

IDEOLOGY, THE AFFORDABLE CARE ACT RULING, AND SUPREME COURT LEGITIMACY

CHRISTOPHER D. JOHNSTON*
D. SUNSHINE HILLYGUS
BRANDON L. BARTELS

Abstract The received wisdom in the scholarly literature on the US Supreme Court is that the perceived legitimacy of the institution is largely independent of the Court's policy output. Legitimacy is thought to be rooted in more stable factors, such as support for democratic values, and thus to be immune from ideological discontent with any particular decision. While recent research has demonstrated a general association between political predispositions and legitimacy, questions remain about the extent to which the specific decisions of the Court might shape legitimacy judgments in the mass public. In this paper, we examine the relationship between ideology, political sophistication, and evaluations of Supreme Court legitimacy in the aftermath of the recent decision on the Affordable Care Act. Our findings suggest a substantial role for Court policymaking in shaping perceptions of legitimacy in the mass public, but the nature of the relationship is conditional on political sophistication.

To what extent is public opinion about Supreme Court legitimacy shaped by ideological agreement or disagreement with a particular Supreme Court ruling? If ever there were a case to shed new light on this crucial question, the Court's "instant landmark" health-care ruling in June 2012—in which the Court upheld President Obama's signature domestic achievement, the Affordable Care Act (ACA)—would be that case.

Scholarly research has traditionally concluded that Supreme Court legitimacy is largely immune to the immediate effects and the ideological and partisan content associated with even the most salient and ideologically charged

CHRISTOPHER D. JOHNSTON is an assistant professor of political science at Duke University, Durham, NC, USA. D. SUNSHINE HILLYGUS is an associate professor of political science at Duke University, Durham, NC, USA. BRANDON L. BARTELS is an associate professor of political science at George Washington University, Washington, DC, USA. *Address correspondence to Christopher D. Johnston, Duke University, Box 90204, Durham, NC 27708, USA; e-mail: christopher.johnston@duke.edu.

doi:10.1093/poq/nfu036

© The Author 2014. Published by Oxford University Press on behalf of the American Association for Public Opinion Research. All rights reserved. For permissions, please e-mail: journals.permissions@oup.com

Court rulings, such as *Bush v. Gore* (2000) (e.g., Gibson, Caldeira, and Spence 2003b). Recent research, however, argues that individual judgments about the Supreme Court depend on the interaction of ideological preferences and the Court's decisions, suggesting a political and ideological foundation to legitimacy (e.g., Bartels and Johnston 2012, 2013; Johnston and Bartels 2010).

Although both *Bush v. Gore* (2000) and the Court's ACA ruling (*National Federation of Independent Business v. Sebelius* 2012) are similar in that they were high-salience decisions involving clear partisan and ideological cleavages, the Court's ACA ruling was distinct in that it was generated by an *even more conservative Court*, yet, *prima facie*, it provided a victory to President Obama and the Democrats.¹ The unique context of this case—a conservative Court issuing a liberal ruling favoring Democratic political interests—offers a compelling opportunity to evaluate the extent to which individuals' ideological preferences vis-à-vis a key ruling's ideological direction influence public opinion of Supreme Court legitimacy. On the basis of a YouGov national survey taken shortly after the ACA decision, we argue that the impact of the decision for any given citizen is conditional on three factors: (1) a citizen's awareness of the decision and its ideological direction; (2) the decision's influence on that citizen's beliefs about the ideology of the Court more broadly; and (3) the ideological orientation of the citizen herself. Our results strongly support an ideological foundation to public opinion of Supreme Court legitimacy.

Theory and Hypotheses

Our hypotheses regarding the impact of the ACA ruling on Court legitimacy derive from the integration of two theories. First, we draw on Bartels and Johnston's (2013) subjective perceptions theory of ideology and Supreme Court legitimacy, which posits that legitimacy is a positive function of *perceived* ideological agreement with the Court's policy output. Second, we draw on Zaller's (1992) theory of how citizens update beliefs in response to new information. Zaller's (1992) core insight is that a citizen's response to political information available at the elite level will be a multiplicative function of her *reception* of the information and her *acceptance* of the information given reception.

The probability of reception is a positive function of political sophistication: Those who pay more attention to elite politics are more likely to encounter the information in question. Conversely, however, the individual's acceptance of the information is *negatively* related to political sophistication, because sophisticated citizens have dense, preexisting knowledge regarding

1. The media portrayed the ACA decision as a clear political victory for the president and Democrats, but others have argued that the ruling was not an unambiguous Democratic win because of implications for Medicaid expansion and interpretations of the limits of the Commerce Clause (Mariner, Glantz, and Annas 2012).

the political object to which the information may be relevant, and thus the new information is unlikely to have much of an effect on overall beliefs and attitudes (i.e., “inertial resistance”). The unsophisticated, with weaker priors, are more susceptible to belief change. The combination of these two insights generates a quadratic model of opinion change in response to an information shock: Maximal responsiveness to new information should be found among the *moderately sophisticated*, who are likely to receive the information and for whom that information will have a reasonably large impact on beliefs.

We conceptualize the ACA decision as an information shock potentially relevant to making a judgment regarding the ideology of the contemporary Supreme Court. What is interesting about this decision is that it is “liberal,” but was handed down by a conservative Court. It is this gap between specific-decision and general-Court ideology that provides the leverage we need to empirically test the effect of this decision with only cross-sectional data following the decision. Specifically, increasing levels of political sophistication should increase the probability that one knows about the decision and that it was favorable to Democratic and liberal interests.² Conversely, the probability that one adjusts one’s view of the Court’s general ideology in response to this information should be a *negative* function of political sophistication: Sophisticated citizens should be more knowledgeable about the general ideological disposition of the Court, and less likely to adjust their perceptions of the Court’s (conservative) ideology in response to this single decision.

Taken together, we expect the following patterns among low, medium, and high sophisticates: *Low sophisticates*, lacking reliable prior information regarding the Court’s ideology, and lacking exposure to the ACA decision, should possess relatively non-systematic perceptions of the Court’s ideology in both the pre- and post-ACA context; *medium sophisticates*, in possession of relatively weak priors regarding the ideology of the Court, but in possession of information regarding the salient and liberal ACA decision, should have adjusted their perceptions of the Court’s ideology in a liberal direction from pre- to post-ruling; *high sophisticates*, in possession of strong prior information regarding the Court’s ideology, should be likely to perceive the Court’s ideology as conservative in both the pre- and post-ACA era.

In sum, integrating these insights with Bartels and Johnston’s (2013), we generate the following three hypotheses, depicted graphically in figure 1:

- (1) Increasing ideological conservatism among low sophisticates will be unrelated to evaluations of Supreme Court legitimacy;

2. Comparing knowledge of the ACA decision with political sophistication finds that 50 percent of the lowest tercile, 85 percent of the middle tercile, and 96 percent of the top tercile correctly identified the decision. A “don’t know” option was provided. If respondents providing a belief about the decision were simply randomly guessing, we should observe no differences across the two ACA knowledge groups with respect to the influence of ideology.

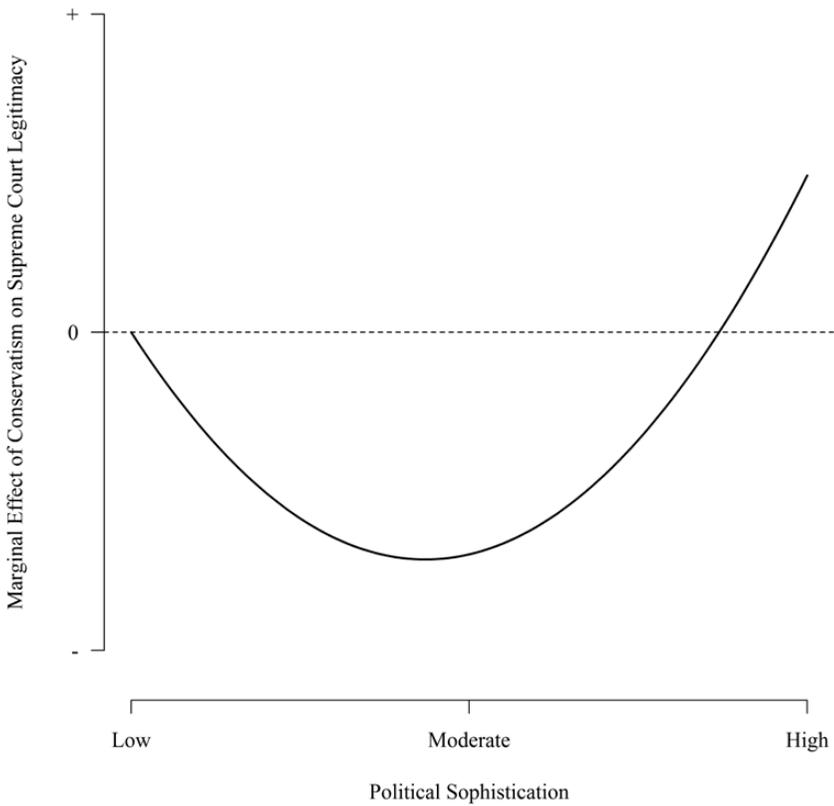


Figure 1. Theoretical Model of the Association between Ideology and Legitimacy, Post-ACA.

- (2) Increasing ideological conservatism among medium sophisticates will be negatively related to evaluations of Supreme Court legitimacy; and
- (3) Increasing ideological conservatism among high sophisticates will be positively related to evaluations of Supreme Court legitimacy.

To provide additional support for our claims, we examine low sophisticates in greater depth. As noted in footnote 2, such citizens display mixed awareness of the ACA ruling. This variation in perceptions among the least sophisticated allows for sufficiently powered empirical tests of two final hypotheses:

- (4) Increasing ideological conservatism among low sophisticates who are *unaware* of the ACA ruling will be unrelated to Supreme Court legitimacy; and
- (5) Increasing ideological conservatism among low sophisticates who are *aware* of the ACA ruling will be negatively related to Supreme Court legitimacy.

Data and Variables

To test these expectations, we rely on survey data collected shortly after the Supreme Court ruling on the Affordable Care Act. The survey of 1,000 respondents was conducted online by YouGov³ from July 7 to 9, 2012. Respondents were selected from YouGov's PollingPoint panel, an opt-in Internet panel, and then matched on a set of demographic and political characteristics to a random sample (stratified by age, gender, race, education, and region) from the 2005–2007 American Community Survey. The sample was weighted using propensity scores based on age, gender, race, education, news interest, voter registration, and non-placement on an ideology scale. This method produces a sample that looks similar to a probability sample on the matched characteristics, but may still differ in unknown ways on unmatched characteristics (Pasek and Krosnick 2010).⁴ The question wording for the key measures used in the analysis are reported in the appendix.⁵

Our dependent variable is perceived Supreme Court legitimacy, and is constructed as a summative scale of four items. These four items are identical to items recommended by Gibson, Caldeira, and Spence (2003a) for the purpose of valid measurement of Supreme Court legitimacy in the mass public (as distinguished from approval or “specific support”). The reliability of this scale was reasonable ($\alpha = .68$).⁶

Our key independent variables are political sophistication, ACA knowledge, and ideology. Political sophistication was constructed as the sum of 10 political knowledge questions. Knowledge of the ACA ruling was measured with a single item concerning the Court's disposition on the constitutionality of the “health-care law.” Respondent political ideology was measured with two items: ideological self-identification and partisan self-identification. We recoded these two variables to range from 0 to 1, then averaged them for an overall measure of respondent conservatism. We believe this approach is more reliable than the use of ideology alone, as many citizens find the “moderate” and “conservative” labels appealing, and the “liberal” label unappealing, for purely symbolic reasons (Ellis and Stimson 2012).⁷ In addition, the two were highly correlated ($r = .63$). Finally, we control for age, gender (1 = male), race (Black and Hispanic identifiers), education (five dummy variables for degree attainment to allow for non-linearity), and income in all analyses. All non-categorical variables were recoded to range from 0 to 1 prior to analysis.

3. <http://research.yougov.com/>.

4. As this is not a probability sample, no response rate can be reported.

5. All surveys were conducted in English.

6. There is some debate in the literature about the correct way to measure Court legitimacy, specifically with regard to the inclusion of the “trust in Court” measure (Gibson 2011). We address this issue and replicate our findings after removing the “trust” measure from the dependent variable. The results are almost identical, and thus are not conditional on the choice to include this item (see the online appendix).

7. The results are robust to the use of ideology independently, but less efficient.

Analysis and Results

To empirically test hypotheses (1), (2), and (3), we estimated an ordinary least squares regression of Court legitimacy on respondent conservatism, political sophistication, the square of political sophistication, the interaction of conservatism with both sophistication and sophistication-squared, and all controls. The squared-sophistication term captures the hypothesized non-linear relationship between conservatism and legitimacy across this variable. We expect a minimal coefficient for the constituent term of ideology, a negative coefficient for the interaction of ideology and the linear sophistication term, and a positive coefficient for the interaction of ideology and quadratic sophistication (see [figure 1](#)).

The coefficient estimates are shown in [table 1](#). These strongly support our theoretical expectations. The estimate for ideology is minimal and insignificantly different from 0; the estimate for the linear interaction is negative, substantively large, and statistically significant; and the estimate for the quadratic interaction is positive, substantively large, and statistically significant. As substantive interpretation of the parameter estimates is difficult, given the functional form, we generated the estimated marginal effects of conservatism across levels of political sophistication, and graph these in [figure 2](#). The y-axis in this figure corresponds with the estimated change in legitimacy for a change in ideology from very liberal to very conservative. At low levels of political sophistication, the marginal effect of conservatism is insignificantly different from 0. For moderate levels of sophistication, the marginal effect of conservatism is negative and statistically significant. The magnitude of the negative relationship between conservatism and legitimacy is maximized at about the median of political sophistication, which coincides nicely with our theoretical model. For the highly sophisticated (the top 20 percent), the marginal effect of conservatism is positive and statistically significant.⁸

A CLOSER LOOK AT LOW-SOPHISTICATION RESPONDENTS

Our evidence for the impact of the ACA on Court legitimacy, to this point, rests on the strong correspondence between theoretical expectations derived from the integration of [Bartels and Johnston \(2013\)](#) with [Zaller's \(1992\)](#) general model of updating, and observed patterns in these data. An obvious problem is that we cannot observe actual responsiveness to this decision, because we do not possess pre- and post-decision data.⁹ In this empirical section, we provide further support for our theory by examining low-sophistication respondents

8. Marginal-effect comparisons of low and moderate, moderate and high, and low and high sophisticates are significant (see the online appendix).

9. A comparison of public opinion polls pre- and post-ACA, however, finds that the public's perceptions of the Court did become more liberal after the decision, and this change was larger among educated citizens (see the online appendix).

Table 1. Parameter Estimates for Model of Supreme Court Legitimacy

Variable	<i>B</i>	(<i>SE</i>)	<i>p</i>
Conservatism	0.15	(0.15)	0.34
Conservatism × Know	-1.60	(0.52)	0.00
Conservatism × Know ²	1.61	(0.40)	0.00
Knowledge	1.15	(0.28)	0.00
Knowledge ²	-1.01	(0.22)	0.00
Age	-0.02	(0.04)	0.66
Male	-0.02	(0.02)	0.14
Black	0.01	(0.03)	0.69
Hispanic	0.03	(0.03)	0.28
HS degree	0.01	(0.04)	0.86
Some college	0.05	(0.04)	0.28
Two-year degree	0.02	(0.05)	0.72
Four-year degree	0.07	(0.05)	0.12
Postgrad	0.06	(0.05)	0.18
Income	0.03	(0.03)	0.28
Constant	0.21	(0.08)	0.01
<i>R</i> ²		0.09	
<i>N</i>		856	

NOTE.—OLS coefficients and robust standard errors.

in greater depth.¹⁰ This group of citizens should have weak priors regarding the general ideology of the Court, and thus be influenced substantially by the ACA decision with respect to their perceptions of the Court's ideology *if* they are aware of this decision. This pattern of empirical results would again suggest that the ACA decision itself had an impact on Court legitimacy.

We estimated two further models to test hypotheses (4) and (5). The first model included respondents in the lowest tercile of political sophistication who were unable to correctly identify the ACA ruling. The second model included respondents in the lowest tercile of sophistication who *were* able to correctly identify the ACA ruling. We compare the estimated marginal effect of conservatism for each group in [figure 3](#).

The estimates strongly support theoretical expectations. For low-sophistication respondents who were unaware of the ACA ruling, conservatism has no effect at all on Supreme Court legitimacy. In contrast, for low-sophistication

10. Given the small percentage of moderate sophisticates unable to identify the ACA ruling, we focus here on low sophisticates. Nonetheless, we examined the moderating effect of ACA knowledge for moderate sophisticates. For three of the four legitimacy variables, the pattern is identical to low sophisticates. Results differed for the "trust" dependent variable, though the observed pattern suggests that this might be due to the very small sample size. We report these results in the online appendix.

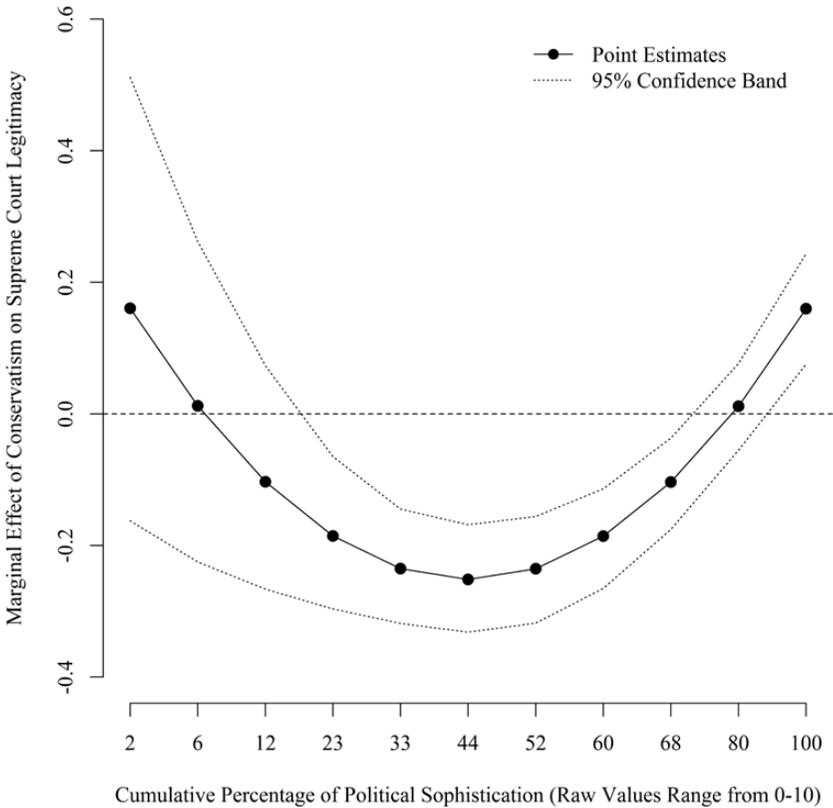


Figure 2. Marginal Effect of Conservatism on Legitimacy across Political Sophistication.

respondents who were able to correctly identify the ruling, the marginal effect is negative, substantively large, and statistically significant. The effect approaches 30 percent of the overall scale of legitimacy, and is thus the largest impact of conservatism on legitimacy observed in these data. This is consistent with Zaller’s (1992) logic concerning the relationship between knowledge and responsiveness to new information. That is, *given that the ruling is known*, it should have its largest impact on citizens with the weakest priors—in other words, the respondents with the lowest levels of overall political sophistication.

Discussion and Conclusion

Taken as a whole, our evidence allows for two conclusions. First, the ACA decision seemed to influence opinions of Supreme Court legitimacy for low and moderate sophisticates who were aware of the decision, such that conservatism

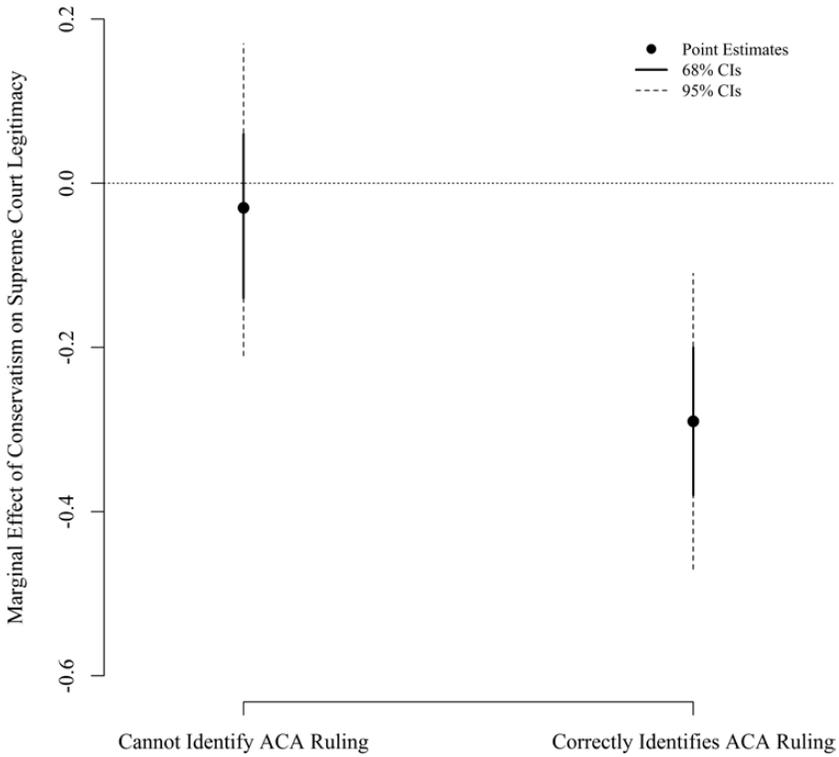


Figure 3. Marginal Effect of Conservatism on Legitimacy for Low Sophistication Respondents.

was associated with lower levels of legitimacy. In contrast, for the highly sophisticated, who presumably hold stronger priors regarding the Court, conservatism was associated with *higher* levels of legitimacy. We acknowledge, however, that our cross-sectional data cannot directly demonstrate how individual-level changes in perceptions of the Court’s ideology mediate the relationship of ideology to individual-level changes in legitimacy (as would be the case in a panel study). Nonetheless, we believe that two points strongly reinforce our theoretical interpretation. First, our theory generates very specific hypotheses regarding the pattern of association between ideology and legitimacy across both sophistication and knowledge of the ACA decision. In all cases, the results coincide with these predictions, and it is difficult to imagine an alternative theory—one that does not rely on changing perceptions—that could better account for the patterns we observe. Second, we provide empirical evidence for changes in perceptions of the Court’s ideology at the aggregate in the online appendix. While we cannot directly observe these changes in our own data, the changes in aggregate perceptions from pre- to post-ACA support our theoretical mechanism.

Second, independent of the effect of the ACA ruling itself, our results strongly support an ideological foundation to Supreme Court legitimacy in the mass public. Even if one questions the specific impact of this particular decision on legitimacy in a dynamic sense, our results unequivocally demonstrate that legitimacy varies as a function of citizen ideology, and strongly so. In some cases, the absolute value of the marginal effect of ideology approaches 30 percent of the scale of legitimacy. Furthermore, heterogeneity in the direction of the relationship of ideology to legitimacy across levels of political sophistication lends further empirical support to recent theorizing emphasizing subjective perceptions of Court ideology as the crucial moderator of the citizen-ideology-to-legitimacy link. Consistent with [Bartels and Johnston \(2013\)](#), our results suggest that citizens perceive the policymaking of the Court differently—here, we posit, as a result of the ACA ruling—and map their ideological predispositions onto legitimacy orientations as a function of these perceptions in systematic ways.

Appendix. Question Wordings

KNOWLEDGE OF ACA RULING

Last week, the US Supreme Court issued its ruling on the 2010 health-care reform law, finding that most of the law is [Constitutional, Unconstitutional, Did not hear about the Supreme Court’s decision in this case]

SUPREME COURT LEGITIMACY

Thinking about the current Supreme Court, please tell me if you agree or disagree with the following statements. [Strongly Agree, Somewhat Agree, Neither Agree Nor Disagree, Somewhat Disagree, Strongly Disagree, Don’t Know]

- The Supreme Court gets too mixed up in politics.
- The decisions of the Supreme Court favor some groups more than others.
- If the Supreme Court started making a lot of rulings that most Americans disagreed with, it might be better to do away with the Court altogether.
- The Supreme Court can usually be trusted to make decisions that are right for the country as a whole.

POLITICAL KNOWLEDGE

What is X’s title? [Representative, Senator, Cabinet Member, Vice President, Judge]

- Eric Cantor
- Nancy Pelosi
- John Roberts

- Harry Reid
- Mitch McConnell
- John Boehner
- Joseph Biden

Which political party currently has more members in the US House of Representatives? [Democratic Party, Republican Party, Not Sure]

Which political party do you think is more conservative? [Democratic Party, Republican Party, Not Sure]

Which political party currently has more members in the US Senate? [Democratic Party, Republican Party, Not Sure]

Supplementary Data

Supplementary data are freely available online at <http://poq.oxfordjournals.org/>.

References

- Bartels, Brandon L., and Christopher D. Johnston. 2012. "Political Justice? Perceptions of Politicization and Public Preferences toward the Supreme Court Appointment Process." *Public Opinion Quarterly* 76:105–16.
- . 2013. "On the Ideological Foundations of Supreme Court Legitimacy in the American Public." *American Journal of Political Science* 57:184–99.
- Bush v. Gore*. 2000. 531 US 98.
- Ellis, Christopher, and James A. Stimson. 2012. *Ideology in America*. New York: Cambridge University Press.
- Gibson, James L. 2011. "A Note of Caution about the Meaning of 'The Supreme Court Can Usually Be Trusted...'" *Law & Courts: Newsletter of the Law & Courts Section of the American Political Science Association* 21(3, Fall):10–16.
- Gibson, James L., Gregory A. Caldeira, and Lester K. Spence. 2003a. "Measuring Attitudes toward the United States Supreme Court." *American Journal of Political Science* 47:354–67.
- . 2003b. "The Supreme Court and the US Presidential Election of 2000: Wounds, Self-Inflicted or Otherwise?" *British Journal of Political Science* 33:535–56.
- Johnston, Christopher D., and Brandon L. Bartels. 2010. "Sensationalism and Sobriety: Differential Media Exposure and Attitudes toward American Courts." *Public Opinion Quarterly* 74:260–85.
- Mariner, Wendy K., Leonard H. Glantz, and George J. Annas. 2012. "Reframing Federalism—the Affordable Care Act (and Broccoli) in the Supreme Court." *New England Journal of Medicine* 367:1154–58.
- National Federation of Independent Business v. Sebelius*. 2012. 132 S. Ct. 2566.
- Pasek, Josh, and Jon A. Krosnick. 2010. *Measuring Intent to Participate and Participation in the 2010 Census and Their Correlates and Trends: Comparisons of RDD Telephone and Non-Probability Sample Internet Survey Data*. Statistical Research Division Study Series: Survey Methodology (#2010–15). Washington, DC: US Census Bureau.
- Zaller, John R. 1992. *The Nature and Origins of Mass Opinion*. New York: Cambridge University Press.