PUBLIC OPINION OF THE U.S. SUPREME COURT: UNDERSTANDING ATTITUDES ABOUT THE AFFORDABLE CARE ACT RULING

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Ideological and partisan preferences often spill over to public opinion about the legitimacy and role of the U.S. Supreme Court. However, prior research has found that the public holds a range of opinions about judicial decision-making approaches and the Court as an institution that are distinct from agreement with specific rulings or broader ideological preferences. As scholars have explored hypotheses about the nature and durability of public opinion about the Court, a number of debates have emerged, but these debates have rarely been examined through panel data. Using panel data gathered directly before and after the Court’s ruling on the constitutionality of the Affordable Care Act, I examine four of these debates within the context of this ruling: (1) the extent to which approval of judicial decision-making approaches was conditioned on agreement with the ruling, (2) whether public attention to this case served to increase the public’s knowledge of the Court, (3) whether, consistent with the theory of “positivity bias,” increased knowledge of the case led to higher approval of the Court, and (4) the degree to which any of these factors influenced individual assessments about the constitutionality of the Affordable Care Act when compared with partisan preferences. I find that public support for judicial decision-making approaches exhibited variability over time, and was influenced in particular by disagreement with the Court’s ruling. I also find that the ruling appeared to increase the public’s knowledge of the Court, but contrary to prior research, increased knowledge was linked to higher approval of some functions of the Court but not.
others. Finally, I find that public attitudes about judicial decision-making, knowledge of the Court, and approval of the Court appeared to play little or no role in an individual’s agreement with the ruling when compared with partisan influences. Thus, while my findings generally support the theory that public approval of the Court does necessarily mirror public approval of specific rulings, I find variability within public opinion of the Court that rebuts certain findings and assumptions posited by prior research.
The research and writing of this thesis is dedicated to everyone who helped along the way.

Many thanks,
Andrea L. Mayer
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INTRODUCTION

Political scientists often look to the U.S. Supreme Court as a barometer for assessing mechanisms of American democracy. For instance, public confidence in the U.S. Supreme Court is a frequent topic of inquiry, both as a measure of the Court’s institutional legitimacy and as an indicator of the public’s reaction to Court rulings. Similarly, a sizable number of studies examine decision-making approaches employed by federal judges in order to assess the extent to which the judiciary is fulfilling its Constitutional mandate. These studies may also shed light on whether the Court appears to lead or to follow social change.

The vast majority of research about the public’s opinion of U.S. Supreme Court, however, is directed at evaluating the Court’s performance. Less scrutiny has been directed toward understanding public reaction to the Court as an indicator of the public’s role in American democracy, in particular the public’s expectations about the expanding number and variety of disputes we are asking the courts to resolve. Given the ever-growing body of federal legislation aimed at addressing society’s changing needs, paired with the political polarization that often paralyzes Congress, the Court may be increasingly drawn into disputes that were previously addressed by other political or social institutions. As a result, the public may be coming to expect that the judiciary will be “an accelerator of government rather than the brake” (Kaufman, 1979, p. 685). Moreover, public beliefs about what the U.S. Constitution requires may be driven more by ideological preference than some research suggests.

Changes in mass attitudes and expectations about the Court not only influence assessments of its institutional legitimacy, but may also reconfigure the relationship between the Court and the public it serves. Understanding what the public expects from the Court, and how these
expectations influence public approval of the Court, tells us a great deal about the Court’s role in American democracy. It is these questions that I take up in this dissertation.

The proper role of the judiciary has been a perennial subject of controversy in American politics, even before the Federalists and Anti-Federalists clashed over defining judicial powers in the U.S. Constitution. Public discourse about the federal judiciary has become especially heated and widespread over the past several decades. One reason for an increased focus on the courts is their expanding role as mechanisms for resolving disputes. Judge Ruggero Aldisert argues that courts’ roles have grown due in part to judicial activism and a willingness to intervene in the political process (2013). In addition, he notes that Congress continues to expand the scope of issues that courts must address by passing remedial legislation to address evolving social and technological needs. Judge Aldisert concludes that a decline in the power and prestige of private institutions, such as churches, schools, and families, may be forcing courts to assume responsibility to resolving issues that were previously addressed by these institutions. The result of these developments, he asserts, is a public that expects the courts to play a larger role in overseeing and adjudicating public and private relationships (2013).

Unsurprisingly, when courts weigh in on newly-created or newly-interpreted rights, they often become the target of increased scrutiny by the media, political elites, and the public. When these newly minted rights touch upon hotly-debated social issues, court rulings can be lighting rods for cultural and political clashes. Accusations that a particular judge is “activist” or “legislating from the bench” are a routine staple of political stump speeches. Unfavorable opinions of the Supreme Court have reached their highest since 1985. In 2015, only 48% of Americans had an overall favorable impression of Supreme Court, while 43% of respondents viewed the Court unfavorably (Pew Research Center, 2015). At the same time, a majority of the
public pays close attention to Supreme Court developments. A 2016 survey found that 65% of registered voters said that Supreme Court appointments were “very important” to their vote in 2016, more important than the environment, trade policy, and issues related to minorities (Pew Research Center, 2016, p. 9). Notably, as I discuss in Chapter 3, the strength of individuals’ beliefs about what the Constitution says and means is largely unrelated to their information levels about the text of the Constitution and the cases in which it is applied.

Mass opinion about the proper role of courts often centers on public perceptions about whether courts only rely on neutral elements of law and legal reasoning, a decision-making approach often termed the “legal model” (Brisbin, 1996; Segal & Spaeth, 2002; Segal, Spaeth, & Benesh, 2005). However, the notion that judicial decision-making is based on neutral rules and obvious outcomes has long been viewed with skepticism. The legal model is repudiated so regularly that political scientists have referred to the pretense of neutrality as the “myth of legality” (Scheb & Lyons, 2000). The legal model continues to enjoy popularly with roughly a third of the public, but has rarely been championed by jurists. An early iteration of the “myth of legality” was articulated in 1897 by Justice Oliver Wendell Holmes, then serving as a member of the Supreme Judicial Court of Massachusetts. He cautioned that judicial decision-making is often a matter of politics that involves questions of moral judgment that are imbedded in interpretations of law. “The law talks about rights, and duties, and malice, and intent, and negligence, and so forth, and nothing is easier, or, I may say, more common in legal reasoning, than to take these words in their moral sense, at some stage of the argument, and so to drop into fallacy” (Holmes, 1997, p. 993). Every judgment relies on a belief about the worthiness of legislative aims, he argues, and these judgments, which are often unconscious, comprise “the
very root and nerve of the whole proceeding. You can give any conclusion a logical form.”
(1997, p. 998)

Levi’s seminal 1949 treatise on legal reasoning echoes Holmes’ concerns. Levi warns that legal rules cannot be written in a way that eliminates all ambiguity. Rather, courtrooms are the forum where communities can participate in resolving “policy in the gap of ambiguity” (1949, p. 1). The need to fill that gap of ambiguity resurfaces every time Congress passes new legislation, especially when the language of the resulting statute is complex or ambiguous. In those circumstances, courts are often called upon to determine what Congress intended to convey through the statutes (Caldeira, 1994; Gibson & Caldeira, 2009; Gibson, Caldeira, & Spence, 2003; Katzmann, 2014; Levi, 1949). Judges must decide how to interpret language that is not explicitly clear on its face. Should the judge consider the history of the law, such as the intent of the Framers or Congress? Should the judge consider the needs of a changing society?

Public expectations about judicial decision-making can influence their evaluation of a court’s legitimacy. Many judges use a variety of interpretive approaches depending on the case, although they may not explicitly define the approaches they are using. Some forthright judges, however, have made the case for using certain approaches to the exclusion of others. Justice Antonin Scalia was an outspoken proponent of the “original meaning” approach to constitutional interpretation, arguing that judges should base their decisions solely on the text of the Constitution and how it was understood by the public at the time it was ratified. Judges lack Constitutional authority, he asserted, to read their own values into textual interpretation. Rather, the meaning of the Constitution is fixed, and any inquiry into the societal values that should influence textual interpretation should be performed by the legislature (Scalia, 2013). Recognizing that most judges rely on non-textual reasons in deciding cases, he remarked that “it
would be hard to count on the fingers of both hands and the toes of both feet…the opinions that
have in fact been rendered not on the basis of what the Constitution originally meant, but on the
basis of what the judges currently thought it desirable for it to mean.” He adds that, in the past,
“nonoriginalist opinions have almost always had the decency to lie….It is only in relatively
recent years, however, that the nonoriginalist exegesis has, so to speak, come out of the closet
and put itself forward overtly as an intellectually legitimate device” (2013, p. 187).

Among jurists, Scalia’s call for originalism generally has more opponents than admirers.
Whether stated explicitly or simply evidenced through practice, most judges will look to factors
outside the text of the law. One of the many opponents of original meaning, Justice Thurgood
Marshall, rejected originalism in favor of the “living constitution” approach. The Constitution
was not “forever ‘fixed’” at its creation, he argued, and was in fact “defective from the start,
requiring several amendments, a civil war, and momentous social transformation to attain the
system to constitutional government, and its respect for the individual freedom and human rights,
that we hold fundamental today.” According to Marshall, the approach that best delivers on the
Constitution’s promise to serve “the People” is one that recognizes society’s evolving
understanding of what is just (2013, p. 195).

Other non-textual references employed by judges include legislative history and judges’
real world experience. For instance, during the 2013 oral argument on the constitutionality of
the Defense of Marriage Act in U.S. v. Windsor, Justice Elena Kagan inquired whether the
legislative history of the Act indicated that Congress’ judgment about the legality of same-sex
marriage was “infected by fear, by animus, and so forth.” If so, she suggested, the Court may
wish to view the statute with “some rigor” (Oral Argument, United States v. Windsor, 2013). In
a controversial reference to her heritage at a 2001 lecture before a law school audience, Justice
Sonia Sotomayor famously stated “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life” (2009). Additional, although less common, approaches to textual interpretation include the purposive approach, in which judges interpret text consistent with the drafters’ purpose in enacting the law, and textualism, which restricts a judge to considering only a text’s ordinary meaning, as opposed to non-textual sources such as drafters’ intent (see Katzmann, 2014).

Most research about the federal bench concludes that judges are motivated at least in part by political or ideological considerations. Analysis of voting patterns and opinion content routinely shows that judges’ personal convictions about difficult questions influence their rulings. These personal motivations include ideological influences stemming from whether the judge is a “liberal” or “conservative,” as well as professional and even interpersonal constraints related to the ideological makeup of a court, relationships between judges, and discipline imposed by the law itself (see Bybee, 2010; Sunstein, Schkade, Ellman, & Sawicki, 2006). This political understanding of judicial decision-making, often called “legal realism,” is widely accepted by political scientists, yet receives an uncertain reception from the American public. In a 2015 study, 70% of the public concluded that justices of the Supreme Court “are often influenced by their own political views,” while 24% still believed that justices “generally put their political views aside” when deciding cases.

Public expectations about the federal judiciary have received increased attention in recent literature. Several studies have focused on determinants of public support for the U.S. Supreme Court, finding decreasing support for the legal model and for the Court itself (Bartels, 2011; Gibson & Caldeira, 2009; Gibson et al., 2003; Gibson & Nelson, 2014, 2015, 2016).
Researchers are also finding that respondents are placing greater weight on specific rulings when evaluating the Court, a practice that was less common in the past (Scheb & Lyons, 2000, 2001).

Public opinion data about the U.S. Supreme Court shows other notable shifts. Voters have become more attentive to Court rulings, and the public approval of the Court may reflect the widening partisan divide evident in other aspects of American life. This changing landscape offers opportunities for fresh insight about the relationship between the public and the Supreme Court.

My analysis in this dissertation has two purposes. First, I seek to explore the nature and durability of public opinion about the Court, and second, to examine whether public opinion about the Court is merely a proxy for an individual’s agreement with the ideological ramifications of its rulings. Unlike most prior research, I use panel data to analyze these questions, which eliminates some of the methodological pitfalls associated with using cross-sectional data. The panel data allows me to focus not on shifts in aggregate opinion, but rather on shifts at the individual level. This data, collected immediately before and after the Court’s June 2012 decision on the constitutionality of the Affordable Care Act, provides a rich and detailed picture of public opinion about Court and its decision-making approaches.

I find that individual opinions changed in predictable ways over the very short time period from May 2012 to July 2012, influenced in large part by whether the respondent agreed with the Court’s rulings. These findings are encouraging in some ways. Regardless of an individual’s approval of the ruling, belief in the Court’s legitimacy was relatively constant. Thus, the Court inspired a degree of loyalty as an institution. However, this finding also suggests that loyalty to the Court may be thin support indeed. Belief in the Court’s legitimacy was dwarfed by the respondents’ partisanship when it came to individual assessments about
whether the Court ruled correctly. In other words, loyalty to the Court as an institution did not appear to carry over into confidence in the Court’s decision. Rather, respondents’ attentiveness to certain partisan debates was far and away the largest predictor of agreement with the ruling. Thus, while the public appears to support the Court as an institution, it is unclear whether that loyalty is more than lip service. The public may treasure the idea of the Supreme Court, but in reality, have little confidence in its ability to rule correctly. These findings help flesh out the seemingly complicated relationship between the Supreme Court and the public it serves.
CHAPTER I: PUBLIC OPINION ABOUT JUDICIAL DECISION-MAKING APPROACHES

U.S Supreme Court’s decisions are often the subject of partisan debate, especially when those decisions relate to hotly debated political and ideological differences. Court decisions about issues like gun rights, abortion rights, and privacy rights regularly become the subject of campaign promises and a rallying cry for certain voting constituencies. Given what many perceive to be increasing levels ideological polarization in recent years\(^1\), U.S. Supreme Court decisions often divide Americans along partisan lines.

Prior research about the determinants of public opinion of the Supreme Court have relied primarily of variables relating to institutional legitimacy and procedural fairness. Less attention has been devoted to understanding other attitudes and beliefs that contribute to an individual’s overall assessment of the Court. In addition, almost none of the preceding research relies on cross-sectional data, and is therefore unable to test to durability and course of public support for the Court over time.

In this paper, I use panel data to investigate the durability of individuals’ opinions of the Court’s decision-making approaches over time by comparing survey panel responses collected both one month before, and one month after, the Court’s 2012 ruling on the constitutionality of the Affordable Care Act. In particular, I test the hypothesis that public support for the decision-

\(^1\) Findings about the extent and nature of polarization vary. For instance, Fiorina and Abrams find that mass opinion on public policy issues has not become more polarized over the past two to three decades. However, there have been increasing levels of correlation between policy views and partisan identification, often called “party sorting” or “issue partisanship” (2008). Baldassarri and Gelman find similar increases in issue partisanship, but conclude that the increase is primarily of function of resorting of party labels as opposed to changes in policy positions. As political parties have become more polarized, they have become better at encouraging individuals to sort along ideological lines (2008).
making approach the Court uses is influenced by approval of the underlying ruling. By using panel data, I can better understand factors that change individuals’ behavior and attitudes. Relying on panel data helps to avoid incorrect inferences about causality that can result from studies based on more common cross-sectional data. In addition, panel data improves the quality of statistical modeling.

Identifying the determinants of public support for the U.S. Supreme Court has been the subject of increased attention in recent years. Several studies have attempted to describe the public’s reaction to the Court in a more detailed fashion than prior research, pressing beyond binary assessments of simply supporting or not supporting its activities and rulings (Bartels & Johnston, 2013; Christenson & Glick, 2015; Gibson & Nelson, 2014). Some of this research has revisited questions about public support for the Court in light of recent trends indicating a decline of confidence in the Court as a non-partisan institution. While prior studies have found that that support for the Court is not connected to partisan or ideological identities (e.g., Gibson, 2007), a significant partisan gap emerged in 2015 following major Court rulings about the Affordable Care Act and same-sex marriage (Pew Research Center, 2016b), suggesting that the public’s response to the Court may be increasingly conditioned on policy agreement.

Underlying much of the research about determinants of public support is the supposition that low levels of diffuse support for the Court may signal an increase in the public’s willingness

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2 “The process of repeated participation by a respondent has a potential downside. The act of answering survey questions may change the subjects by increasing awareness, intensifying interest, imparting information, or even changing opinion about a subject. Thus, survey participation may alter responses to questions in future waves of the survey. In doing so, the act of interviewing subjects may spoil them as a representative sample of the larger population that the analyst seeks to understand. “Panel conditioning” is the term used to describe this process.” (Cite)
to embrace partisan critiques of the Court. Diminished public support may also influence the willingness of Court to involve itself in controversial issues, or to check the authority of the executive or legislative branches through Court rulings (Caldeira & Gibson, 1992; Gibson & Nelson, 2014). Public support for the Court is also a regular topic of contention in elections, especially presidential ones. Given the partisan link between a president’s ideology and choice of nominee to the Court, voters are attentive to the consequences that elections may have on partisan debates. For instance, a 2016 survey found that 65% of registered voters said that Supreme Court appointments were “very important” to their vote in 2016, more important than the environment, trade policy, and issues related to minorities (Pew Research Center, 2016a, p. 9). As we observe increasing polarization of presidential politics, we may find changes in public opinion about the role that the Supreme Court does, and should, play in American politics.

Literature addressing the determinants of public support falls into two broad categories—assessments of the Court’s legitimacy as an institution, and assessments of particular Court rulings and activities. These two concepts are inevitably intertwined, as opinions about legitimacy are often colored by whether a person agrees with a specific ruling, and vice versa. Legitimacy generally translates to the belief that an institution or authority is “appropriate, proper, and just” (Tyler, 2006, p. 375). When people feel that an institution or authority is legitimate, they are more likely to feel an obligation to comply with its decisions and authority voluntarily, rather than out of a desire to avoid punishment or receive reward. The sense of obligation to comply with institutions that the public concludes are legitimate is usually heightened during time of scarcity and conflict (see Tyler, 2006; Tyler & Rasinskit, 1991). Legitimacy is particularly important for the U.S. Supreme Court because it lacks a formal
enforcement mechanism for ensuring compliance with its rulings, and thus must rely on the public’s voluntary acceptance of the Court’s authority.

LITERATURE REVIEW

Public Opinion about Decision-Making Approaches

Both the legitimacy literature and the literature on specific Court rulings incorporate analysis of the Court’s decision-making approaches, in terms of the appropriateness of approaches used as well as the public’s reaction to them. This debate has spanned decades and continues to enjoy scholarly attention, although most studies agree that public perceptions about decision-making plays at least some role in both diffuse and specific support for the Court.

In one of the earlier studies on Court decision-making, Gibson found that when the public perceives that the Court is using fair decision-making procedures, the public is more likely to view the institution as legitimate, and thus is more likely to comply with its decisions, even when they are unpopular. This effect is highest among opinion leaders (1989). More recent studies have expanded on Gibson’s argument that judicial decision-making processes that are perceived as fair—a concept called “procedural fairness”—can heighten public support. Conversely, rulings perceived as biased or arbitrary lower support for the Court (Tyler, 2006; Tyler & Rasinski, 1991b).

One component of this “fairness” that has emerged in the literature is the degree to which the Court adopts purportedly objective criteria when deciding cases. For instance, citizens react more negatively to media reports of a Court motivated by politics than coverage characterizing a Court as strictly following legal guidelines (Baird & Gangl, 2006). Political theorists have also
weighed in, describing how federal courts have an array of safeguards that often assure the public of procedural fairness, such as rigorous vetting of judicial nominees, formal judicial rules, and reliance on precedent (Bickel, 1986; Dworkin, 1986). And, debate over the connection between decision-making approaches and the Court’s legitimacy is not limited to political scientists. Justices often comment on which approach they prefer (e.g., Marshall, 2013; Scalia, 2013). In the Court’s opinion in Bowers v. Hardwick, Justice Byron White cautioned that the Court was “most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or design of the Constitution” (1986, p. 478).

Within the broader category of procedural fairness, some research has examined specific modes of constitutional interpretation used by the Court in deciding cases. While there are arguably numerous approaches and blended approaches used by Supreme Court justices (see O’Brien, 2013), two of the most widely recognized are “originalism” and “living constitution.” “Originalism” refers to the notion that justices should only base their rulings on the text of the U.S. Constitution, together with evidence about what the Framers’ intended that text to mean (the “original intent” approach) or evidence about the public’s understanding of the text when they ratified it (the “original meaning” approach). In contrast, the “living constitution” approach posits that justices should interpret the Constitution as a “living” document, the precise meaning of which changes over time in light of developments in American politics and culture. In a broad sense, the controversy about these two approaches equates to a debate about whether justices should strictly interpret the Constitution, or whether they can incorporate their own political preferences and experiences into their rulings.
Compared with studies about diffuse public support for the Court, there is relatively scant research the public’s understanding of decision-making approaches. The public does have opinions about these approaches, however. Notably, despite the complexity of the decision-making approach debate, the contours of which is hotly contested even among jurists, many members of the public have an opinion about which method is best. A 2014 survey found that 49% of respondents said that Supreme Court decisions should be based on what the Constitution “means in current times,” while 46% said decisions should be based on what the Constitution “meant as it was originally written” (Pew Research Center, 2014).

These percentages vary widely by ideology, race, and religion. Among Republicans, 69% favored original meaning, while 70% of Democrats favored rulings based on the Constitution’s meaning in current times. While 44% of whites preferred the “current times” approach, this figure jumped to 61% for both of African Americans and Hispanics. Some of the starkest divisions fall along religious lines, with 73% of white evangelical Protestants (73%) supporting “original meaning.” Conversely, 63% of those who are unaffiliated with a religious tradition say justices should rule based on the Constitution’s “current meaning” (2014). In short, the “current times” approach is presently favored by Democrats, racial minorities, and the less religious. Originalism is favored by Republicans, white, and the more religious. The extent to which these opinions are informed, or simply an extension of partisan preferences, is addressed in only a handful of research, all of which was completed before the recent decline in public support for the Court.
The Myth of Legality vs. Legal Realism

The U.S. Supreme Court is widely recognized as a legitimate institution, and public support of the Court is relatively stable. This stability is due in large part to the public’s perception of the Court as “non-political” (Gibson & Caldeira, 2011; Gibson, Caldeira, & Baird, 1998). However, only a minority of the public believes that judging can and should be objective, based on clearly defined rules that are applied through neutral reasoning. Political scientists generally refer to this belief as the “myth of legality” or mechanical jurisprudence (Scheb & Lyons, 2001; Jeffrey A. Segal & Spaeth, 1996a, 1996b; Jeffrey Allan Segal & Spaeth, 1993). The “non-political” vision of judging is a myth, researchers argue, because there is little evidence that “plain meaning, intent of the framers, and precedent…[are] good explanations of what the justices do in making decisions” (Caldeira, 1994, p. 485). Rather, evidence suggests that judges’ decision-making is invariably influenced by their political and personal backgrounds.

Myth holders, interestingly, tend to be educated, more attentive to the Court, and more supportive of the Court—these are the individuals who more fully assimilate traditional political culture and “expect Supreme Court justices to transcend ordinary political pressures to render decisions in an atmosphere of detachment and objectivity” (Scheb & Lyons, 2000, p. 931). In contrast, the belief that judges rely on political factors, such as ideology, public opinion, and pressure from the executive and legislative branches, is often called “legal realism” (Scheb & Lyons, 2001, p. 183).

Some political scientists have found that the public is generally aware of the clash between their hopes for a non-political Court and the reality that politics plays in judging. Gibson and Caldeira find that the public is willing to extend legitimacy to the Court even
knowing the political influences on judging because they believe that judges are exercising discretion in a sincere and principled manner. In other words, support for legal realism is not incompatible with legitimacy (2011). George and Epstein go one step further, arguing that Americans are willing to accept that extralegal and legal decision-making frameworks are codependent, not mutually exclusive, explanations of decision-making (1992).

**Retrospective Assessments**

Evidence about the effect of specific decision on public support for the Court is mixed. Although Americans knowledgeable about the Court are not likely to turn against the Court based on specific decisions (Gibson & Caldeira, 2011; Gibson, Caldeira, & Spence, 2003), a series of unpopular decisions can undermine public support for the Court (Caldeira & Gibson, 1992; Gibson et al., 1998). Nevertheless, Americans are largely satisfied with the Court’s performance and are loyal to the institution. This loyalty is the result of a “running tally” of assessments that develops and is reinforced over time, and thus it “difficult for any given decision to have much incremental influence on that tally” (Gibson et al., 2003, p. 364).

Judges who base their rulings on legal principles, such as relying on original intent and precedent, enjoy higher levels of public support than judges who use less objective methods (Scheb & Lyons, 2000, 2001). However, retrospective assessments of specific rulings reflect that public support for the Court as an institution is not necessarily related to policy agreement with a specific ruling ((Baird, 2001; Baird & Gangl, 2006; Scheb & Lyons, 2001). Rather, because the Court’s reputation as a legitimate institution is so firmly entrenched in American culture, disapproval with the decision-making rationale used in a case is only weakly associated
with lower levels of loyalty to the Court. Thus, the debate over decision-making approaches is not nearly as damaging as conventional wisdom or political elites might suggest (Farganis, 2012, p. 213).

**Knowledge Levels**

Often, the more the public knows about court, the more they like it. This phenomenon is true in other countries (Gibson et al., 1998), and in the American state judicial system (Benesh, 2006). Higher knowledge of the Court’s role and activities is linked with stronger loyalty toward the institution. As Gibson and Caldeira explain, pursuant to “positivity theory,” attentiveness to the Court not only provides the public with information, but also exposes them to important and influential symbols of judicial legitimacy. These symbols demonstrate that courts are not ordinary political institutions in the American political scheme, and should be afforded special consideration. Thus, any event that raises the Court’s salience simultaneously increases citizen knowledge and institutional support (Gibson & Caldeira, 2009, p. 437). Knowledge leads to increased support because the legitimizing symbols convince the individual that courts have enhanced legitimacy (Gibson & Caldeira, 2009c).

Attentiveness to the Courts is also associated with a more realistic view of judicial decision-making that recognizes that judges are influenced by discretion and policymaking (Gibson & Caldeira, 2011, p. 203). In other words, those who are more knowledgeable about courts are less likely to assert that the political views of the justices are irrelevant, and are more likely to reject the idea that judges are “merely politicians in robes.” Legitimacy appears to result from the view that discretion is being exercised in a principled, rather than strategic,
manner. In contrast, those with low knowledge are more likely to assert that the political views of justices are irrelevant (2011, pp. 211, 213).

**Motivated Reasoning**

Under the theory of motivated reasoning, personal biases based on political and social identities can skew political opinions. Arguably, all reasoning is motivated because individuals generally cannot purge the impact of preconceptions from their decisions. In the context of political opinion formation, motivated reasoning opens the door for individuals to make decisions using criteria other than accuracy by influencing cognitive strategies used for accessing, constructing, and evaluating beliefs (Kunda, 1990; C. S. Taber & Lodge, 2006). Motivated reasoning not only impacts a final decision, but also the procedures and methodologies used to reach that decision. Thus, individuals are more likely to believe that arguments and information that are congruent with their own beliefs are credible, persuasive, and legitimate (Simon & Scurich, 2011; C. S. Taber, Cann, & Kucsova, 2009; C. S. Taber & Lodge, 2006).

When forming political beliefs, reasoning tends to be motivated by a desire to be accurate, or a desire to be partisan. Partisan goals automatically lead to selective information processing that establishes direction and strength of bias (Kruglanski & Webster, 1996; C. Taber, Lodge, & Glather, 2001; C. S. Taber & Lodge, 2006). Thus, for instance, an experimental study found that participants exhibited both confirmation bias as well as disconfirmation bias. When reading pro and con arguments about affirmative action and gun control, participants exhibited confirmation bias by seeking out confirmatory evidence when given the chance to self-select the
source of arguments they read. Conversely, participants demonstrated disconfirmation by counter-arguing contrary arguments and uncritically accepting the contrary arguments’ rationale. Both confirmation and disconfirmation lead to attitude polarization, an affect that was highest with the highest levels of political sophistication (C. S. Taber & Lodge, 2006).

In a study testing the role of motivated reasoning in laypeople's evaluations of judicial decision-making processes and judicial legitimacy, participants were asked to evaluate the acceptability of three hypothetical judicial decisions, focusing on the manner in which the decisions were made and the perceived legitimacy of the decision maker. Consistent with the theory of motivated reasoning, participants’ judgments were highly contingent on the final ruling. Participants were indifferent to the manner of reasoning used when they agreed with the outcomes of the decisions, but were more critical of reasoning used when the rulings frustrated their preferred outcomes (Simon & Scurich, 2011).

Social and political identities, such as ideological, partisan, religious, class, and ethnic group association, influence a wide range of political beliefs and attitudes (Conover, 1984). Many of these identities are easily activated by elites, who provide cues about which political beliefs are consistent with group membership. However, public awareness of cues is often tied to media coverage. Thus, for example, one study found that public opinion about the Supreme Court in 1990 reflected a 1960s understanding of the Court, with liberals on race and gender issues and those least fearful about crime rating the Court most favorably. Only those with high knowledge and attentiveness to the Court tracked the conservative shift that the Court had made since the 1960s (Hetherington & Smith, 2007).
DATA AND METHODS

This research is based on panel data from The American Panel Survey (TOPS). TAPS is a monthly online survey of a national probability sample from a panel of about 2,000 adults in the United States. The panel was recruited in the fall of 2011 using an address-based sampling frame of randomly selected residential addresses, stratified using ancillary data on age and ethnic group. TAPS surveys are administered online, and selected panelists who do not have a computer or online service are provided a computer and internet access by TAPS. TAPS surveys are conducted for the Weidenbaum Center by GfK/Knowledge Networks, an online survey research firm. The panel generates a minimum of 1,550 completed interviews per month.

I use survey responses that were collected in May 2012 and July 2012, roughly one month before and one month after the Supreme Court’s June 28, 2012, decision in National Federation of Independent Business v. Sebelius, 567 U.S. ___ (2012), in which the Court upheld Congress’ power to enact most provisions of the Patient Protection and Affordable Care Act (ACA), often called “Obamacare.” Among other things, the Court’s ruling upheld a requirement for most Americans to purchase health insurance by 2014 or pay a fine. To explore the determinants of public perceptions about the factors that influence justices’ decision, I regress a number of demographic and opinion variables on the dependent variable of individual support for realism in Court rulings. In particular, I examine how specific policy preferences,

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3 Additional technical information about the survey is available at taps.wustl.edu. TAPS is designed to have approximately 2,000 members by recruiting one person per household through a mail sample. The frame for the sample of addresses is the U.S. Postal Service’s computerized delivery sequence file (CDSF). Marketing Systems Group (MSG), is a sample vendor licensed to work with this file and from whom this sample was purchased. The CDSF covers some 97% of the physical addresses in all fifty states including P.O. boxes and rural route addresses.
ideology, and race change an individual’s perception the Court’s reliance on political factors in reaching a decision.

Two batteries of questions were asked in May 2012. Panelist were asked how big a role certain factors SHOULD play in the U.S. Supreme Court’s decision in the ACA case (Normative Questions), and how big a role these factors WOULD play in the Supreme Court’s decision in the ACA case (Prediction Questions). In July 2012, subsequent to the Court’s ruling in the ACA case on June 28, 2012, the panelists were asked how big a role DID these factors play in the Supreme Court’s decision (Reaction Questions). The text of these questions is set forth in the Appendix to Chapter I.

FINDINGS, DISCUSSION, AND CONCLUSIONS

At the outset, I analyzed the extent to which partisanship corresponded with public support for the Supreme Court. Table 1 reports the percentage of Republicans, Democrats and Independents who approved or disapproved of the way the U.S. Supreme Court was doing its job in May 2012 and July 2012. Not surprisingly, Democrats generally had higher approval ratings of the Court after the ACA ruling, and Republicans generally had lower approval ratings of the Court after the ACA ruling. The percentage changes were modest, however. The percentage of Democrats who “somewhat approved of the Court” rose from 14% to 19% from May to July 2012. By comparison, the percentage of Republicans who “somewhat approved of the Court” dropped from 15% to 10% over that time period. Other changes in approval ratings were even smaller. This data suggests that some fluctuation in public support for the Court occurred after
the ACA ruling, but in large part, public support for the Court as an institution remained relatively stable.

Table 1. Public Approval of the Supreme Court, by Political Party Affiliation.

<table>
<thead>
<tr>
<th></th>
<th>All Panelists</th>
<th>Democrats</th>
<th>Republicans</th>
<th>Independents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Approve</td>
<td>5</td>
<td>8</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Somewhat Approve</td>
<td>44</td>
<td>43</td>
<td>14</td>
<td>19</td>
</tr>
<tr>
<td>Strongly Disapprove</td>
<td>23</td>
<td>25</td>
<td>10</td>
<td>8</td>
</tr>
<tr>
<td>Not Sure</td>
<td>11</td>
<td>11</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(n=1003)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

While party affiliation was associated with modest changes in the public’s approval of the Court, more pronounced patterns emerge when individuals were asked whether they believed a particular factor should/would/did play “a major role” in deciding the Court’s ruling in the ACA case. Table 2 summarizes the panelists’ responses to the three sets of questions—Normative, Prediction, and Reaction.
Table 2. Factors That Should, Would, and Did Play “Major Role” in ACA Ruling\(^4\) (Normative, Prediction, and Reaction Questions).

<table>
<thead>
<tr>
<th>&quot;MAJOR ROLE&quot;</th>
<th>Respondent Believes ACA is Unconstitutional</th>
<th>Respondent Believes ACA is Constitutional</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Views</td>
<td>Norm : Reaction - Prediction</td>
<td>Difference : Reaction - Prediction</td>
</tr>
<tr>
<td></td>
<td>20.31 : 47.79</td>
<td>9.45 : 9.45</td>
</tr>
<tr>
<td>Analysis of Law</td>
<td>72.20 : 64.68</td>
<td>-8.3 : -8.3</td>
</tr>
<tr>
<td>Americans’ Views</td>
<td>54.24 : 16.17</td>
<td>-5.67 : -5.67</td>
</tr>
<tr>
<td>Public Response</td>
<td>35.90 : 19.98</td>
<td>-0.78 : -0.78</td>
</tr>
<tr>
<td>Lib/Cons Views</td>
<td>13.87 : 46.68</td>
<td>11.41 : 5.16</td>
</tr>
<tr>
<td>Appointing Pres.</td>
<td>10.14 : 32.68</td>
<td>5.16 : 5.16</td>
</tr>
<tr>
<td>Obama’s Views</td>
<td>14.50 : 41.41</td>
<td>18.26 : 18.26</td>
</tr>
</tbody>
</table>

(n=1003)

Table 2 illustrates a number of important patterns. Broadly summarized, respondents who believed the ACA was constitutional (the “pro-ACA” respondents) were more likely than respondents who believed the ACA was unconstitutional (the “anti-ACA” respondents) to conclude that the Court relied on interpretation of the law as a major factor in ruling on the ACA. Although more than 70% of both pro-ACA and anti-ACA respondents believed that analysis of the law should play a major role in decision-making, their retrospective reactions after the ruling diverged. Pro-ACA respondents were slightly more likely to believe that analysis of the law

\(^4\) Table 1 reports the percentage of respondents saying they approve or disapprove of the way the U.S. Supreme Court was doing its job in May 2012 and July 2012, omitting category of “refused.” Categories are: Normative questions and Prediction questions, both asked before the ACA ruling, and Reaction questions asked after the ACA ruling.
played a major role. However, among respondents who did not approve of the ACA, 73% predicted that analysis of the law would play a major role but only 65% believed, in retrospect, that analysis of the law actually did play a major role. Consistent with the theory of motivated reasoning, individual beliefs about whether the Court “stuck” to the law in deciding the ACA case were influenced by whether they approved of the law the begin with.

Less than 20% of both the pro-ACA and anti-ACA respondents felt that the Justices “personal views” should play a major role in the deciding the ACA case. However, great numbers of both groups predicted that personal views would play a major role—38% of the anti-ACA and 41% of the pro-ACA groups. Thus, the public may not want Justices to rely on their personal views, but a larger percentage adopts an approach more akin to legal realism, acknowledging that the Justices probably will rely on personal views regardless of the public’s preferences. In retrospect, these patterns once again diverge—the number of anti-ACA who believed that the Justices’ personal views played a major role rose by 9%, while the number of pro-ACA respondents holding that view dropped by 3%. Thus, whether a respondent felt that the Justices’ personal views played a major role was influenced by the respondents’ view about constitutionality of the ACA.

A third pattern illustrates that a fair number of Americans believe their personal views should have played a major role in deciding the ACA case, but the Justices’ personal views should not. Among anti-ACA respondents, 34% more of the respondents felt that their personal views should play a major role than felt the Justices’ views should play a major role. In the pro-ACA group, 22% more of respondents felt that their personal views should play a major role. A similar percentage of both groups, it seems, were disappointed with the ACA ruling. Roughly 5% less of both groups felt that their personal views should have played a major role, but
ultimately did not. This pattern may reflect overall dissatisfaction with the contentiousness of the public discourse that ensued after the ruling, although the data does not explain this pattern.

When comparing Prediction responses and Reaction responses, other shifts in the data emerged. Both the anti-ACA and pro-ACA respondents concluded that Justices’ ideology (on the conservative/liberal spectrum) played a larger role than predicted, by more than 10 percentage points for both groups. The percentage of anti-ACA panelists concluding that President Obama’s views would/did play a major role in the decision jumped by 18 percentage points after the ruling, compared to an increase of only 4% for the pro-ACA group. These shifts in the data underscore a larger dynamic: public approval of Court decision-making often paralleled approval for the law itself.

Next, to model views of justices’ decision-making, I use factor analysis to combine the seven indicators into a single factor for each of the three sets of questions: Normative, Prediction, and Reaction. Higher values on the scale for these three factored variables correspond to greater support for influences other than analysis of law in judicial decision-making (i.e., greater support for extralegal factors in deciding cases), while lower values correspond to lower support for reliance on extralegal factors. To better understand which factors influenced a respondent’s support for reliance on extralegal considerations, I regressed each of the three factored variables

5 The seven indicators are those used above—whether the respondent believed that any of the following considerations should play a major role in the Court’s ACA ruling: Justices’ personal views, analysis of law, Americans’ views, the public’s response to the ruling, the Justices conservative/liberal views, the President who appointed the Justice, and President Obama’s views. Chrombach’s alphas are 0.82 (Normative), 0.73 (Prediction), and .68 (Reaction). For all three factored variables, each of the seven variables loads more strongly on the first dimension than on others.
on belief that the ACA was unconstitutional and the respondent’s political knowledge\textsuperscript{6}, along with a number of demographic and background variables. The cross-sectional\textsuperscript{7} estimates are reported in Table 3.

Contrary to the relationship found by Gibson and Caldeira (2011), political knowledge is not associated with more support for extralegal decision-making. Rather, I find an inverse relationship in which respondents with higher political knowledge are less supportive of extralegal considerations. Second, an individual’s belief that the ACA is unconstitutional only becomes significant in retrospect. Although the data does not explain this relationship, it is possible that individuals became more attentive to issues related to the ACA after the case was decided, when they may have become more conscious of ways in which the ACA would impact them personally. Prior to the decision, questions about extralegal influences may have seemed

\textsuperscript{6} I measure political knowledge by using an additive scale of the number of correct responses to each of the following seven questions, divided by the number of questions (the variable values are bounded by 0 and 1):

- Do you happen to know whether the justices of the U.S. Supreme Court serve for a set number of years or whether they serve a life term?
- Do you happen to know who has the last say when there is a conflict over the meaning of the Constitution?
- Which one of the parties is more conservative than the other at the national level? Is it the Democrats or the Republicans?
- Which party holds a majority of seats in the U.S. House of Representatives?
- Which party holds a majority of seats in the U.S. Senate?
- How long is one term for a member of the U.S. Senate?
- On which of the following federal programs is the most money spent each year? Aid to foreign countries, Medicare, subsidies to farmers, or education?

\textsuperscript{7} Even though I am using panel data, respondents were not asked the same questions during every survey. Rather, they were asked different questions from month-to-month. Thus, comparing responses to different questions asked at different times must be presented as cross-sectional data, not longitudinal.
remote. Afterwards, however, those who felt that the ACA was unconstitutional were more likely to believe that extralegal influences impacted the decision, perhaps unfairly.

Table 3. Public Support for Relying on Extralegal Considerations in Supreme Court Decision-Making (Cross-Sectional Data).

<table>
<thead>
<tr>
<th>VARIABLES</th>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Normative (“Should”)</td>
<td>Prediction (“Will”)</td>
<td>Reaction (“Did”)</td>
</tr>
<tr>
<td>ACA is Unconstitutional</td>
<td>-0.17</td>
<td>-0.17</td>
<td>-0.35***</td>
</tr>
<tr>
<td>Political Knowledge</td>
<td>0.23</td>
<td>-0.40*</td>
<td>-0.88***</td>
</tr>
<tr>
<td>Approves of Supreme Court</td>
<td>0.13***</td>
<td>0.12***</td>
<td>0.02</td>
</tr>
<tr>
<td>Household Income</td>
<td>-0.02</td>
<td>-0.03**</td>
<td>-0.01</td>
</tr>
<tr>
<td>Gender</td>
<td>0.04</td>
<td>0.04</td>
<td>0.18*</td>
</tr>
<tr>
<td>Education</td>
<td>-0.00</td>
<td>-0.03</td>
<td>-0.05</td>
</tr>
<tr>
<td>Age</td>
<td>0.00</td>
<td>0.00</td>
<td>-0.00</td>
</tr>
<tr>
<td>Republican</td>
<td>0.12**</td>
<td>0.08</td>
<td>-0.05</td>
</tr>
<tr>
<td>Ideology</td>
<td>-0.02</td>
<td>0.03</td>
<td>0.08</td>
</tr>
<tr>
<td>Hispanic</td>
<td>0.07</td>
<td>0.05</td>
<td>0.07</td>
</tr>
<tr>
<td>African American</td>
<td>-0.43**</td>
<td>-0.32*</td>
<td>0.12</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.79</td>
<td>-0.01</td>
<td>1.22***</td>
</tr>
</tbody>
</table>

Observations                  | 921     | 921     | 986     |
R-squared                     | 0.06    | 0.07    | 0.14    |

*** p<0.01, ** p<0.05, * p<0.1
Notably, party affiliation is only significant in the normative context. When respondents were asked to predict, and then later react to, the Court’s ruling, statistical significance falls away. Thus, support for extralegal considerations is shared by Democrats and Republicans. Racial differences are also evident. African Americans were less supportive of extralegal considerations prior to the case, but not afterwards, perhaps signaling a broader approval with the ruling. African Americans may have felt, prior to the case, that extralegal legal frameworks were a pretext for systemic bias against the African American community.

To understand the durability of individual assessments about judicial decision-making, I compare estimates for the Prediction and Reaction sets of surveys questions that were asked one month before and one month after the ACA ruling, respectively. These estimates, reported in column 2 and 3 of Table 1.4, show how support for extralegal influences changed over this three-month period. As with the normative factor, higher political knowledge reflects greater opposition to extralegal considerations. This opposition increases in retrospective assessments. This outcome appears to conflict with findings by Gibson and Caldeira (2011) that individuals with more political knowledge have more durable opinions about the Court’s activities.

Finally, approval of the Supreme Court is linked with higher support for extralegal factors in judicial decision-making. The relationship disappears subsequent to the Court’s ruling however. Respondents who approved of the Court prior to the ruling may have been more willing to trust the Court to rely on extralegal factors. When they learned of the resulting opinion, however, their confidence in considerations beyond analysis of the law appears to have eroded.
Thus, public opinion about what actually happened in the ACA case, and what should have happened, was influenced by the political leanings of the opinion-holder. Political ideology, in effect, operated as a framing effect that shaped respondents’ approval of judicial decision-making. Respondents were more likely to approve of the methods used by Supreme Court justices if they agreed with the underlying decision. This suggests that public opinion about judicial decision-making may be, at least in part, simply a proxy for the extent to which an individual’s ideological preferences are mirrored by the Court.
CHAPTER II: POSITIVITY BIAS AND THE AFFORDABLE CARE ACT RULING

The American public, at least according to decades of survey responses, is largely unfamiliar with the U.S. Supreme Court and its activities. Given this widespread ignorance, some scholars question the value of public opinion concerning issues before the Court and the Court itself (see Gibson & Caldeira, 2009b; Kritzer, 2001). To the extent that public opinion influences Court appointments and rulings, the fact that much of this public opinion may be uninformed may be cause for concern. There is also cause for optimism, however. Research has found that controversial cases can help increase public attentiveness to the Court, which may serve to increase the public’s knowledge about the Court. According to these studies, when controversial cases generally garner increased scrutiny from the media and political leaders, the public is given an opportunity to revise and update its attitudes about the Court. In so doing, the public’s knowledge about the Court may grow, at least for the immediate future (Gibson, Lodge, & Woodson, 2014; Gibson & Nelson, 2016).

Increased knowledge about the Court not only positions the public to better understand the Court’s role and rulings, but has also been linked with higher assessments of the Court’s legitimacy. Broadly defined, legitimacy corresponds to diffuse support for the Court as an institution, as opposed to support for its members or rulings (Gibson & Caldeira, 2009a; Gibson, Caldeira, & Baird, 1998). Research has found that higher levels of knowledge about the Court are often associated with more positive opinions about the Court. In other words, to know the

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8 In addition, Gibson and Caldeira find that surveys using closed-ended indicators of judicial knowledge, which they argue are more reliable and valid measures of knowledge than indicators used in prior research, show that “the American people may be more competent than is ordinarily thought at performing the role in the socio-legal process assigned them by democratic theory” (2009b, p. 430).
Court is to love it. Under this “positivity theory” or “positivity bias,” activities that focus attention on the Court remind the public of the Court’s rules and procedures that are designed to ensure fairness of outcomes, which in turn may reinforce the public’s belief in the Court’s institutional legitimacy (Gibson, Lodge, & Woodson, 2014; Gibson & Nelson, 2016).

These two findings are consistent across multiple studies: (1) controversial cases can lead to increased public knowledge about the Court (Gibson, 2012; Gibson & Caldeira, 2009a, 2009b, 2009c, 2011; Gibson, Lodge, & Woodson, 2014; Gibson & Nelson, 2016), and (2) higher knowledge levels can strengthen support for the Court’s legitimacy (Gibson, 2012; Gibson & Caldeira, 2009a, 2009b, 2009c, 2011; Gibson, Lodge, & Woodson, 2014; Gibson & Nelson, 2016). However, these findings have not been tested using panel data. My purpose here is to revisit both findings using nationally representative panel data collected before and after the Court’s 2012 ruling on the Affordable Care Act (ACA). Specifically, I test:

- Did controversy surrounding the ACA case serve to lead to higher public knowledge of the Court?
- Did controversy surrounding the ACA case lead to a “positivity bias” that strengthened the public’s belief in the U.S. Supreme Court’s institutional legitimacy?

I find that the ACA did lead to increased knowledge about specific aspects of the Court, although this affect did not carry over to all measures associated with knowledge levels. I also find “positivity bias” in connection with the ACA case. Increased knowledge about the Court corresponded to increased levels of one measure of legitimacy—diffuse support for the Court as an institution. Positivity bias was not evident, however, with another measure of legitimacy—general satisfaction with the Court.
LITERATURE REVIEW

ACA Ruling

On June 28, 2012, the U.S. Supreme Court’s issued a ruling9 upholding the bulk of the 2010 Patient Protection and Affordable Care Act (ACA), often called “Obamacare.” Among other things, the Court’s decision found that the requirement for most Americans to purchase health insurance by 2014 or pay a fine was constitutional. Using panel data about the U.S. Supreme Court’s ruling in the ACA case, we can examine individual knowledge levels and assessments of Court legitimacy both immediately before and after the Court’s ruling.

Although the ACA became an increasingly partisan issue over time, it started as a bipartisan effort to reduce the ranks of the uninsured. Insurance companies participated in the drafting of Obamacare legislation, and drafters modeled some provisions on insurance programs adopted in states with Republican governors. Similar solutions had been advocated by Republican leadership for decades as alternatives to the single payer (government funded)

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system advocated by some Democrats\textsuperscript{10}. By most accounts, the ACA at one time enjoyed support from both liberals and conservatives, insurance companies and citizen interest groups\textsuperscript{11}.

This relative harmony did not last long. Obamacare quickly became a flashpoint in American politics. Even the moniker “Obamacare” was originally used as a pejorative term by opponents of the ACA. While popular support for other federally-funded social programs, such as Social Security and Medicare, grew as the programs provided benefits to more and more voters, an analogous policy feedback loop eluded the ACA. Although roughly 20 million people have obtained health coverage due to the ACA, and the already-insured received new ACA-mandated protections, public opinion about the law continues to range from mixed to vitriolic.

\begin{flushleft}
\textsuperscript{10} Prior to passage of the ACA, both Democratic and Republican lawmakers indicated support for many of the ideas that were ultimately incorporated into the final legislation. A group of former Senate majority leaders—Republicans Howard Baker and Bob Dole, and Democrats Tom Daschle and George Mitchell—released a health care reform proposal in June 2009 through the Bipartisan Policy Center that embraced the same basic format as the ACA (Cohn, 2009). The individual mandate had long been popular among conservative circles as an alternative to government funded approaches. The idea that individuals should be required to buy health insurance coverage was developed decades before passage of the ACA by conservative economists, and was championed by conservative research groups, such as the Heritage Foundation and the American Enterprise Institute (Cooper, 2012). During an October 2011 presidential debate, former Republican Presidential nominee and Massachusetts Governor Mitt Romney explained that “we got the idea of an individual mandate…from [former Republican Speaker of the House Newt Gingrich], and [Gingrich] got it from the Heritage Foundation” (Roy, 2012).
\end{flushleft}

\begin{flushleft}
\textsuperscript{11} Support for the ACA by the health insurance industry continued after its enactment, in part because the ACA was at least initially a financial boon to private health plans. Increased profits were due in part to a surge in Medicaid enrollment (Pear, 2014).
\end{flushleft}
Partisan concerns about, among other things, overreach by the federal government have eroded support for the ACA and limited its acceptance by the public\textsuperscript{12}.

Unlike many other issues before the Court that are generally associated with partisan politics, such as abortion, gun rights, and same-sex marriage, the ACA was not always tethered to partisan associations. Of course, it became a partisan lightning rod.

\textbf{Knowledge About the Supreme Court}

Survey data suggests that most Americans are largely ignorant of the judicial system in general. Study after study finds a remarkable level of ignorance about judicial structure and processes. For example, a January 2016 study found that almost 60\% of college graduates failed to correctly identify a requirement for ratifying a constitutional amendment, and 10\% of college graduates concluded that Judith Sheindlin—“Judge Judy”—was a member of the U.S. Supreme Court. Only 44\% of respondents correctly identified Elena Kagan as a Supreme Court Justice (American Council of Trustees and Alumni, 2016). In a 2010 political knowledge quiz

\textsuperscript{12} Periodic surveys document the continuing decline of public support for the ACA. A 2016 Pew Research survey found that 54\% of Americans disapproved of the ACA, while only 44\% approved of it. Disapproval increased by 10\% since the time of the law’s passage. Support for the law largely corresponded with party lines—78\% of Democrats approved of the ACA, while only 9\% of Republicans approved. Racial and economic divisions were also present. While 64\% of white respondents disapproved of the law, a large majority (83\%) of black respondents supported it, as did a majority (57\%) of Hispanics. Not surprisingly, about a third of respondents with incomes of $30,000 or less, many of whom would qualify for low- or no-cost government coverage, said the law’s effect on their families was mostly positive. Only 18\% of those with higher family incomes concluded that the law was having a positive effect on their families (Pew Research Center, 2016).
administered by Pew Research, just 28% of respondents correctly identified John Roberts as the
Chief Justice (2010).

The mass public is often ignorant of larger trends concerning the U.S. Supreme Court, as well. The 2010 Pew Research survey found that the public viewed the Court as becoming more liberal, even though most scholars concluded that the Court had become increasingly conservative since 2006, when Justice Samuel Alito replaced Justice Sandra Day O’Connor (see Bartels & Johnston, 2013).

Even when the Court’s processes are in the public eye during the U.S. Senate’s Supreme Court judicial confirmation process, the public is often uninterested in the details. Surveys taken after Elena Kagan and Sonia Sotomayor were nominated to the Court found that news coverage about the nominees made little impact on the public. Most Americans (57%) reported learning little or nothing about Kagan through the nomination process, and 49% reported learning little or nothing about Sotomayor, despite the fact that she had received nearly twice as much news coverage as Kagan (Pew Research Center, 2010).

Similarly, Court decisions generally fail to hold the public’s attention, even when they are the subject of widespread reporting. For instance, in a poll taken the same year as the *Citizens United* 2010 ruling\(^\text{13}\), only 19% of the public reported hearing “a lot” about the decision. A poll taken the same week as the Court’s 2000 decision in *Bush v. Gore*\(^\text{14}\)—one of the Court’s most important decisions, which effectively decided the outcome of the 2000 presidential election—showed that only 34% of the public followed news about the election outcome “very


closely,” despite round-the-clock news coverage of challenges to that election. Notably, more Americans paid “very close” attention to the rising gas prices (61%) and the terrorist attack on the USS Cole (44%) (Pew Research Center, 2010). On a brighter note, some studies have found that individuals may pay closer attention to the Court when its activities more directly affect their lives, such as cases that involve local institutions or policies (Caldeira & McGuire, 2005; Hoekstra, 2000, 2003). Public discourse about highly salient debates, such as heated battles involving especially controversial judicial nominations, has also attracted public notice (Caldeira & Smith, 1996; Kastellec, Lax, & Phillips, 2010).

The natural rebuttal to the “ignorant citizen” argument is that Americans do not need a detailed understanding of an issue to be able to make competent decisions about it. Since the 1940s, political scientists have expressed concerns about the public’s ability to make informed political decisions and effectively participate in the political process. In response, and with great optimism, scholars have foretold a rosier outlook for citizen competency. Despite widespread ignorance about politics and civics, some argue that mass ignorance can be overcome in two ways. First, an uniformed citizen can rely on heuristics15, or mental shortcuts that require little information, to make fairly intelligent political judgments. Therefore, “people can be knowledgeable in their reasoning about political choices without necessarily possessing a large

15 Heuristics allow individuals to simplify political choices before them so that they can decide which political positions to support. When individuals lack sufficient knowledge to choose policy positions, the may choose to rely on other policy positions they hold as shortcuts to the lesser known policy areas. Sniderman explains, “The evidence is compelling that citizens, even well-educated citizens, tend to pay only intermittent attention to politics and to possess a fund of information about politics conspicuous for its thinness. If so, how can they work out what they favor and oppose politically? ...[Through] judgmental shortcuts, or heuristics.” (1993, p. 4). He identifies heuristics he believes to be common, such as instances in which individuals decide whether to support government assistance for a group based on their personal feelings about that group.
body of knowledge about politics” (Sniderman, Brody, & Tetlock, 1991, p. 91). Second, political scientists have argued that public opinion may actually be accurate in the aggregate. Individual decision-making errors cancel each other out, and thus collective opinion, once aggregated, conveys accurate information about individual policy preferences (Page & Shapiro, 2010; Sniderman et al., 1991). Studies have found that individuals can employ these tools— heuristics and collective opinion—to form a rational problem-solving approach that is adequate for many political judgments (Lupia, 1994; Lupia & McCubbins, 1994, 2000; Mondak, Jeffrey J., 1994; Stimson, Mackuen, & Erikson, 1995).

These assurances of citizen competency do not fully explain public opinion about complex constitutional questions, however. First, many scholars have expressed doubt about the “rational public” thesis. Weaknesses in the heuristic and collective opinion approaches suggest that these tools may be sufficient for forming broad impressions, but insufficient for accurately processing rhetoric and choosing specific policy positions concerning complex problems. For instance, Kuklinski and Quirk’s exhaustive analysis of models for mass public opinion find that “human cognition is not well adapted to the tasks of citizens,” and distortions in political judgment can produce misguided signals about policy preferences (2000, p. 194). Heuristics also appear to be more effective when used by political experts than by novices, and can lead both astray (Lau & Redlawsk, 2001).

The broader implications of mass ignorance are wide reaching. Unfamiliarity with American government and the principles on which it was founded is a matter of continuing concern to political scientists and citizens alike because of implications for the democratic process. The United States was founded on the principle that self-governance fosters liberty and human flourishing. Arguably, commitment to shared principles unifies a nation of diverse
backgrounds and cultures. Ignorance of the ideas and structures that make self-governance possible erodes the foundations of democracy. If the public does not understand how American government works, how can it work to sustain and improve the democratic process? Given a largely uninformed mass public, some scholars advocate focusing judicial energies on the views of elite publics, rather than on an American public that knows too little about democratic processes to provide effective oversight and input (Gibson & Caldeira, 2009). Focusing attention on elite publics at the expense of public opinion, however, would signal a fundamental shift in the democratic process (see Gibson & Caldeira, 2009b; Gibson et al., 1998).

**Positivity Theory: Knowledge Underscores Legitimacy**

Increased knowledge of the Court’s role and activities is generally linked with stronger loyalty toward the Court as an institution (Gibson & Caldeira, 2009b; Gibson et al., 1998). This finding is robust, reinforced by surveys conducted in roughly two dozen countries (Gibson et al., 1998), and concerning the American state court system (Benesh, 2006). As Gibson and Caldeira explain, pursuant to “positivity theory” or “positivity bias,” public attentiveness to courts not only provides the public with information, but also exposes it to important and influential symbols of judicial legitimacy. Exposure to the processes and institutions of courts reminds the public of the procedural fairness and judicial safeguards that are the hallmarks of the American judiciary. These procedures and safeguards assure us that the judiciary is designed to protect individual liberty and guarantee equal treatment, and when we become aware of them, we are more likely to believe in the long-term efficacy of courts as institutions even if we disagree with specific decisions or justices. To the extent that judges and justices exercise discretion in deciding cases, we believe that they do so in a principled, systematic fashion (Caldeira &
In other words, under positivity theory, exposure to judicial processes convinces us that courts are not ordinary political institutions in the larger sense of American partisan politics, but instead unique institutions that protect our rights and thus should be afforded special consideration. Gibson and Caldeira have dominated the field in this area of study, repeatedly finding that events that raise the Court’s salience may simultaneously increase citizen knowledge and institutional support because legitimizing symbols convince the individual that courts have enhanced legitimacy (see Gibson & Caldeira, 2009a, p. 437, 2009c, 2011). However, just as knowledge enhances esteem for the Court, ignorance arguably threatens the public’s belief in its legitimacy.

The Impact of Individual Rulings on Legitimacy

Evidence about the effect of specific rulings on public support for the Court is mixed. Although Americans knowledgeable about the Court are not likely to turn against the Court based on a single decision (Gibson & Caldeira, 2011; Gibson et al., 2003), a series of unpopular decisions can undermine public support for the Court in the long-term (Caldeira & Gibson, 1992; Gibson et al., 1998). However, retrospective assessments of Court decisions reflect that public support for the Court as an institution is not necessarily related to policy agreement with a specific ruling ((Baird, 2001; Baird & Gangl, 2006; Scheb & Lyons, 2001). Nevertheless, Americans are largely satisfied with the Court’s performance and are loyal to the institution. This loyalty is the result of a “running tally” of assessments that develops and is reinforced over
time, and thus it “difficult for any given decision to have much incremental influence on that tally” (Gibson et al., 2003, p. 364).

DATA AND METHODS

This research uses longitudinal data from The American Panel Survey (TAPS). TAPS is a monthly online survey of a national probability sample from a panel of about 2,000 adults in the United States. The panel was recruited in the fall of 2011 using an address-based sampling frame of randomly selected residential addresses. TAPS data was collected monthly over the 2012-2013 period. Two batteries of questions were particularly helpful, as they were administered in May 2012 and July 2012, roughly one month before and one month after the Supreme Court’s June 28, 2012, decision in National Federation of Independent Business v. Sebelius. The timing of these question panels allows me to examine survey participants’ immediate reactions to the ACA ruling. I also analyze variables that were collected in months other than May and July 2012 to provide a fuller picture of each respondent’s opinions and background.

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16 TAPS surveys are administered online, and selected panelists who do not have a computer or online service are provided a computer and internet access by TAPS. TAPS surveys are conducted for the Weidenbaum Center by GfK/Knowledge Networks, an online survey research firm. The panel generates a minimum of 1,550 completed interviews per month. Additional technical information about the survey is available at taps.wustl.edu. TAPS is designed to have approximately 2,000 or more members by recruiting one person per household through a mail sample. The frame for the sample of addresses was the U.S. Postal Service’s computerized delivery sequence file (CDSF), which covers 97% of the physical addresses in all fifty states, including P.O. boxes and rural route addresses.
Although TAPS was a panel study, different questions were asked in different months, limiting the ability to treat the data as typical panel data where many of the same questions are asked repeatedly over time. In TAPS, some questions were only asked in one month. Nevertheless, the longitudinal design of the TAPS survey allows me to assess how individual beliefs change over time. By using panel data, I can better understand the factors that changed individuals’ behavior and attitudes, and avoid incorrect inferences about causality that can result from studies based on more common cross-sectional data.

The large number of relevant survey questions in TAPS allows me to use dozens of variables in my analysis. I analyze some of these variables separately, while I have combined others into single variables through factor analysis, or through additive approaches\textsuperscript{17}. These index/additive variables have the benefit of providing more accurate assessments of respondents’ attitudes since they are based on multiple measures.

**Data Used to Measure Knowledge of the Supreme Court**

Many studies about political knowledge measure a survey respondent’s awareness about multiple branches of government. Typical questions include whether respondent knows which party holds a majority of seats in the U.S. House or Senate, or the length of a senator’s term in office. This makes sense even when studying how Court decisions impact political knowledge.

\textsuperscript{17} Using a compound index that aggregates multiple indicators may help mute the impact of data that is unreliable due to sampling error. Combining variables that measure related concepts into a single index produces a measure that is generally more reliable than its individual components.
Insofar as heightened awareness of the Court may lead to increased knowledge about other areas of government (see, e.g., Nelson & Smith, 2014).

In contrast, I focus solely on knowledge of the U.S. Supreme Court. While a conceptually broad index containing questions about multiple political institutions may be a suitable measure for assessing increases in overall political knowledge, I am interested in focusing on the Court alone because knowledge of the Court is acquired in a different manner than knowledge of other governmental institutions. Detailed information about the Court and its activities is more elusive than with other branches. In comparison, information about Congress and the presidency is regularly reinforced through election cycles and daily news coverage. Details such as the length of a term of office or the identify of a majority party is often relevant to routine news coverage about partisanship and polarization. Details about the functioning of the Court rarely reaches mainstream news outside of the judicial nomination process. The Court’s proceedings are not televised, and the justices rarely give interviews about their work. The nature of the deliberative process that leads to Court decisions is also largely hidden from public eye. Even elected officials are restrained in their critiques of the Court. President Obama was widely rebuked for using his 2010 State of the Union address to condemn the Court’s Citizens United decision allowing corporate spending in elections, given that members of the Court were sitting in the audience.

Given the comparative lack of coverage about Court activities, increased knowledge of the Court implies an attentiveness to news coverage beyond that attentiveness that might lead to increased knowledge about other branches of government. In light of the comparative opacity

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and obscurity of its activities, survey respondents might have to be especially attentive to Court matters in order to learn more about it. Additionally, there is little reason to assume that those with high interest in politics in general would necessarily have a correspondingly high interest in Court affairs, especially since justices rarely engage in publicized partisan bickering that so regularly garners news coverage for elected officials.

Thus, I do not use political knowledge measures about politics in general, but rather a four variable additive index of survey responses I created to measure knowledge of the U.S. Supreme Court alone. The index combines the number of correct responses to the following questions, divided by the number of questions. The resulting index value is bounded by 0 and 1. The percentage of respondents giving a correct response at \( t_1 \) (prior to June 2012 ruling) and \( t_2 \) (after June 2012 ruling) are listed in parentheses, with the correct answers bolded:

- **Annual Decisions:** How many decisions with opinions does the Court issue each year? Would you say it is... [**less than one hundred decisions with opinions each year** (62%, 63%), around five hundred decisions with opinions (22%, 23%), a thousand decisions with opinions or more per year (9%, 8%)]

- **Last Say:** Do you happen to know who has the last say when there is a conflict over the meaning of the Constitution? [U.S. Supreme Court (79%, 82%), U.S. Congress (11%, 8%), President (8%, 8%)]

- **Lifetime Term:** Members of the U.S. Supreme court serve... [two-year terms (2%, 2%), ten-year terms (2%, 2%), **life terms** (76%, 78%), terms determined by the president (2%, 1%), Don’t know (15%, 15%)]

- **Chief Justice:** Who is Chief Justice of the United States Supreme Court? [**John Roberts** (46%, 57%), Antoni Scalia (23%, 18%), Mitt Romney (1%, 1%), Hillary Clinton (3%, 2%), Don’t know (26%, 21%)]
Data Used to Measure Supreme Court Legitimacy

In order to measure whether knowledge levels influence assessments of Supreme Court legitimacy, we must first define the concept of legitimacy. Gibson, Caldeira, and Spence argue that measures of Supreme Court legitimacy often conflate distinct concepts. They assert that legitimacy variables often ignore the difference between diffuse support for the Court (support for the institution), specific support (support for individual justices or rulings), and other related concepts\(^\text{19}\). They recommend (2003, p. 357) separating legitimacy measures into the following categories for more precise measurement:

1. Confidence in the U.S. Supreme Court (confidence in the people running the Court)
2. General affect (feeling thermometer about the Court)
3. General approval of performance (how well the Court does its job)
4. General satisfaction with policy (Court is too liberal/conservative)
5. Satisfaction with specific policies (agreement with recent Court decisions)
6. Diffuse support (Institutional loyalty), measured according to respondents’ agreement with the following five statements:
   
   (a) The right of the Supreme Court to decide certain types of controversial issues should be reduced,
   (b) The Supreme Court can usually be trusted to make decisions that are right for the country as a whole,
   (c) The decisions of the U.S. Supreme Court favor some groups more than others,
   (d) The U.S. Supreme Court gets too mixed up in politics,
   (e) The U.S. Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court’s decision.

\(^{19}\) As illustrative support for their argument that legitimacy should be decomposed into its constituent parts, they find that their confidence measure appeared to reflect both short- and long-term judgments about the Court, with the larger effect stemming from satisfaction with the Court’s performance in the moment. Moreover, loyalty measures and performance evaluations, while related, had divergent affects. Commitment to the Court was not primarily a product of whether the public was happy with how the Court was doing its job. Perceptions of individual rulings were even less influential on institutional loyalty (2003, p. 364).
Consistent with their findings, I use four analogous measures from the TAPS survey, which use either the same or similar question wording\(^{20}\).

\textbf{Confidence in the Supreme Court}\(^{21}\): Please indicate your level of confidence in the [the U.S. Supreme Court.]

\textbf{General approval of performance (how well the Court does its job)}\(^{22}\): How well do you think the U.S. Supreme Court does its main job in government? Would you say it does a...

\textbf{General satisfaction with policy (Court is too liberal/conservative)}\(^{23}\): In general, would you say that the U.S. Supreme Court is too liberal, too conservative, or about right in its decisions?

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\(^{20}\) Survey questions were asked in June 2012. For purposes of this analysis, I recoded “refused” and “don’t know” as missing values. I do not use a measure for General affect (feeling thermometer about the Court) or Satisfaction with specific policies (agreement with recent Court decisions), as the TAPS survey data I am using does not contain variables that are similar to these measures.

\(^{21}\) Variable was coded as refused=1, a great deal of confidence=2, only some confidence=3, hardly any confidence=4. As Gibson, Caldeira, and Spence observe, other studies have used different measures of confidence (2003, p. 357). For instance, Grosskopf and Mondak use a confidence measure that is distinct from measures for diffuse support. “Reference to the ‘people in charge of running the Supreme Court’ likely encourages respondents to contemplate current events rather than institutional history when answering the question, and thus the item is not comparable to measures of diffuse support such as the one developed by Caldeira and Gibson (1992)” (Grosskopf & Mondak, 1998, p. 641).

\(^{22}\) Variable was coded as refused=1, great job=2, pretty good job=3, not very good job=4, a poor job=5.

\(^{23}\) Variable was coded as refused=1, too liberal=2, too conservative=3, about right=4.
Diffuse Support (Institutional Loyalty): I analyze these variables separately, and as a combined index generated through factor analysis.

24 In measuring institutional loyalty, I used measures similar to that used by Gibson, Caldeira, and Pence (2003) and a related study by Gibson and Caldeira (2011). The one concept I incorporate into my analysis (as does Gibson & Caldeira, 2011), but which Gibson Caldeira, and Pence (2003) do not, is whether “We ought to have stronger means of controlling the actions of the U.S. Supreme Court.” This item has a logical nexus with other response items about controlling the Court and reducing its power. These items are also similar to the measures used by Nelson and Smith (2014) in their working paper. Instead of using the term “institutional legitimacy,” they refer to this concept as “diffuse support” or institutional support (as opposed to “specific” support for individual actors or actions). To generate the index for institutional loyalty, I used principal component factor analysis.

25 The factor loading for the variables used in creating the institutional loyalty index and the percentage of respondents giving a response supportive of the Court at t₁ (May 2012) and t₂ (July 2012) are listed in parentheses:

- If the Court started making decisions that most people disagree with, it might be better to do away with the Court. [0.76, 64%, 66%]
- The right of the Supreme Court to decide certain types of controversial issues should be reduced. [0.78, 49%, 52%]
- The U.S. Supreme Court gets too mixed up in politics. [0.62, 23%, 21%]
- Justices who consistently make decisions at odds with what a majority of the people want should be removed. [0.79, 44%, 50%]
- The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want. [0.80, 46%, 50%]
- We ought to have stronger means of controlling the actions of the U.S. Supreme Court. [0.82, 41%, 45%]. For the July 2012 Survey, the question wording differed slightly, as follows: “It is inevitable that the Court gets mixed up in politics; we ought to have stronger means of controlling the Court.” For purposes of empirical analysis in this study, I treat the May 2012 and July 2012 versions as if they were the same question asked at different times. The difference in wording is minimal, and arguably conveys a sufficiently similar inquiry.
- Like politicians, we cannot trust them to decide court cases in a way that is in the best interests of our country. [0.76, 41%, 46%]. For the July 2012 Survey, the question wording differed slightly, as follows: “Justices are just like other politicians; we cannot trust them to decide cases in the best interests of our country.” For purposes of empirical analysis in this study, I treat the May 2012 and July 2012 versions as if they were the same question asked at different times. The difference in wording is minimal, and arguably conveys a sufficiently similar inquiry.

Respondents were asked to “[p]lease indicate whether you agree with the following” statements. The response set for these items was coded as: refused=1, strongly agree=2, agree=3, neither agree nor disagree=4, disagree=5, strongly disagree=6, or don’t know=7. For purposes of this analysis, “refused” and “don’t know” were recoded as missing values. Principal component analysis for factor extraction reflects that the measure is unidimensional (1st eigenvalue=4.08, 2nd eigenvalue=7.77).
FINDINGS, DISCUSSION, AND CONCLUSIONS

To test prior findings that controversial cases can lead to high public knowledge of the U.S. Supreme Court, I examine public knowledge levels before and after the ACA ruling. Using survey responses measuring public knowledge of the Court that were collected one month before and after the highly publicized 2012 ACA decision, I examine whether individual respondents’ knowledge levels increased after the decision. Prior research about the impact of widely publicized cases suggests that the Court’s ruling would attract public attention, which in turn would allow the public to refresh and expand its knowledge of the Court.

For the attentive citizen, the ACA Case and its ruling provided a virtual civics lesson on American government. The Court had to consider the extent to which it would check the power of the executive and legislative branches, the ramifications of partisanship and polarization about health insurance, the meaning of some of the Constitution’s most contentious passages, and even the proper role of the Court in implementing laws (i.e., the notion of “legislating from the bench”). Given the variety of political issues central to the ACA Case, it is plausible that media coverage of the case would have led to increased public’s knowledge about the Court’s processes and structures.

The four items measuring knowledge ask whether respondents knew the correct answers to the following questions:

**Annual Decisions**: How many decisions with opinions does the Court issues each year?

**Last Say**: Do you happen to know who has the last say when there is a conflict over the meaning of the Constitution?

**Lifetime Term**: Members of the U.S. Supreme court serve… [terms of office]

**Chief Justice**: Who is Chief Justice of the United States Supreme Court?
I analyze these variables alone, and in a four variable additive index\textsuperscript{26}. Results suggest that the ACA ruling did serve to raise knowledge levels, but only in certain areas. We know that the public was paying at least enough attention to the ACA ruling that Court approval ratings changed within a month of the decision date. Although changes in public opinion were in the single digits, some of these changes are noteworthy (Table 4). For instance, while aggregate approval ratings remained relatively stable, the percent of Democrats approving or strongly approving of the way the Court was doing its job rose from 15\% to 23\%. Conversely, the percentage of Republicans disapproving or strongly disapproving of the way the Court was doing its job rose from 6\% to 13\%.

\textbf{Table 4. Percentage of Survey Respondents Saying They Approve or Disapprove of the Way the U.S. Supreme Court Was Doing Its Job in May 2012 and July 2012.}

<table>
<thead>
<tr>
<th></th>
<th>All Panelists</th>
<th></th>
<th>Democrats</th>
<th></th>
<th>Republicans</th>
<th></th>
<th>Independents</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Approve</td>
<td>5</td>
<td>8</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Somewhat Approve</td>
<td>44</td>
<td>43</td>
<td>14</td>
<td>19</td>
<td>15</td>
<td>10</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>Somewhat Disapprove</td>
<td>23</td>
<td>25</td>
<td>10</td>
<td>8</td>
<td>5</td>
<td>8</td>
<td>8</td>
<td>6</td>
</tr>
<tr>
<td>Strongly Disapprove</td>
<td>11</td>
<td>11</td>
<td>5</td>
<td>1</td>
<td>1</td>
<td>5</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Not Sure</td>
<td>17</td>
<td>12</td>
<td>5</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>6</td>
<td>5</td>
</tr>
</tbody>
</table>

(n=3180)

\textsuperscript{26} The additive index of knowledge about the Supreme Court combines the number of correct responses to these questions, divided by the number of questions.
More to the point, knowledge scores improved after the ACA ruling (Table 5). The additive index for Court knowledge reflects an increase in the mean for knowledge scores from 0.260 to 0.3274 from May 2012 to July 2012. Respondents also demonstrated improvements in the number of correct answers to individual questions about the Court (Table 6), performing better in all four measures after the ACA ruling with the most improvement corresponding to the question about the name of the Chief Justice. This finding mirrors those from a study about knowledge levels after the 2000 ruling in *Bush v. Gore*, in which the greatest improvement in public knowledge concerned the identity of the Chief Justice (Kritzer, 2001). Thus, the ACA case provides confirms the theory that salient cases can lead to increases in public knowledge about the Court.

Table 5. Mean Scores of Knowledge Indexes Before and After ACA Ruling.

<table>
<thead>
<tr>
<th></th>
<th>Mean Score</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowledge Prior to the Ruling</td>
<td>0.260</td>
<td></td>
</tr>
<tr>
<td>Knowledge After the Ruling</td>
<td>0.327</td>
<td></td>
</tr>
<tr>
<td>(n=1180)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 6. Mean Scores of Knowledge Items, Before and After ACA Ruling.

(incorrect responses=1, and incorrect responses=0)

<table>
<thead>
<tr>
<th></th>
<th>Before Ruling</th>
<th>After Ruling</th>
<th>Increase in Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Decisions</td>
<td>0.253</td>
<td>0.293</td>
<td>0.040</td>
</tr>
<tr>
<td>Last Say</td>
<td>0.320</td>
<td>0.378</td>
<td>0.058</td>
</tr>
<tr>
<td>Lifetime Term</td>
<td>0.291</td>
<td>0.369</td>
<td>0.079</td>
</tr>
<tr>
<td>Chief Justice</td>
<td>0.177</td>
<td>0.269</td>
<td>0.092</td>
</tr>
<tr>
<td>(n=1180)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Changes in public approval ratings subsequent to the ACA ruling, however, may undercut studies finding the public support for the Court is durable and relatively unaffected by single cases ((Caldeira & McGuire, 2005; Gibson & Caldeira, 2009c, 2011; Gibson et al., 2003).
I also test the prior finding that controversy surrounding a Supreme Court ruling could lead to a “positivity bias” that reinforced the Court’s institutional legitimacy. To test this premise, I rely on a battery of measures of institutional legitimacy. The wide range of variables that the TAPS survey uses incorporates most of these measures. As discussed above, Gibson, Caldeira and Spence argue that the concept of institutional legitimacy incorporates distinct measures of both specific and diffuse support for the Court. Unlike much of the prior research on the link between knowledge of the Court and corresponding assessments of legitimacy, my study incorporates four separate dimensions of institutional legitimacy:

- Confidence in the Supreme Court
- General approval of performance (how well the Court does its job)
- General satisfaction with policy (Court is too liberal/conservative)
- Diffuse Support (Institutional Loyalty) ²⁸: This index variable combines the following items, about which respondents were asked to agree or disagree:
  - If the Court started making decisions that most people disagree with, it might be better to do away with the Court.
  - The right of the Supreme Court to decide certain types of controversial issues should be reduced.
  - The U.S. Supreme Court gets too mixed up in politics.
  - Justices who consistently make decisions at odds with what a majority of the people want should be removed.
  - The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want.
  - We ought to have stronger means of controlling the actions of the U.S. Supreme Court.

²⁸ Respondents were asked to “[p]lease indicate whether you agree with the following” statements. The response set for these items was coded as: refused=1, strongly agree=2, agree=3, neither agree nor disagree=4, disagree=5, strongly disagree=6, or don’t know=7. For purposes of this analysis, “refused” and “don’t know” were recoded as missing values. Principal component analysis for factor extraction reflects that the measure is unidimensional (1st eigenvalue=4.08, 2nd eigenvalue=.77).
Like politicians, we cannot trust them to decide court cases in a way that is in the best interests of our country.

I find that increased knowledge levels for all four knowledge measures are linked to greater feelings of institutional loyalty, both before and after the ACA decision (Table 7)\textsuperscript{29}.

### Table 7. Changes in Measures of Institutional Legitimacy Before and After ACA Decision, by Knowledge Measures.

<table>
<thead>
<tr>
<th>(1) Loyalty - Before Ruling\textsuperscript{30}</th>
<th>(2) Loyalty - After Ruling\textsuperscript{31}</th>
<th>(3) Job Performance - After Ruling</th>
<th>(4) Confidence - After Ruling</th>
<th>(5) Court Too Liberal/Conservative - After Ruling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Justice</td>
<td>0.298*** (0.0484)</td>
<td>-0.0339 (0.0352)</td>
<td>0.0218 (0.0347)</td>
<td>-0.117** (0.0510)</td>
</tr>
<tr>
<td>Lifetime Term</td>
<td>-0.0578 (0.0610)</td>
<td>0.0949 (0.0588)</td>
<td>0.127*** (0.0400)</td>
<td>0.102*** (0.0387)</td>
</tr>
<tr>
<td>Annual Rulings</td>
<td>0.226*** (0.0528)</td>
<td>-0.0149 (0.0335)</td>
<td>0.0592* (0.0341)</td>
<td>-0.0816* (0.0468)</td>
</tr>
<tr>
<td>Last Say</td>
<td>0.00830 (0.0608)</td>
<td>0.0932 (0.0634)</td>
<td>0.118*** (0.0454)</td>
<td>0.142*** (0.0427)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.189*** (0.0359)</td>
<td>-0.406*** (0.0587)</td>
<td>3.329*** (0.0427)</td>
<td>3.098*** (0.0403)</td>
</tr>
<tr>
<td>Observations</td>
<td>947</td>
<td>903</td>
<td>938</td>
<td>947</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.068</td>
<td>0.093</td>
<td>0.016</td>
<td>0.029</td>
</tr>
</tbody>
</table>

Robust standard errors in parentheses

\textsuperscript{29} In this dissertation, I report numerous regression coefficients. In many cases, ordered probit models would better fit the data since the dependent variables correspond to ordinal or binary values. However, regression coefficients are more intuitive to interpret and arguably provide more usable statistics than ordered probit. Thus, I have used regression in lieu of ordered probit.

\textsuperscript{30} Survey questions were asked at different times over six-month period leading up to the Court’s ruling in the ACA case.

\textsuperscript{31} Survey questions were asked at different times over the twelve-month period following the Court’s ruling in the ACA case.
For instance, individuals who know the number of decisions the Court writes annually or the identity of the Chief Justice were more likely to feel loyal to the Court and to reject suggestions that the Court is too political or that its power should be reduced (two measures from the battery of questions comprising the loyalty index).

However, there is little change in this loyalty from prior to the ACA decision to after. While approval ratings of the Court changed after the decision, loyalty to the Court as an institution is not altered by the single ACA decision. Here, my findings are consistent with studies concluding that single cases do not disturb the durability of long-term assessments of the Court. We can also see the utility of disentangling measures of approval of the Court from loyalty to the Court. Approval fluctuates, but loyalty does not.

The other three measures of public opinion about the Court were only asked in one month of the survey panel, and thus we cannot explore whether the ACA decision impacted these measures over time. However, in general, all three measures are positively associated with increased knowledge levels. The exception to this pattern occurs with the too liberal/conservative assessment, also referred to as the “general satisfaction with policy” variable. Here, the more a survey participant knew about the Court, and in particular the identity of the Chief Justice and the number of rulings the Court wrote annually, the more likely the individual was likely to believe the Court was too liberal or too conservative.

This finding, if robust, may fit well within the broader explanation that public opinion about the Court functions differently along different dimensions. In this instance, increased knowledge of the Court may expose the public to the ideological considerations that a Court must face. Thus, a more knowledgeable public may accept that the Court is not just “calling balls and strikes,” but rather must interpret laws in ways that have ideological implications.
Being aware of ideological currents may prompt individuals to believe that the Court is in fact too ideological, especially if the individual formerly believed that the Supreme Court justices were unaffected by ideological forces. However, concluding that the Court is ideological (too conservative or too liberal), does not lower confidence in the Court or loyalty to the institution. These findings reinforce positivity theory, although in a more nuanced fashion than prior research.
CHAPTER III: DETERMINANTS OF PUBLIC SUPPORT FOR THE AFFORDABLE CARE ACT Ruling

Under the theory of motivated reasoning, we would expect the public’s beliefs about the proper role of U.S. Supreme Court justices’ ideology and public opinion in deciding cases to change depending on whether those ideologies and opinions were consistent with the public’s preferences about the outcome of a case. This Chapter will test whether those beliefs are mere window dressing, or whether they actually influenced individual assessments of the Court’s June 28, 2012, ruling upholding the bulk of the 2010 Patient Protection and Affordable Care Act (ACA), often called “Obamacare.” Longitudinal survey data collected in May 2012 and July 2012, roughly one month before and after the ruling, provides an opportunity to examine the impact the ACA decision had on individual reactions to the perceived ideological approaches of U.S. Supreme Court Justices.

Among other things, the Court’s decision\(^{32}\) found that the requirement for most Americans to purchase health insurance by 2014 or pay a fine was constitutional. ACA decision\(^{33}\) was complicated, both in terms of its underlying facts and the subsequent ruling. The constitutionality of the ACA requirement to purchase health insurance by 2014 or pay a fine, generally referred to as the “individual mandate,” depended on the Court’s interpretation of the Constitution’s Commerce Clause and the definition of a “tax.” Numerous journal articles are devoted solely to understanding the decision and its implications. (Aaron, 2012; Barnett, 2013; Christenson & Glick, 2015; Koppelman, 2013). A bare five-member majority of the Court found that the individual mandate was not a valid exercise of Congress’s power under the Constitution’s Commerce Clause and the Necessary and Proper Clause, but that it was a valid

tax\textsuperscript{34}. Even these conclusions were hotly debated among Supreme Court justices, and Chief Justice Roberts went to great lengths to cobble together a patchwork of Justices who could agree on an opinion of the Court\textsuperscript{35}. The Court’s full decision spanned 193 single-spaced pages. Both Justices Antonin Scalia and Ruth Ginsburg authored spirited dissents critiquing aspects of the majority opinion. In short, the ACA case was detailed, complicated, and narrowly decided based on the Court’s rationale.

\textsuperscript{34} The decision explained the Court’s rationale

\ldots The Constitution grants Congress the power to \textit{“regulate Commerce.”} Art. I, §8, cl. 3 (emphasis added). The power to \textit{regulate} commerce presupposes the existence of commercial activity to be regulated.\ldots The individual mandate, however, does not regulate existing commercial activity. It instead compels individuals to \textit{become} active in commerce by purchasing a product, on the ground that their failure to do so affects interstate commerce.

\ldots Nor can the individual mandate be sustained under the Necessary and Proper Clause as an integral part of the Affordable Care Act’s other reforms.\ldots Even if the individual mandate is “necessary” to the Affordable Care Act’s other reforms, such an expansion of federal power is not a “proper” means for making those reforms effective. \ldots

\ldots [T]he individual mandate must be construed as imposing a tax on those who do not have health insurance, [and] the mandate may be upheld as within Congress’s power to “lay and collect Taxes.” Art. I, §8, cl. 1.\ldots The Affordable Care Act describes the “[s]hared responsibility payment” as a “penalty,” not a “tax.” [However], the shared responsibility payment may for constitutional purposes be considered a tax.

\ldots [T]he Anti-Injunction Act does not bar this suit. The Anti-Injunction Act provides that “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person,” 26 U. S. C. §7421(a), so that those subject to a tax must first pay it and then sue for a refund. The present challenge seeks to restrain the collection of the shared responsibility payment from those who do not comply with the individual mandate. But Congress did not intend the payment to be treated as a “tax” for purposes of the Anti-Injunction Act.

\textsuperscript{35} Chief Justice Roberts, with Justices Scalia, Kennedy, Thomas, and Alito, concluded that the Individual Mandate was not a valid exercise of Congress’ power to regulate commerce. Chief Justice Roberts, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan, concluded that the Individual Mandate penalty is a tax for the purposes of the Constitution’s Taxing and Spending Clause and is a valid exercise of Congressional authority.
on non-obvious construction of precedent and textual interpretation. Beyond partisan cues advanced by party elites, there were few avenues by which the layperson could arrive at an informed decision about the constitutionality of the ACA.

LITERATURE REVIEW

Public Opinion about the Supreme Court’s ACA Ruling

The Supreme Court’s ruling in the ACA case offers a unique opportunity to investigate the contours of public opinion about the Court. Although Obamacare became an increasingly partisan issue over time, it started as a bipartisan effort to reduce the ranks of the uninsured. Insurance companies participated in the drafting of Obamacare legislation, and drafters modeled some provisions on insurance programs adopted in states with Republican governors. Similar solutions had been advocated by Republican leadership for decades as alternatives to the single payer (government administered) system advocated by some Democrats. By most accounts, Obamacare at one time enjoyed support from both liberals and conservatives, insurance companies and citizen interest groups.

This relative harmony did not last long. Obamacare quickly became a flashpoint in American politics. Even the moniker “Obamacare” was originally used in a pejorative fashion by opponents of the ACA. Popular support for other federally-funded social programs, such as Social Security and Medicare, grew as the programs provided benefits to more and more voters. However, an analogous policy feedback loop has thus far eluded the ACA. While roughly 20 million people have obtained health coverage and the already-insured received new ACA-mandated protections in the last four years, public opinion about the law continues to range from
mixed to downright vitriolic. Partisan concerns about, among other things, overreach by the federal government have eroded support for the ACA, has limited the ACA’s acceptance by the public\textsuperscript{36}. However, unlike many other political debates, the ACA case was predicated on bipartisan cooperation. Thus, absent clear partisan cues, we might expect the influence of other determinants of public opinion about the ACA to be easier to identify or more pronounced.

Second, most Americans have a firm view about the constitutionality of the ACA, despite its complexities. It is unsurprising that Americans would have a view about approving or disapproving of the law. Forming an opinion requires little more than drawing upon personal experience, perceived self-interest, and an understanding, well-informed or not, of what the law accomplishes. Most respondents in the survey used for empirical analysis in this article did in fact have an opinion about whether they approved or disapproved of the law. Roughly one quarter (27\%) of respondents approved or strongly approved of the ACA, and 57\% disapproved or strongly disapproved of the law. Only 16\% of respondents refused to respond, or responded that they did not have an opinion\textsuperscript{37}.

\textsuperscript{36} Periodic surveys document the continuing decline of public support for the ACA. A 2016 Pew Research survey found that 54\% of Americans disapproved of the ACA, while only 44\% approved of it. Disapproval has increased by 10\% since the time of the law’s passage. Support for the law largely corresponded with party lines—78\% of Democrats approved of the ACA, while only 9\% of Republicans approved. Racial and economic divisions were also present. While 64\% of white respondents disapproved of the law, a large majority (83\%) of black respondents supported it, as did a majority (57\%) of Hispanics. Not surprisingly, about a third of respondents with incomes of $30,000 or less, many of whom qualify for low- or no-cost government coverage, said the law’s effect on their families was mostly positive. Only 18\% of those with higher family incomes concluded that the law was having a positive effect on their families (Pew Research Center, 2016).

\textsuperscript{37} Respondents were asked a related question that produced interesting results. Participants were first asked, “Do you approve or disapprove of the requirement that every American must buy health insurance or pay a fine?” Next, they were asked a nearly identical question, but with an additional clause reminding the respondent that the requirement in question was part of the ACA law: “Do you approve or disapprove of this requirement that every American must buy health
However, a large majority of respondents also had an opinion about whether the law was constitutional. Perhaps this was a natural outcome of survey question order. Once respondents committed to approving or disapproving of the law, they may have been felt that it was a short leap to knowing the constitutionality of the law. In this scenario, what an individual felt about the ACA might have smoothly transitioned into an expectation that a judge should feel the same. When asked whether the requirement to buy insurance was constitutional, 24% of respondents concluded that it was, 63% concluded that it was not constitutional, and only 12% responded that they did not know whether the law was constitutional. This statistic illustrates a profoundly thought-provoking characteristic of constitutional law. Many Americans have firm opinions about the constitutionality of certain issues, but given American’s ignorance about the judiciary, it would be surprising to learn that many of these opinion-holders understood the constitutional issues at stake.

insurance or pay a fine, enacted as part of the 2010 healthcare bill?” Both questions were asked in June 2012, one month prior to the ACA ruling. For the first question, 27% of respondents approved or strongly approved of the law, 57% disapproved or strongly disapproved of the law, and 16% had no opinion. In response to the second question specifically mentioning the ACA, 35% of respondents approved or strongly approved of the law, only 47% disapproved or strongly disapproved of the law, and 18% had no opinion. Thus, disapproval dropped 10 percentage points and approval rose 7 percentage points when the ACA was mentioned, signaling perhaps that respondents were responding to partisan cues, knowing of President Barack Obama’s support for the ACA law.

Survey participants were asked, “Concerning the requirement that every American must buy health insurance or pay a fine, do you think that this is (un)constitutional?” This survey question was asked in May 2012, prior to the ACA ruling.
Impact of Individual Rulings on Public Opinion

Evidence about the effect of specific rulings on public support for the Court is mixed. Although Americans knowledgeable about the Court are not likely to turn against the Court based on a single decision (Gibson & Caldeira, 2011; Gibson, Caldeira, & Spence, 2003), a series of unpopular decisions can undermine public support for the Court in the long-term (Caldeira & Gibson, 1992; Gibson et al., 1998). Nevertheless, Americans are largely satisfied with the Court’s performance and are loyal to the institution. This loyalty is the result of a “running tally” of assessments that develops and is reinforced over time, and thus it “difficult for any given decision to have much incremental influence on that tally” (Gibson et al., 2003, p. 364).

Judges who base their rulings on legal principles, such as relying on original intent and precedent, enjoy higher levels of public support than judges who use less objective methods (Scheb & Lyons, 2000, 2001). However, retrospective assessments of Court decisions reflect that public support for the Court as an institution is not necessarily related to policy agreement with a specific ruling ((Baird, 2001; Baird & Gangl, 2006; Scheb & Lyons, 2001). Rather, because the Court’s reputation as a legitimate institution is so firmly entrenched in American culture, disapproval with the decision-making rationale used in a case is only weakly associated with lower levels of loyalty to the Court. Thus, the debate over decision-making approaches is not nearly as damaging as conventional wisdom or political elites might suggest (Farganis, 2012, p. 213).
Motivated Reasoning

Under the theory of motivated reasoning, personal biases based on political and social identities can skew political opinions. Arguably, all reasoning is motivated because individuals generally cannot purge the impact of preconceptions from their decisions. In the context of political opinion formation, motivated reasoning opens the door for individuals to make decisions using criteria other than accuracy by influencing cognitive strategies used for accessing, constructing, and evaluating beliefs (Kunda, 1990; C. S. Taber & Lodge, 2006). Motivated reasoning not only impacts a final decision, but also the procedures and methodologies used to reach that decision. Thus, individuals are more likely to believe that arguments and information that are congruent with their own beliefs are credible, persuasive, and legitimate (Simon & Scurich, 2011; C. S. Taber, Cann, & Kucsova, 2009; C. S. Taber & Lodge, 2006).

When forming political beliefs, reasoning tends to be motivated by a desire to be accurate, or a desire to be partisan. Partisan goals automatically lead to selective information processing that establishes direction and strength of bias (Kruglanski & Webster, 1996; C. Taber, Lodge, & Glather, 2001; C. S. Taber & Lodge, 2006). Thus, for instance, an experimental study found that participants exhibited both confirmation bias as well as disconfirmation bias. When reading pro and con arguments about affirmative action and gun control, participants exhibited confirmation bias by seeking out confirmatory evidence when given the chance to self-select the source of arguments they read. Conversely, participants demonstrated disconfirmation by counter-arguing contrary arguments and uncritically accepting the contrary arguments’ rationale. Both confirmation and disconfirmation lead to attitude polarization, an affect that was highest with the highest levels of political sophistication (C. S. Taber & Lodge, 2006).
In a study testing the role of motivated reasoning in laypeople's evaluations of judicial decision-making processes and judicial legitimacy, participants were asked to evaluate the acceptability of three hypothetical judicial decisions, focusing on the manner in which the decisions were made and the perceived legitimacy of the decision maker. Consistent with the theory of motivated reasoning, participants’ judgments were highly contingent on the final ruling. Participants were indifferent to the manner of reasoning used when they agreed with the outcomes of the decisions, but were more critical of reasoning used when the rulings frustrated their preferred outcomes (Simon & Scurich, 2011).

Social and political identities, such as ideological, partisan, religious, class, and ethnic group association, influence a wide range of political beliefs and attitudes (Conover, 1984). Many of these identities are easily activated by elites, who provide cues about which political beliefs are consistent with group membership. However, public awareness of cues is often tied to media coverage. Thus, for example, one study found that public opinion about the Supreme Court in 1990 reflected a 1960s understanding of the Court, with liberals on race and gender issues and those least fearful about crime rating the Court most favorably. Only those with high knowledge and attentiveness to the Court tracked the conservative shift that the Court had made since the 1960s (Hetherington & Smith, 2007).

DATA AND METHODS

This research uses longitudinal data from The American Panel Survey (TAPS). TAPS is a monthly online survey of a national probability sample from a panel of about 2,000 adults in the United States. The panel was recruited in the fall of 2011 using an address-based sampling
frame of randomly selected residential addresses, stratified using ancillary data on age and ethnic group. TAPS surveys are administered online, and selected panelists who do not have a computer or online service are provided a computer and internet access by TAPS. TAPS surveys are conducted for the Weidenbaum Center by GfK/Knowledge Networks, an online survey research firm. The panel generates a minimum of 1,550 completed interviews per month\(^{39}\).

TAPS data was collected monthly over the 2012-2013 period. Two batteries of questions were particularly helpful, as they were administered in May 2012 and July 2012, roughly one month before and one month after the Supreme Court’s June 28, 2012, decision in *National Federation of Independent Business v. Sebelius*, 567 U.S. ___ (2012). The regularity of these question panels allows me to examine survey participants’ immediate reactions to the ACA ruling. In addition, by using longitudinal data, I can better understand the factors that changed individuals’ behavior and attitudes, and avoid incorrect inferences about causality that can result from studies based on more common cross-sectional data.

I also analyze variables that were collected in months other than May and July 2012. The wide variety and specificity of these variables provides an exciting opportunity to test prior

\(^{39}\) Additional technical information about the survey is available at taps.wustl.edu. TAPS is designed to have approximately 2,000+ members by recruiting one person per household through a mail sample. The frame for the sample of addresses is the U.S. Postal Service’s computerized delivery sequence file (CDSF). Marketing Systems Group (MSG), is a sample vendor licensed to work with this file and from whom this sample was purchased. The CDSF covers some 97% of the physical addresses in all fifty states including P.O. boxes and rural route addresses. Homes that are vacant or 2 seasonal are identified as are other categories that help to refine the efficiency of the sample to be mailed. Using data from available U.S. Census files plus from a variety of commercial data bases, such as White Pages, Experian, Acxiom, etc., MSG adds names to these addresses, match with landline telephone numbers, and with some level of accuracy append information regarding race/ethnicity, age of householder, whether there are people of a certain age in the household, presence of children, home ownership status, etc.
findings that were based on blunter measurement instruments. However, the fact that different questions were asked in different months limits the ability to treat the data as typical panel data, where you would expect the same questions to be asked repeatedly over time. Some questions were only asked in one month. Nevertheless, the longitudinal design of the TAPS survey allows me to assess how individual beliefs change over time.

The large number of relevant survey questions in TAPS allows me to use dozens of variables in my analysis. I have combined many of these items into single variables through factor analysis, or through additive approaches. These index/additive variables have the benefit of providing more accurate assessments of respondents’ attitudes since they are based on multiple measures.

**Data Used to Measure Public Opinion about Court Decision-Making**

Two sets of questions about the Court’s decision-making approaches were asked in May 2012. Panelists were asked how big a role certain considerations SHOULD play in the U.S. Supreme Court’s decision in the ACA case (Normative Questions), and how big a role these considerations WOULD play in the Supreme Court’s decision in the ACA case (Prediction Questions). In July 2012, subsequent to the Court’s ruling in the ACA case on June 28, 2012, the panelists were asked how big a role these considerations DID play in the Supreme Court’s decision (Reaction Questions). The text of these questions is set forth in the Appendix to Chapter 3.
Data Used to Measure Attitudes toward the Supreme Court

Gibson, Caldeira, and Spence argue that measures of Supreme Court legitimacy often conflate distinct concepts. They assert that legitimacy variables often ignore the difference between diffuse support for the Court (support for the institution), specific support (support for individual justices or rulings), and other related concepts. They recommend breaking legitimacy measures down into the following categories for more precise measurement:

7. Confidence in the Supreme Court (confidence in the people running the Court)
8. General affect (feeling thermometer about the Court)
9. General approval of performance (how well the Court does its job)
10. General satisfaction with policy (Court is too liberal/conservative)
11. Satisfaction with specific policies (agreement with recent Court decisions)
12. Diffuse support (Institutional loyalty)

As illustrative support for their argument that legitimacy should be decomposed into its constituent parts, they find that their confidence measure appeared to reflect both short- and long-term judgments about the Court, with the larger effect stemming from satisfaction with the Court’s performance in the moment. Moreover, loyalty measures and performance evaluations, while related, had divergent affects. Commitment to the Court was not primarily a product of whether the public was happy with how the Court was doing its job. Perceptions of individual rulings were even less influential on institutional loyalty” (2003, p. 364).

Gibson, Caldeira, and Spence (2003) measure institutional loyalty according to respondents’ agreement with the following five statements: (a) The right of the Supreme Court to decide certain types of controversial issues should be reduced, (b) The Supreme Court can usually be trusted to make decisions that are right for the country as a whole, (c) The decisions of the U.S. Supreme Court favor some groups more than others, (d) The U.S. Supreme Court gets too mixed up in politics, (e) The U.S. Supreme Court should have the right to say what the Constitution means, even when the majority of the people disagree with the Court’s decision.
Consistent with their findings, I use the four analogous measures, which use either the same or similar question wording\textsuperscript{42}.

**Confidence in the Supreme Court\textsuperscript{43}:** Please indicate your level of confidence in the following the U.S. Supreme Court.

**General approval of performance (how well the Court does its job)\textsuperscript{44}:** How well do you think the U.S. Supreme Court does its main job in government? Would you say it does a...

**General satisfaction with policy (Court is too liberal/conservative)\textsuperscript{45}:** In general, would you say that the U.S. Supreme Court is too liberal, too conservative, or about right in its decisions?

\textsuperscript{42} I do not include a measure for General affect (feeling thermometer about the Court) or Satisfaction with specific policies (agreement with recent Court decisions), as the survey data I am using does not variables that are similar to these measures. Variables were coded as refused=1, major role= 2, minor role=3, no role= 4, don’t know=5. For purposes of this analysis, I recoded “refused” and “don’t know” as missing values. Survey questions were asked in May 2012.

\textsuperscript{43} Survey question was asked in June 2012. Variable was coded as refused=1, a great deal of confidence=2, only some confidence=3, hardly any confidence=4. For purposes of this analysis, I recoded “refused” as a missing value. As Gibson, Caldeira, and Spence observe, other studies have used different measures of confidence (2003, p. 357). For instance, Grosskopf and Mondak use a confidence measure that is distinct from measures for diffuse support. “Reference to the ‘people in charge of running the Supreme Court’ likely encourages respondents to contemplate current events rather than institutional history when answering the question, and thus the item is not comparable to measures of diffuse support such as the one developed by Caldeira and Gibson (1992)” (Grosskopf & Mondak, 1998, p. 641).

\textsuperscript{44} Survey question was asked in June 2012. Variable was coded as refused=1, great job=2, pretty good job=3, not very good job=4, a poor job=5. For purposes of this analysis, I recoded “refused” as a missing value.

\textsuperscript{45} Survey question was asked in June 2012. Variable was coded as refused=1, too liberal=2, too conservative=3, about right=4. For purposes of this analysis, I recoded “refused” as a missing value.
Diffuse Support (Institutional Loyalty): I analyze these variables separately, and as a combined index generated through factor analysis.

In measuring institutional loyalty, I used measures similar to that used by Gibson, Caldeira, and Pence (2003) and a related study by Gibson and Caldeira (2011). The one measure that I use (as does Gibson & Caldeira, 2011), but which Gibson Caldeira, and Pence (2003) do not, is “We ought to have stronger means of controlling the actions of the U.S. Supreme Court.” This item has a logical nexus with other response items about controlling the Court and reducing its power, and thus I have included it. These items are also similar to the measures used by Nelson and Smith (2014) in their working paper. Instead of using the term “institutional legitimacy,” they refer to this concept as “diffuse support,” or institutional support (as opposed to “specific” support for individual actors or actions). To generate the index for institutional loyalty, I used principal component factor analysis.

The factor loading for the variables used in creating the institutional loyalty index and the percentage of respondents giving a response supportive of the Court at t1 (May 2012) and t2 (July 2012) are:

- If the Court started making decisions that most people disagree with, it might be better to do away with the Court. [0.76, 64%, 66%]
- The right of the Supreme Court to decide certain types of controversial issues should be reduced. [0.78, 49%, 52%]
- The U.S. Supreme Court gets too mixed up in politics. [0.62, 23%, 21%]
- Justices who consistently make decisions at odds with what a majority of the people want should be removed. [0.79, 44%, 50%]
- The U.S. Supreme Court ought to be made less independent so that it listens a lot more to what the people want. [0.80, 46%, 50%]
- We ought to have stronger means of controlling the actions of the U.S. Supreme Court. [0.82, 41%, 45%]. For the July 2012 Survey, the question wording differed slightly, as follows: “It is inevitable that the Court gets mixed up in politics; we ought to have stronger means of controlling the Court.” For purposes of empirical analysis in this study, I treat the May 2012 and July 2012 versions as if they were the same question asked at different times. The difference in wording is minimal, and arguably conveys a sufficiently similar inquiry.
- Like politicians, we cannot trust them to decide court cases in a way that is in the best interests of our country. [0.76, 41%, 46%]. For the July 2012 Survey, the question wording differed slightly, as follows: “Justices are just like other politicians; we cannot trust them to decide cases in the best interests of our country.” For purposes of empirical analysis in this study, I treat the May 2012 and July 2012 versions as if they were the same question asked at different times. The difference in wording is minimal, and arguably conveys a sufficiently similar inquiry.

Respondents were asked to “[p]lease indicate whether you agree with the following” statements. The response set for these items was coded as: refused=1, strongly agree=2, agree=3, neither agree nor disagree=4, disagree=5, strongly disagree=6, or don’t know=7. For purposes of this analysis, “refused” and “don’t know” were recoded as missing values. Principal component analysis for factor extraction reflects that the measure is unidimensional (1st eigenvalue=4.08, 2nd eigenvalue=.77).
Data Used to Measure Knowledge of the Supreme Court

To measure political knowledge, I use a four variable additive index\(^{48}\) I created to measure knowledge of the U.S. Supreme Court. The percentage of respondents giving a response at \(t_1\) (prior to June 2012 ruling) and \(t_2\) (after June 2012 ruling) are listed in parentheses:

- **Annual Decisions:** How many decisions with opinions does the Court issue each year? Would you say it is... [less than one hundred decisions with opinions each year (62%, 63%), around five hundred decisions with opinions (22%, 23%), a thousand decisions with opinions or more per year (9%, 8%)]
- **Last Say:** Do you happen to know who has the last say when there is a conflict over the meaning of the Constitution? [U.S. Supreme Court (79%, 82%), U.S. Congress (11%, 8%), President (8%, 8%)]
- **Lifetime Term:** Members of the U.S. Supreme court serve... [two-year terms (2%, 2%), ten-year terms (2%, 2%), life terms (76%, 78%), terms determined by the president (2%, 1%), Don’t know (15%, 15%)]
- **Chief Justice:** Who is Chief Justice of the United States Supreme Court? [John Roberts (46%, 57%), Antoni Scalia (23%, 18%), Mitt Romney (1%, 1%), Hillary Clinton (3%, 2%), Don’t know (26%, 21%)]

Data Used to Measure Free Market Principles, Compassion, and Conservatism

To examine the determinants of individual beliefs that the ACA was constitutional, I include additional measures for clusters of policy preferences. These policy preferences could possibly motivate an individual to reject or embrace federal health care reform as either consistent with their personal world view or not. Through factor analysis, I created a variable

\(^{48}\) To measure knowledge about the Supreme Court, I use an additive scale of the number of correct response to the following questions, divided by the number of responses. The measure is bounded by 0 and 1.
measuring an individual’s support for free market principles, a variable measuring the extent to which an individuals’ understanding of right and wrong is motivated by compassion for others, and a variable measuring an individuals’ support for commonly held conservative policy.

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This “free market” scale measures the degree to which respondents favor free market principles. Respondents were asked to indicate their level of agreement with three statements:

1. Large differences in income and wealth are necessary to motivate people to work hard. [strongly agree (7%), agree (20%), neither agree nor disagree (26%), disagree (27%), strongly disagree (19%); factor load value 0.63]
2. If we start to interfere with the ability of employers to determine wages, we will soon lose all of our freedoms. [(strongly agree [(12%), agree (26%), neither agree nor disagree (29%), disagree (23%), strongly disagree (9%); factor load value 0.60].
3. The way income and wealth are distributed in this country is fair. [strongly agree (5%), agree (15%), neither agree nor disagree (390, 27%), disagree (465, 32%), strongly disagree (299, 21%); factor load value 0.63]

Variables were coded as refused=1, strongly agree=2, agree=3, neither agree nor disagree=4, disagree=5 and strongly disagree=6. For purposes of this analysis, I recoded “refused” as a missing value. Principal-component factor analysis indicates that the measure is unidimensional (1st eigenvalue=1.15; 2nd eigenvalue=-0.16). These three survey questions were asked in July 2012.

The “compassion” scale measures the degree to which respondents felt that concern for others’ misfortune was an important factor in deciding right and wrong. Respondents were asked: “When deciding whether something is right/wrong, to what extent are the following relevant to your thinking?”

- Whether or not someone suffered emotionally. [Refused (1%), not at all relevant (7%), not very relevant (10%), slightly relevant (21%), somewhat relevant (31%), very relevant (30%); factor load value 0.36]
- Whether or not some people were treated differently than others. [Refused (1%), not at all relevant (69, 5%), not very relevant (6%), slightly relevant (14%), somewhat relevant (27%), very relevant (47%); factor load value 0.44]
- Whether or not someone cared for someone weak or vulnerable. [Refused (1%), not at all relevant (4%), not very relevant (7%), slightly relevant (19%), somewhat relevant (31%), very relevant (39%); factor load value 0.60]
- Whether or not someone acted unfairly. [Refused (1%), not at all relevant (2%), not very relevant (3%), slightly relevant (10%), somewhat relevant (27%), very relevant (56%); factor load value 0.63]

Variables were coded as refused=1, not at all relevant=2, not very relevant=3, slightly relevant=4, somewhat relevant=5 and very relevant=6. For purposes of this analysis, I recoded “refused” as a missing value. Principal-component factor analysis indicates that the measure is unidimensional (1st eigenvalue=2.04; 2nd eigenvalue=0.10). Cronbach alpha is 0.81. These four survey questions were asked in September 2012.
It is important to note that these three factor variables fall along different attitudinal dimensions. The compassion variable describes fundamental conceptions of right and wrong, the free market variable describes broad principles relevant to conservative attitudes about federal oversight and individualism, and the conservatism variable describes specific policy positions about traditional “hot button,” high salience conservative positions on gun rights, prayer in school, abortion, the death penalty, and reduction of government regulations. The policy positions incorporated in the conservatism index had modest factor loading values and a modest but sufficient Cronbach alpha value of 0.61. I use these three index variables in an effort to better understand the determinants of public opinion about the Supreme Court and the ACA. In other words, when someone forms an opinion about a judicial case or process of which they have little or no knowledge, it is helpful to examine whether they are motivated by reasons closer to world view or to partisanship.

This “conservatism” scale measures whether respondents agree with a range of policy positions generally associated with social and fiscal conservatism. Respondents were asked:

“*We're interested in your opinion on a range of issues. Simply answer each question by choosing 'Yes' or 'No.'*

1. Reduce government regulations on the private sector in order to encourage investment and economic expansion. [Refused (2%), yes (63%), no (36%); factor load value 0.35]
2. Require clinics to give parental notification before performing abortions on minors. [Refused (1%), yes (78%), no (21%); factor load value 0.47]
3. Do you support voluntary prayer in public schools? [Refused (1%), yes (78%), no (21%); factor load value 0.47]
4. Support the use of the death penalty in your state. [Refused (1%), yes (64%), no (35%); factor load value 0.19]
5. Should citizens be allowed to carry concealed guns? [Refused (1%), yes (54%), no (45%); factor load value 0.19]

Variables were coded as refused=1, yes=2, no =3. For purposes of this analysis, I recoded “refused” as a missing value. I also recoded yes=3 and no=2, so that higher values correspond with higher conservatism. Principal-component factor analysis indicates that the measure is unidimensional (1st eigenvalue=1.12; 2nd eigenvalue=0.15). Cronbach alpha is 0.61. These five survey questions were asked in August 2012.
FINDINGS, DISCUSSION, AND CONCLUSIONS

Under the theory of motivated reasoning, we would expect an individual’s beliefs about the proper role of justices’ ideology and public opinion in deciding cases to change depending on whether those ideologies and opinions were consistent with our own preferences about the outcome of a case. Fully understanding the determinants of public opinion about the constitutionality of the ACA could be a meandering plunge down the rabbit hole of opinion formation literature. I do not attempt, in this article, to identify all of the determinants, but rather to investigate whether certain determinants identified in the literature about public opinion on the Supreme Court ring true in the case of the ACA. For instance, in Chapter I, I find that individuals are more likely to believe that factors like the public’s views or the ideological views of Court justices should play a major role in judicial decision making if those views are consistent with one’s assessments about the desirability of a law. Though this “motivated reasoning,” survey respondents revised their pre-ruling views about the proper mode of judicial decision-making after the ruling was announced. Those unhappy with the decision were more likely to conclude that ideology and bias played a major role in the decision, and should not have.

Opinions about which mode of judicial decision-making are appropriate could conceivably play a role in assessing the constitutionality of a law. For instance, if we believe that justices should not consider their personal views or the views of the American public when deciding cases, then we adopt a similar approach ourselves when thinking about a case, focusing more on textual interpretation or the original intent of the framers when making up our own minds about whether we believe a law is constitutional.
Another cognitive shortcut that some individuals may use to discern constitutionality is simply personal approval of a law. While some may appreciate the need to disambiguate a law’s popular appeal from its constitutionality, it is conceivable that laypersons might conflate these concepts, whether intentional or not. Thus, individuals might conclude that health care reform is constitutional because they distrust health insurance companies. Or, they might conclude that health care reform is unconstitutional because it expands the federal government’s power in a manner that concerns them, regardless of whether such expansion runs afoul of the Constitution.

Other plausible cognitive shortcuts abound, irrespective of their suitability to the task of constitutional interpretation. For instance, we might anticipate that self-interest would play a prominent role. Individuals who expect to personally benefit from the ACA might be more likely to believe it was constitutional. Or, those with altruistic motives might be more supportive. Belief that the ACA would help Americans in general might make a person more likely to believe the law was constitutional if they conclude that altruism was a bedrock principle imbedded in the Constitution. Or, we might expect that citizens attentive to national and international news coverage of politics would know more about the ACA, and thus might feel more emboldened to form an opinion about the ACA due to their greater knowledge of politics in general. In similar fashion, those with greater knowledge about the Court, from whatever source, may know more about the Constitution and the ACA, which might better enable them to evaluate constitutionality. Finally, we might expect that beliefs about the constitutionality of the ACA derive from world views and core values about the proper role of government, our perceived responsibility to care for each other, and the importance of American individualism. In my empirical analysis, I include variables measuring all these concepts.
First, however, to begin understanding the interrelationships between these concepts, I look to data about public approval of the ACA. Notably, the percentage of survey respondents who approved of the individual mandate rose after the Court’s 2012 ruling (Table 8), and fewer respondents disapproved of the individual mandate as well. It would appear that public disapproval of the individual mandate was mediated by the Court’s conclusion that the law was constitutional. Belief that the individual mandate was constitutional was strongly correlated with support for the ACA (Table 9). As could be expected, 81% of respondents who supported the ACA also felt the individual mandate was constitutional. However, only 59% of respondents who opposed the ACA felt that the individual mandate was unconstitutional. Thus, the popular appeal of the ACA and its provisions sometimes aligns with assessments of constitutionality, but not always.

Moreover, belief that the ACA was constitutional did not always follow projections about whether the Court would rule in the same way (Table 10). While 63% of respondents felt that the law was unconstitutional, only 53% expected that the Court would agree with them. These statistics suggest that some individuals are comfortable disagreeing with the Court, and that expectations about the Court’s ruling did not necessarily dictate individual opinions about constitutionality of the ACA. Or, said another way, respondents believed that they were capable of deciding constitutionality independently, regardless of the Court’s ruling. Confidence in their personal judgment was also noteworthy—roughly three-quarters of respondents were unwilling to change their minds if the Court ruled contrary to their opinions (Table 11).
Table 8. Percentage of Survey Respondents Who Approve or Disapprove of the Individual Mandate.

<table>
<thead>
<tr>
<th></th>
<th>May 2012</th>
<th>July 2012</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Approve</td>
<td>10</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Approve</td>
<td>17</td>
<td>20</td>
<td>3</td>
</tr>
<tr>
<td>Neither Approve nor Disapprove</td>
<td>12</td>
<td>11</td>
<td>-1</td>
</tr>
<tr>
<td>Disapprove</td>
<td>25</td>
<td>17</td>
<td>-8</td>
</tr>
<tr>
<td>Strongly Disapprove</td>
<td>32</td>
<td>30</td>
<td>-2</td>
</tr>
<tr>
<td>Don’t Know</td>
<td>3</td>
<td>6</td>
<td>3</td>
</tr>
</tbody>
</table>
(n=1396)

Table 9. Percentage of Survey Respondents Who Believe the Individual Mandate is Constitutional, Sorted by Whether They Support the ACA.52

<table>
<thead>
<tr>
<th></th>
<th>Supports the ACA</th>
<th>Opposes the ACA</th>
<th>Not Sure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandate is constitutional</td>
<td>81</td>
<td>4</td>
<td>14</td>
</tr>
<tr>
<td>Mandate is unconstitutional</td>
<td>16</td>
<td>59</td>
<td>25</td>
</tr>
<tr>
<td>Don’t know</td>
<td>44</td>
<td>12</td>
<td>42</td>
</tr>
</tbody>
</table>
(n=1396)

Table 10. May 2012 Questions about the Individual Mandate. 53

<table>
<thead>
<tr>
<th></th>
<th>%Yes</th>
<th>%No</th>
<th>%Don’t Know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is requirement constitutional?</td>
<td>24</td>
<td>63</td>
<td>12</td>
</tr>
<tr>
<td>Do you expect Court to rule that requirement is constitutional?</td>
<td>20</td>
<td>53</td>
<td>26</td>
</tr>
</tbody>
</table>

52 Note that Table 9 reports whether respondents “support or oppose” the ACA. Table 8 reports whether respondents “approve or disapprove” of the individual mandate. Though the two concepts are related, they are not identical, and have different measurements scales.

53 The wording of the two questions asked in May 2012 about the constitutionality of the ACA were as follows:

1. Concerning the requirement that every American must buy health insurance or pay a fine, do you think that this is (un)constitutional? [the requirement is constitutional (24%) the requirement is unconstitutional (63%), don’t know (12%)]
2. Do you expect the Court to rule that the requirement that all Americans have health insurance is constitutional or unconstitutional? [constitutional (20%), unconstitutional (53%) don’t know (26%)]
Table 11. May 2012 Survey Questions about Respondents’ Willingness to Change Mind Due to Court Ruling.\textsuperscript{54}

<table>
<thead>
<tr>
<th>Requirement is constitutional</th>
<th>% Would change mind if Court ruled contrary to respondent’s belief</th>
<th>% Would not change mind if Court ruled contrary to respondents belief</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement is unconstitutional</td>
<td>12</td>
<td>72</td>
</tr>
</tbody>
</table>

Next, I turn to modeling the decision-making process that leads an individual to believe that the ACA was constitutional or not. Using respondents’ views about the constitutionality of the ACA as the dependent variable, I examine the variety of other plausible explanations for this decision. I include an expanded model to help uncover weaknesses in the other models, as well as more parsimonious models that focus on the statistically significant explanations. The “kitchen sink,” expanded model indicates that many of the variables that could be expected to influence a person’s belief that the ACA was constitutional did not in fact play a role. Among the variables with no statistically significant effect was attentiveness to news coverage, support for free market principles, compassionate regard for others, knowledge of the Court, trust in government, opinions about court legitimacy, and whether the law would benefit the respondent or the country. In fact, the number of variables that had no statistically significant effect was as probative as the list of variables that were. Almost no variable that related to whether respondent would benefit from the ACA, respondents’ knowledge of the Court, respondents’ views about

\textsuperscript{54} The wording of the two questions asked in May 2012 about whether respondents would change their minds about the constitutionality of the ACA was as follows:
1. If the Court rules that the health insurance requirement is unconstitutional, would you change your mind and agree with the Court? [yes (12%), no (72%), not sure (16%)]
2. If the Court rules that the health insurance requirement is constitutional, would you change your mind and agree with the Court? [yes (8%), no (77%), not sure (14%)]
the Court and its decision-making, respondents’ party affiliation, or other demographic considerations appeared to play a role in belief about the constitutionality of the ACA.

Rather, two closely related opinion determinants stand out: whether the respondent personally supported the mandate, and the extent to which the respondent agreed with highly salient conservative policy positions (the conservatism index variable incorporated support for items on abortion, gun rights, prayer in school, the death penalty, and reduction of government regulations). In other words, whether a person supported prayer in school and the death penalty was more closely linked with constitutionality beliefs than whether the ACA met the needs of the country or one’s family, whether judicial decision-making should take public opinion into consideration, or even political party affiliation. While respondents may have had few cognitive shortcuts available to make an informed decision about constitutionality, one seemingly unrelated cognitive shortcut may have been enough. The ACA may have simply served as a proxy for other, high salience conservative positions.

One additional variable is closely linked with agreement with the Court’s ruling—awareness of the Court. This relationship was inverse. The less aware respondents were of the Court and its activities, the more likely they were to believe that the ACA was constitutional. It is difficult to speculate about the causation driving this relationship.
Table 12. Models of Decision Making for Belief that ACA was Constitutional.\(^{55}\)

<table>
<thead>
<tr>
<th></th>
<th>(1) Full Model</th>
<th>(2) Model 2</th>
<th>(3) Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supports Individual Mandate</td>
<td>0.468**</td>
<td>0.379***</td>
<td>0.410***</td>
</tr>
<tr>
<td></td>
<td>(0.154)</td>
<td>(0.0503)</td>
<td>(0.0523)</td>
</tr>
<tr>
<td>Free Market Values</td>
<td>-0.117</td>
<td>0.0379</td>
<td>0.0302</td>
</tr>
<tr>
<td></td>
<td>(0.0939)</td>
<td>(0.0246)</td>
<td>(0.0266)</td>
</tr>
<tr>
<td>Conservatism Values</td>
<td>-0.504**</td>
<td>-0.155***</td>
<td>-0.144***</td>
</tr>
<tr>
<td></td>
<td>(0.193)</td>
<td>(0.0363)</td>
<td>(0.0381)</td>
</tr>
<tr>
<td>Compassion Values</td>
<td>0.0109</td>
<td>-0.0160</td>
<td>-0.0149</td>
</tr>
<tr>
<td></td>
<td>(0.103)</td>
<td>(0.0198)</td>
<td>(0.0199)</td>
</tr>
<tr>
<td>Knowledge Levels Before Ruling</td>
<td>0.212</td>
<td>0.0482</td>
<td>0.0975**</td>
</tr>
<tr>
<td></td>
<td>(0.219)</td>
<td>(0.0487)</td>
<td>(0.0473)</td>
</tr>
<tr>
<td>Decision-Making Norm: Interpretation of Law (May 2012)</td>
<td>-0.144</td>
<td>-0.00757</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.0948)</td>
<td>(0.0309)</td>
<td></td>
</tr>
<tr>
<td>Decision-Making Norm: American’s Views (May 2012)</td>
<td>0.110</td>
<td>0.0109</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.0675)</td>
<td>(0.0220)</td>
<td></td>
</tr>
<tr>
<td>Decision-Making Norm: Justices’ Ideology (May 2012)</td>
<td>-0.383**</td>
<td>-0.0399</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.130)</td>
<td>(0.0290)</td>
<td></td>
</tr>
<tr>
<td>Frequency of Following News</td>
<td>-0.0101</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.153)</td>
<td></td>
<td></td>
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<tr>
<td>Economic Conditions Household</td>
<td>-0.348</td>
<td>-0.0336*</td>
<td>-0.0153</td>
</tr>
<tr>
<td></td>
<td>(0.194)</td>
<td>(0.0201)</td>
<td>(0.0205)</td>
</tr>
<tr>
<td>Economic Conditions Country</td>
<td>0.297**</td>
<td>-0.0452*</td>
<td>-0.0315</td>
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<tr>
<td></td>
<td>(0.104)</td>
<td>(0.0263)</td>
<td>(0.0276)</td>
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<tr>
<td>Awareness of Supreme Court</td>
<td>-0.396**</td>
<td>-0.0706***</td>
<td>-0.0560*</td>
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<tr>
<td></td>
<td>(0.163)</td>
<td>(0.0273)</td>
<td>(0.0312)</td>
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<tr>
<td>How Well Court Does Job</td>
<td>0.208</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>(0.147)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court Too Liberal</td>
<td>-0.110</td>
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</tr>
<tr>
<td></td>
<td>(0.131)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Confidence in Court</td>
<td>-0.097</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>(0.588)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{55}\) The dependent variable is the survey respondents’ answer to the question: “Do you think [the ACA’s individual mandate] is (un)constitutional?” Responses were recoded as “yes” or “no.” Although the dependent variable is dichotomous, I use linear regression as opposed to ordered probit based on the utility and intuitive appeal of regression coefficients. It may also be helpful to examine the output of ordered probit analysis to confirm the validity of the regression results.
Table 12 (contd.)

<table>
<thead>
<tr>
<th></th>
<th>(1) Full Model</th>
<th>(2) Model 2</th>
<th>(3) Model 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional Loyalty</td>
<td>-0.018</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.903)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACA Better for Most Americans</td>
<td>0.114</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.0834)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ACA Better for You</td>
<td>-0.157</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.137)</td>
<td></td>
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</tr>
<tr>
<td>Trust in Federal Government</td>
<td>-0.0531</td>
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<td></td>
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<tr>
<td></td>
<td>(0.859)</td>
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<td></td>
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<td>News Source</td>
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<td>Married</td>
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<td></td>
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<td>Household Income</td>
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<td>-0.00180</td>
<td>-0.00302</td>
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<td></td>
<td>(0.0308)</td>
<td>(0.00427)</td>
<td>(0.00420)</td>
</tr>
<tr>
<td>Gender</td>
<td>-0.0778</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>(0.109)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Education</td>
<td>-0.0922**</td>
<td>0.00592</td>
<td>0.00677</td>
</tr>
<tr>
<td></td>
<td>(0.0313)</td>
<td>(0.00873)</td>
<td>(0.00931)</td>
</tr>
<tr>
<td>Approval of Supreme Court</td>
<td>-0.0386</td>
<td>-0.00807</td>
<td>-0.0114</td>
</tr>
<tr>
<td></td>
<td>(0.0465)</td>
<td>(0.0138)</td>
<td>(0.0135)</td>
</tr>
<tr>
<td>Age</td>
<td>-0.00753</td>
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<td></td>
<td>(0.00790)</td>
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<tr>
<td>Party ID</td>
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<td></td>
<td>(0.0857)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.397*</td>
<td>0.00415</td>
<td>-0.0357</td>
</tr>
<tr>
<td></td>
<td>(0.211)</td>
<td>(0.0543)</td>
<td>(0.0560)</td>
</tr>
<tr>
<td>Liberal/Conservative</td>
<td>0.102</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.144)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>0.0254</td>
<td>0.0441</td>
<td>0.0558</td>
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<tr>
<td></td>
<td>(0.262)</td>
<td>(0.0696)</td>
<td>(0.0741)</td>
</tr>
<tr>
<td>Decision-Making Used: Interpretation of Law (July 2012)</td>
<td></td>
<td></td>
<td>0.00887</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>(0.0256)</td>
</tr>
<tr>
<td>Decision-Making Used: American’s Views (July 2012)</td>
<td></td>
<td></td>
<td>-0.00290</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.0279)</td>
</tr>
<tr>
<td>Decision-Making Used: Justices’ Ideology (July 2012)</td>
<td></td>
<td></td>
<td>-0.0189</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(0.0295)</td>
</tr>
<tr>
<td>Constant</td>
<td>4.467*</td>
<td>0.669***</td>
<td>0.458*</td>
</tr>
<tr>
<td></td>
<td>(2.434)</td>
<td>(0.236)</td>
<td>(0.264)</td>
</tr>
<tr>
<td>Observations</td>
<td>942</td>
<td>967</td>
<td>922</td>
</tr>
<tr>
<td>R-squared</td>
<td>0.933</td>
<td>0.397</td>
<td>0.397</td>
</tr>
</tbody>
</table>

Robust standard errors in parentheses, *** p<0.01, ** p<0.05, * p<0.1
Much of the literature about public opinion of the U.S. Supreme Court examines mass attitudes about the proper role the Court should assume. Many of the attitudes may closely parallel partisan affiliation. However, some attitudes, such as those about how the Constitution should be interpreted and the extent to which justices’ ideology should influence the Court’s rulings, are not necessarily telegraphed by political elites. Thus, we might expect that public opinion about the justices’ decision-making approaches to influence individual opinions about the ACA ruling, regardless of that individual’s political affiliation. However, despite prior research finding that the public does have an opinion about how the Court should make decisions, that opinion did not appear to play a substantial role in public assessment of the ACA ruling.

Rather, two opinion determinants appear to have the most influence—whether an individual supported the individual mandate, and whether that individual agreed with conservative policy positions abortion, gun rights, prayer in school, the death penalty, and reduction of government regulations. Interestingly, opinions about support for free market economic principles and opinions about the need to show compassion to others were not statistically significant. Rather, only the narrow set of “dog whistle” concepts related to conservative positions on issues unrelated to health care were consistently significant. Thus, prior findings about public opinion of Supreme Court decision-making approaches did not carry over to the ACA case. Instead, the ACA appeared to have served as a proxy for certain conservative positions, and public opinion about Supreme Court decision-making approaches played little or no role.

Thus, while the public appears to support the Court as an institution, it is unclear whether that loyalty is more than window dressing. The public may treasure the idea of the Supreme
Court, but in reality, have little confidence in its ability to rule correctly. Instead, the public may only believe that the Supreme Court is using the proper decision making method, and properly fulfilling its role in American democracy, when it rulings advance the political positions of individual opinion holders. These findings help flesh out the seemingly complicated relationship between the U.S. Supreme Court and the public it serves.
APPENDIX A: VARIABLES AND MEASUREMENT FOR CHAPTER I

TAPS Questions about U.S. Supreme Court Justices’ Decision-Making (asked in May and July 2012)

In May 2012, panelists were asked how big of a role certain factors SHOULD play in the U.S. Supreme Court’s decision in the ACA case (Normative Questions), and how big of a role these factors WOULD play in the Supreme Court’s decision in the ACA case (Prediction Questions). In July 2012, subsequent to the Court’s ruling in the ACA case on June 28, 2012, the panelists were asked how big of a role DID these factors play in the Supreme Court’s decision (Reaction Questions). The text of the questions was:

Normative Questions (asked May 2012): When the Supreme Court rules on the case challenging the requirement that everyone buy health insurance or pay a fine, how big of a role do you think each of the following SHOULD play in their decision? [major role, minor role, no role, don’t know]

Prediction Questions (asked in May 2012): When the Supreme Court rules on the case challenging the requirement that everyone buy health insurance or pay a fine, how big of a role do you think each of the following WILL play in their decision? [major role, minor role, no role, don’t know]

Reaction Questions (asked in July 2012): When the Supreme Court ruled on the case challenging the requirement that everyone buy health insurance or pay a fine, how big of a role do you think each of the following played in their decision? [major role, minor role, no role, don’t know]

Factors (identical list asked in Normative, Prediction, and Reaction Questions)

- The personal views of the justices about the health insurance requirement.
- The justices’ analysis and interpretation of the law.
- The views of average Americans about the requirement.
- The public’s likely reaction to the Court’s decision.
- The justices’ liberal or conservative views.
- Whether the justice was appointed by a Democratic or Republican president.
- President Obama’s views on the legal issues.
APPENDIX B: TAPS QUESTIONS ABOUT U.S. SUPREME COURT JUSTICES’ DECISION-MAKING

TAPS Questions about U.S. Supreme Court Justices’ Decision-Making (asked in May and July 2012)

In May 2012, panelists were asked how big of a role certain factors SHOULD play in the U.S. Supreme Court’s decision in the ACA case (Normative Questions), and how big of a role these factors WOULD play in the Supreme Court’s decision in the ACA case (Prediction Questions). In July 2012, subsequent to the Court’s ruling in the ACA case on June 28, 2012, the panelists were asked how big of a role DID these factors play in the Supreme Court’s decision (Reaction Questions). The text of the questions was:

Normative Questions (asked May 2012): When the Supreme Court rules on the case challenging the requirement that everyone buy health insurance or pay a fine, how big of a role do you think each of the following SHOULD play in their decision? [major role, minor role, no role, don’t know]

Prediction Questions (asked in May 2012): When the Supreme Court rules on the case challenging the requirement that everyone buy health insurance or pay a fine, how big of a role do you think each of the following WILL play in their decision? [major role, minor role, no role, don’t know]

Reaction Questions (asked in July 2012): When the Supreme Court ruled on the case challenging the requirement that everyone buy health insurance or pay a fine, how big of a role do you think each of the following played in their decision? [major role, minor role, no role, don’t know]

Factors (identical list asked in Normative, Prediction, and Reaction Questions)

- The personal views of the justices about the health insurance requirement.
- The justices’ analysis and interpretation of the law.
- The views of average Americans about the requirement.
- The public’s likely reaction to the Court’s decision.
- The justices’ liberal or conservative views.
- Whether the justice was appointed by a Democratic or Republican president.
- President Obama’s views on the legal issues.
BIBLIOGRAPHY


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