

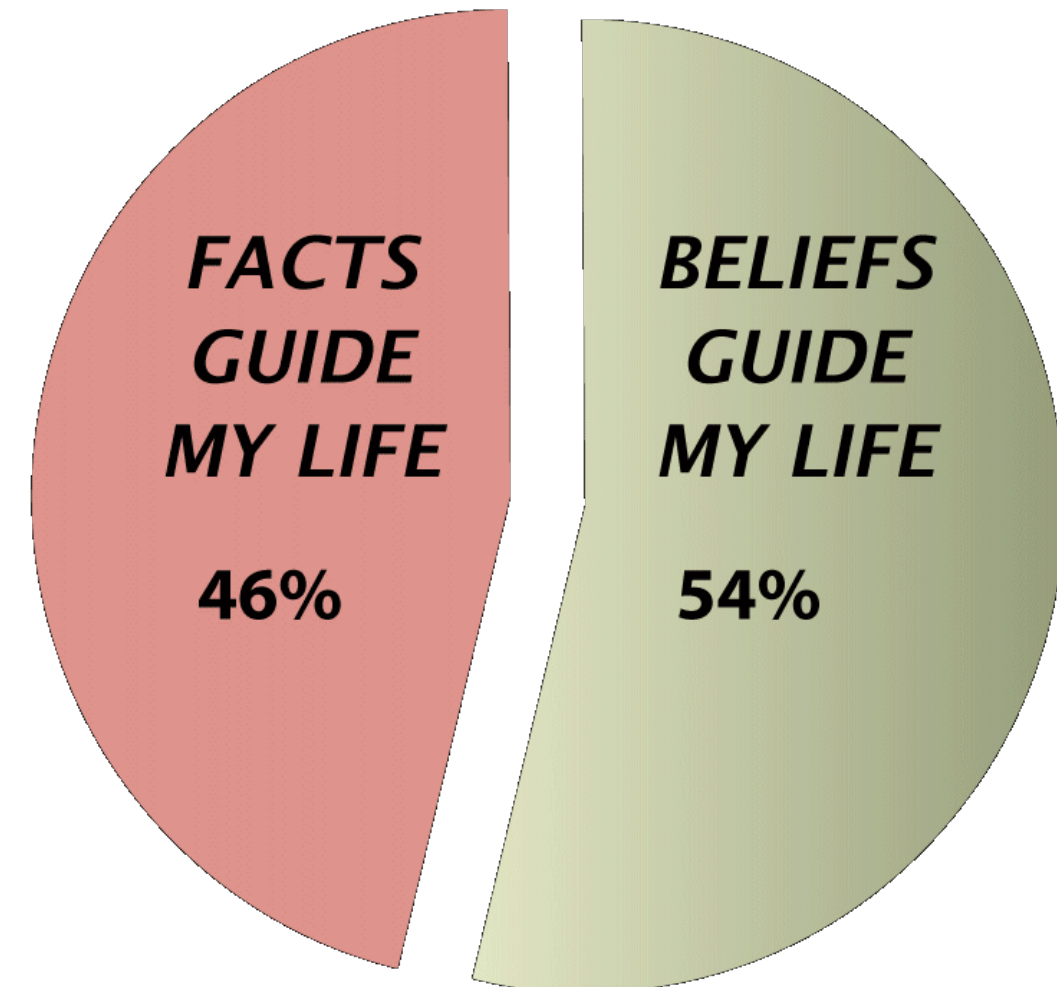
Persuading the Polarized Juror in Sex Abuse Cases

Shelley Spiecker, PhD
Persuasion Strategies Senior Litigation Consultant

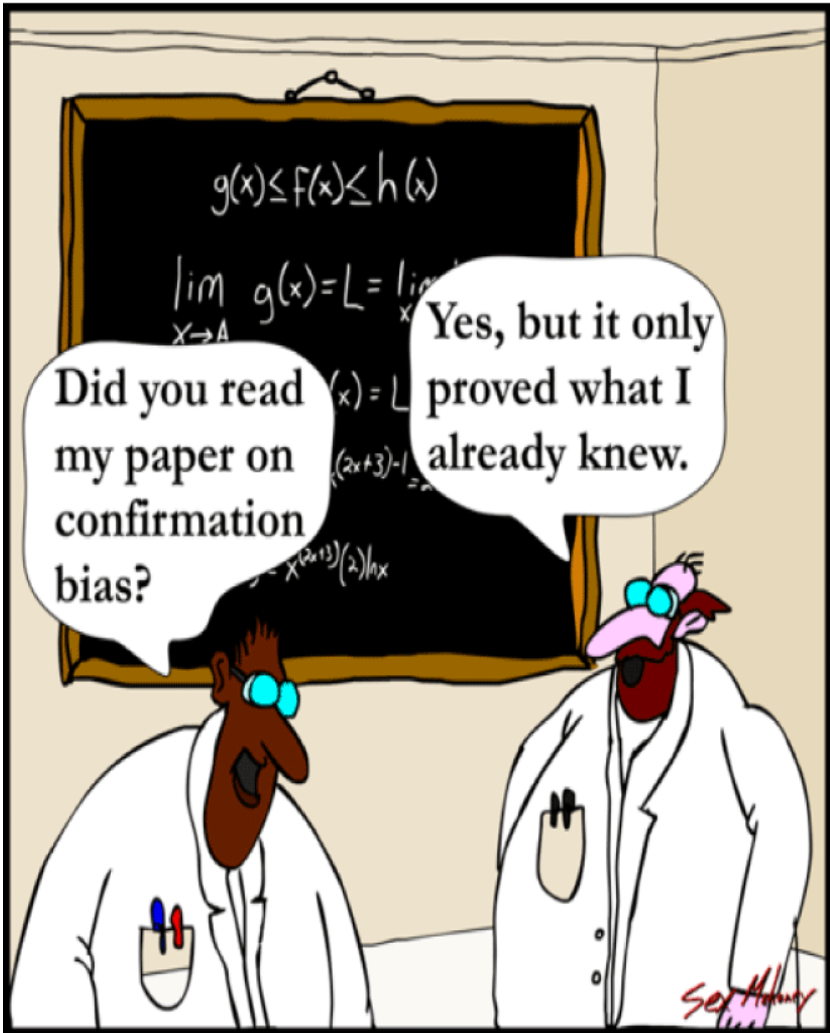
December 3, 2019



WHICH BEST DESCRIBES YOU?

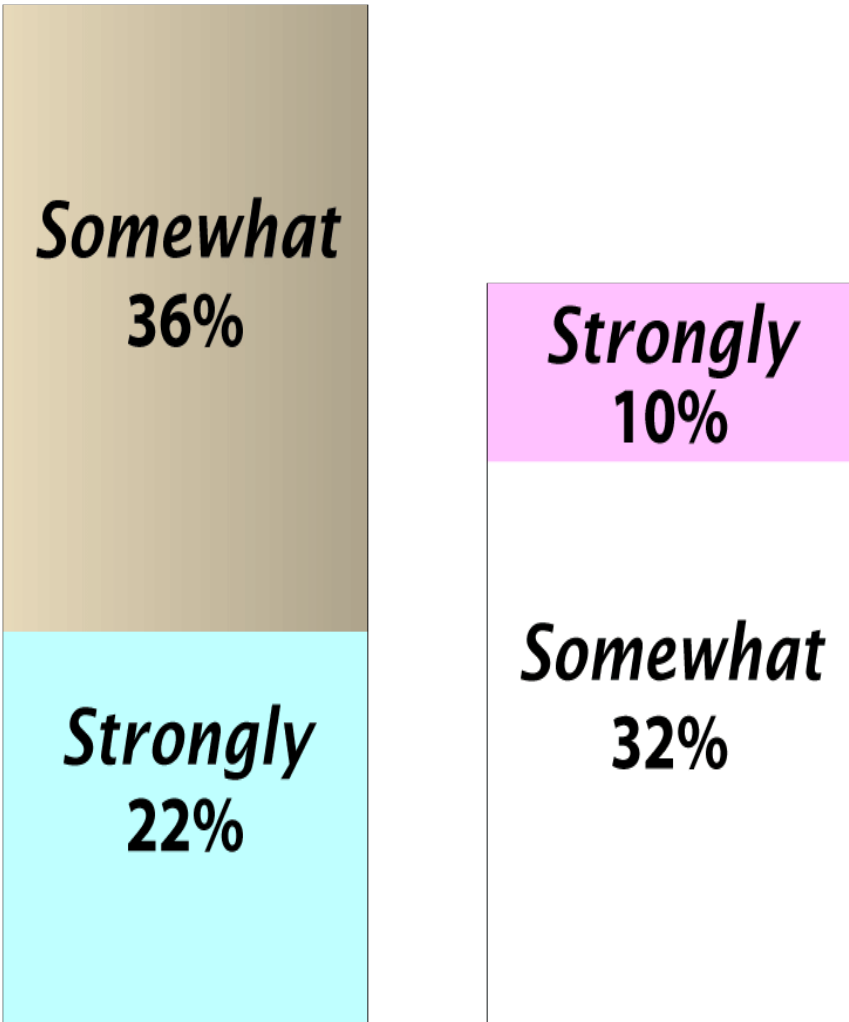


IF YOU FEEL REALLY STRONGLY ABOUT SOMETHING, YOU DON'T NEED FACTS TO PROVE YOU ARE RIGHT.



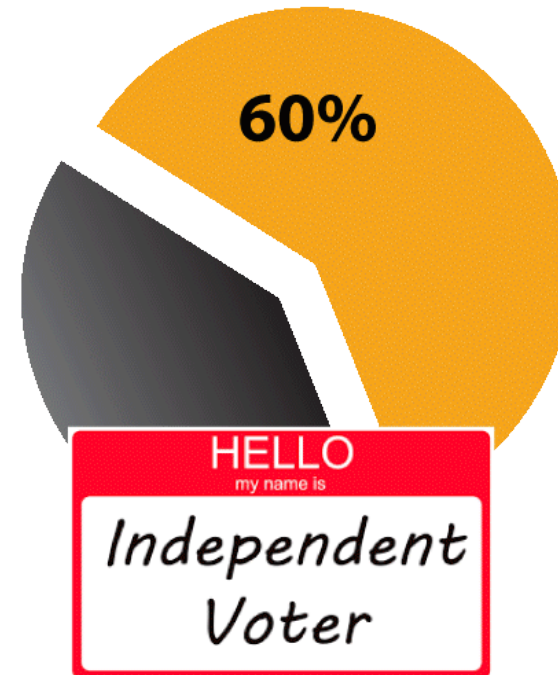
DISAGREE

AGREE



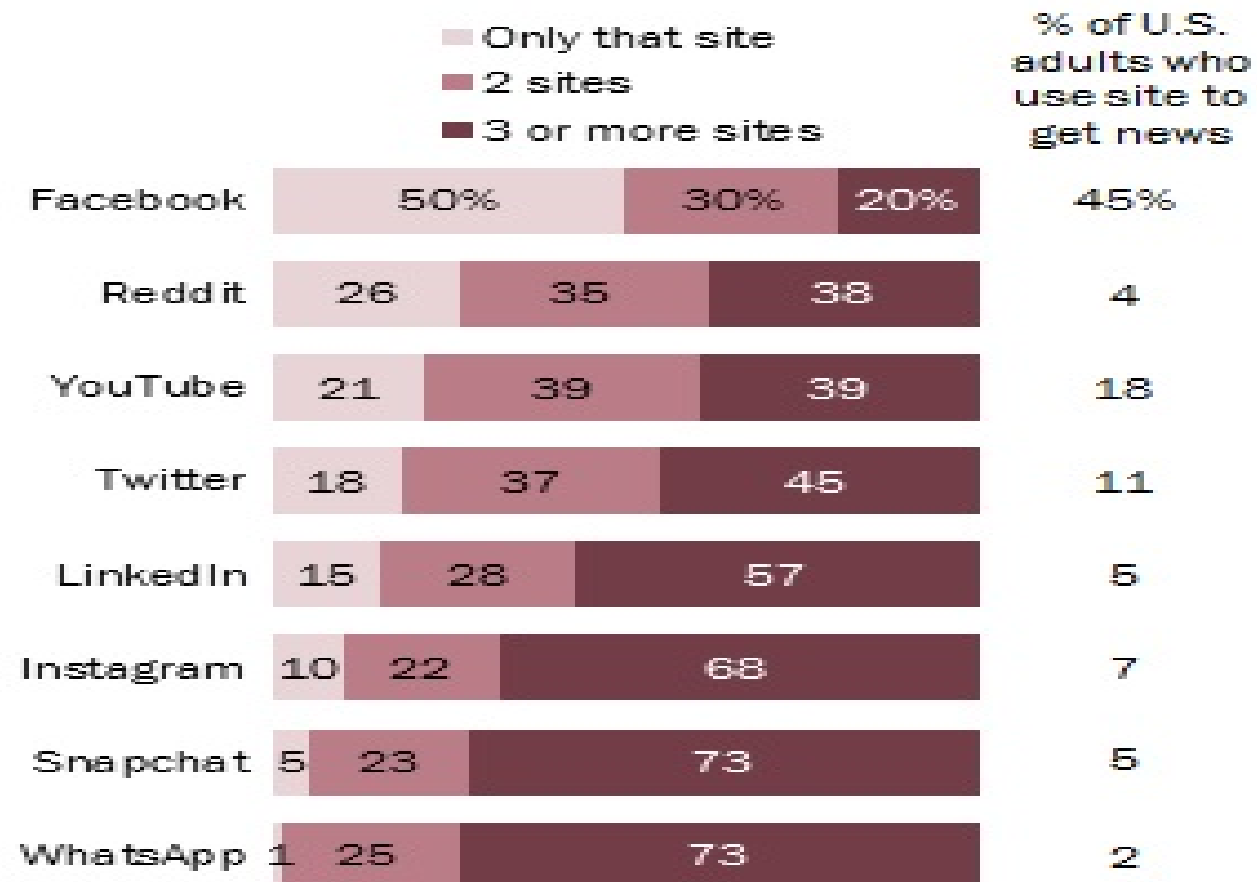
Fake News Abounds

65% OF PUBLIC BELIEVES
MAINSTREAM MEDIA IS
FULL OF FAKE NEWS



Half of Facebook news users get news from that social media site alone; other audiences rely on multiple sites

% of each site's news users who get news from ...



Note: Tumblr not shown due to small sample size. Numbers may not add to 100% because of rounding.

Source: Survey of U.S. adults conducted Aug. 8-21, 2017.

PEW RESEARCH CENTER

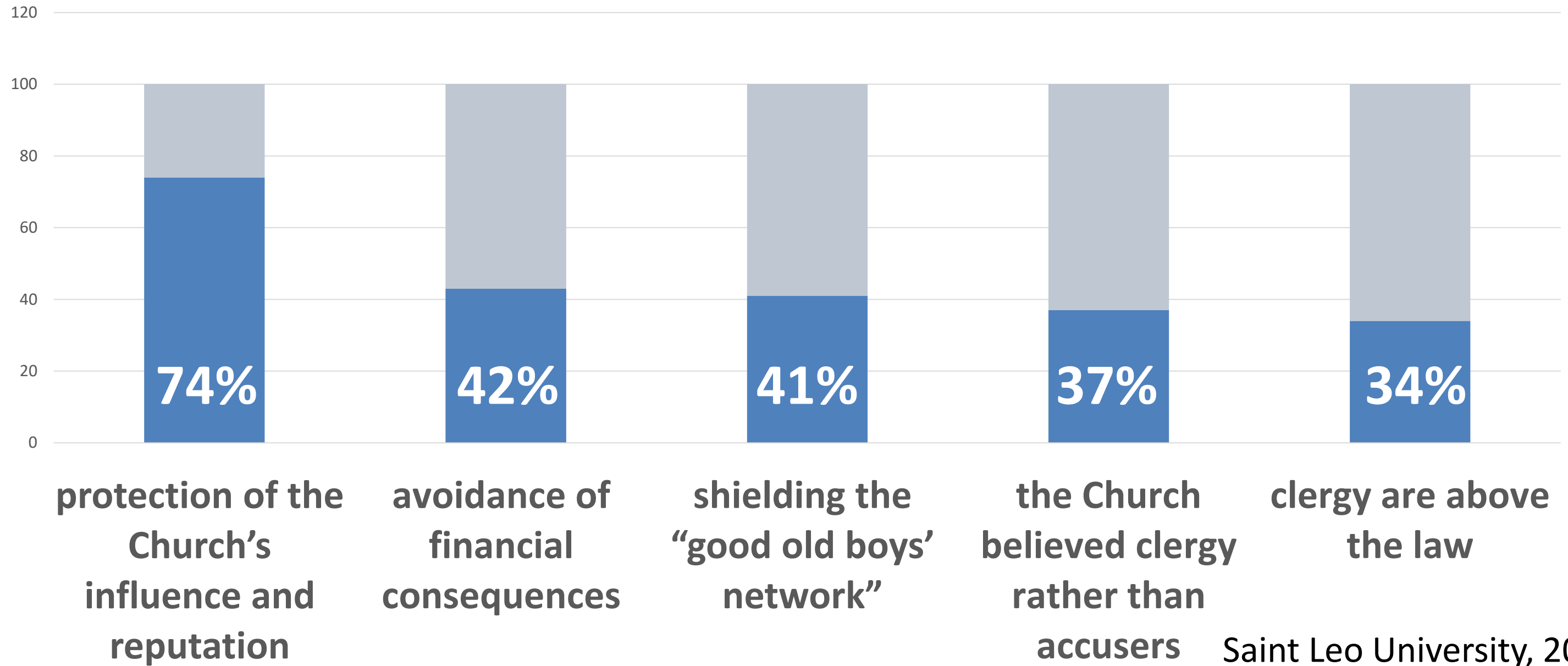
What Do People Think They Know?

57% said sexual abuse is equally common among clergy and other adults who work with children.

34% believe it is more common among religious leaders.

Only 6% said religious leaders are less likely to commit sexual abuse.

Views of factors in the Catholic Church’s inaction to identify and address child sexual abuse



Views on what
factors
contributed to
sexual abuse
within the
Catholic Church

blind faith in clergy

individual priests' lack
of moral character

mandated celibacy

lack of oversight

Church's decision to
handle abuse internally

39%

43%

44%

49%

52%

0 10 20 30 40 50 60

Saint Leo University Survey

A YouGov poll found that the 1,234 Americans they surveyed were most likely to say that child molestation is a “serious problem” or “somewhat of a problem” in:

- religious institutions (**76%**)
- the film/music industry (**69%**)
- child education centers (**61%**)
- sports teams (**49%**)

Child molestation is seen as...

more of an issue
in urban areas...

(56%)

than rural areas

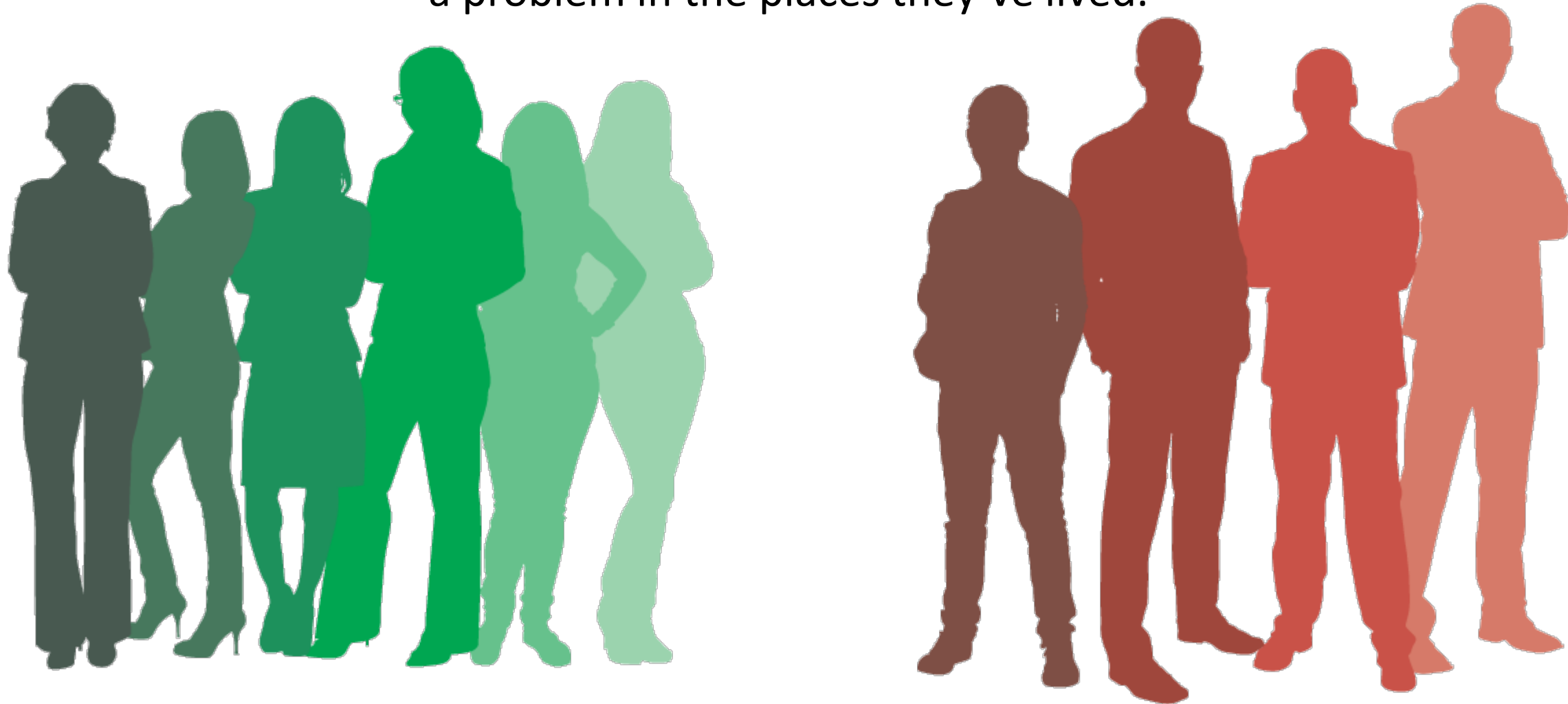
(45%)

33% believe it's
a problem in
the places they
have lived



GENDER AND ATTITUDES

Women **(37%)** are more likely than men **(28%)** to say that sexual abuse is a problem in the places they've lived.



Women **(54%)** are also slightly more likely than men **(44%)** to say molestation is an issue in sports teams.

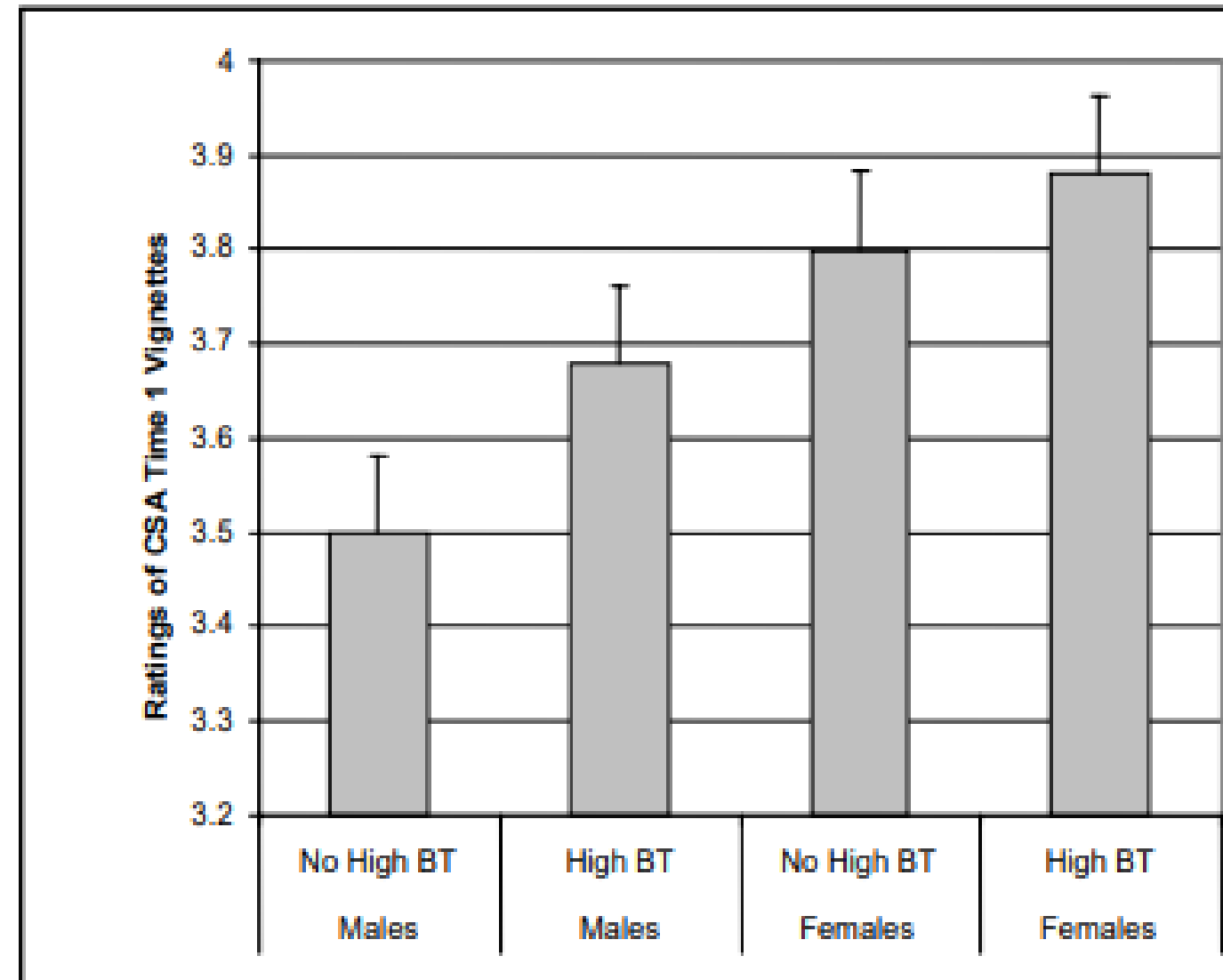


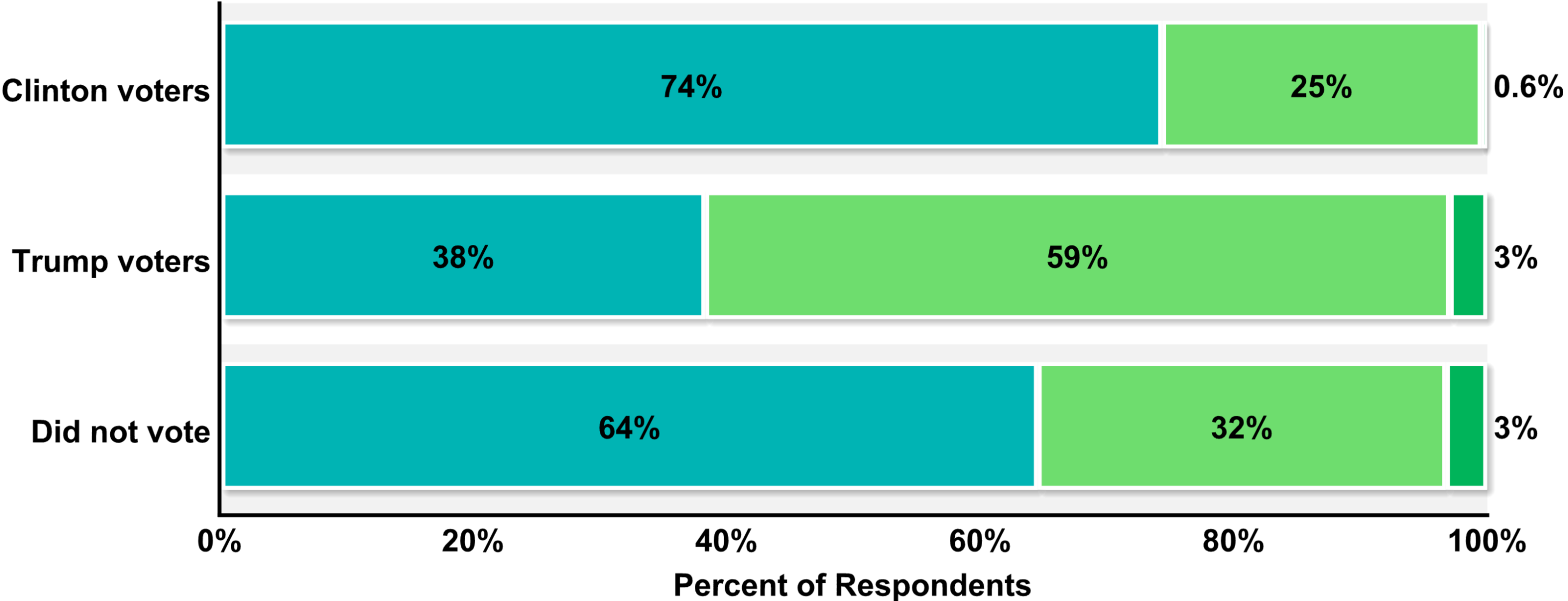
Figure 1
CSA Vignette Believability Ratings by Participant
Gender and Trauma History

BT= Betrayal Trauma

POLITICS AND ATTITUDES

To what extent is sexual harassment in the workplace a problem in America today?

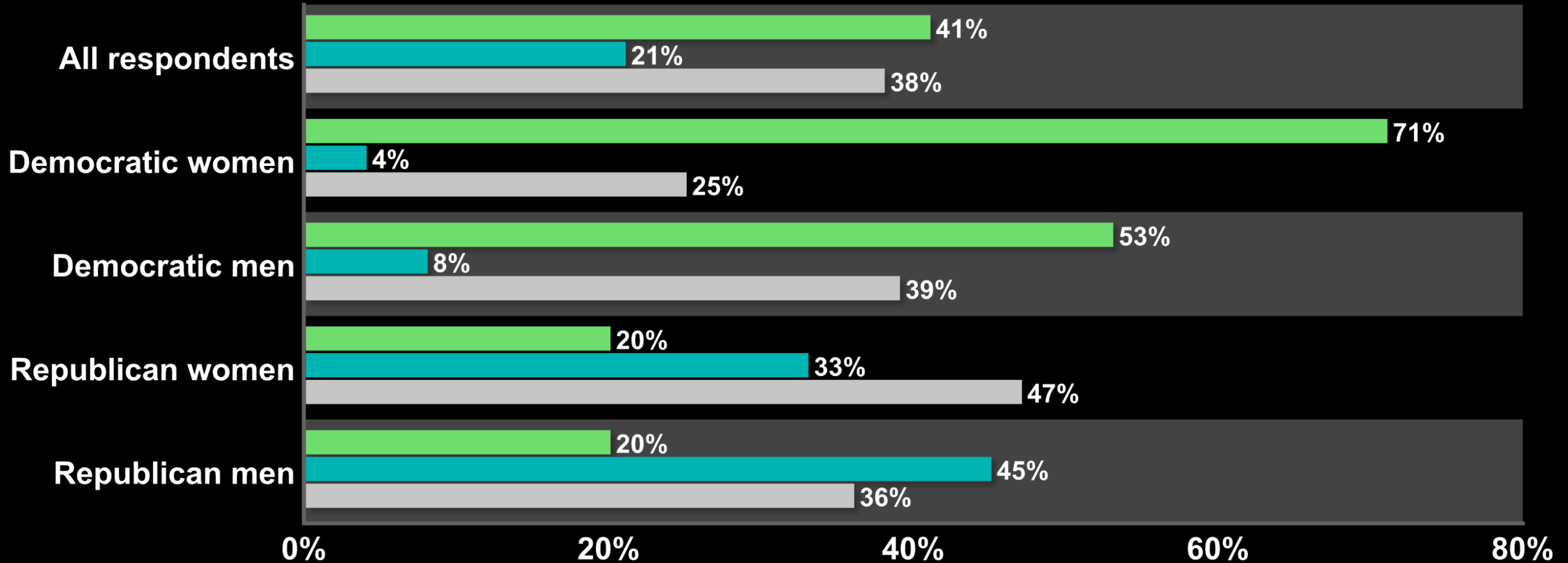
■ Serious problem
■ Minor problem
■ Not at all a problem



Source: Persuasion Strategies, National Juror Survey 2018; N = 345

Generally speaking, what is your impression of the #MeToo movement?

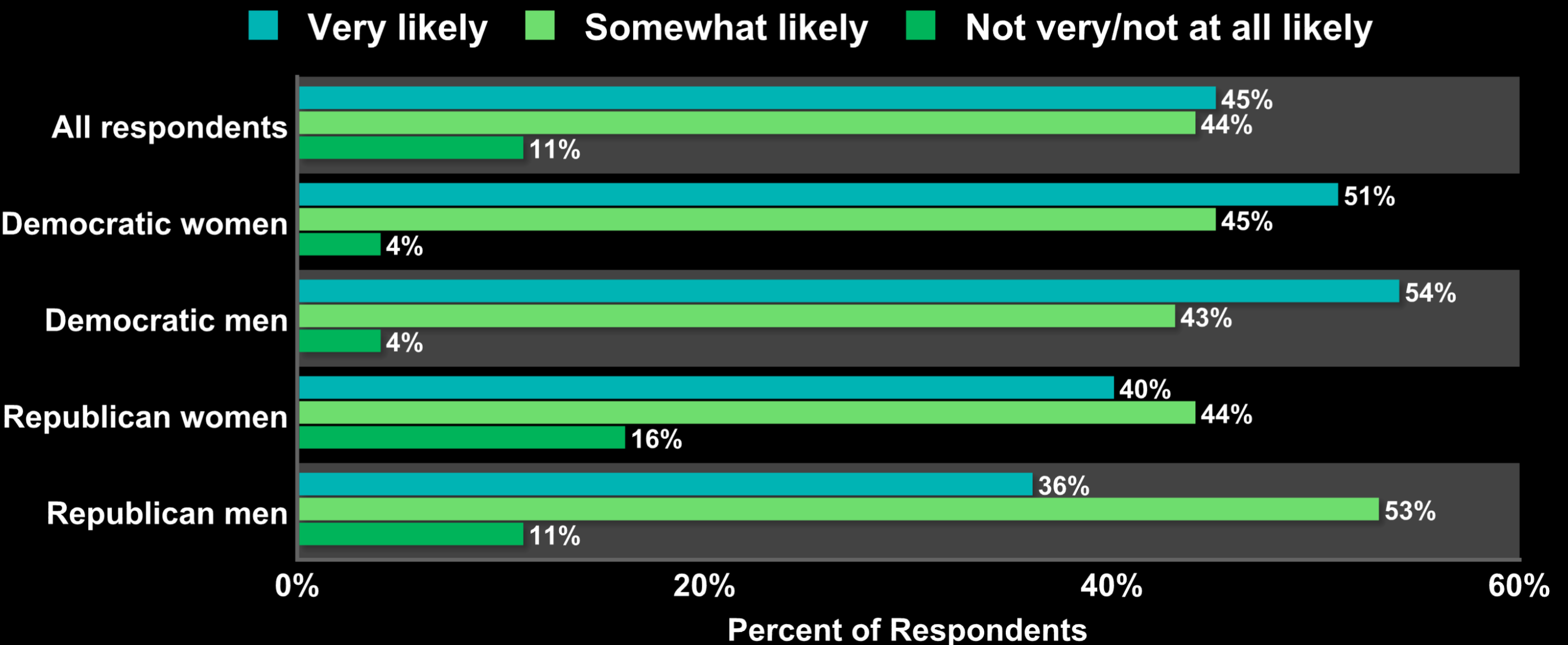
Favorable **Unfavorable** **No opinion/never heard of**



Percent of Respondents

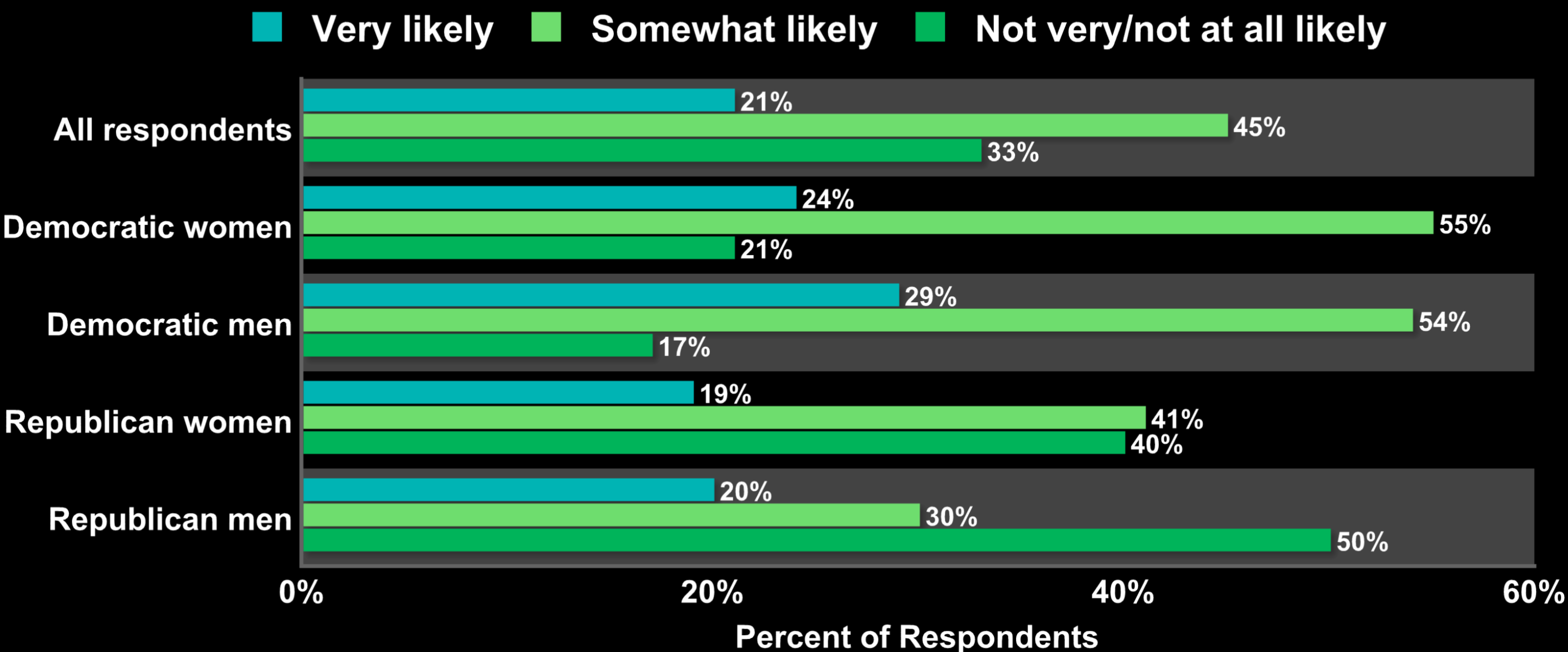
Source: Bucknell Institute for Public Policy, Perceptions of Higher Education Survey, March 26 - March 31, 2018; N = 1,000

How likely is it that the #MeToo movement will empower more women to come forward with allegations of sexual harassment?



Source: Bucknell Institute for Public Policy, Perceptions of Higher Education Survey, March 26 - March 31, 2018; N = 1,000

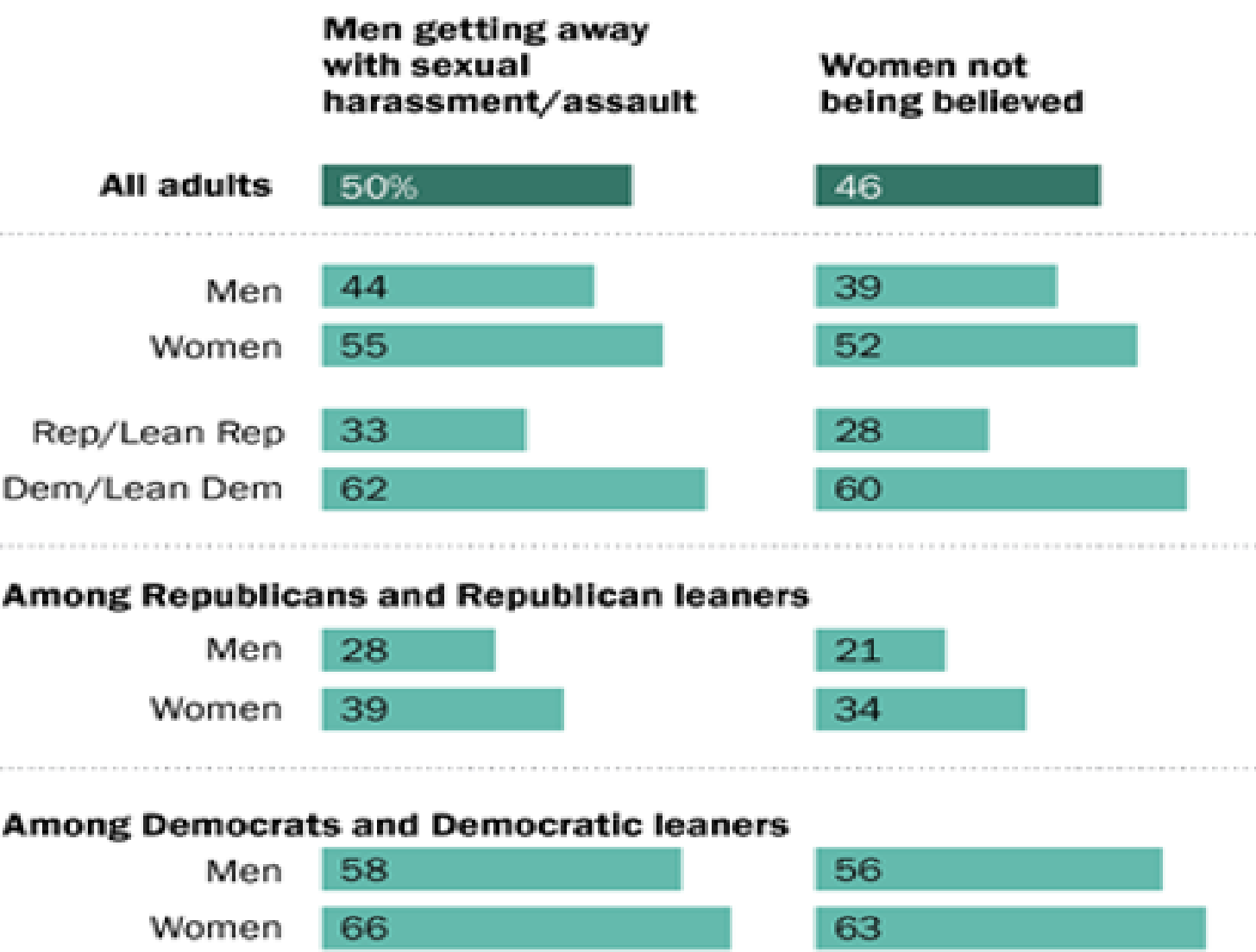
How likely is it that the #MeToo movement will lead to a decline in sexual harassment in the workplace?



Source: Bucknell Institute for Public Policy, Perceptions of Higher Education Survey, March 26 - March 31, 2018; N = 1,000

Democrats far more likely than Republicans to see men getting away with sexual harassment and women not being believed as major problems

% saying each is a major problem when it comes to sexual harassment and assault in the workplace today

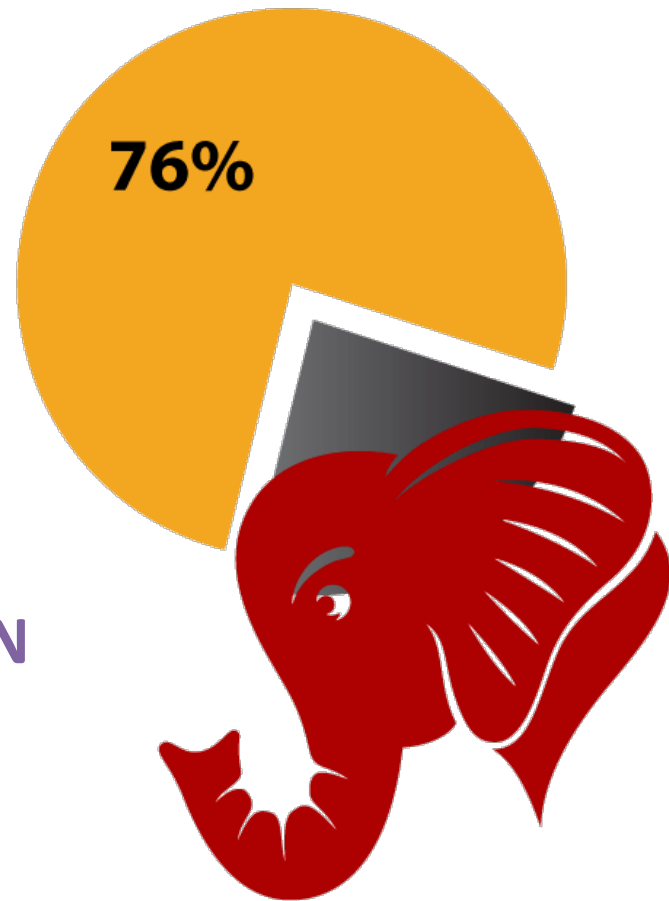


Source: Survey of U.S. adults conducted Feb. 26-March 11, 2018. "Sexual Harassment at Work in the Era of #MeToo"

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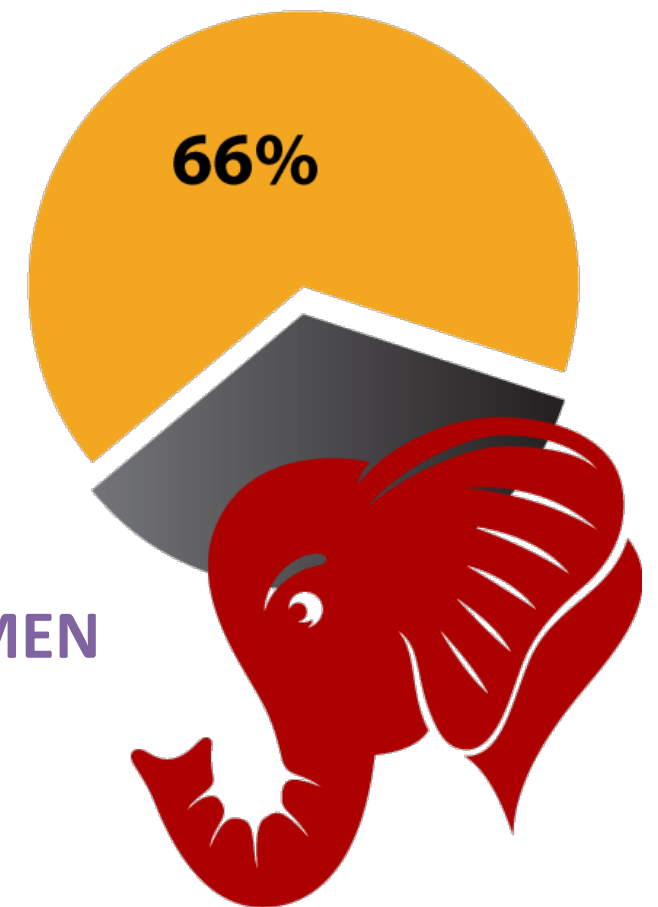
MEN



= YES

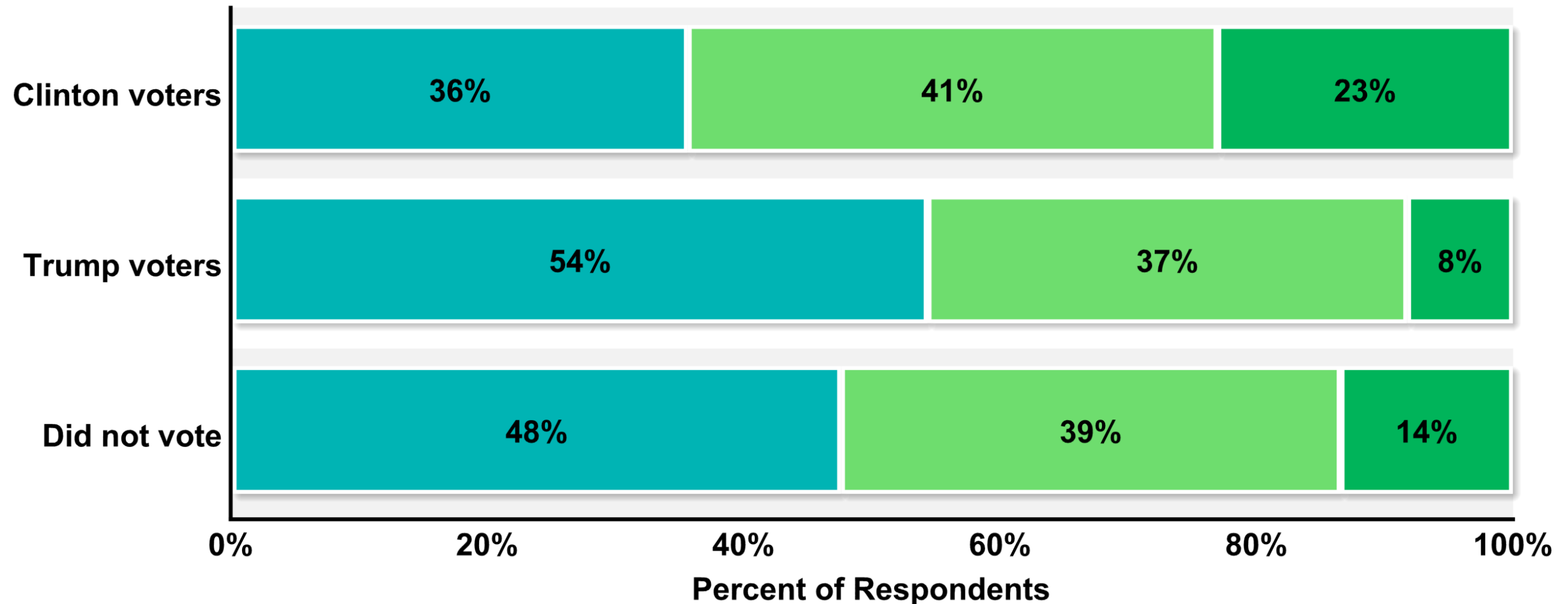


WOMEN



How do you feel about the amounts of money that juries award in jury verdicts?

■ They are too high ■ They are about right ■ They are too low



Source: Persuasion Strategies, National Juror Survey 2018; N = 345

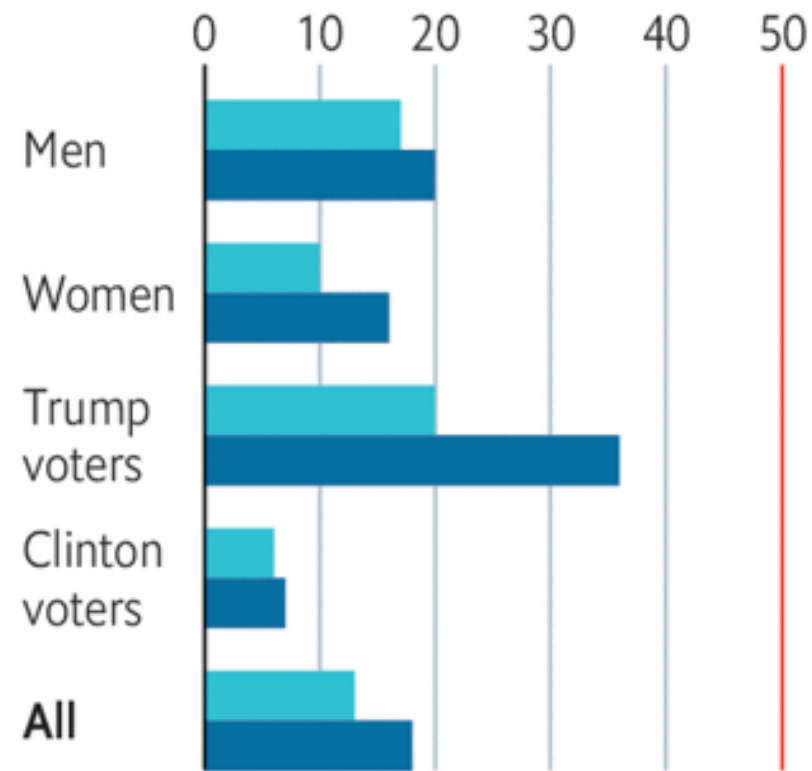
BACKLASH?

Victim blaming

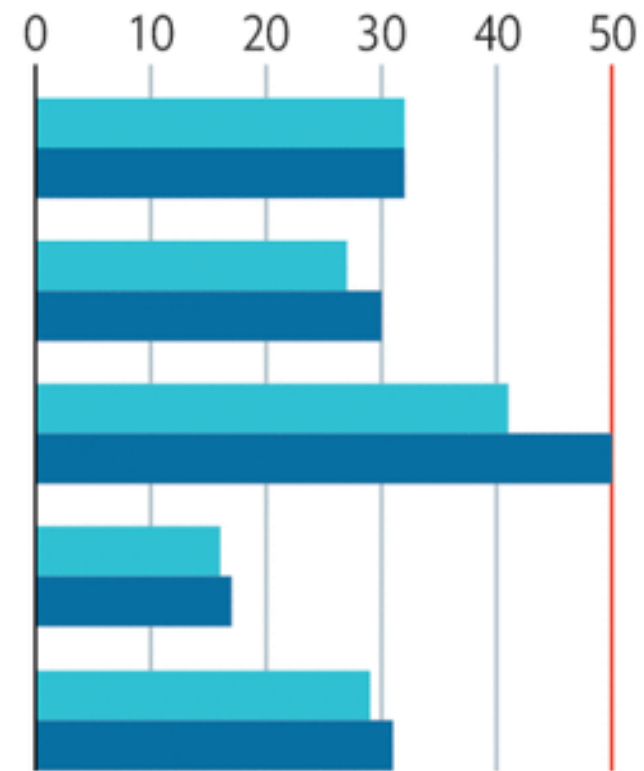
United States, % of adults agreeing

■ November 2017 ■ September 2018

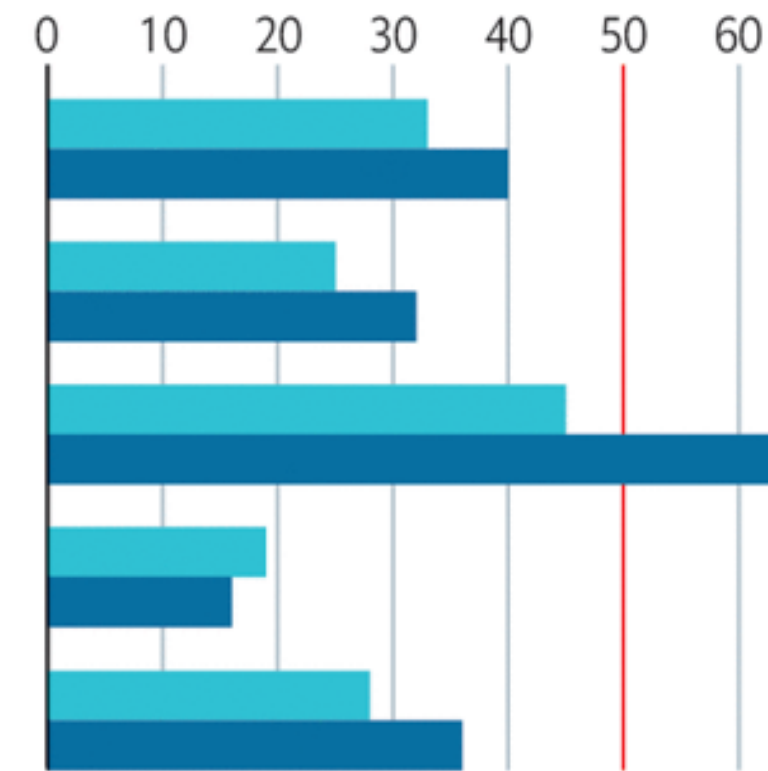
False accusations of sexual assault
are a bigger problem than
unreported assaults



Women who complain about
sexual harassment cause more
problems than they solve



Men who sexually harassed women
20 years ago should not lose
their jobs today



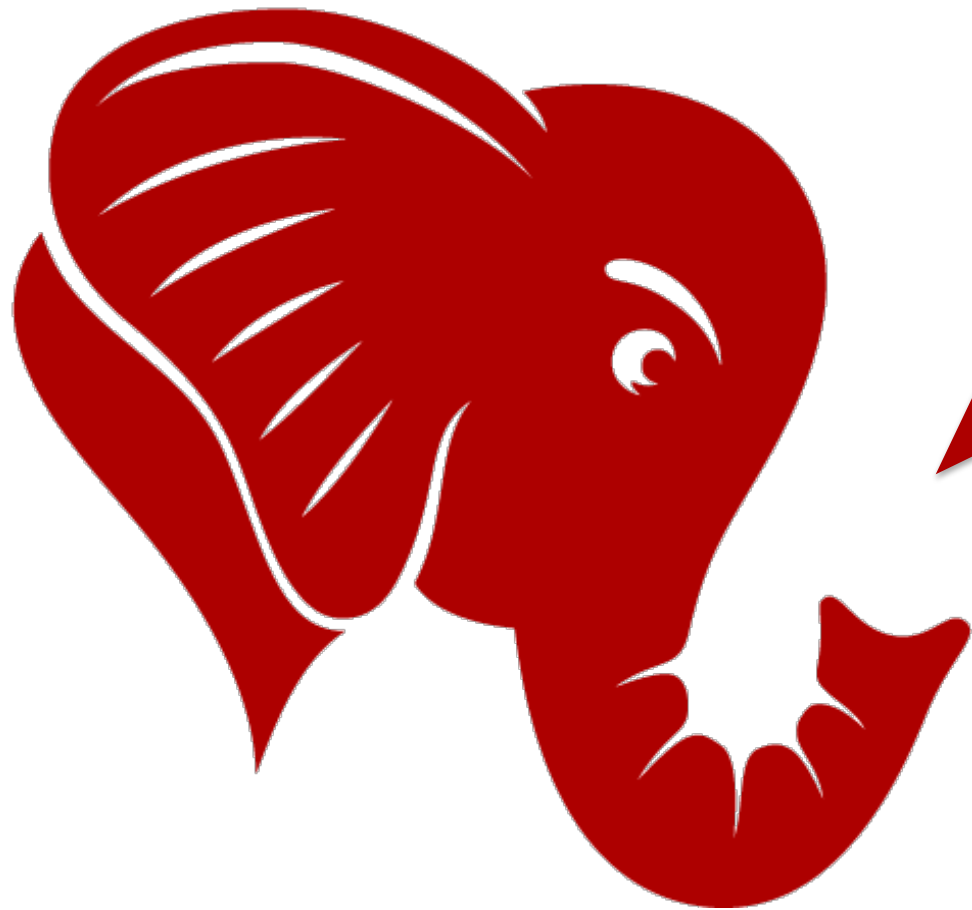
Source: YouGov

The Economist

<https://www.economist.com/united-states/2018/10/20/measuring-the-metoo-backlash>



Sentiments about **victims** have not changed for Democrats (85%), although they are *slightly less* inclined to believe the **accused** today (70%, down from 75% last year).’’



Compared to last year, Republicans are *less inclined* to believe harassment **victims** should get the benefit of the doubt (67%, down from 78%) and are *more inclined* to believe those **accused of harassment** should receive the benefit of the doubt (86%, from 80%).

As Hundreds of Child Victim Suits Are Filed in NY, Lawyers Say It's Just Beginning

More than 400 cases were filed under New York's new child-victims law, and plaintiffs lawyers say they have hundreds in the pipeline.

By Jack Newsham | August 14, 2019 at 06:03 PM



Attorney Jeff Anderson, left, points to a chart of sexual abuse perpetrators as sexual abuse victims Birdie Farrell, center, and Joseph Caramanno watch during a news conference in New York on Wednesday. Photo: Richard Drew/AP

More than 400 lawsuits were filed across New York state against the Catholic Church, the Boy Scouts and other institutions Wednesday to mark the first day of a one-year window to file historic claims of child sex abuse—and plaintiffs attorneys said many more cases are in the pipeline.

Trending Stories

- 1 **Greg Craig Is Warned: Cut the Chumminess With Former Skadden Colleagues at Trial**
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- 3 **Irell's Managing Partner, 3 Other IP Litigators Move to Milbank**
[THE AMERICAN LAWYER](#)
- 4 **Former Alito Clerk Steven Menashi Gets Trump Nod for 2nd Circuit**
[NATIONAL LAW JOURNAL](#)
- 5 **5 Miami Judges Facing Discipline: Read the Full Findings and Recommendation**
[DAILY BUSINESS REVIEW](#)

STRATEGIES IN TODAY'S WORLD OF POLARIZATION AND BELIEF DOMINANCE



#1 – Consider the Role of Dominant Narratives

WHOLE PAYCHECK

M A R K E T

W O R K E L

W O R K E L

Traditional Abuse Dominant Narratives

- Victim Blaming
- Abuse Justification
- Allegation Veracity

Rape Myth Literature





Plaintiff = the policies
are clearly not enough
to protect the *public*
given the plaintiff
victim's experience.



#2 – Pay Attention to **Authoritarianism**

Views on Child-Rearing

Respectful or
Independent

Well-
behaved or
Considerate



Obedient or
Self-reliant

Well-
mannered
or Curious



#3 - Let Some Things Piece Together







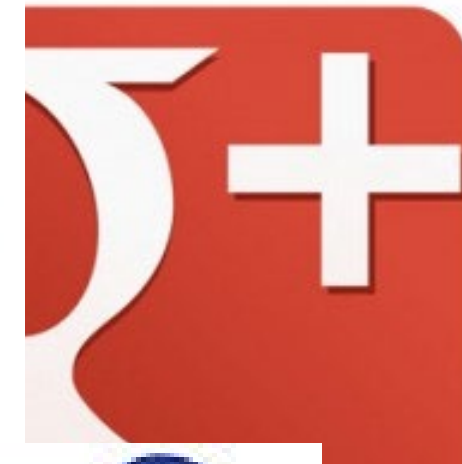
#4 – Think About Not Only the Fact Finder, But **Their Tribe**





37% v 23%
More Common

<https://today.yougov.com/topics/politics/articles-reports/2019/02/28/how-sex-abuse-scandal-impacts-catholic-church>



EXPAND THE TRIBE



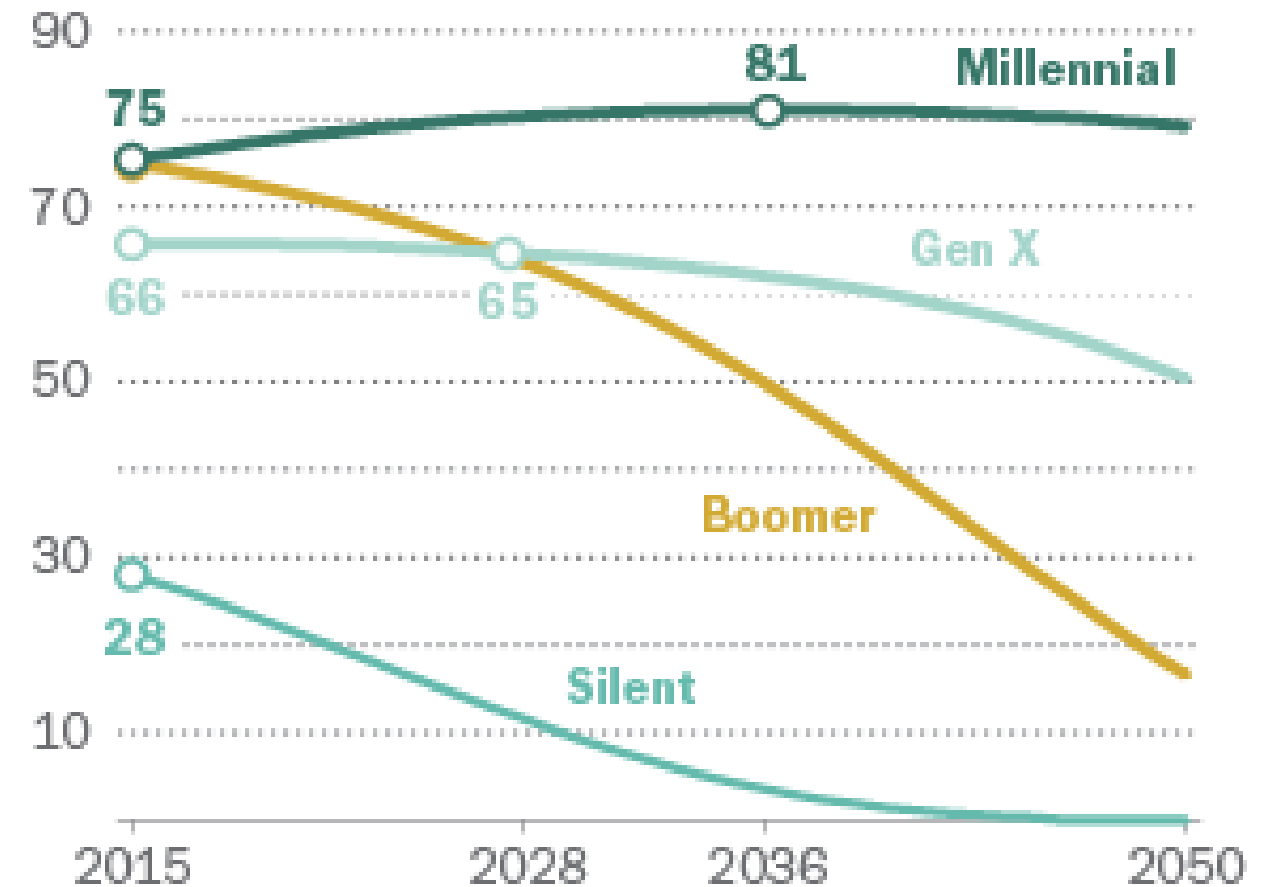


#5 – Plan for Millennials

Why Are Millennials a Buzz?

Projected population by generation

In millions



Note: Millennials refers to the population ages 18 to 34 as of 2015.

Source: Pew Research Center tabulations of U.S. Census Bureau population projections released December 2014 and 2015 population estimates

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Support for Bigger Government Highest Among Millennials

Would you rather have ...

	Smaller government, fewer services		Bigger government, more services	Depends/ DK
	%		%	%
Total	51		40	9=100
Millennial	38	➔	53	9=100
Gen X	49		43	7=100
Boomer	59		32	8=100
Silent	64		22	14=100

Note: Figures may not add to 100% because of rounding.

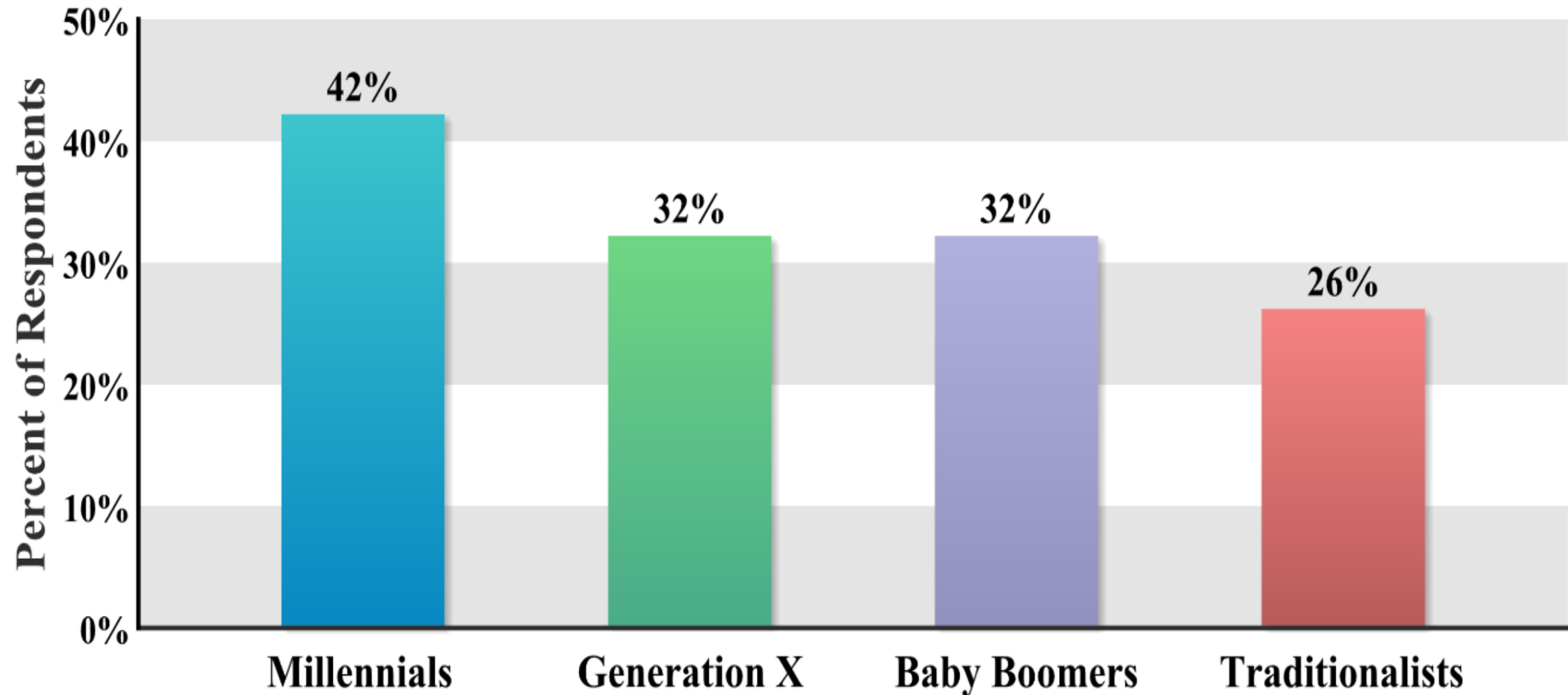
Source: Pew Research survey, Sep. 4-8, 2013

PEW RESEARCH CENTER



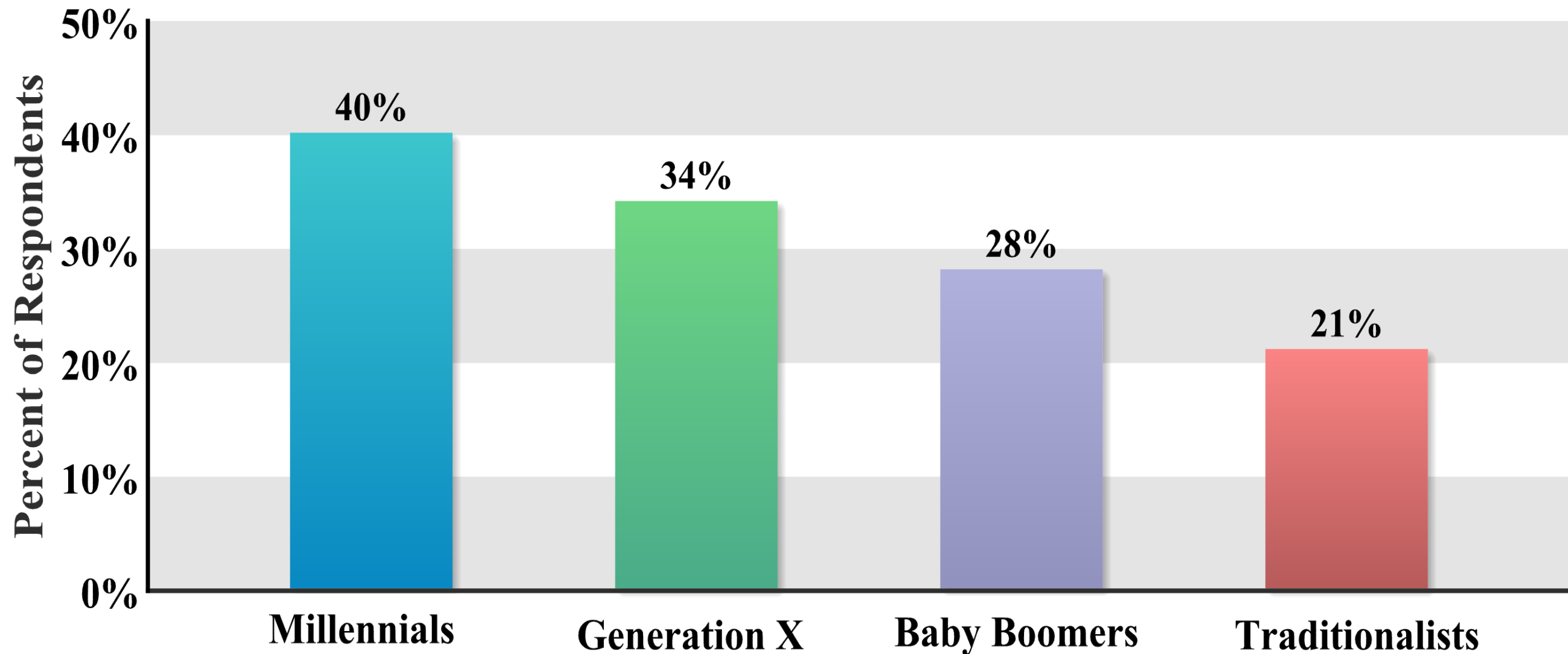
Lisa Benson

There Are Too Few Lawsuits Against Large Corporations



Source: Persuasion Strategies, National Juror Survey 2016; N=413

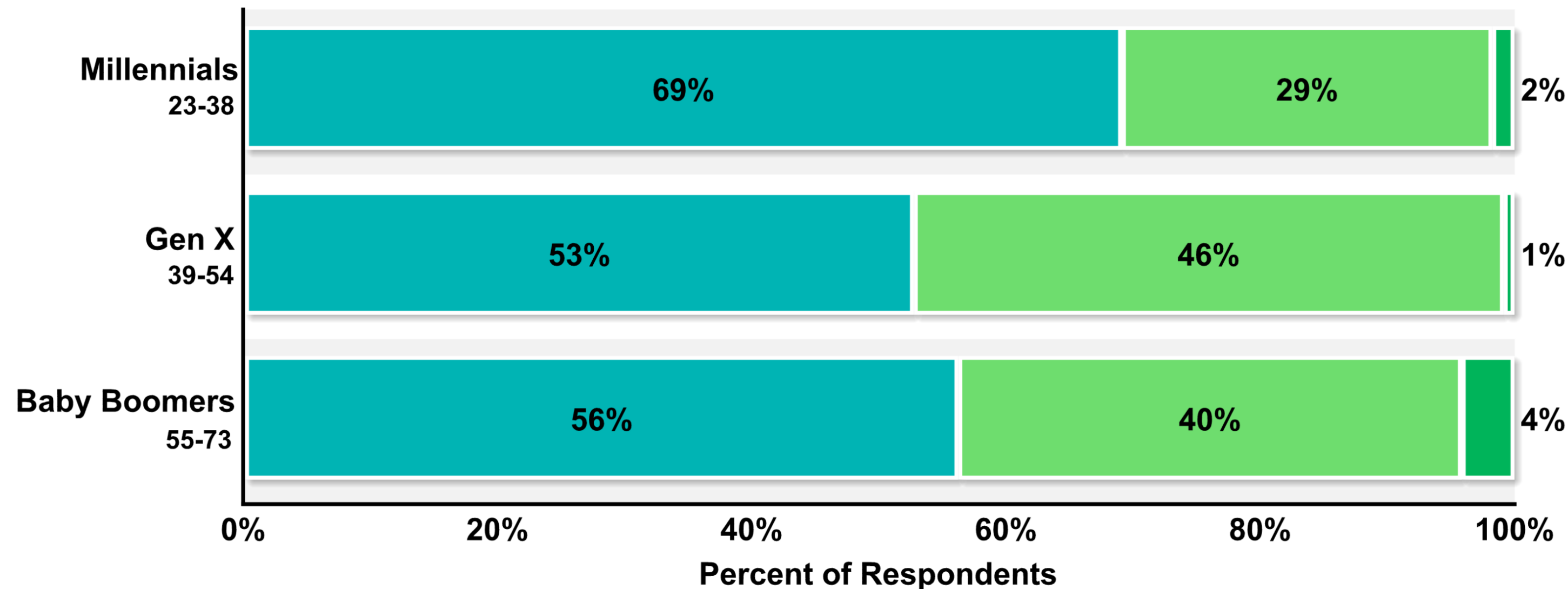
When Personal Ethics and the Law Conflict, You Should Follow Personal Ethics



Source: Persuasion Strategies, National Juror Survey 2016 - 2018; N=1,152

To what extent is sexual harassment in the workplace a problem in America today?

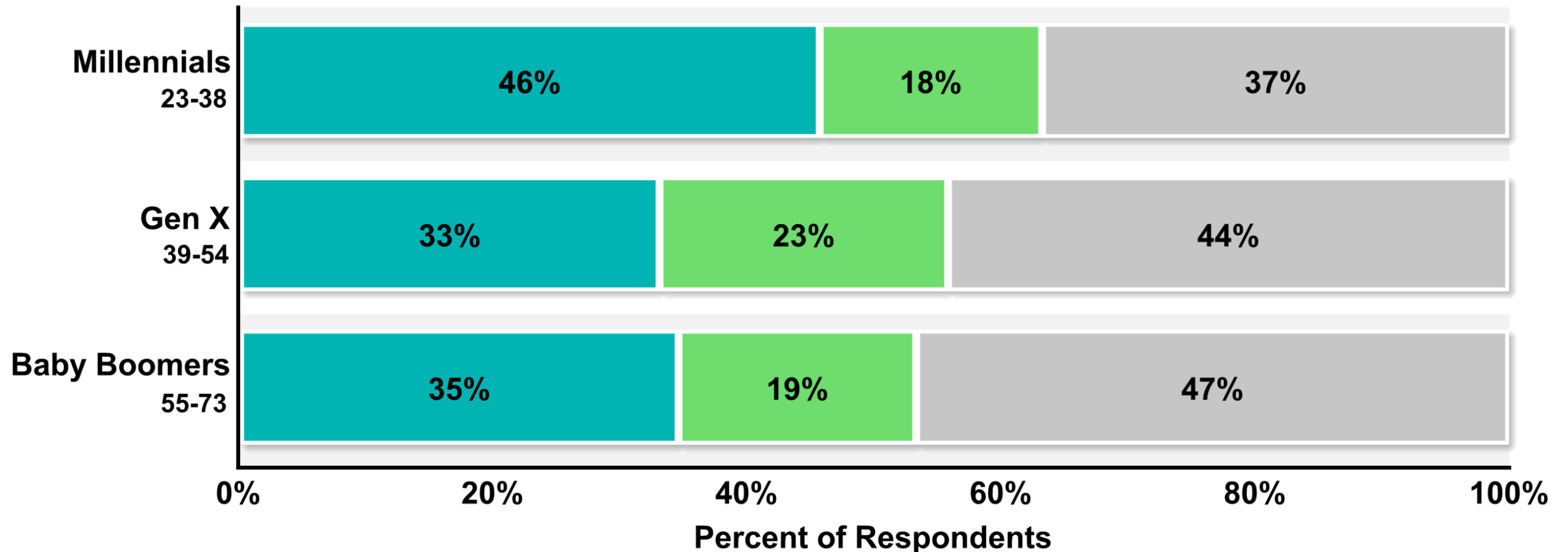
■ Serious problem
■ Minor problem
■ Not at all a problem



Source: Persuasion Strategies, National Juror Survey 2018; N = 339

A company and a former employee are in a dispute. The employee claims she was sexually harassed by a male supervisor and the company ignored it. The company claims the female employee welcomed the supervisor's attention until she was fired from her job. Then, she accused him of sexual harassment. Would you:

■ Lean in favor of the employee ■ Lean in favor of the company ■ Not lean either way



Source: Persuasion Strategies, National Juror Survey 2018; N = 339

“Two men are suing the Jackson estate with allegations of child molestation against Michael Jackson. The cases were dismissed due to the statute of limitations (i.e., the case was determined to be too old) but the men are appealing. Do you think the cases should be reopened?”



Support for reopening the cases:

Millennials 31%

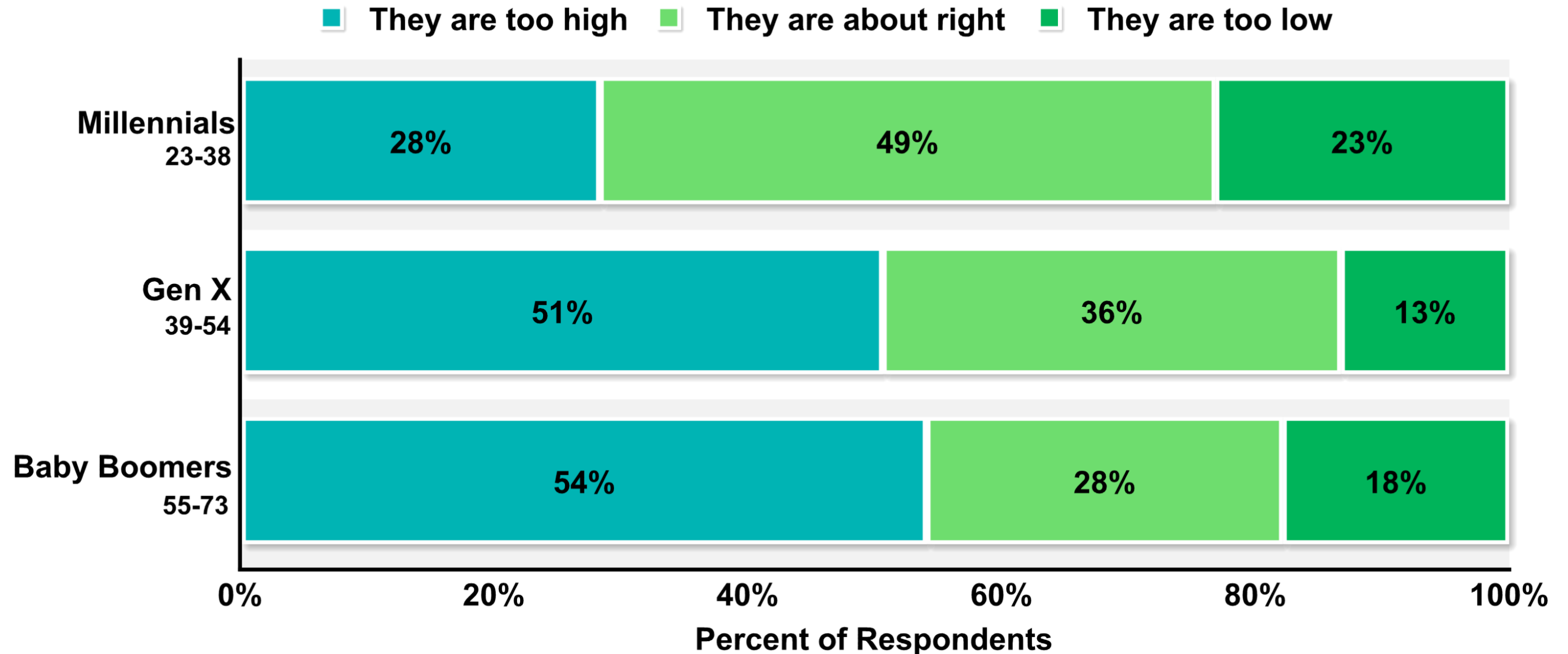
Boomers 20%

Traditionalists 19%

Gen Xers 18%

[https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/s97ov2nznt/Copy%20of%20Results%20for%20YouGov%20Omnibus%20\(Leaving%20Neverland\)%20051%2028.2.2019.xlsx%20%20%5bGroup%5d.pdf](https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/s97ov2nznt/Copy%20of%20Results%20for%20YouGov%20Omnibus%20(Leaving%20Neverland)%20051%2028.2.2019.xlsx%20%20%5bGroup%5d.pdf)

How do you feel about the amounts of money that juries award in jury verdicts?



Source: Persuasion Strategies, National Juror Survey 2018; N = 339



#6 – Teach to the **Attention** **Span**



Less Likely to Be Believed

**A properly
manufactured tire will
not detach its tread**

More Likely to Be Believed

**A properly
manufactured
tire will not
detach its
tread**



Pictures Make Things “Truthy”



SOUND BYTES ARE ALSO “TRUTHY”

- *The common denominator*
 - *A set of sticky facts*
- *The one thing the other side cannot explain*

Key Trial Technique Takeaways

- Avoid unintentional repetition
- Visuals are critical
- Themes really do matter
- 1st witness = strength of the case
- Even excellent witnesses need preparation
- Catch jurors' attention during witness testimony
- "No redirect" is powerful
- Beware interpreters



Jury Selection – Key Takeaways

- SJQs are efficient
- The approach for 20 minutes matters
 - Prosecution focused on three individuals and one group question (law professor, me, a juror who inquired about jury instructions, and no DNA jurors)
 - Defense conducted group questioning and more effectively introduced themes and weaknesses; removed one juror for cause
- “Who feels similarly?” and “Who disagrees?” are comfortable questions
- Peremptories in open court are okay

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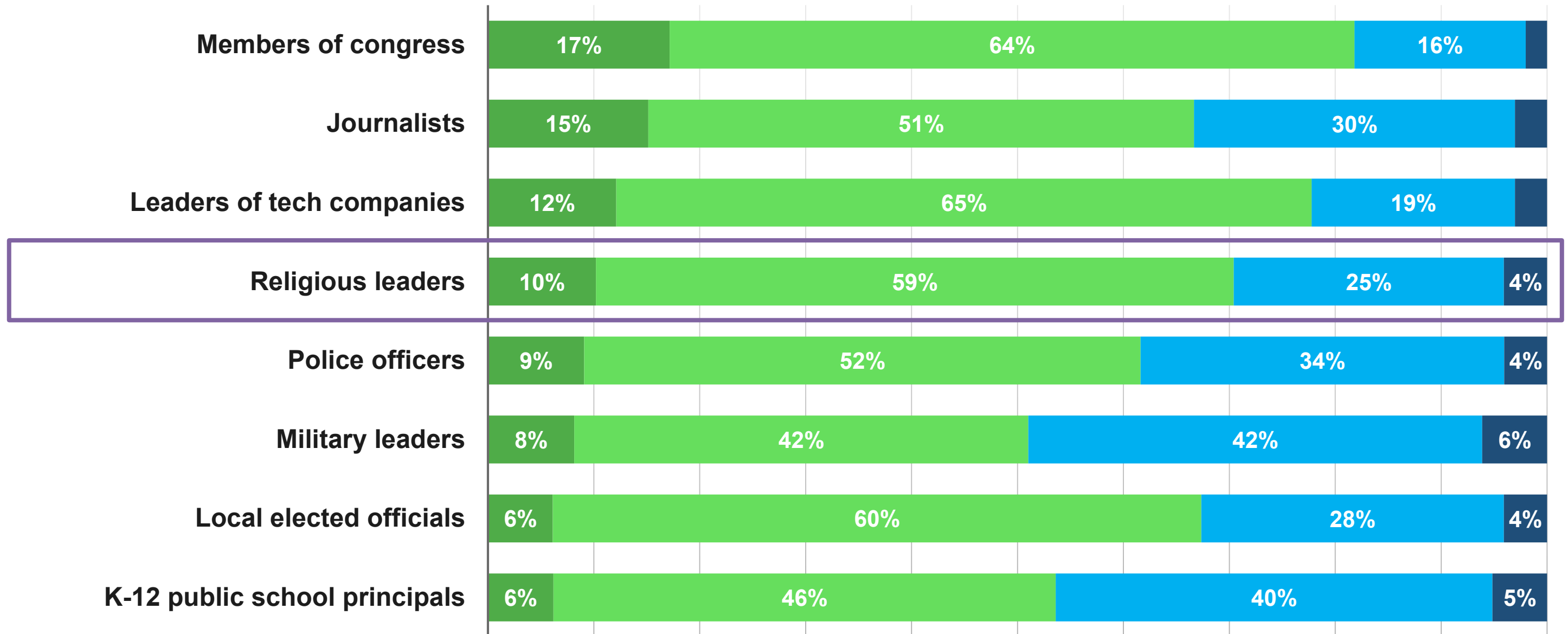


www.PersuasiveLitigator.com

Extra Slides

The Following Professions Behave Unethically:

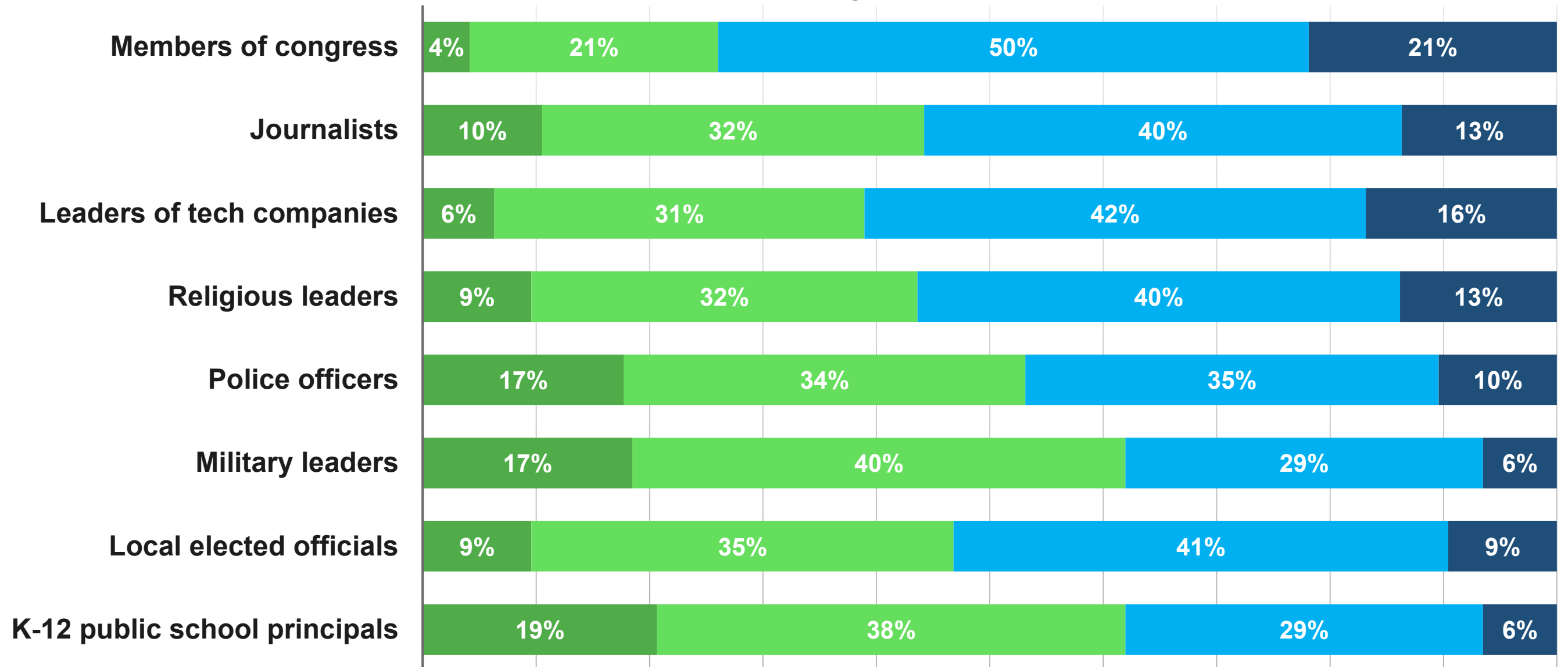
■ All or most of the time
 ■ Some of the time
 ■ Only a little of the time
 ■ None of the time



Source: Pew Research Center, *Why Americans Don't Fully Trust Many Who Hold Positions of Power and Responsibility*, Survey conducted Nov. 27 – Dec. 10, 2018, N = 10,618

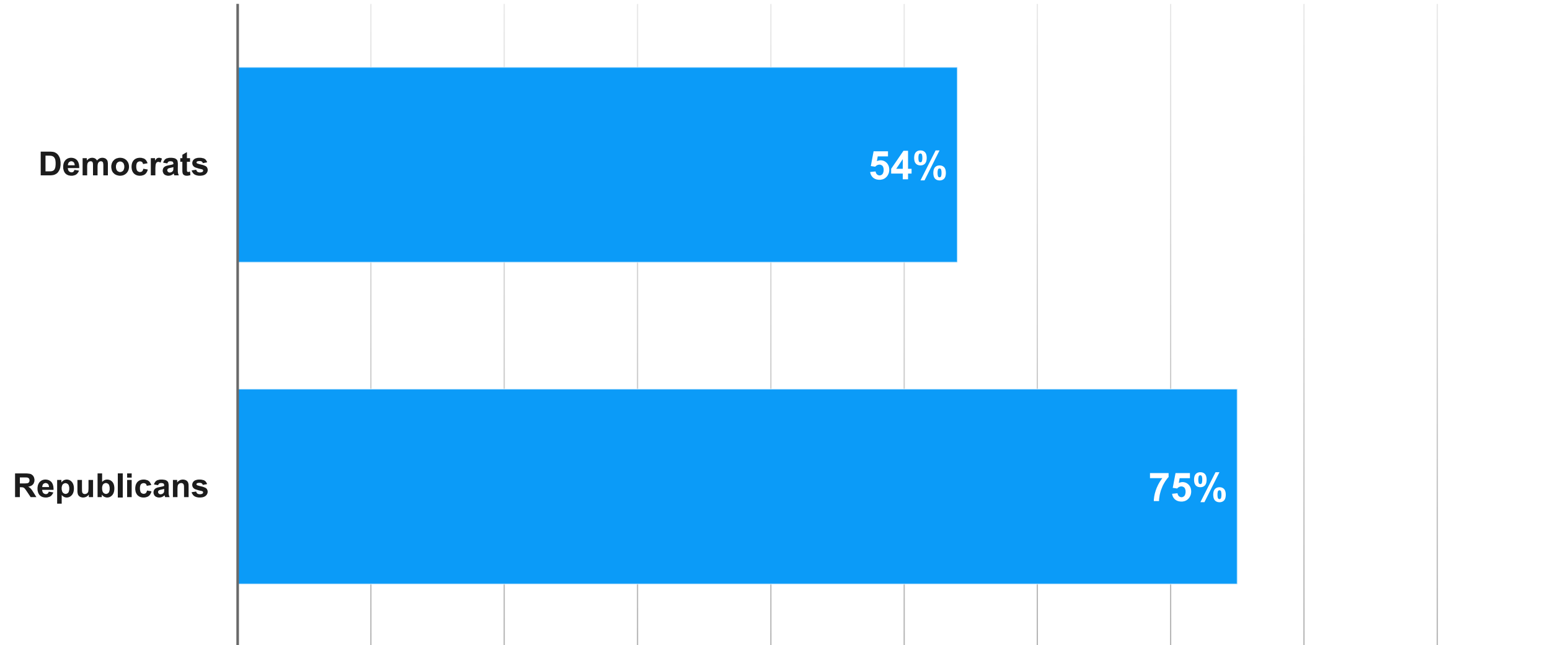
The Following Professions Face Serious Consequences When They Act Unethically:

■ All or most of the time ■ Some of the time ■ Only a little of the time ■ None of the time



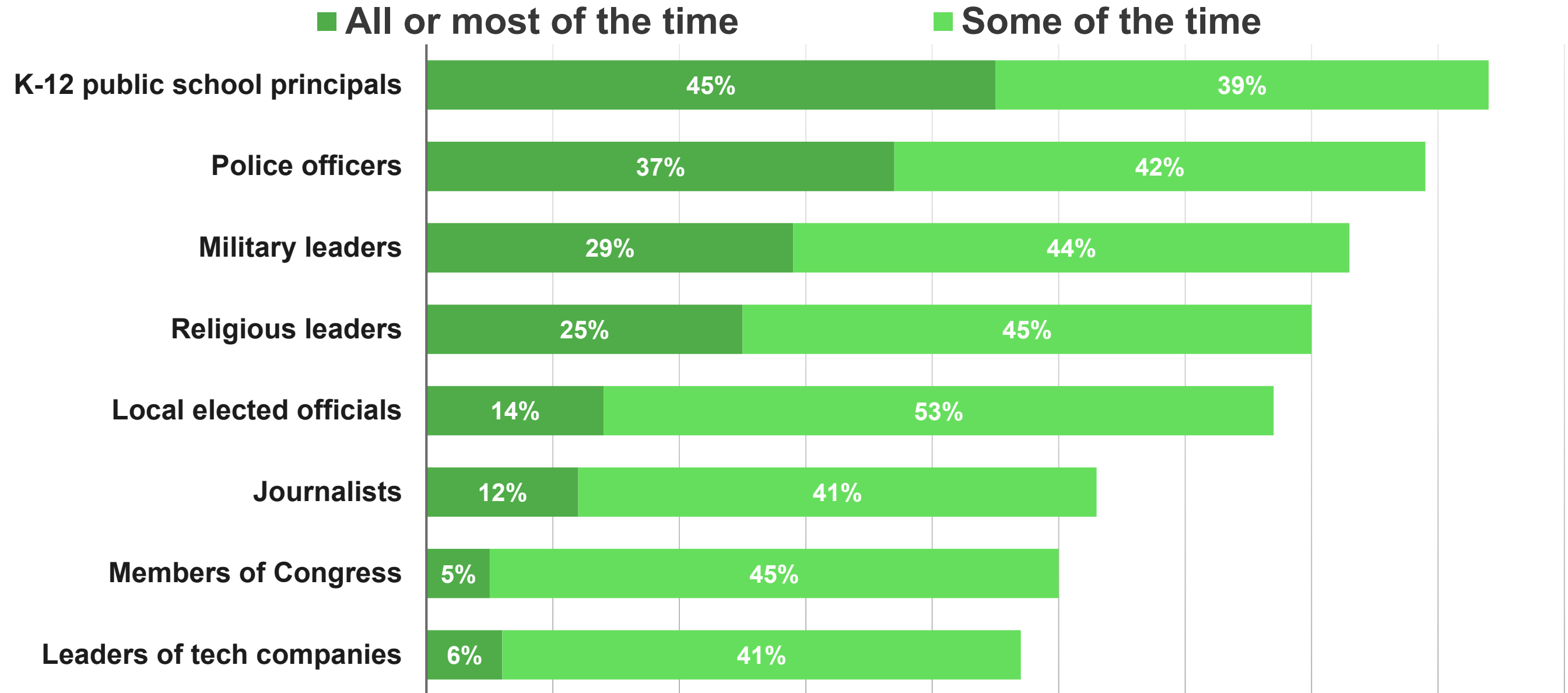
Source: Pew Research Center, *Why Americans Don't Fully Trust Many Who Hold Positions of Power and Responsibility*, Survey conducted Nov. 27 – Dec. 10, 2018, N = 10,618

Religious Leaders Provide Fair and Accurate Info to the Public at Least Some of the Time:



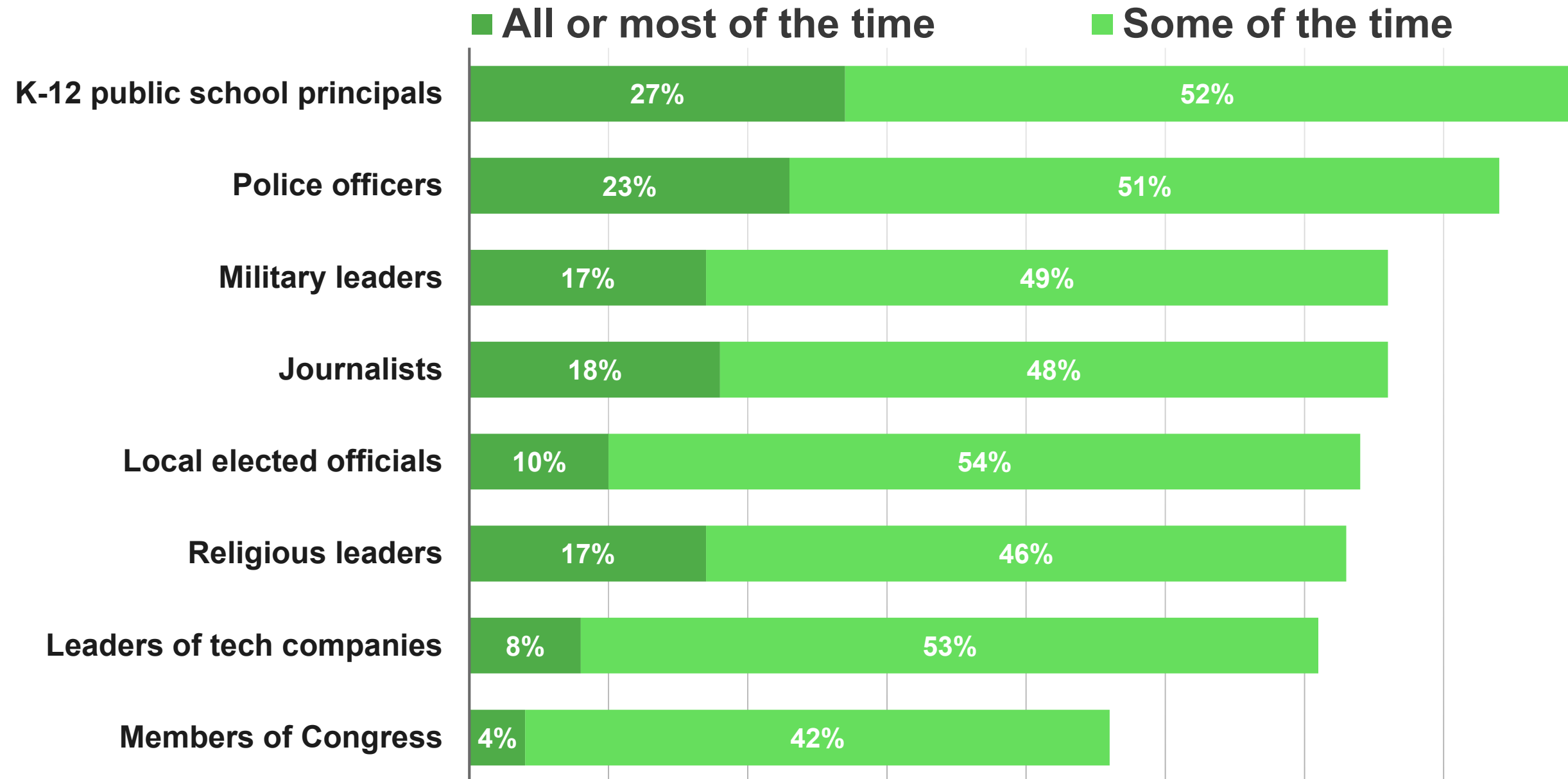
Source: Pew Research Center, *Why Americans Don't Fully Trust Many Who Hold Positions of Power and Responsibility*, Survey conducted Nov. 27 – Dec. 10, 2018, N = 10,618

The Following Professions Care About Others or “People Like Me”



Source: Pew Research Center, *Why Americans Don't Fully Trust Many Who Hold Positions of Power and Responsibility*, Survey conducted Nov. 27 – Dec. 10, 2018, N = 10,618

The Following Professions Provide Fair and Accurate Info to the Public

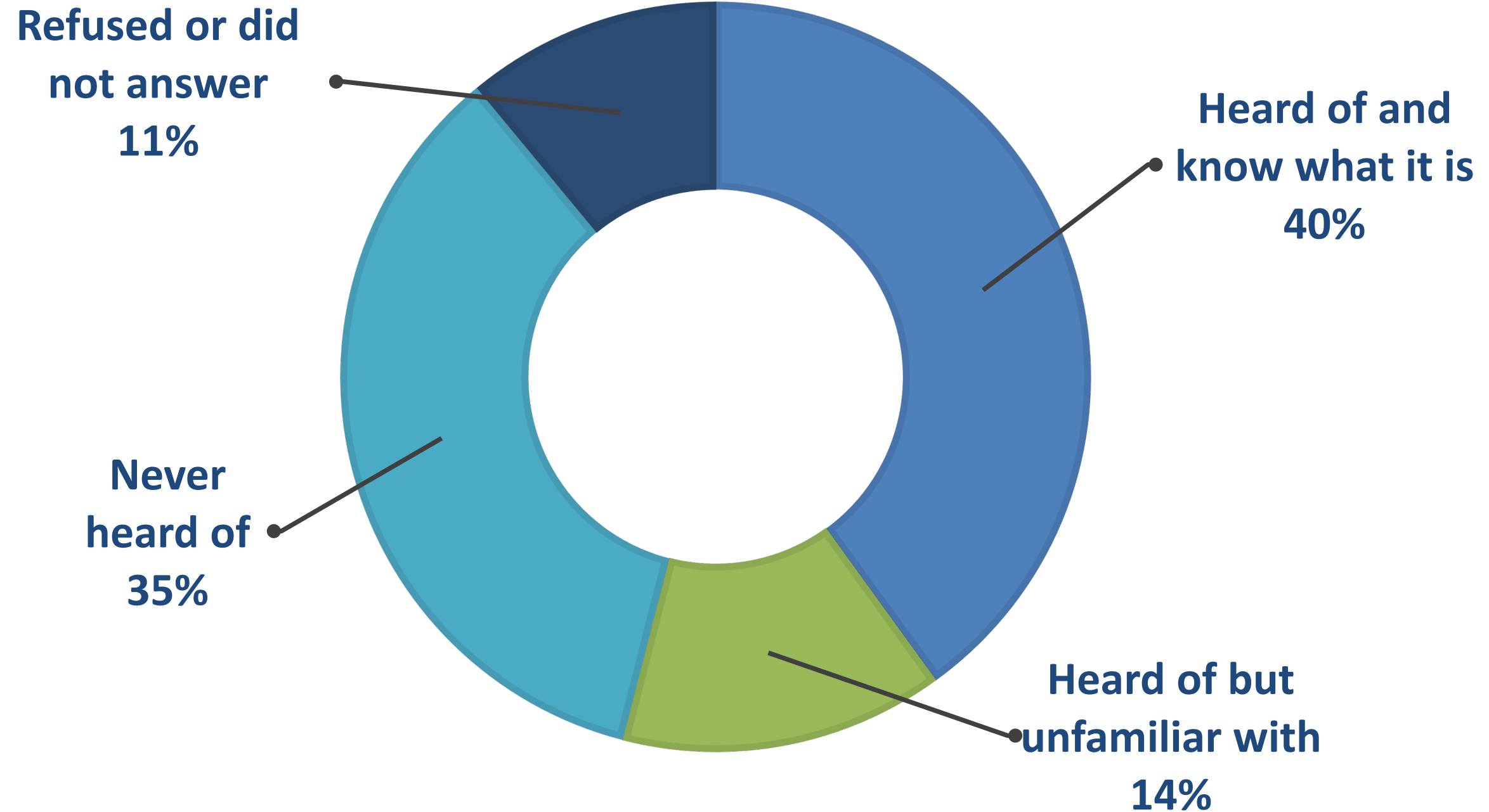


Source: Pew Research Center, *Why Americans Don't Fully Trust Many Who Hold Positions of Power and Responsibility*, Survey conducted Nov. 27 – Dec. 10, 2018, N = 10,618



79% believe recent news reports about sexual abuse committed by Catholic clergy are reflective of ongoing problems *rather than* past issues

“sexual grooming”



89% of Catholics and 81% of all adults surveyed
said the Catholic Church has been
slow to identify and address child sexual abuse.