



Western Michigan University
ScholarWorks at WMU

Honors Theses

Lee Honors College

Spring 4-18-2011

The Supreme Court: A Decade of Opinion

Matthew A. Bahleda

Western Michigan University, mbahleda@umich.edu

Follow this and additional works at: https://scholarworks.wmich.edu/honors_theses



Part of the American Politics Commons, and the Courts Commons

Recommended Citation

Bahleda, Matthew A., "The Supreme Court: A Decade of Opinion" (2011). *Honors Theses*. 62.
https://scholarworks.wmich.edu/honors_theses/62

This Honors Thesis-Open Access is brought to you for free and open access by the Lee Honors College at ScholarWorks at WMU. It has been accepted for inclusion in Honors Theses by an authorized administrator of ScholarWorks at WMU. For more information, please contact wmu-scholarworks@wmich.edu.



The Supreme Court:
A Decade of Public Opinion

Matthew Bahleda
Western Michigan University
Political Science Honors Thesis

Committee:

Dr. Ashlyn Kuersten (Chair)

Dr. Kevin Corder

Dr. Mark Hurwitz

Acknowledgements

Foremost, I would like to express my sincere gratitude to the chair of my honors thesis committee, Dr. Ashlyn Kuersten, for her continuous support of my studies and research. Her encouragement, patience, enthusiasm, and never-ending stream of knowledge have been extremely helpful throughout the entire process of writing this thesis. Furthermore, she has proved to be an invaluable resource in pursuit of my future law school aspirations.

In addition to the chair of my committee, I give thanks to my other advisors Dr. Corder and Dr. Hurwitz. Both of these gentlemen played absolutely critical roles in the development of my thesis, and I will forever remember and appreciate their willingness to help me through this process.

Last but not least, I would like to thank my friends and family, without naming each of you specifically, who were supportive and understanding throughout the entirety of this process.

Table of Contents

Abstract

Introduction

Research Design Plan

- Case Selection
- Unit of Observation
- Hypothesis
- Methods
- Polling Data and Context

Case Analysis: Salient Cases 2000-2010

- Bush v. Gore (2000)
- Gonzales v. Raich (2005)
- Gonzales v. Carhart (2007)
- Montejo v. Louisiana (2009)

Results and Findings

Conclusion

Abstract

Conventional wisdom would have us believe that the **Bush v. Gore** (2000) decision marked a large change in public approval of the Supreme Court. To analyze this claim, a series of landmark cases for the years 2000-2010 will be reduced to a data set that will allow for the observation of specific variables and the roles each variable may play in determining the change in public opinion. From there, conclusions are made that substantively explicate the relations between the indicated relevant variables and the change in opinion. Ultimately, the **Bush v. Gore** decision is found to have not had the major effect on public approval that conventional wisdom would have us believe.

INTRODUCTION

At the turn of the millennium, the nation found itself in the middle of a very heated presidential election. Would the Republican candidate George W. Bush take control of the house or would the Democrat Al Gore win the nation over. Who would lead the nation? As November 7th came and went, America still did not have an answer to this question. The state of Florida had awarded the presidency to Bush. The victory, however, was by less than a margin of 0.5 percent, which brought about a statutorily-mandated recount of the votes. Then, as the recount returned with Bush winning by only 327 votes, Gore took advantage of Florida election law allowing him to demand a manual recount. On November 26, Florida Secretary of State Katherine Harris announced Bush as the official winner and litigation immediately ensued to contest the declaration and the need for a recount.

Before long, the United States Supreme Court would weigh in on the issue and find itself in the middle of an extremely controversial case. The judicial branch of the government had declared itself the supreme decider on the issue our nation's president-elect. Just one day after hearing oral argument, the Court reached a conclusion. In a 5-4 decision, the Court found the recount requested by Gore to be unconstitutional and stopped it from happening. As the gavel slammed, the media erupted.

The nine justices at the head of the judicial branch of the United States had, for all practical purposes, decided the presidential election of 2000.

The media erupted, but how did the American people react? Public opinion polls, used to gauge the public's feelings toward specific issues, groups, etc., reported a 3 percent drop in the approval rating of the Supreme Court. To be sure, 3 percent is no insignificant drop, but was it the monumental dive in approval that people associate with the case? It would appear that, contrary to the amount of attention the media gave the issue, Americans did not allow the decision to affect their approval rating of the Court much more than they did when the Court decided on the detention of enemy combatants in *Hamdi v. Rusmfield* (2004). In fact, prior to and since this poll there have been a number of instances of approval decreasing much more dramatically than 3 percent. In some instances, public approval ratings of the Court had dropped a stunning 9 percent.

While it is impossible to pinpoint exactly what constituted these dramatic changes in approval throughout the period of 2000-2010, a number of factors may have made their own contribution to these changes. For instance, approval of the court plummeted from 51 percent to a low of 42 percent by the end of June 2005. In June of that year, the Court had decided a number of hot-button issues including reversing a man's murder

conviction, overturning another man's death sentence, and declaring Congress' right to ban medical marijuana regardless of state laws. Also, the day before the public opinion polling took place, the Court handed down what has been called one of the most controversial decisions of that session, if not all time, Kelo v. City of New London (2005). This decision made it constitutionally permissible for the government to seize private property against the will of the owner and transfer it to private developers when the result of such a seizure will lead to economic development for said community.

Did the Bush v. Gore decision really impact public opinion of the Court as greatly as conventional wisdom would have us believe? It seems that is not the case. There have been a number of occasions between 2000 and 2010 that appear to have impacted the prestige of the Court in a greater way than this particular decision did. An analysis of specific variables (described in greater detail in the Research Design Plan) of the most salient decisions handled by the Court from 2000-2010 will allow us to explore more deeply the effects of different circumstances on the public approval of the Court. Some of these specific variables are controlling party of the Senate, presidential party, the issue type for each case, and whether or not the case overturns past precedent.

RESEARCH DESIGN PLAN

Focusing on the Bush v. Gore decision, I will determine how great an impact, if any, a particular decision had on the public's approval of the Court. To do this, I will compare the public approval rating immediately following the Bush v. Gore decision to the public opinion ratings following other cases that are particularly salient to the American people.

Case Selection

First, a list of issues were chosen that peaked the interest of the American people. These issues were chosen because they were determined to most affect the approval ratings of the Court. Cornell University, which currently maintains a database of the Supreme Court decisions by term, offers a collection of what it calls the "highlight decisions" of each term. I have made this the basis for my collection of cases. The cases that made the list used in this particular analysis had to, at a minimum, be mentioned as one of the highlight decisions for that term as developed by Cornell University (2). The following topics were considered to be salient to the American people and allowed me to narrow down the number of cases that may have had the most significant impact on the polling data:

Abortion
Homosexuality
Criminal Rights
Civil Rights
States' Rights
Commerce Clause
Federal Agent
Environment
Immigration
Free Speech

Note: Presented in no particular order

Making use of the Cornell highlights offers a reducible, valid, and transferrable method of measure for issue salience. This standard can be used for replication and/or further study of these specific variables.

Public Opinion Data – Unit of Observation

To gauge the public's approval of the Supreme Court, Gallup Incorporated has collected data from the public 18 times since 2000. Gallup asked a random sample of the American population the following question: *"Do you approve or disapprove of the way the Supreme Court is handling its job?"* The respondents, averaging n=1,000 per poll, were instructed to answer in one of three ways: approve, disapprove, or don't know. The surveys were conducted by telephone using random-digit-dial sampling and limited to U.S. citizens of age 18 or older (3). This data will serve as the basis for my comparisons and conclusions regarding the effect specific decisions and/or entire terms had on public

approval of the Supreme Court. The unit of analysis will be the random sampling of the American people, and the unit of observation will be the approval ratings of the Supreme Court by respondents.

Gallup Incorporated has been recognized as one of the premier public opinion data collection agencies and has been used in many reputable publications including the New York Times as well as the Wall Street Journal. The reputation of Gallup polling has allowed me to feel confident in using their data as my main point of analysis. I will compare the decision dates to the dates of the polls to attempt to understand which decisions played a role in each particular poll's results. For instance, if a decision had been handed down from the Court on June 23, 2005, as was the decision for the *Kelo v. City of New London* case regarding eminent domain, and a public opinion poll had been taken on June 24-26, 2005, the resulting approval rating of the Court at that time could be a result of that recently announced decision, and the analysis would approach the issue in such a manner.

Date	Approve (%)	Disapprove (%)	No Opinion (%)
2000 August 29 - September 5	62	29	9
2001 January 10 - January 14	59	34	7
2001 June 11- June 17	62	25	13
2001 September 7 - September 10	58	28	14
2002 September 5 - September 8	60	29	11
2003 July 7 - July 9	59	33	8
2003 September 8 - September 10	52	38	10
2004 September 13- September 15	51	39	10
2005 June 24- June 26	42	48	10
2005 September 12 - September 15	56	36	8
2006 September 7- September 10	60	32	8
2007 May 10 - May 13	51	36	13
2007 September 14 - September 16	51	39	10
2008 June 9 - June 12	48	38	14
2008 September 8 - September 11	50	39	11
2009 June 14- June 17	59	30	11
2009 August 31 - September 2	61	28	11
2010 September 13 - September 16	51	39	10

Table A - "Do you approve or disapprove of the way the Supreme Court is handling its job?" – Gallup, Inc. MoE ± 4 n≈ 1,000

Do you approve or disapprove of the way the Supreme Court is handling its job?

■ % Approve ■ % Disapprove



GALLUP®

Figure 1 - The same information presented in a line graph.

Hypothesis

Once the cases were selected, each case had to be broken down into categories for a deeper analysis. Multiple factors were believed to have affected the prestige of the court. These factors included:

Issues – It is expected that the most important factor in determining the mean effect of each decisions on the approval of the Court will be issues. Certain types of issues the Court decides on, it is believed, speak more directly to the public and can incite a lot of discussion and/or change in the feelings the public has of the Court. This variable will allow us to break the cases down to what category of issues they fell in to.

President's Party (PresPart) – The party of the president at the time the decision was handed down may have affected the public's view of the Supreme Court.

Up to 1 Year After Presidential Election (PPEly) – It is important to look for patterns in change in approval of the Supreme Court following presidential elections because it may be the case that approval of the Court is a function of a recent upheaval in the amount of attention the American public is paying to politics. Typically, the presidential election year brings added attention to politics and being more informed may play a role in approval. The timeframe of one year is equivalent

to $\frac{1}{4}$ the term length of the president. Beyond that, people may begin to become disinterested in politics again after this amount of time, if they haven't already.

Up to 6 Months After Mid-Term Election (PME6m) – Much like the timeframe of the variable above, 6 months is the time limit that has been granted before political apathy spreads among the American people. Again, during congressional elections we find that the attention paid to politics is higher than non-election times. For these reasons, it is important to search for any patterns that may occur in change in approval following congressional elections.

Unanimous Decision (UnaDec) – Perhaps it is the case that the overall agreement of the nine justices plays a role in shaping approval for the Court. For instance, does a 5-4 decision give more support to a change in approval than, say, a 9-0 decision? Unanimity among the nine justices may indicate to the public that the issue was decided on a non-partisan law basis. Whatever the actual psychological effect, it will be helpful to discover if a unanimous decision preceding an approval poll actually has any effect.

Senate Majority Party (SenMaj) – This variable refers to the party that has majority control of the Senate at the time the decision is handed down, unless the decision came down after a congressional election. It is important to take into account

the time of the election because it may indicate a change in the political thoughts of the American people. Are the approval ratings of the Supreme Court likely to be higher or lower in times of Republican rule in the Senate? Questions like these can be answered with an appeal to this variable.

House Majority Party (HousMaj) – As with the Senate, this variable refers to the party holding the most seats at the time the decision is handed down, unless of course the decision is handed down immediately following an election, but prior to the inauguration date of the new Congress (January 3rd). In cases where this is applicable, the majority party shall be considered the party that will hold the most seats on the date of inauguration.

Divided Congress (DivCon) – Is there a different party in the majority in the House of Representatives than there is in the Senate? Does a divided Congress correlate to a decrease or increase in the approval rating of the Supreme Court?

President and Congress Divided (PCDiv) – Is the party that controls the presidency the same party that commands a majority in Congress? If not, is the president a Republican or a Democrat? Does it matter?

Overturn Previous Case (OvrTrn) – Are we more likely to see a change in public approval rating if the decision overturns past precedent? Do Americans have an affinity for the doctrine

of Stare Decisis? This variable is designed to consider the possible effect of such sentiments.

Opinion Author – Appointing Party (OpAuthRD) – What party was the president that nominated the Justice that wrote the opinion? Does this partisan aspect of the Supreme Court play a role in America's feelings toward the Supreme Court? Are approval ratings better immediately following decisions handed down by Democratic nominees, or is the Court better off assigning the decision writing to Republican nominees?

Actual Approval Rating Before and After
(Poll_Pre)(Poll_Post) – These variable will simply represent the percentage of the respondents who offered the response of "approve" in the poll immediately preceding and following each decision. The change in approval will be looked at in terms of absolute value, as well as in terms of negative or positive depending on its application to specific variables (See Effect).

It is expected that the Bush v. Gore decision (2000) did not have the dramatic effect on public approval for the Supreme Court that seems would intuitively follow given the nature of the decision. In comparison to other cases between the years 2000 and 2010, the Bush v. Gore decision had, relatively speaking, a small effect on the prestige of the Supreme Court. Varying factors including issues, House and Senate majority

leading parties, the party of the president, overturning of previous cases, unanimity of the decision, was Congress divided, were the president and Congress led by the same party, and which party appointed the author of the opinion all play a role in determining the public approval rating of the Supreme Court following some of their major decisions. Further examination of these variables and their effects is necessary to support this conclusion.

Throughout this thesis, I will explore the effects that the decisions made by the Supreme Court between the years 2000 and 2010 had on the public approval rating of the Court. In addition, explanations for what circumstances may have brought about these changes in approval rating will be identified and further explicated.

Methods

With the data broken down into the multiple variables, the next step is to do a basic analysis to determine which case appeared to have the greatest impact on the approval rating. After that, it becomes a matter of doing a similar type of analysis for each variable. Determining the issue most likely to cause the greatest change in public approval is a very intriguing question that may lead to a very surprising answer. By separating the variables and comparing the means of variables against one another, we can determine which variable plays a greater role in determining approval rating. Eventually, the variable most likely to play the largest role in determining public approval will prevail. From there, certain variables can be controlled for to determine the strength of their predictability. In the end, it may even be the case that only one or two variables actually play a large role in determining the change in public approval. If this is so, this study will elaborate only on those variables that are significant to the study.

Polling Data and Context

Before diving into the complex details of some of the more salient cases, it will be helpful to understand the range of public approval ratings for the Supreme Court starting with the year 2000. In August 29, 2000, Gallup, Inc. began polling a random sample of roughly 1,000 Americans asking *"Do you approve or disapprove of the way the Supreme Court is handling its job?"* Respondents to the questions were given the options of approve, disapprove, or unsure. The polling was closed on September 5, 2000, and the results showed that 62 percent of Americans approved of the way the Supreme Court was handling its job at that time. Since that poll, the Supreme Court has only once been found to have such high approval rating, and it didn't last long.

Throughout the next few years, the approval rating for the Supreme Court would bounce around between 62 percent and 58 percent, but it didn't drop below that. Then, in a term in which the Supreme Court granted certiorari to a number of cases involving hot-button issues including homosexuality, affirmative action, and cross burning as a form of speech, the Court saw its first major drop in approval in the new millennium. Results of a poll taken just months after the court handed down some of these controversial decisions, the approval rating of the Court sank to 52 percent.

Surprisingly, 52 percent wasn't the lowest approval rating the Court reached between 2000 and 2010. Just two terms later, the Court would again find itself handing down some of its more controversial decisions including cases involving white collar crime following the Enron mishap, issues of intellectual property and downloading of files illegally, as well as the right of Congress to control the use of medical marijuana. Gonzales v. Raich (2005), the case in which the Court affirmed the authority of the federal government in controlling the growth, possession, and use of marijuana for medicinal purposes, was quickly followed up twenty days later by another poll of the American people that indicated that approval of the Court's handling of its job had plummeted to an all-decade low of 42 percent.

Since then, the Court has not seen a return to the high levels of public approval it had at the turn of the millennium with 62 percent. To be sure, however, the Court has not seen a return to the dismal low of 42 percent, either. In analyzing these facts, however, it may be important to better understand what it is that the 9 justices of the Supreme Court are deciding on in some of these controversial cases. The following cases are used to exemplify the types of issues and details that brought about the greatest changes from 2000-2010
(See Figure 2).

Case Studies: Salient Cases 2000-2010

When approaching an analysis of the affects of a case like Bush v. Gore on the public approval of the Supreme Court and comparing its effect to that of other controversial decisions of the same decade, it is important to have an understanding of what Bush v. Gore was about. What were the facts presented to the nine black robes? What were the exact questions they had to answer? What was the actual, substantive result of their decision? Once these questions are answered about a number of different cases, we can move to a larger picture understanding of the approval of the Court throughout the decade.

Case Analysis: Bush v. Gore (2000)

The idea of one person, one vote is merely a myth in America when it comes to presidential elections. As many are well aware, the American vote is not a vote for that particular candidate, at least not directly. No, the vote is for a slate of "electors" who have pledged to vote for a particular candidate for president. These electors are collectively known as the Electoral College. It used to be the case that State legislatures would directly appoint the Electoral College, but

many states, including Florida, have moved to select the College by popular vote. The state of Florida awards all of the votes of the Electoral College to the candidate that receives a plurality (greatest number) of votes. Article II, § 1, cl. 2 . The candidate who receives an absolute majority of the votes of the Electoral College is announced the winner of the Presidential election.

By a lead of 2,909,135 votes to 2,907,351 votes, the Florida Division of Elections on November 8, 2000 reported that Governor Bush had led in total number of votes for Presidential election. In accordance with §102.141 of the election code, a mandatory machine recount was conducted because of the margin of victory was less than 0.5 percent. The recount again revealed Governor Bush as the winner of the popular vote, but by an even smaller margin than the initial count. When then Al Gore called for manual recounts in four Florida counties a challenge was made over the deadline by which time the local county canvassing boards had to meet to submit their findings to the Secretary of State. The Florida Supreme Court, reacting to the Secretary of State's refusal to move the November 14th deadline, ordered the deadline to be November 26th to allow for ample time for recounts. Yet again, when the new deadline of November 26th came, the board declared Governor Bush the winner of Florida's electoral votes.

After a series of challenges to the election results from Gore, the Florida Supreme Court held that the burden of proof that Gore had to meet under §102.168(3)(c) of the election code was sufficiently met by his argument that Miami-Dade County had failed to detect some 9,000 votes, which came to be known as "undervotes." As a result, the Supreme Court of Florida ordered a manual recount of the Miami-Dade County votes. Immediately, Governor Bush filed for an emergency application for a stay of the mandate of the Supreme Court. The United States Supreme Court granted the application for the stay, treated said application as a petition for a writ of certiorari, and granted certiorari on December 9, 2000. The petitioner, George Bush, argued that the Florida Supreme Court, by establishing new standards for resolving Presidential election contests, violated Art. II, §1, cl. 2, of the United States Constitution. In addition to this claim, Bush argued that the use of manual recounts without a set standard, as was the case in Miami-Dade County, constituted a violation of the Equal Protection Clause of the Fourteenth Amendment as it is applied to the equality of a citizen's vote. Interestingly enough, the respondent, Al Gore, bases much of his argument on the Equal Protection clause as well, citing it as justification for the recounts to ensure that each person's vote is counted toward the presidential election.

The problem of counting votes stems from the difficulty in discerning the "intent of the voter" on each ballot. The ballot cards are designed so that the button a voter pushes forces a stylus to pierce the card next to the name of the candidate for whom they wish to vote. Occasionally, the stylus fails to pierce the whole completely and, in other circumstances, does little more than leave an indent on the card. According to the *per curiam* opinion of the Court, a study revealed that something around 2 percent of ballots cast in a presidential election do not actually register a vote. (1.1 and 1.2). In some instances, the ballot had been pierced but any number of corners of the punched hole may still be attached to the ballot. These came to be known as "hanging chads."

A 5-4 decision, handed down in the form of a *per curiam* opinion (meaning no particular justice authored the opinion and instead it is a representation of the majority view as a whole), declaring the acts of the Florida Supreme Court requiring the manual recount of any number of the ballots using the standard of "the intent of the voter" was a violation of the Equal Protection Clause of the Fourteenth Amendment. To further convey that the risk of differing standards from county to county, let alone individual counter to individual counter was too great, the Court cites testimony that "A monitor in Miami-Dade County testified at trial that he observed that three

members of the county canvassing board applied different standards in defining a legal vote." 3 Tr. 497, 499 (Dec. 3, 2000). In addition, further testimony revealed "at least one county changed its evaluative standards *DURING* the counting process." (Emphasis Added). If the state is to require manual recounts of votes, says the opinion, there must, at a minimum, be some assurance of fundamental fairness and equal treatment when counting the votes on the ballots.

In a concurring opinion, Justice Rehnquist (joined by Justice Scalia and Justice Thomas) argued the recount ordered by the Florida Supreme Court was unconstitutional because the decision effectively created new election law, a duty assigned exclusively to the legislature. Just like that, the Supreme Court, the head of the judicial branch of our government, decided the presidential election of the United States of America. For many, the Court overstepped its bounds and handed down an obviously politically charged decision. For others, this was merely a particularly difficult question of law for which the justice never asked for. It is their duty to answer these types of questions, and so they did.

The *Bush v. Gore* decision, which is commonly referred to as the most controversial decision of the Court's history, resulted in what looks like only a small loss in approval when compared to that of the *Gonzales v. Raich* decision of 2005, the effect of which will be explained in the results section. What factors of this case could have brought about this dive in approval? To better understand that, it is important to understand the case itself and what the judges had to decide.

Case Analysis: *Gonzales v. Raich* (2005)

Long before any of us can remember, Emperor Shen Neng of China prescribed tea as a remedy for things like gout, rheumatism, and malaria. The tea he proscribed in 2737 B.C. happened to be made with the leaves of *Cannabis sativa*, more commonly referred to as marijuana. From China, the drug's popularity quickly spread to all of Asia, the Middle East, and Africa. Doctors from these continents readily proscribed marijuana for a number of remedies (4). Fast forward a couple thousand years and Christopher Columbus is toting marijuana with him on his voyage to America, thus the introduction to North America. In 1619, a law is passed in Jamestown, Virginia requiring farmers to grow the hemp plant, a variant of *cannabis sativa* (5). Early American medical journals of the late 18th

century recommend use of the hemp plant for illnesses like incontinence, venereal diseases, and inflamed skin. So where did marijuana go wrong? If so many physicians are proscribing it for medicinal benefit to people all around the world, why is it that the use of marijuana for medicinal purposes is illegal today?

In 1914, the Harrison Act was passed which was the first time the use of any drugs had been considered a crime, but marijuana was still not criminalized. It wasn't until 1937 when America saw 23 states had made it a crime to use marijuana regardless of the intended purpose. For some states, this was a preventative move to stop those addicted to morphine from simply switching to another form of narcotic once the use of morphine was criminalized. For other states, particularly those near the Mexican border, marijuana laws were enacted as a means of control over the migrant population coming from Mexico who were blamed for bringing more of the drug into the country. By the 1950s, the Boggs Act and the Narcotics Control Act were passed by Congress, which instated mandatory sentences for those convicted of drug related offenses. In similar fashion, the infamous "War on Drugs" campaign was started by the Reagan administration in 1969.

When Congress passed the Comprehensive Drug Abuse Prevention and Control Act of 1970, they classified marijuana as

a Schedule I drug under Title II of the Act, also referred to as the Controlled Substances Act (CSA). Placing marijuana under Schedule I effectively criminalized any and all uses of marijuana, with the exception of that of studies conducted under the approval of the Food and Drug Administration. According to the most recent version of the CSA, Schedule I substances are labeled as such because:

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(6)

More recently, there appears to be a move toward a relaxation of anti-marijuana laws and enforcement of the same. As of today, 15 states and Washington, D.C. have some form of legalized medicinal marijuana, despite the federal law against its use (7). Many American people have resorted to marijuana as an effective relief from chronic pain and other severe illnesses. In 1996, California blazed trails by passing Proposition 215, now referred to as the Compassionate Use Act, a law permitting the use of medical marijuana under specified circumstances. Following the passing of the act, Angel Raich and Diane Monson began to use medical marijuana by

recommendation and prescription of their doctors, both of whom were licensed, board-certified family practitioners in the state of California. The doctors of both women had tried a myriad of different medications to treat their patients' conditions and found that only marijuana proved to be effective.

On August 15, 2002, Diane Monson was surprised when she opened the door to see county deputy sheriffs and agents of the federal Drug Enforcement Agency standing before her. Following a thorough investigation of the home, the county officers found that Monson, who had not been selling or buying the drugs, was in full compliance with California law when it came to her use of marijuana. Within three hours of this declaration by the county officials, federal agents had removed and destroyed all of Monson's marijuana plants citing a violation of federal law as enacted by the CSA.

Following this incident, Diane Monson and Angel Raich (who shall be referred to jointly as "Raich") sued the DEA and U.S. Attorney General Ashcroft (later Gonzales) in federal court seeking injunctive and declaratory relief prohibiting the enforcement of the Controlled Substances Act. In the complaint, Raich cited violations of the 10th Amendment and of Article I Section 8 of the U.S. Constitution, better known as the Commerce Clause. Raich argued that their actions were wholly intrastate (within the borders of the state, and making use of products

manufactured and delivered completely within the state of California) and thus not subject to the control of Congress, which has expressed power to control interstate commerce (that between two or more states). Raich's complaint argues that it is a constitutional imperative that the federal government, in consistency with our federal system wherein States retain their rights as governing bodies, be precluded from controlling commerce that is wholly intrastate. Raich goes so far as to claim that their actions were not commerce at all because they neither bought nor sold the marijuana that they grew or had grown for them by legal "caregivers."

Furthermore, the complaint cited the doctrine of medical necessity, which allows for the use of medical marijuana for those people who have serious medical conditions, who will suffer harm if denied medical marijuana, and for whom there is no legal alternative to remedy their symptoms. Although the right to one's body and personal choices therein is not expressly stated in the Constitution, it is clearly a major part of our nation's history. "The rights to bodily integrity, to ameliorate pain, and to prolong life are..." the complaint argues, "distinct rights or specific aspects of the famous trinity 'life, liberty, and the pursuit of happiness' in the Declaration of Independence (8)." The complaint continues on to say that the government has no compelling interest in denying

respondents, Raich, who were both very seriously ill patients, these fundamental rights.

After being denied injunctive relief from the District Court, Raich appealed to the Court of Appeals for the Ninth Circuit and got the District Court decision reversed and an order to enter a preliminary injunction was submitted. *Raich v. Ashcroft*, 352 F.3d 1222 (2003). Relying heavily on prior Supreme Court cases including *United States v. Lopez*, 514 U.S. 549 and *United States v. Morrison*, 529 U.S. 598 (2000), the Court of Appeals stated that "the medicinal marijuana at issue in this case [was] not intended for, nor [did] it enter, the stream of commerce." The Court of Appeals did not, however, make any ruling on the argument put forth in the complaint of the medical necessity doctrine.

Following the judgment of the Court of Appeals, the United States Supreme Court granted certiorari to the case citing the "obvious importance" of the issue. In the opinion of the Court, Justice Stevens speaks of the challenges of this case due to the strong argument that Raich makes that irreparable harm will be suffered as a result of the actions of the government because, despite the contradictory findings of congressional investigation, marijuana does have some valid therapeutic effects. To be sure, the Court made clear its responsibilities to the Constitution, the government, and the American people.

The Court clearly states three categories over which Congress has the authority to regulate under the Commerce Clause. First, Congress, as a result of *Perez v. United States*, 402 U.S. 146, 150 (1971), can legislate over the "channels of interstate commerce." That is, Congress has the authority to enforce legislation over any means by which commerce may become interstate including highways, rivers, streams, walking paths, etc.. Second, Congress is recognized as having the power to regulate the "instrumentalities" of interstate commerce, including any and all persons or things in interstate commerce. Third, Congress shall have the authority to regulate those things which can be seen to "substantially affect" interstate commerce. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937). It is under the umbrella of the third category that we find application to the *Raich* decision.

A trail of case law led the Court to its decision in this case. Most notably, the case of *Wickard v. Filburn*, 317 U.S. 111, 128–129 (1942) offers some insight into the opinion handed down from the Court. Briefly described, the case of *Wickard v. Filburn* is one in which a farmer, Filburn, grew and harvested 23 acres of wheat, despite the federal government's cap of 11.1 acres for economic reasons. Filburn argued that the federal government's regulation of his wheat production was unconstitutional on the grounds that his wheat was produced

solely for the purpose of consumption on his own farm and never entered into the stream of commerce in any way.

Justice Jackson, in the Court's opinion, stated, "even if [Filburn's] activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce." *Id.*, at 125. While a *de minimis* approach to the acts of Filburn may at first appear trivial, it is of the Court's opinion that his action in concert with others who may be similarly situated is far from trivial. In effect, the Court declared that Congress does have the authority to regulate intrastate activity that is not in the typical understanding "commerce," because it is not produced for sale, if it can show a compelling interest in regulating the activity wherein a failure to do so would undercut the regulation of the interstate market in that particular good.

The Court, after being presented the facts of *Raich* found the similarities between *Wickard* and *Raich* to be stunningly similar. Like Filburn, Raich was cultivating a commodity for which there exists an already established interstate market, even if the market in the case of *Raich* is an illegal one. Congress, said the Court, had a clearly compelling reason for controlling the production of home-grown and consumed wheat in *Wickard* just as they do in the case of *Raich*. Not allowing the

federal government to control home-grown and consumed marijuana under the CSA would substantially affect the price and market conditions of the commodity.

The Court further opined that it matters not whether the Court can determine “whether parties’ actions, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a ‘rational basis’ exists for so concluding.” *Lopez*, 514 U.S., at 557; see also *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276–280 (1981); *Perez*, 402 U.S., at 155–156; *Katzenbach v. McClung*, 379 U.S. 294, 299–301 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 252–253 (1964). In particular, the Court found that the difficulties of enforcement for distinguishing between marijuana that is home-grown and consumed and that which is grown and consumed elsewhere, combined with concerns of the drugs past history of falling into illicit channels, places far too burdensome of an onus on that of the federal government and leaves a major hole in the CSA. 545 U.S. 1 (2005). Thus, in enacting the CSA, Congress was acting under the auspices of the authority granted in the Commerce Clause to “make all Laws which shall be necessary and proper” to “regulate Commerce...among the several states.” U.S. Const., Art. I, §8.

While the Court may have seen this as an issue of federal power under the Commerce Clause, many Americans saw this as a battle over the legalization of medical marijuana.

Case Analysis: Gonzales v. Carhart (2007)

In 1973, a Texas law banned all abortions, except for those that were necessary to save the life of the mother. An unmarried, pregnant woman from Texas sought an abortion but was denied as a result of said law. The woman's name was Norma McCarvey, better known as "Jane Roe," and she successfully sued for injunctive relief from the Texas anti-abortion law. Citing precedent, Justice Blackmun, in the Court's opinion in the case of *Roe v. Wade*, 410 U.S. 113 (1973), stated that the privacy right affirmed in a prior case, *Griswold (1965)*, "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." The Court's opinion concluded that a "right to privacy," though not explicitly stated in the Constitution, should allow a woman to make autonomous decisions for her own body.

To be sure, the decision in *Roe* did not allow for abortion under any circumstances. With *Roe* came the well-known trimester approach to the permissibility of abortions. A woman's

pregnancy was to be divided into three thirteen-week periods, thus making distinction between a wholly permissible abortion and a constitutionally allowed control over access to abortion more clearly defined. In the first trimester, the only legal obstacle between a woman and an abortion of a fetus is that the woman consults with her physician beforehand. In the second trimester, states were granted the right to regulate abortions, but only in such a way that would best ensure the health of the woman. An example of this might be requiring a woman have the procedure done in a hospital rather than a clinic. For pregnancies in their final trimester, wherein the fetus is considered "viable" – able to live, regardless of the necessary medical technology, outside of the mother's womb, the state's had the right to regulate and even limit abortions due to "its interest in the potentiality of human life," except in those situations in which the woman's health is in danger (6).

Following the decision of the Court in *Roe*, state legislators attempting to limit access to abortion passed a number of laws. Some of these included requirements that women seek the approval of their spouses (*Planned Parenthood Of Missouri v. Danforth*, 428 U.S. 52 [1976]), minors receive the approval of *both* of their parents without any other option (*Akron v. Akron Center For Reproductive Health*, 462 U.S. 416 [1983]), and that women listen to a state-scripted speech

designed to deter them from having an abortion (*Thornburgh v. Amer. Coll. of Obst. & Gyn.*, 476 U.S. 747 [1986]). All of these requirements were struck down as unconstitutional, many of them because they constituted what would later be called an "undue burden" on a pregnant woman (12).

Case after case, the Court appeared to reaffirm its basic claim that abortion, at least in some form, is protected by the Constitution as a fundamental right of privacy. By 2000, the abortion procedure had seen some medical advances that would bring before the court yet another a challenge to *Roe v. Wade*, the partial birth abortion. A partial birth abortion is a procedure performed in the second trimester of pregnancy that effectively kills the fetus before it is born. The procedure involves delivering a substantial amount of a live fetus through the cervix, including the entire head or the lower trunk of the body from the naval, then performing any number of overt acts to kill the fetus and remove it from the woman's body.

Eventually, the issue made its way to the Supreme Court in the case of *Stenberg v. Carhart*, 530 U.S. 914 (2000). Leroy Carhart, a Nebraskan physician that performed partial birth abortions in a clinic, challenged a Nebraska law banning the procedure on grounds that the law was unconstitutionally vague and placed an undue burden on him and female patients seeking abortions. Ultimately, the Court found in favor of Carhart and

declared the Nebraskan law unconstitutional. This, however, was only the beginning of the battle over partial birth abortion.

In 2006, Leroy Carhart would be before the Supreme Court once again fighting for a woman's right to what he referred to as late-term abortions. Reacting to the ruling of the Supreme Court in *Stenberg v. Carhart*, Congress passed the Partial-Birth Abortion Act and it was signed into law by President Bush and enacted on November 5, 2003. Again, Carhart challenged the banning of the late-term procedure. Because the act could just as easily be applied to a different type of abortion procedure than the one it was intended to ban, Carhart argued that the law was unconstitutionally vague and created an "undue burden" according to the Court's decision in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). Carhart also claimed that the Act's lack of an exception for abortion procedures deemed necessary to protect the mother's health, regardless of congressional findings of no medically compelling reason for performing the abortion, made it unconstitutional under *Stenberg v. Carhart*, 530 U.S. 914 (2000).

The government, on the other hand, argued that the ban is quite specific in its language when describing the type of abortion procedure. Furthermore, the government urged the Court to decide that there is no need to include a health exception in

the Act when Congress determines that this procedure is never for the health of the mother.

On April 18, 2007, Justice Kennedy handed down the opinion of the Court in a 5-4 decision that ruled the Partial-Birth Abortion Ban Act to be constitutional. The Court held that a reasonable reading of the Act leaves no question as to the type of abortion procedure that it bans because it is very specific about the intentional acts that must be performed by the physician in order to be regarded as a criminal violation.

In response to the necessity of an exception for the mother's health, the Court held that the findings of Congress that there is no medically necessary reason for performing this procedure constituted just-cause for omitting a health exception in the Act (13). Justice Ginsburg, in a long-winded dissent, boldly and bluntly commented on her colleagues stating that "[t]he Court's hostility to the right *Roe* and *Casey* secured is not concealed (14)." Since this decision, no legitimate challenge for medically necessary partial birth abortions (intact D&E) has made its way to the Supreme Court.

Case Analysis: Montejo v. Louisiana (2009)

Individual issue types will be explored more in-depth under the results section. It will be important, however, to have a firm understanding of a criminal rights case, one of the expected particularly salient issue types explained in the research design plan, and the details of a specific case the Supreme Court heard during the studied decade. One of the best illustrations of a case of this type comes to us in the form of the case of *Montejo v. Louisiana* (2009).

Under suspected connection with the robbery and murder of a Mr. Lewis Ferrari, police arrested Jesse Montejo on September 6, 2002. Through the late evening of the 6th and the early morning of September 7th, sheriff's office police detectives interrogated Montejo, who waived his rights under *Miranda v. Arizona*, 384 U. S. 436 (1966). Somewhere between his multiple stories of what happened to Mr. Ferrari, Montejo admitted that he was guilty of shooting and killing Mr. Ferrari. All of the interrogations of Montejo up to this point were videotaped.

According to Louisiana law, a 72-hour preliminary hearing must occur, wherein the defendant is brought before a judge within 72 hours of being arrested. On September 10, Montejo was brought in for this hearing and the record of the proceedings reads as follows:

"The defendant being charged with First Degree Murder, Court ordered N[o] Bond set in this matter. Further, Court ordered the Office of Indigent Defender be appointed to represent the defendant."

(10)

All of this occurred without Montejo uttering anything resembling an answer in the affirmative of whether or not he wanted to accept the appointed counsel. After the hearing, two police detectives paid Montejo a visit and requested that he assist them in their attempt to locate the murder weapon by accompanying the two men, which Montejo had claimed he had thrown into a lake. Montejo's attorneys claim that Montejo reminded the gentleman that he had a lawyer appointed to him. The two detectives, according to Montejo's attorneys, should have ended the interview at that moment, but instead they pressed on and falsely informed Montejo that he did not, in fact, have a lawyer appointed to him. (Pet. App. 49a; R. 2787 (Trial Tr. March 8, 2005)).

At this point, the detectives read Montejo another set of *Miranda* warnings. Following the reading of the warnings, Montejo signed a statement saying he was voluntarily accompanying the detectives. Throughout the course of the car ride to the lake, Montejo was provided a pen and paper by the detectives and told that he should write a letter to the widow of Mr. Ferrari in which he could express his remorse for his actions. At trial, Montejo testified that much of the letter's

content was actually dictated by one of the detectives that sat next to him for the ride. Though ultimately unsuccessful in locating the murder weapon, the detectives returned Montejo to the St. Tammany jail where they encountered Montejo's court-appointed attorney. Not surprisingly, the attorney was quite perturbed by the fact that his client had been questioned without any notice to counsel.

On October 24, 2002, Montejo was indicted on one count of capital murder. At trial, the letter that Montejo had written to Mr. Ferrari's widow was introduced. Defense counsel immediately objected on grounds that the letter was "procured in violation of the Sixth Amendment." (See petition for writ of certiorari). Following a suppression hearing, the trial court ruled against the objection of Montejo and admitted the letter into evidence during the examination of one of the detectives. The guilt phase of Montejo's trial began on March 5, 2002 and just four days later the jury found him guilty of first-degree murder. The next morning, the penalty phase began and was completed before noon, with the jury returning a death sentence for Montejo.

Of course, Montejo appealed the decision and eventually made his way to the Supreme Court. In the opinion of the Court, Justice Scalia insisted on emphasizing a number of issues that

were not in dispute in this case. First, the Sixth Amendment guarantees the right to counsel at all "critical" stages of criminal proceedings (*United States v. Wade*, 388 U. S. 218, 227–228 [1967]). According to *Massiah v. United States*, 377 U. S. 201, 204–205 (1964), interrogation by the State is considered a "critical" stage in the proceedings. Justice Scalia continues by making clear that precedent clearly allows for a waiving of the Sixth Amendment right to counsel, "so long as relinquishment of the right is voluntary, knowing, and intelligent. *Patterson v. Illinois*, 487 U. S. 285, n. 4 (1988). Furthermore, the decision to waive this right does not need to be a counseled decision. *Michigan v. Harvey*, 494 U. S. 344, 352–353 (1990). And, regardless of the *Miranda* rights being derivative of the Fifth Amendment, waiving one's right is an effective means of waiving the right to counsel being present as arranged for by the Sixth Amendment.

The Court overturned its prior decision of *Michigan v. Jackson*, 475 U.S. 625 (1986) and did away with the case law that held that once a person has claimed a right to counsel any subsequent waiving of that right for police interrogation would be invalid and any evidence collected in this way would be found to be inadmissible in court. *Jackson* was the main focus of Montejo's defense, as they claimed it offered protection for Montejo, even after police made false statements regarding his

lack of appointed counsel. As a result of the Court's decision, the Louisiana Supreme Court decision was vacated and the case remanded to trial court to re-examine the merits of Montejo's claim. Essentially, the Court determined that a defendant does not necessarily need to take extra steps to secure the protections provided by the Sixth Amendment. 556 U.S. ____ (2009); 129 S.Ct. 2079 (11).

Results and Findings

The data collected for statistical analysis simply looks like a series of numbers following a list of cases, but hidden within the numbers are trends and peculiarities that have played a part in determining the American people's approval of the Court.

Exactly which variables play the largest role is easier to pinpoint using the software program known as the "Statistical Package for the Social Sciences," a description of which can be found above. First, it is important to break the cases down into their component parts and develop a table of this data in a format that can be analyzed with the use of SPSS. For this, it is important to code different variables into the table. Coding is a term used to describe the process wherein a certain variable, be it Senate majority or presidential party, is transformed from a qualitative term like Republican or Democrat into a simple 0 or 1. This coding must be done for all of the variables until the case is nothing more than a series of numbers that correlate to a codebook allowing the analyst to bear in mind what each variable means.

Given the focus of the analysis, the most important variable will be the overall change in approval rating following a decision by the Supreme Court. To determine this change, the

poll most recently taken following the decision (sometimes only a few days after [Poll_Post]) is subtracted from the poll most recently taken before the decision (Poll_Pre). As this analysis understands it, the results of this simple mathematical equation give us the change reflected as a result of each particular decision.

For instance, the data shows that prior to the *Gonzales v. Randolph* decision, the approval rating for the Supreme Court was 56 percent. Following that decision, the nearest poll taken indicated a 4 percent increase in the overall approval rating for the Court, bring it up to 60 percent. The table used for all of the data analysis is available below.

Table 1: Case Data Coded for the Studied Variables (Codebook Below)

Case	Issue	Year	Pres Part	PPE 1y	PCE 6m	Una Dec	Sen Maj	Hous Maj	Div Con	PC Div	Ovr Trn	OpAut hRD	Dec_Date	Poll_Pre	Poll_Post	Effect	Effect_abs
Bush v. Gore	7	2000	0	1	1	0	3	0	0	0	0	2	12/12/00	62	59	-3	3
Kyllo v. United States	3	2001	0	1	1	0	3	0	1	3	0	0	6/11/01	59	62	3	3
Ashcroft v. Free Speech Coalition	10	2002	0	0	0	0	3	0	0	0	0	0	4/16/02	58	60	2	2
Lawrence and Garner v. Texas	2	2003	0	0	0	0	0	0	0	0	0	0	6/26/03	60	59	-1	1
Hamdi v. Rumsfeld	3	2004	0	0	0	0	1	1	0	0	0	0	6/28/04	52	51	-1	1
Gonzales v. Raich	6	2005	0	1	0	0	0	0	0	0	0	0	6/6/05	51	42	-9	9
Georgia v. Randolph	3	2006	0	0	0	0	0	0	0	0	0	0	3/22/06	56	60	4	4
Gonzales v. Carhart	1	2007	0	0	0	0	0	0	0	0	0	0	4/18/07	60	51	-9	9
Boumediene v. Bush	3	2008	0	0	0	0	0	0	0	0	0	0	6/12/08	48	50	2	2
Montejo v. Louisiana	3	2009	1	1	1	0	1	1	0	0	1	0	5/26/09	50	59	9	9
Citizen United v. Federal Election Committee	10	2010	1	0	0	0	1	1	0	0	1	0	1/21/10	61	51	-10	10

CODEBOOK

Issues:

Abortion – 1
Homosexuality – 2
Criminal Rights – 3
Civil Rights – 4
States' Rights – 5
Commerce Clause – 6
Federal Agent – 7
Environment – 8
Immigration – 9
Free Speech – 10

Presidential Party at Time of Decision (PresPart):

Republican – 0
Democrat – 1

Case Decided Within 1 Year After Presidential Election Year (PPEly)*:

No – 0
Yes – 1

Case Decided Within 6 Months After Congressional Election (PCE6m)*:

No – 0
Yes – 1

Unanimous Decision (UnaDec):

No – 0
Yes – 1

Senate Majority Party at Time of Decision (SenMaj):

Republican – 0
Democrat – 1
Split – 3

House Majority Party at Time of Decision (HousMaj):

Republican – 0
Democrat – 1

Divided Congress Majority Parties at Time of Decision (DivCon):

No – 0
Yes – 1

President and Congress Divided at Time of Decision

(PCDiv):

Pres R Con D – 0
Pres D Con R – 1
Not Divided R/R – 3
Not Divided D/D – 4
N/A – 5

Case Overturns Past Precedent (OvrTrn):

No – 0
Yes – 1

Opinion Written by Appointee of Which Party (OpAuthRD):

Republican – 0
Democrat – 1
Per Curiam – 2

Supreme Court Public Opinion Approval According to Gallup, Inc.:

1-100%

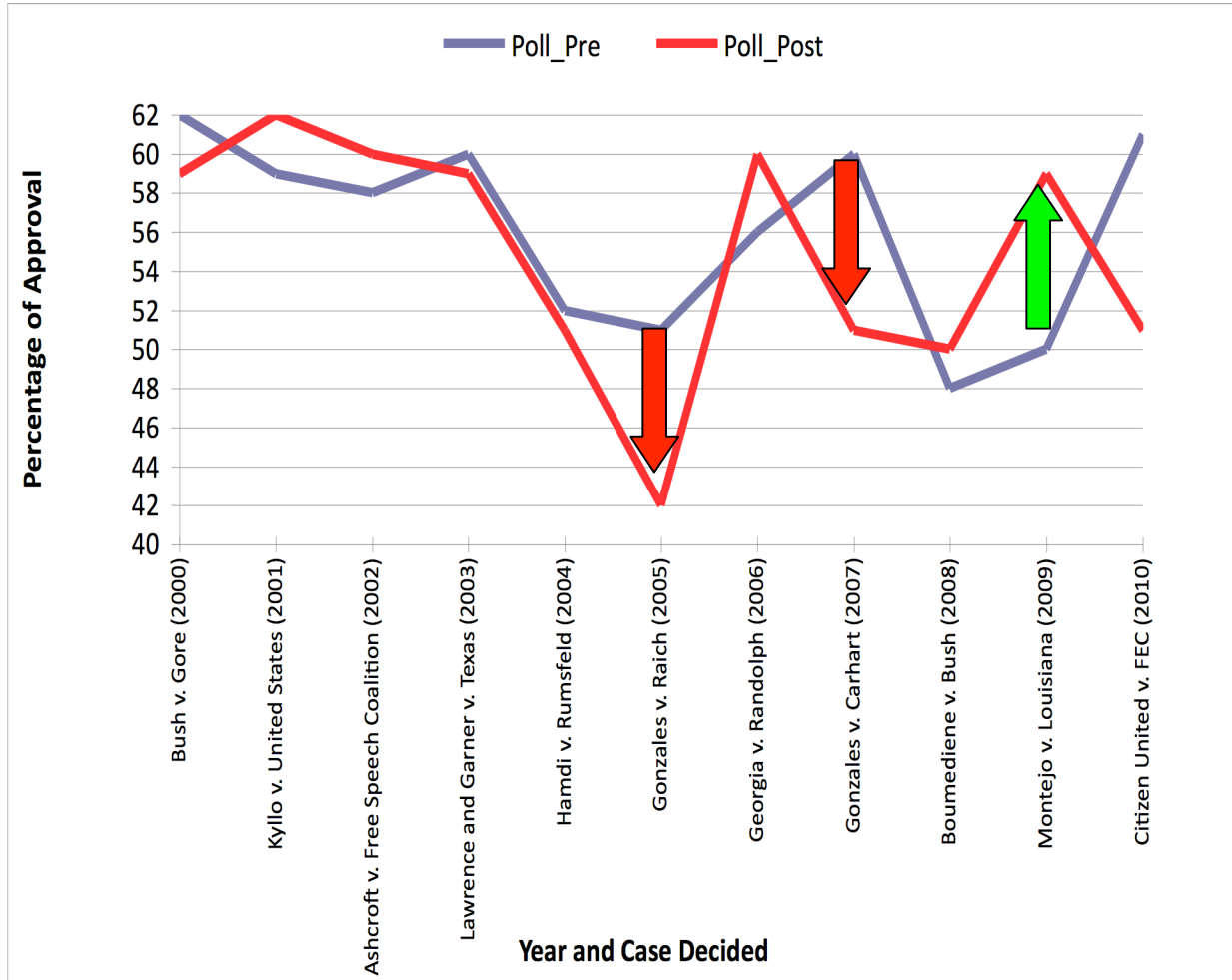
* - Simply following election, not necessarily meaning term has started yet. If applicable, refers to party of President-Elect.

** - Even if new term technically has NOT started. Designed to suggest the political feelings of the nation and who the people wanted to be the majority of our legislature.

An analysis of the approval ratings after each case from each individual year indicates that the years 2003-2005 marked a steady decrease in public approval for the Supreme Court, as shown in Figure 2. The court saw its approval ratings following major decisions fall from a high of 60 percent to a low of 42 percent during this time period. This 42 percent approval rating came immediately after the Gonzales v. Raich (2005) decision, which resulted in the lowest approval rating of the Court for the entire decade.

Furthermore, the graph shows that the approval ratings for the Supreme Court were extremely volatile from 2003-2010. A quick overview and subsequent references to this graph will allow for an understanding of the change over time following analysis of specific variables, particularly those of issue type and year.

Figure 2: Approval Ratings Before and After Each decision and
Year



Do Issues Play a Role?

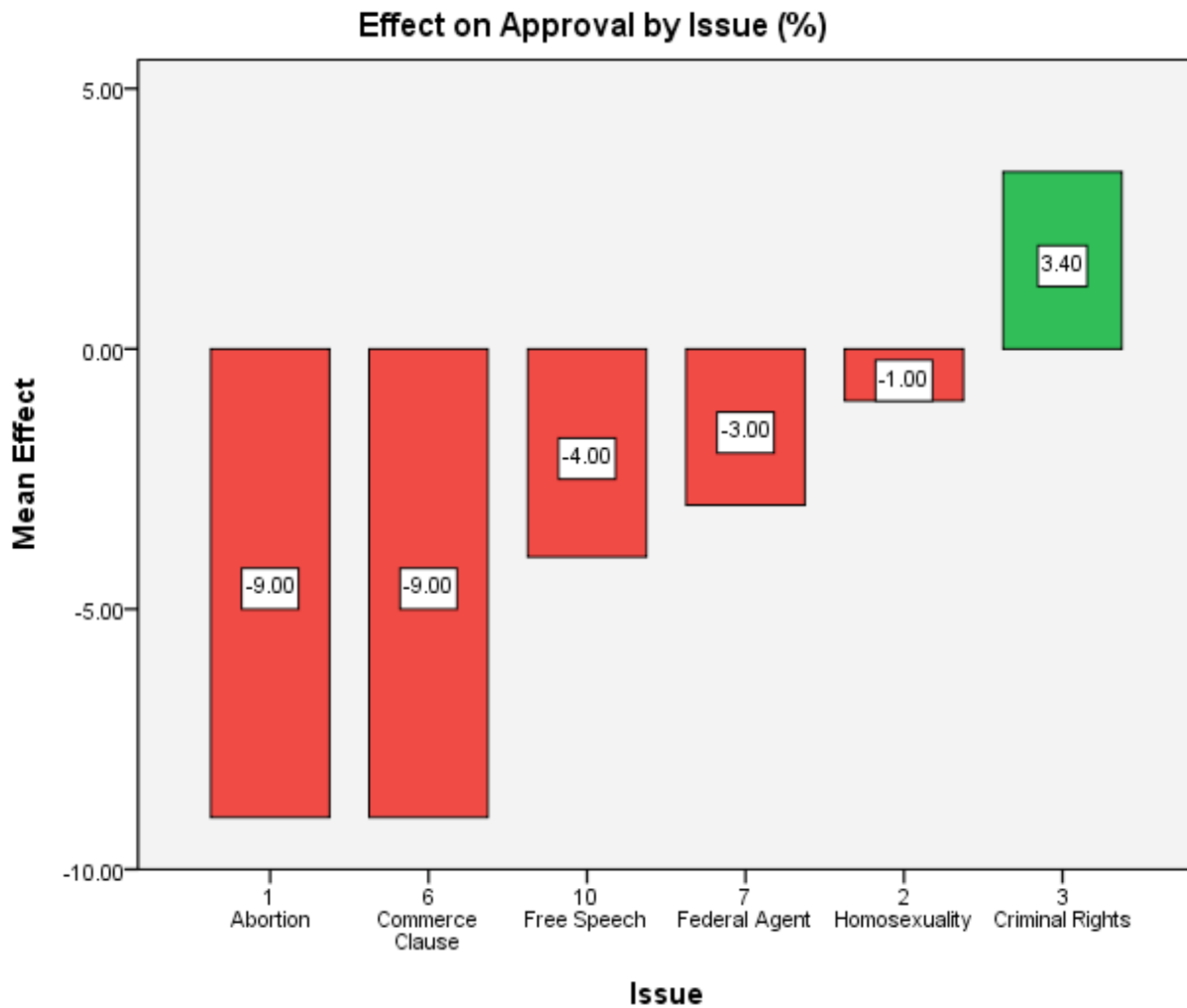
Below is a bar graph that represents the means of the absolute changes for issue types from the poll that most immediately preceded the decision (Poll_Pre) to the poll that most immediately followed the decisions (Poll_Post). The red bars indicate a loss in mean approval and the green represent a gain in mean approval rating for the issue indicated beneath each bar. Comparing issue types throughout the decade reveals some very intriguing data regarding approval trends from 2000-2010.

Criminal rights cases, which include *Boumediene v. Bush* (2008) and *Montejo v. Louisiana* (2009), appear to be the only issue type that leads to a positive mean for change in approval ratings for the court. This tells us that over the last decade, cases involving criminal rights had a tendency to lead to an improvement in approval for the Supreme Court. In fact, it appears the average increase from Poll_Pre to Poll_Post is +3.4 percent following such decisions.

The exact cause of this change is difficult to pinpoint, but there are explanations that are more plausible than others. Perhaps the American people approve of the Court "cracking down" on criminals and keeping our nation safe. As crime rates seem to be going up, the American people may find enjoyment in the idea that criminals are no longer going to be released on a

technicality. It could, however, be the exact opposite. Some of the cases of this decade, to be sure, brought about questions of things like the 5th Amendment right to due process and not to self-incriminate or the 6th Amendment right to retain counsel. It could be the case that decisions reflecting a strengthening or weakening of these rights has a direct effect on the approval ratings of the Court.

Figure 3: The Effect on Approval Ratings Divided By Issue



Case Overturns Precedent (OvrTrn) –

Comparing means of the effect of a decision by different variables allows us to observe the trends by which certain phenomena can be explained, if any trends exist. In the above data, the variable of whether or not a case overturns past precedent is coded into No – 0 and Yes – 1. From the data, we can see that during the first decade of the millennium the average change from Poll_Pre to Poll_Post was negative for both situations. While there is a slight difference in the effect of the two different characteristics, the difference is so small as to be almost negligible. This analysis does, however, make clear that regardless of the decisions effect on past precedent, the approval rating of the Court tended to decrease following some of its most controversial decisions.

**Table 2: Mean % Change When Decision
Overturns Precedent**

OvrTrn	Mean	N	Std. Deviation
0	-1.3333	9	4.87340
1	-.5000	2	13.43503
Total	-1.1818	11	6.09620

Key:
Not Overturn – 0
Overturn - 1

Senate Majority (SenMaj) – Interestingly, an analysis of the means for this variable shows evidence of a greater negative change in public approval following decisions that are handed down in times of Republican control of the Senate. The middle chart represents the means for all three of the possible outcomes, and the table below shows that in times when the Senate was controlled by Republicans a -2.6% change in public approval occurred on average.

Table 3: Mean % Change Under Control w/ 3

Options			
SenMaj	Mean	N	Std. Deviation
0	-2.6000	5	6.10737
1	-.6667	3	9.50438
3	.6667	3	3.21455
Total	-1.1818	11	6.09620

Key:
 Republican – 0
 Democrat – 1
 Split - 3

Table 4: Mean % Change Under Party Control

SenCont	Mean	N	Std. Deviation
.00	-2.6000	5	6.10737
1.00	.0000	6	6.38749
Total	-1.1818	11	6.09620

Key:
 Republican – 0
 Not
 Republican -1

Presidential Election 1 Year (PPE1y) – The data in these tables shows us that the Supreme Court decisions handed down within one year of the presidential election, a time often referred to as the “honeymoon” period for newly elected presidents, results in an average of 0 percent change from Poll_Pre to Poll_Post following some of the decades most controversial decisions. Conversely, decisions handed down not in this “honeymoon” period tend to result in a mean decrease in public approval of 1.85 percent following controversial decisions.

It is important to note that throughout the decade, there were only 4 cases that were decided within one year of the presidential election. Also, an analysis of this variable controlling for the party of the president (PresPart) indicates that this variable maintains the same significance in regards to the effect of change in public approval.

Table 5: Mean % Change Within 1 Year After Presidential Election

PPE1y	Mean	N	Std. Deviation
0	-1.8571	7	5.52052
1	.0000	4	7.74597
Total	-1.1818	11	6.09620

<p>Key:</p> <p>Not w/in 1 Year - 0</p> <p>W/in 1 Year - 1</p>
--

Post Congressional Election 6 Months (PCE6m) –

The difference in public approval change for those decisions handed down within the first 6 months of a congressional election, which happens every two years, resulted in an average increase of 3 percent for the Court. Interestingly enough, beyond the cutoff point of 6 months, the data reveals an average -2.75 percent change in approval rating following the Court's decisions. The difference between the first 6 months and any time beyond that threshold equates to a stunning 5.75 percent. This variable, it seems, results in much larger differences than, say, that of being within one year of a presidential election. Much of this could be a simple coincidental result for this decade, but there certainly could be some really intriguing reasoning for this result that would require much more than a statistical analysis.

Table 6: Within 6 Months Post Congressional Election

PCE6m	Mean	N	Std. Deviation
0	-2.7500	8	5.70088
1	3.0000	3	6.00000
Total	-1.1818	11	6.09620

Key:
Not w/in 6 Months – 0
W/in 6 Months - 1

Criminal Rights Issue (Issue3) – The tables below show the strongest predictor of all the variables available in the analysis. Issue3 represents the issue type of criminal rights. According to the data, simply knowing that the issue that the decision involved was criminal rights tells us something around 51 percent of the outcome regarding change from Poll_Pre to Poll_Post. The other issues, when analyzed separately, were not statistically significant in revealing any intriguing data about their impact on the effect of the decisions.

Table 7: Criminal Rights as a Predictor

Model	R	R Square (Predictability)	Adjusted R Square	Std. Error of the Estimate
1	.720 ^a	.518	.464	4.46219

a. Predictors: (Constant), Issue3

Table 8: Mean Change for Criminal Rights Issue

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B (Mean % Change)	Std. Error	Beta		
1	Criminal Rights Issues	3.400	1.996		1.704	.123
	Not Criminal Rights Issue	-8.400	2.702	-.720	-3.109	.013

a. Dependent Variable: Effect

CONCLUSION

By now, our question has long been answered. Did the Court's decision in Bush v. Gore really have the effect of destroying the Court's approval rating? The answer seems to be a very apparent no. Much of this can be concluded from a simple analysis of the larger changes in public approval from the same decade. As mentioned, following the decision of Gonzales v. Raich (2005), the Court saw a change of -9 percent in its overall rating.

An analysis of the change in public approval throughout the decade indicates that the year or term that the poll occurred after played a role in the effect of the decision. As was made obvious in the representation in Figure 2, which shows an extremely volatile return of approval ratings for the Court from 2005-2009. It is also important to note that the cases highlighted with a more in-depth analysis (*Raich (2005)*; *Carhart (2007)*; and *Montejo (2009)*) were all cases that showcased an extreme change in public approval for the Court during the studied decade. These cases were explained in more detail to further explicate the types of issues that lead to a major change in public approval for the Court. Also, of the chosen cases, only 3 of them resulted in a change of public approval outside the margin of error as concluded by Gallup, Inc. Not

coincidentally, those three cases were highlighted above in the Case Analysis section.

The exact reason for this volatility is not apparent from the data collected for this analysis. Indeed, it may be completely impossible to make claims of exactly what causes such erratic responses from respondents. An analysis of specific variables, though, does offer some insight into this question.

It seems Republicans controlling the Senate when the Court hands down certain decisions appears to play a role in determining the effect of the decision on the Court's public approval rating. From the data, we can clearly see that, following those decisions that were handed down during times of Republican control of the Senate, the approval ratings for the Court saw an average decrease of 2.6 percent. Following those decisions that were handed down in any time other than that which the Republicans controlled the Senate, the data indicates that there is no difference in public approval rating from Poll_Pre to Poll_Post. For the Supreme Court's sake, it might be best to keep those Republicans from controlling the Congress. It is also very interesting to note that 2 of the 3 major changes in public approval that were highlighted by further case analysis were also cases that had their decisions handed down during times of Republican control of the Senate. This may lead

us to believe that a Republican controlled Senate leads to major dives in public approval ratings for the Supreme Court.

If a case overturns past precedent, we observed that the mean effect of such a decision is actually less likely to bring down public approval than if the case did nothing to overrule past precedent. Conventional wisdom would have many of us believe that the Court overruling past decisions, thus potentially making the laws applications even more ambiguous, would lead to a greater change in public approval than cases which leave the past precedent untouched. An appeal to the doctrine of *Stare Decisis* would seem to make this very claim. This, however, is not the case, and although the difference between the effects of such circumstances may be small quantitatively, it still brings up an interesting challenge to the idea that consistency in the Court is important.

In line with the hypothesis, whether or not a decision was handed down within the "honeymoon" period of a new presidency appears to have played a role in the mean effect of decisions in the studied decade. More precisely, those decisions handed down within one year of a presidential election saw on average no change from Poll_Pre to Poll_Post. Those decisions handed down after this period saw a -1.85 percent decrease in public approval on average following each of these decisions. This appears to correlate with a time that is normally associated

with high approval for the president as well. Perhaps the Courts are subject to similar treatment when there is a new president.

One of the largest differences in the mean change in public approval stems from the decision being handed down within 6 months of a congressional election. Much like the honeymoon period for the president, a period of heightened positivity on the part of the American people was expected to accompany the ushering in of some fresh faces into Congress, as well as the continuation of the careers of some of the more well liked representatives and senators. In quantitative terms, the Supreme Court saw its approval ratings rise an average of 3 percent following those decisions handed down within 6 months of congressional elections, which are held every two years. This 3 percent mean increase is a 5.75 percent higher mean change than what we observe following decisions that are handed down after the 6 month honeymoon period. Those decisions handed down after this period resulted in a mean change of -2.75 percent overall throughout the decade.

As was suspected, the most important variable for effecting change in public approval rating was the issues variable. Whether or not the Court's decision dealt with some particularly controversial issues played a major role in determining the change in approval for the Court. As Figure 3 indicates, a case

dealing with abortion, the Commerce Clause, or criminal rights played a major role in the mean change in public approval of the Court for the first decade of the new millennium.

Contrary to conventional wisdom, it would appear that the *Bush* decision had a relatively small effect on the overall feelings of the American people toward their highest court. Furthermore, it seems an appeal to issues played a much larger part in determining the change in overall effect than any of the other variables studied in this analysis. For further analysis of this topic, it will be extremely important to keep in mind that a number of the variables analyzed saw a change in public approval that is worth noting including Senate majority, overturning of precedent, and "honeymoon" periods.

All of this data may be useful for future determination of change in public approval ratings for the Court. For instance, one may be able to observe whether or not the case is likely to overturn past precedent and make an appeal to the type of issue the case handles in conjunction with which party controls the Senate at the suspected time of decision to make statistically reliable assumptions about future trends regarding public approval of the Supreme Court. Of course, the more cases and dates included in the analysis, the stronger and stronger the ability to predict such changes becomes, but this analysis does

offer an overview of the last decade in the history of public approval of the United States Supreme Court.

Bibliography

- (1) *Per Curiam* Opinion – *Bush v. Gore* (2000). 531 U.S. 98 (2000)
 - (1.1) Ho. *More Than 2M Ballots Uncounted*. AP Online (2000).
 - (1.2) Kelley. *Balloting Problems Not Rare But Only In A Very Close Election Do Mistakes And Mismarking Make A Difference*. Omaha World-Herald (2000).
- (2) Highlights of the Supreme Court by term. Cornell University Law School – Legal Information Institute.. <http://www.law.cornell.edu/supct/>
- (3) Supreme Court Approval Survey – Gallup, Inc.. <http://www.gallup.com/poll/4732/Supreme-Court.aspx>
- (4) Stack, Patrick. *Medical Marijuana: A History*. Time Magazine (2002). <http://www.time.com/time/covers/1101021104/history.html>
- (5) Author – N/A. *42.0 Milestones in the History of Marijuana*. (2010). <http://brainz.org/420-milestones-history-marijuana/>
- (6) *Controlled Substances Act* - <http://uscode.house.gov/download/pls/21C13.txt>. Pub.L. 91-513.
- (7) ProCon.org. *15 Legal Medical Marijuana States and DC*. (2011).

<http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>

(8) Raich Complaint -

<http://medicalmarijuana.procon.org/view.resource.php?resourceID=000159#Raich>

(9) Justice Stevens. Opinion – Gonzales v. Raich. 545 U.S. 1 (2005).

(10) Montejo Application to Petition for Certiorari 63a.

(11) Justice Scalia – Opinion – Montejo v. Louisiana. 556 U.S. ____ (2009); 129 S.Ct. 2079

(12) Markels, Alex. *Supreme Court's Evolving Rulings on Abortion*. (2005). National Public Radio.

<http://www.npr.org/templates/story/story.php?storyId=502993>

4

(13) Justice Kennedy – Opinion – Gonzales v. Carhart. (2007). 550 U.S. 124 (2007)

(14) Justice Ginsburg Dissent – Gonzales v. Carhart. (2007). <http://www.law.cornell.edu/supct/html/05-380.ZD.html>