

RESETTING THE AGENDA:  
SUPREME COURT DECISIONS AND THE PUBLIC'S  
ASSESSMENT OF THE AMERICAN PRESIDENCY

By

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Abstract: A major focus in judicial politics research has been to measure the extent to which the U.S Supreme Court behavior is constrained by the other branches of government, while leaving the Court's capacity to alter the behavior of political actors relatively untouched. This project seeks to reset the judicial politics agenda by evaluating the impact highly salient U.S. Supreme Court decisions have on the public's assessment of presidential performance and the viability of presidential candidates. Using a mixed methods approach, I quantitatively and qualitatively test the Supreme Court's influence on fluctuations in presidential approval ratings, presidential election public opinion polls, and day to day campaign donations to determine if the American population uses the information cues provided by the Court to alter the perception of their support for the presidency. I argue that the salient Supreme Court decisions will indeed have an effect on the population's evaluation of the presidency and will be exhibited through either the Affirmation Effect or the Counter-Mobilization Effect. The Affirmation Effect evaluates the Court's impact on the public when their ideological disposition aligns with the Court and encourages the citizenry to increase their support for the presidential candidate who matches the same beliefs. The Counter-Mobilization Effect evaluates the Court's impact on the public when their ideological disposition fails to align with the Court and thus out of fear that their ideology is under attack, they heavily mobilize their support for the president or presidential candidate who also ideologically disagrees. I find significant support for the Counter-Mobilization hypothesis suggesting that high salient U.S. Supreme Court decisions lead those who ideologically disagree with Court decisions to heavily mobilize their support behind the "losing president/candidate" by donating directly to the campaigns. These findings suggest the Court has an indirect impact on the presidential campaign process when it renders politically relevant decisions, and should encourage further research into the nature of the Court's influence on other branches of government.

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## CHAPTER I

### INTRODUCTION

June 28<sup>th</sup> 2012, the U.S. Supreme Court is left with the difficult task of ruling on the Affordable Health Care Act. Seeing that the passing of the Affordable Health Care Act was one of the primary achievements in the Obama administration's first term as president, the subsequent Supreme Court ruling could have a significant impact on the upcoming 2012 presidential election. While there are countless scenarios that could arise from the outcome of this case, a subset of these outcomes could include: (1) The U.S. Supreme Court affirms the Affordable Health Care Act and legitimizes the incumbent president's campaign, (2) The U.S. Supreme Court negates the new health care law and it leads to the affirmation of the challenger Mitt Romney's policies or (3) It is equally possible that counter-mobilization occurs where public opinion associated with the losing side of the Affordable Health Care Act decision creates a rally around the flag effect for those who feel their ideological disposition is being attacked by the Courts. In the end, this rallying effect could lead to a rise in support for the candidate that ideologically associates with the losing side. Ultimately, the U.S. Supreme Court rules 5-4 in favor of the Affordable Health Care Act, thus legitimizing the President's previous policies and perhaps facilitating his electoral victory. While the policy implications of the decision are

clear, we know little about the indirect influences created by the Supreme Court that stem from a highly salient decision such as this. The following pages attempts to answer a very simple research question: Do high profile Supreme Court Cases similar to that of the Affordable Health Care Act have a significant impact on the way voters assess presidential candidates and incumbent presidents?

The goal is to determine if there is an actual relationship between salient cases decided by the Supreme Court similar to the Affordable Health Care Act case and the evaluation of presidential performance or the validity of a presidential candidate. Is it possible for the U.S. Supreme Court to have a significant impact on the way American voters view presidential candidates and thus sway them to vote in a particular way? Granted, almost all Supreme Court rulings can be divided along partisan lines with at least one major political party agreeing and the other disagreeing with the decision. Thus, if a decision laid out by the Court affirms or rejects a voter's ideology or the policy platform of the president, it should elicit a reaction. The overall objective of this thesis is to determine if the populace responds to salient Supreme Court cases and provide enough evidence that the U.S. Supreme Court is capable of having a significant impact on the other branches of government. To achieve this goal, I will utilize both quasi-experimental methods and interrupted time-series analyses to conduct pre and post-tests before and after a high salient case occur. This study is set out to reset the agenda in judicial politics to generate a larger focus on the manners in which the U.S. Supreme Court impacts the other branches of government.

On the surface, this questions seems particularly simplistic and one that should be readily accessible within the literature of the political science field. Certainly there has



been research regarding the impact the U.S. Supreme Court has on presidential elections. Unfortunately for the political science literature, and luckily for my research agenda that is not the case. After a broad search through the political science literature, I have found very little focus on the ways in which the U.S. Supreme Court can alter the behavior or impact the presidential office. While obviously, there are clear-cut institutional examples like judicial review that are capable of having direct consequences on the policy making process, there has been little focus within the field on the indirect manners in which Supreme Court decisions can impact the presidency. Rather than evaluating how the U.S. Supreme Court impacts the other American branches the judicial politics field has largely focused on how the court's behavior is altered by various external actors. Whether it is congressional pressures on the court (Segal et al 2011), presidential pressure on the court through the Solicitor General (McGuire 1998, Pacelle 2006, Nicholson and Collins 2008, etc.) or public opinions impact (Mondak 1992, Gibson, Calderia, and Baird 1998, and McGuire and Stimson 2004) there is an attention deficit in regard to the indirect ways in which the U.S. Supreme Court can influence the elected branches of government that makes this particular research project interesting and necessary. The following pages will be asking questions and seeking answers to issues that have yet to be appropriately analyzed in the political science field. This study is capable of striking new ground for the field of political science as well as new avenues of influence for the judicial branch. Ultimately, I will find that the lack of focus is understandable given the extremely difficult data-limitations that I will discuss in latter parts of the paper; this is certainly a political phenomenon that is difficult to capture. While this paper solely focuses on the

relationship between the U.S. Supreme Court and the Presidency, there is certainly room for research in the other avenues as well.

The stated goal of this research project is to generate an improved understanding of the impact salient Supreme Court cases have on the public's evaluation of presidential candidates. However, what is a salient case and why is it important? For the sake of this research project a salient case will be defined as a U.S. Supreme Court decision that has received a large amount of attention from the public. To properly assess the impact Supreme Court cases can have on the public's evaluation of the presidency, it is important to only look at cases that will actually have an impact on the public. It would be relatively pointless to measure if a random U.S. Supreme Court case has an impact on the general populace given there is little chance the population would be aware of the issues before the court or care about its constitutional implications. Thus to deal with this issue, I will limit the cases studied to only those that fit within the New York Times Case Salience measurement (Epstein and Segal 2000). This particular measurement finds a Supreme Court case to be salient when it appears on the front page of the New York Times. Epstein and Segal (2000) argue that this is the most appropriate approach to dealing with salience issues because the New York Times is aimed at general national readership that avoids a regional bias. The New York Times case salience measurement is particularly useful for this paper's purposes because it measures salience on the basis of viewership. An issue is salient when a lot of people are aware of the issue and thus people have an opinion on the topic. This is extremely important to consider given that I am testing the Court's impact on how the public evaluates a presidential candidate or presidential performance.

The other side of the research question deals with measuring the public's reaction to the Supreme Court decision in question. I want to determine if a Supreme Court case is capable of having an impact on how the populace votes, feels, or decides to donate their money. Basically, I need to measure how the Supreme Court decision impacts a voter's mobilization. There are several manners in which to assess public mobilization for or against a president in office or those on the campaign trail. With this in mind, the remaining chapters of this research project will assess the overlapping research question using three different levels of analysis to measure how salient Supreme Court cases can alter the public's assessment of the president:

(1) Presidential approval ratings will also be used to assess voter mobilization in reaction to Supreme Court decisions. Due to data limitations, I will be using data ranging from 1993-2012. Looking at presidential approval ratings will allow us to maximize the limited number of salient cases by extending the measuring periods beyond the election periods. This measurement will be used to assess how Supreme Court cases alter the manner in which the populace evaluates the current president.

(2) Public opinion polls throughout the election cycle serve as the second level of analysis for this research project. Due to data limitations, I will be using data from the 2004, 2008, and 2012 presidential election cycle. The goal is to see if a high profile decision laid out by the Court provides a greater advantage to the presidential candidate that supports the decisions or the candidate who disagrees with it. Basically, the question is whether a citizen's reaction to the Court's decision leads to influxes in public opinion for the presidential candidate who also

ideologically aligns with the Court and if a negative reaction leads to influxes in public support for the candidate on the “losing” end of the Court’s decision.

Overall, the emphasis of this model will be to determine if there is a reaction from the public in response to the court and if so, determine the direction.

(3) The final research strategy used to test salient cases impact on presidential evaluation will be campaign donation data. Due to data limitations, this model is restricted to the 2008 and 2012 election cycle. Given the small number of salient cases during this time period, a more qualitative approach focusing on an interrupted time series analysis will be utilized. While the small number of cases limits the generalizability of the findings, being able to look at how the populace decides to spend their money on a campaign provides an extremely useful and tangible analysis of the impact the Court can have on presidential elections. Is there a spike in campaign donations after a high profile Supreme Court case? If so what are the most likely cases to provide the candidates a boost and why. Given the direct nature of campaign donations as compared to participating in a public opinion polls, it is highly likely that the campaign finance data used in this study will provide us with the most useful results.

The general hypothesis advanced is that high salient U.S. Supreme Court cases will have an impact on the American populace’s assessment of presidential candidates and current presidents in office. I argue that the Court’s general influence can be manifested through two equally possible and non-competing scenarios. A U.S. Supreme Court decision, depending on its ideological direction and the ideological disposition of

the voter will create either a positive or negative reaction to the decision and the candidates the decision aligns with. Below is a description of these two potential outcomes:

- (1) Affirmation hypothesis: in this scenario, the U.S. Supreme Court case affirms a set of ideological beliefs and thus motivates the populace to engage in support of their desired candidate. As a result, there should be a spike in public opinion ratings/campaign fundraising or presidential approval for the candidate that more closely aligns with the direction of the decisions.
- (2) Counter-Mobilization Hypothesis: in this scenario, high profile Supreme Court cases have an adverse effect creating a more negative response motivating the opposite party to increase their support of the candidate who does not align with the direction of the decisions. This can be associated with a rally around the flag effect, where when individuals' are threatened it can lead to a highly motivated reaction that mobilizes behind the presidential candidate that is most likely to protect their particular political views.

The subsequent chapters will provide a more in-depth analysis of the general arguments displayed in the introduction section of this thesis. Specifics concerning the current state of the political science literature, justifications for theoretical assumptions, research methodology, testing results, and conclusions will follow.

Chapter 2 provides a comprehensive evaluation of the literature within the political science field. Due to the complicated nature of the thesis topic in question, I am obligated to discuss many different facets of the fields literature including; (1) how the U.S. Supreme Court impacts presidential behavior, (2) how the presidency alters the U.S. Supreme Court's behavior, (3) U.S. Supreme Court and public opinion literature, (4) American political knowledge, and (5) U.S. Supreme Court and case salience literature. Within this chapter I will also discuss the various holes within the judicial politics literature. As discussed earlier, there is a substantial gap in regard to the influence the U.S. Supreme Court has on other governmental actors.

Chapter 3 discusses the theoretical justifications that constitute the argument concerning the influence of salient U.S. Supreme Court cases have on the presidency, along with the overlapping hypotheses that shape the remainder of the paper. Chapter 3 presents the general theory utilizing conclusions from the political science literature, and shapes the general expectation that the Courts do indeed impact the presidential evaluation process and that their decisions can alter the outlook of the campaign season.

Chapter 4, 5, and 6 present the data, testing methods and results that are associated with Models 1, 2, and 3. Chapter 4 will discuss Model 1, which tests the influence highly salient U.S. Supreme Court cases have on presidential approval ratings. Chapter 5 analyzes Model 2 which concentrates on a similar relationship but focuses on the court's impact during presidential election cycles using public opinion data. Lastly in Chapter 6, describing the data, testing methods and results for Model 3, analyzes the relationship between high profile cases and the rate of change in campaign donations to presidential campaigns.

Chapter 7 summarizes the findings from chapters 4, 5, and 6 and ultimately describes the general conclusions that come from this study along with its implications on the political science and judicial politics field. In the end, I find support for the notion that the U.S. Supreme Court has a counter-mobilizing influence over the presidential evaluation process during the election cycle. Model 3 using day to day campaign donation data provides support for this notion and clearly depicts the influence of the U.S. Supreme Court by finding strong support for the counter-mobilization effect in Supreme Court cases during the 2008 and 2012 presidential cycle. It would appear that when the U.S. Supreme Court makes a highly salient decision, the side that ideologically disagrees with the Court's decision is more likely to increase their support for the candidate who also disagrees with the decision. While there was also some support for the Affirmation effect, there was not enough to claim that it has a consistent role in the court's influence leading me to suggest more research in this area Overall; I find little support for the Affirmation hypothesis, but strong support for the Counter-Mobilization hypothesis. This suggests that American voters are likely to become politically mobilized when the U.S. Supreme Court submits a decision that fails to ideologically align with the citizenry.

## CHAPTER II

### LITERATURE REVIEW

Do salient U.S. Supreme Court cases have a significant impact on the way voters assess presidential candidates? If so, is this effect one of affirmation which leads the winning party to increase its support for the president who ideologically aligns out of confirmation of their ideological beliefs through the credible U.S. Supreme Court, a negative/adverse effect which motivates the losing party in effort to protect their ideological beliefs, increase its political support for the candidate who aligns with the losing side or both? These are the primary questions of contention within this particular research project. However, prior to accessing these questions directly, it is important to have a clear understanding of the political science literature that will shape the theories and research design in the later chapters.

The following will first focus on the literature concerning the relationship between the U.S. Supreme Court and the presidency. I will contend that the political science field has limited its focus to only one side of this relationship: how the presidency impacts the behavior of the U.S. Supreme Court. I argue that the adverse side of the Supreme Court-Presidential relationship needs to be examined much further. First, I depict the literature's limited focus on the Court's ability to impact the presidency.



Second, transitioning to the other side of the relationship to discuss topics concerning the impact the Presidency has on the Court's behavior along with its implications on the study in question. Third, focus will shift to look at the literature's assessment of the relationship between the U.S. Supreme Court and public opinion. This study will find that this side of the political science literature does not suffer from the one-sided deficit described above and shows that both sides of the relationship can be evaluated. Fourth, once it has been fully determined that there is a gap in the judicial politics literature calling for this research project, I will shift my focus to discuss political knowledge in the U.S. and how it impacts the average citizen's capacity to evaluate the presidency through Supreme Court behavior. Lastly, the focus will swing to discuss differing measures of case salience and its relevance to the study concerning the U.S. Supreme Court and the presidency.

### **U.S. Supreme Court's Impact on the Presidency Literature:**

This study seeks to evaluate how the U.S. Supreme Court can impact voter evaluation of presidential candidates or president's in office, however this has not been a focal point for the field. The literature in regard to the manners in which the Court alters the behavior of the executive branch is limited at best. While this makes it difficult to formulate informed political theory, it means that this is an area of research that is in need of attention and I argue that my research design will help fill in this particular gap.

While there is certainly a gap in the literature which makes it difficult to formulate a literature review around this specific topic, there are few studies in the literature that focus on the potential ways the U.S. Supreme Court can alter presidential

behavior or alter the public's evaluation of the president. Ross (2002) chronologically tracks the prominence of judicial issues in past elections from 1924 to 2000. Similar to Lasser (1988) Ross (2002) finds that judicial issues rarely play a prominent role in presidential campaigns and elections and argue that voters show little awareness of judicial issues or the knowledge capacity to respond to these stimuli. Ryden (2002) counters the claims of Lasser (1988) and Ross (2002) by arguing that since *Baker v. Carr* (1962) and clearly shown in *Bush v. Gore* (2001), the U.S. Supreme Court has not shied away from dealing with important political questions, and has seen its presence grow in the electoral realm.

I would argue that there is an inherent flaw with Lasser (1988) and Ross (2002) that leads them to their conclusions. In both of these studies, they focus on all judicial issues that occur during the campaign and fail to control for cases of low salience. The research design utilized in this particular study will evaluate the relevance of judicial issue that is readily salient to everyday voters through the New York Times Salience measure. Ross (2002) concedes in his own article that growing public awareness of judicial issues will ensure the court's growing role. Thus, by only looking at cases that people are likely to be aware of and understand, I contend that judicial issues will have a larger impact on the voter's calculus than found in Lasser (1988) and Ross (2002).

Given some of the methodological issues associated with Ross (2002), there are still several aspects and conclusions within the study that are useful for the sake of this particular research project, especially when it comes to the Court's relationship with the polarization literature. Ross (2002) argues that the increasing polarization of political parties would make it easier for voters to discern the two competing sides in a Supreme

Court case and that with the cases clearer to interpret for the public and the parties clearly aligning with the issue at hand, it is much easier for the case to alter the voter's decision or evaluation of the presidential candidate. The polarization of political parties in the recent years should provide the U.S. Supreme Court higher levels of influence on this phenomenon which could also lead to different results than from previous years. Another reason why rise of party polarization is an important factor to consider is that it can lead to voters projecting ideologically conservative or liberal positions not taken up by the presidential candidate in question to the U.S. Supreme Court case. I bring this up because not all salient cases will be politically relevant or will have any direct link to the presidential candidates in question. However, even when there is little link between the case and the candidates, it is still possible for voters to project what they expect and how the candidate would behave on the basis of partisanship. Therefore, the escalation of polarization potentially provides the court with influence it did not previously hold. This notion of party polarization in the political realm today is strongly supported in the literature by Abramowitz (2011), Niemi, Weisberg, and Kimball (2011), Hetherington (2011), etc. These pieces of literature all contend that U.S. political party system has become increasingly polarized with the parties moving toward the more extreme ends on the political spectrum.

Ross (2002)'s conclusion that the U.S. Supreme Court does not play a role in the campaign process ignores the idea that the lack of tangible evidence showing voter response to Supreme Court cases could also be explained by the fact that judicial decisions can be muted by the notion that they simply reflect how a voter already feels. For example, a voter whose support of Gore was based upon his or her perception that

Gore was more pro-choice than Bush was not likely to prefer Gore merely because Gore may have been more likely than Bush to appoint pro-choice judges to the federal courts. This does not mean that the case had little impact on the voter; it just means that it confirmed what they already believed. This confirmation by a highly credible institution could lead to other forms of political participation such as donating to a campaign or increased support through public opinion. All of this will be evaluated in the latter pages.

Similar to Ryden (2002) and Ross (2002), Stephenson Grier (1999) analyzes the intersection of Supreme Court decisions and presidential elections while arguing that the Court is capable of altering the campaign process. Stephenson Grier argues that a primary function of the Court is to facilitate the definition and clarification of candidates and party positions on critical issues in the campaign. What the Court says on a major issue such as the role of the government in health care can make it easier for parties and candidates to sharpen their issues and clarify opposing positions. Stephenson Grier is making the point that the courts can play the role of the agenda setter. This notion is strongly supported in the literature through Franklin and Kosaki (1989), Johnson and Martin (1998), Hoekstra (2000). An issue that is not originally in the limelight during the campaign can be brought to focus through a high profile decision and subsequently altering the way voters evaluate a candidate. The Supreme Court's decision and becoming a major news story makes it easier for voters to obtain information and thus make a decision (Dalton and Wattenberg (1993). This decrease in information costs created by the Supreme Court decision could have an impact on the voter's evaluation of the presidential candidate (Downs 1957).

A key proposition submitted by Stephenson-Grier that is strongly supported in the U.S. Supreme Court literature is the notion that the Supreme Court is most likely to receive public attention in a negative light. It is found that the court is more likely to become ensnared in partisan combat when it has negated, rather than upheld a policy choice made by a state government, another branch of government or diverges from the ideological preferences of the public (Durr et al. 2000). This means that candidates running for office are more likely to react negatively when a law is ruled unconstitutional than when it is simply upheld. This is reflected in separation of powers literature such as Segal et al (2011) that find that the Supreme Court is less likely to utilize judicial review when the legislation in question is ideologically distant from congress and the president (Segal et al 2011). This is a political calculation to avoid attacks from the elected branches of government that can alter the institutional integrity of the court. This notion of negative attention to the courts in a campaign is important because it can formulate the public's response. Mostly negative attention could mean that the public is more likely to respond to a Supreme Court case only when the court is attacking their ideological disposition, creating a rally around the flag effect. If the court negates the policy of a certain group of people it could bode well for the presidential candidate that aligns with the losing side.

Becker and Feely (1973) still evaluating how the Supreme Court alters the presidency comes at the question from a different perspective using an empirical approach to Supreme Court decisions that alter the political process. Becker and Feely (1973)'s The Impact of Supreme Court Decisions is the only empirical evaluation of how the Supreme Court impacts the behavior of the other branches of government. Are

Supreme Court decisions capable of altering the political process? While the study is certainly outdated, this is a similar question to the one I am asking. Becker and Feeley (1973) find that the court has rarely succeeded in using judicial review to prevent the president and Congress from gaining any major policies on which they agree. Citing examples such as the failed opposition to the New Deal policies, the court has struggled to put up a fight against the elected branches of government. The only success the court has seen is in the short term delay of such policy goals. While this is a bleaker look on how the court alters the policy process, it does provide a window in which the court alters the presidency's behavior. Given the short window in which a campaign is conducted, the court could alter policy behavior during the campaign period, thus altering how the public evaluates the president.

Clearly, the literature regarding the Supreme Court's impact on the presidency in and out of the campaign process is limited in scope; however it does come to some important conclusions that will impact the theories utilized in the next chapter. In summary, I have determined that (1) the field is divided on the level of impact the Courts can have on presidential campaigns. Some argue that it does not have an impact while others contend the courts influence is potentially growing. (2) The field has yet to study the extent of Supreme Court's influence through the lens of salient cases. (3) The increasing party polarization in the U.S. could have a significant impact on voter evaluation of presidential candidates making it easier for them to formulate ideological stances. (4) The Court can act as an agenda setter that brings new issues to the forefront during a campaign, thus making it easier to gather information. (5) Public reaction to Supreme Court decisions tends to be focused more through negative attention.

Campaigns are more likely to mobilize an effort to demonize the court if it rules a law unconstitutional or if it negates one of their policy stances more so if the court is affirming their beliefs or stances. This means that a rally around the flag effect will be more likely to occur than a confirmation effect. Lastly (6), the Supreme Court's window of influence is limited due to the relative power of the other branches in the policy making process. However, for the sake of this study, the size of the window is somewhat irrelevant due to the short campaign period.

### **Presidency's Influence on the U.S. Supreme Court Literature:**

Now shifting away from the more topical side of the judicial politics literature concerned with how the Supreme Court impact the presidency, it is important to have an understanding of where the field is actually concentrating their research. Rather than focusing on how the U.S. Supreme Court alters the behavior of the president, the field has focused on the adverse relationship. The following will provide a brief overlap of the ways in which the political science field has evaluated and measured how the presidency impacts the courts through the appointment process, the influence of the Solicitor General, and the president's power to persuade.

A cornerstone piece in political science literature and a required piece to discuss in any judicial politics work is Dahl (1957). Dahl (1957) acts as the standing piece for the legalistic model and evaluates the manner in which the U.S. Supreme Court can make policy decisions by going outside the established legal criteria found in precedent, statute and the Constitution. Dahl (1957) finds that the Courts are extremely limited in this ability, finding that the patterns of decision making within the Supreme Court reflect the

appointments presidents make to the Court and the dominant viewpoint among the lawmaking majority. Dahl (1957) suggests that the Courts have little institutional advantage to disagree with the president, Congress, or the public because it jeopardizes the institutional legitimacy of the Court. Scigliano (1971), and Segal, Timpone and Howard (2000) echo this notion but extends the emphasis on the power of the president's appointment powers. They argue that the president's appointment power provides him with significant influence over the conducted behavior of the courts. Lindquist et al (2000) find this to be a questionable hypothesis and seeks to find the necessary conditions for the president to successfully maintain strong influence over Supreme Court Justices. They argue that in order for this hypothesis to be true the following conditions must be met: (1) the President must have the opportunity to appoint one or more justices; (2) when multiple justices are appointed, they must vote cohesively relative to the Court as a whole; and (3) voting cohesion among multiple appointments must further the President's (and the political majority's) policy preferences. Among modern Presidents, these conditions were fulfilled only by the Nixon and Reagan appointments, showing the unlikelihood of this from consistently occurring. This would suggest that in actuality the president's influence over his appointees is somewhat limited. Therefore, an incumbent president during the campaign cycle would not have an unnecessary amount of influence over the Supreme Court justices that would prevent them from making a decision that could alter the voting calculus of the population. This is a positive sign for this particular study which relies on an independent judiciary that serves as an independent evaluating measure for the population to look to for voting guidance. Szmer and Songer (2005) also support this idea of an independent judiciary by finding that the assumption that



presidential success in the judicial appointment process will lead to a nominee that will mirror presidential policy goals is flawed.

Another commonly studied phenomenon in the judicial politics literature concerning Supreme Court and presidential relationships is work concerning the influence of the Solicitor General (SG). Given the close working relationship between the presidential appointed Solicitor General and the U.S. Supreme Court, the SG serves as an excellent proxy to monitor the president's influence. It can be argued that the Solicitor General acts as an agent of the president when working with the Supreme Court that seeks to advance the political agenda of the current administration. "The solicitor general is appointed by the president and represents the interests of the executive branch before the Supreme Court. One would expect considerable policy and ideological agreement between the appointing president and the Solicitor General" (Meinhold and Shull 1998, 528). The notion that the president appoints the Solicitor General is a constitutional fact, and is irrefutable; however the manner in which the Solicitor General represents the president's ideological or policy goals through its actions in the court have yet to be fully determined. Whether the SG is an agent of the president or not is important to determine due to the high rate of success the SG experiences on the court (Nicholson and Collins 2007). O'Connor (1983), Segal (1988), Salokar (1992), Meinhold and Shull (1998) and Graham (2003) argue that the Solicitor General is indeed a surrogate for the president and influences the court in a manner that is consistent with his policy and ideological preference.

However, more recent and methodologically sound research has found the relationship between the President and Supreme Court to be more neutral in nature.

McGuire (1995) and Pacelle (2006) argue that the Solicitor General serves an important information gathering purpose and should be viewed as a credible and reliable source of information for the courts. “The SG seeks to provide the justices with accurate and balanced information and assure that the briefs maintain a high level of professionalism” (Pacelle 2006, 318). To argue that in this information providing role that the SG is serving as the president’s instrument would be an overstatement. Therefore, it is imperative to understand that the SG is capable of acting in other fashions that do not include advancing the president’s administrative goals. Nicholson and Collins (2007) examine the legal, political, and administrative factors that affect the SG’s decision to participate as an amicus curiae provider. Nicholson and Collins find that political explanations for the SG’s participation in the amicus process have been largely overstated. The only hypothesis they found to be statistically significant was that the SG would be more likely to file an amicus brief in a politically salient case. However, they found no evidence that supported the claim that the SG is more likely to file amicus when the cases are important for the president’s policy agenda or when the SG is ideologically aligned with the court. Wolfrath (2009) further examines this relationship and shows that it is politically dangerous for the Solicitor General to blindly advocate presidential policy goals. Wohlfarth argues that the politicization of the policy agendas directly affects the status among the justices in a negative manner. This article acts as a necessary response to Neudstadt (1980) and the ability of the president to persuade other political actors. Wohlfarth (2009) found that an SG who solely pursues the president’s ideological position will lose credibility and its standing amongst the court.

It is important to understand the literature concerning the Solicitor General and the U.S. Supreme Court because the SG serves as the primary liaison between the two branches and signifies the level of autonomy the Court has in regard to the cases it hears and rules upon. The level of dependence or independence, similar to the issues noted in the presidential appointment section is important because they can directly impact the manners in which the Court deals with an incumbent president. This study looks at presidents during election cycles, but also while in office through presidential approval ratings. I need to be sure that the Supreme Court is not hindered in its ability to make rulings that could alter public opinion away from the president in office. The literature would suggest that the SG does not have a disproportional level of influence in the courts thus allowing for the hypothesized relationship between the courts and populace to exist. While the SG plays a primary role in some of the cases rendered, it serves more of an information gathering role than a controlling role.

The last section concerning the relationship between the presidency and the U.S. Supreme Court that I want to briefly address concerns the president's ability to impact the other branches of government through the concept of political capital. Neustadt (1980) argues that presidential power is the ability to persuade and the shared powers among the branches of government allow the president to utilize his influence to set policy agendas. In this particular case the president would be using his capital to impact the Courts. The modern president is expected to do more than their constitutional authority allows them to, and therefore presidents must rely on the power to persuade to influence final policy outcomes. "In a government of "separated institutions and sharing powers," they yield them to all sides. With the array of vantage points at his disposal, the President may be

far more persuasive than his logic or charm could make him” (Neustadt 1980, 32). The basis of the argument Neustadt presents is that the president has a large source of political capital and it allows him to impact the policy and decisions made within the other branches of government. It is quite possible for the Courts in fear of institutional retribution to seek to appease the president in their decision making. Obviously the judicial branch wants to maintain its level of legitimacy and autonomy, and believes that avoiding conflict with the president is the best way to do this. This notion is supported by Segal et al (2011) who find that the court is less likely to utilize judicial review when the legislation in question is ideologically distant from congress and the president (Segal et al 2011). This notion of presidential capital while strong is limited and forces president to pick and choose the battles they want to spend political capital on especially during an election cycle. Wohlfarth (2009) depicts this through the SG as described above and notes that when the political capital is spent, the president no longer is able to control the Supreme Court’s decisions. Overall, it would seem that presidential capital will play a role in the Supreme Court’s calculus to render a decision counter to the president’s agenda; however, it should not serve as a detriment to it all together. This is a limited political power held by the president and should not fully constrain the court for the sake of this research design.

Mondak (1992) discusses the issue of political capital similar to that of Neustadt (1980) but applies it to the U.S. Supreme Court. He argues that the U.S. Supreme Court can introduce institutional support in its efforts to generate legitimacy for a particular policy, but in doing so the court risks its institutional backing by advancing controversial decisions. Therefore, the institutional legitimacy functions as expendable capital for the

Supreme Court. This notion of political capital within the Supreme Court is important because it shows that the court also uses its persuasive powers to effect policy. This logic can be extended toward impact other areas of policy or politics such as presidential elections.

### **U.S. Supreme Court and Public Opinion Literature:**

Now that I have developed our understanding of the manners in which the Supreme Court and presidency interact and influence each other, it is imperative that we now shift to the other key actor in this particular research question: the public. The primary question at hand still stands as evaluating the impact high salient Supreme Court cases have on voter's evaluation of presidential candidates and presidential performance. At this point this study has only discussed literature concerned with half of this relationship. The following will take an in-depth look at how the U.S. Supreme Court reacts to and alters public opinion.

Given the overlapping question at hand, it is important to determine if the Supreme Court is capable of influencing the policy preferences or decisions of the public. Does the U.S. Supreme Court influence the policy preferences of the public? Franklin and Kosaki (1989) argued that the U.S. Supreme Court historically has played the role of the "republican schoolmaster" in which through its explanation of the law and its high moral standing, the Court may give the populace an example of the way they should behave. Thus through the highly credible Supreme Court the populace has a model of behavior for the populace. Ultimately, they find that the court has a strong influence on the structure of public opinion and allows the public to further crystalize their beliefs.

Franklin and Koaski (1989) are supported by the literature through Marshall (1989), Johnson and Martin (1998), Hoekstra (2000), Hoekstra (2003), Stimson (2004) and Stoutenborough et al (2006). All of these contend to some extent that the Court is capable of persuading or altering public opinion on a particular subject.

The paragraph above simply determines if the Court has some impact on the manner in which the public make public policy decisions, however it does not go into the extent to which the Court is capable of doing so. Within the judicial politics field there are competing degrees of confidence in which the court can alter public opinion. Scholars such as Franklin and Kosaki (1989), Marshall (1989) and Stimson (2004) contend that the Court's in general have persuasive powers that can pull the public's opinion in one direction or the other. This subsection of the literature is highly supportive of the hypotheses that the U.S. Supreme Court plays a vital role in the way presidential candidates and incumbent presidents are evaluated.

Other political science scholars contend that the Supreme Court is capable of altering public opinion, but in a more conditional fashion. Johnson and Martin (1998), Hoekstra (2000) and Stoutenborough et al (2006) argue that this effect is conditional based upon the salience of the case in question. Johnson and Martin (1998) analyzing public opinion data before and after the Supreme Court ruled on a highly visible abortion case (*Webster v. Reproductive Health Services* 1989) find that Supreme Court influence does impact public attitudes but only during high salient issues. The Johnson and Martin (1998) article is extremely relevant given the research design approach utilized. I use similar pre and post-test analysis to perform a more comprehensive evaluation of this phenomenon and then apply it to presidential elections. While the Johnson and Martin

(1998) approach is useful it is severely narrow in its scope. The research design being implemented in this study expands upon Johnson and Martin (1998) due to an improved measure of case salience and a widened scope of application to public opinion. Stoutenborough et al (2006) looking at cases concerning homosexual civil rights, argues that the Court's ability to influence public opinion is a function of the salience of the issue, the political context and case specific factors at the aggregate level. This basically echoes the arguments made by Johnson and Martin (1998) but applies it to a different sector of salient cases. Overall, the point being made is that public opinion and the U.S. Supreme Court is interrelated, but due to the complexity of the topics in question should be limited to only highly salient cases. It would be difficult to expect average American citizens to use an obscure Supreme Court ruling that received little media attention to factor into their evaluation of politics. However, if the case is salient enough and has enough media attention, one can safely assume that it will impact the populace's decision making capabilities. This issue of case salience is extremely important and will be discussed in greater detail in the next section.

Grosskopf and Mondak (1998) evaluate the dynamics of public opinion to determine if positive or negative reactions to the decisions rendered by the U.S. Supreme Court have different effects. Looking at the impact of high profile decisions and comparing them to fluctuations in public opinion polls, they find that agreement with the rulings did affect the perceptions of the court in a positive way, but only marginally. However, disagreement with the decision laid out by the court substantially reduced the confidence of the public in the court. This finding paired with the evidence provided by Stephenson-Grier (1999) presented earlier would lead us to conclude that negative

attention to the U.S. Supreme Court is more powerful than positive attention to the U.S. Supreme Court. This has significant implications on the study in question. According to the literature, I should expect to see greater levels of fluctuation in public opinion or campaign donations when the majority of the public disagree with the decision laid down. At this point, the notion of positive confirmation from a credible branch of government appears to be less likely to explain the public's reaction to a Supreme Court case during presidential elections.

### **Political Knowledge in the United States Literature:**

Transitioning to the fourth section of the literature review, I look to the literature discussing American political knowledge and their capacity to make complex political connections. A major component of the theory for this research projects consists of the public being aware of the Supreme Court decision being rendered, reacting to the ideological stance of the ruling and thus using its decision to make an informed political decision in regard to evaluating a presidential candidate or an incumbent president. In order for this to occur I need to first evaluate the extent to which American citizens are capable of making such decisions.

“Americans are in fact indifferent to much that transpires in politics, hazy of its principal players, lackadaisical regarding debates that preoccupy Washington, ignorant of basic facts that the well informed take for granted and unsure about the policies advanced by presidents” (Kinder 1983, 390). The capacity of an everyday citizen to acquire political knowledge and then have the ability to apply it in a political context has been up for debate since the early 1950's. Original staples in American behavioralist theory like



Converse (1964), Campbell et al (1960) argue that the average American citizen is ideologically “innocent” and incapable of having a consistent opinion. While the magnitude that comes with these articles is difficult to refute, the manner in which they come to their conclusions can be. I’d contend along with many in the field that the understanding of American voting capabilities to gather political knowledge is grossly underestimated. These staple behaviorist theories advanced by Converse (1964) or Campbell et al (1960) were plagued by outdated research designs and a lack of consistency within the question methods. They utilized an open-ended interview approach which required those being questioned to have a very high level of political understanding to meet the necessary level to be labeled as politically sophisticated. I would argue that the standard average Americans were held to in these studies were too high and incorrectly label average Americans as misinformed and unable to formulate political opinions.

Page and Shapiro (1992) provide an alternative mode of questioning involving frames that make it easier for average Americans to understand. The use of framing reduces the amount of error substantially, and provides a much clearer picture of American political knowledge. This is one new method that has produced results that has led to a more optimistic view of public opinion and its research. Using this new and improved method of questioning Page and Shapiro (1992) found that the American public as a group are capable of holding stable opinions on public policy. They analyze public opinion in the aggregate rather than on an individual level and determine that while an individual opinion may fluctuate randomly around a central tendency, his long term preferences will be stable despite periodic fluctuations.

Another way in which the average voter can adapt to the ever changing political environment while gathering the necessary knowledge to make informed decisions is through shortcuts/heuristics. “It has become common to argue that citizens can overcome their informational shortfalls and make sense of politics by taking advantage of judgmental shortcuts, or heuristics” (Sniderman 1983, 221). The concept behind the utilization of a heuristic is that citizens are politically unsophisticated due to a lack of either motivation or ability and therefore rely on a series of shortcuts which enable them to make political decisions. Sniderman (1983) and Niemi Weisberg, and Kimball (2011) argue that in order to take advantage of a heuristic one must know where they stand on a particular issue, and weight it by the difference in how they feel liberals and conservatives view the issues. In this particular case, I could argue that the Supreme Court case decision submitted and the front page article in the New York Times describing the case can act as a shortcut for citizens to evaluate the presidential candidate or president in question.

The overall point being made in regard to American political knowledge is that while originally the political science literature suggested that average citizens are incapable of making informed political decisions or making connections from one stimulus to the other, advanced research has lead us to believe that this may not be the case. It is certainly plausible to argue that the average American citizen with enough motivation and information could make the connection between a Supreme Court decision and presidential policy position. This connection is even more plausible when the parties and politicians in question have become increasingly polarized. This allows

for political questions to be depicted in a much easier light and allows us to easily discern where candidates stand on the political spectrum.

### **U.S. Supreme Court Case Salience Literature:**

The final area of discussion in this literature review needs to be the evolution of Supreme Court case salience data and my subsequent justification for the utilization of the New York Times Case Salience Measure. For the sake of this research project a salient case will be defined as a U.S. Supreme Court decision that has received a large amount of attention from the public. To properly assess the impact Supreme Court cases can have on the public's evaluation of the president, it is important to only consider cases that are likely to capture the attention of the public and could be applied to the president's policy platform. Case salience plays a prominent role in the judicial politics literature considering that varying case levels will create different effects within the behavior of the Court. For example, as seen in Maltzman and Wahlbeck (1996) one could ask if Chief Justices are more likely to assign themselves as the majority opinion writer on issues they deem important or if intra-court bargaining is more common over the resolution of landmark disputes as in Murphy (1963) and Epstein and Knight (1998). In both of these research questions a measure determining what cases are indeed important or salient and what cases are not important or non-salient. However, the appropriate salience measure for one particular question in judicial politics is not essentially the correct salience measure for another research question. The following will describe a series of potential case salience measures but will ultimately explain why the New York Times Case Salience measure is the most appropriate for this research question.

Slotnick (1978), Maltzman and Wahlbeck (1996), Epstein and Knight (1998) and

Wahlbeck, Spriggs, and Maltzman (1998) have all developed their own unique forms of case salience measures that appropriately fit into their specific research design. For example, Maltzman and Wahlbeck (1996) developed a measure of case salience using the number of amicus curiae participation as an indicator of case salience. While this is certainly a valid way to measure salience because it indicates third party interest into a particular Supreme Court case, it would not be as useful in this particular context. In this research project, I am looking to assess the public's use of high profile Supreme Court cases and its impact on the evaluation of presidential candidates. What is salient to an interest group, corporation, NGO, or governmental institution providing an amicus brief may not be the same as an average American citizen. Therefore, this study would need to utilize a salience measure that focuses on tools used by average citizens and clearly indicates to the American population that the case is important and should be considered. This is where the New York Times Salience measure comes in.

Epstein and Segal (2000) provide us with an alternative approach to measuring issue salience that focuses on media coverage. The idea is extremely simple: if the media covers the case it therefore must be salient. An issue is salient when a lot of people are aware of the issue and thus allowing the population to form an opinion on the subject. In order for people to make an educated decision about the Supreme Court decision in question and thus apply it to their evaluation of the president in question, they must be aware of the case and be able to comprehend the issues in question. Epstein and Segal (2000) ultimately argue that the best measure of salience is focused around any case that appears on the front page of the New York Times the day directly following the announcement of the court's decision. The logic behind this argument assumes that the

highly visible and widely read New York Times would not post the information about the U.S. Supreme Court case unless it felt its viewers would deem it important. The New York Times serves as the most appropriate publication to use in this measure because it is aimed at general national readership that avoids a regional bias, and is one of the most widely read newspapers throughout the country. Using this measure as an indicator of case salience is the most appropriate for this study because it is readily accessible to the American public and serves as an indication to the populace that they need to pay attention to the Supreme Court's behavior. As argued in Gibson and Calderia (2007) most research suggests that the public is woefully ignorant of the everyday actions within the Supreme Court. It is an institution that tends to operate outside the limelight and receives little media attention. However, when the New York Times decides to publish their actions on the front page, it could indicate to the public that it is an important case and is most likely receiving news coverage from other media outlets as well. By reading the explanation about the case in the New York Times citizens become primed to expand upon what they read and apply it to new areas. Therefore, the New York Times Case Salience measurement will be used as the indicator for high profile cases.

At this point I have evaluated the literature concerning both sides of the relationship between the U.S. Supreme Court and the presidency, the relationship concerning the U.S. Supreme Court and public opinion, the American populations capacity to process political knowledge and deal with issues regarding the U.S. Supreme Court, and finally the issue of case salience associated with using the New York Times Case Salience measure that will as the basis for the sample of cases studied. Now that there is a basic understanding of the political science and judicial politics literature, I can

now transition into the next chapter which will discuss the theoretical justifications for my overlapping arguments and the hypotheses that will serve as the foundation for the following research design.

## CHAPTER III

### THEORY

The state of the literature described in the prior chapter depicts a gap in the political science field that ignores the possibility for the U.S. Supreme Court to have a significant impact on the way in which American voters evaluate the presidency. While there has yet to be a direct answer to this question, there are indirect findings that justify investigating the potential relationship. A subset of these academic justifications can be exemplified through the U.S. Supreme Court's positive impact on public opinion (Stoutenborough et al 2006), increasing partisanship in politics that leads to clear ideological distinctions in Supreme Court rulings (Ross 2002), the American public's reliance on cues to make voting decisions (Sniderman 1983) and the high level of institutional credibility associated with the U.S. Supreme Court (Mondak 1992, Gibson, Calderia, and Kenyatta-Spence 2003). While this is simply an abridged list of factors that suggest that the U.S. Supreme Court indeed can have an impact on the presidential election process or simply the evaluation of the president in office, it does provide some justification to proceed further down the rabbit hole and ask the necessary questions.

The objective of this chapter is to clearly outline the cause and effect relationship between the highly salient Supreme Court cases and its potential impact on the public's

evaluation of the presidency. Overall, I argue that voters can use U.S. Supreme Court cases as information cues that stimulate either a positive or negative reaction toward the presidential candidate or incumbent president that aligns with the ideological disposition of the ruling. I will present hypotheses that support this notion and contest that the U.S. Supreme Court will indeed have a significant impact in this relationship. The following will first describe the theoretical justifications for the arguments briefly mentioned above. Secondly, I present the two overlapping hypotheses that will guide the remainder of the research design and will describe how to expect the results to look. Lastly, I will discuss the importance of this research question and the potential implications the confirmation of my theories will have on the field.

### **Theoretical Justifications**

The literature review in the chapter before presented the general expectations within the political science field and I intend to utilize that information and apply it to potential expectations for the research question at hand. I argue that there will be either a positive or counter-mobilizing effect associated with high profile U.S. Supreme Court cases in regard to presidential approval ratings, public opinion polls and campaign donations toward presidents in office and presidential candidates. The following will explain the train of thought that justifies this overall argument.

Due to the increasing degrees of party polarization in the U.S. (Abramowitz (2011), Niemi, Weisberg, and Kimball (2011), Hetherington (2011)) and from the behavior exhibited by Supreme Court Justices during oral arguments (Johnson et al 2009), the language utilized in their written opinions, and their next-to predictable voting



behavior, it has become possible to divide the sides of a Supreme Court decision along ideological lines (Spaeth et al 2012). Generally, the arguments before the Court are presented through a lens that is supported by a conservative ideology countered by an argument presented through a lens supported by a liberal ideology or vice versa. With this ideological breakdown available, I argue that voters can use the U.S. Supreme Court cases as information cues (Sniderman 1982) that stimulate a positive or negative reaction toward the president or presidential candidate that identifies with the rulings. Page and Shapiro (1992) argue that the American public is capable of making political decisions when the questions are framed in an easier manner. I would contend that a Supreme Court case between Side A acting in a conservative manner and Side B acting in a liberal manner could be viewed as a framed set of options that the public could easily utilize. For example, the Affordable Health Care Act decision that occurred in the summer of 2012 clearly broke down along partisan lines in which Democratic candidate Barack Obama supported the more liberal decision that would seek to uphold the provisions of Affordable Health Care while the Republican candidate Mitt Romney supported the more conservative decision that would strike the law down. The argument here is that the way in which the Supreme Court rules on the case can have an important impact on election outcomes or at least the overall assessment of the president. In essence, the populace potentially has an extremely credible political institution in the U.S. Supreme Court (Mondak 1992) (Gibson, Calderia, Kenyatta-Spence 2003) assessing the overall validity or constitutionality of each of the candidate's platforms. This logic will be applied to all high profile U.S. Supreme Court cases that appear on the front page of the New York

Times (Epstein and Segal 2000) due to their level of media attention and their potential weight on the potential voting calculations or the assessment of current presidents.

### **General Overlapping Arguments/Hypotheses**

Now that the overall justification for why I am pursuing this research question is established, it is now possible to venture into what should be expected within the results. I argue that the U.S. Supreme Court will indeed have a significant impact on the population's assessment of presidential candidates and incumbents and that it will manifest itself in two equally feasible scenarios. Given the literature discussed thus far, I would hypothesize that high profile Supreme Court cases can have either an Affirmation effect or a Counter-Mobilization effect on the population in general. The following paragraphs will describe each of these in detail.

One potential way in which the U.S. Supreme Court can affect voter's assessment of presidential policy or platform is through the affirmation of the public's ideological beliefs. Under this hypothesis, voters who align ideologically with the U.S. Supreme Court ruling will see their political beliefs confirmed by the highly credible court and thus encourage them to increase their support for the candidate who also aligns with the ruling. Having the Supreme Court confirm the constitutionality or the credibility of a set of political beliefs could act as positive reinforcement and serve as a catalyst for an increase in political participation. The public, feeling their understanding of politics confirmed, could seek out those who also align with that particular ideology and award the presidential candidate or president in office with either higher level of approval or through donating to a campaign. The literature supports this potential effect and can be

exemplified when looking at Franklin and Koaski (1989) who argue that the Supreme Court can play the role of a “Republican Schoolmaster” in which they inform the public on the best ways to conduct their behavior and that the Court has a positive impact on how the public formulate opinion on policy. The affirmation of the population’s beliefs should create a higher probability that a voter will provide a positive assessment of the candidate in question or be more willing to donate funds to the campaign. Stratman (1998) found that the timing of public donations to campaigns often coincide with key legislative debates taking place in congress. This suggests that when there is a topic of importance being discussed in the legislature dominating the news cycle; people are more willing to donate to a campaign. I do not see why this same logic or causal mechanism cannot be applied to when the U.S. Supreme Court dominates the news cycle over policy issues that pertain to the president. Therefore I present the first general hypothesis that will serve as a guiding force for the remainder of this study:

**Affirmation Effect Hypothesis:** *High salient U.S. Supreme Court decisions will have an Affirmation Effect in which the subset of the population that ideologically aligns with the decision rendered will increase their support for the candidate or president who also ideologically aligns with the decision through increases in presidential approval ratings, public opinion surveys or campaign donations.*

One thing to consider with the Affirmation hypothesis is that it will most likely have a more subtle impact on candidate assessment than the Counter-Mobilization hypothesis below. As the literature suggests, public reaction to the U.S. Supreme Court is tempered when they agree with the decision at hand (Grosskopf and Mondak 1998)

(Stephenson-Grier 1999). Affirmation is a weaker mobilizing tool because it does not create a particular reason to act politically. Unlike, the Counter-Mobilization hypothesis the public will not be reacting to a catalyst that threatens the way they think. Thus, I should expect the affirmation hypothesis to be less clearly demonstrated than the Counter-Mobilization hypothesis. I would argue though that it will be more likely to see positive fluctuation in presidential approval ratings or public opinion polls in association with the affirmation effect than it will with large increases in campaign finance. Public opinion is most likely to capture the Affirmation effect due to the relative lack of action it requires. Participating in a poll is far less costly than donating to a campaign. Given that I expect those who experience the Affirmation effect to be less inclined to participate politically than one who is Counter-Mobilized.

Transitioning to the other primary hypothesis, I look toward the Counter-Mobilization hypothesis. It is equally if not more likely to assume that a U.S. Supreme Court case will have the adverse effect on the population that does not match up with the ideological disposition of the decision. Those who do not align ideologically with the Court's decision could feel as if their beliefs were under attack from the Court and thus heavily mobilize an effort to support a president or presidential candidate that is willing to oppose such a ruling. This negative reaction to the decision rendered can be described almost as a rally around the flag effect for the candidate who does not align ideologically with the court. Baker and O'Neal (2001) using a similar New York Times index incorporated in this study, found that the size and appearance of the rally depends on how the crisis is presented to the public in terms of media coverage, bipartisan support, and White House spin. This means that if the campaigns in question decide to use the

negative ruling from U.S. Supreme Court case as a rallying cry in support of one of their policy issues it could lead to a huge boost in support. Ross (2002) and Stephenson-Grier (1999) show us that politicians have a history of using Supreme Court decisions to rally political support whereas Grosskopf and Mondak (1998) show that negative attention to the Court can have a powerful impact on public opinion. All of these factors lead us to assume that a Counter-Mobilization effect in regard to high salient U.S. Supreme Court cases during the evaluation of the presidency is possible.

Unlike the Affirmation effect in relation to public opinion polls, the Counter-Mobilization effect is more likely to show its effects in campaign donations. This is the case because campaign donations are the most proactive of the options examined here for a voter to impact the political process. During this Counter-Mobilization process, voters feel that their ideological views are under attack from the courts. They need to find a way to elect a president that will fight the court on the issues they deem important. The best way to do this, I would argue, is to donate to that particular candidate. While they will also provide a position message for a public opinion poll, I think the donation would be more powerful and prevalent. With this in mind I offer the second general hypothesis for this study:

**Counter-Mobilization Hypothesis:** *High salient U.S. Supreme Court decisions will have a Counter-Mobilization Effect, in which the subset of the population that does not ideologically align with the decision rendered will increase their support for the president or presidential candidate who also does not align ideologically with the decision.*

Both the Affirmation Hypothesis and the Counter-Mobilization Hypothesis will serve as the primary assumption for the remainder of the study. Chapter 4, 5 and 6 seek to execute the research design in question, but at all times will be looking to confirm or deny the two primary hypotheses described above. Another consideration that needs to be noted is the nature of the two hypotheses in question. Given the nature of the data and the general expectations of the hypotheses, I must note that this analysis is conducted on the aggregate level rather than the individual level. Given that panel data on a day by day basis was unavailable, I was forced to aggregate the focus of the study to look at population trends in general. Both hypotheses are assessing general population trends in regard to Court's influence on the public's assessment of the presidency and ultimately seek to determine if the population acts in either an Affirmation and Counter-Mobilization fashion.

It is important to note the degree of difficulty that is associated with the first two angles being pursued in Chapters 4 and 5. I would expect to find that the campaign donation data utilized in Model 3 will be more likely to capture the hypothesized results above than the public opinion data used in Models 1 and 2. I make this claim given data complications that will be discussed in greater detail in the latter chapters as well as the broad scope of the public opinion measure itself. Presidential approval ratings and general election public opinion polls are created to assess far more than the influence of the Supreme Court decision, and thus will be limited in their ability to capture the direct effect of the Courts. It is difficult to argue that the limited fluctuations in the polls are only due to the Court's behavior and not associated with other political events that are also occurring. Another pitfall associated with the utilization of opinion polls is its

reactive nature in general. To participate in a public opinion poll, one must wait to be randomly selected among the population and then answer a series of questions, none of which will directly ask the public their opinion about the Supreme Court decision. The fact that the population must wait to participate in the measure and that there is a strong likelihood for many of those who are impacted by the decision will not participate in the poll, makes it a difficult measure to utilize. While this is certainly a difficult measure to properly pinpoint, this does not provide enough reason to not pursue public opinion as a measure in general. A key attribute of this project overall is its broad approach to the U.S Supreme Court's effect on voter evaluation of the presidency. By approaching the topic using multiple dependent variables to analyze the phenomenon from different angles, it increases the likelihood of understanding the overall relationship as well as potentially increasing the robustness of the study in general. Therefore, even though public opinion polls present a higher degree of difficulty, it is possible for Models 1 and 2 to support the hypotheses. With this understanding toward public opinion polls, it is important to note that the third dependent variable concerning campaign donations captures a far more proactive medium of political participation and enables the citizenry to directly place themselves into the campaign process by donating money to their desired candidate. This is potentially best for this particular study given that I am seeking to assess the public's ability to use the Court's behavior as a cue for their assessment of presidential viability. The overall point being made is that it is far more plausible for a citizen who is impacted by the Court's behavior to get online, go to the candidate's home page and donate funds directly after experiencing Affirmation or Counter-Mobilization than it is for a citizen to exhibit these effects through a poll. Therefore, I argue that it is far more likely to capture

the hypothesized effects through campaign donations and Model 3 than through public opinion polls utilized in Models 1 and 2.

Before I begin conducting the analysis of the hypotheses presented above, I must first explain the importance of the study in question and the theoretical implications of finding proof of either the Affirmation or Counter-Mobilization hypothesis during highly salient U.S. Supreme Court cases.

### **Importance of Study and Implications**

As portrayed in both the introduction and literature review sections, this is an extremely important study for the separation of power literature within judicial politics because it seeks to answer questions previously ignored. I have argued that the field currently suffers from a major gap that disregards the U.S. Supreme Court's ability to impact presidential powers or their electability through high profile decisions. There has yet to be a study within political science that examines Supreme Court decisions during an election cycle to determine if there is a relationship between fluctuations in public opinion polls or spikes in campaign donations. There has not been a study using presidential approval ratings, opinion polls or day to day campaign donations in conjunction with high profile Supreme Court cases to determine if the public uses these cases as voting cues. These media cycle dominating cases could be playing a pivotal role in the manners in which citizens evaluate candidates, however one cannot be sure due to the field's overall lack of interest in the topic. This study seeks to reset the agenda in judicial politics and hopefully engineer interest in the Supreme Court's capacity to impact the other branches of government.



Regardless of the results, this research questions poses serious implications for not only the literature within the judicial politics area but also areas concerned with presidential elections, and U.S. political knowledge and the prevalence of heuristics. This study has a wide range of implications that could have an important impact on the field. Obviously, any result will help judicial scholar assess the relationship between the U.S. Supreme Court and the presidency, but if in the results section of this study I find that there is a positive relationship between the Courts high profile decisions and swings in public opinion or donations it could alter the manner in which president's view the importance of Supreme Court nominations and the weight of each decisions in and out of election cycles. While current politics already places heavy value on each Supreme Court nomination, finding that court rulings are capable of altering the public's voting calculus would certainly signal to each political party that they want to have the ideological upper hand. Without it, not only would they be subject to unfavorable rulings, but also be electorally vulnerable. This would likewise increase the value of each decision rendered by the court and could potentially alter the media coverage of the cases in questions.

Will this study find that the courts have an influence over the presidency that extends beyond simple judicial review or will there reach be limited? I would argue that the results are less important than the actual testing of the relationship. While it would certainly be more interesting to find that the courts have a significant impact on the presidency in this area, simply testing the relationship and measuring the court's reach in an area previously ignored is enough justification to pursue the study.

Political knowledge literature is another area that could be impacted by this study. Are American citizens capable of using Supreme Court rulings to use the information

provided to help them assess presidential candidates? A positive finding in this study would provide a major hit to political scientists who still subscribe to the Converse (1964) or Campbell, Converse, Stokes (1960) school of thought that the American public is uninformed and incapable of forming political ideology. This study is asking a lot of the American population by assuming that they can make the complex connection between difficult Supreme Court rulings and applying them to their assumptions toward presidential candidates or current presidents. That could be difficult for the politically uninformed. However, I am relying on the nature of high profile cases and the priming that occurs in reading the front page of the New York Times or at the very least the signal sent to other political actors that this is a case relevant to the masses, to assume that it is possible. Overall, any positive evidence supporting the expected relationship between the U.S. Supreme Court and the presidency in this study would be a major victory for scholars who subscribe to Page and Shapiro (1992) or Sniderman (1983) and a positive view of the American public's capacity for political knowledge. It would suggest that the American population is indeed capable of making complex political decisions.

With the basic theoretical framework of the study and the overall implications of the project understood, it is now time to begin the actual execution of the research design. The next three chapters will individually analyze the data, testing methods, and results of the three models described above. Chapter 4 will discuss the data, testing methods, analysis and results to evaluate the hypotheses concerning the effect high profile Supreme Court rulings have on presidential approval ratings. This pattern will be duplicated for both Model 2: public opinion in presidential elections and Model 3: campaign donations in presidential elections in Chapters 5 and 6.

## CHAPTER IV

### MODEL 1: PRESIDENTIAL APPROVAL RATINGS DATA, TESTING METHODS AND RESULTS

The previous chapters discussing the introduction, literature review and theory have provided the general framework that will guide the remaining sections of this study. From the literature review it is deduced that while the judicial politics research has not focused directly on how U.S. Supreme Court decisions impact the evaluation of the presidency, there are other secondary findings that imply a positive relationship between the two; thus making this a necessary study. The theory section outlined the projects general hypotheses concerning the research question evaluating the cause and effect relationship between high salient Supreme Court cases and its potential impact on the public's assessment of the presidency or potential presidential candidates. This chapter seeks to build on this framework by evaluating the likelihood for American citizens to use high profile Supreme Court cases in the overall evaluation of presidential performance. The proxy in which I intend to evaluate this particular relationship for Model 1 will be presidential approval ratings. Therefore, for the sake of this particular model, the dependent variable will be the degree of change in presidential approval ratings from before and after the U.S. Supreme Court decision paired with the

independent variable of the U.S. Supreme Court decision's ideological direction. In effort to maximize the number of salient U.S. Supreme Court cases that apply within the data's timeframe I sought to evaluate the presidency in and out of the presidential election period. Using presidential approval ratings as a proxy allows us to determine: (1) if U.S. Supreme Court cases are utilized in average citizen's general assessment of the president in office, and (2) are they capable or willing to make the complex connection between the ideological direction of the decision rendered by the court and the potential ramifications it has on the current president's policy goals? The following pages will describe Model 1 in further detail while explaining the data utilized, elaborate on the methodology in which Model 1 will be executed, and finally I will describe the results of the analysis concerning presidential approval ratings and the U.S. Supreme Court.

**Data:**

Model 1 evaluates the effect high profile U.S. Supreme Court cases have on presidential approval ratings from 1993-2012. In essence, this study is analyzing the U.S. Supreme Court's impact on the presidency from the Clinton administration to the current Obama Administration. Due to limitations concerning the frequency of public opinion data that will be described later in this chapter, I was unable to go back beyond the Clinton Administration. Model 1 probes the basic question of whether important Supreme Court decisions impact the manner in which American citizens evaluate the current president in office. Would a decision that disagrees with the president's ideological compass impact the way in which the people evaluate the president's policy platform? Thus, to effectively evaluate this relationship I will need to acquire data concerning the dependent variable of presidential approval ratings, data concerning which cases are

highly salient and those that are not, the ideological direction of the decisions decided and finally other important variables from the U.S. Supreme Court Database that will be used as control variables. The next few paragraphs will describe the data utilized to fulfill these necessary criteria.

The degree of change between the pre and post-tests in presidential approval ratings ( $\text{Post-test} - \text{Pre-Test} = \text{degree of change}$ ) will serve as the dependent variable for Model 1. Descriptive statistics for the dependent variable can be found at the end of the data section below. This variable will provide an estimate of the level of change a high profile Supreme Court decision creates. However, for the sake of the quasi experimental testing method adopted for Model 1 this study requires an enormous amount of data assessing the public's evaluation of presidential performance before and after the U.S. Supreme Court case in question to serve as the pre and post-tests. The goal was to find presidential approval rating polls that ended the day before the U.S. Supreme Court ruling was decided to act as the pre-test and find presidential approval rating polls that began the day of after the decision was heard to coincide with the case appearing on the front page of the New York Times or other media outlets that deemed the case salient. This is the ideal situation, however due to time and resource limitations I was forced to get creative with the data processing. For one, the study is required to "go back in time" to assess previous phenomenon therefore, and it would not be possible to create my own public survey analysis that monitor's the public's behavior. These studies are taken in real time to assess opinions at the time of these events. A second issue is that polling houses generally do not run polls for every day of the year, meaning that using a singular polling house such as Gallup for instance, would not be possible. The goal is to have a

pre and posttest as close to the events as possible in order to control for other important political events that could also influence voters. To remedy this problem I decided to employ multiple polling houses' evaluation of presidential approval ratings as long as they phrased their polling question using this specific language: "Do you approve or disapprove of the job president X is doing as president? Luckily for this study, the general question to assess presidential approval ratings has become standardized and for the most part has been consistent. The only issue of non-standardization we run into using this multiple polling house process is the interchanging use of likely voters and registered voters. Given data limitations, I have made the decision to simply treat these two different measuring techniques as a single unit. While far from perfect, this multiple polling house approach made it more than possible to successfully create pre and posttests for all salient cases during this time period. Below is a list of the multiple polling houses employed to compile presidential approval ratings from 1993-2012 that were found through the iPoll database:

American Research Group, NBC/Wall Street Journal, Fox News, CBS/New York Times, CNN, Democracy Corps, Politico/George Washington University, McClatchy/Marist, Quinnipiac University, Pew Research Center, Bloomberg, Allstate/National Journal, Gallup, TIPP, Time, PRRI, Harris Polls, LA Times, and Newsweek.

Questions concerning the validity of the presidential approval rating variable would be unfounded due to the consistency in the questioning methods across polling houses. While this may not be the most ideal way to test the relationship between the

U.S. Supreme Court and presidential approval, this is the most feasible way to perform this kind of test, given the data limitations.

Once the presidential approval rating data was compiled I was able to apply the correct polls to the appropriate U.S. Supreme Court case to establish which polls qualified as pre-tests and which polls were posttests. Ideally all pre and post-tests would fall the day before and the day after, however in some scenarios that was not possible. Therefore, I made the decision to exclude a Supreme Court case from the dataset if there was not a poll that ended five days prior to the decision (pretest) or began five days after the decision (posttest). The goal is to eliminate other potential political explanations that could cause fluctuation in the ratings and the best way to do that is to have the data as close as possible to the actual Supreme Court decision. There are countless explanations or reasons that play into a citizen's thought process when answering polling questions, by limiting the number of days that pass between the Supreme Court decision and the time people take the polls, it limits the opportunity for new political events to be the actual reason for fluctuation. In order to ensure that the Supreme Court is actually the catalyst for change in the polls, this day after approach must be emphasized.

Before being able to successfully determine the relationship between high profile Supreme Court cases and presidential approval ratings, it is important to determine which cases are deemed salient and those that are not. As described in the literature review section of this paper, Epstein and Segal (2000) and their New York Times Salience measure serve as the criteria to determine salience. When a U.S. Supreme Court case finds its decision described on the front page of the New York Times, I can argue that it is indeed a salient case and thus should have a considerable impact on the American public.

In this case, the media determines if the Court decision is important enough to place it on its front page and primes the American public about the Court's behavior. The Supreme Court Database, a National Science Foundation funded dataset, is open to public use and serves as the basis for the salience measure along with the source of several of the secondary control variables. For the sake of the salience measure however, the Supreme Court Database also contains supplementary materials created by other important figures in the judicial politics field. Epstein and Segal (2000)'s NYT salience measure along with Congressional Quarterly's landmark case salience measure are deemed by the U.S. Supreme Court dataset as adequate measures of study. However, for this particular research project, I argue that only the New York Time salience measure is consistent with the goals of my study. I hope to evaluate the American public, and thus using a measurement that considers what the media (the information source for average citizens) deems important rather than not what academic scholars is essential.

Currently, the U.S. Supreme Court Database codes the salience of every Supreme Court case decided from 1946-2009. Using this dataset in its current state would thus prevent this study from utilizing anything after 2009, preventing me from evaluating the Supreme Court's impact on the second half of the Obama administration and would have forced us to ignore all of the data for the 2012 presidential election cycle. I also would have missed the impact of landmark U.S. Supreme Court cases such as *Arizona v. United State* (2012) which evaluated the constitutionality of the highly controversial and partisanly divided immigration laws in Arizona or *Snyder v. Phelps* (2011) which ruled on the first amendment protections for publicly protesting at a funeral. This was made to be national news by the controversial tactics of the Westboro Baptist Church. Therefore, I



decided to add to this dataset myself by personally coding all of the U.S. Supreme Court decisions after the 2009 Supreme Court term. I utilized the same methodological methods employed by Epstein and Segal (2000) to ensure the accuracy of the dataset:

“To reproduce the NYT approach, we used two sources: the Index to the *New York Times* and LEXIS. A salient case (1) led to a story on the front page of the *Times* on the day after the Court handed it down, (2) was the lead (“headlined:”) case in the story, and (3) was orally argued and decided with an opinion” (Epstein and Segal 2000, 73).

Following that exact approach, I was able to add 12 new cases to the salience dataset’s previous 192, to give us a total of 204 highly salient U.S. Supreme Court cases between 1993 and 2012. This enables the study to include all presidential approval ratings for the Obama administration up to the last salient case rendered by the court. All of this means that my particular study will serve as the most up-to-date study of the U.S. Supreme Court, at least until the next official term.

Finally, there are other important functions The U.S. Supreme Court Database will serve for the purpose of this study. Below is a list and description of key variables that play a vital role in the testing of the hypotheses: (1) Case ID: Serves as the unifying variable in the dataset that describes the term and the case within the term. (2) Issue area: This variable separates the cases heard into 14 possible case areas including: Criminal Procedure, Civil Rights, First Amendments, Due Process, Privacy, Attorneys, Unions, Economic Activity, Judicial Power, Federalism, Interstate Relations, Federal Taxation, Miscellaneous, and Private Action. I took this variable and created a dichotomous civil

liberty variable stressing yes (1) or no (0) if it is a civil liberty case. (3) Decision Direction: This variable determines the ideological direction of the decision rendered. The decision direction variable serves a critical function within Model 1 and all of the other models. The direction of the decision acts as the expected shortcut message the U.S. Supreme Court sends to the American public through the New York Times article that will potentially trigger a change in evaluation of the presidential candidate. If my hypotheses are correct, the decision direction support or opposition to the president in office should have an impact on presidential approval ratings. (4) Precedent Alteration: Measures if the majority opinion effectively overrules previous court precedent. This will be used as a potential control variable. (5) Law Unconstitutionality: Indicates that the court either declared a law enacted by Congress unconstitutional. Again, this will serve as a basic control variable. (6) Finally, the U.S. Supreme Court provides us with the majority on the bench. This control variable will allow us to determine if the margin of victory in which the controversial decision was rendered has an impact on the weight of the decision among the people. Whether 5-4 decisions have greater impact than 9-0 decisions is a question that can be considered.

**Table 1A: Dependent Variable Descriptive Statistics**

<u>Variable</u>	<u>Observations</u>	<u>Mean</u>	<u>Std.</u>	<u>Min</u>	<u>Max</u>
			<u>Deviation</u>		
<b>Presidential Approval</b>	193	.818	4.51	-9	21
<b>Rating Degree of Change</b>					

**Table 1B: Independent Variable Descriptive Statistics**

<u>Variable</u>	<u>Observations</u>	<u>Mean</u>	<u>Std.</u>	<u>Min</u>	<u>Max</u>
			<u>Deviation</u>		
<b>Decision's Ideological Support of President</b>	201	.433	.497	0	1

**Testing Methods:**

In effort to test Model 1 and the hypotheses associated with it (Affirmation and Counter-Mobilization Hypotheses), this study will employ a quasi-experimental approach tied into a regression analysis. Quasi-experimental designs, similar to other experimental types follows: (1) the testing of descriptive causal hypotheses about manipulable causes, (2) incorporates the frequent presence of control groups and pretest measures, and (3) enables testing of a phenomenon before and after the stimulus is presented to the subject to measure the level of effect (Shadish, Cook, and Campbell 2002). However, the difference for quasi-experimental design is that this method lacks random assignment. This is an appropriate tool for this study, because I have decided to only incorporate highly salient Supreme Court decisions in the dataset, excluding other non-salient cases. For the sake of the research design in Model 1; presidential approval rating data is compiled before and after high profile Supreme Court decisions are rendered. This allows us to clearly visualize and demonstrate the actual impact the catalyst (salient Supreme Court case) will have on the public's evaluation of the president in office. Thus, it can be determined that while testing presidential approval ratings in Model 1, the dependent

variable will be the degree of change in presidential approval from the pre-test to the post-test (post-test – pre-test = degree of change).

With the dependent variable being the degree of change in presidential approval, the primary independent variable for Model 1 will be the ideological direction of the U.S. Supreme Court decision's support for the president in office. This measure is a simple dummy variable coded as a 1 if the ideology of the decision matched the expected ideology of the president in office. The variable is coded as a 0 if it is the opposite and the decision opposes the expected ideology of the president. For this study, I am assuming that if the president is a member of the Democratic Party his ideological disposition will support a liberal decision rendered by the U.S. Supreme Court and vice versa for a Republican president. The description for what constitutes a liberal or conservative decision direction can be further explained in the code book found in the appendixes of the study; however, it is safe to assume that they are consistent with the general expectations of the candidate in office. I associate a decision's ideological direction and party of the president in office as support for the decision because presidential party is a heuristic/tool used by average American citizens to understand the expected behavior of political officials (Sniderman 1982). Remember, I am measuring the behavior of average Americans not political scientists which allows us to have less complex measures of support. So while it is certainly possible for a presidential candidate to hold a view on an issue outside the expected ideological spectrum used in this study or simply not have a particular policy stance on the subject, it is equally possible that average Americans are unaware of this and thus project these expected viewpoints onto the candidates based on partisanship or expected ideology. Meaning that even though a

candidate may not have a stance on an issue heard by the Court, it is still possible for there to be an effect. For example, a counter-majoritarian effect could occur simply because their partisan label would suggest that they too disagree with the ruling. Given that we are assessing the general public rather than highly sophisticated political experts, an extremely simplistic understanding of ideological direction is employed.

While I have described both the dependent variable and the independent variable, there are other important controls that could have an impact on the relationship between presidential approval ratings and the courts. Model 1 will include the following key control variables in its analysis: (1) Civil liberty cases to determine if different types of Supreme Court decisions have a greater impact than others. This is coded dichotomously where 1 signals the case is a civil liberty issue whereas a 0 signals a non-civil liberty issue. Therefore, we can determine if civil liberty cases or non-civil liberty cases have an impact on presidential approval ratings. This is certainly possible and thus will be a question ran in the analysis. (2) Precedent alteration will be another aspect of the Supreme Court decision that will be considered. It is certainly possible to consider a case that alters previous Supreme Court precedent to have a greater impact on the public than those that do not. The alteration of precedent coded dichotomously as well, could serve as a signal to the public that the court's previous understanding of the law was incorrect and thus this is an important issue. (3) Declaration of unconstitutionality could have a similar effect as precedent alteration and will also be included in the analysis as a control variable. (4) Lastly, majority vote is included to determine the impact the margin of victory has on the proposed relationship being tested. A 5-4 decision could have a different effect than a 9-0 decision, and thus is something that needs to be accounted for.

It is possible to note that there is a general lack of potential control variables for this study. This is possible due to the relative nature of the quasi-experimental approach. Given that this study is using data that tests the day before the case was decided and the day after to perform the posttest I am potentially controlling for other key political events that may occur and effect the evaluation of the president. By performing the time-frame as close to the decision as possible, I seek to rule out other potential explanations for fluctuations in presidential approval ratings, limiting the need for a large amount of controls.

This is the proposed idea, but it is also equally as possible that presidential approval ratings in general is far too broad of an index to measure the Supreme Court's individual effect. When answering a question such as "Do you approve or disapprove of the job Barack Obama is doing as president" it is very possible to be considering many other factors. One would assume that given the proximity of the time people were asked this question to the highly salient case that the U.S. Supreme Court would be the deciding influence however that may not be the case. Personal biases, conversations with others in various political networks, other key events occurring on the same day could also alter this. Therefore, it is necessary to temper the expectations about this potential relationship. Regardless of results, using this measure is a necessary step because it serves as the most general starting point to assess the impact the U.S. Supreme Court has on the presidency. Only from this most general spot of presidential approval can this project progress on to other more specific studies like public opinion in elections or even most specific in campaign contributions.

The dependent, independent, and multiple control variables will be utilized in a simple regression analysis to measure how the typical value of the dependent variable changes when any one of the independent variables are held constant (Johnson and Reynolds 2012). Ideally, while running the analysis of Model 1, I will find either a positive confidence measure signifying support for the affirmation effect or a negative confidence measure signifying support for the counter-mobilization effect. Either one of these outcomes will require a confidence measure over 95% to be considered a significant relationship. Without this threshold being met, it is not possible to conclude that U.S. Supreme Court decisions have a significant impact on presidential approval ratings.

Before moving into the results section of this chapter, it would be useful to reiterate the hypotheses and general expectations that motivate Model 1. Below is a list of the applicable hypotheses that apply only to Model 1 and the results described below:

**Affirmation Effect Hypothesis:** *High salient U.S. Supreme Court decisions will have an Affirmation Effect in which the subset of the population that ideologically aligns with the decision rendered will increase their support for the candidate or president who also ideologically aligns with the decision through increases in presidential approval ratings, public opinion surveys or campaign donations.*

**Counter-Mobilization Hypothesis:** *High salient U.S. Supreme Court decisions will have a Counter-Mobilization Effect, in which the subset of the population that does not ideologically align with the decision rendered*

*will increase their support for the president or presidential candidate who also does not align ideologically with the decision.*

**Results:**

Considering the hypotheses described above and the general argument that presidential approval rating should be affected by high profile Supreme Court decisions through either an Affirmation effect associated with confirmation of ideological beliefs or the opposite Counter-Mobilization effect associated with the defense of one’s ideological beliefs; this section describes the results found from the regression analysis conducted. Using the data and testing methods also depicted above I do not find any support for the hypotheses within Model 1. Below, I describe the outcome of the results for each of the primary hypotheses as well as discuss the implications associated with the lack of findings.

**Table 2A: Bivariate Regression Analysis: Presidential Approval Ratings**

Variable	Coefficient	Standard Error	t	PValue/Significance
<b>USSC Decision’s Support for the President’s Ideology</b>	.2585227	.6689	0.39	0.700

Notes: \*\* p < .05                      N= 190

Table 2A above depicts the simple bivariate regression between the degree of change in presidential approval ratings from the pretest to the posttest (dependent variable) and the U.S. Supreme Court case’s support for the president’s perceived ideological position based on the direction of the decision (independent variable). This



analysis shows that it is not reasonable to assume that there is a correlation between a high profile U.S. Supreme Court cases and average American’s perception of presidential approval ratings during this specific time period. At this point without controlling for any other factors we find little to no support for the Affirmation or Counter-mobilization effects. Rather than seeing a positive or negative reaction to these cases depicted through the proxy of the presidential approval ratings, it would appear that there is simply little to no effect.

**Table 2B: Multivariate Regression Analysis: Presidential Approval Ratings**

Variable	Coefficient	Standard Error	t	PValue/Significance
<b>USSC Decision’s Support for the President’s Ideology</b>	.500	0.693	0.72	0.471
<b>Alteration in Precedent</b>	-.635	1.667	-0.38	0.704
<b>Declaration of Unconstitutionality</b>	.017	0.402	0.04	0.966
<b>Majority Vote</b>	2.040	1.591	1.28	0.201
<b>Civil Liberty Cases</b>	-1.379	0.825	-1.66	0.099

Notes: \*\*p < .05                      N=190

Table 2B above describes the multivariate regression analysis for the Model 1 regression between the degree of change in presidential approval ratings from the pretest to the posttest (dependent variable) and the U.S. Supreme Court case’s support for the president’s perceived ideological position based on the direction of the decision (independent variable). I find that when analyzing presidential approval ratings from

1993 through 2012 in conjunction with the various control variables, there is still no significant evidence supporting either the affirmation or counter-mobilization effect in regard to presidential approval.

The lack of the impact highly salient U.S. Supreme Court cases have on the public's approval of presidential behavior is could be considered relatively surprising. As hypothesized, one could justifiably argue that the U.S. Supreme Court either validates presidential policy or rejects presidential policy through its controversial decisions. However that does not appear to be the case, at the very least in this particular time period. It is possible as suggested in the theory chapter, that presidential approval ratings are simply an inappropriate proxy to measure U.S. Supreme Court's impact on the populace. The lack of results could be due to the various competing factors that also influence presidential approval ratings such as internal disputes between the presidency and Congress leading to gridlock, political scandal, poor economic performance, etc. It is also possible that the public is simply incapable of making the complex connections between U.S. Supreme Court decisions and presidential performance.

Given the limited results in the expansive time period between 1993 and 2012, I decided to go back to the party polarization literature to determine when exactly increased party polarization hit its peak. It is certainly possible that low levels of partisanship in the 1990's or at the very least the lack of media coverage concerning partisanship or polarization plays a role in these minimal results. Abramowitz and Saunders (2006) argue that partisanship and ideology increased dramatically over the years from 0.49 in 1992-200 periods to 0.60 during the 2004 elections. Jacobson (2007) contends that disagreement over the Iraqi War lead to drastic increases in polarization.

Given this potential increase in polarization levels during this time period, it is possible to argue that partisan or ideological lines of the decisions before the court are becoming much clearer and easier for the electorate to understand. Increasing levels of partisanship could result in higher levels of electoral competition, which could increase the partisan clarity of Supreme Court decisions, enabling the populace to make the complex connection between the Court’s decision and the president’s policy platform. Thus, given this drastic change in the political climate mid-way through the studies general timeframe; I re-test the analysis of presidential approval ratings for high salient cases but use only cases decided after 2004. Statistically significant findings in this Model would have interesting implications on the political polarization literature as well as suggest that the political role of the minds of the American people have increased dramatically over the years.

**Table 2C: Multiple Regression Analysis: Presidential Approval Ratings 2004-2012**

<u>Variable</u>	<u>Coefficient</u>	<u>Standard</u> <u>Error</u>	<u>t</u>	<u>P- Value</u>
<b>USSC Decision’s Support for the President’s Ideology</b>	.225	1.064	0.21	0.822
<b>Alteration in Precedent</b>	-0.307	3.01	-0.10	0.919
<b>Declaration of Unconstitutionality</b>	-0.209	0.613	-0.34	0.734
<b>Majority Vote</b>	2.05	1.847	1.11	0.270
<b>Civil Liberty Cases</b>	-2.661	1.34	-1.99	**0.050

Notes: \*\*p < .05

N=66

Table 2C depicts the regression analysis limited to 2004 through 2012 and finally yields an interesting finding. In the time period of 2004-2012 in cases involving civil liberty issues (cases coded as criminal, civil rights, 1<sup>st</sup> amendment, due process and privacy in the U.S. Supreme Court Database) I find that high profile Supreme Court decisions yield an impact on presidential approval ratings. This would suggest that there is some discernible significance between U.S. Supreme Court cases from 2004-2012 that deal with civil liberty issues versus those that do not. While Table 2C does lend support for the relationship between civil liberty cases and fluctuation in presidential approval ratings, it does not directly address the potential for an affirmation or counter-mobilization effect in conjunction with the type of case decided. Therefore, in effort to further evaluate this interesting discovery and confirm or deny the validity of the proposed hypotheses, I created an interactive variable multiplying the decision's support of the president with the civil liberty case (decisions support of president x civil liberty cases) that will allow me to determine if there is truly evidence of the Affirmation or Counter-Mobilization effect hypotheses. Below in Table 2D and 2E we find the results from the model with the interaction variable. In order to interpret the potential effects of the interaction term, I calculated predicted values displayed in Table 2D and 2E below.

**Table 2D: Interactive Regression Analysis: Civil Liberty Cases that Do Not Support the President's Ideological Position**

<b>Variable</b>	<b>Predicted Value</b>	<b>95% Confidence Intervals</b>	<b>95% Confidence Intervals</b>
<b>Predicted Y</b>	2.987	-0.534	6.507
<b>Civil Liberty Cases that do not support the President's Position</b>	-0.403	-2.220	1.415
<b>Non- Civil Liberty Cases that do not support the President's Position</b>	3.39	-0.234	7.013

**Table 2E: Interactive Regression Analysis: Civil Liberty Cases that Support the President's Ideological Position**

<b>Variable</b>	<b>Predicted Value</b>	<b>95% Confidence Intervals</b>	<b>95% Confidence Intervals</b>
<b>Predicted Y</b>	1.623	-1.879	5.126
<b>Civil Liberty Cases that support the President's Position</b>	-0.039	-2.191	2.112
<b>Non- Civil Liberty Cases that support the President's Position</b>	1.663	-2.152	5.478

Tables 2D and 2E depicting the predicted values for the interactive variable is unable to find any statistically significant relationship between civil liberty cases and the decision's support or lack of support for the president's ideology. The confidence interval in all four cases ranges from a negative to positive interval, which indicates the interaction is not statistically significant. This is somewhat surprising given the positive indications from the multivariate regression analysis ran in Table 2C suggesting that civil liberty cases were indeed statistically significant, but from this point in the study I find no conditional relationship between the type of case and whether it supports the president's position. In sum, I do not find support for either the Affirmation or the Counter-Mobilization hypotheses in Model 1.

The inconclusive findings would suggest that there is no statistically significant difference between the U.S. Supreme Court's influence during the 1993-2012 periods and the limited 2004-2012 period. While presidential approval ratings may not be the best proxy to measure the U.S. Supreme Court's influence, these findings hold interesting effects for some important theories in the literature.

A statistically significant finding in Tables 2D and 2E would have provided a boost to party polarization literature that suggests that the American political system has become increasingly polarized (Abramowitz and Saunders 2006; Jacobson 2007), however that was not the case. Instead, we find little support for the notion that the American political system has increased its level of polarization, at least in regard to the U.S. Supreme Court. In a polarized political system, we did not find any statistically significant difference in the Court's ability to use the ideological direction of their decisions to impact the assessment of presidential candidates.

These inconclusive findings also have a negative impact on the outlook of American political knowledge. Positive findings for Model 1 would have suggested that the American public is indeed capable of making complex political connections between a U.S. Supreme Court decision and how it ties into the president's policy platform. It would have suggested that U.S. Supreme Court decisions who have liberal and conservative frames prime the American public to assess the performance of the presidency. However, as depicted in the tables above that does not appear to be the case. While these results could be due to the impact measurement of presidential approval ratings, these findings still provide a discouraging outlook for American political knowledge.

In summary, Model 1 finds no statistically significant support for either the Affirmation or Counter-Mobilization effect. This chapter utilized various methodological formats (bivariate regression, multivariate regression, interactive variable pr tests) to test the relationship between high profile Supreme Court decisions and the public's assessment of the presidency through presidential approval ratings; however I find little support for the proposed hypotheses. I contend that these negative results are more a reflection of the proxy chosen to test the phenomenon (presidential approval ratings) than it is on the U.S. Supreme Court's ability to impact the other branches of government. As alluded to earlier in the chapter, presidential approval ratings are an extremely broad survey that simply asks citizens to express their view of the president's job performance. While it is certainly possible for a citizen to read or hear about a U.S. Supreme Court case that rejects or confirms the president's platform and reject accordingly, it is equally possible for a variety of other factors to also influence this poll. There are too many

counteracting influences that go into presidential approval ratings to view these negative results as the ultimate conclusion for this relationship. Poor economic performance, great economic performance, state of the union addresses, a political gaff, gridlock in Congress, partisan squabbling, other events in the news are just an abridged list of potential factors that could also tie into a citizen's calculus when assess presidential approval. The primary rational for using presidential approval ratings to assess the Court's ability to influence the public was to maximize the number of salient cases. As we will see in the latter chapters, evaluating high salient cases during a limited number of election cycles severely constrains the overall number of cases one could use. Prior to starting this project, I knew that the chosen measures to assess this phenomenon were imperfect, thus to counteract this I decided to test these models in as many ways as possible to determine the court's impact on the presidency. In this chapter, we find little support for this relationship, but there are still two different measures to assess.

Chapter 5 tests Model 2, and the impact U.S. Supreme Court decisions have on public opinion polls during a presidential election cycle. This will allow us to determine if the U.S. Supreme Court has a greater impact on the presidency during an election cycle rather than off years.



## CHAPTER V

### MODEL 2: PRESIDENTIAL ELECTIONS PUBLIC OPINION DATA, TESTING METHODS AND RESULTS

Chapter 5 functions as the second section concerning data, testing methods and results for the research question regarding highly salient U.S. Supreme Court cases and the presidency. This particular chapter will focus solely on Model 2 which emphasizes the relationship between the U.S. Supreme Court and presidential elections. Within this interval, I hope to analyze the Court's impact on how a presidential candidate is viewed by public opinion. Does a liberal candidate receive a bump in approval when the Court rules in a conservative manner or vice versa? The proxy utilized in Model 2 to evaluate the U.S. Supreme Court and presidential elections will be public opinion polls concerned with which presidential candidate the poll participant prefers. In this model, American citizens will be allocating their support behind a particular candidate rather than the current president in office as seen in the previous chapter. The following pages will pursue this question by first describing the data pertinent to Model 2. While there may be some overlap in data description from the previous chapter, I will mainly focus on data that I have yet to fully describe. Secondly, an account of the testing methods utilized will explain the continued use of a quasi-experimental design paired with regression analysis.

Lastly, I will evaluate the results of the models and describe its potential implications on the field of political science and judicial politics.

**Data:**

Model 2 evaluates the effect high profile U.S. Supreme Court decisions have on how voters evaluate presidential candidates running for political office from 2004-2012. For the sake of the model, this chapter is evaluating this relationship during the presidential elections between: John Kerry (D) v. George W. Bush (R) in 2004, Barack Obama (D) v. John McCain (R) in 2008, and Barack Obama (D) v. Mitt Romney (R) in 2012. Due to data and time limitations associated with performing a thesis, I am only able to go back to the Kerry and Bush election. While this creates a limited sample size of only 33 cases, which could potentially impact the quality of the regression analysis or hinder the chances of findings significance in the models, there are potential benefits of this limitation. For example, limiting the data to the 2004-2012 time periods allows us to further pursue the political effects of party polarization. While Model 1 in Chapter 4 failed to find any significant results concerning the impact of polarization of the Court's influence, this limited dataset allows us to easily continue that pursuit. Are salient U.S. Supreme Court cases capable of altering how citizens view presidential candidates? Or are there too many other important political events occurring in the same time period that neutralizes the signals sent by the Court? To effectively answer these puzzling questions, data concerning which cases are highly salient and those that are not, the ideological direction of the decisions decided and other important variables from the U.S. Supreme Court Database, and finally I need to acquire a large amount of public opinion poll data

concerning presidential elections to create pre and posttests. The next few paragraphs will describe the data utilized to fulfill these criteria.

As described in the previous chapter; before being able to successfully determine the relationship between high profile Supreme Court cases and election public opinion, it is important to determine which cases can be deemed salient and those that are not. For the sake of this study, the New York Times Salience Measure developed by Epstein and Segal (2000) will act as the criteria to determine salience. When a U.S. Supreme Court case finds its decision described on the front page of the New York Times, I can argue that it is indeed a salient case and thus should have a considerable impact on the American public. The media acts as the determining factor of what is salient and what is not salient, but this serves the purposes of the study nicely because they have an understanding of what the public wants to know and what will sell more papers. If a U.S. Supreme Court case ends up on the front page of the NYT's it then should be news worthy enough to dominate that news cycle and calculate into the public's electoral decision making process. Given that chapter 4 described this measure in complete detail there is little need to rehash what was said. Simply understand that Model 2 also uses data supplied by the U.S. Supreme Court Database and that includes the extremely important New York Times Salience Measure.

Public opinion polls during the presidential election cycle will serve as the data source for Model 2's dependent variable. For the sake of the quasi-experimental design utilized for Model 2, this study requires a large amount of data that will enable us to perform a pre and posttest. Due to the time sensitive nature of the question being asked, there needs to be a pre-test poll that ends just prior to the decision date and a posttest poll

that begins the day after the decision was rendered. This is data that must be collected at the time of the events and thus must be borrowed from other polling houses. Clearly, it is not possible to come up with original data for this study given that the appropriate time has passed. Another obstacle for this study was that typically singular polling houses such as Gallup were not running day to day public opinion tracking polls for the 2004 presidential election. While these polling houses have recently adopted the day to day polling strategy, unfortunately this is not the case throughout the time period of this particular study. Therefore, similar to Model 1 in effort to come up with the necessary amount of data, I am forced to compile public opinion data for presidential elections from multiple polling houses. While this is certainly not an ideal strategy due to the different methodological strategies or political biases associated with the various polling houses, however this is the best that can be done under the current data limitations. The literature contends that as long as the polling question remains consistent across the different polling houses the information utilized will be valid (Smith 1987). For the sake of this particular study, a polling house's results were employed if the phrasing of their question used this specific language: "If the presidential election was held today and the candidates were X of the Democrats and Y of the Republicans for whom would you vote?" This multiple polling house approach proved advantageous for it allowed us to create over 836 observations enabling the study to include all 33 salient cases during the 2004, 2008, and 2012 election cycle. Below is a list of the many polling houses employed to compile public opinion data during presidential elections for the 2004, 2008, and 2012 presidential elections:

CNN Opinion Research, TIPP Online, Washington Post/ABC News Poll, Reuters, Fox News, Democracy Corps, Gallup, CBS News/New York Times, and Rasmussen Tracking Polls.

Questions concerning the validity of the public opinion elections variable would be unfounded due to the consistency in the questioning methods and the language of the questioning across polling houses. While this may not be the most ideal way to test the relationship between the U.S. Supreme Court and presidential approval, this is the most feasible way to perform this kind of test, given the data limitations.

Once the public opinion elections data was compiled I applied the correct polls to the appropriate U.S. Supreme Court case and established which polls were pre-tests and which polls were posttests. In order to easily place the pre and posttests into a regression analysis I then created a variable describing the degree of change from the pretest public opinion data to the posttest public opinion data for both the Republican and Democratic candidate. This variable depicting the degree of change from pretest to posttest serves as the primary dependent variable for Model 2 (post-test election public opinion polls – pre-test election public opinion polls). It subtracts the polling value in the post test with the polling value of the pre-test to determine the degree of change “created” by the highly salient U.S. Supreme Court case.

**Table 3: Dependent Variable Descriptive Statistics**

Variable	Observations	Mean	Std. Deviation	Min	Max
Democrat	33	0.454	3.113	-4	6
Rate of Change					
Republican	33	-1.090	3.126	-8	8
Rate of Change					

Similar to Model 1; Model 2 will utilize many variables that can be found in the U.S. Supreme Court database. The previous chapter described the key variables that serve a vital role in the testing of the hypotheses to include: (1) Case ID, (2) Civil liberty Cases, (3) Decision Direction, (4) Precedent Alteration, (5) Law Unconstitutionality, and (6) Finally, the U.S. Supreme Court provide us with the majority vote on the bench. All of these variables will be employed again for the sake of Model 2. Another variable that is unique to Models 2 and 3 is labeled as (7) media perception of the presidential horserace. The objective of this variable is to consider the priming effect the media holds over the American public, and control for potential biases created from constant horserace reporting that informs the public who is “currently winning” the campaign. Mutz (1995) examined the effect of media portrayals of public support for candidates on the behavior of potential campaign contributions. Using a time series analysis, he found that the horserace spin created by the media helped determine the frequency of campaign contributions. A mass media portrayal of public opinion directly influences the decisions

of others to contribute to a campaign. Thus, if the media is claiming that candidate X is winning the election, a Supreme Court decision that either favors or attacks candidate X's policy platform could have a significant effect. Thus for Model 2 and 3 that focus on elections I created the horse race variable. This variable calculates the level in which the leading candidate is ahead in the polls along with the number of polls suggesting that candidate is winning. These two characteristics are thus compiled and determine the way citizens are primed by the media. This is a rather imperfect variable in that the polls used to assess the media horserace are the same as the polls used in the DV. I understand that while this can be problematic, this is the best that could be done under the current constraints. In an ideal situation, I would find an index that measures media perception of presidential races rather than the using the current variable. Ultimately, we find in the results section below that all of this is of little relevance due to the lack of significance the variable has on the overall relationship.

### **Testing Methods:**

In effort to test the Model 2 and the Affirmation and Counter-Mobilization hypotheses, this study will employ a similar quasi-experimental approach and regression analysis to that of Model 1, but it will be ran two separate times to account for changes in public opinion toward the Democratic candidate and changes in public opinion for the Republican candidate. For the sake of Model 2 the dependent variable will be the degree of change from the pretest to posttest in election public opinion surveys. The variables for the degree of change for the Democratic candidate and the degree of change for the Republican candidate will be ran on different occasions to evaluate the public's reaction

to the U.S. Supreme Court decision being rendered and its ultimate impact on each individual candidate.

With the dependent variable being the degree of change in public opinion data, the primary independent variable for Model 2 than will be a dichotomous variable determining whether the ideological direction of the U.S. Supreme Court decision aligns with the expected ideology of the Democratic or Republican candidate for president. Thus, for the sake of the model there are two primary independent variables: (1) Decision's support for the Democratic candidate in the election will determine if the U.S. Supreme Court decision supports the expected ideology of the Democratic candidate. For the sake of ideology direction, this study adopts the logic utilized in the U.S. Supreme Court database concerning what is a liberal decision. I also simply associate a liberal decision to be in support of the Democratic candidate running for office. While this appears to be a rather simplistic measure of ideology, it is necessary given the makeup of the sample being tested. By the public's assessment of these presidential candidates it is most appropriate to use a measure of ideological direction that is simplistic enough for average Americans to comprehend or one they are most likely to incorporate. Thus, while associating a liberal decision with the liberal leaning Democratic Party may not completely represent positions taken by the candidate, it is the best way to measure the limited political understanding of everyday citizens. (2) Decision's support for the Republican candidate in the election will determine if the U.S. Supreme Court decision supports the expected ideology of the Republican candidate. Both of these two variables will be utilized in conjunction with the dependent variable to determine if highly salient U.S. Supreme Court decisions impact public opinion during election cycles to create an



affirmation or counter-mobilizing effect that alters the way voters view their political candidates. Is a high profile decision capable of drawing enough attention to a particular subject or issue that it sways the public's mood and alters a candidate's chances of winning the presidential election? This is a primary question that will be answered in the results section that will follow shortly.

Table 4 below provides a brief description of the four models that will be conducted in this chapter concerning public opinion and presidential elections. The table below describes four potential scenarios in which the U.S. Supreme Court decision could impact the presidential election and thus must be modeled: (1) The impact on the Democratic candidate for the presidency when U.S. Supreme Court decides a highly salient case that supports the ideological disposition of the Democratic candidate. (2) The impact on the Democratic candidate for the presidency when the U.S. Supreme Court decides a highly salient case that supports the ideological disposition of the Republican candidate. (3) The impact on the Republican candidate for the presidency when the U.S. Supreme Court decides a highly salient case that supports the ideological disposition of the Republican candidate. Lastly, (4) the impact on the Republican candidates for the presidency when the U.S. Supreme Court decides a highly salient case that supports the ideological disposition of the Democratic candidate. All four of these scenarios are equally likely to occur and thus must be measured.

**Table 4: Model 2 Methodology**

<b>What is the Model Measuring?</b>	<b>Dependent Variable</b>	<b>Independent Variable</b>	<b>Controls</b>
<b>U.S. Supreme Court case’s impact on the <u>Democratic</u> presidential candidate’s public opinion ratings when the ideological direction of the decision supports the <u>Democrat</u>.</b>	Democratic	Decision’s Support for	Precedent Alteration
	Candidate’s	Democratic Candidate	Unconstitutionality
	Degree of Change		Majority vote
			Minority Vote
			Media Horserace
			Civil Liberty Cases
<b>U.S. Supreme Court case’s impact on the <u>Democratic</u> presidential candidate’s public opinion ratings when the ideological direction of the decision supports the <u>Republican</u>.</b>	Democratic	Decision’s Support for	Same as above
	Candidate’s	Republican Candidate	
	Degree of Change		
<b>U.S. Supreme Court case’s impact on the <u>Republican</u> presidential candidate’s public opinion ratings when the ideological direction of the decision supports the <u>Republican</u>.</b>	Republican	Decision’s Support for	Same as above
	Candidate’s	Republican Candidate	
	Degree of Change		
<b>U.S. Supreme Court case’s impact on the <u>Republican</u> presidential candidate’s public opinion ratings when the ideological direction of the decision supports the <u>Democrat</u>.</b>	Republican	Decision’s Support for	Same as above
	Candidate’s	Democratic Candidate	
	Degree of Change		

Before moving into the result section of the chapter, and revealing the findings from the regression analysis, it would be useful to reiterate the hypotheses and general expectations that motivate Model 2. Below is the list of applicable hypotheses that apply only to Model 2:

**Affirmation Effect Hypothesis:** *High salient U.S. Supreme Court decisions will have an Affirmation Effect in which the subset of the population that ideologically aligns with the decision rendered will increase their support for the candidate or president who also ideologically aligns with the decision through increases in presidential approval ratings, public opinion surveys or campaign donations.*

**Counter-Mobilization Hypothesis:** *High salient U.S. Supreme Court decisions will have a Counter-Mobilization Effect, in which the subset of the population that does not ideologically align with the decision rendered will increase their support for the president or presidential candidate who also does not align ideologically with the decision.*

### **Results:**

Given the hypotheses described above and the general argument that U.S. Supreme Court decisions should have either a positive (affirmation) or negative (counter-mobilization) effect on public opinion data during presidential election cycles; this section seeks to finally confirm or deny these expectations by executing the appropriate tests. Using the data and testing methods depicted above, I find no support for the hypotheses within Model 2. Below is a description of the results for each of the primary hypotheses for Model 2 along with the implications of these findings. As described in the testing method section above the results section will precede in a somewhat similar fashion as in Table 4 analyzing (1) the impact on the Democratic candidate for the presidency when U.S. Supreme Court decides a highly salient case that supports the

ideological disposition of the Democratic candidate. (2) The impact on the Republican candidate for the presidency when the U.S. Supreme Court decides a highly salient case that supports the ideological disposition of the Republican candidate. Unlike the way the models were setup in the testing methods section, I found that there would be little need to run the models through both scenarios given the dichotomous nature of the decision support variables. Running them with the opposite level of support simply changed the direction of the influence but had no effect on the significance of the influence. Therefore in the tables below there are simply two regression tables; one for the Democratic candidate and the influence of the U.S. Supreme Court and the other for the Republican candidate and the influence of the U.S. Supreme Court.

**Table 5A: Multivariate Regression Analysis: Democratic Candidate**

Variable	Coefficient	Standard Error	T	P Value
Decision's Support for Democratic Candidate	0.376	1.277	0.30	0.77
Precedent Alteration	Omitted due to collinearity			
Unconstitutionality	-0.753	0.689	-1.09	0.28
Majority Vote	-1.548	2.156	-0.72	0.48
Minority Vote	-1.181	2.052	-0.58	0.57
Civil Liberty Cases	-1.850	1.521	-1.22	0.22
Media Horserace	0.713	0.947	0.75	0.46

Notes: \*\*p < .05

N= 33

**Table 5B: Multivariate Regression Analysis: Republican Candidate**

Variable	Coefficient	Standard Error	T	P Value
Decision's Support for Democratic Candidate	-1.35	1.288	-1.05	0.30
Precedent Alteration	Omitted			
Unconstitutionality	-0.015	0.695	-0.02	0.98
Majority Vote	-0.446	2.175	-0.21	0.84
Minority Vote	-1.141	2.070	-0.55	0.58
Civil Liberty Cases	-0.422	1.534	-0.28	0.78
Media Horserace	-0.901	0.955	-0.94	0.34

Notes: \*\*p < .05                      N= 33

Both Table 5A depicting the relationship between Democratic presidential candidate's election opinion polls and highly salient U.S. Supreme Court cases and Table 5B depicting the same relationship for Republican presidential candidates fail to find any significant relationship between fluctuations in the opinion polls and highly salient U.S. Supreme Court cases. The closest these two models come to finding a relationship would be the simple decision support for the Republican candidate, but that is only at a 70% confidence level, which is nowhere near the necessary 95% threshold to claim a significant relationship. One point to note about the two models is the precedent alteration variable. Due to collinearity issues the Precedent alteration was omitted. Basically in the 33 salient cases that fit into the time frame of the models there were not enough precedent altering cases that would enable us to use it as a control.

The unsuccessful results for Model 2 portrayed above show no support for either an Affirmation or Counter-Mobilization effect during presidential election public opinion

polls. It is still too early however, to reject our primary general hypotheses concerning the Affirmation and Counter-Mobilization effect given that there is still one more model to run. While the results of Model 2 are discouraging, they are not too surprising given the type of data used in Model 2 (opinion polls) and the overall insignificant findings from the previous chapter and Model 1. While presidential approval ratings and public opinion polls during the presidential election cycle are different measures, they are still both survey polling. As alluded to many times throughout this study, these broad surveys are subjected to many other catalysts that lead to fluctuation in the polls and suffer from a reactive nature that could limit its application to measuring the Court's influence on the presidency. It is not possible to control for the various factors that lead a citizen to answer survey questions in the manner they do. While I hoped to control for this by using a quasi-experimental method that reduced the amount of time between the poll and the actual Supreme Court decision, it was not always possible to find a poll conducted the day before as the pre-test and the day after as the post test. This data issue enabled other important political events to play into the fluctuation in the polls. Thus, the overall point being made here is that using public opinion polls to assess the Supreme Court's influence is an imperfect measure, and therefore the results from Models 1 and 2 should not be viewed as conclusive results. Therefore, I would argue that there needs to be a far more exact way of measuring the public's reaction to U.S. Supreme Court cases that public opinion is unable to provide.

Chapter 6 seeks to remedy this issue by looking at the influence highly salient U.S. Supreme Court cases have on campaign donations. Given that public opinion polls during the election cycle appear to be diluted by the many other salient political events

that occur in junction with the salient Supreme Court decisions, I argue that this study needs to utilize the most tangible data possible. The logic utilized in Chapter 6 argues that the most effective way for a voter to affect the campaign process is through campaign donations. Therefore, if evidence to support either the Affirmation or the Counter-Mobilization effect exists, I am most likely to witness this effect while using day to day campaign donation data.

## CHAPTER VI

### MODEL 3: PRESIDENTIAL ELECTION CAMPAIGN DONATIONS DATA, TESTING METHODS AND RESULTS

As the final medium to test the relationship between highly salient Supreme Court decisions and the American voter's evaluation of the presidency; Chapter 6 and Model 3 analyze day to day campaign donation trends to determine if court decisions are capable of eliciting an Affirmation or Counter-Mobilization effect. Similar to the design of the previous two chapters, Chapter 6 focuses solely on the data, testing methods and results for Model 3. In the previous chapters, I was unable to find any significant relationship between the U.S. Supreme Court decision and the presidency through presidential approval ratings and during the election cycle. I argue that this lack of relationship can be explained by the multitude of competing campaign events, and political information available to the citizen participating in the public opinion poll that dilutes the influence of the Supreme Court decision. Due to data limitations, it was not always possible to have a public opinion poll match up with the day before the U.S. Supreme Court case or the day after to create a 100% accurate pre and post-test. Model 3 however, remedies this issue because it focuses on an extremely tangible means of political participation for American voters and the day-to-day tracking allows for exact pre and post-test execution. Due to



these remedies, I argue that campaign donation data during the election cycle will provide significant proof that U.S. Supreme Court decisions in highly salient situations influence American voters to donate to the candidate in which they ideologically align.

The rationale behind Model 3 is one of personal experience. In the aftermath of the Supreme Court decision for the Affordable Health Care Case, I was extremely excited and wanted to express my personal approval of the decision. The U.S. Supreme Court had just stated the constitutionality of a cornerstone piece of the Obama Administration's policy agenda and I thus decided to donate funds to that particular campaign. In this personal example, it can be argued that an affirmation effect occurred. Of course the opposite is equally and most likely given the mounds of literature suggesting that a counter-mobilization effect is possible. In this same scenario, there can be a conservative voter who ideologically disagrees with the U.S. Supreme Court ruling on the Affordable Health Care Act and feels that it's an attack on their basic beliefs. As a result of this decision, they should be extremely motivated to be proactive and protect their personal beliefs through political participation. I'd argue that a particularly simple way to proactively participate in the protection of one's beliefs would be to provide a campaign contribution to the candidate who also disagrees with the decision. The best way to overturn this decision or voice one's disapproval would be to help the other candidate win. Model 3 and campaign contributions are most likely to exhibit these two potential hypotheses given that they are far more proactive than being randomly selected to participate in a public opinion poll and that they also provide one the opportunity to make a snap decision and provide a donation. There is no need to wait for a phone call from a random survey when you simply need to go to the candidate's website and enter a credit

card number. Citizens are even prompted through random emails from interest groups or presidential candidates they support asking them to donate money to their campaign of choice. Due to this, I contend that this Model 3 is the most realistic chance to witness either the affirmation or the counter-mobilization effect.

The following pages will first explain the data utilized in this particular model. Again, there will be some overlap from previous chapters in regard to U.S. Supreme Court data; therefore I will spend the majority of the time explaining only data that has yet to be discussed. Secondly, I will describe the testing methods utilized. Due to the limited number of observations and data limitations, conducting a regression analysis would be inappropriate. Therefore instead, Model 3 takes a qualitative approach interrupted time series approach and simply analyzes the time-series in a more explanatory/observational fashion that looks for trends in the data. Lastly, the results section describes the conclusions drawn from the qualitative time-series analysis and explains the general implications of the findings.

**Data:**

Model 3 attempts to evaluate the Court's impact on presidential elections and campaigns similar to that of Model 2, but measures the phenomenon through a completely different medium. Rather than using public opinion polls and surveys to determine the influence of the courts, Model 3 seeks to analyze one of the more tangible manners in which a motivated American citizen can participate in politics.

The primary question to be asked for Model 3 is: Do highly salient U.S. Supreme Court decisions have an impact on campaign donations during presidential election

cycles? To answer this particular question effectively, I will need to use (1) the New York Times Case Salience data to determine which cases are highly salient and those that are not. (2) Data from the U.S. Supreme Court Database to utilize variables such as the direction of the decision. Lastly, (3) day to day tracking of campaign donations for both candidates running for the presidency. Given that the New York Times Case Salience measure has been discussed in great lengths already along with the U.S. Supreme Court Database variables, there is little need to reiterate their purpose. The following chapter will explain the data concerning campaign donations and how it is utilized.

Day to day tracking of campaign donations is a relatively new practice in campaign monitoring practices. While the Federal Elections Commission has indeed been tracking campaign finance information since its inception in 1975, it does not have an index that measures donations on a daily basis. The lowest their website appears to break this financial information down is on the quarterly or monthly level. Given that I want to create a measurement with a pre-test that accounts for the amount of donations coming into the campaign the day before U.S. Supreme Court decision and a post-test accounting for the amount raised after the U.S. Supreme Court decision to create a variable determining the exact rate of change created by the case; I need daily data. Therefore, this study turns its attention to OpenSecrets.org and the Center for Responsive Politics who have created an index that accounts for day by day comparisons during the 2008 and 2012 presidential elections.

While this serves the studies purposes perfectly in that it creates day to day tracking of campaign donations, the fact that its only for the 2008 and 2012 election limits the number of cases that apply to this particular study. The total number of salient

cases that apply to the necessary time period is limited to 14. While this certainly is not enough to run an effective regression analysis, it is enough to qualitatively analyze the trends associated with influxes and declines in donations. There is enough information here to at the very least suggest potential support for our hypotheses, and encourage later work analyzing the Court's impact on the presidency. Regardless of the number of cases, positive results would indicate that there is something to this theory; justifying further research once more data becomes available. One must remember that a primary goal of this study is simply to reset the agenda and bring attention to the U.S. Supreme Court's ability to influence presidential politics. Model 3 is still more than capable of serving those important purposes.

The day to day tracking information gathered from the Center for Responsive Politics will be utilized in a similar fashion as the presidential approval and public opinion data from previous models, however with a slight twist. Similar to the previous models, I compiled the data and allocated the appropriate dates with the appropriate salient cases to create pre and post-tests. From here I established a rate of change variable rather than a degree of change variable as seen in previous models. By subtracting the post-test donations from the pre-test donations and dividing that by the pre-test donation, I am able to establish the percentage of change that occurs after the U.S. Supreme Court renders its decision ( $\text{post-test} - \text{pre-test} / \text{pre-test} = \text{rate of change in campaign donations}$ ). It is from this particular variable paired with the direction of the decision and the expected ideological direction of the candidate running for office that will be utilized to determine the ultimate effect of the Court on the presidency during election cycles.

### **Testing Methods:**

As alluded to earlier, in order to appropriately test Model 3 and the hypotheses associated with it; this study will not employ the regression analysis scheme used in the previous two chapters. Instead, Model 3 will emphasize the interrupted time series approach and preform a more qualitative case study analysis based around the rate of change variables to determine if there is any indication that an Affirmation or Counter-Mobilization effect is occurring.

For the sake of the results section in Model 3, the 14 salient cases that pertain to the 2008 and 2012 presidential elections will be categorized into three separate sections based on the level of rate of change from the pre to post-tests in campaign contributions:

#### Category 1: No Hypothesized Influence

All U.S. Supreme Court cases that fail to exhibit any behavior consistent with the hypothesized Affirmation or Counter-Mobilization effect will be placed into category 1. If there is truly no relationship between highly salient U.S. Supreme Court decisions and campaign donations in presidential elections, I should see the majority of Supreme Court cases fall into this category. An example of the numerical values that would lead a U.S. Supreme Court case to be categorized in this manner would be: Rate of Change in Democratic Campaign Donations = -5% and Rate of Change in Republican Campaign Donations = -21% for a case with a liberal decision. Under this example there is no substantial evidence where liberal supporters increase support of their candidate and

there is no support for a counter-mobilization effect amongst conservative voters. While this is a hypothetical example, it shows that neither the Republican candidate nor the Democratic Candidate received any hypothesized reaction from the Supreme Court case.

### Category 2: Minor Influence

All U.S. Supreme Court cases that exhibit behavior consistent with either the Affirmation or the Counter-Mobilization effect, but show a rate of change below 100% are placed into Category 2. In this particular instance, the U.S. Supreme Court appears to have had an impact on the presidential candidate's campaign donations in question, but the rate of change is only slightly changed. Given that this is a qualitative study and relies on observations and judgment of the author in question, I want to temper the interpreted implications of any limited results. While it may be a little extreme to imply that a 100% increase in funding is only minor, I hold this high level to exhibit the validity of this model's study. U.S. Supreme Court cases that are placed into Category 2 can be used to argue for the validity of the hypotheses; however the overall implications of these findings should be viewed cautiously.

### Category 3: Major Influence

All U.S. Supreme Court cases that exhibit behavior consistent with either the Affirmation or the Counter-Mobilization effect and show a rate of change that is above 100% are placed into Category 3. Cases that fall

into Category 3 show massive fluctuations in campaign donations after a U.S. Supreme Court decision is rendered and provide excellent support for either the Affirmation or the Counter-Mobilization hypotheses. If the majority of U.S. Supreme Court decisions fall into Category 3, it would be a very positive sign toward the validity of the hypotheses put forth in this study.

One final important question that remains unanswered is how exactly one would determine if there is evidence of Affirmation in Counter-Mobilization using the rate of change variable? In conjunction with the decision's support of either the liberal or conservative candidate based on the ideological direction of the decision I can determine the effect based on the direction of the increase or decrease in donations. For example, there is a hypothetical U.S. Supreme Court decision that supports the liberal candidate and as a result of this there is a positive increase in Democratic campaign contributions of +57%. This would be categorized as a minor influence for the Court and would signify potential Affirmation effects. In this case the U.S. Supreme Court agreed with the Democratic candidate and as a result the next day there was a spike in funding for that same candidate. On the opposite end of the hypothesized spectrum there is the Counter-Mobilization effect which can be exemplified when a U.S. Supreme Court decision that supports a liberal candidate and as a result we see a positive increase of +150% in campaign donations for the Republican candidate. In this case the U.S. Supreme Court disagreed with the conservative ideology, but there still is evidence of a spike in donations. Given that negative reactions to court decisions tend to elicit greater reaction than positive ones (Grosskopf and Mondak 1998), the Counter-Mobilization effect

illustrates the public's fear of policy that they ideologically disagree with. To counteract this problem, citizens donate to the candidate who would most likely also disagree with the decision and potentially remedy the problem.

Before moving on to the results section for Model 3, and revealing the findings from our qualitative analysis, it would be useful to reiterate the hypotheses and general expectations that motivate Model 3. Below is the list of applicable hypotheses that apply to Model 3:

**Affirmation Effect Hypothesis:** *High salient U.S. Supreme Court decisions will have an Affirmation Effect in which the subset of the population that ideologically aligns with the decision rendered will increase their support for the candidate or president who also ideologically aligns with the decision through increases in presidential approval ratings, public opinion surveys or campaign donations.*

**Counter-Mobilization Hypothesis:** *High salient U.S. Supreme Court decisions will have a Counter-Mobilization Effect, in which the subset of the population that does not ideologically align with the decision rendered will increase their support for the president or presidential candidate who also does not align ideologically with the decision.*

## **Results**

Given the hypotheses above and the general argument that U.S. Supreme Court decisions should influence campaign donations during presidential election cycles; this section executes the qualitative time series analysis related to the rate of change in day to



day campaign donations. Using the data and testing methods depicted above, Model 3 finds strong support for the Counter-Mobilization effect. As for the Affirmation effect, there are signs to suggest that this effect also occurs, but it is less convincing than the information in favor of the Counter-Mobilization effect.

Of the 14 salient U.S. Supreme Court cases that occur during the 2008 and 2012 presidential campaign process, 7 cases showed “Major” change in campaign donations the day after the U.S. Supreme Court decision dominated the news cycle on the front page of the New York Times. There were also 6 other cases that showed “Minor” change in campaign contributions, but still suggested behavior consistent with either the Affirmation or Counter-Mobilization effect. Only 2 out of the 14 cases measured in this model suggest that the U.S. Supreme Court has little to no influence on the campaign donation process. Below in Table 6A is a comprehensive look at these results, depicting the rate of change for each presidential candidate and the hypothesis that the results suggest, while 6B and 6C provide a closer look at the impact these cases have on each partisan affiliation.

**Table 6A: U.S. Supreme Court Decision’s Impact on Presidential Campaign Donations**

Case ID	Case Name	Liberal Decision	Conservative Decision	Rate of Change in Democratic Campaign Donations	Effect	Rate of Change in Republican Campaign Donations	Effect
2007-017	Riegel v. Medtronic, Inc.	Yes	No	0%	Neither	+582%	Counter
2007-031	Bowling v. Kentucky Department of Correction	No	Yes	-71%	Counter	-76%	Neither

<b>2007-042</b>	<b>CBOCS West, Inc. v. Humphries</b>	Yes	No	+208%	Affirmation	∞% *due to pre-test=0 (actually saw an increase of \$531,500)	Counter
<b>2007-043</b>	<b>Gomez-Perez v. Potter</b>	Yes	No	+208%	Affirmation	∞% *due to pre-test=0 (actually saw an increase of \$531,500)	Counter
<b>2007-053</b>	<b>Boumediene v. Bush</b>	Yes	No	+29%	Affirmation	+135%	Counter
<b>2007-068</b>	<b>Kennedy v. Louisiana</b>	Yes	No	-36%	Neither	+12%	Counter
<b>2007-071</b>	<b>District of Columbia v. Heller</b>	No	Yes	+40%	Counter	-29%	Neither
<b>2011-021</b>	<b>Perry v. Perez</b>	No	Yes	+13%	Counter	-33%	Neither
<b>2011-038</b>	<b>Lafler v. Cooper</b>	Yes	No	-19%	Neither	-67%	Neither
<b>2011-039</b>	<b>Missouri v. Frye</b>	Yes	No	-19%	Neither	-67%	Neither
<b>2011-072</b>	<b>FCC v. Fox Television Stations</b>	Yes	No	-56%	Neither	+89%	Counter
<b>2011-074</b>	<b>Miller v. Alabama</b>	Yes	No	-36%	Neither	+1942%	Counter
<b>2011-075</b>	<b>Arizona v. United States</b>	Yes	No	-36%	Neither	+1942%	Counter
<b>2011-077</b>	<b>The Affordable Health Care Cases</b>	Yes	No	-39%	Neither	+284%	Counter

**Table 6B: Liberal Population’s Response to U.S. Supreme Court Decision**

<u>Neither</u>	<u>Affirmation Effect</u>	<u>Counter-Mobilization</u>
Riegel v. Medtronic, Inc.	CBOCS West, Inc. v. Humphries	Bowling v. Kentucky Department of Correction
Kennedy v. Louisiana	Gomez-Perez v. Potter	District of Columbia v. Heller
Lafler v. Cooper	Boumediene v. Bush	Perry v. Perez
Missouri v. Frye		
FCC v. Fox Television Stations		
Miller v. Alabama		
Arizona v. United States		
The Affordable Health Care Cases		

**Table 6C: Conservative Population’s Response to U.S. Supreme Court Decisions**

<u>Neither</u>	<u>Affirmation Effect</u>	<u>Counter-Mobilization</u>
Bowling v. Kentucky Department of Correction		Riegel v. Medtronic, Inc.
District of Columbia v. Heller		CBOCS West, Inc. v. Humphries
Perry v. Perez		Gomez-Perez v. Potter
Lafler v. Cooper		Boumediene v. Bush
Missouri v. Frye		Kennedy v. Louisiana
		FCC v. Fox Television Stations
		Miller v. Alabama
		Arizona v. United States
		The Affordable Health Care Cases

Within Table 6A, 6B and 6C there are some simple trends that occur throughout the 14 cases of study:

(1) Find significant support for the hypotheses that were unfounded in the previous 2 models concerning public opinion polls. This could suggest that campaign donations are the most appropriate proxy to measure the impact on U.S. Supreme Court decisions on presidential elections or presidential evaluation. In 12 out of 14 cases, I find a significant relationship between the decision and the immediate response by the public. In these 12 cases, the public appears to be more inclined to donate to their candidate of choice either out of Affirmation of the court's ideological disposition onto their own or through Counter-Mobilization out of fear of their ideological beliefs being ignored.

(2) The Counter-Mobilization effect is far more prominent than the Affirmation effect. Evidence of Counter-Mobilization occurs 12 times whereas evidence for the Affirmation effect only occurs 3 times. This is fairly consistent with the literature that suggests a negative approval of a U.S. Supreme Court decision is more likely to elicit a reaction from the public than actual approval.

(3) The Counter-Mobilization effect appears to be more prevalent among conservative citizens than those of liberal ideological disposition. While this could be a case of data bias given that the majority of the decisions rendered by the Court in this sample are liberal decisions, the conservative ideology appears to be more likely to act in a Counter-Mobilizing fashion. 9 out of the 11 times Counter-Mobilization occurs it is when the court submits a liberal decision. This could suggest that the traditional nature associated with the conservative ideology is more likely to mobilize in support of their candidate when they feel their ideological beliefs are being threatened.

(4) Citizens who align with a liberal ideological disposition are more difficult to categorize than those of the conservative ideology. While conservatives demonstrate a pattern of Counter-Mobilization with no tendency toward the Affirmation effect, liberals appear to not prefer any strategy. This is evident in that there are 3 cases showing an Affirmation effect, 3 cases showing a Counter-Mobilization effect. This lack of predictable pattern among liberal citizens may be due to the subset of cases being heavily in favor of the liberal ideology, creating little opportunity to Counter-Mobilize, however at this point it remains unclear.

(5) It is possible to have U.S. Supreme Court decisions that foster many different reactions from the public. In 3 cases we witness public reaction that fulfills both the Affirmation and Counter-Mobilization hypothesis at the same time. However in the majority of cases (9), the Supreme Court submits a decision and is receives a response from the public that supports the Counter-Mobilization hypothesis. An interesting side project to conduct based off of these findings would seek to determine the conditions that foster cases that promote both affirmation and counter-mobilization compared to cases that foster simply counter-mobilization.

While these general trends are certainly interesting and Table 6A provides evidence that there indeed is a relationship here, is this information exhibiting true fluctuations in campaign donations? Or are they these changes merely insignificant in measure? While these cases may be exhibiting evidence of these two potential explanations, are they just barely showing these effects? Table 6D below, utilizes the categorization strategy described earlier in the testing method section above Ultimately, any U.S. Supreme Court cases that falls into Category 1 would negate the general

hypotheses whereas Category 2 and 3 would provide support for them. The study places higher weight on those that fall into Category 3 over Category 2 due to the relative amount of change that occurs in the level of campaign donations. While both Category 2 and 3 exhibit significant changes, those in Category 3 which fall above the 100% threshold should be far more persuasive.

**Table 6D: Categorization of U.S. Supreme Court Decision’s Influence on Campaign Donations**

Category 1: No Hypothesized Influence	Category 2: Minor Influence	Category 3: Major Influence
Lafler v. Cooper	Bowling v. Kentucky Department of Correction	Riegel v. Medtronic, Inc.
Missouri v. Frye	Kennedy v. Louisiana	CBOCS West, Inc. v. Humphries (Affirmation and Counter)
	District of Columbia v. Heller	Gomez-Perez v. Potter (Affirmation and Counter)
	Perry v. Perez	Boumediene v. Bush (Counter)
	FCC v. Fox Television Stations	Miller v. Alabama
	Boumediene v. Bush (Affirmation)	Arizona v. United States
		The Affordable Health Care Cases

**Notes:** No influence: No hypothesized relationship found, Minor Influence: Hypothesized relationship found but rate of change below 100%, Major Influence: Hypothesized relationship found with rate of change above 100%

Table 6D shows that only 2 U.S. Supreme Court cases fall under “No influence”, 5 fall under only “Minor influence”, whereas there are 7 cases that fall under “Major influence”. From this particular table I find that there 13 different scenarios where a U.S. Supreme Court decision is rendered placed on the front page of the New York Times (thus becoming a salient issue) and the very next day see fluctuations in campaign donations. In the majority of these cases there are massive fluctuations that are over

100% increases. While this is a limited sample, these numbers strongly suggest that there is validity to the theory that the Courts have an impact on presidential campaign donations.

In Category 3, we see U.S. Supreme Court cases that are associated with very controversial political topics that lead to a strong reaction from the American populace. For example, The Affordable Health Care cases clearly were one of the more polarizing political topics during the 2012 presidential elections. Liberal leaning citizens who supported the Democratic candidate Barack Obama tended to support the affirmation of the Affordable Health Care act whereas conservative leaning citizens who supported Republican candidate Mitt Romney sought to see the act repealed. On June 28<sup>th</sup> 2012, the U.S. Supreme Court ruled that the Affordable Care Act was indeed constitutional confirming the policy agenda of the liberal leaning Barack Obama. On that same day there is a 284% increase in campaign donations to the Romney campaign. This can be interpreted as strong evidence that the U.S. Supreme Court decision had an impact on the American voters who do not align ideologically with the court's ruling, and evidence in favor of the Counter-Mobilization hypothesis. People who disagreed with the Court felt compelled to donate their hard earned money to the Romney campaign in hope to overturn the decision.

While I have used the Affordable Health Act many times throughout the paper to exemplify the influence of the U.S. Supreme Court and in this case the Counter-Mobilization effect, there are several other controversial Supreme Court decisions that portray similar patterns of behavior. *Arizona v. United States* (2012) ruled on the constitutionality of the Support Our Law Enforcement and Safe Neighborhoods Act

passed by the state of Arizona which challenged the federal government's authority to regulate immigration laws and enforcement. (Oyez 2013). Similar to health care, the issue of immigration was also a politically salient issue during the 2012 presidential election and as a result depicts even greater spikes in campaign donations the day after the decision. Table 6A shows that the liberal decision rendered by the Court that limited the state of Arizona's ability to supersede federal policy elicited a spike in contributions to the Romney campaign of over 1942%. Again, this donation spike for a Republican candidate after a liberal decision clearly depicts Counter-Mobilization behavior.

*Boumediene v. Bush* (2008) is another U.S. Supreme Court decision that had a Counter-Mobilizing effect after a liberal decision. *Boumediene v. Bush* (2008) dealt with the denial of writ of habeas corpus for Guantanamo detainees. The plea was submitted by Lakhdar Boumediene, a naturalized citizen of Bosnia and Herzegovina who was being held in military detention at Guantanamo Bay in Cuba. The court decided in a 5-4 majority, holding that prisoners had a right to habeas corpus under the U.S. Constitution and the Military Commissions Act of 2006 was an unconstitutional suspension of that right. During the 2008 presidential election, a major campaigning issue was the rights of the accused and the validity of Guantanamo Bay Prison (Oyez 2013). President Obama directly campaigned on the idea of closing down the prison and moving those detained to another detention center. Once the Court's decision was laid out there was a 135% spike in fundraising for the McCain campaign exhibiting potential Counter Mobilization. Again, here is another controversial politically relevant topic determined in the U.S. Supreme Court, the media covers the case at length, and then there is a spike in donations for a particular candidate. This should serve as convincing evidence that the Court in this



particular instance has some influence on the U.S. public and the presidential campaign process.

While it is certainly possible to go into detail describing each of the cases above, its characteristics and how it was politically relevant to prove the validity of the Counter-Mobilization hypothesis, I would contend that these three examples above and the information in the tables throughout the chapter make the relationship very clear. Model 3 finds substantial evidence supporting the Counter-Mobilization Hypothesis which argues that salient U.S. Supreme Court decisions during presidential election cycles tend to have a Counter-Mobilizing effect on the American citizens who ideologically disagree with the decision.

There is less evidence to support the notion that U.S. Supreme Court decisions lead to an affirmation effect. While some cases exhibit this behavior, there is less convincing proof to support the Affirmation Hypothesis. Therefore, I am in no way rejecting the concept that the Affirmation Effect Hypothesis is possible, I simply do not find enough support in the literature or in this model to conclusively uphold the hypothesis. I would argue however, that given the trends we see in the tables above with more data it is possible to see further proof for the Affirmation effect.

**Table 6E: Hypothesis Results**

<u>Hypothesis</u>	<u>Model 3 Support?</u>
Hypothesis 1: <b>Highly salient Supreme Court cases will have an <u>Affirmation Effect</u> on campaign donations</b>	<b>Further Research Required</b> 3 out of the 14 cases provided evidence of the Affirmation effect. Need more data to confirm its significance.
Hypothesis 2: <b>Highly salient Supreme Court cases will have a <u>Counter-Mobilization</u> effect on campaign donations</b>	<b>Yes</b> There appears to be strong support in favor of the Counter-Mobilization effect

While these findings are certainly interesting and provide support for the U.S. Supreme Court’s ability to influence other branches of government, it is not possible to claim these results are robust. Due to the data limitations that come with using a new form of measurement, there are only 14 salient cases in Model 3. While I am able to witness trends that support the general hypotheses, it is important to proceed with caution. More evidence is needed and further study in regard to this phenomenon is necessary.

The final and potentially most important implication of this study is that given the positive findings in Model 3, there should be enough evidence to show that there is a need for other political science scholars to focus on the U.S. Supreme Court’s influence on other branches of government. The day to day campaign donation data suggests that there is validity to the proposed hypotheses and that further evaluation of the overall phenomenon should be pursued. It should no longer be acceptable for the field of judicial politics to ignore the Court’s ability to impact the election cycle or other potential phenomenon. The political science field needs to reset the way it evaluates the indirect

influence of the Court to include its ability to be proactive rather than simply analyzing how it reacts to the aggressive electoral branches.

## CHAPTER VII

### CONCLUSIONS

Considering the political ramifications and the magnitude of the media coverage associated with the U.S. Supreme Court decision concerning the Affordable Health Care Act in the summer of 2012, I was inspired to evaluate the level of influence a single U.S. Supreme Court decision can have on the presidential campaign process as well as the evaluation of presidential performance in general. Is it possible for a Supreme Court decision to alter the way we view a candidate for office or the performance of the president? As alluded to in the chapters earlier, this U.S. Supreme Court decision was highly visible amongst the media and encouraged potential voters such as myself to participate in the campaign process through either affirmation or rejection of our ideological beliefs on the issue of health care. Compelled that this was a viable political science question, I sought to formulate a research question that would be worthy of the judicial politics field. From this single event the basis of the study was formed.

Throughout this paper I have sought to assess the influence highly salient U.S. Supreme Court decisions have on the public's evaluation of presidential performance. Through this research question I sought to determine if a U.S. Supreme Court decision is capable of having either an (1) Affirmation Effect or a (2) Counter-Mobilization Effect.

The Affirmation effect describes the scenario where the U.S. Supreme Court decision affirms a set of ideological beliefs and thus motivates those who ideologically align with the ruling to engage in support of their candidate most likely to uphold such a ruling. As a result, there is an increase in either public opinion ratings or increases in campaign donations to the particular presidential candidate that closely aligns with the direction of the decision. There is also the Counter-Mobilization effect where high profile Supreme Court cases have an adverse effect and create a more negative response motivating the opposite party to increase their support of the candidate who does not align with the direction of the decisions. This Counter-Mobilizing effect is associated with a rally around the flag effect, when one's ideological beliefs are threatened it can lead to a highly motivated reaction that mobilizes behind the presidential candidate that is most likely to protect their particular political views.

Using these two primary effects as the overlapping general hypotheses to base the study around, I decided to test the impact highly salient U.S. Supreme Court cases have on the evaluation of the presidency using three different proxies: (1) presidential approval ratings, (2) public opinion polls during election cycles, and (3) day to day campaign donation data.

Model 1, using presidential approval rating data, sought to test the U.S. Supreme Court's ability to influence the evaluation of the presidency during non-election cycles between 1993 and 2012. This model evaluates the relationship between the dependent variable of the change in presidential approval ratings from the pre to the post-test (post-test – pre-test = degree of change) and an independent variable that accounts for the ideological support the U.S. Supreme Court decision has for the president in office. To

test this relationship, I used bivariate, multivariate and interactive regression analysis paired with the quasi-experimental approach. Within Model 1, I find no statistically significant evidence supporting the Affirmation or Counter-Mobilization hypotheses. This suggests that the U.S. Supreme Court has little to no effect on variations in presidential approval ratings.

Model 2, using public opinion data during presidential election cycles, evaluated the U.S. Supreme Court's ability to influence the viability of individual presidential candidates. This model tested whether a highly salient case could increase or decrease the chances of a particular presidential candidate being elected to office. Similar to Model 1, Model 2 is tested using quantitative analysis through bivariate, multivariate, and interactive regressions. Comparable to the results in Model 1, I find no statistically significant evidence supporting the Affirmation or Counter-Mobilization hypotheses. This suggests that the Courts have little to no influence on fluctuations in presidential public opinion polls.

The lack of significant support for the primary hypotheses for the study thus far, were discouraging, but could be more of a reflection of the proxy of study chosen than by the Court's actual influence on the presidency. With presidential approval ratings and election public opinion polls, there are far too many intervening or competing influences that limit the influence of the Supreme Court decision. Even if I was to find perfect public opinion polling data that matches up with the day before and the day after the U.S. Supreme Court decision, it is next to impossible to control for the other reasons an American voter would have a positive or negative opinion about a candidate.

Model 3 seeking to remedy the downfalls of the previous two models, takes an alternative approach and moves away from survey data to instead rely on day to day campaign. I argued that donating to a presidential campaign is the most proactive means of participation available to an American voter and thus would be an ideal way to evaluate the effect high profile Supreme Court cases have on presidential campaigns. If you agree with the decision rendered by the Court it can spur you to donate to a presidential campaign. On the opposite end of the spectrum, you could ideologically disagree with the same Supreme Court decision and thus in effort to protect one's ideological beliefs decide to donate money to the candidate who is most likely to work to overturn the decision. Using a rate of change rather than a degree of change measure ( $\text{post-test} - \text{pre-test} / \text{pre-test}$ ) as the dependent variable and the direction of the decision's support for the candidate's ideology as the independent variable, I conduct a qualitative time series analysis to test the hypotheses in question. During the 2008 and 2012 presidential election cycles, I find strong support for the Counter-Mobilization effect but only minor support for the Affirmation effect. This suggests that U.S. Supreme Court cases during the 2008 and 2012 presidential election cycle exhibited patterns where when American citizens ideologically disagreed with the highly salient decisions rendered by the Supreme Court they were most likely to heavily increase their support for the presidential candidate who also ideologically disagrees with the decision. As a result of this, when this set of circumstances occur, I witness a drastic increase in the percentage of campaign donations for the presidential candidate on the "losing" side of the debate. Evidence in support of the Counter-Mobilization effect are consistent with past political science literature which contend that the American public tends to react

strongly to Supreme Court decisions they disagree with but fail to react when there is a decision they do indeed agree with (Grosskopf and Mondak 1998). This would explain why the findings in favor of the Affirmation effect are relatively tempered. Below I have created a list of the general findings from Model 3:

1. High profile U.S. Supreme Court decisions have a significant impact on fluctuation in donations to presidential campaigns. The majority of salient Supreme Court cases sees an increase or decrease in donations over 100%.
2. The Counter-Mobilization effect is far more prominent than the Affirmation effect. We see its effect in 12 out of the 14 cases whereas in only 3 out of the 14 cases for the Affirmation effect
3. The Counter-Mobilization effect is far more prevalent among conservative American voters than liberal Americans.
4. It is possible for a single U.S. Supreme Court case to foster both an Affirmation and Counter-Mobilization effect. This occurred on 3 separate occasions.

Now that all of the analysis has been conducted and the results for all of the Models have been recorded, how exactly did the overlapping hypotheses which drove this study perform throughout the three models? Below in Table 7, is a list of the appropriate models matched up with the two primary hypotheses. It is apparent that in Models 1 and 2 there is no statistically significant results in favor of either the affirmation or the Counter-mobilization effects. However, as mentioned in the paragraph above there are promising findings in Model 3 concerning campaign donation data. Within this model



there is significant support for the Counter-mobilization effect and some support for the Affirmation effect.

**Table 7: Conclusions**

<b>Model</b>	<b>Support For Affirmation Effect Hypothesis</b>	<b>Support for Counter-Mobilization Effect Hypothesis</b>
<b>Model 1: Presidential Approval Ratings</b>	No	No
<b>Model 2: Public Opinion during Election Cycles</b>	No	No
<b>Model 3: Campaign Donations</b>	No (requires further research)	Yes

While the results for Model 3 suggest significant support for the Counter-Mobilization effect, the implications of these findings need to be interpreted in a conservative manner. Due to data limitations associated with utilizing a relatively new measure of compiling campaign finance data, the study is limited to the 2008 and 2012 presidential election cycle. This limited time frame only allows me to conduct the necessary analysis on 14 salient U.S. Supreme Court cases. While this is certainly enough to witness trends or patterns that suggest the prevalence of the Counter-Mobilization effect, it should be understood that the positive results I find in Model 3 may not hold over a longer time span and requires further research. Therefore, I suggest one exercises caution when expanding on the implications of these particular findings.

Naturally, this study is but a first step forward into understanding the impact the highly salient U.S. Supreme Court cases have on voter's evaluation of presidential candidates or incumbents as well as the Court's impact on other branches of government in general. This study was meant to "reset" the agenda in American judicial politics and bring attention to the potential ways the U.S. Supreme Court can alter the behavior of the other branches of government. The emphasis on the reactive behavior the Supreme Court exhibits toward the other branches of government has been far too prevalent in the literature and has left the other side of the relationship completely ignored. I would argue that this research project provides judicial politics scholars an excellent starting point to further analyze this phenomenon. While the research for this particular project is concluding, there are still many potential questions that remain unanswered. For example, I would be interested to see a focused research project on the impact party polarization has had on the U.S. Supreme Court. What has its impact been on the judicial nomination process, how has it effected the Court's certification process, as well as the Court's tendency to make controversial decisions. While at points in the study there were signs that party polarization played into an increasing role for the Courts, overall this study was relatively unsuccessful in supporting that claim. However the means used to test this phenomenon were limited. Therefore, I would argue that there is room for more research. Another potential research avenue available to political science researchers is to further develop day to day campaign finance tracking. This is an invaluable asset to those who wish to conduct time series analyses. While limited, the data we do have clearly suggests that day to day tracking of campaign donations is an excellent medium to measure the court's impact on the presidency during election cycles. It would appear that the

proactive nature of donating to a campaign is a far more appropriate medium to capture the effects of the Court on the public than public opinion polls. The data simply needs to be further developed. Also, extending this kind of research into the other branches of government is certainly possible. I would be interested to see a study that investigates the impact Supreme Court cases have on issue advocacy. Similar to the use of day to day campaign finance in this project one could create pre and post test to determine the impact salient and non-salient Supreme Court cases have on fund raising for particular issue advocacy. One of the goals an interest group has while arguing before the courts is to bring attention to their particular issue advocacy message. Some potential research questions could include: Does this translate into increases in funding? Do we see a spike or decline in donations to interest groups promoting their agenda at the Supreme Court level? Is there an effect similar to the hypothesized Affirmation or Counter-mobilization effects? This study would help evaluate the impact the U.S. Supreme Court has on interest groups that seek to advance their agendas through the courts. Focusing on interest group issue advocacy rather than presidential campaign finance data will solve the limited number of case issue because there is not a limited time frame when interest groups can appear before the court as well as there being far more interest groups than candidates running for office. Also, this study would allow one to evaluate both non-salient and salient cases, and I would think that these groups have been compiling data for a long amount of time. Finally, other more obvious extensions of this project would include research regarding Congressional elections, especially when there is a decision that pertains directly to the Congressman's own district. When the U.S. Supreme Court case overturns a piece of legislation authored by their congressmen, are voters more

likely to vote them out of office? Given the lack of literature in this area, there are countless areas of extension that can branch off from this project.

Overall, I would argue that this research project was a success. While I did not find overwhelming conclusive support for both the Affirmation and Counter-Mobilization hypotheses as seen through the lack of hypothesized support through presidential approval ratings and public opinion polls, there was enough evidence from the analysis conducted with day to day campaign finance data to suggest a statistically significant result. Given the proactive qualities that enable one to make a campaign donation to presidential candidate after a U.S. Supreme Court decision, finding that donations are a more effective proxy than public opinion polls is not surprising. The true impact the U.S. Supreme Court decision appears to have is one leading to a “snap” decision of validation or panic that mobilizes American citizens to rally behind the candidate who they ideologically agree with. In the case of campaign donations the medium to participate in the political process is readily available and can be done by simply logging on to the presidential candidate’s website to donate immediately after the decision is rendered. This allows citizens to interject their opinions of the highly salient case without waiting to be asked their opinion on the subject as one would have to do to participate in a public opinion poll. The desire to speak one’s mind about the Supreme Court decision ultimately has an impact on the presidents running for office because it leads to an increase in their own or the opponent’s campaign war chests, which can ultimately impact the outcome of the election. Public opinion polls on the other hand, were not nearly as successful as the campaign donation model, and proved to be less capable of detecting this relationship given the less proactive nature of the polling process. With opinion polls, there is no

guarantee that a citizen directly affected by the U.S. Supreme Court decision will be randomly selected in the poll as well as there being no direct mechanism for a citizen to express their opinions directly after understanding the case. The selection issues as well as the inability to quickly express their political Affirmation of the decision or Counter-Mobilize in opposition against a decision makes it difficult for these polls to adequately measure the Court's impact without being muddled by other key political events. These overall conclusions are reflected in the findings that support the Counter-Mobilization effect through the use of day to day campaign donations while there is little support for either of the hypothesized relationships through presidential approval or public opinion polls. Therefore, given the results of this study there appears to be enough support to justify a call for additional research into the Court's capacity to influence the public or other branches of government in effort to further understand the extent of the Affirmation and Counter-Mobilization effects.

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## APPENDICES

### Codebook

#### 1. Case ID (caseid)

- Case ID serves as the unifying variable in the dataset. Within this variable, the first four digits are the term. The next four are the case within the term (starting at 001 and counting up).

#### 2. Issue Area (issueArea)

- This variable simply separates the issues identified in the preceding variable (issue) into the following larger categories: criminal procedure (issues 10010-10600), civil rights (issues 20010-20410), First Amendment (issues 30010-30020), due process (issues 40010-40070), privacy (issues 50010-50040), attorneys (issues 60010-60040), unions (issues 70010-70210), economic activity (issues 80010-80350), judicial power (issues 90010-90520), federalism (issues 100010-100130), interstate relation (issues 110010-110030), federal taxation (issues 120010-120040), miscellaneous (issues 130010-130020), and private law (issues 140010-140080).
  - i. Values:

1. Criminal Procedure
2. Civil Rights
3. First Amendments
4. Due Process
5. Privacy
6. Attorneys
7. Unions
8. Economic Activity
9. Judicial Power
10. Federalism
11. Interstate Relations
12. Federal Taxation
13. Miscellaneous
14. Private Action

**3. Civil Liberties (civlib)**

- This variable determines if a U.S. Supreme Court case is of the issue of civil liberties or not.
  - i. Civil liberty case = 1
  - ii. Non-civil liberty case = 0

**4. Decision Direction (decisiondirection)**

- Variable determines whether the Court supports or opposes the issue to which the case pertains, this variable codes the ideological direction of the decision

1. Conservative =1
2. Liberal= 2
3. Unspecified=3

**5. Decision's Support of President Subjected to Presidential Approval Rating**

(decision\_support\_presapproval)

- Variable measures the ideological support the U.S. Supreme Court decision provides the current president in office. Using a basic spectrum of political ideology, if the direction of the decision is consistent with the expected ideology of the current president the U.S. Supreme Court case will receive a 1. If the direction of the decision is the opposite of the expected ideology of the current president, the U.S. Supreme Court case will receive a 0.

**i. Values:**

1. Case supports president ideology = 1
2. Case opposes president ideology = 0

**6. Supreme Court decision alters precedent** (precedentalteration)

- Variable measures if the majority opinion effectively says that the decision in this case “overruled” one or more of the Court’s own precedents.

**i. Values:**

1. 0= no formal alteration of precedent
2. 1= precedent formally altered

**7. Supreme Court declares law unconstitutional** (decalrationuncon)



- Variable indicates that the Court either declared unconstitutional an act of Congress; a state or territorial statute, regulation, or constitutional provision; or a municipal or other local ordinance.

**i. Values:**

1. No declaration of unconstitutionality = 1
2. Act of Congress declared unconstitutional = 2
3. State or territorial law, regulation, or constitutional provision unconstitutional = 3
4. Municipal or other local ordinance unconstitutional = 4

**8. Majority Vote in Supreme Court Conference (majVotes)**

- Variable specifies the number of justices voting the majority; whereas minVotes below indicates the opposite.

**9. Name of the Supreme Court Case (casename)**

- Variable that depicts the name of the U.S. Supreme Court case in question.

**10. Date of Decision (dateDecision)**

- This variable contains the year, month, and day that the Court announced its decision on the case.

**11. New York Times Case Salience Measure (nytsalience)**

- This variable describes U.S. Supreme Court cases that have been deemed salient by the NY Times Case Salience Criteria adopted by Epstein and Segal (2000).

- All U.S. Supreme Court cases that have appeared on the front page of the New York Times immediately after the decision was rendered have been deemed highly salient issues for voters and are included in this dataset.

**i. Values:**

**1. High Salient Case = 1**

**2. Low Salient Case = 0**

- a. \*\*\*all low salient cases have been dropped from the dataset to make it easier to navigate.**

**12. Date of the presidential approval rating poll used to establish a pretest**

(date\_preapproval)

- This variable identifies the range of dates the presidential approval rating data utilized to assess the public mood toward the president in office. Due to data limitations, I was forced to employ multiple polling houses to find enough information to perform a pretest. This variable is there simply to identify with the polling house used.

**13. Date of the presidential approval rating poll used to establish a posttest**

(data\_postapproval)

- This variable identifies the range of dates the presidential approval rating data utilized to assess the public mood toward the president in office. Due to data limitations, I was forced to employ multiple polling houses to find enough information to a post- test. This variable is there simply to identify with the polling house used.

**14. Pre-Test Presidential Approval Rating (preapproval)**

- This variable identifies the number associated with the public's approval of the current president's job performance. Information is used to establish public mood before the U.S. Supreme Court Case occurs.

**15. Post-Test Presidential Approval Rating** (postapproval)

- This variable identifies the number associated with the public's approval of the current president's job performance. Information is used to establish public mood after the U.S. Supreme Court Case occurs.

**16. President Assessed in Presidential Approval Rating Pre-Test**

(preapproval\_pres)

- Variable depicts the president in office that is being assessed by the pre-test polling house.

**17. President Assessed in Presidential Approval Rating Post-Test**

(postapproval\_pres)

- Variable depicts the president in office that is being assessed by the post-test polling house.

**18. U.S. Supreme Court Decision Support of Democratic Presidential Candidate**

(decision\_support\_dem\_elections)

- This variable interprets the direction of the U.S. Supreme Court case decision and compares it to the expected ideology of the Democratic Presidential candidate on a liberal-conservative scale. Similar to the Presidential approval support variable; if the USSC case decision direction matches with the expected ideology of the candidate, the case receives a 1 and vice versa.

**i. Values:**

**1.** Decision supports candidate = 1

**2.** Decision opposes candidate = 0

**19. U.S. Supreme Court Decision Support of Republican Presidential Candidate**

(decision\_support\_repub\_elections)

- This variable interprets the direction of the U.S. Supreme Court case decision and compares it to the expected ideology of the Republican Presidential candidate on a liberal-conservative scale. Similar to the Presidential approval support variable; if the USSC case decision direction matches with the expected ideology of the candidate, the case receives a 1 and vice versa.

**i. Values:**

**1.** Decision supports candidate = 1

**2.** Decision opposes candidate = 0

**20. Donations gained by Democratic Presidential Candidate prior to the U.S.**

**Supreme Court case**(dem\_preettest\_money\_raised)

- This variable uses day to day tracking data employed by OpenSecrets.org (2013) to determine the amount of campaign contributions the candidate received by the democratic candidate the day before the U.S. Supreme Court decision was rendered.

**21. Donations gained by Democratic Presidential Candidate the day of the U.S.**

**Supreme Court case** (dem\_posttest\_money\_raised)

- This variable uses day to day tracking data employed by OpenSecrets.org (2013) to determine the amount of campaign contributions the candidate received by the democratic candidate the day of the U.S. Supreme Court decision was rendered.

**22. Donations gained by Republican Presidential Candidate prior to the U.S.**

**Supreme Court case** (rep\_pretest\_money\_raised)

- This variable uses day to day tracking data employed by OpenSecrets.org (2013) to determine the amount of campaign contributions the candidate received by the republican candidate the day before the U.S. Supreme Court decision was rendered.

**23. Donations gained by Republican Presidential Candidate the day of the U.S.**

**Supreme Court case** (rep\_posttest\_money\_raised)

- This variable uses day to day tracking data employed by OpenSecrets.org (2013) to determine the amount of campaign contributions the candidate received by the republican candidate the day after the U.S. Supreme Court decision was rendered.

**24. Public Opinion Election Pre-Test for Democratic Candidate**

(pre\_electiondem)

- This variable collects public opinion data from various polling houses to determine public mood toward the democratic presidential candidate prior to the U.S. Supreme Court case.
  - i. We make the pre-test as close to the decision date as possible to control for other explanations for fluctuations in public mood.

**25. Public Opinion Election Pre-Test for Republican Candidate** (pre\_electionrep)

- This variable collects public opinion data from various polling houses to determine public mood toward the republican presidential candidate prior to the U.S. Supreme Court case.
  - i. We make the pre-test as close to the decision date as possible to control for other explanations for fluctuations in public mood.

**26. Public Opinion Election Post-Test for Democratic Candidate**

(post\_electiondem)

- This variable collects public opinion data from various polling houses to determine public mood toward the democratic presidential candidate after to the U.S. Supreme Court decision has been decided.
  - i. We make the post-test as close to the decision date as possible to control for other explanations for fluctuations in public mood.

**27. Public Opinion Election Post-Test for Republican Candidate**

(post\_electionrep)

- This variable collects public opinion data from various polling houses to determine public mood toward the republican presidential candidate after to the U.S. Supreme Court decision has been decided.
  - i. We make the post-test as close to the decision date as possible to control for other explanations for fluctuations in public mood.

**28. The degree of change from pre to posttest for public opinion of the**

**democratic candidate**(election\_rateofchange\_dem)

- This variable assesses the degree of change from the pre-test public opinion poll to the posttest public opinion poll of the democratic candidate. This variable was created in Stata where post\_electiondem was subtracted from pre\_electiondem.

**29. The degree of change from pre to posttest for public opinion of the republican candidate** (election\_rateofchange\_repub)

- This variable assesses the degree of change from the pre-test public opinion poll to the posttest public opinion poll of the republican candidate. This variable was created in Stata where post\_electionrep was subtracted from pre\_electionrep.

**30. The degree of change from pre to posttest in presidential approval ratings for the current president in office** (presapproval\_rateofchange)

- This variable assesses the degree of change from the pre-test presidential approval ratings to the posttest presidential approval ratings of the president currently in office at the time of the U.S. Supreme Court case. This variable was created in Stata where postapproval was subtracted from preapproval to create the degree of change.

**31. The rate of change from pre to posttest in campaign donations for the democratic candidate**(donation\_rateofchange\_dem)

- This variable assesses the rate of change from the pre-test campaign donations for the democratic candidate to the post-test campaign donations. This variable was created in Stata where dem\_posttest\_money\_raised was subtracted from

dem\_prettest\_money\_raised divided by dem\_prettest\_money\_raised. This allowed us to see the percentage of change in campaign donations from pre to post test.

**32. The rate of change from pre to posttest in campaign donations for the republican candidate**(donation\_rateofchange\_rep)

- This variable assesses the rate of change from the pre-test campaign donations for the republican candidate to the post-test campaign donations. This variable was created in Stata where rep\_posttest\_money\_raised was subtracted from rep\_prettest\_money\_raised divided by rep\_prettest\_money\_raised. This allowed us to see the percentage of change in campaign donations from pre to post test.

**33. Interaction between the degree of change in presidential approval and civil liberty cases** (decisionsupportapprovalXcivilb)

- This creates an interaction variable between the degree of change in presidential approval and civil liberty cases.

**34. Media Perception of Presidential Race** (media perception\_horserace\_monthl)

- This variable assesses how the media portrays the current presidential race to the American public. Based off the public opinion polls used in the data, I determine add up the number of points a presidential candidate is receiving per month and the number of polls they are leading to determine the general perception displayed to the public.
  - i. 1= liberal candidate leading
  - ii. 2= conservative candidate leading



iii. 3= no clear leader

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