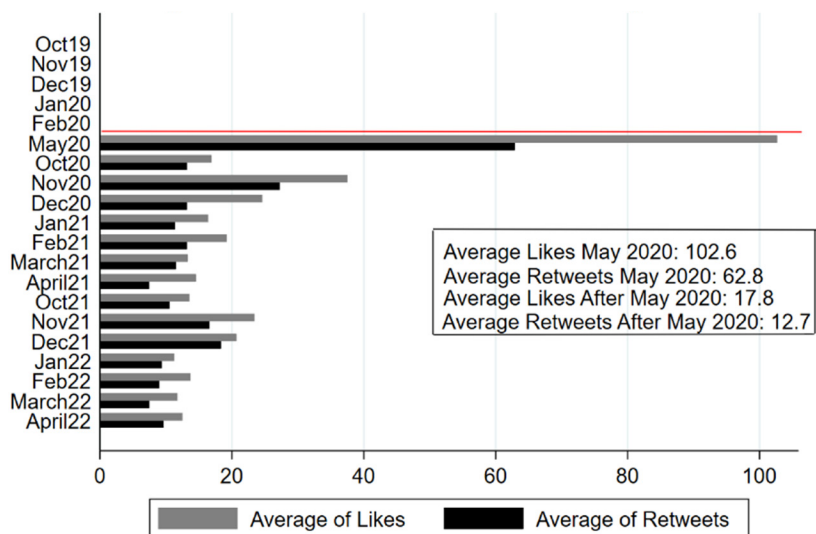


FIGURE 4.5 Average likes and retweets on twitter by oral argument session.

62 retweets. The main case driving these data is *Patent & Trademark v. Booking.com*, which received 539 likes and 298 retweets. As with the viewership data on C-SPAN, perhaps users were more willing to engage with the arguments in this case because it was the first argument the justices heard with livestreamed public access. Across the other sessions in our dataset, the average number of retweets and likes never eclipsed 40. In fact, the average likes on livestreamed cases after the initial May 2020 session was 17.8 and the average number of retweets was 12.7.

From these data across C-SPAN's website and social media pages, we find support for both of our expectations. Our first expectation is that the number of views, likes, comments, and shares should spike during the May 2020 session. Through the viewership data on C-SPAN's website, we find that views for oral argument audio during the May 2020 session (the first session the Court heard livestreamed arguments) were at a record high, but viewership numbers quickly declined after this session—returning to previous levels of viewership prior to livestreaming. Facebook and YouTube data can't provide evidence for this expectation because, to our surprise, C-SPAN did not typically post the Court's oral argument to these two accounts before livestreaming. Through the Twitter data, however, we were able to see that the number of likes and retweets quickly declined after the initial May 2020 session of livestreaming.

Our second expectation is that many users will chime in with their thoughts about oral argument as they happen live. We were able to capture highlights of conversations that took place over the three arguments that C-SPAN broadcasted live on its YouTube page. C-SPAN offered an unprecedented opportunity by keeping its comment sections open, allowing the public to actively engage with one another as the proceedings took place. Moving forward, C-SPAN should broadcast all arguments on its YouTube page to continue fostering public discussion about the Court and its decision-making process.

## CONCLUSION

C-SPAN has tried for years to open up the nation's highest court. Its success was minimal and relegated to cases deemed important by the justices themselves (e.g., *Bush v. Gore* [2000]). But the 2020 pandemic forced the justices' hands. They had to close the Supreme Court, but they also had to ensure that their most important cases were heard and decided in a timely manner. Thus, to ensure the public would still have access to the arguments, the justices took the major step (especially for an institution that moves at a turtle's pace) of allowing immediate, live-streamed access to the argument sessions. This was a huge win for C-SPAN, as it could help U.S. citizens better understand the least known branch of federal government through live arguments at the Court.

With this transition to livestreaming, C-SPAN was able to telecast arguments live through its website and social media platforms, allowing the public to interact with the Court in a new way. The data we provide here show a remarkably interested public—at least in the short term. But, as with other phenomena surrounding the Court's decision to livestream (see e.g., Houston et al., 2023; Ringsmuth et al., 2022; Sag et al., 2021), viewership and engagements leveled off even as the Court made the decision to continue livestreaming during the 2021 and 2022 terms. What this tells us is that institutions can adapt to major world events but that, when things settle down, dissipate, or normalize, people do so as well. C-SPAN provides an amazing service so that the public may understand the nation's highest court, and while we do not expect to see May 2020 levels of viewership anytime soon, it is certain that a good number of citizens, media members, academics, and Supreme Court watchers will continue to use this service as long as it is provided. And that, at its core, is good for democracy!

## NOTES

1. For a history of the Supreme Court's oral argument, see Mauro (2022).
2. Beginning with the October 2006 term, the Supreme Court has made the transcripts of oral argument available free to the public on its website, <https://www.supremecourt.gov/>, on the same day an argument is heard by the Court. The delays come with the audio of these arguments.
3. "All oral arguments are open to the public, but seating is limited and on a first-come, first-seated basis. Before a session begins, two lines form on the plaza in front of the building. One is for those who wish to attend an entire argument, and the other, a three-minute line, is for those who wish to observe the Court in session only briefly." For more information, see "Visitor's Guide to Oral Argument" at <https://www.supremecourt.gov/visiting/visitorsguidetooralargument.aspx>.
4. To access these viewership data, see Wasser (n.d.).
5. The Supreme Court only gave livestream access to CNN, the Associated Press, and C-SPAN (Supreme Court of the United States, 2021).
6. For more information about C-SPAN's mission see <https://www.c-span.org/about/history/>.
7. In late August 2022, Justice Kagan supported keeping livestreaming even after the pandemic: "The livestreaming was a consequence of closing the courtroom to the public. There might be arguments that once we open the courtroom to the public, we should get rid of the livestreaming, so go back to the old system. I personally would prefer to keep the livestreaming. I think that livestreaming has worked very well and we've seen no problems with it. But I only get one vote of nine" (C-SPAN, 2022d). Ultimately, her colleagues agreed with her. On September 28, 2022, the Court issued a press release making clear it would continue the livestreaming experiment (Supreme Court of the United States, 2022). Therefore, livestreaming is now continuing through the new October 2022 term.
8. Before 2010, the Court only provided audio from a given term's hearings at the start of the next term. When a case is particularly high profile, however, the Court has historically released audio of the proceedings the same day as the arguments. See, for example, *Bush v. Gore* (2000), *Citizens United v. FEC* (2010), and *NFIB v. Sebelius* (2012). Audio recordings of opinion announcements are still not available until the fall after cases are decided. This policy has led to misreporting in the media. A notable example is with the health care rulings in 2012. Although the court upheld the Affordable Care Act, it was hard to know that as the news broke on that Thursday morning. (See Farhi, 2012.)

9. Every state supreme court allows cameras, and so do the highest courts in Canada, the United Kingdom, and Australia. The U.S. Court of Appeals for the Ninth Circuit began livestreaming oral argument in the last several years.
10. Several members of the press have real-time access to the Court's oral argument and can cite quotes in their news stories pulled from the live argument (see e.g., "Courtroom Seating" at [https://www.supremecourt.gov/oral\\_arguments/courtroomseating.aspx](https://www.supremecourt.gov/oral_arguments/courtroomseating.aspx)). However, reporters are prohibited from using electronic devices of any kind, such as cameras, cell phones, and laptops, to record the proceeding (Carter, 2012; Schubert et al., 1992; Wasby et al., 1976).
11. It is important to note that beyond tradition and precedent, nothing precluded the justices from deciding those cases on the briefs alone without oral argument from the involved parties.
12. Unfortunately, the Court's own lack of transparency has meant the public is generally less knowledgeable about it compared to the elected branches as well (Davis, 1994; Davis & Strickler, 2000; Haltom & Cadwallader, 1998; Slotnick & Segal, 1998).
13. Of these viewers, television remains the most popular device for accessing content, but a sizable number of viewers—more than two in five—use a smartphone, and roughly a third use a laptop/PC. (See C-SPAN, n.d.b.) While C-SPAN has traditionally been known as a television broadcast network, its online presence now reaches millions.
14. For a full review of these interactions, see Collins (2007).
15. From December 2000 to 2007, the Court granted just more than half (56%) of C-SPAN's requests for same-day release of the taped oral argument. See Collins (2007).
16. As a reminder, the Court's usual policy is to release audio recordings of oral argument at the end of the week on which they are heard.
17. The Supreme Court released same-day audio in 27 cases before the transition to livestreaming oral argument, most recently in 2018 with the "travel ban" case, *Trump v. Hawaii* (2018). The court has also released same-day audio in the LGBTQ cases of *Hollingsworth v. Perry* (2013) and *United States v. Windsor* (2013), along with the 2015 marriage equality case *Obergefell v. Hodges* (2015).
18. It is difficult to measure the life span of news stories because it is largely dependent on the topic area (politics and elections, social issues, environment, etc.) and how life span is measured (readership, distribution, etc.). Additionally, news stories can have multiple life spans. However, The Lifespan of News Stories offers a unique approach by depicting this concept using Google Trends API (see <https://www>

- .newslifespan.com/). It quantifies the evolution of search interest across a 60-day window surrounding each event. According to The Lifespan of News Stories' calculations, most politic and election stories have a lifespan of 0–1 days.
19. Here, we focus on YouTube comments exclusively. C-SPAN does not have a comment section on its website.
  20. See <https://www.c-span.org/supremeCourt/calendar/>.
  21. Viewership data was collected on September 7, 2022.
  22. And there is no reason to see it going back given that the Court announced it will continue to livestream even though the courtroom will be open to visitors beginning in October 2022 (Supreme Court of the United States, 2022).
  23. At the bottom of C-SPAN's home page, there is a section that says, "Follow C-SPAN," and provides links to its Twitter, Facebook, and YouTube pages. C-SPAN also includes its Instagram handle. We decide not to include Instagram in our analysis because unlike the other platforms, there is not a search tool available on Instagram. In other words, to track oral argument coverage we would have to manually scroll through C-SPAN's feed. Additionally, compared to the other platforms, Instagram is not as influential in its reach. As of September 9, 2022, C-SPAN's Instagram account has 127k followers. Its Twitter has 2.1 million followers, its Facebook has 1.5 million followers, and its YouTube account has 1.1 million subscribers. Therefore, while Instagram is important, we feel that it is not consequential to understanding C-SPAN's posting behavior and its viewership data of oral argument.
  24. See <https://www.facebook.com/CSPAN>. We used these search terms because of our findings on C-SPAN's website. For each oral argument, C-SPAN captured its post as "[INSERT CASE NAME] Oral Argument." By using the phrase "oral argument" on Facebook, we can capture all the cases that C-SPAN cross-posted to its Facebook account. We follow this same procedure for Twitter and YouTube.
  25. See <https://www.youtube.com/c/C-SPAN>.
  26. See <https://twitter.com/search-advanced>.
  27. For some cases, C-SPAN tweeted multiple times about the oral argument. For example, C-SPAN tweeted that arguments were happening live for *Kennedy v. Bremerton School District* (2022) on April 25, 2022, but then it also tweeted the audio for this argument on June 27, 2022, after the Court handed down its decision in this case. (See C-SPAN, 2022c.) In this essay, we are only interested in the tweets that advertise that the arguments are happening live. Future research, however, should explore these other tweets.

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