

Bush v. Gore in the American Mind: Reflections and Survey Results on the Tenth
Anniversary of the Decision Ending the 2000 Election Controversy

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Very few, if any, Supreme Court cases have captured public attention on a scale comparable to that of *Bush v. Gore*. The Supreme Court's involvement was the last scene in a political and courtroom drama that played out for over a month on television. Even if the legal claims, let alone the holding, in the case were difficult for the public to understand, the import and consequences of the case were not: George W. Bush would be the next President. As a rare, high salience case with understandable political consequences and clear winners and losers, *Bush v. Gore* provided a unique test of the Court's legitimacy in the public mind.

Scholars who studied the aftermath of *Bush v. Gore* found conflicting evidence of the short-term effect on public attitudes toward the Court (*see, e.g.*, Gibson, Caldiera and Spence 2003a, 2003b, 2005, 2007, 2009; Kritzer 2001; Nicholson and Howard 2003; Mate and Wright 2008). A flurry of articles were published between 2001-2003 debating whether the Court's legitimacy was indeed "wounded" by its actions in *Bush v. Gore* (Gibson, Caldiera and Spence 2003a, 2003b). To some extent the conflict arose from different measures employed to assess public attitudes toward the Court. Some researchers found both racial and partisan polarization toward the Court as an institution in the two months following the decision (Kritzer 2001; Mate and Wright 2008), while others found little or no effect (Gibson, Caldiera and Spence 2003a, 2003b, 2005, 2007, 2009). All seemed to agree, however, that *Bush v. Gore* led to no long-term effects on public opinion about the Court. Within a year, if not much earlier, the Court appeared to recover to its pre-*Bush v. Gore* levels in public opinion and the structure of support did not reveal new levels of racial or partisan polarization.

In the decade since the Court's decision, no survey has been conducted that asks about *Bush v. Gore* or tries to link attitudes toward the decision to opinion of the Court. This paper discusses the first survey taken on this subject in the last ten years since the initial fallout from the decision. Part I describes the earlier literature on attitudes toward the Court and attitudes toward the decision ending the 2000 recount. Part II then looks at results from our recent survey that asked respondents whether they thought the Court's decision was fair or unfair. Although a sizable share (20 percent) of the population says they do not remember, we find that the public remains polarized along partisan and racial lines in its attitudes toward the decision and that approval of the Bush presidency remains a powerful predictor of attitudes toward the decision. Part III examines the effect of perceived fairness of the decision in *Bush v. Gore* on a respondent's approval and confidence in the Supreme Court. Although approval or confidence in other institutions, such as Congress and the President, greatly determines attitudes toward the Court, attitudes concerning the decision in *Bush v. Gore* remain a statistically significant variable in predicting Court approval and confidence.

Introduction

Ten years have passed since terms "butterfly ballots" and "hanging chads" entered into the American lexicon following the closely-contested 2000 election. For six weeks the controversial presidential election recount captured the attention of the nation and the world, with the electoral votes of the battleground state of Florida hanging in the balance as the "prize" needed to capture the presidency. On December 12, 2000, all eyes were on the steps of the Supreme Court as the nation pondered how the Supreme Court

would rule in *Bush v. Gore*. Would the Supreme Court end the recount, as Republicans wanted? Would it uphold the Florida Supreme Court's decision and allow the recount to restart after the Supreme Court lifted its stay from three days earlier? Or would it remand the case back to the Florida Supreme Court to conduct a recount under different rules? The decision ending the recount produced, as expected, a difference of opinion that polarized along partisan lines. Indeed, public debate about the decision even prompted Chief Justice Rehnquist and Justice Thomas to take the unusual step of coming forward to publicly state that the Court was not influenced by partisan and political considerations in their decision in *Bush v. Gore* (Greenhouse 2000; Lewis 2000).

The debate surrounding *Bush v. Gore* brought to the forefront a number of issues that are often relegated to law reviews and legal symposium. For instance, what impact do controversial Supreme Court decisions have on public opinion in the short-term and the long-term? Do controversial decision polarize the public along predictable lines of cleavage and if so, does public opinion about the case continue to polarize the public the same way years later after the media spotlight fades? Further, do such polarizing Supreme Court decisions have any impact on the public's confidence in the legitimacy of the Supreme Court, both in the near term and years later? Is it true that Court decisions that generate negative reactions "endanger [the Court's] lifeblood, institutional legitimacy?" (Gibson 2007; Mondak 1992, 461).

On many of these issues, the scholarly community is divided. While there is generally a consensus that the Supreme Court enjoys high levels of mass approval (Marshall 1989; Mondak and Smithey 1997) and that its "political capital" can help it generate both support and compliance with its decisions (Choper 1980; Mondak 1992; Mondak and Smithey 1997), scholars are more divided as to how and when the Supreme Court can actually move public opinion. Because there are so few Court decisions that are really salient to the American public, work on public reaction to Court decisions has been limited. Some scholars argue that Supreme Court can actually shape public opinion so that it will fall in line with the Court's pronouncements (Clawson, Kegler and Waltenburg 2001, 2003; Clawson and Waltenburg 2003; Grosskopf and Mondak 1998; Hoekstra 2003; Hoekstra and Segal 1996).¹ Under the so-called "legitimation hypothesis," or "positive response hypothesis," the Supreme Court acts as a policy elite and leads opinion in a certain way; in other words, because the public holds the Court in such high esteem relative to other institutions, public opinion shifts in line with the Court's pronouncements (Stoutenborough, Haider-Markel and Allen 2006; Franklin and Kosaki 1989). This effect can, of course, vary among the public. Some scholars contend that the effect of a single Supreme Court decision is contingent on the type of people that are exposed to the decision such as whether the decision had a direct impact on the person's daily life, the degree to which the decision reinforces pre-existing views and the degree to which the person already had diffuse support for the Court (Hoekstra 1995, 2000; Hoekstra and Segal 1996; Stoutenborough, Haider-Markel and Allen 2006; Clawson, Kegler and Waltenburg 2001, 2003). For instance, Stoutenborough, Haider-Markel and Allen (2006) found that the Court's opinions on certain gay rights issues affected aggregate and individual public opinion on the issue conditional on media coverage, case specific elements and the political context.

¹ Some scholars argue that the opposite is true, that is, Supreme Court justices in their decisions are highly responsive to the public mood (see, e.g., McGuire and Stimson 2004).

Individual Court cases can also crystallize latent attitudes toward a controversial issue. Rather than the Court always acting as a leader of public opinion, Franklin and Kosaki (1989) contend that Court decisions work to crystallize public opinion, thereby leading to polarization of the electorate as different groups that people identify with take sides on the issues. They refer to this as the structural response hypothesis. Most salient Court decisions end up polarizing the electorate either because the decision forces people to elaborate their own attitudes or because the discourse surrounding the case make certain considerations more accessible in people's minds (Brickman and Peterson 2006; Franklin and Kosaki 1989; Johnson and Martin 1998; Zaller 1992). In their study of *Roe v. Wade*, Franklin and Kosaki (1989) found that American Catholics were less inclined to agree with *Roe* because of their preexisting religious beliefs. Similarly, Stoutenborough, Haider-Markel and Allen (2006) found that there were real differences with Catholics, whites and the wealthy less likely to support gay right decisions. Indeed, it is of no surprise that there is a strong group-centric dynamic to opinion on Court decisions and that the more firmly rooted the group attachment the less likely one's decision will be affected by other forces (Clawson, Kegler and Waltenburg 2003, 306).

Research concerning the long-reaching effects of Court decisions is even more limited. Some scholars, studying the train of Court decisions on a particular topic like abortion or the death penalty, argue that the Court's initial decision on the controversial polarizes the electorate while subsequent decisions do not (Johnson and Martin 1998). Others, like Brickman and Peterson (2006), challenge this view (commonly called the "Conditional Response Model"), arguing instead the state of public opinion on the issue determines how the public will react to Court actions over the long term. Under their theory, which they claim is more consistent with the "Receive-Accept-Sample" model popular in political science (Zaller 1992), there is remarkable consistency within groups (such as parties or religions) in a "two-sided" information environment, where individuals rely on elite cues to influence their opinion (Brickman and Peterson 2006, 88). However, if there is little public debate about an issue, in a so-called "zero-sided information environment," voters cannot rely on elite cues and thus attitudes are less consistent intra-group.

While scholars generally agree that controversial decisions like *Roe* and *Bush v. Gore* may polarize the public in their immediate aftermath - at least with respect to the merits of the decision - there really has not been a whole lot of research to determine whether existing lines of cleavage at the time of the decision on the actual merits of the decision persist into the future. In this article, we trace the timeline of opinion on the fairness of *Bush v. Gore* from its inception to the current time to assess the cleavages by which opinion divided when the decision was initially issued and whether those cleavages persist into the future when asking today's public their opinion on the fairness of *Bush v. Gore*.

The scholarly community also debates issues concerning the effect that a controversial Court decision has on the public's approval and/or confidence in the Supreme Court in the near and long term. On the one hand, some scholars claim that controversial Supreme Court decisions have little impact on perceptions of the Court because support for the Court is largely a product of the public commitment to a core set of democratic values - such as commitment to social order and support for democratic norms like liberty - acquired through childhood socialization into the democratic process

that remains stable over time (Murphy and Tanenhaus 1968; Easton 1965, 1967; Caldiera 1986; Caldiera and Gibson 1992).

Under this line of reasoning, advanced by Gibson, Caldeira and Spence (2003a, 2003b), among others, this long-standing loyalty to the democratic norms and to the Court's place in that system is so strong that short-term displeasures with specific decisions fail to affect the longstanding socialization in democratic norms that underlie the primarily positive view that Americans have of the Supreme Court. The Court's legitimacy thus functions as a "reservoir of goodwill" that is rarely swayed by a particular Court decision. Borrowing from the work of David Easton (1965, 1975), Gibson et al. distinguish between "specific support" and "diffuse support." "Specific support," they claim, is "approval of policy outputs in the short term," while "diffuse support" denotes "fundamental loyalty to an institution over the long term" and support that is "not contingent upon satisfaction with the immediate outputs of the institution" (Gibson 2007; Gibson, Caldiera and Spence 2003, 537; Easton 1965). In other words, specific support is directed to measuring attitudes toward the justices themselves while diffuse support measures support for the Court more generally distinct from its membership. It is this latter concept that allows an institution to retain its legitimacy even when there is discord between the institution and the public (Easton 1965, 269-270). While Caldiera (1986) found that judicial action affected public attitudes toward the justices (specific support), Caldiera and Gibson (1992) concluded that the same behavior of the Court had no impact on the Court's diffuse support.

Along this line of reasoning, scholars advancing this view contend that factors like partisanship, ideology and even policy preference have virtually no impact in determining diffuse support for the Court among the mass public, though policy preference may have an impact on support for the Court among white elites causing diffuse support to behave more like specific support (Caldiera and Gibson 1992, 643, 645, 651, 656-657). Instead, these scholars argue, those who have a high degree of "loyalty" to the Court rely much more on "judiciousness" rather than ideology, party or policy in forming their opinions on Court action (Gibson and Caldiera 2009). Advocates of this view contend that commonly used measures of court legitimacy, such as the "confidence" measures used in the General Social Survey as well as the "confidence" measures used in other studies, either improperly assess "specific support" rather than "diffuse support" or confound the two concepts together (Gibson, Caldiera and Spence 2003a, 2003b; Caldiera and Gibson 1992, 637). To their mind, controversial Supreme Court decisions – like *Bush v. Gore* – do not alter public attitudes toward the Court's legitimacy. These scholars do not totally discount that changes in diffuse support could occur; rather, they ascribe any dissonance to "wholesale shifts in style" of the Court rather than "short-term disagreements with the Court's policy" (Caldiera and Gibson 1992, 659). This may occur, they suggest, if the Court "makes no bones about its pursuit of policy objectives," by, for instance, failing to justify its decisions on the basis of legal principles (6 Caldiera and Gibson 1992, 59).

Yet, other scholars feel that Supreme Court decisions, particularly polarizing ones, can have immediate and lasting effects on public perceptions of the Court and that the Court can suffer backlash as a result of issuing a controversial decision. Grosskopf and Mondak (1998) examined two polarizing decisions on abortion and flag burning, *Webster v. Reproductive Health Services* (1989) and *Texas v. Johnson* (1989),

respectively. They found that opinion on those two cases affected respondent's confidence in the Court (Grosskopf and Mondak 1998, 645-646).² They also discovered that there was a negativity bias, whereby disagreement with one or both of these decisions reduced confidence in the Court substantially but agreement brought about only marginal gains in confidence, thereby underscoring that criticism by a small but vocal minority "can trigger a measurable decline in confidence" (Grosskopf and Mondak 1998, 648, 652). Under their theory, unpopular decisions can erode political capital and thus diffuse support for an institution like the Court. Supporting this line of work, Mondak and Smithey (1997, 1124) also advanced a "value-based regeneration" theory to explain the linkage between public opinion on individual cases and institutional support. Using a dynamic model, they concluded that the Supreme Court actually regenerates support over time through its decisions because any support lost due to displeasure with a decision is recovered "due to public perception of a link between the Supreme Court and democratic values" (Mondak and Smithey 1997, 1124, 1139).

Caldiera and Gibon's (1986) earlier work also lends support to the claim that Court action affects trends in confidence. In their 1986 article measuring changes in Court confidence over time, they found that political events and judicial actions (specifically judicial support for accused criminals and Court invalidation of federal laws) brought about movement in Supreme Court confidence in the period 1966-1984. Other scholars are also of this view. In her analysis of local reactions to Supreme Court decisions, Hoekstra (1995, 109-129) found that satisfaction with Court decisions affected the respondent's subsequent evaluation of the Court.

Scholars have also explored the importance of group-centric forces in affecting support for the Court. For instance, scholars have concluded that the impact of a specific decision on one's attitude toward the Court and its decisions may vary well vary on the basis of race (Gibson and Caldeira 1992; Jaros and Roper 1980; Murphy and Tanenhaus 1968; Hirsch and Donohew 1964), partisanship/ideology (Dolbeare and Hammon 1968; Adamany and Grossman 1983; Murphy, Tanenhaus and Kastner 1973; Casey 1976); issue positions (Murphy and Tanenhaus 1968b); political activism (Adamany and Grossman 1983; Tanenhaus and Murphy 1981); political sophistication and attentiveness (Caldiera and Gibson 1992); membership as an elite (Beiser 1972; Caldiera 1977; Murphy and Tanenhaus 1970); religion (Franklin and Kosaki 1989); education (Handelberg and Maddox 1982; Casey 1974; Murphy and Tanenhaus 1970); age (Kessel 1966; Murphy and Tanenhaus 1968, 1973); social status (Casey 1974); attitudes toward other governmental institutions (Caldiera and Gibson 1992); or even how the decision was framed in the first place (Nicholson and Howard 2003). These group-centric forces can in fact be so strong so as to override any diffuse support that an individual holds for the Court. For instance, Clawson, Kegler and Waltenburg (2003, 301, 304-305) found that while diffuse support for the Court affected opinion on the death penalty and affirmative action for those with lower levels of race-consciousness, it had little effect in changing opinion for those displaying more intense race-consciousness.

² As they admit, however, the confidence question they use arguably was worded so as to force the respondent to factor in contemporary events (Grosskopf and Mondak 1998, 651).

Public Opinion About the Court's Decision in *Bush v. Gore* and About the Court Itself in 2000

Before we discuss what other scholars have found concerning *Bush v. Gore*'s impact in the immediate wake of the decision and its ensuing effect, we first discuss the results of the 2000 National Annenberg Election Study (NAES) to see for ourselves the status of public opinion on both the fairness of *Bush v. Gore* itself and on the Court's handling of it in the immediate aftermath of the decision. The 2000 NAES is a useful vehicle in which to test such hypotheses, because although it did not conduct a panel study around the Court's decision in *Bush v. Gore*, the survey did have questions on the issues surrounding *Bush v. Gore* both before and after the decision, thus allowing us to compare the two time periods. Specifically, it employed a rolling cross-sectional design that ran from December 1999 through mid-January 2001, including interviews with about 59,000 respondents. There is sufficient variation in both periods to allow us to make comparisons, but because it is not a panel study there could be some differences between the two groups that might not be captured in our analysis. Prior to the decision, the survey interviewed 52,400 whites and 4,853 blacks and after the decision, it interviewed 2,404 whites and 250 blacks.

Responses to many questions on the 2000 NAES show just how polarized the country was in the immediate aftermath of the decision. One question asked respondents if they approved of the decision to "stopping and reviewing [the] Florida recount." About 36% "strongly approved," 17% "somewhat approved," 13% "somewhat disapproved," and 30% "strongly disapproved."³ Another similar question with slightly different wording asked only after the decision queried respondents whether they approved of the Court's action declaring the Florida recount unconstitutional.⁴ Thirty-six percent said "strongly approve," 15% said "somewhat approve," 11% said "somewhat disapprove," and 34% said "strongly disapprove."⁵

After the decision was announced, the survey questioned respondents as to whether they felt the decision was fair or unfair. Fifty-four said that they felt the decision was fair compared to 40% who felt it was unfair, with an additional 5% saying they did not know.⁶ The 14-percent gap between those who felt it was "fair" versus "unfair," however, belies the group-centric forces around which opinion regarding *Bush v. Gore* was polarizing. Below we show cross-tabulations between the responses to this question and age, education, race, party, ideology and Bush feeling. While most age groups saw the decision was fair, less than 47% of older Americans over 60 felt that way. Similarly, while a majority of each educational grouping felt the decision was fair, 49% of the least educated Americans – those without a high school diploma – felt the decision was unfair.

³ NAES, Question CS16, Asked December 11-19, 2000. An additional 3% asked "don't know," and less than 1% did not answer.

⁴ This question was asked immediately after a question concerning whether the respondents "were aware [that the] US Supreme Court declared [the] Florida recount unconstitutional." (CS 19). Specifically, the question asked "Do you strongly approve of the US Supreme Court having done this?" NAES, Question CS20, Asked December 13, 2000-January 19, 2001.

⁵ In addition, 3% answer don't know and 1% did not answer.

⁶ Less than 1% did not answer. NAES CS24, Asked December 13, 2000-January 19, 2001.

Predictably, the survey indicates that the most group-centric polarization concerning *Bush v. Gore* occurred on the basis of race, party and ideology. While a majority of whites and Asians felt the decision was fair, only 19% of blacks felt that way, with 76% of blacks saying that the decision was unfair when questioned by ANES in the month or so after the decision. Democrats and liberals, alike, also said that the decision was unfair, with less than a third of each of those groups expressing support for the Court's decision. By contrast, we see 84% of Republicans and about 70% of conservatives saying that the decision was fair. Feelings about President Bush also mattered. Respondents were asked to rank their feelings toward Bush on a scale of 1 to 100. We compiled these responses into quartiles and found that support for the decision increases as we move up the thermometer. While only 17% of the respondents who ranked Bush in the bottom quartile on the scale felt the decision was fair, 86% who ranked Bush in the top quartile had that view.

Age and US Supreme Court Acted Fairly in Declaring the Recount Unconstitutional

	Fairly	Unfairly	Don't Know	No Answer
Age 18-29	55.53	39.42	4.85	.19
Age 30-44	57.40	38.11	3.79	.71
Age 45-59	56.30	38.47	4.69	.54
60+	46.70	44.27	8.68	.35
Totals	54.40	39.83	5.29	.48

Education and US Supreme Court Acted Fairly in Declaring the Recount Unconstitutional

	Fairly	Unfairly	Don't Know	No Answer
Less than H.S.	37.22	49.33	13.45	0
High School	53.90	41.06	4.80	.24
Some College	55.11	38.67	5.52	.69
College or Higher	59.03	36.77	3.54	.66
Totals	54.40	39.83	5.29	.48

Race and US Supreme Court Acted Fairly in Declaring the Recount Unconstitutional

	Fairly	Unfairly	Don't Know	No Answer
White	59.49	35.00	5.10	.41
Black	18.40	76.00	4.80	.80
Asian	50.00	45.83	4.17	0
Verbatim	40.88	50.94	7.55	.63
Totals	54.40	39.83	5.29	.48

Party and US Supreme Court Acted Fairly in Declaring the Recount Unconstitutional

	Fairly	Unfairly	Don't Know	No Answer
Republican	84.55	11.52	3.53	.39
Democrat	27.04	66.89	5.63	.44
Independent	57.30	37.16	5.25	.28
Verbatim	54.62	37.35	6.43	1.61
Totals	54.40	39.83	5.29	.48

Ideology and US Supreme Court Acted Fairly in Declaring the Recount Unconstitutional

	Fairly	Unfairly	Don't Know	No Answer
Very Conservative	71.35	26.32	1.75	.58
Conservative	71.86	23.29	4.23	.62
Moderate	53.60	40.66	5.25	.49
Liberal	31.65	63.51	4.44	.40
Very Liberal	27.78	64.81	7.41	0
Don't know	36.78	41.38	21.84	0
Total	54.40	39.83	5.29	.48

Bush Favorability Scale and US Supreme Court Acted Fairly in Declaring the Recount Unconstitutional

	Fairly	Unfairly	Don't Know	No Answer
Score 0-25	16.64	78.35	4.83	.18
Score 26-50	35.09	58.53	6.06	.32
Score 51-75	68.39	25.88	4.81	.92
Score 76-100	86.30	9.59	3.65	.46
Totals	54.40	39.83	5.29	.48

Still other questions on the survey queried respondents on whether they felt the decision was political in nature. One question asked respondents whether they felt that the Supreme Court justices were influenced by their own political views in deciding *Bush v. Gore*. The answer is surprising – opinion was split with 47% answering yes and 47% answering no.⁷ Yet, if one breaks the number down by how they actually *felt* about the decision's outcome, we see a great deal of polarization. Of those who felt the decision was fair, 67% said that they did not think that the justices were influenced by their political views. By contrast, 76% of those who viewed the decision as unfair thought that political concerns motivated the justice's reasoning. The results of the 2000 NAES also echo the results of other polls taken during the same time that show the nation deeply

⁷ Another 6% answered that they did not know. CS23, Asked December 11-December 19, 2000.

divided over *Bush v. Gore*. One survey discovered that over 86% of those disagreeing with *Bush v. Gore* thought that the decision was based on personal preferences while 80% of those who agreed with the decision felt it was based on legal principles. (Gibson, Caldera and Spence 2001, Table 3, 10).

Yet, despite being polarized on many matters surrounding *Bush v. Gore*, the 2000 NAES also indicated that there were some matters to which public opinion heavily favored one side of the other. Consistent with Caldera, Gibson and Spence's (2003a, 2003b) argument that the public has positive opinions on the Court's legitimacy, the 2000 NAES shows that the public felt the obligation to obey whatever decision the Court made. Before the decision was announced, eighty-eight percent said that they would accept the word of the Supreme Court as the "final word" on the Florida recount; after the decision, 73% expressed this view.⁸ The public also believed that even partisans would obey the Supreme Court's decision. When asked whether they thought partisans would accept the Court's decision as the final word, nearly 65% said they would.⁹

Unlike the later 2004 NAES, the 2000 NAES also asked questions that arguably can be said to measure both "specific" and "diffuse" support. With respect to "specific" support, the 2000 NAES asked "How much confidence do you have in the US Supreme Court to deal fairly with the situation surrounding the results of the election for president? A great deal, a fair amount, not too much or none at all?"¹⁰ Before the decision, 36% said they had a "great deal" of confidence, 47% said "fair amount," 10% said "not too much," 5% said "none," 2% said they did not know and less than 1% did not respond. After the decision, 32% said a "great deal," 35% said a "fair amount," 18% said "not too much," 13% said "none," 2% said they did not know and less than 1% did not answer. These numbers belie, however, what was going on under the surface if one looks at group-level differences.

Comparing cross-tabulations before and after the decision, we see noticeable shifts in opinion along the lines of age, education, party, ideology, race and Bush approval, among other variables, indicating at least in the immediate short-term, *Bush v. Gore* had some effect on the way in which specific groups viewed the fairness of the decision. As shown below in the Tables below, we include two numbers in each column. The first number is the cross tabulation for opinion for surveys done prior to December 13; the second number consists of opinion for surveys conducted December 13 or later. As one can clearly see in the tables, the difference between the two periods is striking. With respect to age, we see a noticeable change in the opinion of older people, over 60. Whereas 38% of them expressed a great deal of confidence in the Supreme Court's ability to deal fairly with the election outcome prior to the decision, only 29% felt that

⁸ The question wording was a bit different for both of these questions. Question CS17, asked on December 11-12, gave respondents more choices, as it allowed respondents to answer "very likely," "somewhat likely," "not too likely," and "not likely," whereas Question CS21, asked December 13-19, asked respondents to answer "yes," or "no." to whether they would accept the Supreme Court decision on the recount as the final word. Further, for CS17, 2% said they did not know and 2% did not answer. For CS21, 3% did not know and less than 1% did not answer.

⁹ CS18, Asked December 11-12, 2000.

¹⁰ The question, Question CS22, was phrased this way from November 29-December. After the decision was announced (thus from December 13 to January 19), the first part of the question was reworded "How much confidence do you have that the US Supreme Court dealt fairly..."

way after. Further, among all age groups, we see noticeable declines in the number of respondents who express “no” confidence in the Supreme Court, with about 10% more respondents in each age indicating that they lacked confidence in the Court after *Bush v. Gore*. The cross tabulations on education similarly show declines in confidence among all levels of education, with larger declines among the least and most educated.

The survey shows remarkable changes among races. Blacks in particular exhibited a noticeable decline in confidence in the Court to decide *Bush v. Gore* fairly. Before the decision, 29% of blacks had a “great deal” of confidence and after the decision only 6% had that same opinion. Further, the percentage of blacks expressing “no” confidence in the Court went from 10% before the decision to a remarkable 35% after the decision. Other minority groups, such as Asians, expressed similar declines in confidence. Indeed, there was even some decline in confidence among whites, though to a small extent. The most movement among whites occurred from those moving from a “fair amount” of confidence to “not too much” or “no” confidence.”

There were also predictable changes in confidence on the basis of party and ideology (see also Brady 2000, 70). Republicans and conservatives actually showed an *increase* in confidence following the Court’s decision. Republicans went from 39% who felt a “great deal” of confidence in the Court before the decision to 53% after the decision. Among those labeling themselves “very conservative” and “conservative,” the numbers went from 41% to 49%, and 35% to 43%, respectively. Similar *declines* in confidence occurred among Democrats and liberals. Thirty-eight percent of those labeling themselves “liberal” surprisingly exhibited a “great deal” of confidence in the Court prior to its decision; after the decision, this number declined over 20 points to 17%. We even see changes among those labeling themselves “moderates,” with decreases in the number of moderates expressing a “great deal” of confidence and increases in the numbers saying that they do not have much confidence in the Court at all. Similarly, independents also showed declines in confidence after the decision; before the decision, 45% said that they had a “fair amount” of confidence in the Court’s ability to deal fairly with the election, but this number declined to 38% after the decision (see also Brady 2000, 70).

We also looked at cross-tabulations on the basis of Bush favorability and not surprisingly, found similar results. Those thinking very highly of Bush so as to label him with a score between 75 to 100 on a feeling thermometer had more confidence in the Court following its decisions, with the expressing a “great deal” of confidence going from 38% to 58%. Among those thinking the lowest of him (labeling him with a score of 0 to 25 on the feeling thermometer), 12% had no confidence in the Court’s handling of the case before the decision compared to 37% after the decision. Even those expressing moderate support for Bush (labeling him with a score between 51 and 74 on the feeling thermometer) had less support for the Court after the decision. Of that group, 40% had a “great deal” of confidence in the Court’s handling of the decision before December 13, whereas after the decision, only 34% did.

Age and Confidence in SC to Deal Fairly with the election outcome
 Prior to December 13 is on top; December 13 or after is on bottom

	Great Deal	Fair Amount	Not Too Much	None	Don’t Know

Age 18-29	29.43 30.10	52.48 38.06	13.12 17.48	4.26 13.01	.71 1.36
Age 30-44	36.55 32.43	49.45 34.56	8.36 20.47	5.09 10.65	.36 1.66
Age 45-59	36.44 35.12	44.69 32.84	11.71 15.68	5.64 14.61	1.30 1.61
60+	38.02 29.34	42.81 35.94	8.63 16.32	4.79 14.76	4.79 3.30
Totals (both periods)	33.36	39.61	14.87	10.06	1.83

Education and Confidence in SC to Deal Fairly with the election outcome

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
Less than H.S.	31.58 24.22	45.39 30.04	10.53 24.22	6.58 13.90	5.92 7.62
High School	30.27 28.21	51.74 39.26	11.66 16.57	4.50 13.69	1.23 1.92
Some College	35.07 32.73	46.02 36.19	11.94 16.99	5.72 12.85	1.00 .96
College or Higher	42.10 36.99	44.76 31.89	7.46 17.50	4.62 12.51	.89 1.11
Totals (both periods)	33.36	39.61	14.87	10.06	1.83

Race and Confidence in SC to Deal Fairly with the election outcome

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
White	36.83 35.37	47.77 36.41	8.93 16.02	4.69 10.38	1.56 1.55
Black	29.06 6.40	41.03 25.60	18.80 30.40	10.26 34.80	0 2.80
Asian	35.14 29.17	54.05 39.58	5.41 27.08	2.70 2.08	2.70 2.08
Verbatim ¹¹	29.90 24.53	44.33 32.70	18.56 19.50	4.12 18.87	2.06 4.40
Totals (both periods)	33.36	39.61	14.87	10.06	1.83

Party and Confidence in SC to Deal Fairly with the election outcome

¹¹ The verbatim category appears to be one in which respondents verbally told the questioner what race they were.

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
Republican	39.41 53.40	49.48 37.04	7.13 5.50	2.73 2.49	1.26 1.18
Independent	35.05 32.06	44.85 38.30	11.27 18.16	6.37 9.93	1.96 1.56
Democrat	35.66 13.91	48.30 31.34	10.00 28.26	4.91 24.06	.94 2.43
Verbatim	31.29 35.74	46.94 30.52	14.29 16.87	6.12 14.86	1.36 1.20
Totals	33.36	39.61	14.87	10.06	1.83

Ideology and Confidence in SC to Deal Fairly with the election outcome

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
Very Conservative	41.24 48.54	41.24 30.99	10.31 9.94	3.09 7.60	4.12 1.75
Conservative	35.25 43.21	51.92 37.11	8.62 11.83	3.45 6.35	.77 1.37
Moderate	33.39 30.74	47.91 37.45	10.85 18.48	5.84 11.77	1.67 1.26
Liberal	37.46 16.94	47.08 30.85	8.93 26.61	4.81 23.59	1.37 2.02
Very Liberal	46.03 16.97	26.98 23.15	17.46 27.78	9.52 28.70	0 3.70
Don't know	23.68 19.54	31.58 34.48	18.42 14.94	15.79 19.54	7.89 11.49
Total	33.36	39.61	14.87	10.06	1.83

Bush Favorability Scale and Confidence in SC to Deal Fairly with the election outcome

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
Score 0-25	27.01 8.41	44.39 25.04	15.24 27.91	11.50 36.67	1.60 1.79
Score 26-50	36.96 17.07	46.62 35.89	10.63 29.67	4.11 15.15	1.21 2.07
Score 51-75	40.33 34.20	49.84 47.13	6.89 12.57	1.97 4.81	.98 1.29
Score 76-100	37.71 57.99	49.58 34.36	8.69 5.02	2.75 1.14	1.27 1.03
Totals	33.36	39.61	14.87	10.06	1.83

The Annenberg survey also asked a question that arguably addresses diffuse support for the Court.¹² The question was: “Please tell me how much confidence you have in the Judicial Branch of government – this includes the US Supreme Court. Do you have a great deal, a fair amount, not much at all or none at all?” Before the decision, 23% said they had a “great deal” of confidence, 50% said a “fair amount,” 19% said “not too much,” 5% said “none,” 2% said they don’t remember and less than 1% did not respond. After the decision, twenty-one percent of respondents said they had a “great deal” of confidence, 50% said a “fair amount,” 21% said “not too much,” 6% said “none,” 2% said they didn’t know and less than 1% did not respond. Looking at these numbers alone, we do not see much difference between the two periods on this measure of diffuse support.

Although it is not as extensive as the discrepancies we uncovered for the specific support measure, there still were noticeable changes in confidence in the federal judiciary as a whole before and after the decision once we look at the group data. With respect to age, we see some changes moving away from higher levels of support before the decision to lower levels after the decision. This is particularly pronounced among the elderly. Interestingly, those with the lowest levels of education expressed more confidence in the judiciary after the decision than before. More educated respondents had small decreases in confidence. Among the demographic variables that we did cross tabulations on, by far the biggest difference can be seen on the basis of race. As before, we see a noticeable decline in the confidence that blacks have for the federal judiciary, though the decline is not as drastic as for the “specific” support question. Whereas before the decision 19% of blacks had a “great deal” of confidence in the Court, after the decision, only 8% had that same viewpoint. We see similar increases in the numbers of blacks exhibiting less confidence as well.

Contrary to Caldiera and Gibson’s (1992, 643) claim that liberals and conservatives, and Democrats and Republicans, exhibit equal levels of diffuse support, we find instead that diffuse support for the Court – at least in the way it is measured by the ANES question – does in fact vary on the basis of party and ideology. As with the specific support question, Republicans and conservative ideologues increased their support of the federal judiciary after the decision, though the increase in the “great deal” of confidence category among conservatives occurred only among those labeling themselves “conservative” and not “very conservative.” Likewise, Democrats and liberals had less confidence in the federal judiciary, though as with the others, the numbers are not as drastic as with the specific support question. Interestingly, we see the same or perhaps even a bigger loss in confidence among independents than Democrats. Twenty-five percent of Independents expressed a “great deal” of confidence in the federal judiciary before the decision; this number declines to 17% after the decision. There are also increases in confidence among strong Bush supporters and declines in confidence among Bush’s opponents.

¹² Similarly, Brady (2000, 70) looked at data from the 2000 National Election Study which asked respondents to rank the Supreme Court on a “feeling thermometer” from 1 to 1000. During the first twelve days in December before the opinion was announced, he found that the respondent’s feeling on the Court “dropped sharply by about five points,” with a noticeable 7.5% decline among Democrats, a 5.7% drop among independents and a 4.3% increase among Republicans.

Age and Confidence in Federal Judiciary

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
Age 18-29	18.79 21.17	56.03 49.71	18.44 20.39	4.96 7.38	1.77 1.36
Age 30-44	24.55 21.18	48.55 51.83	20.73 20.59	4.73 5.44	1.45 .83
Age 45-59	24.51 22.25	48.81 50.27	20.17 19.71	5.64 6.30	.87 1.47
60+	23.32 21.18	51.44 44.62	15.02 23.96	7.35 6.94	2.24 3.13
Totals (both periods)	22.17	49.78	20.28	6.06	1.62

Education and Confidence in Federal Judiciary

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
Less than H.S.	15.79 19.28	44.08 41.70	25.00 24.22	9.87 8.07	5.26 6.73
High School	16.56 18.49	55.01 48.86	21.06 22.57	5.73 8.16	1.23 1.80
Some College	24.88 20.86	48.26 50.83	19.15 20.99	5.97 5.80	1.74 1.52
College or Higher	30.73 25.36	49.38 51.16	15.63 18.60	3.73 4.65	.53 .11
Totals	22.17	49.78	20.28	6.06	1.62

Race and Confidence in Federal Judiciary

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
White	24.03 22.62	51.34 51.16	17.17 19.85	5.26 5.01	1.49 1.27
Black	18.80 8.80	42.74 45.60	29.06 28.80	8.55 15.20	.85 1.60
Asian	21.62 29.17	54.05 47.92	16.22 16.67	2.70 6.25	5.41 0
Verbatim	23.71 22.01	45.36 37.11	22.68 23.90	7.22 11.32	1.03 5.66
Totals	22.17	49.78	20.28	6.06	1.62

Party and Confidence in Federal Judiciary

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
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Republican	24.95 30.37	51.78 51.18	16.14 14.92	4.82 1.96	2.10 1.44
Democrat	23.04 19.72	50.74 52.48	20.59 19.43	5.15 6.67	.49 1.70
Independent	25.09 16.67	50.19 47.79	19.06 27.37	4.91 6.95	.75 1.21
Verbatim	17.69 18.07	46.26 45.38	24.49 20.88	8.16 13.25	3.40 2.41
Totals	22.17	49.78	20.28	6.06	1.62

Ideology and Confidence in Federal Judiciary

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
Very Conservative	27.84 26.90	42.27 46.78	22.68 19.30	4.12 5.26	3.09 1.75
Conservative	21.65 25.40	52.68 49.56	19.92 19.30	4.79 3.86	.96 1.74
Moderate	23.21 20.82	52.92 52.72	17.86 19.16	4.84 6.03	1.17 1.26
Liberal	25.09 17.34	50.17 47.58	17.53 26.01	5.50 8.27	1.72 .81
Very Liberal	33.33 15.74	31.75 42.59	25.40 30.56	7.94 11.11	1.59 0
Don't know	13.16 11.49	31.58 40.23	26.32 19.54	21.05 17.24	7.89 11.49
Total	22.17	49.78	20.28	6.06	1.62

Bush Favorability Scale and Confidence in Federal Judiciary

	Great Deal	Fair Amount	Not Too Much	None	Don't Know
Score 0-25	20.59 9.84	43.32 40.43	23.53 32.20	11.50 15.38	1.07 2.15
Score 26-50	22.22 18.18	54.83 49.60	18.60 25.36	3.14 5.74	1.21 .96
Score 51-75	26.23 20.15	55.74 58.04	14.10 17.93	2.62 3.14	.98 .74
Score 76-100	25.85 32.88	48.94 50.91	19.49 12.21	4.45 2.74	1.27 1.14
Totals	22.17	49.78	20.28	6.06	1.62

The results of the 2000 NAES underscore the impact that the decision had in polarizing groups. Consistent with the logic of Franklin and Kosaki (1989) in their study on the impact of *Roe*, the Supreme Court's opinion in *Bush v. Gore* seemed to crystallize public attitudes on this highly contentious issue, thereby intensifying the inter-group solidarity of certain groups about the issue. This resulted in polarization on the basis of

race, party and ideology, among others. As one scholar put it, such group forces “are the filters that structure and condition the Court’s capacity to throw the cloak of legitimacy on a policy” (Clawson, Kegler and Waltenburg 2001, 580).

Scholars’ Opinion on Specific and Diffuse Support in the Immediate Aftermath of *Bush v. Gore*

Despite the immediate polarization of opinion that we see from the 2000 NAES cross-tabulations discussed above, scholars still are largely split in their assessment of *Bush v. Gore*’s impact in the immediate aftermath of the decision on public opinion on both the Court’s handling of the case and on confidence in the Court more generally. On the one side of the debate, scholars, most prominently, Gibson, Caldiera and Spence (2003a, 2003b, 2007, 2009) argue that *Bush v. Gore* failed to alter public attitudes toward the Court’s legitimacy; rather, to their mind, the inverse was true- the public’s preexisting attitudes toward the Court’s legitimacy and its predilection to see the Court as harboring a “reservoir of goodwill” predisposed them to accept the Court decision as legitimate irrespective of whether they agreed with its merits. Using the concept of “diffuse support” as the appropriate metric in which to assess opinions on the Court’s legitimacy,¹³ in their examination of cross-sectional data from three surveys spanning from 1987 to 2001, Gibson, Caldiera and Spence (2003a, 2003b) concluded that the while opinion toward the Court may have been more polarized, the 2000 election controversy did not in fact threaten “the basic legitimacy of the Court;” rather, they find that the Court “enjoy[ed] at least a moderate degree of loyalty from the American people” (2003, 543; 2003, 359). In a regression with a factor measuring “loyalty to the Supreme Court” as the dependent variable, they found variables that reflected various democratic norms, affect for Bush, awareness of the Court, knowledge of the Court and race to be statistically significant (2003a, 548 (Table 5)).¹⁴ In other regressions employing *Bush v. Gore* as an instrumental variable, they found that any effect *Bush v. Gore* had on the Court’s “enduring loyalty” was “marginal indeed” (Gibson, Caldiera and Spence 2003a, 553). They discovered that between 1987 and 2001, diffuse support for the Court failed to decline among Democrats, and that it in fact increased among Republicans and independents (554). They explain this finding by reference to “positivity frames,” which posit that exposure to courts and “symbolic trappings of judicial power” enhance judicial legitimacy, even among those unhappy with the Court’s decision (Gibson, Caldiera and Spence 2003a, 553; 2003b; Gibson and Caldiera 2009). They further argue that this positivity bias is closely connected to the perception among some people that courts are somehow distinct from other institutions and that decisionmaking in courts is a nonpolitical process – the so-called “myth of legality” (Gibson and Caldiera 2009; Scheb

¹³ Specifically, Gibson, Caldiera and Spence (2003, 540) measure diffuse support through the answers to six separate questions concerning significant structural and functional changes to the Supreme Court as an institution, with higher scores indicating greater support for the Court. In other articles, they measure diffuse support with a similar set of questions (though the exact number of questions often varies) that “concern willingness to support elemental changes in the powers, process, and structures of the high bench” (Caldiera and Gibson 1992, 639).

¹⁴ In two-stage least squares regressions, they also found loyalty to the Supreme Court to reach significance (Gibson, Caldiera and Spence 2003a, 552 (Table 6)).

and Lyons 2000, 2001). Subscription to this “myth of legality” is especially commonplace among those who are most knowledgeable about courts because they are exposed to these “legitimizing judicial symbols” that only reinforce the distinctive status of courts (Gibson and Caldiera 2003a, 2003b, 2009). Gibson et al. contend that the powerful effect of these legitimacy symbols of law may explain how institutional loyalty “inoculates against an unwelcome policy decision,” even among partisans. Gibson et al. also found that while blacks as a whole are less supportive of the Court than whites, blacks nevertheless are still generally loyal to the Court as an institution – notwithstanding Court decisions that they may find unsavory – and *Bush v. Gore* failed to change “basic attachment to the institution” (Gibson, Caldiera and Spence 2003a, 543; 2003b, 359; Caldiera and Gibson 1992, 640).

Opposed to the Gibson, Caldiera and Spence argument are a host of scholars who claim that *Bush v. Gore* had a discernible impact on public perception of the Court at least in the immediate term. By coincidence Howard Kritzer had been collecting individual-level data during the 2000 election controversy that allowed him to measure public opinion both before and after the Court decision. With respect to *Bush v. Gore* itself, he asked two questions, one asking respondents on a four-point scale whether they approved of the decision; and another asking respondents to rate the job that the Supreme Court was doing on a ten point scale (Kritzer 2001, 4). His statistical analysis found that opinion on the decision polarized along predictable partisan divisions, even though the net effect of the decision on public attitude was effectively null (with increases in negative evaluations offset by increases in positive evaluations) (11). He found that before the decision, there was no discernible relationship between partisan identification and public attitude toward the Court, while after the decision was announced, a clear pattern between partisan identification and public attitude became readily apparent, with feelings about *Bush v. Gore* itself being an important variable explaining the difference in the two time periods (7, 12). His survey found that there was a 17.5% decline in public support among Democrats, a 13.1% increase in support among Republicans and an insignificant increase of just 3% in support among independents (7). Kritzer found a similar pattern on the basis of ideology (7, 8). Further, in his multivariate regression, he found knowledge and attention paid to national politics to be the only statistically significant predictors of Court approval in the period prior to the *Bush v. Gore* issuance (10-11). However, after the decision was announced, party, and frequency of discussion of politics reached significance and attention paid to national politics was replaced by interest in national politics (10-11). Yet, while Kritzer found party identification significant, he stressed that the substantive impact of his findings may be less significant than what one would expect (12). Adding *Bush v. Gore* as an independent variable caused it to become significant by replacing party identification as a significant predictor of Court approval (11). While in part the difference between Kritzer and Gibson et al can be explained by the fact that Kritzer’s analysis focused on general evaluations of the Court’s performance and not necessarily “diffuse” support for the institution, his findings still are a useful because they support the notion that least *Bush v. Gore* had *some* impact in affecting public attitudes toward the Court.¹⁵

¹⁵ Kritzer asked the following question: “On a scale of 1 to 10, where 1 means very poor and 10 means excellent, how would you rate the job the Supreme Court is doing?”

Anthony Price and Anca Romantan (2004) also found that confidence in the Court changed remarkably after *Bush v. Gore* with divisions centering on public feelings on the decisions' merits. Like Kritzer, Price and Romantan had the unique ability to survey respondents at different phases of the 2000 election cycle on their confidence in various governmental institutions, including the Supreme Court. They were able to survey respondents in August, early December (around the Court's ruling) and February (940). While they found that there was strong diffuse and specific support for the institutions they studied, they discovered that in particular that *Bush v. Gore* affected public opinion of the Supreme Court and the presidency as institutions (940). With respect to the Supreme Court, confidence rose significantly from August to December, and then declined by February after the last wave of the survey (945). Further, in regression analyses, they found that there was little relationship between ideological leaning and confidence in the Supreme Court in their August survey for both cross-sectional regressions predicting confidence in the institutions as well as individual-level regressions showing individual changes over the survey period. However, by February, both ideology and party identification reached conventional levels of significance in the regressions, underscoring the ideological polarization that was occurring concerning the Court's decision and how it affected confidence in the Court (948, 950).

Writing nearly eight years after the decision, Mate and Wright (2008) more directly attack the Gibson et al's claim that *Bush v. Gore* had little impact on the public evaluation of the Court in the immediate aftermath of the decision. Consistent with the work of Grosskopf and Mondak (1998), they conclude that a highly partisan decision like *Bush v. Gore* does in fact affect both specific and diffuse support for the Court, especially among certain groups of people, particularly – as expected - partisans. Using data from the 2000 National Annenberg Election Survey, they set out to statistically test the impact that various independent variables (such as age, education, gender, religious attendance, Southern residence, race, political interest and knowledge) had on “specific”¹⁶ and “diffuse”¹⁷ support for the Court. With respect to “specific” support, they found that the more a respondent leaned toward the Democratic party or identified as a liberal, the more likely the respondent had less confidence in the Court (343). Similarly, whereas race was not statistically significant for the regression done on responses before the decision was announced, it was statistically significant in the regression for responses rendered *after* the decision. Gender, educational level, Southern residence and institutional confidence also yielded statistically significant coefficients for their analysis of “specific” support.

In their analysis of “diffuse” support – which is more directly comparable to Gibson et al's work - Mate and Wright (2008) similarly found a marked change in public

¹⁶ Mate and Wright measured “specific” support with the following 2000 NAES question: “How much confidence do you have in the US Supreme Court to deal fairly with the situation surrounding the results of the election for president? A great deal, a fair amount, not too much or none at all?” [After the decision was announced, the first part of the question was reworded “How much confidence do you have that the US Supreme Court dealt fairly...?”] (Mate and Wright, 337).

¹⁷ Mate and Wright measured “diffuse” support with the following 2000 NAES question: “Please tell me how much confidence you have in the Judicial Branch of the federal government – this includes the US Supreme Court. Do you have a great deal, a fair amount, not too much, or none at all?”

attitudes before and after the decision although the degree of polarization was less than that present for specific support. They found that “changes in diffuse support... [were] less dramatic than changes in specific support.” Whereas before *Bush v. Gore*, education, institutional confidence, political interest and Southern residence yielded statistically significant coefficients, after the decision, the black race, age, Southern residence and institutional confidence were significant, thus underscoring the impact that *Bush v. Gore* had even on diffuse support, “at least in the short term”¹⁸ (343).

Jeffrey Yates and Andrew Whitford (2002) also concluded that *Bush v. Gore* affected opinion of the Court as an institution at least in the short term. While they found that the general levels of public support remained fairly constant for the Supreme Court during this period,¹⁹ they discovered that these averages masked a surprising shift in public opinion that was going on underneath the surface. A closer look at the data revealed that public opinion about the Court was highly polarized along partisan lines (112). For instance, their data indicated that while Republican support of the Court rose from 60% to 80% in the wake of the decision, Democratic support actually fell from 70% to 42% (116)

Still other scholars offer a more conditional view of the impact that *Bush v. Gore* had in the short term in affecting public perceptions of the Court. Nicholson and Howard (2003, 692) argue that framing a decision like *Bush v. Gore* in terms of partisan politics affected specific support for the Court, but that it did not affect diffuse support. In a poll of Georgia residents taken in 2001, they discovered that citizens’ perceptions of partisan decisionmaking on the Court did not lead to a loss of diffuse support for the Court (686, 692). However, framing the decision in terms of the consequences of the decision, such as framing the decision in terms of the justices’ motivations in ending the election, did in fact reduce diffuse support (693).²⁰ Thus, “[i]f the consequences are grand, as they were in *Bush v. Gore*, the very legitimacy of the Court may be questioned.” (693). Nicholson and Howard’s findings are consistent with that of Baird and Gangl (2006, 598), who found that the public reacts more negatively to politically charged press coverage like that present during *Bush v. Gore* than to a case where coverage rested purely on legalistic principles, thus leading to their conclusion that the presence of legal guidelines drives public perception that a decision is fair.

¹⁸ Mate and Wright also test their impact that the independent variables had on a third independent variable, what they call “residual support.” They created the “residual support” dependent variable by subtracting each respondent’s answer to the specific support question from the answer to the diffuse support question, thus coding the results on a scale from -3 (indicating very high specific support relative to diffuse support) to +3 (indicating very high diffuse support relative to specific support). Whereas before *Bush v. Gore*, only education and institutional confidence reached significance, after the decision, gender, black race, age, education, party identification, ideology and institutional confidence all reached significance, lending support to their other regressions on “specific” and “diffuse” support.

¹⁹ In fact, they found that overall public support for the Court actually rose 3%.

²⁰ Brady (2000) also measured “diffuse support” by reference to a question on the 2000 NAES that asked respondents to “rate the Supreme Court on a feeling thermometer from 0 to 100.” Around the first 12 days of December before the decision was announced, Democrats dropped about 7.5 points in their feelings, independents dropped 5.7 points and Republicans actually increased 4.3 points

What then can be gleaned from these seemingly contradictory viewpoints? To some extent, the conflict between the Gibson, Calderia and Spence camp and the others rests on different measures used to assess public attitudes toward the Court, with each scholar using different survey questions as their dependent variable. Gibson et al. critique some scholars as improperly relying on “confidence” questions which they claim are too dependent on short-term forces (Gibson, Calderia and Spence 2003a, 555; 2003b, 354). Because of the variations in question wording, it is almost impossible to compare the results directly.

Nevertheless, notwithstanding the different measures, there may be ways in which one can reconcile the two strands. Perhaps *Bush v. Gore* represents an “exception” to Gibson et al.’s theory. As Gibson and Calderia (1992) concede, there may be periods of dissonance when feelings on democratic norms and the like do *not* predict diffuse support. This could occur, for instance, during periods of upheaval or when the Supreme Court bases its decision on the “pursuit of policy objectives” rather than legal principles (659). One could argue that perhaps *Bush v. Gore* represented the rare instance in which Democrats, blacks and others, perceiving the decision to be the product of political desires on the part of the justices, abandoned their otherwise long-standing commitment to the Court that would normally manifest itself as diffuse support. Under this line of reasoning, it is not necessarily the case that individual Court cases or opinion on policy matters always impact diffuse support; rather, it just so happens that *Bush v. Gore* represented a period of upheaval for certain groups, causing factors other than adherence to democratic norms to motivate diffuse support for the Court during this time.

The unique and widespread knowledge of *Bush v. Gore* also may help explain differences between the two viewpoints. In their 1992 study, Calderia and Gibson found that unlike the mass public, diffuse support among white opinion leaders was indeed influenced by policy preferences, who ostensibly have more knowledge of Court interworkings and who care more about the outcomes (660). Perhaps in *Bush v. Gore* the mass public acted more like elites than they normally do because the decision had such overwhelming importance to every American.

The two viewpoints could also possibly be reconciled by reference to views on judicial restraint and activism. Calderia and Gibson (1992, 652) note that their findings may differ from other scholars studying in the 1960s and 1970s because the data it tests occurred during a Court era where the Court largely acted with restraint. In an era of judicial activism, common for instance in the 1960s and 1970s, it may well indeed be true that citizens based their judgment of the Court on the basis of agreement or disagreement with policy outputs. As they put it, “the bolder the Court is in confronting the politics of Congress, the less confidence citizens bestow it as an institution” (Calderia and Gibson 1992, 660; Calderia 1986, 1222). Thus, to the extent one views *Bush v. Gore* – or the specific Court era in the early part of this century – as embracing judicial activism, we might expect to find a closer connection between policy preferences and diffuse support than what would otherwise be the case.

Examining *Bush v. Gore* Years Later

Scholarly Work Assessing Lingering Impact After The Initial Fallout

After the initial fallout from the decision and the slew of articles written in 2001-2003 on the potential impact that the case might have on the Court's legitimacy, only a few scholars conducted any statistical analyses testing *Bush v. Gore*'s lingering impact in the years following the controversial decision. In particular, surprisingly few polls even asked the American public their feelings on the fairness or unfairness of the decision. In his 2005 article, Rick Hasen opined that regardless of partisan affiliation, polarization about the fairness of the election process as a general matter actually increased between 2000 and 2004 among partisans. Using data from the National Election Studies time series question on the fairness of American elections,²¹ he found that while in 1996, only 7.5% of Democrats called the 1996 election "somewhat" or "very unfair," by 2000, that number shot up to 44% of Democrats (Hasen 2005, 943). These attitudes, he found, hardened over time; by 2002, that number rose to 68% and in 2004, it rose again to 75.2% (943, n.28). By contrast, among Republicans, the numbers steadily declined from 2000 to 2004 with 24.9% calling the 2000 election "somewhat" or "very" unfair in 2000, compared to 10.2% in 2002 and 14% in 2004 who viewed the election that way. Hasen also found that while overall the numbers declined from 37% in 2000 to 13.6% in 2004, there still remained a twenty-point difference between Democrats and Republicans.

Most post-2000 analyses concerning *Bush v. Gore* focused on measuring how *Bush v. Gore* affected the public perception of the Court itself and it is on that measure that we see more of a consensus among the legal community that *Bush v. Gore* appeared to have little lingering impact on overall opinion of the Court. Those supportive of the Gibson et al school of thought argued that the Court suffered no consequences – adverse or otherwise – from their controversial decision in *Bush v. Gore* in later years. Examining data from his own 2005 survey nearly five years after *Bush v. Gore* with data spanning from 1987 to 2005, Gibson (2007) found that public support for the Court had not waned. Indeed, he discovered that support for the Court actually reached its apogee during the 2000 election controversy, and then steadily declined. Survey results indicated that in 1995, 63.5% trusted the Court, whereas in 2001, that figure rose to 78% before declining by 2005 to the 1995 figure (520). This trend, Gibson contends, shows that the results of the 2000 election actually "elevat[ed] the perceived legitimacy of the Court... even if only temporarily" (Gibson 2007; Gibson, Caldiera and Spence 2003a). Gibson concluded that any decline in support for the Court in recent years simply represented a retreat from the unusually high levels of support the Court enjoyed during the time of the 2000 election controversy; in his eyes, 2001, not 2005, was "unusual" and that there was "no evidence that the current political climate ha[d] tainted the legitimacy of the Supreme Court" (Gibson 2007). Gibson also found that neither partisanship nor ideology affect diffuse support for the Court and indeed, those having strong partisan views actually had more support for the Court. Further, Gibson finds that there was a positive relationship between knowledge and loyalty, with the more knowledgeable respondents indicating greater loyalty to the Court (Gibson 2007). Once he does the multivariate equation, however, he finds that knowledge, education and the respondent's attachment to liberty and order are not significant even though there had significant correlations with the dependent variable, perhaps due to multicollinearity. Significantly, however, he finds that the most substantively important predictors of loyalty were two measures of

²¹ This question asked the respondent to opine on the fairness of the recent election. There was no specific mention of the *Bush v. Gore* decision.

democratic values – support for the rule of law and support for a multiparty system. He also finds the black variable to be significant, indicating that after the 2000 election, blacks in fact had significantly less support for the Court. He goes on to conclude that diffuse support is “grounded in broader commitments to democratic institutions and processes, and more generally in knowledge of the role of the judiciary in the American democratic system” 23).

Other scholars echo Gibson et al’s conclusion that *Bush v. Gore* had no long-lasting impact. While they believed, contrary to Gibson et al, that *Bush v. Gore* had some short-term impact, Yates and Whitford (2002) agree with them that any short-term effect diminished over time and would likely continue to fade out (116). In one of the few studies examining post-2000 data, Mate and Wright, using the 2004 NAES, conducted statistical analysis to predict diffuse support for the Court and then they compared those responses to those from 2000. They found that the effect of *Bush v. Gore* on levels of diffuse support had “all but disappeared” by 2004. Specifically, they found that while blacks still were more likely than whites to think that the decision was unfair, the “extra negativity engendered by the decision” in 2000 had all but evaporated by 2004 (346). They also found that the role of partisan identification and ideology had unexpectedly reversed with Democrats and liberals actually being more supportive of the Court in 2004 than they were prior to the *Bush v. Gore* decision. Significantly, however, contrary to Gibson et al., Mate and Wright still found ideology to be at least a statistically significant variable in predicting diffuse support. They posit that perhaps the change in the substantive significance of ideology between 2000 and 2004 may be due to some of the other controversial cases that the Court took up in the intervening period, such as *Lawrence v. Texas*, *Grutter v. Bollinger* or *McConnell v. FEC*. In this way, their findings may lend support to the argument made by Mondak and Smithey (1997) that the Court regenerates institutional support through their own decisions. Alternatively, Mate and Wright posit that the significance of ideology underscores that the Court shows “remarkable resiliency in restoring the ideological bases of diffuse support” (348).

II. Attitudes Toward *Bush v. Gore* Ten Years Later.

Since the initial fallout from the decision, no survey to our knowledge has specifically asked respondents their opinion of the Court’s decision in *Bush v. Gore*.²² To some extent, this is unsurprising. With the possible exception of *Roe v. Wade* or *Brown v. Board of Education*, few Court decisions enter (by name) into public opinion polls. Given the lack of understanding and memory that Americans have of the Court and its decisions, this is unremarkable. However, we are still close enough in time to the decision that a considerable share of the population probably has opinions about it. Examining the structure of public opinion on *Bush v. Gore* ten years later is particularly important so as to see whether the initial polarization toward the decision (if not the Court) lasted beyond the contentious context in which it was delivered. Furthermore, if the structure of opinion has changed since the decision’s release, perhaps we can learn larger lessons about the factors that affect retrospective attitudes of the Court’s involvement in politically charged cases. *Bush v. Gore* is also an important case to test

²² Nor to our knowledge have there been any surveys that allow researchers to assess *both* specific and diffuse support.

because it is one of the few scenarios where there is not any intervening Court case on the subject to cloud the results. For instance, any study of Court opinion on *Roe v. Wade* may be affected by Court opinion on some of the Court's subsequent decisions on abortion rights.

We begin with the simple results from our question assessing the fairness of *Bush v. Gore*. We commissioned a survey called the Constitutional Attitudes Survey ("CAS"). In June of 2010,²³ we asked a national random sample of 1027 people:

You may remember that ten years ago the U.S. Supreme Court issued a decision in the case concerning the counting of ballots cast in Florida in the 2000 presidential election contest between George Bush and Al Gore. Do you think the Supreme Court decided the case fairly or unfairly?

Yes, it decided the case fairly –	33.7%
No, it did not decide the case fairly –	35.2%
I don't remember –	28.4%
Refused to Answer –	2.6% ²⁴

Two conclusions immediately jump from the responses: (1) A substantial share of the public does not remember (or does not have an opinion) about the case; and (2) those who do have an opinion are evenly split on the fairness of the decision.²⁵ Although Americans are less likely to have opinions about the decision than they did 10 years ago,²⁶ they are no less divided. For those who may have hoped that the memory of *Bush v. Gore* would be seared in the public mind or that a consensus on the decision would build over time, these results are somewhat disturbing.

However, these simple results tell us nothing as to the structure of opinion and non-opinion or as to the roots of polarization (if it exists) over the decision. We begin to

²³ We also conducted a Constitutional Attitudes Survey in July 2009, but the questions on that survey did not ask about *Bush v. Gore*.

²⁴ For the remainder of this paper we exclude those who refused to answer the question unless otherwise stated.

²⁵ These results differ from the results of the 2000 NAES where 54% said they felt the decision was fair, 40% said that they felt the decision was unfair, 5% said they did not know and less than 1% did not respond. Our results also differ from the conclusions of Gibson, Caldiera and Spence (2003, 545), who in a poll taken in early 2001 found results consistent with the 2000 NAES that a majority (56.2%) thought the decision was fair, with 41.9% feeling it was unfair. They also found that 97.2% of respondents offered an opinion on the issue – a far cry from the close to 30% of respondents in the CAS survey who responded that they don't remember or they refused to answer.

²⁶ Indeed, it is not surprising that over 95% or more of respondents expressed an opinion on *Bush v. Gore* in 2000. The 2000 ANES asked respondents whether they were aware of the Supreme Court's decision. When asked between December 11-19, 2000 whether they were aware that the United States Supreme Court had decided to stop the recounting of ballots in Florida, 82% said yes. (CS15, Asked December 11-19, 2000). When asked after the decision whether they were aware that the Supreme Court declared the recount of ballots in Florida unconstitutional, 93% said yes. (CS19, Asked December 13-19, 2000).

tackle those questions by assessing the demographic breakdown on responses toward the question. In particular, we look at age, education, and race. We suspect (and find) that age and education strongly relate to having an opinion, while race seems to correlate with the perceived fairness of the decision - a conclusion that we later find support for when we do the multinomial logit analysis. As one moves from the youngest cohort (18 to 29) to the oldest (over 65) the share without an opinion drops by eighteen percentage points from 42% to 24%.²⁷ The same pattern holds as one moves from the least educated group to those with a college education – the share choosing “don’t remember” drops from 44 percent to 18 percent.²⁸ Given that both age and education would affect the level of attention a respondent paid to the Court decision in *Bush v. Gore* (let alone any significant political event), we should expect the patterns that we discover. (These simple results are confirmed by multivariate analysis not presented here.) However, the great disparities we see among age cohorts ten years after the decision points to a future in which most people do not hold strong opinions about a distant historical event such as *Bush v. Gore*.

Age and Opinion on *Bush v. Gore*

	Fair	Unfair	Don't Remember
Age			
18-29	26.65	30.93	42.42
30-44	32.78	36.55	30.68
45-59	35.40	41.86	22.74
60+	42.53	33.75	23.72

Education and Opinion on *Bush v. Gore*

Education	Fair	Unfair	Don't Remember
Less than H.S.	23.96	32.15	43.89
High School	34.96	32.71	32.32
Some College	32.64	37.43	29.93
College or Higher	41.62	40.92	17.46

The racial breakdown of opinion hints at continuing racial polarization over the decision. Indeed, the current results do not differ markedly from the results in the 2000 ANES, thereby underscoring the racial undertones that *Bush v. Gore* continues to have. When questioned in the month after the decision in 2000, 76% of blacks felt the decision

²⁷ By contrast, in 2000, it was actually the oldest cohort of Americans that were over age 60 that were less likely to offer an opinion. According to the 2000 ANES, about 9% of respondents aged 60 and over answered “don’t know” to the question concerning the fairness of the *Bush v. Gore* (CS 24). This contrasts with the 4-5% of respondents in the other age cohorts who answered “don’t remember.”

²⁸ Again, we saw a similar pattern in 2000 but the numbers were not as dramatic. About 13% of those with less than a high school education answered “don’t remember” to the question concerning *Bush v. Gore*’s fairness compared with the 4-6% who answered that way in higher categories of education.

to be unfair compared to only 18% who felt it was fair. Blacks today remain overwhelmingly of the belief that the decision was unfair – 64 percent expressing that opinion and only 10 percent saying it was fair. Whites are more evenly split, with a plurality (40 percent, compared to 31 percent) saying the decision was fair.²⁹ Hispanics are less likely to have an opinion (40 percent, as compared to 29 percent for whites and 26 percent for blacks), but their breakdown is somewhere in the middle: a plurality (34 percent) saying the decision was unfair and 26 percent saying it was fair. As we investigate in the multivariate analysis, however, one could argue that much of these racial differences could be attributable to partisan differences among racial groups. Since Blacks tend to be Democrats and Democrats tend to think the decision was unfair, what appear at first blush to be racial differences might simply be part of the larger phenomenon of partisan polarization over the decision. Moreover, since Blacks had a consistently low approval rating of President Bush, perhaps attitudes toward the Bush presidency “explain away” these racial differences (in a statistical sense).

Nevertheless, while it is difficult to make predictions because of both the sample size and the fact that our survey yielded no self-described black Republicans (either weak or strong), a closer look indicates that we still see a racial effect independent of political opinions. For instance, among black moderates, 15% approved of the decision compared to 45% of nonblack moderates who felt that way.³⁰ Further, even among blacks identifying themselves as “conservative,” only 41% felt the decision was fair compared to 88% of nonblack conservatives who felt it was fair. In addition, among those blacks who “somewhat disapprove” of Bush, 6% felt the decision to be fair compared to 54% of nonblack respondents who also said they “somewhat disapproved” of Bush’s performance. Among those who “somewhat approved” of Bush, 45% of blacks thought the decision was fair compared to 86% of nonblacks.

Race and Opinion on *Bush v Gore*

Race	Fair	Unfair	Don't Remember
White	39.77	30.94	29.29
Black	9.86	64.32	25.81
Hispanic	26.17	33.98	39.85

²⁹ This is consistent with the 2000 percentages where 59% of white respondents said that the decision was fair compared to 35% who said that it was unfair.

³⁰ All of the percentages in this paragraph are only of people expressing an opinion on *Bush v. Gore*.

-> ideology2010 = Extremely liberal

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	15.970554 80.45 72.91	3.8816254 19.55 94.77	19.852179 100.00 76.35
black	5.9334511 96.51 27.09	.21436985 3.49 5.23	6.1478209 100.00 23.65
Total	21.904005 84.25 100.00	4.0959953 15.75 100.00	26 100.00 100.00

-> ideology2010 = Liberal

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	75.147346 74.90 82.57	25.179562 25.10 96.87	100.326908 100.00 85.75
black	15.859519 95.12 17.43	.81357277 4.88 3.13	16.673092 100.00 14.25
Total	91.006865 77.78 100.00	25.993135 22.22 100.00	117 100.00 100.00

-> ideology2010 = slightly liberal

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	60.250909 79.81 81.65	15.24 20.19 94.01	75.490909 100.00 83.88
black	13.538182 93.31 18.35	.97090908 6.69 5.99	14.509091 100.00 16.12
Total	73.789091 81.99 100.00	16.210909 18.01 100.00	90 100.00 100.00

-> ideology2010 = Moderate

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	96.452571 55.34 77.12	77.831619 44.66 93.85	174.28419 100.00 83.79
black	28.614857 84.87 22.88	5.1009523 15.13 6.15	33.715809 100.00 16.21
Total	125.06743 60.13 100.00	82.932572 39.87 100.00	208 100.00 100.00

-> ideology2010 = slightly conservative

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	23.695474 22.10 89.50	83.525903 77.90 100.00	107.22138 100.00 97.47
black	2.7786224 100.00 10.50	0 0.00 0.00	2.7786224 100.00 2.53
Total	26.474097 24.07 100.00	83.525903 75.93 100.00	110 100.00 100.00

-> ideology2010 = Conservative

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	17.203454 12.05 76.18	125.587383 87.95 97.04	142.79084 100.00 93.94
black	5.380147 58.42 23.82	3.8290159 41.58 2.96	9.20916284 100.00 6.06
Total	22.583601 14.86 100.00	129.4164 85.14 100.00	152 100.00 100.00

-> ideology2010 = Extremely conservative

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	1.94083866 6.41 100.00	28.338024 93.59 97.52	30.278863 100.00 97.67
black	0 0.00 0.00	.72113728 100.00 2.48	.72113728 100.00 2.33
Total	1.94083866 6.26 100.00	29.059161 93.74 100.00	31 100.00 100.00

-> q599_2010conserv = Strongly disapprove

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	204.83352 86.16 81.49	32.895651 13.84 89.82	237.72917 100.00 82.54
black	46.541028 92.58 18.51	3.7298043 7.42 10.18	50.270832 100.00 17.46
Total	251.37454 87.28 100.00	36.6254557 12.72 100.00	288 100.00 100.00

-> q599_2010conserv = Somewhat disapprove

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	52.913056 45.81 70.53	62.591292 54.19 97.83	115.50435 100.00 83.10
black	22.105854 94.08 29.47	1.3897986 5.92 2.17	23.495653 100.00 16.90
Total	75.0189099 53.97 100.00	63.9810901 46.03 100.00	139 100.00 100.00

-> q599_2010conserv = Somewhat approve

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	30.493218 13.52 80.58	195.10791 86.48 96.99	225.60113 100.00 94.39
black	7.346697 54.83 19.42	6.0521735 45.17 3.01	13.39887 100.00 5.61
Total	37.839915 15.83 100.00	201.160085 84.17 100.00	239 100.00 100.00

-> q599_2010conserv = Strongly approve

Key
<i>frequency</i>
<i>row percentage</i>
<i>column percentage</i>

RECODE of ppethm_201 0 (race / ethnicity)	RECODE of q604_2010 (you may remember that ten years ago the u.s. supreme court		Total
	0	1	
Non black	4.1970951 5.99 100.00	65.833551 94.01 98.55	70.030646 100.00 98.63
black	0 0.00 0.00	.96935367 100.00 1.45	.96935367 100.00 1.37
Total	4.1970951 5.91 100.00	66.802905 94.09 100.00	71 100.00 100.00

Still, when we examined certain political variables, such as partisanship, ideology and Bush approval, we find the expected, substantial differences. Belief in the fairness of *Bush v. Gore* begins at 79 percent for Strong Republicans and drops to 7 percent for Strong Democrats. Strong partisans are much more likely to have an opinion than weak partisans. Independent “leaners” are the mirror image of each other with 57 percent of Independents who “lean” Republican believing the decision was fair and 56 percent of Democratic “leaners” believing the decision was unfair. More or less the same trend appears for ideology: with only 14 percent of extreme liberals but 79 percent of extreme conservatives believing the decision was fair. Self-described moderates, however, are much less likely to express an opinion, as 40% say they do not remember.

Academic commentary in the wake of the Supreme Court’s decision predicted that the retrospective evaluation of *Bush v. Gore* would depend on the success of the Bush presidency. As Judge Posner summarized his views, “My guess (and not only mine) is that history’s verdict on *Bush v. Gore* will depend significantly, though improperly, on the success of Bush’s presidency.”³¹ To test this hypothesis, our survey included a question on whether the respondent “approved of the way George W. Bush handled his job as President.” Thirty-nine percent approved and 61 percent disapproved. That lopsided split in approval ought to chasten advocates of this hypothesis given the relatively even split of respondents on the fairness of *Bush v Gore*. In other words, if respondents’ attitudes toward the Bush presidency determine their retrospective evaluation of the decision in *Bush v. Gore*, we should expect more people to believe the decision in *Bush v. Gore* was unfair.

Although attitudes toward the Bush presidency might not be wholly responsible for retrospective evaluation of the Court’s decision, the correlation is still quite strong ($r = 0.65$) among those who do hold an opinion. Only 10 percent of those who strongly disapprove of Bush’s job performance considered the decision to be fair, whereas 75 percent of those who strongly approve of the Bush presidency considered it to be fair. If we look at just those people who identify themselves as “leaning” Republican, we see a noticeable disparity between those who disapprove of Bush and those who approve of him. Among that group, 96% of those who approve of Bush think the decision was fair compared to only 51% of those who disapprove of Bush. Among Democratic leaners, 54% who approve of Bush thought the decision was fair compared to only 14% of Democratic leaners who disapproved of Bush. Similarly, if we just look at self-professed “moderates,” 76% of those who approve of Bush felt the decision to be fair compared to only 24% of those who dislike Bush. Further, as the multivariate analysis suggests, Bush approval is a stronger and more consistently significant variable than partisanship or ideology.

Party, Ideology, Bush Job Approval and Opinion on *Bush v. Gore*.

	Fair	Unfair	Don’t Remember
Party			
Strong Republican	79.25	3.58	17.17

³¹ RICHARD A. POSNER, BREAKING THE DEADLOCK 222 (2001) (citing Jack Balkin, Yale L. J.; Michael Klarman, CAL. L. REV.).

Not Strong Republican	57.29	10.91	31.80
Indep. Lean Republican	57.21	13.43	29.36
Indep. Leans Democrat	14.46	56.34	29.20
Not Strong Democrat	22.10	44.64	33.26
Strong Democrat	7.05	69.53	23.42
Ideology			
Extremely Liberal	13.80	73.79	12.41
Liberal	16.46	57.62	25.92
Slightly Liberal	14.48	65.93	19.59
Moderate	23.75	35.81	40.44
Slightly Conservative	55.30	17.53	27.18
Conservative	66.21	11.55	22.24
Extremely Conservative	78.67	5.25	16.08
Bush Approval			
Strongly Disapprove	10.07	69.11	20.82
Disapprove Somewhat	26.24	30.76	43.00
Approve Somewhat	59.46	11.19	29.35
Strongly Approve	75.31	4.73	19.96

When we control for all the relevant demographic and political variables, we find that, in fact, approval of the Bush presidency is the most powerful factor influencing one's attitude concerning the fairness of *Bush v. Gore* – even independent of party and ideology.³² That Bush approval is significant is not altogether surprising; indeed, some scholars predicted years ago that support for Bush v. Gore would depend on how one viewed the Bush presidency (Posner 2001). Perhaps the Bush variable is measuring “what side one is on” (Gibson, Caldiera and Spence 2003a, 550 n.37). Table __ presents OLS and logit results of multivariate analysis limited to those in the sample who have an opinion on *Bush v. Gore* (that is, excluding those who say they do not remember). Our model fits very well - we have an R squared of over .52, which is a phenomenal value to obtain for a social science model.³³ In addition to Bush approval, party is significant in

³² There is a high correlation between and among Bush approval, party and ideology. Between party and ideology, the correlation is -.66, between ideology and Bush approval it is .50 and between party and Bush approval it is -.64. We thus looked at the variance inflation factors (VIF) to see whether multicollinearity clouds our results. All of the VIF values were less than 3, with predictably party, ideology and Bush approval having the highest values of 2.78, 1.85 and 1.78, respectively.

³³ We also tested this model with various ways of measuring each of the independent variables. For instance, in the model we include, race is measured as a dummy variable with black being “1” and nonblack being “0.” We tested a specification where we included a dummy variable with white being “1” and nonwhite being “0.” The same variables remained significant, though, as expected the coefficient on the race variable was less when we used the white dummy variable instead of the black dummy variable. The survey we conducted in 2010 also had a unique way of measuring partisanship. Respondents were first asked whether they were Democrat, Independent or Republican. Those who expressed a party preference were then asked whether they were

both the OLS and logit models at the .01 level. The black race and ideology are significant at the .05 level for the OLS model; for the logit model, they are significant at the .10 level.

We also tested specifications of the model with other commonly used demographic variables like Southern residence, religious service attendance, gender, marital status, income, born again Christianity, knowledge and political interest.³⁴ Inclusion of these variables did not alter our conclusions.³⁵ We also included a regression that included measures of confidence in governmental institutions. We found that a factor analysis composed of variables that loaded on variables directed at confidence in the military, church and corporations was significant.³⁶ Inclusion of the confidence factors did not, however, alter the significance of party, ideology, Bush

“strong” or “not strong” partisans. The remaining individuals – those saying that they were Independent as well as those who said they were some other party, no party or did not answer – were then asked whether they “leaned” towards the Democrats or Republicans. From this data, we constructed a 6-point scale going from strong Republican to strong Democrat. In 2009, we measured party differently because the question itself asked respondents to place themselves on a 7 point scale. The correlation between the two measures of party is .89. We tried regressions using both measures and came out with consistent results.

³⁴ We had a number of different knowledge questions on our survey in both 2009 and 2010. We asked general knowledge questions about the Supreme Court. In 2009, we asked respondents whether they knew the justice of the Supreme Court (q11) and whether they could identify the justice who had recently retired (q12). In 2010, we asked respondents to state the party of the majority of Supreme Court justices (q508_2010). We also asked respondents about their knowledge of their rulings of current Supreme Court cases. In 2009, we asked five such questions, and in 2010 (q301-305), we asked four questions like that (q520_2010-523_2010), with follow up questions for respondents saying that they did not know the answer. We were able to compile a number of different knowledge variables from this data. We compiled a factor analysis of responses to all of the knowledge questions and found that knowledge failed to reach significance. We thought perhaps that including case-specific knowledge questions might not be a good barometer of knowledge because the questions might just be too “hard” to answer for the lay public. We then included in the regressions a knowledge factor composed of just the three general knowledge questions as well as the individual general knowledge questions. We still found knowledge to be insignificant. We then excluded both age and education from our analysis to see if perhaps that was the reason why knowledge was not significant. Still, knowledge did not reach significance. Of course, it is possible that the questions by which we are measuring knowledge are not adequately capturing the relevant concept to be tested.

³⁵ We also tested various interactions, including interactions between and among party, ideology, Bush approval and race. Generally, it remained the case that the same values stayed significant. However, when we put in an interaction term for black and party, black no longer remained significant, most likely, because the effect of race was somehow intertwined with the party. This of course is not unexpected. In our logit results only, black also did not reach significance when we included an interaction between black and Bush approval. Further, although the same variables remained significant, we did notice slight changes in the substantive values of the variables when the insignificant interaction term was included in the regression. The R² remained generally in the .52-.53 range whenever any interaction term was included. We also tested an interaction between age and education and found no difference in our results.

³⁶ Similarly, if instead of using the confidence factors, we put in just the individual question on confidence in the military, church or corporations, these individual variables also reach significance.

approval and race, though it did increase the R squared from .5279 to .5459 and likelihood ratio tests done on unweighted regressions indicated that inclusion of the confidence variables yielded a better model fit..

To test the robustness of our results, we confirmed the analysis by ordered logit and multinomial logit analysis that either include or exclude those who do not express an opinion.³⁷ Although our results are generally consistent, there were some minor differences. For instance, race did not reach significance in the ordered logit when using a three-pronged dependent variable with the order being fair, don't remember and unfair.³⁸ This is probably due to the fact that the effect of race varies between the opinionated and the don't remember respondents. Our results in the multinomial logit confirm this. In that analysis, race was not significant for don't remember with fair or unfair as the reference category (or vice versa), but it was significant for unfair with fair as the reference category (or vice versa). Thus, this means that race probably does not really matter as much for the don't remember responses versus the opinion responses. Of course, this is something we expected and is consistent with what we found in the cross tabulations. Our multinomial logit analysis also uncovered the fact that age and education were significant for don't remember with fair or unfair as the reference category and vice versa – again a finding consistent with what we found in the cross tabulations concerning the impact that age and education had for don't remember responses but not for opinionated responses. Finally, ideology was significant for the opinionated categories but it was not significant for the don't remember category.

	(OLS Results)	(Logit Results)
	Dicho	dicho
age2010	-0.011 (-0.29)	-0.077 (-0.25)
educ2010	0.010 (0.27)	0.185 (0.65)
black2010	-0.087** (-2.94)	-0.659* (-2.43)
party2010	-0.240*** (-4.65)	-1.580*** (-4.02)
ideology2010	0.143** (3.21)	0.982* (2.52)
Bush	0.421***	2.626***

³⁷ To do this, we created a dependent variable that was ordered fair, don't remember, unfair. Although it is not strictly a linear progression going from each category to the next, in creating a continuum, it seemed most logical to put the don't remember response in the middle.

³⁸ Race was also not significant in the ordered logit when we included interactions terms between and among party, ideology, race and Bush approval.

Approval	(9.56)	(8.30)
r2	0.527	
N	718.000	718.000

Standardized beta coefficients; *t* statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Ordered Logit

	(1)
	triple604
triple604	
age2010	0.0131 (0.26)
educ2010	0.0212 (0.54)
black2010	0.472 (1.66)
party2010	0.271*** (3.63)
ideology2010	-0.279*** (-3.78)
q599_2010con serv	-0.905*** (-8.21)
cut1 _cons	-1.726** (-3.14)
cut2 _cons	0.0172 (0.03)
<i>N</i>	954

t statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Multinomial Logit

	(1)
	triple604
Don't remember age2010	-0.243***

	(-3.53)
educ2010	-0.176 ^{***} (-3.42)
black2010	0.236 (0.54)
party2010	0.307 ^{**} (3.24)
ideology2010	-0.112 (-1.21)
q599_2010con serv	-0.377 ^{**} (-2.77)
_cons	2.170 ^{**} (2.87)
<hr/>	
No unfair age2010	0.0325 (0.41)
educ2010	-0.000604 (-0.01)
black2010	0.834 [*] (2.01)
party2010	0.390 ^{***} (3.53)
ideology2010	-0.360 ^{***} (-3.32)
q599_2010con serv	-1.310 ^{***} (-8.05)
_cons	1.185 (1.42)
<hr/>	
<i>N</i>	954

t statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

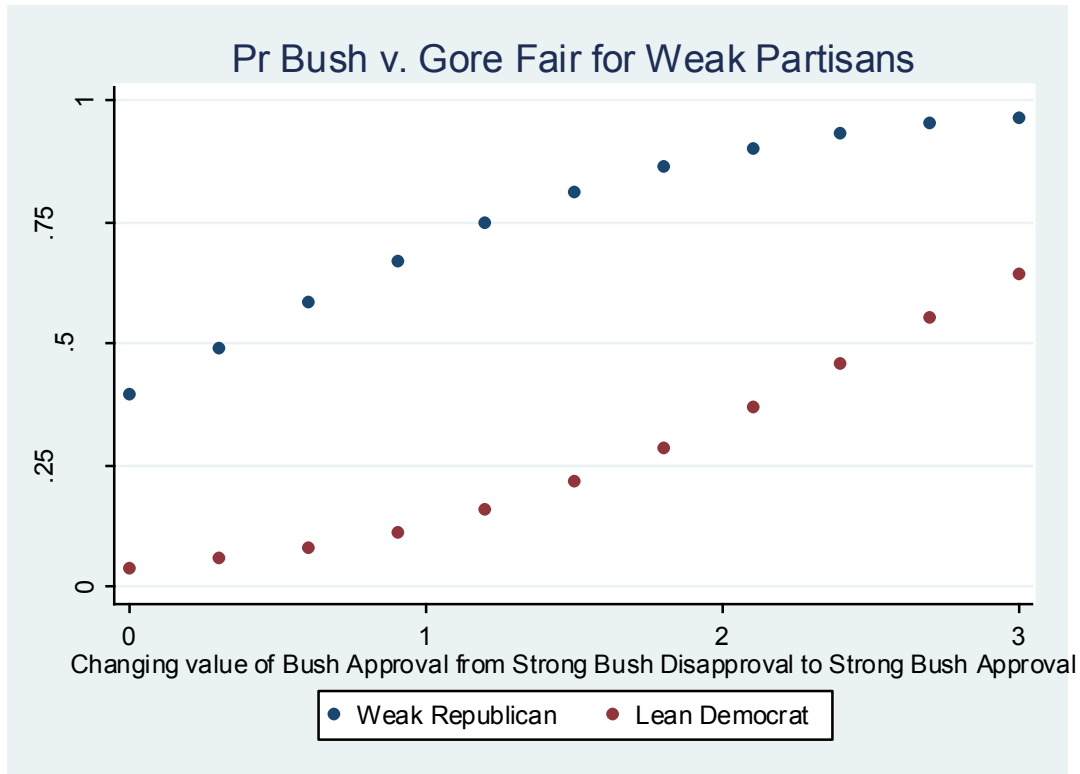
The data attest to the continuing polarization in opinion over *Bush v. Gore*.³⁹ Partisanship, ideology and especially approval of President Bush's job performance all point to the same result: Democrats and liberals still find the decision unfair while Republicans and conservatives still consider the decision to be fair.⁴⁰ Further, blacks feel that the decision was unfair. In order to better explain our findings, we calculated predicted probabilities for many of the relevant variables. (Long 1997). According to our logit analysis, when all independent variables are held at their means, the probability of the respondent saying that they think that *Bush v. Gore* was fair increases by 60% going from those who are "strong" Democrats to those who are "strong" Republicans.⁴¹ Even among mainstream partisans, that is, those identifying themselves as "not strong Republican" or "not strong Democrat," the probability still increases by 33% that the respondent will say *Bush v. Gore* is fair if they are a "not strong Republican" versus if they are a "not strong Democrat." As an example, we show this difference between weak partisans in Graph __. As would be expected, the percentages are less when comparing leaners of both parties but it is still significant that the probability increases by 11% that the respondent will say that *Bush v. Gore* was fair if they lean Republican rather than if they lean Democrat. We see similar percentage changes looking at ideology.⁴²

³⁹ In one of the few multivariate regressions on the merits of the decision, Kritzer (2001, 11) found party identification to be the only significant variable when a four-stage approval variable is used as the dependent variable. Here, our dependent variable is either a dichotomous variable on the fairness or unfairness of the decision; or a three-level variable, with a fair, don't remember or unfair response.

⁴⁰ By contrast, it appears that some of the other demographic variables do not matter nearly as much when we compare predicted probabilities at each end of the scale. For instance, when all independent variables are held at their means, the probability of the respondent saying that they think that *Bush v. Gore* was fair increases by only 3% going from respondents who say that they have a high school education to a college education and by only 5% going from respondents with high school education to those with a masters or professional degree.

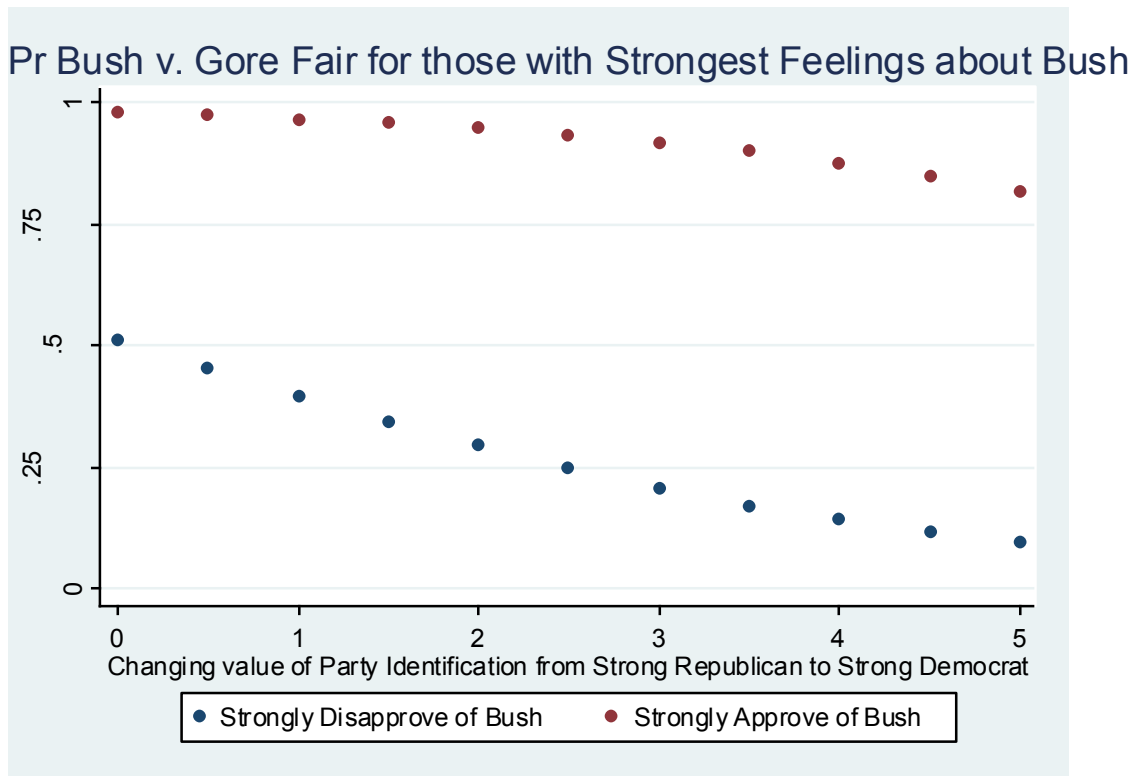
⁴¹ Indeed it may be surprising that, holding the other variables at their means, 19% of "strong Republicans" thought *Bush v. Gore* was unfair versus 70% of "strong Democrats."

⁴² When all independent variables are held at their means, the probability of the respondent saying that they think that *Bush v. Gore* was unfair increases by only 43% going from those who are "extremely conservative" to those who are "extremely liberal." Surprisingly, however, not all "extremely" ideological people expressed the "expected" opinion on *Bush v. Gore*. Among those who are "extremely liberal," (and all other variables being at their means) a third (33%) said they thought the decision was fair. For "extreme" conservatives with other variables held at their means, it may be surprising that 25% said that they thought the decision was unfair. As expected, there is somewhat of a drop between mainstream ideologues with an increased probability of 29% that a mainstream liberal will say *Bush v. Gore* was unfair versus a mainstream conservative. The percentage differences drops to 15% between those who express that they are only "slightly" ideological. Most interesting are the percentage differences between those who express themselves as moderate and those who express that they have some kind of ideological preference, whether it be "extreme," mainstream, or only "slight." Between moderates and those who say that they are "extremely liberal," there is a 22% decreased likelihood of saying that they think *Bush v. Gore* was unfair, which nearly 45% of moderates versus 67% of those who are "extremely liberal" saying that they thought the decision was unfair. Between moderates and "extreme" conservatives, moderates are 20% more likely to say *Bush v. Gore* was unfair versus "extreme" conservatives. Between moderates and mainstream ideologues whether liberal or



Further, we see even bigger changes when we look at Bush approval comparing the extremes at each end of the scale. In Graph __, we show the predicted probabilities for those strongly disapproving and strongly approving of Bush for each level of partisan identification. The odds of saying that the decision was unfair increases by 72% for each one unit change in the Bush approval variable as it moves upward from strongly approve to strongly disapprove. Holding all other values at their means, the probability of the respondent expressing that *Bush v. Gore* was fair decreases by a whopping 69% going from those who “strongly approve” of Bush to those who “strongly disapprove.” Held at the mean for all other values, only 7% of those who strongly approve of Bush thought the decision was unfair compared to 76% of those who strongly disapprove of Bush. Comparing those who felt that they just “approved somewhat” of Bush to those who said that they “disapproved somewhat” yields a healthy 27% (for mean values of respondents) – still surprising given that respondents in that category did not harbor as strong of feelings as the others on Bush.

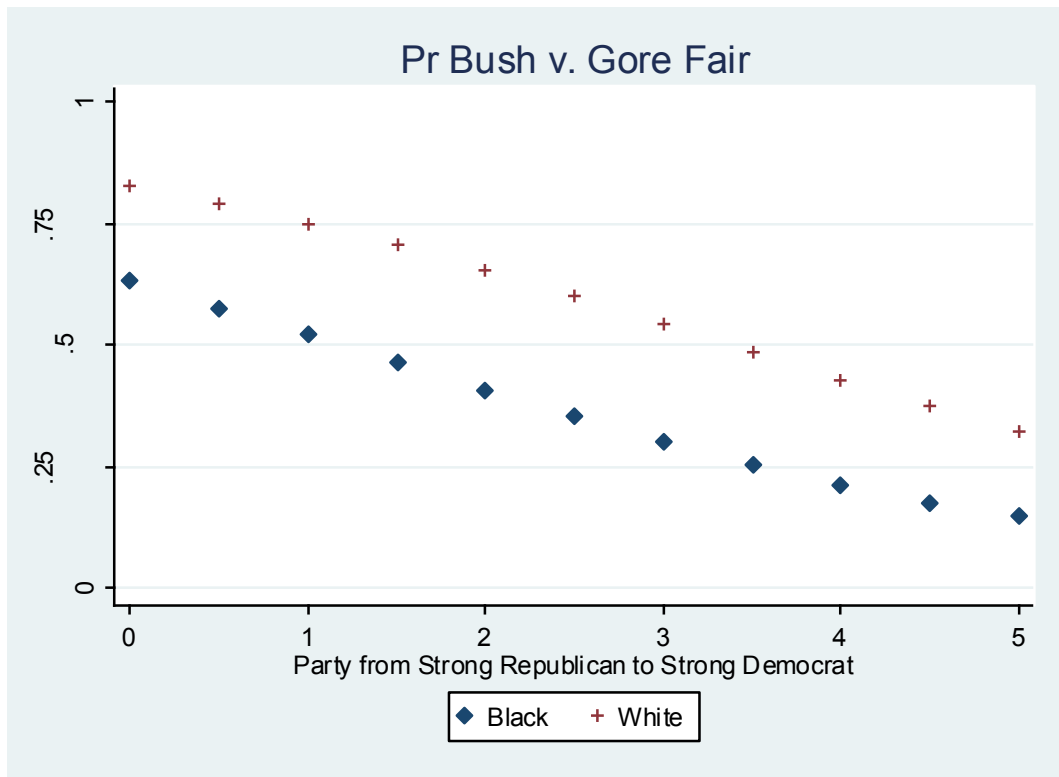
conservative, the percentages differences are 14-15% and between moderates and those “slightly” ideological, the differences are about 7-8%.



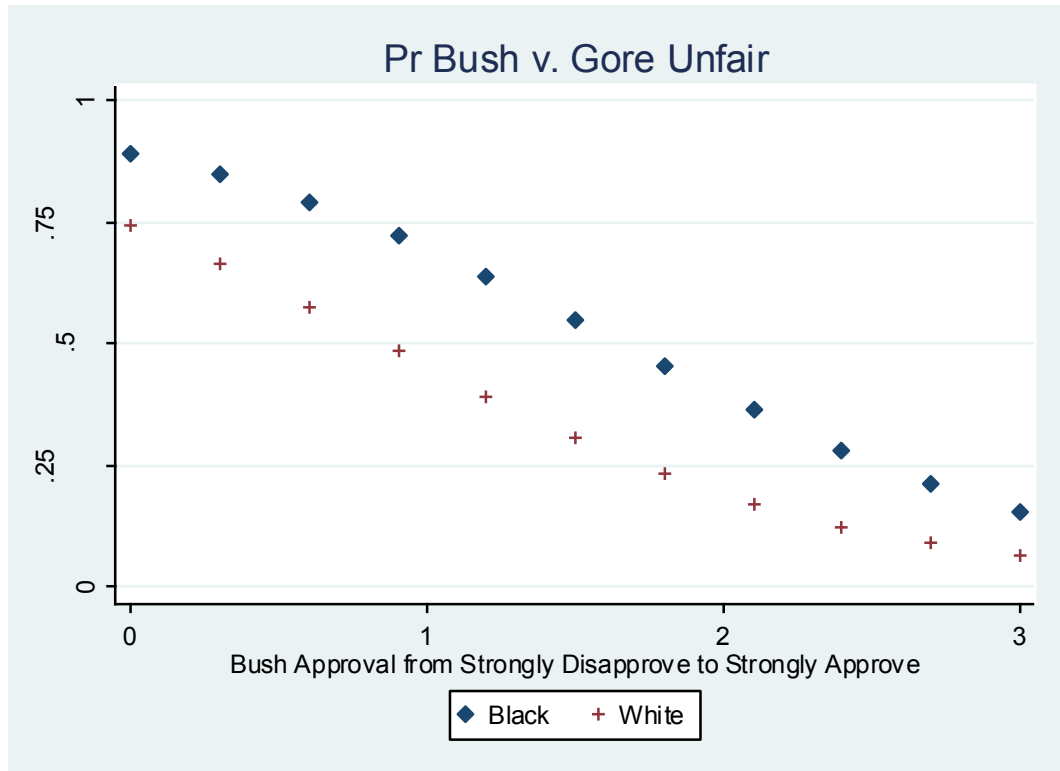
Even when controlling for partisanship in these multiple ways, however, race remains a statistically significant variable in predicting opinion on *Bush v. Gore*. Non-blacks are more likely – all other things being equal – to consider the Court’s decision in the case to have been fair, while blacks are more likely to consider it unfair. Indeed, our logit results indicate that when all independent variables are held at their means, the probability of the respondent saying that they think that *Bush v. Gore* was fair increases by 25% when race of the respondent changes from black to nonblack. Put another way, the odds of saying that *Bush v. Gore* was unfair increases by 177% for black respondents versus nonblack respondents, holding the other variables constant at their means, a staggering amount.

Looking at race in conjunction with party and Bush approval also shows surprising differences. In Graph __, we show the predicted probabilities for our race dummy variable according to partisan identification. The percentage difference between partisans actually decreases if we look just at the mean respondent who is also black. There, the probability of the respondent saying that they think *Bush v. Gore* was fair increases by only 49% going from strong Democratic partisans to strong Republican partisans and 31% going from more mainstream Democrats to mainstream Republicans. For black respondents, it is interesting that with everything else at the mean, the model predicts that even 63% of black strong Republicans would think the decision to be fair versus 83% of white strong Republicans. Among leaners, the difference between black and white leaners is almost 25%. We see similar changes with Bush approval which we show in Graph __. Indeed, the differences between those who feel strongly about Bush is even greater for black respondents, with there being a 73% difference between the strong

disapproval respondents and the strong approval respondents who are black. At least among those who have an opinion (a big caveat), some of the racial and partisan polarization concerning the decision that existed in its immediate aftermath remains ten years later.⁴³



⁴³ Indeed, interestingly, our regression results do not differ markedly from those of Gibson, Caldiera and Spence (2003, 548 (Table 5)) when they regressed various independent variables on opinion regarding fairness of *Bush v. Gore* taken in an early 2001 survey. Similar to our analysis, they too found party, affect for Bush and race to be statistically significant variables; they also found that awareness, variables that measured “perception who won the national election” and “perception of who won the Florida election” – variables that were not included in our survey -- to be significant.



That the same lines of cleavage still persist ten years later is not all that surprising. Consistent with Brickman and Peterson (2006), the cues that underlie the information environment today concerning opinion on *Bush v. Gore* are very similar to 2000. Further, there has been no real change in elite opinion regarding *Bush v. Gore*. Our results also lend support to the Franklin and Kosaki (1989) claim that rather than the Court being a leader on public policy, Court decisions only serve to harden preexisting issue preferences and exacerbate long-standing intra- and inter-group differences on policy matters.

III. The Lingering Effect of *Bush v. Gore* on Approval and Confidence of the Supreme Court

We now turn to the more controversial findings of our survey concerning the effect of attitudes toward *Bush v. Gore* on attitudes toward the Supreme Court today. While there is some support for the claim of a relationship between diffuse support and agreement with *recent* decisions of the Court (Murphy, Tanenhaus and Kastner 1973; Murphy and Tanenhaus 1970), there is little empirical support for the notion that this relationship lingers on. We came to this question expecting to support the conventional wisdom that no residual effect remains from that controversial decision. The decision is now in the distant past for a public with a notoriously short political memory. Given the upheavals of the last decade – a terrorist attack, two wars, a devastating hurricane, the Great Recession, and a historic presidential election – we would expect a ten year old event, even if dramatically significant at the time, to fade in importance in affecting public opinion toward anything, including the Supreme Court. Add to these events the

substantial turnover in the Court’s membership over this period, and we might expect that whatever one might have thought of the decision at the time, it should not have a continuing effect on one’s assessment of the current Court. However, the data suggest that, even when controlling for partisanship and some other factors, attitudes toward *Bush v. Gore* predict one’s job approval and/or confidence in the Supreme Court

The effect is not evident from simple crosstabs or correlations, however. Indeed, the correlation is approximately zero between attitudes as to the fairness of the decision and approval and confidence in the Court. Tables __ displays the uninteresting (but nevertheless revealing) crosstabs. This of course, is consistent with other longitudinal studies of Supreme Court confidence and/or approval that shows remarkable temporal stability (e.g., Caldiera 1986; Mondak and Smithey 1997; Grosskapy and Mondak 1998). To measure approval, we simply asked “Do you approve of the job the U.S. Supreme Court is doing?” (The same question was also asked regarding President Obama and the Congress.) To measure confidence, we stated “below is a list of institutions (including the military, the Court, Congress, church, corporations and the president) and we asked respondents to label whether they felt a “great deal of confidence,” “some confidence” or “hardly any confidence.” Regardless of one’s opinion or non-opinion concerning the decision, the basic breakdown appears to be the same. The results from the crosstabs caution us not to overstate the independent significance of *Bush v. Gore*. Whatever the multivariate analysis tells us, we can be confident that other variables have a stronger aggregate effect than perceived fairness of *Bush v. Gore*.

Table __. Perceived Fairness of *Bush v. Gore* and Job Approval of the Court

Attitude Toward <i>Bush v. Gore</i>	Strongly approve	Somewhat Approve	Somewhat Disapprove	Somewhat Disapprove
Fair	7	57	28	8
Unfair	4	56	31	9
Don’t Remember	4	54	34	8
<i>Total</i>	5	57	30	8

Table __. Perceived Fairness of *Bush v. Gore* and Confidence of the Court

Attitude Toward <i>Bush v. Gore</i>	Great Deal of Confidence	Some Confidence	Hardly Any Confidence
Fair	22	61	17
Unfair	18	64	18
Don’t Remember	19	64	16
<i>Total</i>	20	63	17

We then turn instead to our multivariate analysis to see what factors influence Court approval and Court confidence. We have two independent variables that we test.

The first dependent variable is the respondent's approval of the Supreme Court.⁴⁴ Of the 994 respondents who answered the question concerning approval of the Court's handling of its job, 5% said that they "strongly approve," 56% said "approved somewhat," 31% said "disapprove somewhat" and only 8% said "strongly disapprove." In our OLS regressions, we use the 4-prong approval, but in our logit regressions, we changed the variable to a two prong response since logit analysis requires a dichotomous variable. The second dependent variable is the respondent's confidence in the Supreme Court, and we gave respondents the option to state whether they had a "great deal of confidence," "some confidence" or "hardly any confidence" in the institution.⁴⁵ With respect to the Supreme Court, 41% said that they had a "great deal of confidence," 50% said that they had "some confidence," and 9% said that they had "hardly any confidence."⁴⁶ For purposes of our analysis, we recoded the dependent variable so that "1" equals only those respondents who expressed a "great deal of confidence" in the Supreme Court. Respondents who said that they had "some confidence" or "hardly any confidence" were recoded "0."⁴⁷

For some respondents, however, the decisions of the Court may have some influence on their level of confidence and approval, apart from or in addition to the effect of "generic" or "partisan" confidence variables. To assess the independent significance of attitudes concerning *Bush v. Gore* on Court approval and confidence, we attempt to control for all the other factors present in our survey that might influence attitudes toward the Court. In particular, we might expect that approval and/or confidence in other institutions (particularly Congress) to have a powerful effect on approval and confidence toward the court. We find that the correlation in the CAS between approval of the Court and the President and Congress is 0.29 and 0.36 respectively, and between confidence of the Court and the President and Congress is .35 and .40 respectively, a finding consistent with the scholarly literature on the topic.⁴⁸ Scholars generally find positive interrelationships among measures of confidence of different governmental organizations, thus leading us to believe that perhaps some of the confidence displayed for the Supreme Court may be tied up in general confidence toward the political system as a whole (Cook and Gronke 2001; Cook, Gronke and Rattliff 2000; Price and Romantan 2004; Scheb and Lyon 2001). Indeed, Caldiera (1986) found a positive linkage between confidence in the Court and presidential approval. In their study of the 2000 election period, Price and Romantan (2004) found a similar trend that confidence in the Court strongly paralleled confidence in other institutions. There are a number reasons why we might expect to see such a linkage. Some citizens might perceive of the Court as part of the monolithic entity that is the federal government, viewing it as a single

⁴⁴ This was question 601_2010 in the 2010 survey.

⁴⁵ These were questions 501_1_2010-501_6_2010. The Court question was 501_2_2010.

⁴⁶ In our 2009 survey, we asked a question asking respondents to opine whether they felt that the Supreme Court was "too conservative, too liberal or about right"? (question 8). Twenty-two percent said "too conservative," 29% said "too liberal," and 48% said "about right."

⁴⁷ We also tried the regressions using the three-prong variable as well as a variable where we recoded "hardly any confidence" as "1" and the "great deal of confidence" or "some confidence" as "0." Further, we tested specifications using a factor of various questions on approval and/or confidence as the dependent variable.

⁴⁸ Indeed Price et al. found similar correlations between Court confidence and Congress and President confidence respectively in their 2000 survey (Price et al. 2004).

“governing coalition” (Caldiera and Gibson 1992, 645; Murphy, Tanenhaus and Kastner 1973, 27). This approval and confidence may also be reflective of the respondent’s attitudes toward the incumbents holding power in the other branches as well as their general trust in institutions (Price and Romantan 2004, 941, 942). A large share of the population looked at the Court through a lens that was colored by their attitudes toward President Obama and the Democratic Congress (Price and Romantan 2004, 941). Still others are skeptical of authority more generally and the Court gets swept up in their general skepticism toward powerful institutions. To put it simply, for much of the public the attitudes they hold toward the Court are nothing personal. There is nothing – positive or negative – the Court can do to change their beliefs.

Accordingly, we think it is important to consider the respondent’s confidence in other institutions because this may impact their view of the Supreme Court’s confidence (Grosskapy and Mondak 1998, 645). We have constructed indexes for the other confidence variables through principal components factor analysis. “Confidence Factor 1” loads principally on the military, churches, and corporations while “Confidence Factor 2” loads primarily on the Congress and President. We are cautious not to make too bold a characterization of types of confidence that such latent factors indicate. Although we would like to derive measures of “generic” and “partisan” confidence, both factors probably point to latent partisan or ideological variables. To put the matter more specifically, confidence in churches, the military, and corporations probably points to ideological affinity with the Republican Party platform while confidence in the President and Congress probably points to latent attitudes toward the Democrats. We need not belabor the point. In the end, these different factors do seem to identify different attitudes and both such attitudes, as we will see, are significant in predicting approval and confidence in the Court. In addition to a confidence factor, we similarly created a factor analysis of the two questions asking respondents whether they approved of the job that the Congress and the President were doing. We used this “approval” factor as an alternative to the “confidence” factor in some specifications with Supreme Court approval as the dependent variable.

Scholars have found race to be an important predictor of attitudes toward the Court (Gibson 2007). Studies have found that blacks exhibit less support for the Court as a general matter than whites (Gibson and Caldiera 1992). As Gibson (2007) notes, although short-term policy disagreements do not threaten Court legitimacy, over time, the “repeated failure of an institution to meet policy expectations can weaken and even destroy that institution’s legitimacy in the eyes of disaffected groups.” He hypothesizes that this may be exactly what has happened to blacks. As such, we include a variable “black” that is a dummy variable with “1” indicating black and “0” indicating non-black.

The conventional wisdom dictates that variables like ideology and party can also have an important impact in determining opinion toward the Court (Murphy, Tanenhaus and Kastner 1973). Given the partisan nature of the debate surrounding *Bush v. Gore*, we would expect to see Democrats and liberals respectively have a more negative view of the Court than Republicans and conservatives. As such, we included measures for both party and ideology. To ensure that a positive sign on party or ideology instead merely represents Bush affect, we also included a variable directed at Bush approval.

Knowledge is also another important variable (Gibson 2007; Gibson, Caldiera and Baird 1998). Scholars have found that the more knowledgeable the respondent and

the more active they are in the political arena, the more likely they evince support for the Court (Gibson, Caldiera and Spence 2003a; Gibson, Caldiera and Baird 1998; Murphy, Tanenhaus and Kastner 1973; Adamany and Grossman 1983; Murphy and Tanenhaus 1970; Hibbing and Theiss-Morse 1995). Under the framework of a “positivity bias” discussed earlier, scholars contend that more knowledgeable respondents have greater awareness of the dominant cultural norms and to the “legitimizing symbols of the judiciary” (Gibson 2007; Gibson and Caldiera 2009b). As Gibson puts it, “they are learning to accept the legitimacy of the institution” (Gibson 2007). Thus, studies have found that those with more knowledge are more loyal to the institution, thus leading to greater support to the institution itself (Gibson 2007; Gibson and Caldiera 2009b). In some specifications not reported here, we thus included a variable that measured respondent’s knowledge on different questions concerning the Supreme Court and its decisions, with all questions weighted equally. As we did with our knowledge variable in the *Bush v. Gore* regressions, we also used alternative measures of the knowledge variable that only included responses to the “general” knowledge questions.]

Most importantly, we also wanted to test for the independent significance of constitutional decisions on Court approval and confidence. We were most interested, of course, in testing whether opinion on *Bush v. Gore* would show up significant for respondent’s approval and confidence in the Court ten years later. We thus included two dummy variables, one for “unfair” and one for “don’t remember” with “fair” being the reference category.⁴⁹ We did other specifications where we included only the dichotomous variable on *Bush v. Gore* opinion (fair v. unfair, leaving out the don’t remember responses). We also included either a 4-stage or a two-stage variable directed at approval of *Roe v. Wade*. *Roe* is one of the only Supreme Court decisions to which pollsters ask the public their opinion on. As such, we include it here in the regression to control for the fact that maybe *Bush v. Gore* only reaches significance because it is serving as a proxy for the polarization of public opinion on constitutional issues.⁵⁰

Finally, we include standard demographic variables that have been shown to affect confidence and/or approval, such as age and education. Although not reported here, we did statistical analyses on other specifications using other demographic variables and we found that our results did not generally differ.⁵¹

Table _ reports the OLS and logit results of regressing the dependent variable Supreme Court approval on the independent variables we listed.⁵² Contrary to the views of Gibson and Caldiera (1992, 647), who found that confidence in other institutions had little impact on diffuse support for the Court, here we find that confidence in or approval of other institutions, particularly that of Congress and the President, has a very important

⁴⁹ We also tried using “unfair” and “don’t remember” each respectively as reference categories.

⁵⁰ In other specifications, not reported here, we tested for the independent significance of opinion on the Second Amendment as well.

⁵¹ As we did with the *Bush v. Gore* regressions, we tested the independent significance of Southern residence, religious services attendance, gender, marital status, income, born again Christianity and political interest.

⁵² We also tried different specifications such as altering the dependent variable to a dichotomous variable (approve v. disapprove) and changing around the variables we use to measure *Bush v. Gore* (such as by using “unfair” or “don’t remember” as the reference category instead of “fair”). For the dichotomous dependent variable, race was not significant.

impact on Supreme Court approval.⁵³ Not surprisingly, race also reached significance in most specifications.⁵⁴

Most relevant to our findings is the fact that the variables measuring opinion on *Bush v. Gore* consistently reached significance. In Graph ___, we show the predicted probabilities of *Bush v. Gore* for our dichotomous approval dependent variable for different stages of Congress and President approval. In this specification, we use the dichotomous version of *Bush v. Gore* and *Roe v. Wade* for clarity. When all independent variables are held at their means, the probability of the respondent saying that they approve of the Supreme Court increases by 18% when the *Bush v. Gore* variable changes from an unfair response to a fair response. By contrast, we see that *Roe v. Wade* does not reach significance. As such, when all independent variables are held at their means, the probability of the respondent saying that they approve of the Supreme Court increases by only 3% going from *Roe* disapproval to *Roe* approval. We graph the *Roe* result in Graph ___, making crystal clear how little *Roe* appears to matter for approval compared to the effect that *Bush v. Gore* has.

We find similar results when we use the two dummy variables for the *Bush v. Gore* responses. In Graph ___, we see the results when we compare the fair, unfair and don't remember responses. Holding all of the other independent variables at their means, the probability of a respondent approving of the Court increases by 25% moving from unfair to fair. The effect is less for the don't remember responses. The probability of a respondent approving of the Court increases only 20% moving from don't remember to fair and by only 4% going from don't remember to unfair.

Dichotomous Approval as Dependent Variable- OLS Results

	(1) Shortapprove	(2) Shortapprove	(3) Shortapprove	(4) Shortapprove
	Using Dichotomous Roe and Bush v. Gore	Using Dichotomous Roe and Bush v. Gore	Using 3 prong Bush v. Gore and 4 Prong Roe	Using 3 prong Bush v. Gore and 4 Prong Roe
	Using Institutional Approval instead of Confidence	Using Institutional of Confidence Instead of Approval	Using Institutional Approval instead of Confidence	Using Institutional Approval instead of Confidence
age2010	0.00863 (0.63)	0.00233 (0.17)	0.00765 (0.66)	0.000364 (0.03)

⁵³ There is also the concern that answers to the confidence questions could be affected by a response-set bias (Grosskopf and Mondak 1998, 645). That is, when answering each individual confidence questions, respondents may have fallen into some sort of pattern. In order to account for this, we also included in some regressions a variable that measures the respondent's mean on the 6 confidence questions.

⁵⁴ As before with the *Bush v. Gore* regressions, race often was not significant once we started adding in interaction terms, such as interactions between race and Bush approval or race and ideology.

educ2010	0.0128 (1.18)	0.00421 (0.39)	0.0135 (1.46)	0.00548 (0.61)
black2010	0.0827 (1.18)	0.0987 (1.38)	0.0941 (1.67)	0.0900 (1.55)
party2010	0.0196 (0.95)	0.0215 (1.04)	0.0220 (1.22)	0.0220 (1.22)
ideology2010	0.0247 (1.25)	0.00397 (0.19)	0.0220 (1.30)	-0.00182 (-0.10)
q599_2010con serv	0.0444 (1.50)	0.0334 (1.04)	0.0452 (1.81)	0.0402 (1.51)
shortroe	-0.0303 (-0.58)	-0.0522 (-1.00)		
Dicho (dichotomous Bush v. Gore)	0.158** (2.67)	0.142* (2.39)		
Approvalfactor (factor of Congress and President APPROVAL)	-0.168*** (-6.93)		-0.194*** (-9.58)	
otherinstituti ons1		0.0451 (1.67)		0.0597** (2.76)
otherinstituti ons2		-0.137*** (-4.81)		-0.160*** (-7.04)
roe2010			-0.0136 (-0.75)	-0.0229 (-1.26)
Unfairgore			-0.198*** (-3.76)	-0.154** (-2.91)

Dumgore			-0.163*** (-3.31)	-0.149** (-2.97)
_cons	0.232 (1.41)	0.417* (2.52)	0.414** (2.83)	0.579*** (3.94)
<i>N</i>	709	698	941	927

t statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

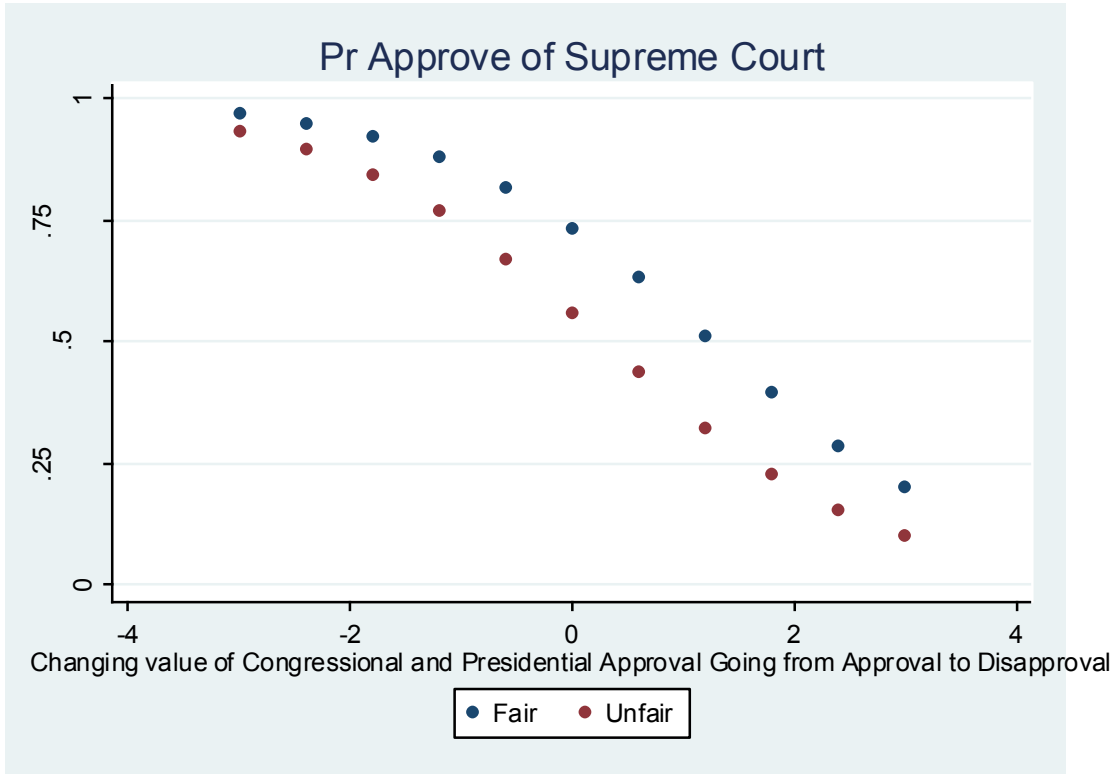
Same as Above but Logit

	Shortapprove	Shortapprove	Shortapprove	Shortapprove
	Using Dichotomous Roe and Bush v. Gore	Using Dichotomous Roe and Bush v. Gore	Using 3 prong Bush v. Gore and 4 Prong Roe	Using 3 prong Bush v. Gore and 4 Prong Roe
	Using Institutional Approval instead of Confidence	Using Institutional of Confidence Instead of Approval	Using Institutional Approval instead of Confidence	Using Institutional Approval instead of Confidence
	shortapprove	shortapprove	shortapprove	shortapprove
age2010	0.0375 (0.58)	0.00147 (0.02)	0.0369 (0.65)	-0.00764 (-0.13)
educ2010	0.0585 (1.10)	0.0143 (0.28)	0.0671 (1.44)	0.0213 (0.49)
black2010	0.458 (1.16)	0.527 (1.33)	0.579 (1.65)	0.550 (1.56)
party2010	0.0974 (0.96)	0.106 (1.06)	0.112 (1.23)	0.112 (1.23)
ideology2010	0.120 (1.23)	0.0208 (0.20)	0.114 (1.32)	0.00227 (0.02)
q599_2010con serv	0.218 (1.46)	0.157 (1.00)	0.227 (1.77)	0.201 (1.50)
shortroe	-0.148 (-0.60)	-0.267 (-1.06)		
dicho	0.788* (2.55)	0.748* (2.42)		

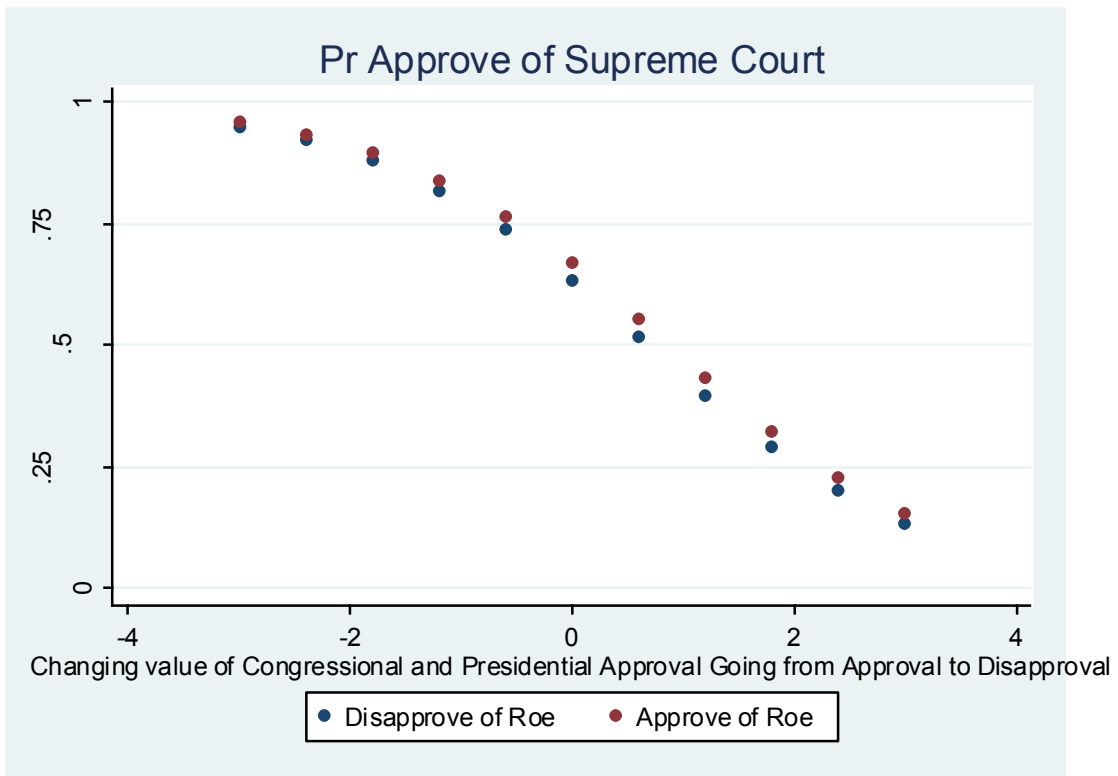
approvalfactor	-0.803 ^{***} (-6.17)		-0.957 ^{***} (-8.17)	
otherinstitutio ns1		0.229 (1.81)		0.323 ^{**} (2.95)
otherinstitutio ns2		-0.698 ^{***} (-4.29)		-0.848 ^{***} (-6.09)
roe2010			-0.0691 (-0.76)	-0.129 (-1.37)
unfairgore			-1.035 ^{***} (-3.56)	-0.843 ^{**} (-2.99)
dumgore			-0.836 ^{**} (-3.23)	-0.780 ^{**} (-2.99)
_cons	-1.306 (-1.61)	-0.365 (-0.47)	-0.449 (-0.61)	0.484 (0.67)
<i>N</i>	709	698	941	927

t statistics in parentheses

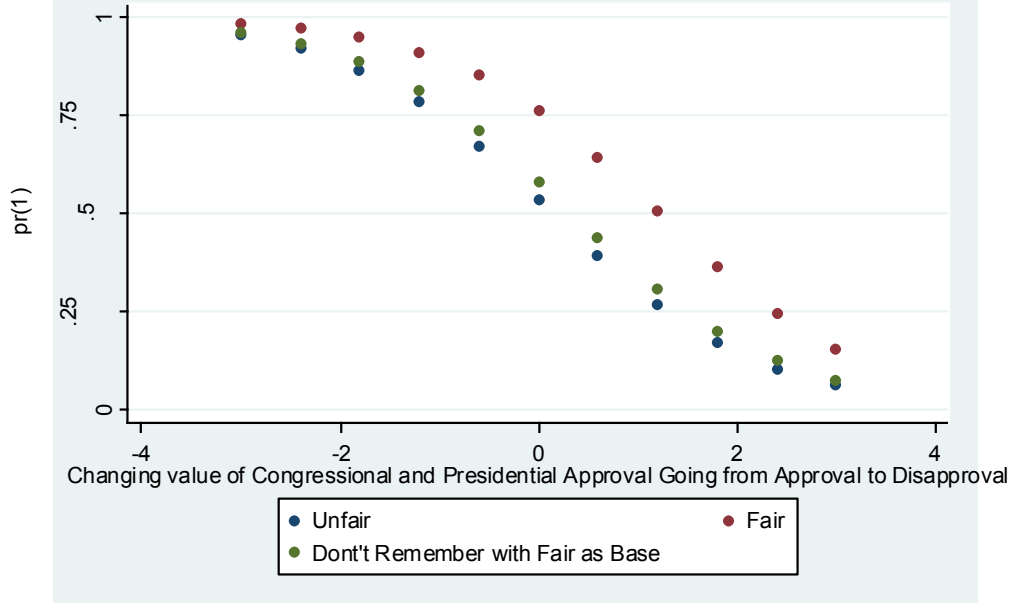
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$



Roe v. Wade



Pr Approve of Supreme Court - Using Two Dummy Variables for Bush v. Gore



OLS Results – 4 Prong Approval Variable

	Longapprove Using Dichotomous Roe and Bush v. Gore	Longapprove Using Dichotomous Roe and Bush v. Gore	Longapprove Using 3 prong Bush v. Gore and 4 Prong Roe	Longapprove Using 3 prong Bush v. Gore and 4 Prong Roe
	Using Institutional Approval instead of Confidence	Using Institutional of Confidence Instead of Approval	Using Institutional Approval instead of Confidence	Using Institutional Approval instead of Confidence
	q601_2010c	q601_2010c	q601_2010c	q601_2010c
age2010	-0.0239 (-1.18)	-0.0130 (-0.65)	-0.0187 (-1.15)	-0.00669 (-0.42)
educ2010	-0.0271 (-1.56)	-0.0144 (-0.78)	-0.0217 (-1.50)	-0.0102 (-0.67)
black2010	-0.146 (-1.74)	-0.191* (-2.23)	-0.149* (-2.12)	-0.159* (-2.28)
party2010	-0.0297 (-1.00)	-0.0342 (-1.13)	-0.0327 (-1.31)	-0.0360 (-1.43)

ideology2010	-0.0436 (-1.42)	-0.00500 (-0.15)	-0.0453 (-1.76)	-0.00346 (-0.13)
q599_2010con serv	-0.0800 (-1.69)	-0.0586 (-1.16)	-0.0706 (-1.83)	-0.0664 (-1.66)
shortroe	0.0355 (0.44)	0.0856 (1.01)		
dicho	-0.286*** (-3.35)	-0.234** (-2.69)		
approvalfactor	0.307*** (7.90)		0.334*** (10.26)	
otherinstitutio ns1		-0.0958** (-2.64)		-0.0981** (-3.15)
otherinstitutio ns2		0.230*** (5.16)		0.256*** (7.20)
roe2010			0.0369 (1.35)	0.0533 (1.86)
unfairgore			0.354*** (4.65)	0.268*** (3.50)
dumgore			0.278*** (3.97)	0.235** (3.19)
_cons	2.157*** (8.23)	1.841*** (6.91)	1.743*** (7.88)	1.504*** (6.50)
<i>N</i>	709	698	941	927

t statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Ordered Logit – 4 Prong Approval

	Longapprove	Longapprove	Longapprove	Longapprove
	Using Dichotomous Roe and Bush v. Gore	Using Dichotomous Roe and Bush v. Gore	Using 3 prong Bush v. Gore and 4 Prong Roe	Using 3 prong Bush v. Gore and 4 Prong Roe

	Using Institutional Approval instead of Confidence	Using Institutional of Confidence Instead of Approval	Using Institutional Approval instead of Confidence	Using Institutional Approval instead of Confidence
	q601_2010c	q601_2010c	q601_2010c	q601_2010c
q601_2010c age2010	-0.0624 (-1.02)	-0.0268 (-0.44)	-0.0566 (-1.11)	-0.0117 (-0.24)
educ2010	-0.0684 (-1.25)	-0.0229 (-0.43)	-0.0621 (-1.27)	-0.0166 (-0.35)
black2010	-0.461 (-1.57)	-0.588* (-2.02)	-0.536* (-2.01)	-0.564* (-2.17)
party2010	-0.0801 (-0.86)	-0.0822 (-0.88)	-0.103 (-1.26)	-0.0987 (-1.22)
ideology2010	-0.135 (-1.43)	-0.0178 (-0.17)	-0.146 (-1.79)	-0.0149 (-0.17)
q599_2010con serv	-0.267 (-1.79)	-0.189 (-1.23)	-0.251* (-2.01)	-0.214 (-1.70)
shortroe	0.153 (0.62)	0.288 (1.12)		
dicho	-0.862** (-3.10)	-0.730** (-2.62)		
approvalfactor	0.961*** (7.18)		1.099*** (9.34)	
otherinstitutio ns1		-0.276* (-2.51)		-0.310** (-3.14)
otherinstitutio ns2		0.762*** (5.02)		0.875*** (6.97)
roe2010			0.117 (1.36)	0.173* (1.97)

unfairgore			1.139*** (4.37)	0.887*** (3.46)
dumgore			0.912*** (3.90)	0.780*** (3.32)
cut1				
_cons	-5.332*** (-6.29)	-4.261*** (-5.23)	-4.432*** (-5.92)	-3.525*** (-4.74)
cut2				
_cons	-1.556* (-1.96)	-0.471 (-0.61)	-0.448 (-0.63)	0.513 (0.71)
cut3				
_cons	0.572 (0.71)	1.605* (1.99)	1.808* (2.51)	2.753*** (3.66)
N	709	698	941	927

t statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Table __ reports the OLS and logit coefficients for our second dependent variable Court confidence. Again, recall that our confidence variable here is dichotomous; we label as “1” those respondents who expressed a “great deal” of confidence in the Court, while those saying that they had “somewhat” or “hardly any” confidence in the Court were labeled “0.”⁵⁵ If we use only the dichotomous version of *Bush v. Gore* (thereby excluding the don’t remember responses), only the confidence variables reach significance. But if we narrow the data in this way we are losing a great deal of data. When we use the two dummy variables for the *Bush v. Gore* responses, we again find *Bush v. Gore* to reach significance. We see similar results as with approval, except that when confidence is the dependent variable, *Roe v. Wade* also reaches significance and in our logit regressions, education does as well. It is unclear what effect race has, because we find that it reaches significance in the OLS regression but not in the logit regression, probably because its significance is on the borderline and it just barely reaches significance here.

OLS Results

	(1) Greatdeal – Dichotomous version of Roe and Bush v. Gore	(2) Greatdeal – 4 Prong Roe and 3 Prong Bush v. Gore
age2010	0.00238 (0.23)	0.0100 (1.14)

⁵⁵ We get similar results even with the 3-stage confidence variable, though we find that education is significant in our OLS and ordered logit regressions and race reaches significance in our OLS regression.

educ2010	0.0103 (1.42)	0.0102 (1.55)
black2010	-0.0367 (-0.64)	-0.0777 (-1.60)
party2010	-0.0138 (-0.80)	-0.00994 (-0.71)
ideology2010	0.00475 (0.28)	0.00964 (0.69)
q599_2010con serv	-0.0174 (-0.74)	-0.0281 (-1.46)
shortroe	-0.0610 (-1.42)	
dicho	0.0937 (1.83)	
otherinstitutio ns1	0.0953 ^{***} (4.95)	0.103 ^{***} (6.41)
otherinstitutio ns2	-0.152 ^{***} (-6.46)	-0.156 ^{***} (-8.16)
roe2010		-0.0333 [*] (-2.06)
unfairgore		-0.108 [*] (-2.40)
dumgore		-0.109 ^{**} (-2.97)
_cons	0.140 (1.22)	0.228 [*] (2.29)
<hr/> <i>N</i>	<hr/> 696	<hr/> 928

t statistics in parentheses

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Logit Results

	(1) Greatdeal – Dichotomous version of Roe and Bush v. Gore	(2) Greatdeal – 4 Prong Roe and 3 Prong Bush v. Gore
age2010	0.0409 (0.55)	0.113 (1.64)
educ2010	0.0957 (1.79)	0.117* (2.30)
black2010	-0.283 (-0.64)	-0.647 (-1.56)
party2010	-0.0933 (-0.76)	-0.0755 (-0.68)
ideology2010	0.0110 (0.09)	0.0495 (0.45)
q599_2010con serv	-0.106 (-0.62)	-0.205 (-1.33)
shortroe	-0.441 (-1.43)	
dicho	0.647 (1.86)	
otherinstitutio ns1	0.784*** (4.90)	0.956*** (6.60)
otherinstitutio ns2	-1.051*** (-6.21)	-1.211*** (-7.96)
roe2010		-0.295* (-2.32)
unfairgore		-0.855* (-2.52)
dumgore		-0.923**

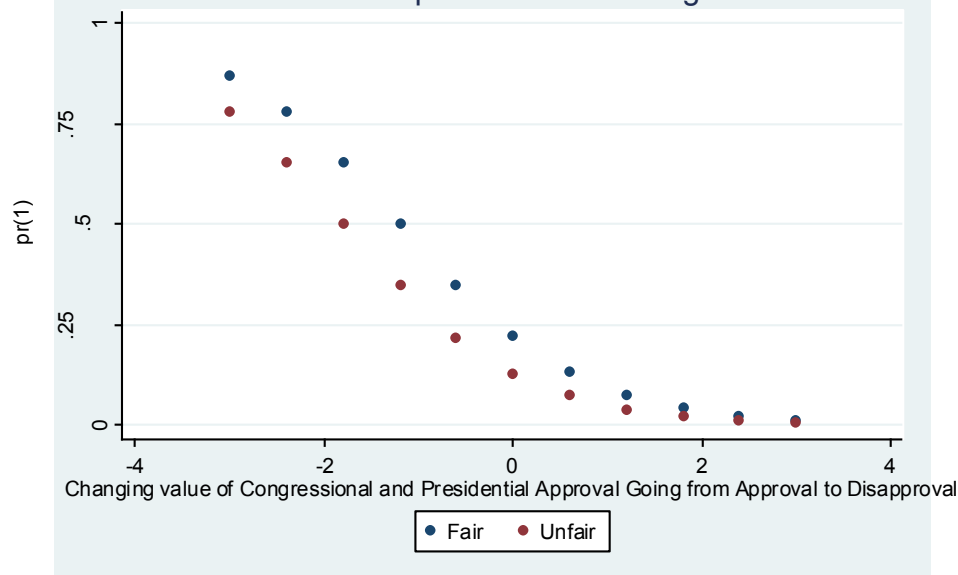
		(-3.19)
_cons	-2.402** (-2.65)	-1.983* (-2.37)
<hr/> N	696	928

t statistics in parentheses
 * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

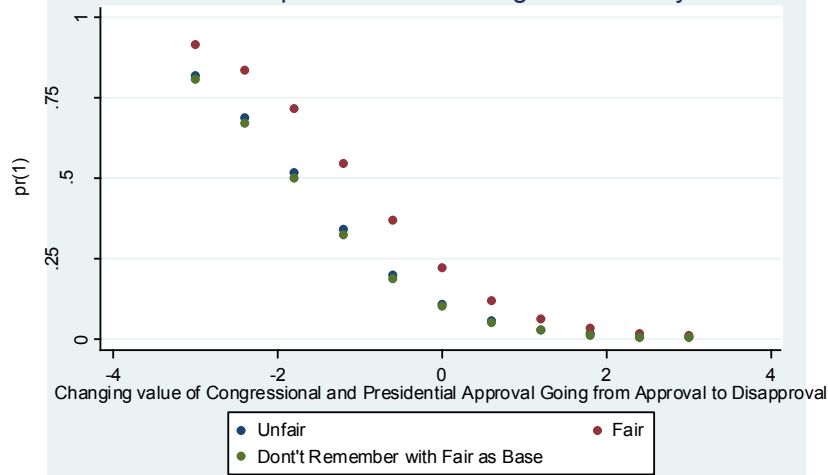
In any event, most interesting to our findings is that the *Bush v. Gore* variables reach significance, underscoring the impact that they continue to have on respondent's expression of confidence in the Supreme Court even years later. As we did before with Supreme Court approval, we graph the results for the two dummy variables for *Bush v. Gore* and the dichotomous variable for *Roe v. Wade* to show the difference between the two. In Graph ___, we see the predicted probabilities of *Bush v. Gore*. When all independent variables are held at their means, the probability of the respondent saying that they have a great deal of confidence in the Supreme Court increases by 11% when the *Bush v. Gore* variable changes from an unfair response to a fair response. (20% who say fair vs 10% who say unfair). Going from don't remember to fair yields the same change whereas going from don't remember to unfair results in almost no change.

The difference compares nicely with the differences we observe for *Roe*. When all independent variables are held at their means, the probability of a respondent saying that they have a great deal of confidence in the Court increases by just 7% between supporters and opposers of *Roe*. The graphs below show the differences.

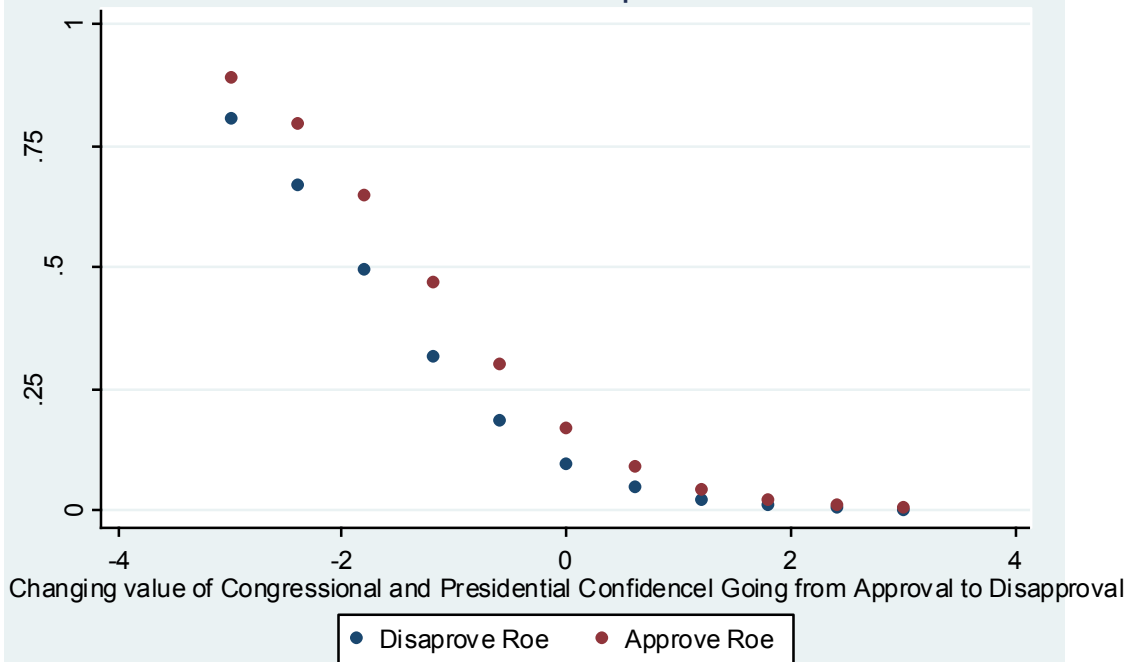
Pr Great Deal of Confidence in Supreme Court - Using Dichotomous Bush v. Gore



Pr Great Deal of Confidence in Supreme Court - Using Two Dummy Variables for Bush v. Gore



Pr Great Deal of Confidence in Supreme Court - Roe v. Wade



Critiques of this work will contend that we are not really measuring diffuse support because our dependent variables - approval and confidence - are directed toward assessing specific support rather than diffuse support (Gibson, Caldiera and Spence

2003a, 2003b; Caldiera and Gibson 1992). Indeed, some of the dependent variables we use are very similar to those used in other studies that Gibson, Caldiera and Spence cite as measuring specific support rather than specific support. Gibson, Caldiera and Spence (2003b, 355) also critique the confidence measure because they claim that it is not institution-specific and it is dependent upon immediate performance of the institution. Such a confidence measure, they claim, can cause the dependent variable to be so contaminated with large quantities of short-term specific support so as to make analysis meaningless because of course the analysis would show that support is a function of Court outputs (2003b, 357).

For a number of reasons, however, we believe that these critiques of the confidence and approval measures that we employ here are misplaced. In the first instance, we are measuring the effect that a Supreme Court decision ten years earlier has on present levels of confidence. If confidence is affected by short-term forces, as Gibson et al allege, then using a confidence measure here might actually bias us *against* a finding that decisions like *Bush v. Gore* even matter. In other words, our dependent variable, according to Gibson et al., is actually biased against the finding we are trying to make. Thus, that we find *Bush v. Gore* significant in determining Court approval and confidence is all the more important. Further, the confidence question in the CAS differs from some of the confidence questions critiqued by Gibson et al. because it specifically addresses confidence in the institution itself. Unlike the confidence question in the General Social Survey, there is no reference in our confidence question to “people running” the institutions or confidence in the “leaders” of the institution, an inclusion Gibson et al. contend makes the confidence measure inappropriate because it may force respondents to call to mind more immediate effects (Gibson et al. 2003b, 355-356).

These same critiques would argue that variables that measure so-called “democratic norms” like support for the rule of law, or support for a multiparty system are omitted variables in our analysis as other studies have found these variables to be so supportive in determining diffuse support for the Court (Gibson 2007; Gibson, Caldiera and Spence 2003, 547). Indeed, the line of work emanating from Gibson, Caldiera and Spence has found in many different studies that “there was a fairly strong relationship between support for democratic institutions and processes and loyalty to the Supreme Court (Gibson 2007; Gibson, Caldiera and Spence 2003a, 2003b; Gibson and Caldiera 2009). We do not seek nor did our survey permit us to redo the analyses that others so capably did in earlier work. Quite simply, our regressions do not seek to test the factors underlying feelings concerning the Court’s legitimacy. We do not think, however, that the omission of variables that more directly ask about democratic norms distracts from our findings. We do not dispute the Gibson, Caldiera and Spence claim that the public has long-standing and stable feelings of institutional loyalty to the Court. The fact that the public is loyal to an institution, however, does not necessarily mean that controversial Court decisions have no effect in changing public attitudes toward the Court. In our mind, the fact that *Bush v. Gore* is a statistically significant variable in regressions on Court approval and confidence is an important finding that challenges the conventional wisdom that individual Court cases have no long-standing effect.⁵⁶

⁵⁶ In any event, although we did not have variables that directly measure adherence to democratic norms, we did try in some regressions including variables that get at similar concepts. Gibson sets forth two reasons why he thinks democratic norms are so important. The first, he says, relates

Indeed, we reiterate the conservative nature of our findings. At least with respect to the specifications we have tried so far, we have found *Bush v. Gore* to be a statistically significant variable in predicting Supreme Court approval and confidence. This is an interesting finding, especially since one would not expect that the case to still have any effect especially independent of party, ideology, race and Bush approval. Yet, while it reaches significance (and indeed in some cases it just barely reaches significance at merely the .10 level), the substantive impact is relatively small. All else equal, other factors, namely confidence or approval of other governmental institutions is by far the most substantive variable in our regressions in predicting respondent's attitudes toward the Supreme Court. We might also mention that the R-squared of our regressions are not nearly as high as they were in our regression for predicting opinions on the merits of *Bush v. Gore* itself. While the R-squares – hovering in the low .2 – are reasonable for a social science analysis, it is still nevertheless the case that over 80% of the variance is explained by other variables. It could also be the case that our survey did not allow us to adequately capture some variables that may be significant in the analysis. As mentioned previously, many scholars have found knowledge to be an important factor in predicting diffuse support (Mate and Wright 2008; Gibson, Caldiera and Spence 2003). The fact that knowledge fails to be significant in our regressions could be due to the fact that we did not adequately capture the type of knowledge that may be relevant. The questions we asked – concerning general facts about the Supreme Court as well as specific facts about recent case outcomes – may in fact have been too “hard.” Indeed, less than half got a 50% score on the twelve knowledge questions. Perhaps more general knowledge about the governmental process in general may be a better predictor of Court approval and confidence than specialized knowledge of the Court.

Finally, there is of course the concern that the causal order may in fact vary; that is, the respondent's approval or confidence in the Supreme Court may affect how they react to the *Bush v. Gore* decision. Indeed, the relationship between the two is dynamic and interrelated and as many scholars have found, it is quite difficult to entangle the two concepts (Caldiera and Gibson 1992; Hoekstra 2000; Mondak 1991, 1992; Mondak and Smithey 1997; Clawson, Kegler and Waltenburg 2003; Gibson, Caldiera and Spence 2003). For instance, Clawson, Kegler and Waltenburg (2003) found that diffuse support for the Court impacts opinion on the capital punishment and the death penalty decisions. However, for the reasons discussed by Grosskapy and Mondak (1998, 647 n.9), we believe that this is not a concern here and that the effect is unidirectional. In the first

to rule of law and the strong correlation he sees between people who have strong feelings toward the rule of law and the ability of an institution to be legitimate (Gibson 2007). The second reason is because the democratic norms he measures relate to feelings concerning individualism, individual liberty and tolerance (Gibson 2007). Although the questions are not directly comparable, in regressions not reported here, we included factor analyses that measure such things as moral traditionalism, support for egalitarianism and libertarianism. We also included, in both factor form and as individual questions, variables that relate to the respondents' view of what it takes for a person to be a good Supreme Court justice, a battery of questions that Gibson created himself and that he found strongly correlates with institutional loyalty (Gibson and Caldiera 2009). Except for one of our egalitarian factors barely reaching significance, none of these variables proved important in our analysis.

instance, as Grosskapy and Mondak note, the legitimation theory works best for describing lesser-known cases (Grosskapy and Mondak 1998, 647 n.9; Hoekstra 1995; Hoekstra and Segal 1996; Mondak 1990, 1992, 1994). A Court case could not be more high-profile than *Bush v. Gore*. Nevertheless, we hope to explore this issue further. Gibson, Caldiera and Spence (2003) did a two-stage least squares analysis in their study of opinion on *Bush v. Gore* and loyalty to the Court. In this vein, we are in the process of exploring what might be an appropriate instrumental variable to assist us with such an analysis.

Conclusion

Ten years after *Bush v. Gore*, scholars still debate the wisdom of the decision and its lasting impacts. Surprisingly, however, in the decade since, few pollsters have asked the American public their opinion on this monumental decision in American history. Our survey allowed us to capture American public opinion on this important decision, thereby enabling us to contribute to the debate on how the Court shapes public opinion. In a sense, our results are not all that surprising. We find that the same factors that polarized opinion on *Bush v. Gore* among the American public ten years ago – namely race, party, ideology and Bush approval – still polarize our opinion on *Bush v. Gore* today – at least among those who still share an opinion on the case. The more interesting question however is why? Why does *Bush v. Gore* continue to polarize American public opinion? Further, is *Bush v. Gore* unique in that regard? There are so few Supreme Court decisions that enter into the public consciousness, so it makes it impossible to ascertain whether *Bush v. Gore* is really different than any other highly controversial case. Is the polarization of *Bush v. Gore* simply a mask for deeper polarization on some other underlying dimension?

We also found that this underlying polarization might even have some lasting ramifications. Although substantially our findings are limited, it was surprising to us to find that opinion *Bush v. Gore* obtained statistical significance in regressions predicting Court approval and confidence – even independent of institutional confidence, party, ideology, race and Bush approval. Again the question is why? Is *Bush v. Gore* simply a proxy for something deeper? Interestingly, we do not find that opinion on *Roe v. Wade* to be as significant – if at all – in predicting Supreme Court approval, though it did a better job at predicting confidence. *Bush v. Gore* appears to be a unique polarizer of public opinion. In any event, more research needs to be done to better understand some of the themes developed in this paper. Simply finding that certain cases polarize the American public is not enough – we need to better understand what causes that polarization, whether and why that polarization persists and what impact that polarization has in affecting attitudes toward the Court in the long term – and even what effect it might have in effecting other political actors as well. This article is a first bite out of the apple to address this question.

party2010	RECODE of q601_2010 (do you approve of the job the u.s. supreme court is doing?)					Total
	Strongly Approve	s Approve	s Disapprove	Strongly Disapprove		
Strong Republican	10.860251 7.89 22.95	60.382181 43.87 11.08	48.728766 35.41 16.72	17.652992 12.83 22.81		137.62419 100.00 14.32
Not Strong Republican	2.57269986 2.21 5.44	66.829183 57.32 12.27	34.9500766 29.98 11.99	12.2330353 10.49 15.81		116.584995 100.00 12.13
Leans Republican	4.2810538 2.67 9.05	83.536479 52.09 15.33	53.986022 33.67 18.53	18.558013 11.57 23.98		160.361568 100.00 16.69
Leans Democrat	5.9487327 3.19 12.57	99.470948 53.42 18.26	64.103952 34.43 22.00	16.666621 8.95 21.53		186.19025 100.00 19.37
Not Strong Democrat	6.345315 3.58 13.41	120.75419 68.21 22.16	46.471298 26.25 15.95	3.467552 1.96 4.48		177.03836 100.00 18.42
Strong Democrat	17.317422 9.45 36.59	113.89027 62.17 20.90	43.176615 23.57 14.82	8.8163272 4.81 11.39		183.20064 100.00 19.06
Total	47.325475 4.92 100.00	544.86326 56.70 100.00	291.41673 30.32 100.00	77.39454 8.05 100.00		961 100.00 100.00

RECODE of q601_2010 (do you approve of the job the u.s. supreme court is doing?)	party2010						Total
	Strong Re	Not Stron	Leans Rep	Leans Dem	Not Stron	Strong De	
Strongly approve	10.860251 22.95 7.89	2.57269986 5.44 2.21	4.2810538 9.05 2.67	5.9487327 12.57 3.19	6.345315 13.41 3.58	17.317422 36.59 9.45	47.325475 100.00 4.92
Approve somewhat	60.382181 11.08 43.87	66.829183 12.27 57.32	83.536479 15.33 52.09	99.470948 18.26 53.42	120.75419 22.16 68.21	113.89027 20.90 62.17	544.86326 100.00 56.70
Disapprove somewhat	48.728766 16.72 35.41	34.9500766 11.99 29.98	53.986022 18.53 33.67	64.103952 22.00 34.43	46.471298 15.95 26.25	43.176615 14.82 23.57	291.41673 100.00 30.32
Strongly disapprove	17.652992 22.81 12.83	12.2330353 15.81 10.49	18.558013 23.98 11.57	16.666621 21.53 8.95	3.467552 4.48 1.96	8.8163272 11.39 4.81	77.39454 100.00 8.05
Total	137.62419 14.32 100.00	116.584995 12.13 100.00	160.361568 16.69 100.00	186.19025 19.37 100.00	177.03836 18.42 100.00	183.20064 19.06 100.00	961 100.00 100.00

RECODE of q601_2010 (do you approve of the job the u.s. supreme court is doing?)	RECODE of q601_2010 (do you approve of the job the u.s. supreme court is doing?)				Total
	Strongly Approve	s Approve	s Disapprove	Strongly Disapprove	
0	0 0.00 0.00	0 0.00 0.00	305.92737 78.77 100.00	82.471261 21.23 100.00	388.39863 100.00 39.07
1	49.57006 8.19 100.00	556.03131 91.81 100.00	0 0.00 0.00	0 0.00 0.00	605.60137 100.00 60.93
Total	49.57006 4.99 100.00	556.03131 55.94 100.00	305.92737 30.78 100.00	82.471261 8.30 100.00	994 100.00 100.00

RECODE of q601_2010 (do you approve of the job the u.s. supreme court is doing?)	party2010							Total
	Strong Re	Not Stron	Leans Rep	Leans Dem	Not Stron	Strong De		
0	66.381758 18.00 48.23	47.1831119 12.79 40.47	72.544035 19.67 45.24	80.770573 21.90 43.38	49.93885 13.54 28.21	51.992942 14.10 28.38	368.81127 100.00 38.38	
1	71.242432 12.03 51.77	69.401883 11.72 59.53	87.817533 14.83 54.76	105.419681 17.80 56.62	127.09951 21.46 71.79	131.20769 22.16 71.62	592.18873 100.00 61.62	
Total	137.62419 14.32 100.00	116.584995 12.13 100.00	160.361568 16.69 100.00	186.19025 19.37 100.00	177.03836 18.42 100.00	183.20064 19.06 100.00	961 100.00 100.00	

RECODE of q501_2_2010 ([the us supreme court] below is a list of some instituti	party2010							Total
	Strong Re	Not Stron	Leans Rep	Leans Dem	Not Stron	Strong De		
Great deal of confide	23.414658 12.01 17.26	24.3366543 12.48 20.95	19.969836 10.24 12.45	35.674171 18.30 19.13	38.733984 19.87 21.31	52.837491 27.10 28.93	194.966795 100.00 20.25	
Some confidence	81.0647682 13.31 59.77	65.218586 10.71 56.14	104.67193 17.19 65.28	120.03178 19.71 64.37	124.82414 20.50 68.68	113.05095 18.57 61.89	608.86216 100.00 63.23	
Hardly any confidence	31.145244 19.57 22.96	26.606184 16.72 22.90	35.694435 22.43 22.26	30.760235 19.33 16.50	18.186634 11.43 10.01	16.77831 10.54 9.19	159.17104 100.00 16.53	
Total	135.62467 14.08 100.00	116.16142 12.06 100.00	160.3362 16.65 100.00	186.46619 19.36 100.00	181.74476 18.87 100.00	182.66675 18.97 100.00	963 100.00 100.00	

party2010	RECODE of q501_2_2010 ([the us supreme court] below is a list of some instituti			Total
	Great dea	Some conf	Hardly an	
Strong Republican	23.414658 17.26 12.01	81.0647682 59.77 13.31	31.145244 22.96 19.57	135.62467 100.00 14.08
Not Strong Republican	24.3366543 20.95 12.48	65.218586 56.14 10.71	26.606184 22.90 16.72	116.16142 100.00 12.06
Leans Republican	19.969836 12.45 10.24	104.67193 65.28 17.19	35.694435 22.26 22.43	160.3362 100.00 16.65
Leans Democrat	35.674171 19.13 18.30	120.03178 64.37 19.71	30.760235 16.50 19.33	186.46619 100.00 19.36
Not Strong Democrat	38.733984 21.31 19.87	124.82414 68.68 20.50	18.186634 10.01 11.43	181.74476 100.00 18.87
Strong Democrat	52.837491 28.93 27.10	113.05095 61.89 18.57	16.77831 9.19 10.54	182.66675 100.00 18.97
Total	194.966795 20.25 100.00	608.86216 63.23 100.00	159.17104 16.53 100.00	963 100.00 100.00