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MEDIA PORTRAYAL AND PUBLIC OPINION OF THE SUPREME COURT

by

Patrick Hall

A Thesis Submitted in Partial Fulfillment
of the Requirements for a Degree with Honors
(Political Science)

The Honors College

University of Maine

May 2014

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ABSTRACT

Because the power of the Supreme Court rests on its acceptance as a legitimate institution by the people of the United States, understanding why people accept the Court is critical for maintaining the institution. This study explored the relationship between how media covers Supreme Court rulings and how public opinion of the Court changes afterward. A selection of cases, *Griswold v. Connecticut*, *Roe v. Wade*, *Lawrence v. Texas*, *Hollingsworth v. Perry*, and *U.S. v. Windsor*, articles from the *New York Times*, were analyzed to gauge whether the case and the Court were portrayed in either a political manner or in a manner that focused on the procedural aspects of the case and ruling. The analysis looked at the references to legal, procedural items like the Constitution, precedent, or other legal jargon or to the references of institutional conflict, interest groups, elections, political parties or figures, activists, or social and moral values. This analysis shows a trend toward more politicization of coverage of Court rulings, and, when compared to public opinion polls, show a correlation with lower public approval of the Court.

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INTRODUCTION

In a time of polarized politics and very negative views of the federal government,¹ what has happened to public opinion on the Supreme Court, the branch of government that typically has the greatest level of public support?² This thesis tracks changes in public opinion responses in the wake of several cases and analyses the media coverage of those cases.

Recently, the Supreme Court made two controversial decisions regarding gay marriage in their overturning the Defense of Marriage Act and their declining to rule on a case over California's Proposition 8; both decisions were in favor of same-sex marriage. The Court's decision on *U.S. v. Windsor*, the case over the constitutionality of the Defense of Marriage Act (DOMA), an act that limits federal recognition of marriage solely to heterosexual marriages, overturned the law, allowing same-sex marriage to be federally recognized. The decision on *Hollingsworth v. Perry*, the case regarding Proposition 8, effectively allowed gay marriage to resume in California. Both of these cases were major accomplishments for the gay-rights movement and received significant amounts of media coverage. As Justice Scalia said, "some will rejoice in today's opinion, and some will despair at it, that is the nature of a controversy that matters so much to so many."³

In light of these cases, and of other, significant cases, this thesis will attempt to answer whether the way national media portrays the Court corresponds with national

¹ "Public Trust in Government: 1958-2013." Pew Research Center for the People and the Press RSS. Pew Research Center, 18 Oct. 2013. Web.

² Jones, Jeffrey M. "Americans' Trust in Government Generally Down This Year." *Gallup Politics*. Gallup, Inc., 26 Sept. 2013. Web.

³ Schwartz, John. "Guide to the Supreme Court Decision on the Defense of Marriage Act." *The New York Times*. The New York Times, 25 June 2013. Web.

public approval of the court. The analysis does not presume that media coverage had a direct impact on public opinion or was the sole influence on opinion.

Understanding how and why the public supports the Court is important for strengthening the Court in the future. Durr, Martin, and Wolbrecht wrote about the importance of understanding the foundations for support of the court in their article titled *Ideological Divergence and Public Support for the Supreme Court*:

Unlike support for other institutions, interest in Supreme Court support is driven not by a hypothesized electoral linkage, but by the expectation that the Court necessarily depends on public support as a source of institutional legitimacy and political capital. The level of support the Court enjoys has long been viewed as a crucial resource, both by helping engender a positive response to the Court's decisions and by encouraging the successful execution of its proclamations, necessarily carried out by other actors and institutions.⁴

Losing such public support would undermine the Court's ability to have its decisions followed. Understanding the effects of media on these cases helps to further the knowledge that would help enable the implementation of the Court's decisions

The public's support for the Supreme Court as an institution has sparked much research into the reasons behind the public's approval. Several political scientists have conducted surveys and studies to determine why people generally support the Supreme Court, which contrasts with lower public approval of other branches of the government. They argue that the court's legitimacy has been shown to be a factor in public approval. People generally feel that, despite the degree of separation between public opinion and the court's decisions, it is a very legitimate branch of the government. Additionally, special attention has been paid to the way that the media portray the Supreme Court and its decisions. These scholars argue that the media usually portray the Supreme Court in

⁴ Durr, Robert H., Andrew D. Martin, and Christina Wolbrecht. "Ideological Divergence and Public Support for the Supreme Court." *American Journal of Political Science* 44.4 (2000): 775. Print.

an apolitical manner, typically focusing on the procedure and arguments behind the court's decisions. The public not only believes it to be fairer and more trustworthy but to have none of the downsides of the partisanship at work in the legislative and executive branches. Even actions by the court that would lower some people's approval of it seem to be tempered by the perceived focus on procedure. Because the Supreme Court is largely portrayed as apolitical and procedural, people generally approve.

In some of this research, the amount of information people glean from the media affects their public opinion of the Supreme Court. According to a study done by John H. Kessel, those with more favorable support of the Court usually saw more favorable messages regarding it. Kessel's study was done in 1966, but later studies showed similar results. In a much more recent study, Mark D. Ramirez showed that how the public gained information on the Court affects their support of it. In this 2008 study, survey respondents presented with news articles showing the Court as an institution that follows procedure and precedent gave the Court more approval than those respondents who were presented with news articles showing partisan behavior as being responsible for the outcome of a case. Moreover, no matter how the Court was portrayed, approval was not related to whether the respondents agreed with the outcome of the case. Support for the Court was also high for those respondents presented with a partisan portrayal that agreed with the partisan reasons behind the court decision. Other studies have looked at whether the actual decisions affect public opinion and have shown some correlation: Caldeira and Gibson argued that the people mainly support Court decisions that protect civil liberties and democratic norms.⁵ Ramirez, however, found no such causality.⁶

⁵ Caldeira, Gregory A., and James L. Gibson. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36.3 (1992). Print.

As this thesis will show, reporting on the Supreme Court shifted during the last fifty years, at least as it concerns prominent cases on social issues. Reporting that was fairly procedural and legal in nature eventually started incorporating more and more political subjects, reflecting the growing political activism surrounding such issues. All of the cases had articles explaining the history of the case, some of the biographical information of the participants in the case, the legal reasoning behind the case, and the possible outcomes and effects, but the earlier cases' articles lacked much of the items that could characterize them as political. They had fewer, if any at all, mentions of interest groups, activists, politicians, morals and social values, or the legislative process. Although all cases had media that covered how the rulings would affect or were affecting the law, the politics and social values that the legislation would be based on were not as present. While this thesis makes no causal claims, this shift in reporting corresponds with the long term trend of declining public support for the Court.

⁶ Ramirez, Mark D. "Procedural Perceptions and Support for the U.S. Supreme Court." *Political Psychology* 29.5 (2008): 675-98. Print.

CASE SELECTION AND ANALYSIS METHODS

In addition to the same-sex marriage cases mentioned earlier, several other landmark cases concerned with individual privacy, discrimination, and sex, over the last 50 years, were chosen to analyze media coverage of Court decisions and shifts in public opinion. The cases chosen deal with similar issues and are fairly well spaced throughout the last 50 years. By using similar issues, this thesis attempts to negate some of the factors that could influence how closely media portrayal corresponds to public opinion. Using cases with a wider variety of issues would just introduce other variables. By choosing cases so spread out in time, this thesis attempts to gain a clearer picture of the long term shifts in media, public opinion, and their relationship.

The earliest of these cases, from 1965, is *Griswold v. Connecticut*. This case centered on a Connecticut law that barred the use of any form of contraceptive. Although people had been trying for several years before *Griswold* to challenge and overturn the law, no successful case had been made until Estelle Griswold, the Executive Director of the Planned Parenthood League of Connecticut, and Dr. C. Lee Buxton, a physician began a birth control clinic, something they did to intentionally test the law. After they were arrested and fined for their practice, specifically for giving advice on contraception and prescribing a contraceptive, they appealed their conviction to Connecticut's Supreme Court of Errors, lost, and appealed then to the U.S. Supreme Court. The Court decided on two issues. First, the Court ruled that Buxton and Griswold had standing to assert the rights of married people; even though they themselves were not using the contraceptives, they were accessories to the crime, and "certainly the accessory should have standing to

assert that the offense which he is charged with assisting is not, or cannot constitutionally be, a crime”⁷. Second, the Court ruled that the Connecticut law that prohibited the use of contraceptives was unconstitutional; it violated the penumbral right to privacy within one’s home and marriage found in several of the Amendments in the Bill of Rights.

The next case this thesis examines is *Roe v. Wade*. Argued in 1971 and 1972 and decided in 1973, *Roe* covered the right of women to choose to abort their pregnancies and specifically targeted a Texas Law that prohibited all abortions not medically necessary to save a mother’s life. The case started in 1970 with three plaintiffs: Marsha and David King, a married couple interested in the possible use of abortion in their future (although King was not pregnant, she was worried about possible contraceptive failure) and Norma McCorvey, who was unmarried, pregnant, and wanting an abortion. For the case, all of the plaintiffs’ names were changed. The Kings became the Does and McCorvey became the known Jane Roe. They sued the Dallas district attorney, Henry Wade. Although Roe won in the federal district court they had brought the suit in, the Does were dismissed as plaintiffs due to lack of standing, and the court refused to issue an injunction against the Texas law. Doe appealed the decision to the Supreme Court. The Court heard the arguments late in 1971, very soon after two Justices, Black and Harlan, retired and left the court. The case was reheard late 1972 to accommodate the addition of Justices Powell and Rehnquist. During the case, James Hallford, a physician being prosecuted under the Texas law, intervened in the suit, but he was eventually ruled to not have standing. In 1973 the Court ruled that the Texas law that Roe was seeking an injunction against was unconstitutional on the grounds that it violated the Fourteenth Amendment’s Due Process Clause. The majority opinion stated that the State’s interest in protecting

⁷ “Griswold v. Connecticut | LII / Legal Information Institute.” Web.

the mother's health and the "potentiality of human life" do not outweigh the mother's right to privacy and the "qualified right to terminate her pregnancy"⁸.

The third case studied in this thesis is *Lawrence v. Texas*, in which two Texas men, John Lawrence and Tyron Garner, were convicted of sodomy, their actions being against a Texas law prohibiting consensual, intimate sexual contact between same-sex couples. Although they were initially convicted and fined and lost their appeal to the Texas Court of Appeals, they appealed to the Supreme Court. The majority ruled that the Due Process Clause protected their personal, private right to engage in such sexual contact. Justice Kennedy wrote that, "the Texas statute furthers no legitimate state interest which can justify its intrusion into the personal and private life of the individual"⁹.

These cases will be studied alongside the two recent cases over same-sex marriage. Those two cases will be treated as a single case for the purposes of media analysis because they were so close together in time (they were argued a day apart and their decisions were announced the same day) and because they were so similar in their subject. Many articles covered both cases at the same time.

The first of these cases is *Hollingsworth v. Perry*, in which couples Kristin Perry and Sandra Stier and Paul Katami and Jeffrey Zarrillo were denied marriage licenses under a recent California state constitutional amendment know as Proposition 8. Although the State of California chose not to defend the suit (both the attorney general and the governor chose to not help in the defense), State Senator Dennis Hollingsworth, leader of ProtectMarriage.com, the group that sponsored the initial proposition, was

⁸ "Roe v. Wade." LII / Legal Information Institute. Cornell University Law School, n.d. Web.

⁹ LAWRENCE AND GARNER v. TEXAS. The Oyez Project at IIT Chicago-Kent College of Law. and Lawrence v. Texas. U.S. Supreme Court. 26 June 2003. Print.

allowed to intervene as defendant. The federal district court found that the proposition was unconstitutional, so Hollingsworth and ProtectMarriage.com appealed to the U.S. Supreme Court. The Supreme Court found that the group did not have standing to appeal the decision, effectively allowing California to follow the district court decision.¹⁰

The second of the same-sex marriage cases, *U.S. v. Windsor*, dealt with the Defense of Marriage Act (DOMA). Edith Windsor and Thea Spyer, were married in Canada and had their marriage recognized by their state, New York. When Spyer passed away, the Internal Revenue Service denied a spousal estate tax exception to Windsor because, after DOMA, the federal government would not recognize same-sex marriages. Because the current presidential administration refused to defend the law, an interest group called the Bipartisan Legal Advisory Group (BLAG), intervened in the case to defend it. Although Windsor won in both the district court and in the court of appeals, BLAG continued to appeal to the Supreme Court. The Court ruled that DOMA's provision that defined marriage as existing only with a man and a woman was unconstitutional under the equal protection clause.¹¹

In analyzing the articles surrounding these cases, a search through the *New York Times*' database was made. The *Times* was chosen for several reasons. It is one of the major national news sources. It is widely considered the "newspaper of record."¹² It still, despite declining print media readership, maintains a daily circulation of close to two

¹⁰ Santoro, Thomas, and Stephen Wirth. "Hollingsworth v. Perry." LII / Legal Information Institute. Cornell University Law School. Web.

¹¹ Dudley, Michaela C., and Allison Nolan. "United States v. Windsor." LII / Legal Information Institute. Cornell University Law School. Web.

¹² The Editors of Encyclopædia Britannica. "The New York Times (American Newspaper)." Encyclopedia Britannica Online. Encyclopedia Britannica. Web.

million,¹³ and it has long held one of the top spots in American newspapers.¹⁴ Lee Epstein even suggests using the *Times* as a measure of issue salience.¹⁵ The *Times* should provide a representative sample mainstream media coverage. Additionally, it has an easy-to-access archive database that makes finding and using their old articles feasible. The time frames for the searches were a year before the arguments were made and a year after the case was decided, a period chosen because media outside of these ranges would not be able to show much of a relationship with the public opinion responses to the actual arguments or rulings.

The analysis focused on categorizing the articles as either political or procedural. Political articles portrayed the Court in a political manner with emphasis on morals and social values, politicians, political activists, interest groups, laws and legislation, and institutional conflict. Those being classified as procedural focused on the legal reasoning behind the case. They contained the following: circumstances and history of the cases, constitutional law, logic, court procedure, legal experts (Law professors or attorneys if they are not part of interest groups or other political entities), and arguments and decisions. See Appendix A for a list of the articles in chronological order. The analyses are labeled to the corresponding citation.

The public opinion polls used later in the analysis of the changes in public opinion of the court were acquired from several sources. The Roper Center for Public Opinion Research's iPoll database was used extensively. Additionally, poll results came from

¹³Lee, Edmund. "New York Times Tops USA Today to Become No. 2 U.S. Paper." Bloomberg.com. Bloomberg, 30 Apr. 2013. Web.

¹⁴"Erdos & Morgan: Press Releases- Erdos & Morgan Releases 2011 Opinion Leaders Study." Erdos & Morgan. Erdos & Morgan, Inc., 4 Nov. 2011. Web. and "Erdos & Morgan: Press Releases- Erdos & Morgan Releases 2013 Opinion Leaders Study." Erdos & Morgan. Erdos & Morgan, Inc., 5 Dec. 2013. Web.

¹⁵"Measuring Issue Salience." *American Journal of Political Science* 44.1 (2000): 66-83. JSTOR. ITHAKA, 13 May 2004. Web.

searches through Harris Interactive's archive, Pew's archive, and Gallup's archive. The earlier cases had relatively little public opinion research done on them. Public opinion research was still a growing field, and less attention was paid to the specific thoughts of the public on each Supreme Court case. For all of the polls used, the methodology and question wording was examined to the extent possible, and some poll results have been deliberately not included due to unacceptable wording or question order biases.

GRISWOLD V. CONNECTICUT

Coverage of *Griswold v. Connecticut* was composed of ten articles, of which three were political, one was relatively neutral, and six were procedural in their portrayals of the case.

Articles

1) Although the constitutionality of Connecticut's ban on contraceptives had been in the news for several years, the specific case, *Griswold v. Conn.*, did not appear in the *New York Times* until 1964. Its first mention, and it was not mentioned by name, was on May 12, in an article on Connecticut's Supreme Court of Errors decision. The article's title "Connecticut Wins on Birth Control" may have seemed to be relatively political in nature, but the article focused on facts, listing out dates, the history of similar cases, and the circumstances of this case. After laying out the background of the case, the article quoted extensively from the State Supreme Court's opinion; more than half of the article was a quote from the majority opinion. The last paragraph of the quote, and of the article, was a quote from the majority opinion explaining that politics do not supersede case law. The article stuck to the circumstances of the case and the reasoning of the court. It did not focus at all, or even really mention, any politics behind the case.

2) The next article that appeared in the *New York Times* that mentioned *Griswold v. Connecticut* was a summary of the Court's actions of the day. On December 8th, 1964, the *Times* published a list of the courts actions. On this list, the Court's decision to review *Griswold v. Conn.* was listed with many other of the other of the Court's decisions to review or to not review. The article had a scant thirty-one words, a single sentence, dedicated to the case. The sentence was very cut and dry, listing only exactly what the

Court had done and what the case was legally about: “Agreed to review the convictions of a Connecticut doctor and a Planned Parenthood official for running a birth-control clinic in violation of that state’s laws against the use of contraceptives.”

3) The decision to review the case was, however, expanded upon in an article later on in the same issue. This 267 word article fully explained the background to the case. The article, much like the previous articles, explained each aspect of the case. Starting with an explanation of the law in dispute, the article moved through explaining the characters of the case and the legal contentions they made. The article then explained more of the history behind the issue, citing when Connecticut’s law had been previously challenged and why those challenges had failed. In doing so, the article cited procedure, and said nothing about the politics of the time. The only reference the article made to the political debate that existed was in calling Connecticut’s law “much debated.” The article very clearly avoided political discussion.

4) After the oral arguments of the case, in late March of 1965, another article was published. This one, again, focused largely on the legal reasoning of the case. The article extensively quoted the dialogue between Justice Stewart and the lawyer representing Connecticut. The article, which focused on the new emergence of marital status in reference to the use or provision of birth control, highlighted several legal issues: the police power of the state and its need to “prevent immorality,” the states power to provide for its own “population ‘continuity,’” and the state’s ability, legislatively, to “enact laws in this area.” The dialogue quoted by the article continued to tackle legal questions, such as how closely tailored a law must be to what it attempts to prevent. The article refrained from bringing up current political tensions. It ended with

an overview of the appellants' history, explaining who they were, what they had done, how they had managed to appeal it to the Supreme Court, and on what constitutional grounds they were disputing Connecticut's laws.

5) When the decision came out, the *New York Times* released several articles that significantly covered the case, the first of which was a selection of excerpts from the majority's opinion, the concurring opinions, and from the dissent. Just by the nature of the article being all quotes of the opinions, the *Times* did not insert any political context and focused exclusively on what the justices wrote. Even the introduction of the article simply explained that the decision overturned a Connecticut law banning contraceptives. The justices only hinted at the political matters behind the case (Stewart's dissenting opinion explained, "as a philosophical matter, I believe the use of contraceptives in the relationship of marriage should be left to personal and private choices [...]"¹⁶), but, by necessity, they wrote of the legal merits of the case and the reasoning behind Connecticut's law's constitutionality. Politics were all but absent in the article.

6) In a separate article, the *Times* chronicled the life of a "Gentle Crusader," Dr. C. Lee Buxton, the primary character in *Griswold v. Conn.* from his position as the physician that opened a birth control clinic with Planned Parenthood League of Connecticut's Executive Director Estelle Griswold. The article told of how Dr. Buxton had become involved in the case and reviewed his larger life story, where he had been born, how he had been educated, and how his professional life had developed. The article is notably more political than the previous ones because it focused on Buxton's

¹⁶ "Excerpts From Opinions of Supreme Court in Barring Curbs on Birth Control." *The New York Times* 8 June 1965: 34. *The New York Times*. *The New York Times*. Web.

drive to gain acceptance for birth control, to “help wipe out superstition and ignorance.” Despite this focus, the article was still relatively matter-of-fact.

7) A third article concerning the Court’s decision was released the same day and was essentially a paraphrasing of the opinions and dissents. However, this article called attention to the controversy that the case created. The title, “7-to-2 Ruling Establishes Marriage Privileges—Stirs Debate,” immediately showed that a controversy over the decision exists. What the article later showed was that the controversy was between the justices. The article highlighted the dissent’s belief that the majority was not following the constitution closely enough, that they had “revived the Court’s earlier policy of striking down legislation that it considered unreasonable, even when the law did not violate a specific provision of the Constitution.” The article still quoted extensively from the opinions. Toward the end of the article, though, the article called attention to the politics of the court. It showed how the dissenting justices “saw the case as a turning point toward increased judicial activism.” It recalled the history of judicial activism during the New Deal. The article quoted Justice Black’s statements on the nature of privacy and of the balance of the judiciary’s power over other branches of government. Although political in nature, the article focused on institutional conflict, not on party or electoral politics.

8) The *Times* also released their customary summary of actions taken by the Court. The article devoted a paragraph explaining the legal result of the case and the alignment of the Justices’ votes. The paragraph on *Griswold*, just like the rest of the article, contained many legal terms (“reversed,” “remanded,” “concurring,” etc.).

Although it did not cover any of the grounds of the ruling, the article definitely portrayed the Court in a legal manner.

9) In another article, the *Times* explored the effect of the decision on the state of New York. Although the article initially focused on New York legislative proceedings on birth control, it discussed people's opinions of the Court's ruling in *Griswold*. The first major section on the ruling was a discussion of the Catholic reaction. The article quoted Archbishop Henry J. O'Brien's view that the decision was a "valid interpretation of constitutional law," but that it "in no way involve[d] the morality of the question." The article quoted from other clergymen who agreed that the ruling was correct, but one, the Rev. Robert Drinan (also the dean of the Boston College Law school) fostered doubt about "the scope and thrust of the majority opinion." The article also quoted from the defendants of the case, Dr. Buxton and Mrs. Griswold. It was more political in nature than the previous articles because it hit on the morals and religion behind birth control, but it also emphasized, at least those the article quoted emphasized, that the Court's decision was still made according to solid constitutional law, thus portraying the Court in both a political and legal manner.

10) Months later, an article emerged that tackled some of the politics surrounding the case. In "Bishops and the Court," John Cogley connected the politics of the Catholic Church to the decision in *Griswold v. Conn.*. The Catholic Church applauded the decision of the Court to protect a right to privacy and agreed with the court that the decision was not based on the morality of contraceptives but on governmental power concerning marriages. The article showed how the Church was using the decision to argue against government run birth control programs. The article was political in nature, but portrayed

the Court as a procedural, not a moral, institution, and it showed that the Catholic Church held the court in a favorable light.

Public Opinion

Media coverage of *Griswold v. Connecticut* was primarily legal and procedural in nature. Only three of the ten articles showed the case in a political light, and only one of those articles actually focused on the Court. Determining public opinion toward the Court was relatively difficult in this time period. . In 1965 relatively few polls were run covering the Supreme Court,. No polls were run asking about the specifics of the case.

Many of the long-run polls

from Gallup, Harris, and

Pew had not been started

yet. A couple of polls

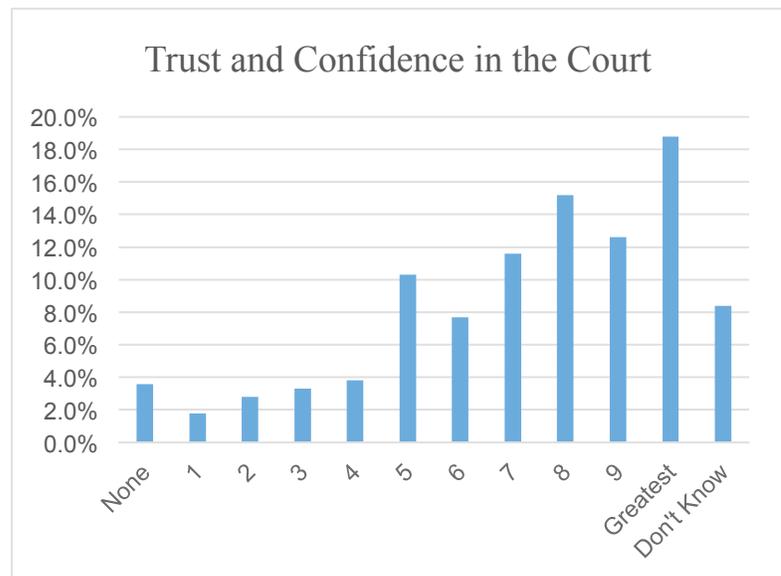
were conducted before the

case was argued and

decided. In 1963, one of

the earliest Gallup Polls on

governmental satisfaction



that included the Court, found that 10% of people rated the Court as excellent, 33% as good, 27% as fair, and only 15% as poor.¹⁷ The results seem to show mixed results on favorability of the Court, but the results could be skewed due to answer wording.

“Excellent,” and “good” are clearly favorable ratings of the Court, but “fair,” which is

¹⁷ Gallup Poll # 1963-0675: Satisfaction/1964 Presidential Election. Rep. Roper Center for Public Opinion Research. AMERICAN INSTITUTE OF PUBLIC OPINION, 23 July 1963. Web.

one of the less favorable answers, still has a positive connotation. This could have caused some bias. Although this poll does not directly convert to a confidence or favorability rating, the poll shows that the public was pretty favorable to the Court. In a survey conducted in 1964 that used a sliding scale for respondents to rate their confidence in the court, similar results emerged.¹⁸ Because the survey was based on a sliding scale of confidence, a graph has been included to help visualize the results. The survey shows, again, that confidence in the court was fairly high. After the case, opinion of the court stayed relatively high. A 1966 Harris Survey asking about how good of a job the Court had been doing showed that 48% of people thought the Court was doing either an excellent or pretty good job.¹⁹ A poll taken in 1967 showed almost identical results: 15% rated the Court as excellent, 30% as good, 29% as fair, and only 17% as poor.²⁰ A Harris Interactive Poll that measured confidence in the Court actually showed an increase in the percentage of respondents answering with a “great deal” of confidence from 1966 to 1967 from 31% to 40%.²¹ The media coverage on the Court was mainly procedural in nature, and, correspondingly, the public opinion on the Court was fairly high and did not decrease.

¹⁸ Gallup/Potomac Poll # 1964-633POS: National Survey of Attitudes, Hopes, and Fears. Rep. Roper Center for Public Opinion Research. Potomac Associates, 21 Sept. 1964. Web.

¹⁹ Harris Survey, Nov, 1966. Retrieved Apr-15-2014 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut.

²⁰ Gallup Poll # 1967-0747: Vietnam War/Politics. Rep. Roper Center for Public Opinion Research. Gallup Organization, 27 June 1967. Web.

²¹ Bowman, Karlyn H., and Andrew Rugg. "PUBLIC OPINION ON THE SUPREME COURT." AEI Public Opinion Studies. AEI. American Enterprise Institute for Public Policy Research, June 2012. Web.

ROE V. WADE

Roe v. Wade generated a mix of *New York Times* articles. Of the eight, three portrayed the Court procedurally, one was a mix, and four portrayed it politically.

Articles

11) Per their usual, the *New York Times* published an article on the day that the Supreme Court decided to hear *Roe v. Wade* merely stating that it had done so. This article was the *Times*' standard "Summary of Actions Taken." The section on the case was small (less than thirty words, a single sentence) and focused strictly on the constitutional merits being argued. This article was in no way political in nature.

12) The next article published on the case, when the case was decided, was another "Summary of Actions Taken by the Supreme Court" which very plainly stated what the Court had decided. The article was still relatively short, two sentences, and focused exclusively on the legal consequences of the *Roe v. Wade* decision.

13) On the same day, published immediately after the decision was announced, a selection of excerpts came out. The excerpts, coming from the words of Justice Blackmun for the majority and Justice White for the dissent, focused on the legal reasoning behind the decision. Black clearly had to substantiate his opinion to overturn Texas law, and his arguments were logical and legal in nature. The dissenting opinion, however, took a slightly more political approach. It discredited the arguments in the majority opinion, but is also claimed that the Court was acting in an "extravagant" manner. The article, in totality, was largely legal in nature; because it was exclusively quotes from the justices, the article showed mainly how the decision came to be through logical reasoning.

14) Also published the day after the ruling was made, an article covered how the decision would affect politics in the New York state legislature. The article focused on anti-abortion politicians and quoted from them. Their quotes were very political in nature and brought out the morals behind abortion. New York politicians were “saddened not only for those unborn infants who will never taste birth but also for our society that has soured with permissiveness.” The article also quoted from the New York Civil Liberties Union and some New York legislators that were pleased with the decision. The article briefly covered some Connecticut politics after the decision. The article was highly political in nature; it quoted from political supporters and opponents of abortion and highlighted the morals of the issue.

15) A day later, an article by Jane Brody outlined the deficiencies of the Court’s decision. The article was more political than the previous ones. The article started by claiming the decision as “far-reaching” and claimed it as a major victory for women. However, the article turned to discussing legal repercussions of the decision, and it cited “legal authorities here and in Washington.” The article covered how different state laws conformed to the ruling. In Brody’s part on State Law conformation, she quoted an attorney for Planned Parenthood-World Population, Mrs. Harriet Pilpel. Although Pilpel was an attorney and spoke about the legal effects of the decision, the fact that Pilpel was part of an interest group made the article more political in nature. The article again brought information from Planned Parenthood when it showed the expectations for more abortion clinics to be set up. The article then discussed the effects of the decision on New York state law and quoted from that state’s health services administrator. The article then quoted from the majority opinion in the case. The article continued to cover

statistics on infant mortality and the speed at which abortion would be affected by the decision. The article brought in quotes from interests groups, but it largely stuck to facts and statistics surrounding abortion laws. The article was still clearly more political than the simple descriptions of the Court's actions, but it relied on statistics and extensively discussed legal repercussions of the case. The article was a mix of both procedural and political portrayal.

16) The next article that significantly mentioned *Roe v. Wade* also explored the legal effects of the decision on the medical community. The article focused on New Jersey's response to the decision and their relaxation of state abortion rules. It started by quoting from the attorney general from New Jersey on how the state would be adhering to the recent decision. The attorney general was quoted as clarifying what New Jersey's laws said on abortion, which matched up with the recent Court decision. He was also quoted as criticizing the Court, saying that the decision "has placed a great burden on the medical profession and on its integrity." The article went on to outline the processes by which abortions would be permitted and how New Jersey was reacting to *Roe*. The article was political in nature because it addressed how the state of New Jersey would be responding to the Court's decision on abortion. It referenced current political issues such as who deserved abortion and who should be qualified to make abortion decisions.

17) Another article, written by the same reporter, Joseph F. Sullivan, covered much of the same information. The article tracked New Jersey's legislative efforts to re-regulate abortion in a more liberal manner. The piece mentioned, again, New Jersey's attorney general, and it mentioned the president of the New Jersey Hospital Association's

views. The article focused less on *Roe v. Wade* than previous articles, but mentioned it in a much political light.

18) Nearly two weeks after the decision was issued, Jane Brody again wrote an article on the aftermath of the abortion ruling. The article showed how most states were reacting to the decision slowly and cautiously, and it explored how anti-abortion groups were responding to it. The article displayed the political atmosphere in the states as their legislatures acted to bring their laws into compliance with the Court's ruling. The article went state by state for several states showing why they were delaying their enactment of new laws. Primarily, states' justifications for the delay involved studying and clarifying the Supreme Court's opinion. The article also featured the American Civil Liberties Union's response to state actions. The article did not mention the reasoning behind the ruling, only on the political effects of it, and it brought in several outside opinions from groups concerned with the new rules on abortion. The piece was clearly political in nature.

For the articles on this case, the *Times*' reporting became progressively more political in nature. With initial pieces showing the actual actions by the Court, later articles moved toward focusing on the political ramifications. The articles were split somewhat evenly between political and procedural portrayals of the decision, but slightly more of the articles focused on political ramifications for states and doctors. Worth noting is that the *New York Times* ran many, many more articles on the debate over abortion, but few of these referenced *Roe v. Wade*. The discussion over abortion was eventually incredibly political and extended far beyond this case.

Public Opinion

Articles were split relatively between political portrayals and procedural portrayals, and the media surrounding the case reached many people. According to the General Social Survey in 1973, 86% of people had either “heard or read of the recent Supreme Court decision concerning abortion.”²² The ruling received slightly favorable ratings. A Harris Interactive survey gauged the public’s favorability of the ruling at 52% with only 41% opposed to the ruling.²³

The case’s favorability was matched by the overall opinion of the Court. Although polls at the time did not ask about favorability of the Court, several polls concerning confidence in the Court were running. A Harris Interactive poll showed 33% of respondents having a “great deal” of confidence in those “in charge of running” the Court, 40% having “only some,” and only 20% having “hardly any.”²⁴ A Gallup Poll showed similar results. When asked about confidence in the institution of the Supreme Court, 45% responded either “great deal” or “quite a lot,” and 17% responded either “very little” or “none.”²⁵ The Harris Interactive poll result for 1973 was actually part of an upward trend in confidence that lasted from 1971 to 1974, where it flattened out. The Gallup result was from the first year they ran that particular survey, but, according to that survey, confidence remained fairly similar from year to year until 1984. Gallup ran a different survey, asking about the confidence in the branches of the government which collected results in 1972 and -74, which had a slight increase, between the years, in those

²² General Social Survey 1973, Feb, 1973. Retrieved Apr-14-2014 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut.

²³ Harris, Louis. Publication. Harris Interactive. Harris Interactive, Inc., 19 Apr. 1973. Web.

²⁴ Bowman, Karlyn H., and Andrew Rugg. "PUBLIC OPINION ON THE SUPREME COURT." AEI Public Opinion Studies. AEI. American Enterprise Institute for Public Policy Research, June 2012. Web.

²⁵ "Supreme Court." Gallup.Com. Gallup, Inc., 2014. Web.

responding with either a “great deal” or “fair amount” of confidence in the Supreme Court.²⁶ The media was evenly split between procedure and politics; this corresponds very well to the relatively stable confidences in the Court. The polls show that 1973 was a year in the midst of very stable, slightly increasing (by a couple of percentage points a year) confidence in the Court and those that run it.

²⁶ "Supreme Court." Gallup.Com. Gallup, Inc., 2014. Web.

LAWRENCE V. TEXAS

Compared to the earlier decisions, this case was covered by more articles portraying it as political. Five of the eight were political and three were procedural.

Articles

19) When the oral arguments were made for *Lawrence v. Texas*, the *New York Times* released two articles. One was a selection of excerpts. As is to be expected, the excerpts, all quotes from the Justices or the lawyers arguing the case, were highly legal in nature and focused on the constitutional and logical reasoning behind the case. Political consequences are not mentioned.

20) The other article from the argument phase of the case, by Linda Greenhouse, mentioned some more political circumstances. It acknowledged that the case was “cultural as well as constitutional” and pointed out that some members of the audience were gay. For the most part, though, the article addressed how the lawyers and the justices argued. It showed the reasoning behind the arguments and the reasoning for either overturning Texas Law or upholding it. The article did not mention more political aspects of the case.

21) On the day that the decision came out for *Lawrence v. Texas*, the *New York Times* published an article by Joel Brinkley that outlined the circumstances of the case and brought to light many of the political activist groups that were concerned with it. Starting by quoting the opinions, the article quickly showed the political consequences of the case. Its quotes concerned the “homosexual agenda” and whether a state can “demean” homosexuals. The article briefly outlined the history of the case, showing how the plaintiff was arrested and convicted of “deviate sexual intercourse” and wrote about

the previous case in Georgia over an anti-sodomy law. In doing so, the article started to comment on gay rights activists and other political groups. The Lambda Legal Defense and Education Fund, a gay-rights group, was focused on. Its legal director of was quoted as saying the decision “will be a powerful tool for gay people [...]” and how it stopped the labeling of “the entire gay community as criminals and second-class citizens.” The article then hit on conservatives’ “angry” reactions to the decision. In one quote from the chief counsel for Concerned Women for America, the article highlights the future possible implications for state laws: “If there’s no rational basis for prohibiting same-sex sodomy by consenting adults, then state laws prohibiting prostitution, adultery, bigamy, and incest are at risk [...]Any attempt to equate sexual perversion with the institution that is the very foundation of society is as baseless as this ruling.” The article covered a bit of the history behind the right of privacy by quoting the plaintiff’s lawyer’s explanation of the “tradition of respect for the privacy of couples in their home.” It finished with a paragraph on Justice O’Connor’s view on the values of the Constitution. Overall, the article was political in nature, and it highlighted some of the social values behind and surrounding the decision.

22) In another article from the same day, the *New York Times* gave a much briefer summary of the decision. The article outlined the circumstances and statistics around the case. It showed the alignment of the opinions, the low number of laws that the case might overturn, and the events that lead to the case. He article briefly mentioned political activist groups, but moved on to show how Texas defended its anti- sodomy law. The article was brief and surveyed the circumstances of the decision. It was not overtly political in nature and did not show much of the legal reasoning behind the case;

however, it shall be considered more political in nature due to its references to gay activists and its reference to “the culture war.”

23) Per their usual when a Supreme Court Case is decided, the *New York Times* released an article with excerpts from the case, with selected quotes from the majority and dissenting opinions. It therefore followed the legal reasoning behind the Justices’ decision to overturn laws prohibiting sodomy. Justice Kennedy, in writing the majority opinion, addressed a bit of the moral reasoning behind banning sodomy, but, in doing so, he specifically stated that the morals of some do not warrant such a restriction of liberty: “Our obligation is to define the liberty of all, not to mandate our own moral code.” In stating such, Kennedy helped to remove political overtones from his decision, and from the article. The dissent by Scalia accused the majority of not following legal precedent properly and of following politics more than legal reasoning, but Scalia extensively addressed the logical faults in the majority opinion. Despite the dissent’s quotes, the article was still clearly a legal portrayal of the case.

24) An article by Linda Greenhouse, released on the same day as the excerpts, addressed more of the political issues surrounding the case. Although the article started with a brief explanation of the results of the case, it quickly addressed the social values at play in the case. It quoted the majority opinion in a way that highlighted the controversy, such as when Scalia wrote that the court had “taken sides in the culture war” and “largely signed on to the so-called homosexual agenda.” Even when quoting Kennedy, the article highlighted the social issues: “its continuance [the Bowers decision that *Lawrence* overruled] as precedent demeans the lives of homosexual persons.” The article also looked for a political response from the executive branch. The White House press

secretary was asked for a comment, and the article noted that the Bush administration filed no brief for the case. The article covered the “delicacy of the moment” for the White House as it had to deal with “the socially conservative side of the Republican Party.” The article also mentioned the libertarians’ response, and it quoted from the co-chairman of the Republican Unity Coalition, a group of republicans attempting to “defuse the issue within the party.” The repeated references and quotes of so many political entities showed that the article was very much concerned with the politics surrounding the issue and portrayed the Supreme Court’s decision in a much more political manner than other articles. Although the article quoted from the opinions, it did so in a way that accentuated the politics of the issue.

25) A few days after the decision, Greenhouse again published an article that discussed *Lawrence*. The article was concerned with the broader subject of the Court’s whole terms, but it included significant parts on the recent ruling. The article portrayed the Court in a very political nature; it agreed with Justice Scalia’s assertion that the Court has “taken sides in the culture war” by saying that “there was little dispute that, to some degree, at least, he was right.” The article also showed the voting alignments for the Court’s decisions and called the Justices “liberal” or “indisputably conservative.” The article spent significant time on the political views of the Justices and brought in Walter Dellinger, former solicitor general, to explain them:

“In fact, “this term suggested a split between two kinds of conservative Republicans,” Walter Dellinger, a former acting solicitor general and longtime student of the court, said in an interview. Justices Kennedy and O’Connor “share the sensibilities of corporate Republicans, who often have a bit of a libertarian streak in them,” he said, while on social issues, “Scalia and Thomas represent the Moral Majority strain, which is vocal but not necessarily dominant.”

The article mentioned some legal issues (it quoted Kennedy's argument that gays' privacy is "a matter of constitutional due process"), but it focused on political disagreements as reflected in the divided court. The article was only partially about the *Lawrence* decision, but it portrayed the Court in an overwhelmingly political manner.

26) Several months after the *Lawrence v. Texas* was decided, the *New York Times* published a lengthy article on the broad and historical implications of the decision, in September, an article titled "How to Reignite the Culture Wars." The article showed the tensions between those that favored gay-rights and those that opposed them. It highlighted religious groups, political activists, and governmental positions (specifically President Bush's stance on gay marriage). The article quoted extensively from some groups over the reasoning behind the case. Phyllis Schlafly, president of the conservative group, Eagle Forum, was quoted as saying "It isn't so much the facts of the case; it's the reasoning of Kennedy's majority opinion that was really very offensive to a lot of people." The article then showed some of the implications that the case would have on future laws. It was almost completely political in nature; it showed all of the politics surrounding the decision and next to nothing of the legal reasoning behind it.

Public Opinion

With the number of articles portraying *Lawrence v. Texas* in a political manner outnumbering those that portrayed it in a procedural, legal manner, public opinion of the Court dropped after the ruling. Before the case was decided, a Gallup poll showed that the majority of Americans thought that homosexual relations between consenting adults

should be legal.²⁷ After the ruling was announced, virtually the same percentage of people approved of the way the court was handling its job.²⁸ However, that rating was a decline in popularity for the Court. The approval rating for the Court, as taken by a Gallup poll in July of 2003, showed a decrease of approval by 1% and an increase in disapproval of 4%.²⁹ Those who answered the poll with no opinion dropped 3% as well. In the same Gallup poll, confidence in the Court dropped that year, more so than the usual drop of the longer trend. Those who answered they had a “great deal” of confidence dropped 4% from the previous year, and those that answered they had a “fair amount” dropped 4%. The combined categories, those that had either a great deal or a fair amount of confidence, dropped from 75% to 67%, the biggest drop in the poll since 1976. The great deal/fair amount percentages had been holding steady around the 75% level for several years (really since 1998) before 2003.

According to a Fox News/Opinion Dynamics poll and the *New York Times*, approval of the specific decision in *Lawrence* was only 40%³⁰. These reports sharply contrast with a Harris poll which reported that a “72% to 19% majority agrees with the decision that ‘it is not illegal for consenting adults to have homosexual sex in their own homes.’”³¹ However, even with such a high approval of the actual decision and approval of the merits of the decision, the public opinion of the Court dropped. This drop

²⁷ Newport, Frank. "Six in 10 Americans Agree That Gay Sex Should Be Legal." Gallup. Gallup, Inc., 27 June 2003. Web.

²⁸ Jones, Jeffrey M. "Nearly 6 in 10 Approve of Supreme Court." Gallup. Gallup, Inc., 17 July 2003. Web.

²⁹ "Supreme Court." Gallup.Com. Gallup, Inc., 2014. Web.

³⁰ Fox News/Opinion Dynamics Poll, Jun, 2003. Retrieved Apr-13-2014 from the iPOLL Databank, The Roper Center for Public Opinion Research, University of Connecticut. and "Public Approval of Major Court Decisions." *The New York Times*. *The New York Times*, 17 July 2012. Web. This appears to be an outlier that contrasts sharply with the Harris poll. Moreover, although the *Times* cited the Fox News poll, no survey results or methods could be found online or in any of the numerous public opinion databases, even after extensive searching.

³¹ Taylor, Humphrey. "Public Sharply Divided on Recent Supreme Court Decisions." *The Harris Poll*® #42. *Harris Interactive*. Harris Interactive, Inc., 30 July 2003. Web.

corresponds to the media coverage. The ruling was portrayed mostly politically, and the corresponding drops in public approval and confidence match up with the previous changes in opinion toward the Court.

HOLLINGSWORTH V. PERRY AND U.S. V. WINDSOR

The same sex marriage cases generated significantly more political articles than other cases. Out of the fifteen articles analyzed, eight were political in nature, three were mixed, and four were procedural.

Articles

27) A month before the same-sex marriage cases were to be argued, a *New York Times* piece covered how the Obama administration had given its support to marriage equality by filing briefs in favor of it for *Hollingsworth v. Perry*. The article covered the details of the brief and reactions to it by both sides of the case. Both sides were quoted on their political views, whether gays are entitled to the same rights as straights and whether the government is really protecting those “raising the next generation.” The article covered some of the legal issues in the case, but focused on the Obama administration’s position. It covered some of the changes President Obama has made in his own positions on gay marriage, and it covered some of the attitudes of supporters of same-sex marriage. It wrapped up with some of the legal issues the briefs covered and how, procedurally, the case should be decided. The article quoted from political figures, but it also evenly covered how the briefs legally argued. It did not portray the upcoming cases as too political and it did show some of the legal arguments being made. The article was about evenly split between being more procedural or political in nature.

28) Before *U.S. v. Windsor* and *Hollingsworth v. Perry* were to be argued, the *New York Times* published an article chronicling San Francisco’s fight against a ban on same-sex marriage. Starting with how public officials in San Francisco started to fight against California’s Proposition 8, the article spent time exploring the group of lawyers

that helped spark the nation-wide fight against same-sex marriage law. It then moved on to some of the legal complications the Supreme Court faced. Then the article contained quotes from prominent attorneys arguing for or against the same-sex marriage ban, but those attorneys were either members or leaders of interest groups, such as John Eastman, the chairman of the National Association for Marriage, or they were members of the law firm bringing the suit. Their quotes were particularly critical of each other and very political. Eastman said that government officials had shown a “a cavalier attitude toward their duties to enforce the law,” and Dennis J. Herrera, San Francisco’s attorney and one who has been involved in almost every part of the legal battle, said that when a disfavored minority is being targeted, it’s up to a public law office to stop it.” The news piece moved on to chronicle more of how the legal team fighting Proposition 8 was pieced together, exploring signing bonuses and other lawyers that have joined Herrera’s team. The article did label several Justices, either as “more liberal” or as “by some measures the most conservative justice on the current court.” Toward the end of the article, some legal points were brought out over briefs filed for the Court and over some points that they attempt to win, but the article did not go into detail. Although the article did cover some of the legal points that Herrera’s team would have to win, it portrayed the case very politically for both parties in the case.

29) A week before the two cases were to be argued, the *Times* released a brief article announcing that the oral arguments in the two cases would be released by the Court the same day that they are argued. The article gave examples of other cases where such a thing had happened, but did not address either the merits of the case or the politics surrounding the case.

30) In an article formatted as a question and answer, a couple of days before the case was scheduled to be argued, the *New York Times* outlined the merits of *Hollingsworth v. Perry*. The questions and answers focused on both the case and the politics surrounding it. Starting by establishing the stakes and the history of the case, the article stuck to how the case had been brought to the Supreme Court and how the lawyers would be expected to argue it. The article then brought in the current position of the Obama administration. Returning to legal issues, the article explained the upcoming argument process and how the Court would reason legally to decide the case. It outlined the legal arguments being made by both sides of the case and how the case could be decided. For the most part, the article was legally oriented, but it did mention some of the current political positions of the executive branch.

31) In another article, the *New York Times* compared the upcoming cases with their previous decision in *Roe v. Wade*. The article was very politically focused. Right at the start, the article pointed out how the previous case, *Roe*, had “created a culture war” and labeled Justice Ginsburg “a liberal and a champion of women’s rights.” The article showed how opponents of same-sex marriage used the effects of the *Roe* decision to argue against the court changing law in the upcoming cases. The article quoted the chairman of the National Organization for Marriage’s very political statements about the upcoming case: “The lesson [the Court] should draw is that when you are moving beyond the clear command of the Constitution, you should be very hesitant about shutting down a political debate.” Although the statement is a legal argument, it shows that the issue is political and that the chairman thinks it should be dealt with politically. The article continued to compare and quote others who compared the upcoming two cases with *Roe*

v. Wade. Opponents of Judicial intervention into the matter of same-sex marriage continued to argue that the Courts would be effecting the same results of *Roe*, where “the court essentially took the laws deregulating abortion in four states and turned them into a constitutional command for the other 46.” Proponents of same-sex marriage were also quoted in the article. At the conclusion of it, it outlined some of the possible outcomes of the cases. The article, due to its repeated quoting of political figures and its characterization of Justice Ginsburg, definitely portrayed the case in a political manner. Even when the article quoted lawyers (some of the political figures were also lawyers) or professors of law, it focused on their opinion on the politics surrounding same-sex marriage and the possible political aftermaths.

32) As arguments were being made, an article was published that explored the oral arguments in *Hollingsworth v. Perry* and how the Justices were reacting to them. It started with the difficulty the Justices had just to hear the case, particularly whether those that appealed it had standing to do so, but the article then moved on to showing some of the attitudes held by the Justices. Justice Kennedy “voiced sympathy for the children of gay couples,” while Justice Alito warned that “the court should not move too fast.” The article also quoted from the arguing attorneys, one of whom said that the question before the court was “an agonizingly difficult, for many people, political question.” The article eventually covered some of the history of the case, specifically how it was decided in earlier, lower courts and continued to show the struggle the Justices had with taking the case. The article was quite political; it explored some of the political tendencies of the individual Justices and quoted someone outright claiming that the issue was purely political. Although claiming that the issue was purely political was an argument made in

defense of the ban on same-sex marriage, it did show the court acting on something political. The article covered some of the history of the case and was decidedly political in nature.

33) The day that the arguments were made, the *New York Times* released an article chronicling the oral arguments. Although the article covered the arguments, it used a political viewpoint. It called the Justices predicted to overturn D.O.M.A. liberal and repeatedly referred to them as such. The article quoted the Justices and Paul Clement, an attorney defending D.O.M.A. Both spoke about Congress but Justice Kagan was quoted to have brought out the politics of the situation: “Do we think that Congress’s judgment was infected by dislike, by fear, by animus and so forth?” The article briefly mentioned some of the history of the case, but then quoted the Justices bringing out the politics of the issue. The article quoted Chief Justice Robert’s negative opinion on President Obama’s enforcement of the law. As a counterpoint, the article quoted remarks from White House officials. The article then returned to the facts behind the case and the possible legal outcomes. This article contained much of the politics surrounding the case, even showing some of the political views of the Justices. Although it outlined some of the history behind the case, most of the article was focused on political issues and political actors.

34) After arguments were made in court, an article was published that explored some of the ways the Court could have decided to hear a case and then seriously reconsidered whether they had had the power to do so with *Hollingsworth v. Perry*. The article portrayed the Justices in a very political manner, showing them politicking to achieve their goals with minimal emphasis on legal reasoning. After showing the

differences in voting needed to hear a case and to decide a case, the article pointed to the “conservative members of the court” as those that cause the case to be heard: “After Justice Anthony M. Kennedy suggested that the court should dismiss the case, Justice Antonin Scalia tipped his hand. ‘It’s too late for that now, isn’t it?’ he said, a note of glee in his voice. ‘We have crossed that river,’ he said. That was a signal that it was a conservative grant.” The article explored different ideas as to why the Court had decided to hear the case. One idea was that “the court’s four liberals were ready to try to capture Justice Kennedy’s decisive vote to establish a right to same-sex marriage around the nation,” and another was that the conservatives did not feel their odds of preventing same-sex marriage would improve. The article later pointed to more strategizing by the justices by quoting a law professor who found “pretty strong evidence that the justices act more strategically in high-profile cases.” In another quote from a different law professor, the article showed how “‘The justices can’t quite resist getting involved in major cases,’ Professor Perry said. ‘This is going to come out quite unsatisfactorily to a lot of people.’” Although the article quoted law professors, the quotes centered on the Justices’ politicking and strategizing. This article clearly portrayed the Justices’ decision-making process as something less legal and more personal and political.

35) Several days before the decisions were scheduled to be announced, the *New York Times* published an article that showed how some of the upcoming rulings could fundamentally change several major institutions (marriage, education, and voting). The article gave brief summaries of several cases and spent little time on *U.S. v. Windsor* or *Hollingsworth v. Perry*. It showed how Chief Justice Roberts “suggested in March that ordinary politics would sort things out” over the issues in *Windsor*. It briefly covered

how *Hollingsworth v. Perry* may be dismissed. The article contained little more than brief summaries of some cases, but it also presented aspects that characterized the cases as political. It showed how some believe the issues before the court are just political and it called Justice Kennedy the “member of the court at its ideological center.” It also quoted a law professor on how the Court interacted with politics: “In giving something to liberals and something to conservatives, as it often does, Professor Strauss said, ‘the court has avoided putting itself in a position where either side wants to declare war on them.’”

36) On the day that the decisions were announced for *U.S. v. Windsor* and *Hollingsworth v. Perry*, a plethora of articles were published covering the decision. One focused on the reactions of the crowds to the ruling. The article quoted gay-rights activists and showed how invested in the case they were. The article also quoted a Reverend of the Evangelical Church Alliance, an interest group opposing same-sex marriage. The article continued to bring in quotes from those either opposed to or in favor of same-sex marriage. The article was clearly political in nature. It did not focus at all on the merits of the case; it merely showed political reactions to the case.

37) Another article released that day explored the celebrations by supporters of same-sex marriage and the reactions by those that opposed it. The article quoted both political figures for and against marriage equality and non-political, laymen. It quoted from Republican Representative Tim Huelskamp (Kansas) criticizing the Court as attempting to undercut normal legislative processes: “short-circuit the process and to undo a decision, a strong bipartisan decision, signed by President Bill Clinton and supported by then-Senator Joe Biden; for this court to overrule it, I think folks are tired of judges dictating.” The article also quoted President Obama’s support of the decision.

The quote from President Obama referenced political idea and morals. When the article quoted laypeople, it quoted their views on the decision and on politics of same-sex marriage. Several more Representatives were quoted, each either celebrating the decision (most commenting on how freedom and equality had benefitted) or vowing to continue their attempts to define marriage. The article also quoted Bishop V. Gene Robinson, the first openly gay bishop in the Episcopal Church, who spoke about morals behind same-sex marriage. The article was undoubtedly political in nature. It did not reference at all the legal reasoning behind the case; it only mentioned the political views of many people on the issue decided upon in the ruling.

38) In a different article, the *Times* covered more of the legal logic that led to the rulings. It covered how the Justices voted and how the decisions were announced. It then started in on the law. It quoted the Justices' opinions and covered the constitutional bases for the decision, citing federalism, equal protection, and due process. The article did mention some things political in nature. It did label some of the justices as "more conservative," and it mentioned how the ruling would affect President Obama's administration. The article explained how the *Windsor* case had come to be and then moved on to the legal reasons for the *Hollingsworth* decision. It briefly covered some of the effects of both cases. The article portrayed the cases in a primarily legal fashion, citing different constitutional items and showing legal precedents.

39) The same day, the *Times* released a guide to the decision in *Hollingsworth* explaining the legal reasoning behind the ruling. The article quoted from the opinions of the Court extensively. Although both the article and its quoted opinions mentioned

political activists, it focused on the legal question of whether the Proposition 8 supporters had standing. The article was purely legal.

40) In a very similar article, written by the same author, the *Times* also explained the legal reasoning behind *U.S. v. Windsor*. Again, the article quoted extensively from the opinions of the Court. The only nods to the politics of same-sex marriage were contained in the dissenting opinions, which claimed the matter was political and not legal. Again, though, the little mentions of politics were in regards to the legal reasoning behind the opinions. This article was also purely legal.

41) Months after the cases, in October, the *Times* published an article on the effects of the rulings on same-sex marriage. The article covered the financial effects of the D.O.M.A. rulings on gay couples. The article quoted financial planners and gay advocacy groups, but did not cover much on how the decision was made. It simply explored how new tax rules would apply to same-sex couples.

Public Opinion

According to a Gallup Poll, since 2012, more Americans have been in favor of recognizing same-sex marriages as valid, with the same rights as traditional marriages, than those opposed to it. This statistic did not change much after the rulings on *U.S. v. Windsor* and *Hollingsworth v. Perry*, but it could traditionally be a predictor for public approval of the court for overturning a law contrary to such a belief, especially for a case so public.

The public approved of the Court's decisions. A Quinnipiac University National poll, started on July 28th, 2013, found that 62% of poll respondents agreed with the

Court's decision on D.O.M.A.³², and an ABC News poll showed similar results, with 56% of respondents either approving strongly or somewhat, compared to the 41% that disapproved somewhat or strongly.³³ The decision over Prop. 8 was slightly less popular, but still showed favorability: 51% favored the ruling, while 45% did not. Taken together, according to a Pew poll, 45% approve of the decisions, while 40% disapproved.³⁴

Despite approval of the actual decisions, support for the Court actually declined after the rulings were released. According to another Pew poll, started June 27th, a day after the rulings were announced, the court was viewed favorably by only 48%, unfavorably by 38%,³⁵ compared to a survey they conducted in March, 52% viewed the court favorably, against 31% unfavorable.³⁶ This drop in approval was also shown with the previously mentioned Quinnipiac University poll, which found that 45% approved of the court and 44% disapproved.³⁷

This difference between approval of results and approval of the Court could be related to how the public perceives the Court. The media released on these cases was extensively political. In May, several survey results showed that people think that factors other than legal analysis contribute to how Justices make decisions. A poll by CBS News/The New York Times showed that only 20% of respondents think that "Justices

³² "Clinton Tops Christie By 6 Points In 2016 Race, Quinnipiac University National Poll Finds; Republicans Take Bigger Hit For Gridlock." Quinnipiac University. Quinnipiac University, 12 July 2013. Web.

³³ Langer, Gary. "Many Criticize Voting Rights Ruling; Partisan Splits on Gay Marriage Continue." *ABC News*. ABC News Network, 03 July 2013. Web.

³⁴ "Public Divided over Same-Sex Marriage Rulings." People-Press.org. Pew Research Center for the People and the Press, 1 July 2013. Web.

³⁵ "Supreme Court's Favorability Edges Below 50%." People-Press.org. Pew Research Center for the People and the Press, 24 July 2013. Web.

³⁶ "Supreme Court's Favorable Rating Still at Historic Low." People-Press.org. Pew Research Center for the People and the Press, 25 Mar. 2013. Web.

³⁷ "Clinton Tops Christie By 6 Points In 2016 Race, Quinnipiac University National Poll Finds; Republicans Take Bigger Hit For Gridlock." Quinnipiac University. Quinnipiac University, 12 July 2013. Web.

decide their cases based on legal analysis without regard to their own personal political views,” but 68% thought that “they sometimes let their own personal or political views influence their decisions”.³⁸ In another study in May, the Public Religion Research Institute (PRRI) found that 55% think that the Justices are influenced by their political views “a lot” and 32% think “a little,” and 37% believe that they are influenced by their religious beliefs “a lot” and 44% think “a little.”³⁹ Compared with the public’s view that the Court should consider only legal issues (47% in the same PRRI study, compared to 45% that said it should consider what the public thinks).⁴⁰ Another study by CBS, in March, showed similar results: 46% think the Court should “only consider the legal issues involved,” and 45% think it could consider what the majority of the public thinks.⁴¹ With such a large chunk of the public thinking that the Court should look only to legal analysis, the fact that approval ratings dropped after such publicized, politicized rulings. (The public watched the cases on same-sex marriage fairly closely; a Pew poll showed that 22% of the public was following the cases “very closely,” and 29% was following it “fairly closely.”⁴² The cases drew massive political rallies and spurred much political debate. People responded negatively to the Court’s ruling where many articles portrayed the cases politically. Although other factors exist in how people feel about the Court, a definite relationship exists between media portrayal and public opinion.

³⁸ "Poll: Slim Majority Backs Same-sex Marriage." CBSNews. CBS Interactive, 6 June 2013. Web.

³⁹ "PRRI Religion & Politics Tracking Poll." Public Religion. Public Religion Research Institute, 23 May 2013. Web.

⁴⁰ "PRRI Religion & Politics Tracking Poll." Public Religion. Public Religion Research Institute, 23 May 2013. Web.

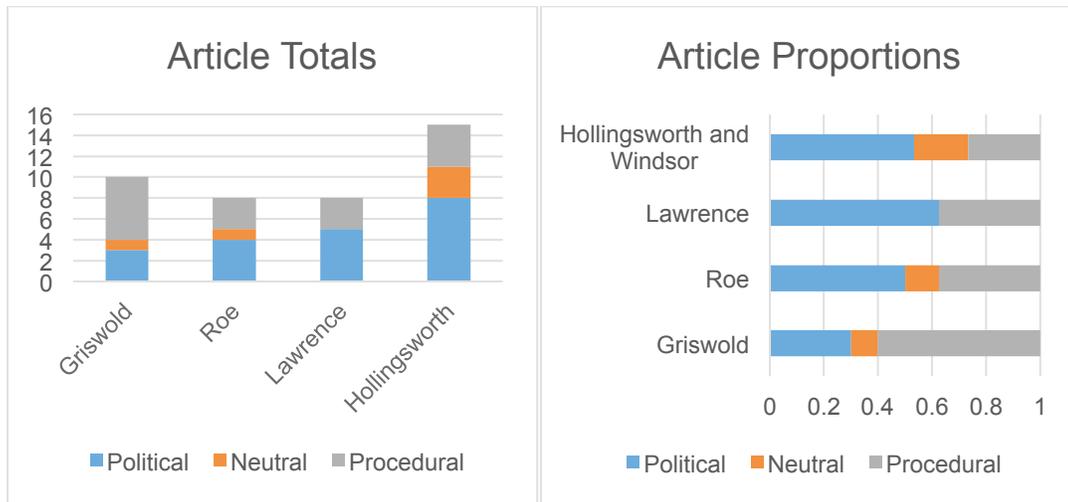
⁴¹ "Poll: 60% Think Federal Gov't Should Recognize Same-sex Marriages." CBSNews. CBS Interactive, 26 Mar. 2013. Web.

⁴² "Gun Debate Draws More Interest than Immigration Policy Debate." People-Press.org. Pew Research Center for the People and the Press, 8 Apr. 2013. Web.

CONCLUSIONS

Summary of Findings

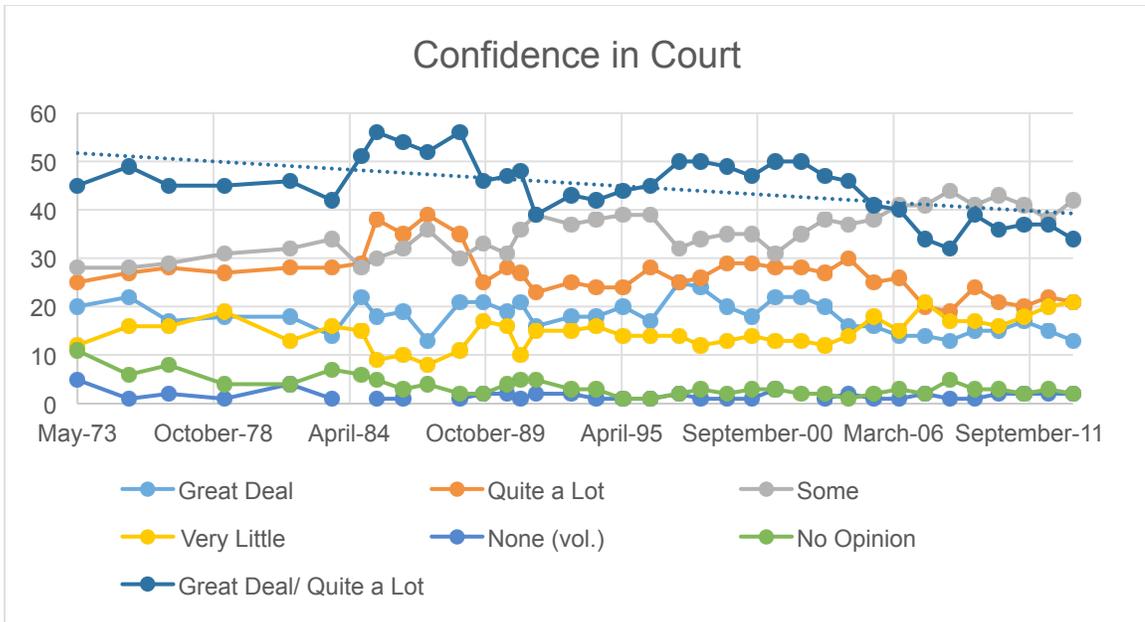
In summation, the proportion of articles portraying the Court as political has increased over time. The following graphs display visually the trends found in the cases' articles analyzed. The graphs show *Hollingsworth v. Perry* and *U.S. v. Windsor* in the same sections.



The trend shows an increase in the number of articles that portray the cases politically from the *Griswold* case to reporting on *Lawrence*. Although the proportion of articles that portray cases politically in *Lawrence* is slightly larger than that of the same-sex marriage cases, the increasing trend still exists when comparing those to *Roe* and *Griswold*. Compared with the trend in confidence in the court, some correlation exists.

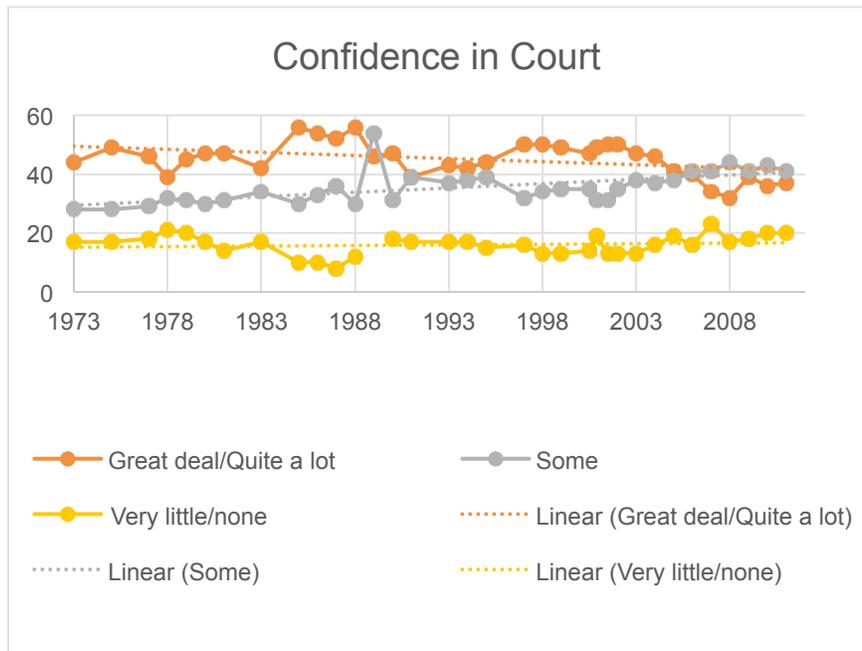
The following data were taken from Gallup surveys.⁴³

⁴³ "Supreme Court." Gallup.Com. Gallup, Inc. Web. Note that some surveys were conducted by Gallup that were not run in the 1980s that asked similar questions. Additionally, Harris ran a survey that showed a wild fluctuation in the "Great Deal" responses and an increase in the "Only Some" responses over time. Because the survey does not break down the levels of confidence as well as the Gallup Poll, it is omitted. See the AEI report cited elsewhere.



As the graph and data show, confidence has generally been declining. A line of best fit has been superimposed on the combined responses of “Great Deal” and “Quite a Lot” to help illustrate the trend (R^2 value is 0.3246). Confidence levels have been the longest running items

polled on the Supreme Court, so they have been included here. A condensed version of the above graph helps illustrate the trends. Other measures of popular



support for the Court, like favorability, have also been declining. A measurement of

approval of the Supreme Court's job handling shows a decline since 2001.⁴⁴ Pew Polls taken since 1987, also showed a decline in "overall opinion."⁴⁵ A correlation clearly exists between the increasingly political portrayal of the Court and the decline in public support. This finding is was also found in Mark Ramirez's study on perceptions of the Court.⁴⁶

Possible Explanations

Many things affect how the public responds to media. Ramirez's study clearly shows that procedural portrayals of the Court have a positive effect on people's opinion of it. His findings show that "differences in support for the Court can be attributed to how media coverage alters perceptions of procedural justice."⁴⁷

Studies of media coverage have found that a variety of factors can influence public opinion responses to the media. When the media cites experts, political figures, and interest groups, public opinion changes in different ways. Experts, in this study the Justices and law professors, whose usage helps qualify articles as procedural portrayal, tend to have a positive influence on public opinion on an issue. According to a study by Benjamin I. Page, Robert Y. Shapiro, and Glenn R. Dempsey "those [they] have categorized as 'experts' have quite a substantial impact on public opinion."⁴⁸ They showed that the public "tends to place considerable trust" in experts, and public opinion

⁴⁴ "Supreme Court." Gallup.Com. Gallup, Inc. Web.

⁴⁵ Bowman, Karlyn H., and Andrew Rugg. "PUBLIC OPINION ON THE SUPREME COURT." AEI Public Opinion Studies. AEI. American Enterprise Institute for Public Policy Research, June 2012: 12. Web.

⁴⁶ Ramirez, Mark D. "Procedural Perceptions and Support for the U.S. Supreme Court." *Political Psychology* 29.5 (2008): 675-98. Print.

⁴⁷ Ramirez, Mark D. "Procedural Perceptions and Support for the U.S. Supreme Court." *Political Psychology* 29.5 (2008): 675-98. Print.

⁴⁸Page, Benjamin I., Robert Y. Shapiro, and Glenn R. Dempsey. "What Moves Public Opinion?" *The American Political Science Review* 81.1 (1987): 23-44. Print.

tends to follow the messages of them. In regards to how the media portrays the Court, having experts like the Justices and law professors (those that are not part of interest groups), which shows the media as procedurally portraying the Court, should positively influence opinion of the Court and garner support.

Interest groups, however, “tend to have a negative effect on public opinion.”⁴⁹

The use of interest groups helped articles become categorized as political in nature, so the corresponding drop in public approval agrees with Page et al.’s research. According to the research, the impact of political figures depends on the favorability of the figure. The impact is small, but if they are favored, they had a positive impact on opinion.

Over the years, the type of reporting on the Court has changed considerably. The Supreme Court is reported on in an unusual fashion compared to other government institutions. Much reporting is done by reporters unskilled in law, and those reporters are required to digest “voluminous” information each day rulings are announced.⁵⁰ The *New York Times* seems to escape this situation. Many of their articles are written by a single reporter. Linda Greenhouse and Adam Liptak, the *Times*’ main court reporters, both have law degrees and were responsible for much of the press surrounding the cases this thesis analyzed. However, they were not the only ones, and, over the course of the study, changes can be seen in the style of reporting.

As scholars have shown, over time the news media increasingly focused on the politics of the issues. The articles started showing more of the partisan alliances of the

⁴⁹ Page, Benjamin I., Robert Y. Shapiro, and Glenn R. Dempsey. "What Moves Public Opinion?" *The American Political Science Review* 81.1 (1987): 37. Print.

⁵⁰ Graber, Doris A. *Mass Media and American Politics*. Washington, D.C.: Congressional Quarterly, 1980. Print.

Justices and how political groups interacted with the Court. Thomas Patterson, although not writing directly about court reporting, showed how a major shift has occurred for the media. They have decreased the amount of press released on the actual happenings of American politics and started focusing on the strategizing behind them. He explained: “Reporters in the 1960’s began to chafe at the restrictive rules of objective journalism [...]” There emerged a “new aggressive style of reporting.” Although he explained that this new style was more prominent in television, and newspapers remained somewhat a “string of related facts,” they still followed the changes. Media began to “display the attributes of fiction, of drama.” It began to have “structure and conflict, problem and denouement, rising action and falling action [...]”⁵¹ This change be clearly seen in these articles. For example, the earlier summaries of Court events are collections of related facts, while article 28 is a perfect example of the later story-telling. This change corresponds to the drop in public opinion toward the Supreme Court.

Scope and Limitations of Study

The scope of this study is clearly small. The study used a small selection of media on a small selection of cases. Although the selection of media was meant to be representative of mainstream media at large, using only *New York Times* articles that appeared in print could introduce error or bias into the study. Despite using the so-called newspaper of record, this study missed much more media that was published in print or online, and it completely omitted news delivered through television. The media used excluded any of the intentional partisan news slants displayed by many news blogs and by organizations such as MSNBC or Fox News. Although the *Times* does have a slight

⁵¹ Patterson, Thomas E. *Out of Order*. New York: A. Knopf, 1993. Print

liberal bias,⁵² much of the liberal bias is contained in the editorials, at which this study does not look. The *Times* editorial page was admittedly biased in favor of same-sex marriage.⁵³ Again, however, the articles cited for this bias did not contain those articles related to the Court cases this study focused on.

Another limitation arises from the type and number of cases chosen. The Supreme Court has issued hundreds of rulings each year, so a sample of four cases is incredibly small compared with the total number of decisions.⁵⁴ The type of cases chosen also only presents a small piece of the variety of cases the Court hears. Public opinion of the Court could react differently to media based on the type of cases heard. Indeed, Caldeira and Gibson show that opinions on abortion correlate more strongly with support of the Court than capital punishment, gun control, and even pornography, among issues the Court deals with.⁵⁵ That correlation would mean that the media's relationship with the public's opinion should influence the approval and support of the Court more so than with other issues. Still though, this study over a small selection of a single type of case issue, and larger, overall approval of the Court is influenced by many other cases.

The changes seen in media from the more fact-based blurbs of information to the politically focused story telling on these cases could reflect other, greater political trends like the growing public political activism surrounding social issues. Political protest especially has been on the rise, and protest, being such a public event, often makes the

⁵² Groseclose, Tim, and Jeff Milyo. "A Measure of Media Bias." (December 2004). Web.

⁵³ Okrent, Daniel. "Is The New York Times a Liberal Newspaper?" The New York Times. The New York Times, 24 July 2004. Web

⁵⁴ "About the Supreme Court." United States Courts. Administrative Office of the U.S. Court. Web. 16 Apr. 2014

⁵⁵ Caldeira, Gregory A., and James L. Gibson. "The Etiology of Public Support for the Supreme Court." *American Journal of Political Science* 36.3 (1992): 645. Print.

news.⁵⁶ Additionally, the increasing polarization of American voters has helped stimulate political engagement.⁵⁷ These factors could be influencing the relationship between public views of the Supreme Court and media coverage of cases.

This study only covers how public opinion of the Court is related to media portrayal. It does not cover any of the other multitude of factors that relate to or cause changes in public opinion. This study only attempts to glean some insight into the relationship between media portrayal and Supreme Court favorability.

Significance for the Court

Public opinion is very important for the Court. Although few people would be willing to eliminate the Court,⁵⁸ congressional and executive support rest on the public's support of the Court:

“[...] the idea of important linkages between the public's evaluation of the Court and its institutional capacity has also been an explicit statement of the Supreme Court's “self-concept,” since the nineteenth century. In *United States v. Lee* (1882), Justice Miller writes, the Supreme Court's “power and influence rest solely upon the public sense of ... confidence reposed in the soundness of [its] decisions and the purity of [its] motives.” Likewise, Justice Frankfurter emphasizes, “ the Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction’ (*Baker v Carr* 1962; see also Justice O'Connor writing in *Planned Parenthood v. Casey* 1992).”⁵⁹

⁵⁶ Norris, Pippa. “Democratic Phoenix.” Cambridge: John F. Kennedy School of Government, 2002. Web.

⁵⁷ Abramowitz, Alan I., and Kyle L. Saunders. “Is polarization a myth?.” *The Journal of Politics* 70.02 (2008): 542-555.

⁵⁸ Caldeira, Gregory A., and James L. Gibson. “The Etiology of Public Support for the Supreme Court.” *American Journal of Political Science* 36.3 (1992): 640. Print.

⁵⁹ “An Appeal to the People”: Public Opinion and Congressional Support for the Supreme Court
Joseph Daniel Ura and Patrick C. Wohlfarth

The Journal of Politics, Vol. 72, No. 4 (OCTOBER 2010), pp. 939-956

Published by: Cambridge University Press on behalf of the Southern Political Science Association

Whether public approval is directly or indirectly (through the executive or legislative branches) responsible for the Court's power, the Court must maintain its legitimacy and power by maintaining its favorability with the public.

If the Court wishes to appear above politics, findings from this thesis suggest it could consider a couple of steps. First, the Court could attempt avoid hearing and deciding upon issues that the public perceives as solely political. Hearing cases on issues that are highly political increases the political portrayal of the Court. Having media report on the liberal or the conservative sides of the Court leads to a higher politicization of the Court and a related drop in public approval. Second, the Court should maximize its publicity on the procedural process through which decisions are made. Such publicity would help change the type of media portrayal into one that garners higher support from the public. In total, the Court should attempt to portray itself as existing above politics, which is already part of the reason the Court has such strong support.⁶⁰

The feasibility of these suggestions is questionable. The Court cannot control how the media portrays it or what the media focuses on in the opinions, but it can avoid some politicizing comments it makes during oral arguments and during the readings of the opinions. The Court, though it does decide which cases to hear, to stay an effective institution, must hear cases that may be political in nature. When it does, though, it should try to emphasize the constitutional law behind the case in language clear enough that people and the media can understand the legality of the issue. In addition, it could avoid politicizing language in the opinions. For example, the Court should avoid

⁶⁰ Baird, Vanessa A., and Amy Gangl. "Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedures on the Perceptions of Fairness." *Political Psychology* 27.4 (2006). Print.

comments like Scalia's "It's too late for that now, isn't it?" in article 34. Though limited in its ability to influence the media, the Court could take small steps to help limit political portrayal.

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