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The Supreme Court, Public Opinion, and the Affordable Care Act: The Stability of Partisan Cleavage over Health Care

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THE SUPREME COURT, PUBLIC OPINION, AND THE AFFORDABLE CARE ACT:
THE STABILITY OF PARTISAN CLEAVAGE OVER HEALTH CARE

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Abstract: A fundamental challenge surrounding the role of the United States Supreme Court in American democracy concerns the Court's countermajoritarian status. Much of the existing research has attempted to "resolve" the countermajoritarian difficulty by examining the link between the Supreme Court and public opinion, particularly whether public opinion can influence the outcome of Court decisions. Interestingly, however, little has been studied about the reverse relationship—that is, whether the Supreme Court can influence public opinion. This paper investigates the Court's ability to win popular support for its rulings, specifically in the case of *NFIB v. Sebelius* that ruled on the constitutionality of the 2010 Affordable Care Act. By analyzing various public opinion polls through multivariate analysis, this study finds that the Supreme Court decision has not resulted in an increased public support of the Affordable Care Act but rather bolstered a pre-existing trend of partisan polarization over the issue. With two-sided media coverage of polarized elite opinion of the Court decision, the public too becomes polarized.

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Chapter I

Introduction

The linkage between the judiciary and the public in United States has long been of interest to scholars, who have tackled this topic by trying to answer two major questions: (1) can public opinion influence the outcomes of Supreme Court decisions and (2) can the Supreme Court change public opinion in a way that Americans support its decisions?

Most of the existing literature on the linkage between the Supreme Court and the public investigates the first question—i.e. how closely in sync are Court decisions with public opinion? While scholars of this approach disagree about the extent of the influence of public opinion on the outcomes of Supreme Court decisions, general consensus states that public preferences do influence judicial decision-making (Epstein, Knight, and Martin 2001; Flemming and Wood 1997; Giles, Blackstone, and Vining 2008; Link 1995; McGuire and Stimson 2004; Mishler and Sheehan 1993), especially when issues are non-salient (Bailey and Maltzman 2011; Casillas, Enns, and Wohlfarth 2011) and implementable without the support from non-judicial governmental actors (Hall 2013).

However, studies examining the second question—i.e. whether the Supreme Court can change public opinion—have not reached a general agreement, in part because different methodological designs of these studies have yielded conflicting results. On the one hand, observational studies, which rely on data collected from surveys before and after Court decisions, find that the Court has no significant impact on public opinion (Baas and Thomas 1984; Gash and Gonzales 2008; Le and Citrin 2008; Luks and Salamone 2008; Marshall 1987, 1989; Murphy and Tanenhaus 1990; Rosenberg 2008). On the other hand, experimental studies in which researchers have control over exposure (and thus their subjects' knowledge) of Court decisions discover that the Court has the capacity to move public opinion in line with its ruling

(Bartels and Mutz 2009; Clawson, Kegler and Waltenburg 2001; Cummings and Shapiro 2006; Gibson and Caldeira 2009; Hoekstra 1995, 2003).

What further complicates the debate over the Supreme Court's influence on public attitudes is that the effect of Court decisions on public opinion is not simply dichotomous between "legitimation" and "no impact." Rather, there are several hypothetical ways, none of them absolute, in which the public may respond to Court decisions: public opinion may not change, shift in line with the ruling, deviate from the ruling, or polarize into two opposite camps, which can be identified as no effect, legitimation, backlash and polarization, respectively (Persily 2008). Moreover, a single Court decision may result in any combination of these hypothetical effects. For example, *Lawrence v. Texas*, which struck down a state law banning same-sex sex, resulted in a short-term backlash in public opinion, but eventually led to a long-term legitimation (Brewer 2003; Egan, Persily, and Wallsten 2008; Stoutenborough, Haider-Markel, and Allen 2006; Wilcox and Wolpert 2000). On the other hand, some cases like *Roe v. Wade*, in which the Court upheld the right to abortion, have observed at the same time a sustained increase in support for abortion related to health reasons and a polarized structure of opinion over discretionary or elective abortion (Barnum 1985; Blake 1977; Cook, Jelen, and Wilcox 1992; Franklin and Kosaki 1989).

This study partakes in the ongoing debate on the Supreme Court's capacity to influence Americans' attitudes—when the Supreme Court decides, how does the public react? The answer to this question holds important implications both for the role of the judiciary in democracy and for public opinion formation in general.

First, if the Supreme Court has the ability to win majority popular support for its rulings, then it can partially redeem itself from the major normative challenge to the Court's legitimacy

that the Court is a countermajoritarian institution detached from the people. The Court, composed of unelected judges with life-tenure capable of striking laws enacted by a majority of legislators, obviously and inevitably is countermajoritarian in a formal and procedural sense (Bickel 1968, 16-21; Choper 1974, 37-38). However, in a practical and empirical sense, a Court *ruling* may not be properly characterized countermajoritarian if it either strategically reflects a majority public opinion or persuades a majority to accept the Court's position (Ely 1980, 11-12; Marshall 1989, 5). Furthermore, if Court decisions receive wide public support, then these decisions are rarely challenged by executive and legislative branches, which in turn strengthen judicial legitimacy and judicial independence (Caldeira 1987; Gibson 1989; Stephenson 2004), empowering the Court to serve its purpose as a barrier against "the encroachments and oppressions of the representative body" (Hamilton [1788] 1966). On the other hand, if public opinion after Court decisions does not change, or only backlashes or polarizes, then one important source of the Court's legitimacy and authority—popular support—remains tenuous.

Second, studying the Supreme Court's influence on public opinion helps to shed light on the complexities and processes of public opinion formation. Because events other than a Court decision could, and do, influence public opinion, measuring an independent effect of a Court decision on public opinion formation is often impossible. This, however, should not prevent one from studying the underlying structure of public attitudes about an issue and how the Court may have indirectly shaped these beliefs. The Supreme Court has the unique ability to ignite intensive discussion of an issue through the media, providing a forum in which elite message and mass mobilization interact with each other to influence the public. Media thus serve as an important intermediary between the Court and the public, and as a messenger for elites to inform and educate the public to perceive Court's decisions in a certain way. Besides the role of the media,

other factors such as the level of knowledge, the amount of exposure to media coverage of the issue, one-sided or two-sided information flow, the salience of the issue, the intensity of prior beliefs, and individuals' demographic, social and ideological characteristics can all impact public opinion. Studying these factors in detail will help uncover which potential explanatory variables can explain how public opinion forms on an issue adjudicated by the Court.

A thorough examination of a wide range of different Court cases is unmanageable in a research of this length. Thus, I have selected the Affordable Care Act as a case study and narrowed the focus of this project to answer the question “How has *National Federation of Independent Business v. Sebelius*, the 2012 Supreme Court ruling on the Affordable Care Act (ACA), influenced public opinion on the ACA?” By analyzing various public opinion polls through multivariate analysis, this study finds that the Supreme Court decision has not resulted in an increased public support of the Affordable Care Act but rather bolstered a pre-existing trend of partisan polarization over the issue. With two-sided media coverage of polarized elite opinion of the Court decision, the public too becomes polarized.

Before continuing with the analysis to lay out the findings of this study, I shall clarify what this study is *not* about. Because of the lack of resources and time, I use an observational research design in a natural setting to examine public opinion on the Affordable Care Act before and after the Court decision in 2012. Hence, though I try to cope with general attribution problems through the use of narrow timeframe and the scrutiny of question wording effects, I do not attempt to find an *independent* effect of the Court decision on public opinion on the Affordable Care Act.

My analysis proceeds in four parts. First, I review the literature on the conceptual question: “When the Supreme Court decides, how does the public react?” The literature suggests

that there are mainly four hypotheses—no effect, legitimation, backlash, and polarization—that could be applied to understanding the influence of Court decisions on public opinion. These four hypotheses guide my pursuit in examining which of the four categories best explains the relationship between Supreme Court decision on the Affordable Care Act and the public's attitudinal change. Second, I provide the historical context in which the debate over health care has increasingly become polarized and explain the rationale for choosing the *NFIB* decision as a case study. Third, I describe the research design of this paper, acknowledging the flaws inherent to an observational study and outlining which efforts have been made to improve the study. Lastly, I examine trends in the aggregate opinion on the ACA with attention to significant events such as the Court decision, government shutdown, and the healthcare website crash, gauge the salience of such events by charting media coverage, and analyze the structure of public attitudes in attention to individuals' demographic, social and ideological characteristics. I conclude the paper by discussing general implications of this study's findings on the polarizing American public on contentious issues and the relationship between the Supreme Court and the American public.

Chapter II

Can the Supreme Court Change Public Opinion?

No Effect: Lack of Aggregate Change in Public Opinion

Ample evidence suggests that the vast majority of Supreme Court decisions do not change public opinion at the aggregate level, even for salient issues. This is mainly due to the simple fact that most average Americans do not have knowledge of the outcome of Supreme Court decisions, the functions and roles of the Court, or even the existence of the Court (Murphy and Tanenhaus 1968; Segal, Spaeth, and Benesh 2005). As Jaros and Roper (1980) put it, “Few [Americans] have the necessary awareness [of Court decisions] to give—or withhold—support” (102). Without the relevant knowledge of decisions, the public cannot change its opinion in any way based on the outcome of decisions. This is precisely why many scholars (Baas and Thomas 1984; Gash and Gonzales 2008; Le and Citrin 2008; Luks and Salamone 2008; Marshall 1987, 1989; Murphy and Tanenhaus 1990; Rosenberg 2008) reject the claim that Supreme Court decisions themselves can shape public attitudes, explaining that any change in public opinion after the Court decision is most likely the result of the public responding to political leaders or other significant events, rather than to justices.

Analyzing aggregate shifts in public opinion by comparing various pre- and post-decision polls, Marshall (1987) finds that there is little or no effect of the Court decisions on public opinion. In the 18 instances he studied, Marshall finds that the average shift of public opinion in the direction of the Court’s decisions was essentially zero percent. However, it is important to note here that Marshall’s study relies on the “average” (arithmetic mean) of public opinion shifts of 18 selected cases. A simple example might help illustrate the implication of this caveat. Finding the mean of opinion shifts requires adding two or more opinion shifts (positive if toward the direction of the Court and negative if not) and dividing the sum by the number of cases. So

for instance, a post-decision poll that shows a 10% increase of public support for Court decision A (as a positive value) and a 10% decrease of public support for Court decision B (as a negative value) will *average out* as a net 0% change in the overall public opinion, when in fact each shift in these cases, if considered as an absolute value, clearly shows a significant move toward and away from Court decisions. Likewise, Marshall (1987) claims that *Loving v. Virginia*, which yielded a 10% increase in support for interracial marriage,¹ and *Furman v. Georgia*, which resulted in a 9% decrease in support for elimination of death penalty,² indicate that the average shift toward the Court's position is only 1%. Using this approach, Marshall (1987) finds that the average shift from pre- to post-decision polls of the 18 decisions he studied is only 0.06%, even though there are extreme instances in which as many as 20% of respondents switching their opinion toward the Court's position.

However, one must not hastily conclude that these extreme instances alone nullify the "no effect" hypothesis. In fact, in the same study (Marshall 1987), there were several individual instances where virtually no respondents altered their opinion before and after the decisions, such as in *United Steelworkers of America v. Weber* (affirmative action in industry) and *Bob Jones University v. United States* (revoking tax exemptions for segregated religious schools). Other studies agree with Marshall (1987, 1989) that the Court cannot shape public opinion, pointing that the Court can neither influence public opinion on non-landmark cases (Johnson and Martin 1998) nor move people toward its articulated positions (Rosenberg 2008).

¹ In *Loving v. Virginia* (1967), the Supreme Court found that state laws making interracial marriage a crime are unconstitutional. In pre-decision polls, 46% of the public approved interracial marriage, and in post-decision polls, 56% of the public approved it, hence an increased support of 10% (Marshall 1987).

² In *Furman v. Georgia* (1972), the Supreme Court held that death penalty for murder is cruel and unusual punishment and thus violates the Constitution. In pre-decision polls, 41% of the public approved elimination of death penalty, and in post-decision polls, 32% of the public approved it, hence a decreased support of 9% (Marshall 1987).

The non-effect of Court decisions on public opinion stems from various factors. One strong argument in favor of the irrelevance of Supreme Court decisions on public opinion is that people's attitude about salient issues is often firmly fixed. Thus, even if people have the relevant information concerning the Court and its decisions, we may expect to see no significant shift in opinion for salient issues, on which people usually have cemented their opinion well before they learn about the decision (Persily 2008). Therefore, in order to conclude that the Court decisions shift public attitudes on salient issues, we need significant segments of the public to be *willing* to change opinion.

Furthermore, most Court decisions are too complex to generate extensive, coherent media coverage, without which the public cannot receive information about the rulings to form an opinion. For example, federalism decisions of the Rehnquist Court, despite their significance for legal doctrine, have no observable effect on public opinion because they are too complex for a general American to understand (Mullin 2008). Similarly, the Court's terrorism decisions—*Hamdi v. Rumsfeld* (2004), *Rasul v. Bush* (2004), and *Rumsfeld v. Padilla* (2004)—do not seem to have impact on public opinion because of the obscure legal issues involved in these cases, which stymie people's ability to assess their opinion on national security using Court decisions as cues (Goux, Egan, and Citrin 2008). Even on relatively simple issues like affirmative action, the public is not persuaded when the Court itself confuses people through several conflicting, nuanced, and divided decisions over a long period of time (Le and Citrin 2008).

Legitimation: The Supreme Court as Republican Schoolmaster

The legitimation hypothesis suggests that in some cases Supreme Court decisions can shift public opinion toward the position taken by the Court (Eisgruber 1992; Lerner 1967; Rostow 1952; Uslaner and Weber 1980). Conventional wisdom holds that Americans perceive

the Court as highly legitimate simply because it is the ultimate arbiter of the law (Adamany 1973). Because the public generally regards the Supreme Court as the most stable and respected institution as compared with other political institutions (Caldeira and Gibson 1992), some share of the population might endorse Court decisions and change their opinion in line with the decisions. In effect, the public considers the Supreme Court as a “republican schoolmaster” (Lerner 1967) or as an “educative institution” (Eisgruber 1992) that can guide Americans in the “right” way. In other words, the American people hold a positive presumption in favor of the Court’s position, believing that whatever the Court decides “must be right.”

Not surprisingly, the debate over the Court’s ability to act as “republican schoolmaster” and legitimize its decision by changing public opinion is mixed and complex. The purpose of this section is not to validate or refute the legitimation hypothesis but to note the conditions that make legitimation possible.

First and foremost, one essential condition for legitimation is that the public must actually receive the information about Court decisions. In order for one to change his or her views on an issue after the Court makes the decision, one must first learn about the outcome of the decision. Without exposure to such information, individuals simply cannot be persuaded. The role of the media becomes especially relevant here. Because Americans rely almost entirely on the news media for information about Court decisions, the ways in which the media frame Court decisions are particularly important in shaping public opinion (Davis 1994; Hoekstra 2003; Mondak and Smithey 1997). However, this is not to say that the media have complete discretion or control over influencing the public simply through different choices of framing. Though the volume of positive, neutral, or negative frames will generally differ among the news media along ideological lines, the media can be constrained by the Court ruling because the media cannot

totally ignore the Court's majority opinion and exclusively provide one-sided coverage stemming only from the Court's dissent or from other sources critical of the decision (Linos and Twist 2014, 4). This is why unanimous decisions, which not only have stronger credibility but also create one-sided information flow of signals for the public, tend to elicit legitimation effect more frequently than divided rulings (Zaller 1992). Nonetheless, the fact that the public must first learn about Court decisions through the news media remains as an important condition for any potential legitimation effect.

Secondly, the legitimation effect is greatest in issue areas where people have relatively weak prior interest or opinion about the issue. The level of interest often varies by salience and complexity of the decision. In general, people will have weak prior interest or belief on issues with low salience and high complexity and strong prior interest or belief on issues with high salience and low complexity. It is people with weak prior interest or belief in an issue who are most likely to be influenced by the Court (Hoekstra and Segal 1996; Petty and Cacioppo 1986). This is because when an issue is confusing or non-salient, the Court decision about an issue is likely to be the only signal that the public receives (Persily 2008, 11). In contrast, many people usually do have prior interest or belief on controversial issues such as abortion, flag burning, or euthanasia, and thus are less likely to be swayed on these issues by the Court decision alone. The relationship between the salience of an issue and public opinion posits an irony. On the one hand, this relationship suggests that the Court will have the greatest influence on non-salient issues where people have not yet developed opinions, but because people rely on the news media to receive information about Court decisions, an issue must be salient enough to stimulate significant media coverage of the issue. Indeed, the news media tend to focus on controversial issues (Iyengar 1991), suggesting that decisions that do get media attention, and thus reach the

public, are the ones dealing with issues on which the American people will not easily change their prior beliefs. Perhaps for this reason, the last condition—people’s willingness to change their opinion—is especially important.

Even if people receive relevant information concerning the Court decision, there would be no significant shift in public opinion when the public is not willing to change its prior attitudes. What factors, then, make people willing to change their prior attitudes and accept the position laid out by the Court? One obvious answer stems from the core assumption of the legitimation hypothesis itself: that people endorse Court decisions and change their opinion in line with the decisions because they view the Court as “republican schoolmaster.” Individuals with higher levels of support for the Court are more likely to change their opinion in the direction of the Court decision than those with lower levels of support for the Court (Mondak 1990). However, the assumption that the Court enjoys considerable persuasive powers simply because of public support for the Court should not be taken as the final word. While some segments of the public may well engage in a line of thought that involves endorsing the Court’s position as a result of their confidence in the Court, research suggests that public confidence in the Court is not absolute and does fluctuate over time (Adamany 1973; Caldeira 1986; Casey 1976; Kessel 1966; Kritzer 2001; Murphy and Tanenhaus 1968). For example, when the Court frequently engages in judicial activism and strikes down a high number of legislations enacted by Congress, public confidence in the Court declines (Caldeira 1986). Hence, the argument that people with prior beliefs change their opinion and agree with Court decisions because of their confidence in the Court is too simple.

An alternative, but more fulfilling, explanation is that an individual might take cues from trustworthy and credible elites from the news media and resolve any conflict between his views

and elites' views by changing his opinion (Bailey, Sigelman and Wilcox 2003). Of course, this requires that elites' views must agree with Court decisions for individuals to change their prior belief toward the Court's position by taking elites' views as cues. Other scholars like Petty and Cacioppo (1986) further suggest that an additional source of people's willingness to change opinion can actually be their interest in the issue itself. As mentioned, individuals who feel strongly about an issue are most likely to have developed prior belief, which is difficult to be changed. Interestingly, however, Petty and Cacioppo (1986) explain that individuals with strong interest on certain issues may be willing to change their views, precisely because they are motivated to think about and process information about the issue. In other words, the more important the issue is to an individual, the more likely an individual will pay attention to political events relevant to the issue including the Court ruling, reflect on political implications of these events, and change his or her opinion, if necessary.

As one might expect, Supreme Court cases rarely meet all of the necessary conditions for public opinion shifts toward the Court's direction. However, a few studies stand out in providing evidence of the Court's legitimizing role. Stoutenborough, Haider-Markel, and Allen (2006), for example, find that Supreme Court decisions on gay civil rights issues, particularly *Lawrence v. Texas* (2003), had a significant impact on the increased public support for gay rights. Hoekstra (2003) also finds evidence that people do sometimes align itself with a Supreme Court decision, especially those in the immediate communities who are directly affected by the decision. In an experiment which attributes policy to various actors including the Supreme Court, the police, "bureaucrats" in Washington, and high school principal, Mondak (1992) found that legitimation increased when the policy is "attributed to the Supreme Court rather than actors with lower approval ratings" (470).

More limitedly, some observational studies have also suggested that change in public opinion toward the Court's position happens not as a simple, uniform shift in one direction but through complex patterns (Franklin and Kosaki 1989). Franklin and Kosaki (1989), for example, find a complicated pattern of the public's approval and disapproval of the decision in *Roe v. Wade*. Post-decision polls reveal that the public generally increased support (thus endorsed the decision) in less contentious dimensions such as the right to abortion for women who were impregnated as a result of rape. Interestingly, however, for other dimensions of the "discretionary" abortion policy that are subject to debate (e.g. abortion due to economic constraints or relationship breakup), distinct groups have formed into individuals who are increasingly supportive and those who are increasingly opposed (more on which is discussed in the "Polarization" section).

Backlash: The Illegitimate Court?

Perhaps due to the trend that many backlashes often ultimately result in legitimation over time, current literature on the relationship between court decisions and public opinion has not extensively explored the dynamics of backlash in public opinion. Even if public opinion does not converge to a coherent one that is in line with Supreme Court decision, people often acquiesce to the decision with which they disagree because they understand that Supreme Court decisions are equivalent to laws (Gibson and Nelson 2014). For instance, many cases experience a short-term backlash but eventually gather more support over time—a phenomenon that Persily (2008) describes as a "slingshot" effect. One prominent example of slingshot effect is *Brown v. Board of Education*, which aggravated racial tensions in the South immediately after the decision, but the public gradually accepted the decision as the law of the land.

What make the analysis of backlash hypothesis more complicated are the psychological and political forces behind backlash. Literature on political psychology has developed the idea that individuals' general like or dislike and trust or distrust of an institution influence their evaluation of policies enacted by that institution. Thus, one would expect to observe that individuals who are unsupportive of the Court in the first place are likely to evaluate the decisions unfavorably and judge that the decision was a bad one (Gibson and Nelson 2014). It may also be the case that a Court decision raises salience of an otherwise non-salient issue, and this increased salience itself can provoke a critical discussion of the issue, giving the public a chance to develop an opinion contrary to the Court's position of the issue (Persily 2008, 12).

However, a broad dislike of the Court as an institution does not fully explain the factors of backlash. Just as the public first needs to receive information before it moves its attitudes toward the Court decision, public opinion might shift away from the decision when individuals learn about the decision and its implications. In addition, similar to the case of legitimation, those with weak prior beliefs will be more susceptible to attitude change in the opposite direction of the Court's holdings than those with firmly fixed beliefs. Unlike legitimation, however, there is lack of empirical support that backlash occurred as a result of the Court decision per se. In fact, most instances where backlash occurs are ones in which a preexisting trajectory against the Court's position get accelerated after the decision (Persily 2008). Most notable example is the aforementioned case on death penalty *Furman v. Georgia* (1972). Support for death penalty was already on rise since 1965, and when the Court held in 1972 that death penalty for murder was unconstitutional, support for death penalty steadily increased until early 1990s (Persily 2008). In this sense, it would be incorrect to infer that the Court decision in *Furman* shifted public opinion from one direction to another. Rather, the Court decision accelerated the pace of support for

death penalty—an interesting phenomenon given that the pro-death penalty trajectory did not change even after the Court reversed its decision *Furman* with the new case on death penalty, *Gregg v. Georgia* (1976).

Polarization: The Structural Response

I have explained that it is difficult for Court decisions to switch opinion of individuals who have strong prior beliefs about political and social issues. However, there are instances where a Court decision further strengthens people's prior beliefs. In such case, the aggregate shift in opinion would still look virtually nonexistent (because most public opinion polls do not use a continuous number scale to measure the extent of approval or disapproval of Court decisions), but the group breakdown of public opinion might reveal polarization in which supporters of an issue become more supportive whereas opponents of an issue become more opposed. Again, polarization too requires extensive media coverage, clear elite signals, and high salience of issues. Furthermore, when information flow is two-sided with equal strength of media coverage of both positions, it can be expected that individuals without strong prior beliefs would take cues from reference groups and opinion leaders, and then choose sides accordingly. What essentially happens is a bimodal distribution of opinion in which individuals “sort out” themselves according to the sources they take cues from on the basis of race, ideology, partisanship, religion, or any other group characteristic variable (Abramowitz and Saunders 2008).

As mentioned before, *Roe v. Wade* (1973) stands as the paradigmatic case of polarization. In their study of the effect of *Roe* on public opinion on abortion, Franklin and Kosaki (1989) find evidence of both legitimization and backlash among different groups. Specifically, they argue that the public's response to the decision was a “structural response” in which groups of individuals

such as Catholics, who had prior belief that abortion is immoral, became substantially more critical of abortion while the aggregate support for health-related abortions increased among whites (Franklin and Kosaki 1989; see also Johnson and Martin 1998). Court decisions can thus increase the intensity of within-group attitudes, which in turn lead to polarization between groups based on demographic, social, or ideological lines.

Polarization is not limited to instances where beliefs had already existed in two separate camps before the decision. In fact, studies suggest that even for issues that lack clear division of prior beliefs in public opinion might become more polarized as a result of the Court decision. On gay rights issues, for example, the Court decisions such as *Bowers v. Hardwick* and *Lawrence v. Texas* played an important role in creating an ideological division when most of the public did not have strong prior beliefs about gay rights before the decisions (Stoutenborough, Haider-Markel, and Allen 2006). Ever since the decisions, polarization over gay rights, particularly same-sex marriage, has solidified so strongly that one can now predict people's position on same-sex marriage simply based on their ideology. Indeed, it is not uncommon for Court decisions to initiate politicization of conflict, which in turn results in partisan or ideological divisions on issues (Persily 2008). For example, before the Court ruled in *Texas v. Johnson* (1989) that flag burning is part of freedom of speech, opinion on flag burning was not visibly divided along partisan lines. After the Court's ruling, however, Republicans and Democrats have slowly diverged over the issue, with Republicans denying that burning a national flag is "free speech" and Democrats, though generally limited to those with higher education, approving the Court decision (Hanson 2008).

The Effect of Court Decisions on Public Opinion

So what is the effect of Court decisions on public opinion? As the above review of literature suggests, no single hypothesis explains how the Supreme Court decisions change (or fail to change) public opinion. A decision might fall into any of these four categories in the short-run or even a mixture of these possibilities over a long period of time. For example, *Brown v. Board of Education* (1954) has led to a short-term backlash, medium-term polarization, and long-term legitimation (Persily 2008). If anything can be predicted about irregular effects of Court decisions on public opinion, it is that Court decisions ignite intensive discussion of an issue through media coverage, giving the public necessary time, resources, and cues to “respond” to the decisions. The nature of the public’s response will vary according to several factors, including the level of knowledge, the amount of exposure to media coverage of the issue, the source of news media, the salience of the issue, the intensity of prior beliefs, individuals’ demographic, social and ideological characteristics, and perhaps the unanimity (or lack thereof) in the Court.

Given the idiosyncratic nature of the relationship between Supreme Court cases and public opinion on constitutional issues, this study does not attempt to argue in favor of or against one hypothesis over others. Indeed, such pursuit would be fruitless, if not impossible, for no single hypothesis is able to provide a universal explanation of the effect of Court decisions on public opinion on a wide range of issues. Instead, I apply the existing hypotheses of the influence of Court decisions on public opinion formation to a recent Supreme Court case on the Affordable Care Act, and explore how the *NFIB* decision has shaped, influenced, or changed Americans’ attitudes on healthcare policy. In the next chapter, I provide the rationale for choosing *NFIB* as a case study.

Chapter III **Why *National Federation of Independent Business v. Sebelius* (2012)?**

A Brief History of Health Care Reform in the United States

Though the Patient Protection and Affordable Care Act of 2010, more commonly known as the Affordable Care Act or “Obamacare,” is to date the most extensive health care reform at the federal level, the need for universal access to health care has long been debated, often quite contentiously, in the United States (Kilgour 2015). The purpose of this section is to provide a brief history of the health care reform in the United States, which would allow for a better understanding of the current health care reform and reveal how the health care as social policy has increasingly become a partisan issue over the past decades.

The Franklin D. Roosevelt Administration, though unable to enact legislation on universal access to health care, is often credited as the first administration to elevate health care reform to the national agenda (Kilgour 2015). The Roosevelt Administration attempted to include a provision for national health insurance in its Social Security Act of 1935, but the staunch opposition from a powerful interest group, the American Medical Association, prevented the administration from pursuing a national health insurance (Kilgour 2015, 140). The second attempt of national medical and hospitalization program was made through the Wagner-Murray-Dingell Bill of 1943, which also failed as it never came to a vote (Starr 2011, 38). However, the real contribution of the Roosevelt Administration to the health care reform lies in its role as the progenitor of politicization of health care as social policy. In his victory speech in 1944, President Roosevelt articulated the need for an “economic bill of rights” which should guarantee the “right to adequate medical care” and a “right to adequate protection from the economic fears” of becoming sick (Starr 2011, 39). The public, which had not previously considered health care as an important policy issue, began to perceive it as such.

While the ideological split between liberal and conservative *elites* over health care began to shape shortly after the Roosevelt era, the *public* generally had a consensus in support of national health care provided by the government. Opinion polls in 1946 revealed an “overwhelming public support” for national health care reform (Krugman 2009, 67). The Truman Administration attempted to take advantage of such public support and devise a universal health care system, but the Cold War rhetoric used by the opposition that Truman proposed a “socialized medicine” made it impossible (Kilgour 2015, 140). The ideological divide among the elites during this period would slowly spill over to the public, eventually creating an irreversible polarization trend over the issue of health care reform.

One major health care reform came under the Lyndon B. Johnson Administration. By 1964, Democrats controlled both houses of Congress, and President Johnson capitalized on this ideal situation to pursue Medicare, which was to provide health benefits for senior citizens. Not surprisingly, health care providers, health insurance companies, and conservative Congressional leaders resisted any provision of the proposed Medicare bill resembling a government-controlled universal health care. After a series of compromises and concessions, however, Republicans and Democrats agreed on a three-part plan: Part A of Medicare (the Democratic proposal) that pays hospital care for inpatient services, Part B of Medicare (the Republican proposal) that allows physicians to voluntarily enroll in government-subsidized insurance for doctor’s visits, lab tests, and other outpatient services, and Medicaid, a federal-state funded medical coverage for the poor (Kilgour 2015, 141; Oliver, Lee, and Lipton 2004, 290-291). A Gallup Poll from 1965 demonstrates that the public was again favorable to Medicare and Medicaid, with more than 65% of Americans approving the new health care law that increased the number of insured Americans (Oliver, Lee, and Lipton 2004).

Although Republicans undoubtedly were more hostile to health care reforms than were Democrats, a stark polarization pattern that exists today was noticeably absent in the 60s and 70s. Republican President Richard Nixon, for example, believed in the need of comprehensive health insurance for all Americans. In fact, the Nixon Administration is responsible for expanding Medicare benefits to cover the disabled and those with end-stage renal disease in addition to senior citizens (Oliver, Lee, and Lipton 2004, 295). In 1974, Nixon introduced the Comprehensive Health Insurance Bill that would have mandated employers to purchase health insurance for their employees and created a public health insurance option for all Americans, but the bill was never voted on because of Nixon's resignation later that year (Starr 2011, 56-57). Nonetheless, Nixon's efforts at developing a comprehensive health insurance policy points that the degree of partisan divide over health care reform was quite moderate compared to today.

If Nixon was a Republican outlier, President Jimmy Carter was a Democratic outlier. Carter did not pursue expanding health coverage as promised during his presidential campaign (Oliver, Lee, and Lipton 2004, 297). President Reagan, too, did not do much to create a national health insurance system, which would certainly contradict his staunch belief in "small government." Reagan instead supported the "Medicare Advantage" (Part C of Medicare), which allows Medicare beneficiaries already enrolled in Part A or Part B to receive benefits through private insurance plans such as Health Maintenance Organizations (HMOs) and Preferred Provider Organizations (PPOs) (Oliver, Lee, and Lipton 2004, 284-285). Although Reagan signed the Medicare Catastrophic Coverage Act of 1988 (MCCA), which expanded coverage of Medicare to include drug prescription benefits and catastrophic care, the MCCA was repealed during the first year of the George H. W. Bush Administration (Rice, Desmond, and Gabel 1990).

It was during the Clinton presidency that the ideological split over health care started to widen. President Clinton's major proposal was the Health Security Act in 1993, which was to provide a universal coverage as well as control increasing health care costs through government regulations of the health insurance industry. Furthermore, Clinton reinvigorated Nixon's plan to mandate employers to purchase health insurance for their employees, and revamped the plan to guarantee coverage regardless whether an employee gets layoff, changes jobs, or retires before retirement age (Starr 2011, 100-101). Clinton's proposal was met with fierce Republican opposition, foreshadowing the intense partisan divide that would prevail in the debate over health care reform a decade later. In addition to the political opposition from the Republican Congressional leaders, Clinton's proposal faced major insurance and pharmaceutical companies whose profits would be considerably undermined should the Health Security Act be enacted (Krugman 2009, 228). As it is well known, the proposed act did not survive in Congress.

One last major health care reform developed while President George W. Bush was in office. As a Republican, President Bush did not support government-regulated universal health care, but did sign the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which established the final part of Medicare (Part D) that pays for prescription drugs (Kilgour 2015, 141).

The overview of the history of health care reform in the U.S. reveals that health care, just like any other major social and economic issue, has increasingly become contested over partisan and ideological lines. Many presidents, both Democratic and Republican, have attempted to improve access and costs for health care in one way or another. In the early stages, only the most partisan political elites had distinct beliefs about whether the government should develop a national health care reform. The public, on the other hand, both Republicans and Democrats, had

a consensus in support of national health care provided by the government. The period from 60s to 70s is noteworthy in that Presidents Nixon and Carter differed from their party positions in their approach to health care reform. Presidents Reagan and Bush did not seriously engage in developing a national health insurance system. President Clinton's Health Security Plan was the last major attempt to create a comprehensive health coverage system at the federal level, but the relentless opposition from the Republican elites and insurance and pharmaceutical companies led to its failure, which in turn aggravated the partisan divide over the issue of health care.

The Affordable Care Act and its Controversies

Comprehensive health care reform reemerged as one of the central policy issues during the 2008 Presidential Election. Both Hilary Clinton and Barack Obama, the two then-leading nominees of the Democratic primaries, made health care reform a primary issue to be tackled if they were elected. After being elected, President Obama began to actively push health care reform as a key legislative issue, most likely because both houses of Congress were under Democratic control at the time. After much controversy and heated debate, the Patient Protection and Affordable Care Act (ACA), aimed at providing universal health insurance coverage, passed in the Senate and the House and was signed into law by President Obama on March 23, 2010.

The features of the ACA are simultaneously what distinguish the ACA from previous (and often failed) attempts at health care reform and what invite much of the challenges against the whole system the ACA creates. The ACA imposes stringent regulations on insurance companies, such as prohibiting insurance companies from denying children coverage based on pre-existing conditions, rescinding coverage except in cases of fraud, or placing annual limits on the dollar value of coverage (The Kaiser Family Foundation 2013). Private health insurance plans are also required to cover preventative services in full. In terms of employer requirements,

employers are mandated to offer health coverage to their employees and are fined for every full-time employee they do not offer coverage. The ACA provides cost-sharing subsidies to help low-income individuals and expands Medicaid to all non-Medicare eligible individuals under age 65 whose income is below the 133% federal poverty line (The Kaiser Family Foundation 2013). And, of course, the individual mandate—the core challenge to the constitutionality of the ACA in *National Federation of Independent Businesses v. Sebelius*—requires U.S. citizens and legal residents to purchase qualifying health coverage or pay a tax penalty. All of these features are to improve the overall health care system, expand patients' rights, protections, and eligibility, revamp the administrative procedures of the existing system, reduce health care costs in general, and regulate the unchecked insurance industry (Quadagno 2014).

The partisan and ideological conflict over the Affordable Care Act was clear from the onset of the reform. Despite the fact the ACA passed without a single Republican vote in either the House or the Senate, liberal elites considered the ACA as a watered-down, disappointing scheme that would never achieve universal coverage (Quadagno 2014). Conservatives, on the other hand, accused the ACA as an attempt to put America on the road to socialism (Grogan 2011). Under the leadership of the Republican Senate Minority Leader Mitch McConnell, the Republican Party insured that no Republican would support the ACA, thus preventing the Obama Administration from claiming that the ACA was a bi-partisan effort. Republicans further used denigrating rhetoric to mock the ACA, referring it as the “Obamacare” to negatively associate President Obama as the creator of the new “socialized medicine,” the term reminiscent of the opposition's challenge against the Truman Administration decades ago (Kilgour 2015, 140; Quadagno 2014).

As expected, opponents used the Supreme Court as an avenue for challenging the constitutionality of the Affordable Care Act in *National Federation of Independent Business v. Sebelius* (2012). Given the scope of the ACA and its policy implications, no Supreme Court decision has been more closely scrutinized by political elites since *Bush v. Gore* in 2000 (Hall 2012). Four separate constitutional and policy issues relating to the law have been challenged: the individual mandate itself, the severability of individual mandate from the ACA, the applicability of the Anti-Injunction Act to the present case, and the rules the ACA imposes on the states to receive federal Medicaid funding. Of these, the individual mandate and the impositions on the states have been the most contested issues, not only among political elites but also within the Supreme Court.

The most far-reaching challenge concerned the issue of individual mandate, which required Americans to purchase health insurance or pay a tax for having failed to do so. The opponents argued that mandate was unconstitutional because it was not an exercise of congressional power to regulate commerce but an attempt to force everyone into commerce (Latham 2012). Furthermore, payment for failing to comply with individual mandate is not a tax, but a penalty, and thus the mandate cannot be understood as an exercise of congressional taxing power, either under the Commerce Clause or the Taxing and Spending Clause (Latham 2012). As Federal District Judge Roger Vinson famously posed the question, could Congress “require that people buy and consume broccoli at regular intervals, not only because the required purchases will positively impact interstate commerce, but also because people who eat healthier tend to be healthier, and are thus more productive and put less of a strain on the health-care system?” (Troy 2012). The Court’s conservative majority agreed with opponents that the individual mandate was not a valid exercise of Congress' power to regulate commerce, for

individual mandate is not an attempt to regulate existing commercial activity but to compel individuals to participate in a newly created commerce.

The Court did, however, conclude that individual mandate is still a lawful exercise of the Congress's taxing authority under the Taxing and Spending Clause. Even though Congress had not characterized the mandate as a tax in its legislative proceedings, the penalty was collected according to the existing tax system as it the dollar amount of the penalty is calculated as a percent of one's income and is collected by the Internal Revenue Service by normal means (Hall 2012). The Supreme Court had previously articulated what is known as the compulsion test in *South Dakota v. Dole* (1987) that a federally imposed financial condition cannot be "so coercive as to pass the point at which 'pressure turns into compulsion.'" The Roberts Court held that the mandate payment is not so severe as to be coercive (Hall 2012).

The other contentious issue concerned the provisions of the ACA requiring states to expand their Medicaid coverage or lose federal funding for Medicaid. Some states argued that this imposition meets the definition of coercion under the compulsion test, while the Obama Administration pointed out that many important programs such as education and highway safety also depend on conditional federal government funding (Latham 2012). The Court agreed in a 7-2 decision (with Justices Ginsburg and Sotomayor dissenting) that the Medicaid expansion provisions were indeed coercive and unconstitutional. The Court stated that Congress could not threaten the states to either comply with the expansion or lose federal funding of Medicaid outright (Hall 2012).

On the question whether the Anti-Injunction Act, which holds that a tax cannot be challenged before it has been imposed, the Court unanimously ruled that the Anti-Injunction Act did not apply to the present case, because the Congress did not intend the payment for non-

compliance with the individual mandate to be a tax. On the issue of severability—whether the provision for individual mandate is severable from the ACA as a whole (i.e. individual mandate can be found unconstitutional without negating the other pieces of the legislation)—the Court concluded that individual mandate was constitutional under the Taxing and Spending power of Congress, and so the Court need not address the severability question (Troy 2012).

The conflicts concerning the Affordable Care Act arguably represent a paradigmatic case of how political cleavages deepen in the United States. The political challenge surrounding the Affordable Care Act in 2010 eventually turned into a judicial one, which in turn further stirred much opposition, conflict, and debate among Republican and Democratic elites, whose beliefs have spilled over to the general public through the news media. The paradigmatic process of partisan politicization of the ACA, and the Court’s unique role in it, is behind my rationale for choosing *NFIB* as a case study to examine the relationship between the Court decision and public opinion and the structure of public attitudes in this project.

The Rationale for *NFIB* as a Case Study

Again, the conceptual research question of this project is “Can the Supreme Court change public opinion in a way that Americans support its decisions?” To answer this question, I have selected *National Federation of Independent Business v. Sebelius*, the 2012 Supreme Court ruling on Affordable Care Act (or Obamacare), as a case study for several important reasons.

First, given that many Supreme Court decisions neither influence nor reach the general American public, I needed to choose a salient and influential case that could generate significant media coverage and various public opinion polls on the issue. As the above discussion of the evolving process of health care reforms and the controversies surrounding the Affordable Care Act illustrates and the *NFIB*, the debate over universal coverage has become increasingly

contested. In other words, the *NFIB* decision meets the threshold of salience and politicization needed to reach the general public, suggesting that the first and foremost condition of legitimation hypothesis—that the public must actually receive the information about Court decisions—was fulfilled.

Second, the ACA is a strongly partisan issue with most Republicans opposing it and Democrats supporting it. My goal is to examine whether the fact that the Supreme Court, regarded by many Americans to be the most stable and trusted branch of our federal government, has upheld the constitutionality of Obamacare, overcomes such partisan cleavage among public attitudes. As Caldeira and Gibson (1992, 635) point out, “the Supreme Court has traditionally fared well in the estimations of the public.” But given that the legitimation effect is greatest in issue areas where people have relatively weak prior interest or opinion about the issue, I predict that public opinion on the ACA, an issue that has been on the public radar for quite some time, is difficult to be moved.

Lastly, public opinion on the Affordable Care Act, or even health care in general, in relation to the Supreme Court has not been examined in great detail within the existing literature. In fact, most of the existing research, in both natural setting and experimental design, have given an obsessive and exclusive focus on issues such as abortion, gay rights, due process, affirmative action, gender equality, and euthanasia. Perhaps the lack of attention to the Affordable Care Act may be simply because the ACA is relatively a new issue. But I argue that the ternary relationship among the Supreme Court, public opinion and the Affordable Care Act has not been examined because the *constitutional* issues dealing with individual rights (e.g. gay rights) are more likely to receive media’s and scholars’ attention than the *statutory* issues dealing with the Commerce Clause, the Taxing and Spending Clause, or other federalism issues. Thus, this paper

attempts to contribute to the pool of studies dealing with the relationship between the Supreme Court and public opinion on the Affordable Care Act, explaining what the American people believe about health care and how the Court may have indirectly shaped their beliefs.

While *King v. Burwell* (2015), the second and last (as of May 2016) Supreme Court case on the Affordable Care Act, closely parallels *NFIB* in that *King* was also a salient decision over a strongly partisan issue, this paper does not delve into the discussion of *King* for practical reasons. First, research suggests that the impact the Court decisions can have on public opinion is significant only for the *first* Supreme Court decision on a particular issue (Johnson and Martin 1998). Once the Supreme Court rules a landmark decision on a particular issue concerning the entire nation, individuals elaborate their opinions on that issue. Because individuals have the tendency for “dissonance avoidance” (that is, avoiding information inconsistent with their pre-existing beliefs), individuals’ newly elaborated opinion through a salient event such as the Court decision is not likely to change (Baum 2012, 267). Therefore, Johnson and Martin (1998, 300) argue that “subsequent decisions within the same issue area—even if they overrule an initial landmark decision—will have little effect on public opinion.” Given that *NFIB* preceded *King* and that these decisions both upheld, for the most part, the constitutionality of the ACA, I give exclusive attention to *NFIB*. Second, *King* has been largely overlooked by the media, mainly because *Obergefell v. Hodges* (2015), the landmark decision issued a day after *King* that recognized same-sex marriage as the fundamental right, absorbed most of media coverage. In fact, after the *King* and *Obergefell* decisions, news coverage of same-sex marriage in prominent news sources such as the *New York Times* and the *Wall Street Journal* was almost three times greater than the coverage of the Affordable Care Act. Last justification for disregarding *King* has to do with the lack of data. Because I rely on multivariate analysis to measure between-group

attitudes toward the ACA, I need access to full dataset that codes individual responses on a wide range of social, ideological, and demographic variables. Unfortunately, the latest dated dataset I was able to find is from December 2014, which is before *King* was ruled.

In sum, *NFIB* is a worthy case study for analyzing the ternary relationship among the Supreme Court, public opinion, and the Affordable Care Act because it is a salient decision on a strongly contentious and partisan issue that has not yet been studied in great detail. Furthermore, *NFIB* is the first Supreme Court case on the Affordable Care Act, thus providing individuals with the opportunity to elaborate their opinions on the ACA in ways that would have not been possible without the salience the Court has injected in the national debate about healthcare.

Chapter IV A Research Design for Testing the Four Hypotheses

The Attribution Problem

Studying the effect of the Court decision on public opinion on any issue is a difficult task. One major problem is that simply comparing public opinion before and after the Court decision does not necessarily suggest that the decision has been the sole factor influencing public opinion. Even if one finds changes in public opinion by comparing responses from pre- and post-decision polls, how can it be confirmed that changes are due to the decision rather than other factors? In other words, how can a researcher attribute public opinion shift, if any, to the Court decision?

Most of the existing studies that find a direct effect of a Court decision on public opinion rely on an experiment in which researchers have control over exposure of respondents to necessary information about Court decisions (Bartels and Mutz 2009; Clawson, Kegler and Waltenburg 2001; Cummings and Shapiro 2006; Gibson and Caldeira 2009; Hoekstra 1995, 2003; Linos and Twist 2015). In effect, researchers can decide the amount, content, and framing of news the treatment group will receive, and compare this group's opinion shifts with those of the control group. But a major downside to the experimental approach is that the treatment is a "one-time injection of information," whereas in reality people receive a wide range of elite messages from various sources of news houses over an indefinite period of time (Egan and Citrin 2011, 5).

In addition, an experimental approach is useful when a researcher is testing the legitimization effect of the Supreme Court as a symbol through an *invented* Court decision. It can also be used to separate the study subjects into treatment and control groups prior to an expected *real-life* Court decision and compare differences in attitudes among the groups after the decision. Because the Supreme Court has a habit of accepting a salient and controversial case on

the docket but delaying it to the end of June in each year for the ruling, a researcher can separate control and treatment groups before the anticipated ruling and ask their opinion about the issue involved shortly before and after the decision. Unfortunately, the present author is working with a real-life Court decision that was ruled three years before this project launched, and so is unable to rely on an experimental design to separate subjects prior to the decision. The lack of resources and time further make an experimental design less feasible an option. Therefore, I base my study in a natural setting and rely on polls fielded by independent survey houses to examine the public opinion the Affordable Care Act.

There are several ways to deal with attribution problems inherent in a natural setting, though none of them are perfect: comparing opinions of those who have heard about the decision versus those who have not, looking at polls conducted immediately before and after the decision, and studying the effects of question wording on public opinion. Ideally, I would want to use all three methods to investigate the Court decision's influence on public opinion, but my capacity to do so is limited by the available surveys. Nonetheless, I will outline each design and explain its strengths and weaknesses.

Knowledge about the Court Decision

In any research for drawing causality, the researcher needs a treatment group and a control group to compare the relationship between the independent variable and the dependent variable. In studies of Court decisions, however, it is often difficult to find a control group—that is, people who have no knowledge about the decision—because the Court's rulings, especially ones concerning salient and controversial issues, receive significant media coverage that disseminates information and elite messages to the public. Just as a study finding the correlation between children playing video games and the rise of youth violence needs a treatment (playing

video games) and a control (not playing video games), my study needs a treatment (knowledge of Court decision) and a control (no knowledge of Court decision).

Franklin and Kosaki (1989) have gained leverage on the problem of attribution by distinguishing between respondents who have heard of the decision (in their case, *Roe v. Wade*) and those who have not. In order to respond to the Court decision, members of the public must have at least heard of the decision. If people not aware of the decision, then they can't form an opinion about the decision. Thus, Franklin and Kosaki (1989) use those who have not heard of the *Roe* decision as a control group. If change in public opinion is a result of pre-existing trend irrespective of the decision, opinions of those who have heard the decision and those who have not should be similar. On the other hand, if opinion of those who have heard of the decision changes while the opinion of those who have not remains unaffected, it is likely that the exposure to the Court decision changes opinion. Using multivariate analysis with controls for potential confounding variables such as level of education, Franklin and Kosaki (1989) find that those who have heard about the decision become polarized over their support and disapproval for discretionary abortion, whereas those who have not heard the decision show no signs of changing opinion.

Ideally, I would replicate Franklin and Kosaki's (1989) design and separate the opinions of those who have heard of the ruling on *NFIB v. Sebelius* and those who have not. However, this requires that some reliable surveys need to have asked the crucial question of whether the respondent knows about the Court decision. Perhaps because survey houses understand the effect of knowledge of Court ruling on public attitude formation, virtually every survey I have examined either generally asks respondents' opinion on the ACA or provides the contextual information about the Court decision before asking for respondents' opinion (thus preventing a

researcher to separate respondents with the correct knowledge of the decision and those without such knowledge). Without surveys that ask a question about the respondents' knowledge of the Court decision, I am unable to distinguish opinions of those who have heard about the decision from opinions of those who have not. Hence I have to rely on other less robust methods to test the correlation between the decision and public support for the Affordable Care Act.

Polls within a Quarter Before and After the Decision

Major limitation of observational studies in gauging the influence of a Court decision on public opinion is the long time gap between surveys. As Hoekstra (1995, 112) states, “There is a very long time gap, often one or more years, between the “before” and “after” sample, and events other than the Court decision could influence opinion in this interval.” The longer the period of time between when questions are asked, the more the confounding factors can influence public attitudes (Linos and Twist 2015). A quite intuitive solution to cope with time lag is to look at polls conducted immediately before and after the decision as a solution to minimize intervening factors affecting public attitude formation. When the same survey is repeated within a short period of time before and after the Court decision, any visible change in opinion I find may be attributed to the Court decision, presumably because there would have been no time for other factors to influence public opinion to a great extent.³

Thus, an ideal time frame would be studying polls conducted a quarter before and after the Court's decision on the Affordable Care Act. However, this is not to say that I will disregard public opinion on mandatory healthcare on other time frames. In fact, looking at public support for mandatory healthcare over several years, beginning with the year in which a question on

³ I acknowledge that attributing change in opinion between pre- and post-decision polls within a narrow timeframe, too, is grounded on the assumption that respondents are aware of the Court decision. In a later section, I illustrate how *NFIB* has ignited intensive media coverage of the ACA, and I rely on this increased media attention to assume that the general public, including the sample respondents of surveys, learned about the decision.

mandatory healthcare was first asked and ending with the most recent available poll, would provide an overview of the trend and evolution of public opinion on this issue. A line graph illustrating such trend will help us understand any patterns of public attitudes toward mandatory healthcare. Then, I will place the decision date on the line graph and study any shift in the direction of the line before and after the decision.

But relying on a narrow time frame is not without limitations. One obvious caveat to this method is that there will still be intervening variables even within a narrow time frame. Some variables such as demographic characteristics, social characteristics, and values of respondents can be controlled through a multivariate analysis. However, some variables such as the presence of national presidential debates, the source of news media, or natural disasters are difficult to control in an observational study. Nonetheless, looking at polls a quarter before and after the decision is worth an investigation because of the limited availability of surveys that distinguish respondents who know about the outcome of the decision from those who lack such knowledge.

The Effects of Question Wording

The last approach in dealing with the attribution problem is studying question wordings of surveys. Perhaps because polling organizations are aware of the importance of the knowledge of the Court decision in influencing public attitudes, many post-decision surveys provide factual information about the *NFIB v. Sebelius* ruling before asking respondents' opinion about the Affordable Care Act. For example, a survey conducted by the Kaiser Family Foundation in July 31, 2012 asks: "As you may know, last month the Supreme Court ruled that the healthcare law is constitutional, upholding most of its provisions. Do you approve or disapprove of the Court's decisions in this case?" While giving factual information in the question prevents us from

observing differences between respondents who have heard of the decision and those who haven't, questions like the Kaiser's are helpful for two reasons.

First, by comparing responses from a survey that provides information and one that does not provide information, I can determine whether providing information yields a shift in attitude. To do this, I look at two different sets of surveys: (1) one that documents responses between post-decision poll questions with information about the outcome of the decision and pre-decision poll questions about the Affordable Care Act and (2) one between post-decision poll questions without the outcome information and pre-decision poll questions about the Affordable Care Act. If including the outcome information makes visible changes in public opinion before and after the decision, and excluding the outcome information makes no change, I might be able to attribute that change to the Court decision. Thus, in effect, outcome information becomes the treatment and no outcome information becomes the control.

The second benefit of looking at questions like the Kaiser's is that it includes the word "the Supreme Court." Research shows that the public has more deference for the Supreme Court than for other branches of government (Bartels and Mutz 2009; Gibson and Caldeira 2009). Because the public might perceive reference to the Supreme Court as an "approval stamp" on the Affordable Care Act, responses from surveys that use the word "Supreme Court" might differ from responses from surveys that do not allude to the Supreme Court. If so, I might expect that the legitimization hypothesis hold for public opinion on the Affordable Care Act.

The major caveat to this approach is that two different sets of surveys inevitably come from the responses of two different sample populations. While sample populations will be drawn randomly, two different samples certainly are not one sample. Thus, the responses from these two sample populations may be different simply because they are drawn from different samples,

not necessarily because of the question wording. Still, if two sample populations are similar in its distribution of demographic and social characteristics (e.g. the first survey with a sample of 30% Democrats, 40% Moderates, and 30% Republicans and the second survey with a similar distribution), then I can reasonably assume that any difference I locate among these samples are in fact due to question wording and not due to the different composition of the samples.

Chapter V

How has the *NFIB* Decision Influenced Public Opinion on the Affordable Care Act?

Introduction

To ascertain whether the Supreme Court decision has shifted public opinion on the Affordable Care Act in one direction or another, this study begins by examining trends in the aggregate opinion before and after the decision. The aggregate trend suggests that the Supreme Court decision has pushed the public in opposite directions at the same time. Though Americans disapproving the ACA have consistently outnumbered those approving the reform, surveys from various sources from 2010 to 2015 reveal that approval and disapproval rates have increased at a fairly equal pace after the Court decision in mid-2012, while the number of people undecided on the issue has decreased over the years. Implied in this aggregate trend is that Americans who were uninformed and undecided about the ACA have eventually formed an opinion after the Court decision in 2012 and sorted themselves to one of support or opposition camps. Meanwhile, the intensity of public opinion has increased over time, with more and more people stating that they are “strongly in favor” of the ACA or “strongly opposed” to the ACA. Thus, the aggregate change in public opinion after the *NFIB* decision resembles a polarized public in which the proportions of the population approving and disapproving the ACA have increased in both size and intensity.

However, this study does not pretend that the *NFIB* decision alone was responsible for creating the polarization of public opinion. Rather, this study conforms to the well-established political science scholarship that a visibly politicized media coverage of Court decisions and elite messages is crucial, if not required, in shaping public attitudes about an issue, simply because ordinary people heavily rely on the news media for information about Court decisions (Caldeira 1986; Davis 1994; Franklin and Kosaki 1995; Hoekstra 2003; Mondak 1994; Mondak and

Smithey 1997). For this reason, determining whether the change in public opinion on the Affordable Care Act reflects how the media frame an issue is important in understanding the relationship between the Court decision and public attitudes. I find that the media coverage of the ACA and the *NFIB* decision has been consistently two-sided, especially at politically salient moments (e.g. President Obama signing the ACA, the Supreme Court ruling in 2012, and the HealthCare.gov website crash). This two-sided information flow has provided the public with positive and negative perspectives of the decision, with which the public, particularly the previously uninformed and undecided people, used to form their opinion (Zaller 1992).

Lastly, this study is interested in further exploring the structure of public opinion on the ACA based on group-breakdowns in attitudes. Again, the aggregate trend of public opinion on the ACA seems to support the polarization hypothesis. But polarized along what? Gender? Race? Party identification? Relying on multivariate analysis of demographic, social, and ideological characteristic variables, I find that the underlying structure of public opinion on the ACA reflects increased partisan and ideological polarization. In the following sections I present the empirical findings in greater detail.

Public Opinion on the Affordable Care Act

My analysis of opinion trends relies on the questions included in various studies and survey houses. This author well understands that among various social science survey sources, the biennial American National Election Studies (ANES) and the General Social Survey (GSS) arguably provide the most comprehensive datasets with a wide range of questions and a large national sample size. Unfortunately, however, neither the ANES nor the GSS has asked a question measuring respondents' support or approval of the Affordable Care Act. Thus, I resort to other polling organizations such as CBS/New York Times, Gallup, and Pew Research Center.

Although their sample size is not as big as ANES or GSS, these organizations have consistently included a question on the approval of the ACA from 2010 to 2016 without any significant change in question wording.

Beyond the issue of sample size and change in question wording from one survey to another, the way questions are phrased further complicates any study of public opinion. For example, Harris Poll from February 2010 asks: “Do you support or oppose the new health care bill that requires all Americans to have health insurance or pay a penalty?” In this question that uses negative framing words such as “require” and “penalty,” only about 25% of respondents say that they approve the health care bill while a whopping 67% of respondents disapprove the bill. On the other hand, when CBS News/New York Times Poll asks, “Do you approve or disapprove of the part in the 2010 health care law providing financial help to low and moderate income Americans who don’t get health insurance through their jobs to help them purchase coverage?”, 76% of respondents say that they approve this part of the law while 21% of them disapprove it. As such, question phrasing clearly influences the public’s view on the ACA.

To contend with this challenge, I have gathered survey houses that have asked neutral questions about the ACA. While they differ in the exact wording, neutral questions generally ask individuals whether they approve or disapprove of the 2010 Affordable Care Act or the 2010 health care law without using overt positive or negative framing words (See Table 1). I assume that results from these neutral questions would reflect respondents’ opinion that has not been “filtered” by either positive or negative frames of the *survey*, though it might have been influenced by positive or negative frames of the *news media*. In a later section, I discuss the media’s influence on Americans’ view of the ACA.

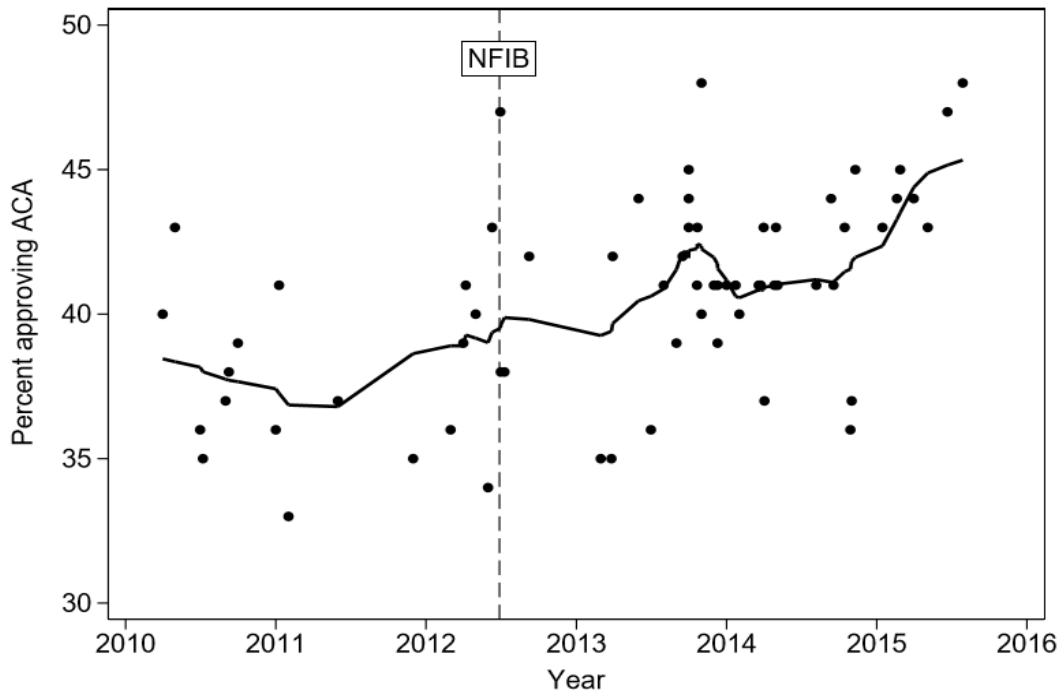
Type	Survey Houses	Features	Typical Question Wording
Neutral	CBS/New York Times, Gallup, Pew Research Center	Approval or disapproval of the 2010 health care law or the 2010 Affordable Care Act	<ul style="list-style-type: none"> • From what you've heard or read, do you approve or disapprove of the health care law that was enacted in 2010? (CBS/New York Times) • Do you generally approve or disapprove of the 2010 Affordable Care Act, signed into law by President Obama that restructured the US healthcare system? (Gallup) • Do you approve or disapprove of the health care legislation passed by Barack Obama and Congress in 2010? (Pew Research Center)
Approval stamp	ABC News/Washington Post, Kaiser Tracking Poll	Approval or disapproval of the 2010 health care law or the 2010 Affordable Care Act with contextual information and reference to the Supreme Court	<ul style="list-style-type: none"> • Do you support or oppose the US Supreme Court ruling upholding a key part of the 2010 federal health care law? (ABC News/Washington Post) • As you may know, in June 2012 the Supreme Court ruled that the 2010 health care law is constitutional, upholding most of its provisions. Do you approve or disapprove of the Court's decision in this case? (Kaiser)

Since the initial push for the Affordable Care Act, more Americans have opposed the ACA than they have supported it. But by any measure, opposition to the ACA has declined somewhat since mid-2014, while support for the ACA has gradually increased without significant drops. Figure 1 plots responses collected by the aforementioned three survey houses assessing the approval of the ACA. The trend of scatter plots, which represent the percentage of respondents approving the ACA in a given survey, is approximated by a local regression (or LOWESS), which “smoothes” out random variation to better depict how the trend has changed over time.⁴ The local regression is a nonparametric method that does not rely on traditional

⁴ For more discussion of local regression, see Cleveland 1993; Fox 1997.

linearity estimating parameters like m and b in $y = mx + b$, which provides a simple line graph with a particular slope. Instead, local regression creates a fitted curve as in Figure 1.

Figure 1: Approval of the Affordable Care Act, 2010-2016.



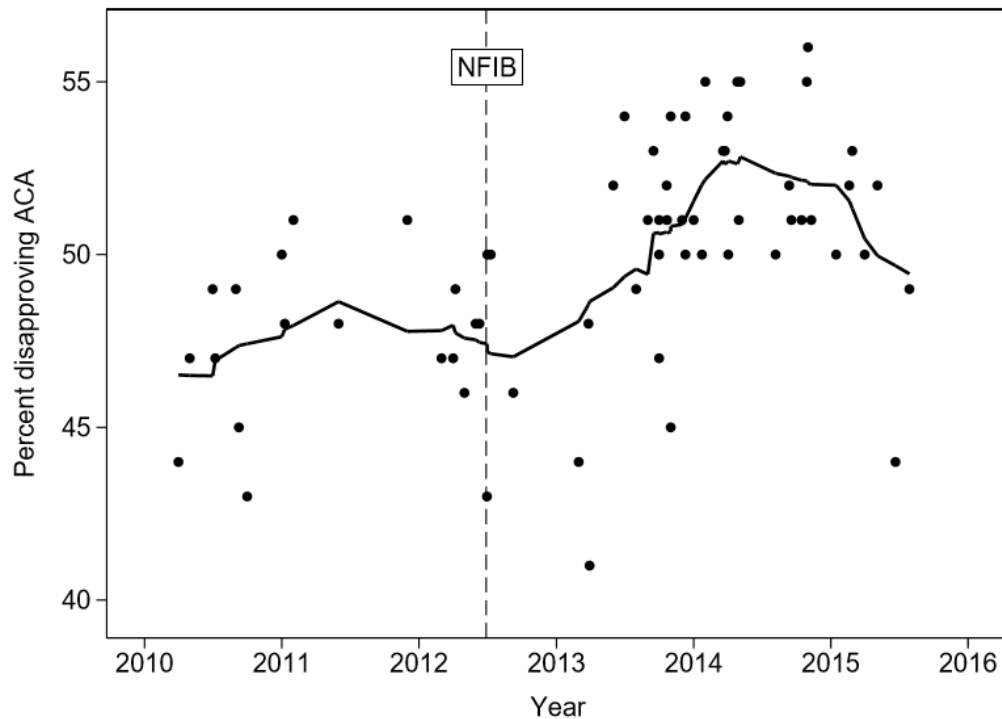
Question wording: see Table 1.

Source: CBS/New York Times, Gallup, and Pew Research Center.

After the legislation passed in March 2010, approval of the health care law has slowly decreased. Beginning in 2011 the public has become more tolerant of the ACA, with approval rate reaching 40% by mid-2012. However, in mid-2012, when the *NFIB* decision was ruled, the approval rate again shifted its direction, albeit gently. Later in this chapter, I explain that this small, short backlash is best understood as a result of the public receiving intense two-sided information flow from the media after *NFIB*. A brief pattern of ups and downs of approval rate continues, but overall trend suggests that the proportion of Americans approving the ACA has increased from 38% in 2010 to 45% in 2016.

The overall disapproval level of the ACA has also increased between 2010 and 2016 (See Figure 2, which uses local regression to approximate the disapproval rate from scatter plots). About 47% of Americans oppose the ACA in 2010, and this number increases to 50% by 2016. However, unlike the approval level that has taken an increasing pace since 2014, the disapproval level has decreased since early 2014. Figure 2 illustrates a rather deep dip in the disapproval rate from 2015 to mid-2015. This is most likely a result of an outlier point (43%) in between 2015 and 2016 that has pulled down the local regression curve. However, even after considering that an outlier point has caused a sharp drop near the right end of the curve, the proportion of disapproval has certainly decreased from its peak at 53% in mid-2014 to approximately 50% by the end of 2015.

Figure 2: Disapproval of the Affordable Care Act, 2010-2016.

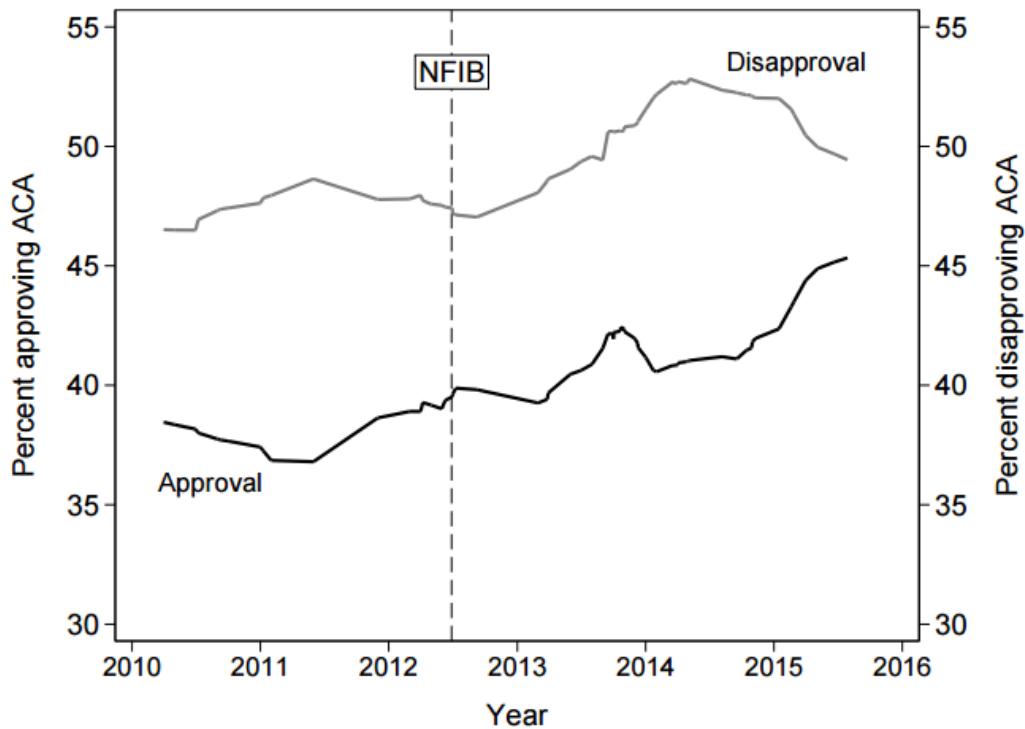


Question wording: see Table 1.

Source: CBS/New York Times, Gallup, and Pew Research Center.

Similar to the approval rate, the disapproval rate seems to be influenced by *NFIB* in that it changes direction from decreasing to increasing after the Court decision. After 2011, disapproval rate has slowly decreased until mid-2012, after which the disapproval began to increase. A comparison of the approval and disapproval proportions on the same graph highlights the influence of the Court decision on public opinion (See Figure 3).

Figure 3: Approval and Disapproval of the Affordable Care Act, 2010-2016.



Question wording: see Table 1.

Source: CBS/New York Times, Gallup, and Pew Research Center.

From 2010 to mid-2012, then again from 2014 to 2016, the approval and disapproval curves mirror each other—that is, if approval increases, then disapproval decreases, and vice versa. But between mid-2012 (when the Supreme Court ruled on the constitutionality of ACA) and 2014, the reciprocal relationship between approval and disapproval camps diminishes and instead proportions of Americans supporting and opposing the ACA *both* increase after the Court

decision. The following section explains that this phenomenon is a result of the Supreme Court creating an environment in which media presents intense two-sided information flow to the public. The two-sided information flow creates a dynamic in which individuals with prior attitudes on the ACA to engage in “reinforcement seeking” where they strengthen their beliefs by following elite messages (Baum 2012, 266) and those without prior attitudes to engage in “sorting” where they pick up on elite signals to form an opinion closest to their values, party membership, orientation, or other ideological factors (Abramowitz 2008).

Overall, the aggregate trend suggests that the public has become almost evenly split in its approval of the ACA—by 2016, about 45% of Americans support the law, 50% of them oppose it, and the rest 5% of them remain uncertain about the issue or have refused to answer. This is clearly a different picture from 2010, when approval rate was about 38%, disapproval 42%, and uncertain/refused 20%. This indicates that as much as 15% of Americans have sorted themselves to either the approval or disapproval side, resembling a pattern of polarization discussed in Chapter II.

Having considered the aggregate trend of public opinion on the ACA with a neutral question wording, I attempt to take advantage of the “approval stamp” question wording to minimize the attribution problem discussed above (See Table 1). By comparing responses from a survey that provides information about the Court decision and one that does not provide such information, I try to determine whether providing information yields a shift in attitude. A theoretical justification behind this comparison reflects the theory of “positivity bias” that Americans have more respect for the Supreme Court than for other branches of government (Bartels and Mutz 2009; Gibson and Caldeira 2009). I predict that the outcome information about the Court decision and the reference to the Supreme Court as an institution would act as an

“approval stamp” on the Affordable Care Act, pushing the public to view the ACA favorably because of the exposure to judicial imagery and symbol of the Supreme Court in the question wording.

Unfortunately, “approval stamp” questions—questions with contextual information and reference to the Supreme Court—have not been frequently asked to the extent “neutral” questions were asked. The paucity of approval stamp questions is a formidable obstacle to performing local regression, or even a simple linear regression, because results from a wide range of surveys is necessary in estimating the aggregate public opinion. Therefore, I do not chart graphs to illustrate public opinion on the ACA from questions with contextual information and reference to the Supreme Court.

However, a simple look at individual survey results is still possible. For example, in July 2012, less than a month after the *NFIB* decision, an ABC News/Washington Post poll asked, “Do you support or oppose the US Supreme Court ruling upholding a key part of the 2010 federal health care law?” About 42 percent of respondents said they “support” while 44 percent of them said they “oppose.” A Kaiser Tracking Poll also asked in July 2012, “As you may know, last month the Supreme Court ruled that the 2010 health care law is constitutional, upholding most of its provisions. Do you approve or disapprove of the Court’s decision in this case?” About 45 percent of respondents approved the decision while 47 percent of them disapproved. These figures suggest that the reference to the Supreme Court did not result in overwhelming support of the ACA as predicted by the theory of positivity bias (Adamany 1973; Caldeira and Gibson 1992). At least for the ACA, the public is susceptible to overt positive and negative framings within the surveys, but not to the general reference to the Supreme Court.

Media Coverage of the Affordable Care Act

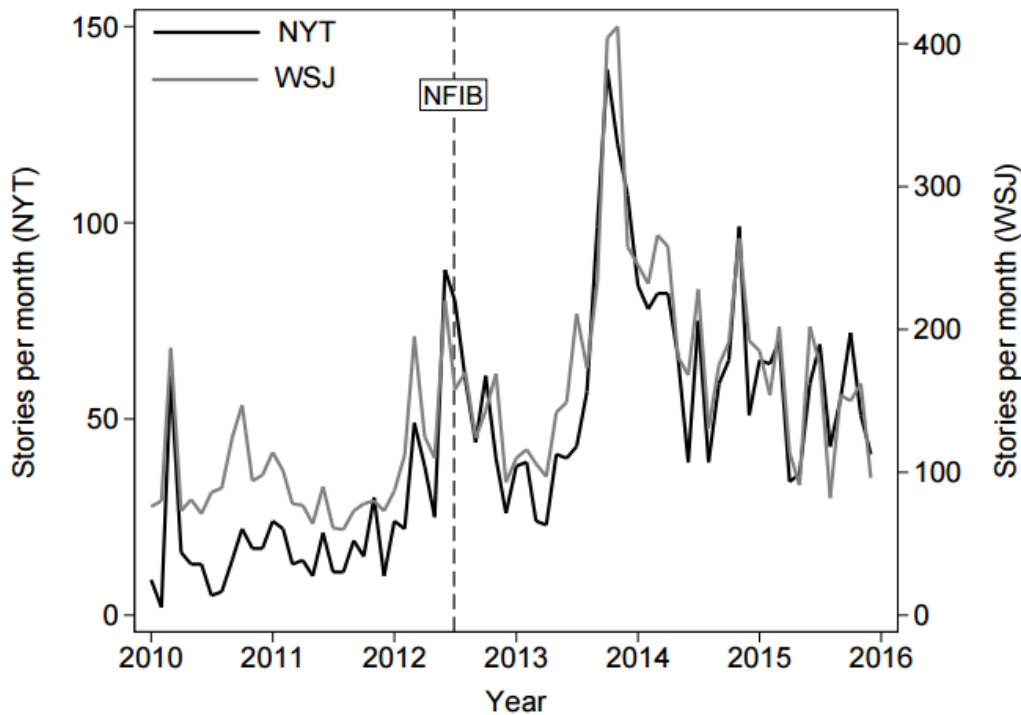
Members of the public do not form opinion about Supreme Court decisions in a vacuum; they depend on the media to inform them about decisions and reactions of reference groups and elites they trust or like (Caldeira 1986; Davis 1994; Franklin and Kosaki 1995; Hoekstra 2003; Mondak 1994; Mondak and Smithey 1997). Hence, the public's response to a certain court decision changes depending how the media portray the decision itself and the reactions of elites. While a simple relationship between media coverage and Supreme Court decisions cannot be formulated, it is generally the case that unanimous decisions on non-salient issues tend to result in media coverage with a single theme, while contended (especially five-to-four) decisions on salient issues tend to create a battleground where the media provide competing and opposite message frames for the public (Davis 1994; Grosskopf and Mondak 1998; Mondak 1994; Nicholson and Howard 2003). Given that *NFIB* was a five-to-four decision over a controversial issue of health care, I expect media coverage of *NFIB* and the Affordable Care Act to be contentious and divided, with supporters resorting to positive frames and opponents employing negative frames.

In order to measure the degree to which healthcare reform has been politicized and publicized over the years, thereby becoming a salient issue for the American public, I analyze the coverage of healthcare reform by the *New York Times*, the *Wall Street Journal*, and *Newsweek*. The *Times* and the *Journal*, considered to be prominent national elite media sources, and *Newsweek*, considered to reflect mainstream media attention (Kellstedt 2000, 252), are good indicators of the extent of media coverage on the Affordable Care Act by both elite and mainstream news sources. The *Times* (a liberal source) and the *Journal* (a conservative source) are considered simultaneously to balance different ideological inclinations that could influence

framing of the ACA. This study uses the ProQuest database to perform text searches within the *New York Times* and the *Wall Street Journal*, and the Lexis-Nexis Academic for searches within the *Newsweek*.

Figure 4 consists of two line graphs illustrating the number of the *New York Times* and the *Wall Street Journal* articles mentioning “Affordable Care Act” or “Obamacare” as a key word or a title word. While the *Times* has published fewer articles on the ACA than the *Journal*, both publications have almost identical proportions of articles mentioning “Affordable Care Act” or “Obamacare,” especially after the Supreme Court decision in mid-2012.

Figure 4: Number of Articles on the Affordable Care Act in the *New York Times* and the *Wall Street Journal*, 2010-2016.

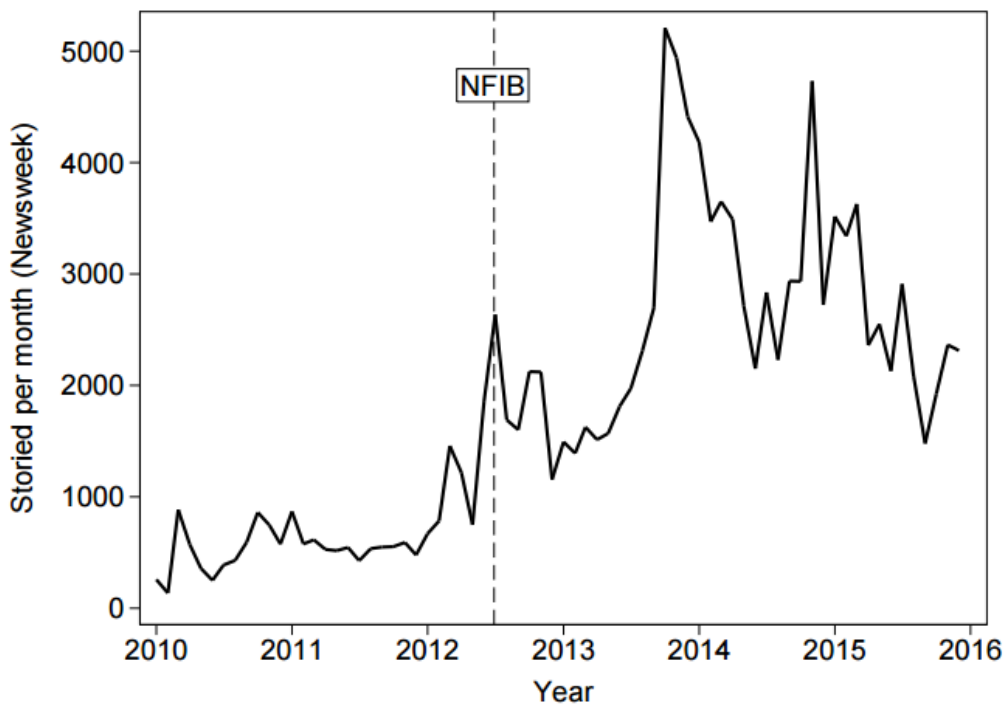


Source: ProQuest Direct.

Figure 5 (next page) illustrates *Newsweek* articles mentioning the “Affordable Care Act” or “Obamacare.” The number of *Newsweek* articles overwhelmingly surpasses those of the *Times* and the *Journal*, but it should be noted that the number of *Newsweek* stories has been

inaccurately exaggerated by the text search methodology used in the Lexis-Nexis database. Unlike ProQuest database that allows a text search only within the article titles, Lexis-Nexis does not have such option. As a result, I was able to limit the search results of the *Times* and the *Journal*, which were collected through ProQuest, to stories specifically mentioning the ACA in their title, but the search results of *Newsweek*, which was collected through Lexis-Nexis, includes every article mentioning the ACA even if an article does not deal with the ACA as a primary focus. Given that no database other than Lexis-Nexis stores data of *Newsweek*, I continued with the text search using Lexis-Nexis in spite of this limitation. In any way, the important implication to be drawn from Figure 4 and Figure 5 is that the proportion of articles about the ACA is still similar across the three sources—that is, all three news sources have similar patterns of fluctuations in the number of stories mentioning the ACA.

Figure 5: Number of Articles Mentioning the Affordable Care Act in *Newsweek*, 2010-2016.



Source: Lexis-Nexis.

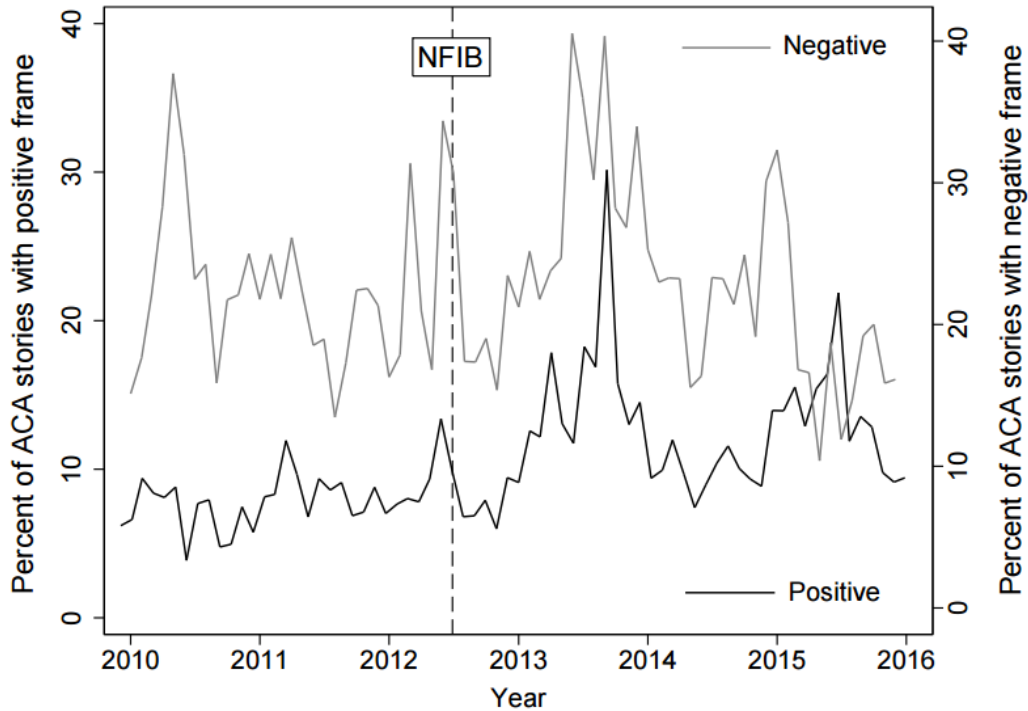
Both Figure 4 and Figure 5 demonstrate that the Supreme Court has been the reason for fluctuation in the intensity of media coverage of the ACA. As shown in the graph, Supreme Court cases often provoke intense media attention about an issue. For example, media coverage of the Affordable Care Act spiked in June 2012, when the first Supreme Court case on the ACA, *NFIB v. Sebelius*, was decided. In fact, media coverage of the Court case on the ACA was more intense than that of the passage of the legislation itself in March 2010. The *NFIB* decision appears to have played a central role in shaping the national debate over health care. A peak in November 2014 is also a result of the Court deciding to hear the case *King v. Burwell*, a second Supreme Court case on the ACA. The *King* decision further drew media attention in June 2015, when the Supreme Court once again upheld the constitutionality of the ACA. However, the Supreme Court is not the only factor that increases media coverage. The highest peak from the graph covers the period from September 2013, when the House passed a spending plan to defund and delay the ACA, to October 2013, when the HealthCare.gov website crashed. These political and social events certainly have had a greater impact on the amount of media coverage than the Court decisions.

Although measuring the frequency of references to the ACA is fairly straightforward, assessing how the media have framed the issue is more complex. To study how the media have framed the ACA over the past years, I first examined the *New York Times*, the *Wall Street Journal*, and *Newsweek* articles mentioning the ACA and identified common keywords that distinguish positive frames from negative frames. The proponents of the ACA often appeal to the positive impact the legislation would have on its major beneficiaries—the uninsured and low-income community. Often conspicuous from the title, articles with positive frames, such as “Good Progress on Affordable Health Care” or “For Many Families, Health Care Relief Begins

Today,” portray the ACA as a way to aid the low-income Americans who have been uninsured due to their pre-existing conditions or financial constraints. The opponents, on the other hand, emphasize on the government’s imposition of mandatory purchase of health insurance. Articles with negative frames, such as “Why the Obamacare Tax Penalty is Unconstitutional” or “The Wrong Remedy for Health Care,” focus on the provision of the ACA that forces Americans to either purchase health care or pay a fine.

In accordance with how supporters and critics portray the Affordable Care Act, I decided to use the keyword search for positive frame as (“help” *or* “aid”) *and* (“uninsured” *or* “low income”) *but not* (“fee,” “fine” *or* “penalty”) *and* (“required” *or* “mandatory”). Conversely, the keyword search for negative frame was (“fee,” “fine” *or* “penalty”) *and* (“required” *or* “mandatory”) *but not* (“help” *or* “aid”) *and* (“uninsured” *or* “low income”). The *or* option was used to include as many articles as possible; the *but not* option was to filter out neutral articles that cover both positive and negative frames. Of course, these keywords do not exhaust the list of framing words that proponents and opponents of the ACA have used. For example, the ACA has often been criticized as a “job killer,” suggesting that the employers will lay off employees or reduce work hours as an attempt to avoid paying for coverage expenses for employees. While I acknowledge that the diversity of framing words cannot be precisely captured with a simple keyword search, I have decided to focus on the issue—namely, the individual mandate—that dominated the debate over the ACA when the Supreme Court decided to hear the NFIB case. Hence, the keyword search for negative frame was limited to words dealing with the individual mandate, such as “fee,” “fine,” “penalty,” “required,” and “mandatory.” The proportion of positive frames and negative frames is illustrated in Figure 6.

Figure 6: Proportion of Articles with Positive Frames and Negative Frames

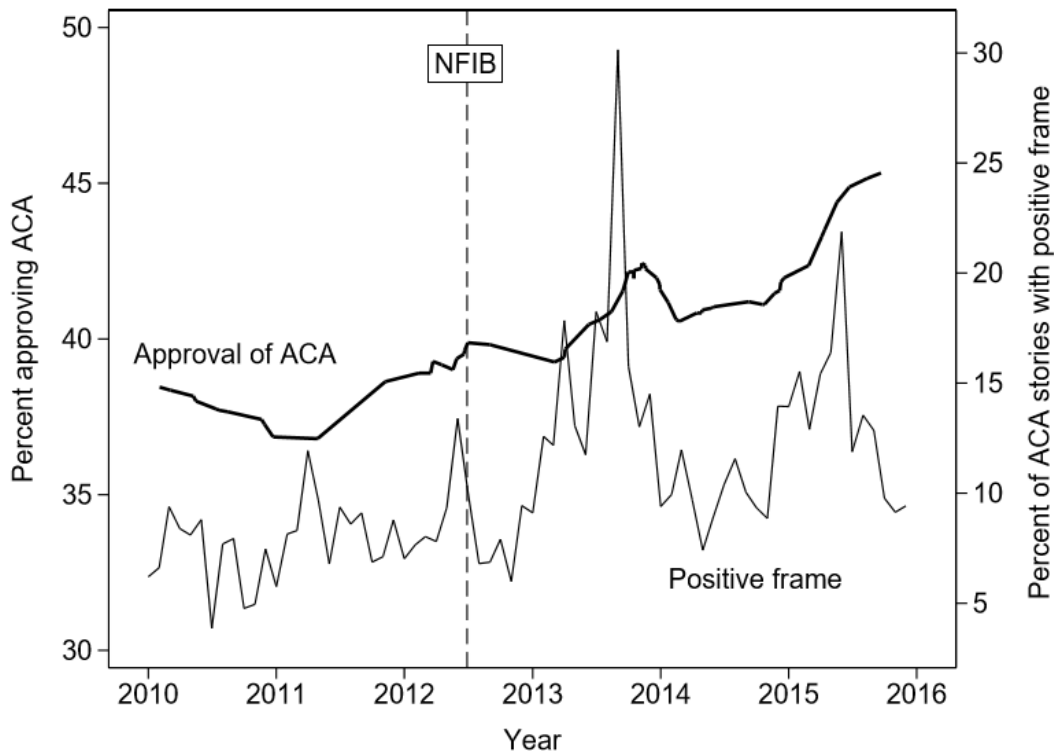


Source: Lexis-Nexis, ProQuest Direct.

As Figure 6 illustrates, the percent of negative frames has been consistently greater than the percent of positive frames, which might explain why Americans disapproving the ACA have consistently outnumbered those approving the reform. It also seems that the amount of negatively framed stories is particularly susceptible to political events; most crests where there is a dramatic increase in the percent of negative framing is when significant political events such as the passage of the legislation, the *NFIB* ruling, and the House defunding plan take place.

Moreover, an analysis of positive and negative frames and public opinion of the ACA confirms that the public is swayed by the nature of messages they receive. Figure 7 compares the proportion of articles with positive frames and the approval rate of ACA; Figure 8 compares the proportion of articles with negative frames and the disapproval rate of ACA.

Figure 7: Proportion of Articles with Positive Frames and Approval of ACA, 2010-2016.

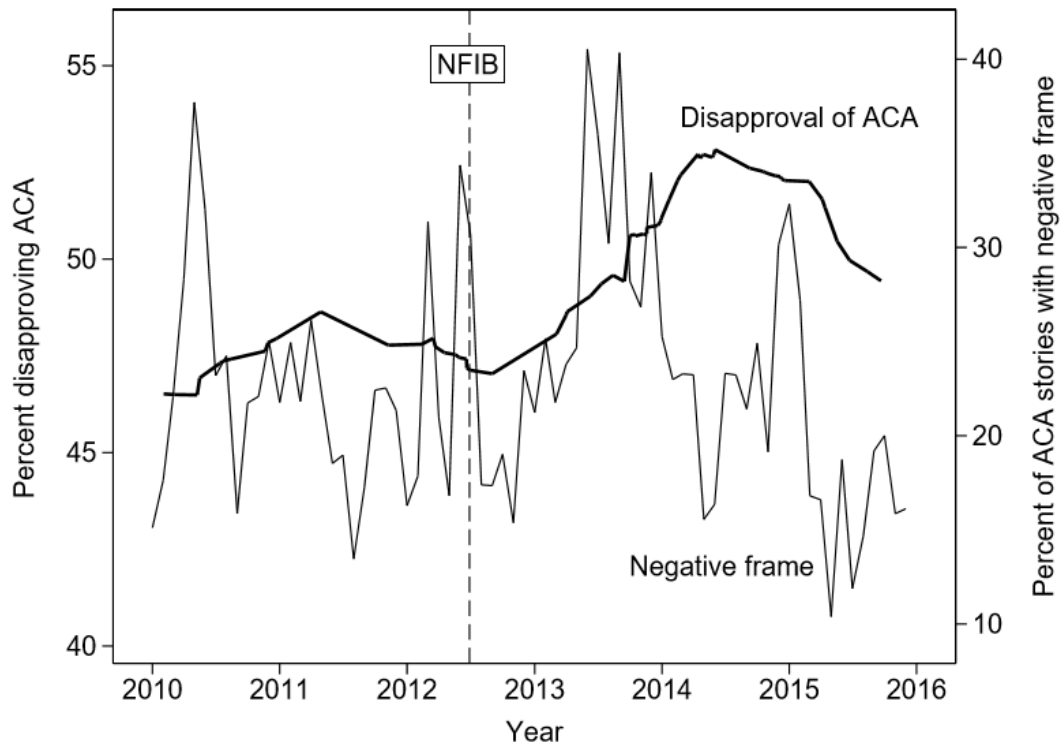


Question wording: see Table 1.

Source: CBS/New York Times, Gallup, Pew Research Center, Lexis-Nexis, ProQuest Direct.

As the proportion of articles with positive frames decreases after the Court decision from mid-2012 to early 2013, so does the approval of ACA. On the other hand, when positive frames increase from early 2013 to 2014, the approval also increases. And the pattern continues. Similarly, an increase or a decrease in public opinion opposing the ACA fluctuates in relation to the proportion of articles with negative frames (see Figure 8). From mid-2012 to 2014, stories with positive frames and negative frames have both increased. As a result, public opinion on ACA became about equally divided, with support and opposition groups increasing in size at a similar pace. The Supreme Court's role in influencing public opinion is thus playing a central role in the intense debate over the issue, creating an environment in which media can present two-sided information to the public.

Figure 8: Proportion of Articles with Negative Frames and Disapproval of ACA, 2010-2016.



Question wording: see Table 1.

Source: CBS/New York Times, Gallup, Pew Research Center, Lexis-Nexis, ProQuest Direct.

Again, the two-sided information flow creates an environment favorable to polarization. Because the Court has issued a 5-4 split decision, the news media is not limited in its ability to frame the ACA in both positive and negative frames, stemming from both the majority opinion and the dissent (see Chapter II). The two-sided information flow gives individuals several options in opinion formation. Individuals with prior attitudes on the ACA will likely engage in “reinforcement seeking” where they strengthen their beliefs by following elite messages (Baum 2012, 266) or in “dissonance avoidance” where they refuse to accept information inconsistent with their pre-existing beliefs (Baum 2012, 267). On the other hand, individuals without prior attitudes (about 20% of Americans in 2010) will “sort out” themselves to either supporting or

opposing camps by picking up on elite signals to form an opinion closest to their values, party membership, orientation, or other ideological factors (Abramowitz 2008). The result is a polarized public where the numbers of individuals approving and disapproving the ACA have increased at the same time after the Court decision.

Multivariate Analysis in a Narrow Timeframe

The above analysis of the aggregate trend in public opinion and media coverage suggests that the Supreme Court decision on the ACA has led to a polarization of the public. In this section I perform a multivariate analysis to examine the structure of opinion on the ACA and determine which variable—demographic, social or ideological—best predicts the underpinnings of support of the ACA. I rely on the survey data collected by CBS News/New York Times, which has repeatedly asked its respondents the same, neutral question about the ACA between 2010 and 2015.

Again, without surveys that ask a separate question about the respondents' knowledge of the Court decision, I am unable to distinguish opinions of those who have heard about the decision from opinions of those who have not. Hence I attempt to cope with this problem by using a narrow timeframe to test the correlation between the decision and public support for the Affordable Care Act. When the same survey is repeated a quarter before and after the Court decision, any visible change in opinion I find may be attributed to the Court decision, presumably because there would have been no time for other factors to influence public opinion to a great extent. Fortunately, CBS News/New York Times polls have surveyed public opinion on the ACA four times in the year 2012: April, July, September, and December. Because a narrow timeframe should include data from polls conducted about a quarter before and after the decision, I have selected April, July, and September results for a multivariate analysis.

The analysis was done using a probit regression in two phases. The first equation includes demographic variables such as age, race, Hispanic ethnicity, and sex, as well as long-term social variables such as region of residence, urbanity, marital status, education level, income and religion. The second equation includes all the demographic and social variables and added ideological variables—political ideology and party identification. By organizing the analysis in this way, I can assess the direct effects of demographic and social variables on the one hand, and evaluate how the effects of these variables change as mediated through intervening variables—i.e. political ideology and party identification—in the second equation. For example, black race is often associated with support for ACA, so black race is likely to have a statistically significant direct effect on the support for ACA. However, black race can also have an indirect effect through the intervening variable of party identification, which is correlated with both black race and support for the ACA (Egan, Persily and Wallsten 2008, 245). Considering this, the general equation estimated is:

$$P_i = P(Y_i = 1) = \alpha + \beta_1 X_{1i} + \beta_2 X_{2i} + \beta_3 X_{3i} + \dots + \beta_k X_{ki} + u_i$$
, where $P(Y_i = 1)$ is the probability that a respondent approves the ACA), X_{ki} representing variables of personal characteristics of the respondent that influence attitudes on the ACA, β_k coefficients the effect of X_{ki} variables, and u_i the random disturbance term.

For the purpose of standardization, all variables were recoded to a score from 0 to 1 and missing values were dropped. For dichotomous variables such as Hispanic ethnicity, a score of 1 represents “present” and a score of 0 represents “absent,” thereby turning dichotomous variables into dummy variables. For categorical variables such as party identification, an n-point scale was used to equally divide the category and recode the values to fit within 0 to 1. For example,

Table 2: The Structure of Support for the Affordable Care Act, April – September 2012

Variable	2012 (April)		2012 (July)		2012 (September)	
	I	II	I	II	I	II
Age ¹	.275	.372	.041	.139	.097	.152
Black	1.172***	.719*	1.562***	.978*	1.676***	1.257**
Hispanic	.417*	.185	.267	.387	.305**	.395*
Female	.197	.100	.097	.022	.428	.322
South	-.301	-.195	-.311*	-.129	-.259*	-.038
Urbanity ²	-.413	-.196	-.362*	-.097	-.451	.045
Married	-.344	-.242	-.182	-.132	-.270	-.212
Education level ³	.521*	.258	.769***	.554*	.597***	.576**
Income ⁴	-.259	-.131	-.197	.201	-.075	.281
Protestant Ideology ⁵	-.645**	-.344	-.259**	-.077	-.475**	-.312
Party identification ⁶		1.129***		1.341***		1.406***
_cons		1.466***		1.833***		1.862***
	-.188	-2.404	-.123	-2.176	-.027	-2.316
N	508	508	784	784	958	958
Pseudo R ²	0.130	0.349	0.101	0.393	0.143	0.436
Log likelihood	-303.16	-226.95	-484.09	-326.65	-568.94	-374.31

Question wording: “From what you've heard or read, do you approve or disapprove of the health care law that was enacted in 2010?” Dependent variable is scored 1 = approve, 0 = disapprove.

Cells contain probit coefficients. They are estimates of the change in probability of supporting the Affordable Care Act, given a shift from the minimum to the maximum value of each independent variable, holding all other variables constant. Probit coefficients are significantly different from zero at *p< .05, **p< .01, ***p< .001.

All variables are coded from 0 to 1. Support, black, Hispanic, female, South, married, and Protestant are dummy variables (1 = present, 0 = absent). Cases with missing data are excluded.

1. Five-point scale for: between 18 and 29, between 30 and 39, between 40 and 49, between 50 and 59, and over 60.
2. Five-point scale for: city (500K+), city (50-500K), suburb, city (10-50K), and rural.
3. Five-point scale for: not a high school grad, high school grad, some college, college grad, and post grad.
4. Five-point scale for: under \$15,000, \$15,000-\$30,000, \$30,000-\$50,000, \$50,000-\$75,000, and over \$75,000,
5. Three-point scale from conservative (0) to liberal (1).
6. Three-point scale from Republican (0) to Democrat (1).

Source: CBS News/New York Times.

party identification, a categorical variable with Republican, Independent and Democrat, was recoded as Republican (0), Independent (0.5) and Democrat (1). For continuous variables such as age, values were first grouped into categories and then recoded to score from 0 to 1. For instance, age between 18 and 29 was coded as (0), age between 30 and 39 as (0.25), between 40 and 49 as (0.50), between 50 and 59 as (0.75), and over 60 as (1). Using the above model, I performed a probit regression analysis with the dependent variable “support for ACA” on Stata. The results are shown in Table 2 (on previous page).

Unlike coefficients from ordinary least squares (OLS) regression, probit coefficients are difficult to interpret. To be sure, the logic of holding variables constant remains the same: probit regression and OLS regression both evaluate the effect of each independent variable on dependent variable when all other independent variables are held constant. Unlike OLS coefficients, however, probit coefficients do not represent “expected change” itself, but a “predictor” used to calculate the effect each independent variable has in increasing or decreasing the probability of dependent variable—i.e. the support for the ACA. So, if Table 2 were results from OLS regression that examines the correlation between independent variables and a fictitious continuous dependent variable of “Barack Obama Thermometer” ranging from 0 to 100, the coefficient 0.521 from row “Education level” and column “2012 April II” would mean that one-unit increase in education level leads to a 0.521 increase in the Barack Obama Thermometer. For probit regression, this interpretation does not suffice. Indeed, it would be incorrect to say that the highest education level in a category of five—not a high school grad, high school grad, some college, college grad, and post grad—yields an increased probability of $0.521 \times 5 = 2.61$ (or 261%) in support of ACA, for probability cannot exceed (1 or 100%).

Therefore, interpreting probit coefficients needs a different approach from interpreting OLS coefficients. To do so, I use the following equation for the first phase:

$$P(Y_i = 1) = F(\alpha + \beta_1 \times \text{Age} + \beta_2 \times \text{Black} + \beta_2 \times \text{Hispanic} + \beta_3 \times \text{Female} + \beta_4 \times \text{South} + \beta_5 \times \text{Urbanity} + \beta_6 \times \text{Married} + \beta_7 \times \text{Educational level} + \beta_8 \times \text{Income} + \beta_9 \times \text{Protestant}).$$

This is a way of expressing that the probability of a respondent supporting ACA [$P(Y_i = 1)$] is equal to the *normal distribution value* [$F(x)$] of the sum of products of probit coefficients (β_i) and independent variables. The second equation adds ideology and party identification to the first equation:

$$P(Y_i = 1) = F(\alpha + \beta_1 \times \text{Age} + \beta_2 \times \text{Black} + \beta_2 \times \text{Hispanic} + \beta_3 \times \text{Female} + \beta_4 \times \text{South} + \beta_5 \times \text{Urbanity} + \beta_6 \times \text{Married} + \beta_7 \times \text{Educational level} + \beta_8 \times \text{Income} + \beta_9 \times \text{Protestant} + \beta_{10} \times \text{Ideology} + \beta_{11} \times \text{Party identification}).$$

This means that whatever value (x) I get from the sum of products of probit coefficients (β_i) and independent variables, I use the normal distribution to convert (x) to the probability of a respondent supporting ACA [$F(x)$].

For example, when finding the independent effect of the Democratic Party identification on the probability of a respondent supporting the ACA from the 2012 April II model, the probability equation becomes: $P(Y_i = 1) = F(-2.404 + 1.466 \times 1)$, where -2.404 is the constant, 1.466 is the probit coefficient for party ID, 1 is coding value of Democratic ID, and all other variables are held at 0, hence not appearing in this simplified equation. Thus, $P(Y_i = 1) = F(-0.938)$. Now, to find the normal distribution value of -0.938, I use the following command in Stata: “display normal(-0.938),” which equals 0.174 or 17.4%. This means that a Democrat is 17.4% more likely than a Republican to support the ACA.

If a 17.4% increase in probability of support for ACA does not seem like a big difference between Democrats and Republicans, it is because independent variables of this study are either dummy or categorical variables that have been recoded from 0 to 1. So in the previous example, when I calculated $F(-2.404 + 1.466 \times 1)$, Stata was actually finding the probability of support for ACA of a respondent who has the following characteristics: age between 18 to 29, non-black, non-Hispanic, male, non-South, rural, not married, not a high school grad, income below \$15,000, non-Protestant, *conservative*, and Democratic, of which all but Democratic party ID has a coding value of 0. Hence, $P(Y_i = 1) = F(-2.404 + 1.466 \times 1)$ yields a 17.4% probability, because this particular respondent had contrasting identities: a Democrat with conservative ideology. Instead, a better prediction would have been $P(Y_i = 1) = F(-2.404 + 1.466 \times 1 + 1.129 \times 1) = F(0.191) = \text{display normal}(0.191)$, which describes a respondent who is a *liberal* Democrat. The result is 0.576 or 57.6%, suggesting that a liberal Democrat is 57.6% more likely to support ACA than a conservative Republican. If I add black race to the equation, the probability increases even higher: $F(-2.404 + 1.466 \times 1 + 1.129 \times 1 + 0.719 \times 1) = F(0.91)$, which equals 0.821 or 82.1%. Compare this with a white conservative Republican, whose equation is $F(-2.404 + 1.466 \times 0 + 1.129 \times 0 + 0.719 \times 0) = F(-2.404)$, which equals 0.008 or 8%. Because variables other than black, ideology, and party ID are not statistically significant in the 2012 April II model (see Table 2), I do not include more variables to the equation. But above example presents a clear picture of the effect party ID and ideology have on the public's approval or disapproval of the ACA: a liberal Democrat is much more likely to support ACA than a conservative Republican would.

It is at this point I can generalize the effect of probit coefficients without having to calculate the normal distribution probability. Because the constant is -2.404 for the 2012 April II

model and because $F(-2.404) = 0.008$, $F(0) = 0.5$, and $F(2.404) = 0.992$, the probability of support increases when the value inside the parentheses in $F(x)$ increases. Thus, a positive probit coefficient generally represents an increase in the predicted probability in support for ACA, whereas a negative probit coefficient represents a decrease in the predicted probability. Given this prediction, a coefficient of 1.466 for party ID, 1.129 for ideology, and 0.719 for black signify that these variables have significant impact on increasing the probability of support for a respondent in the 2012 April model. However, although race is a strong predictor, the effect of black race on the approval of ACA diminishes from model I to model II, both in significance level and the magnitude of coefficient. In other words, the strong explanatory power of race in the first equation for the 2012 April model fades when partisanship and ideology are added in the second equation. This is most likely a result from the overlap between race and partisanship for African-Americans, as an overwhelming majority of African-Americans tends to identify themselves as Democrats (Luks and Elms 2005; Miller and Shanks 1996; Tate 1993). The sample from the 2012 April model, for example, consists of a total of 71 African-Americans, of whom 49 of them identify themselves as Democrats, 20 Independents, and only two Republicans. Implicit in this group breakdown is that party ID and ideology are directly associated with the support for the ACA, whereas race indirectly influences one's attitudes on the ACA mediated through party ID and ideology.

The Structure of Opinion on the Affordable Care Act

I have explained that the higher the magnitude of a probit coefficient, the higher the probability of an increase in support for the ACA. A comparison of probit coefficients from April 2012 to September 2012 reveals that race, party identification, and ideology remain statistically significant for all three models. Over time, however, other variables such as

education level, Hispanic ethnicity, residence in the South, and Protestant religiosity also become important explanatory variables in predicting public attitudes on the ACA. This finding is consistent with the polarization (structural response) hypothesis that public opinion on the ACA is beginning to “crystalize” according to various social and ideological variables after the Supreme Court ruling (Franklin and Kosaki 1989; Johnson and Martin 1998).

Demographic Characteristics

I first consider the explanatory power of three immutable demographic characteristics: age, race, and sex. Even when strongest explanatory variables (i.e. party ID and ideology) are excluded, neither age nor sex is statistically significant, suggesting that these demographic characteristics do not play an important role in shaping public attitudes on the ACA. Given that sex often distinguishes attitudes between males and females on a wide range of issues, the lack of significance for sex on health care is interesting. For example, women are more likely than men to support the legalization of same-sex marriage (Haider-Markel and Joslyn 2005) and the repeal of death penalty (Hanley 2008). But when it comes to health care, no particular gender group seems to be supportive of the Affordable Care Act.

The effect of race, on the other hand, has increased in terms of both the magnitude of probit coefficient and the significance level. In April, for example, the coefficient for “Black” is 0.719 at 5% significance level, but in September, the magnitude almost doubles to 1.257 at 1% significance level. African Americans are distinctly in support of the ACA, and this trend has become clearer after the *NFIB* decision. However, as previously mentioned, the total effect of black race on the approval of the ACA diminishes from “I” models to “II” models as a result of the association between race and partisanship for African-Americans, who tend to identify themselves as Democrats. In order to test if there truly exists an association between race and

partisanship, which are categorical variables, I use a chi-square test of independence for these two variables. The null hypothesis is that there is no relationship between race and partisanship; the alternative hypothesis is that race and partisanship are related. If the p-value is less than 0.1, I reject the null hypothesis.

Table 3 illustrates that the association between partisanship and race is statistically significant for April, July and September models, with overwhelming majority of African Americans identifying themselves as Democrats. The overlap between Democratic Party identification and black race might account for decreased probit coefficients for black race in the “II” models. In other words, because party identification and race are strongly related, the explanatory power of black race decreases when party identification is added into the equation.

	2012 April			2012 July			2012 September		
	R	I	D	R	I	D	R	I	D
Non-black	220	231	201	237	280	217	273	316	292
Black	2	20	49	2	14	43	2	21	66
Chi-square	47.915			49.448			63.897		
P-value	0.001			0.000			0.000		

The Hispanic race is also positively associated with the support for the ACA in April and September models, but the explanatory power of Hispanic race is not as strong as that of black race. For example, in the September II model, the probit coefficient for black race is 1.257 whereas the coefficient for Hispanic race is 0.395 (see Table 2). Furthermore, the Hispanic race loses its statistical significance in the April II model when party ID and ideology are added, but remains significant in the September II model. This may be due to the increased salience of the ACA after the Court decision that might have influenced group attitudes of Hispanic Americans to become increasingly supportive of the ACA, or simply due to the different composition of the samples. Considering that the total Hispanic population from the April sample was 25, of whom

8 were Republicans and 10 were Democrats, and that the total Hispanic population from the September sample was 50, of whom 8 were Republicans and 26 were Democrats, it is likely that the different composition of the samples account for a sustained significance level of Hispanic race variable in the September model but not in the April model.

Long-term Social Characteristics

Of the several long-term social characteristics, only education and religion have significant effects on individuals’ attitudes toward the Affordable Care Act. Education stands out among the social characteristics as the most substantial explanatory variable in predicting individuals’ attitudes. Probit coefficients are positive for education in every model in Table 2, indicating that the higher the education level of an individual, the more likely it is for her to support the ACA. With the exception of the April model, education level remains its statistical significance even after party identification is included in the equation. But is there an association between education and party identification? To test this, I analyze the chi-square values for the correlation between partisanship and education level.

Table 4: The Structural Analysis of Partisanship and Education Level.

	2012 April			2012 July			2012 September		
	R	I	D	R	I	D	R	I	D
Not a high school grad	11	17	12	5	13	14	4	11	10
High school grad	47	47	49	49	55	57	47	61	72
Some college	67	73	74	76	75	56	87	109	99
College grad	63	64	53	61	75	53	89	91	97
Post grad	34	50	62	48	56	80	48	65	80
Chi-square	9.227			12.457			8.209		
P-value	0.324			0.132			0.413		

As Table 4 illustrates, education is not significantly associated with party identification, suggesting that there is no substantial overlap between education and party identification.

Though postgraduates tend to be Democrats, there is no strong pattern that shows relationship between education level and partisanship in any foreseeable way. For example, almost the same

number of college graduates from the September sample has Republican, Independent, and Democratic party identifications. More remarkable is that more college graduates identify themselves as Republicans than as Democrats in both April and July samples—a finding that is contrary to popular belief that college education is a strong correlate of Democratic partisanship (Lottes and Kuriloff 1994). Hence, higher education does not predict that individuals would identify themselves as Democrats, but it does predict individuals’ increased support for the ACA.

Protestant affiliation is another significant explanatory variable. A shift from non-Protestant identification to Protestant affiliation lowers support for the ACA. In all of April, July, and September “I” models, Protestant affiliation has a negative probit coefficient significant at 0.01 level, indicating that Protestants are less likely to support the ACA than non-Protestants. However, when party identification and ideology are included in the “II” models, the coefficients lose significance. Again, this is because of the overlap between Protestant affiliation and Republican partisanship. As shown in Table 5, the association between Protestant (or non-Protestant) and party identification is statistically significant across samples. This implies that negative probit coefficients for Protestant affiliation reflect the fact that Protestants tend to be Republicans and that non-Protestants tend to be Democrats.

Table 5: The Structural Analysis of Partisanship and Religion.									
	2012 April			2012 July			2012 September		
	R	I	D	R	I	D	R	I	D
Non-Protestant	72	140	138	94	150	139	103	167	184
Protestant	150	111	112	145	144	121	172	170	174
Chi-square	32.762			11.345			13.712		
P-value	0.000			0.003			0.001		

Ideological Characteristics

Probit coefficients from Table 2 substantiate my argument that party identification and ideology are strongest predictors for individuals’ attitudes on the ACA. Moreover, the effect of

party identification on public opinion seems to have increased *after* the Court decision. The magnitude of probit coefficient for party identification has increased from 1.466 in April to 1.833 in July, then to 1.862 in September, implying that the explanatory power of party ID in a respondent's approval of the ACA has increased after the Court decision (see Table 2). Similarly, the coefficients for ideology increased from 1.129 to 1.341, then to 1.406. Of course, these probit coefficients are not directly comparable, because they come from models with different constant values: constants for April, July, and September models are -2.404, -2.176, and -2.316, respectively. To compare the predictability strength of these coefficients, I use the normal distribution to interpret the probit coefficients:

$$\text{April: } P(Y_i = 1) = F(-2.404 + 1.466 \times 1 + 1.129 \times 1) = F(0.191) = 0.576$$

$$\text{July: } P(Y_i = 1) = F(-2.176 + 1.833 \times 1 + 1.341 \times 1) = F(0.998) = 0.841$$

$$\text{September: } P(Y_i = 1) = F(-2.316 + 1.406 \times 1 + 1.862 \times 1) = F(0.952) = 0.829$$

Taken together, the effect of party identification and political ideology on individuals' attitudes on the ACA have generally increased after the Court decision, with the probability of a liberal Democrat supporting the ACA reaching over 84% after July—a considerable increase from 58% probability in April. Though this trend does not necessarily prove that the Court decision alone was responsible for the increased significance of party ID and ideology in predicting individuals' attitudes, it is an interesting finding that allows one to at least infer that public opinion on the ACA has become more polarized along partisan lines after the Court decision. In any measure, it seems that party identification is indeed acting as a “perceptual screen,” helping Americans to navigate a complicated issue like the ACA according to the information and cues they receive from their political party (Campbell et al. 1960).

Chapter VI

Conclusion

By examining the Supreme Court's capacity to influence attitude change on a contemporary issue—i.e. the Affordable Care Act, this study has sought to contribute to a long tradition of political science research dealing with the linkage between the U.S. Supreme Court and public opinion. I began by elucidating four hypotheses that attempt to explain how and when Court decisions might influence public opinion. My goal was not to validate one hypothesis over the others, but instead to investigate which of the four hypotheses—no effect, legitimization, backlash, and polarization—best explains the Supreme Court's influence on public opinion when it comes to the Affordable Care Act. Nonetheless, I endorsed the contention that any influence the Court can have on public opinion is conditional on a variety of factors, such as media coverage, the strength of prior interest or belief on an issue, elite message, and the political and social context in which an issue adjudicated by the Court develops over time. A preliminary narrative overview of the past developments of health care reform has revealed that Americans have increasingly become divergent along partisan lines in their views on health care—that is, public opinion over health care has become polarized. The combined analysis of aggregate and individual level opinion on the ACA has lent support for the polarization hypothesis. This finding leads to several important implications.

First, the Supreme Court does not seem to have the power in its own right to move public opinion in a way that Americans support its decisions. Perhaps this is unsurprising, considering that all the necessary conditions of legitimization—the reception of information about a decision, low prior interest or belief, willingness to change opinion, and one-sided information flow in favor of the decision—are rarely fulfilled. A rapid change in mass opinion towards one direction articulated by a political actor such as the Supreme Court can take place with consistent,

homogeneous transmissions of information over a period of time (Page and Shapiro 1992). In the case of the *NFIB* decision, intensive media coverage of the issue may have enabled the general public to receive information about the decision, but significant segments of the public probably have held moderate to strong prior beliefs on the issue, especially after the 2008 presidential election when health care became an important issue on the national agenda. Moreover, the controversial debate over the Affordable Care Act along partisan lines, as well as different positions taken by various actors in the political system, have created conflicting, multifaceted transmissions of information. The lack of a coherent, one-sided information flow in favor of the Court's position articulated in *NFIB* has prevented any visible legitimization effect. As such, this finding is consistent with claims of scholars such as Dahl (1957) and Rosenberg (2008) that the Court is able to persuade the public only if the vast majority of other actors in the political system also agree with the Court's position, helping the Court in disseminating the same message to the public.

Second, the ability of the Supreme Court to persuade Americans depends critically on how the media frame a decision. The analysis of media coverage of the ACA suggests that negative frames have generally outnumbered positive frames and that negative frames were particularly prone to political and social events such as the Supreme Court rulings in the *NFIB* and *King* decisions, the House defunding plan, and the HealthCare.gov website crash. This might explain why more Americans have opposed the ACA than they have supported it. One crucial limitation to this conclusion is that there is a possibility that the causal arrow is pointing in the other direction—that is, increasingly disapproving public attitudes are what caused the greater negative framing in the media coverage, rather than the media frames driving changes in public opinion. While I have not directly addressed this issue in examining media coverage, I have

relied on the assumption stemming from the existing literature on the relationship between elites and public suggests that it is elites who utilize the media to send cues to the mass public (Zaller 1992). Thus, it is assumed that changes in media coverage reflected changes in elite opinion, which eventually spilled over to the public.

Third, the analysis of individual level opinion lends support for the “structural response” (Franklin and Kosaki 1989) and the “crystallization” (Johnson and Martin 1998) of public opinion. In my analysis there were clear differences in the way specific groups of individuals responded to the *NFIB* decision. For example, African Americans, highly educated individuals, non-Protestants, liberals, and Democrats were much more likely to support the Affordable Care Act than whites, individuals with low levels of education, Protestants, conservatives, and Republicans. It is interesting to find that many of these factors were not statistically significant in the pre-decision poll, but eventually become significant in the post-decision polls, suggesting that individual opinion has “crystallized” over various demographic, social, and ideological factors after the decision. Of the various variables, however, party identification and ideology have the greatest explanatory power in predicting one’s approval or disapproval of the ACA, especially after the Court decision.

In sum, this study finds that the Supreme Court decision has not resulted in an increased public support of the Affordable Care Act but rather bolstered a pre-existing trend of partisan polarization over the issue. Given that public opinion on the ACA has always been diverged along partisan lines since 2010, this finding may be unsurprising. However, the power of the Court to draw attention to particular issues is noteworthy, especially because the Court on its own does little to publicize its decisions. The elites and the public pay attention to and discuss Court decisions because of the Court’s high degree of legitimacy within the American political

system (Johnson and Martin 1998, 300). The Supreme Court is thus in a unique position to ignite debate over a particular issue, after which elites transmit cues to the public through the media. With two-sided media coverage of polarized elite opinion of the *NFIB* decision and the ACA, the public, too, has become polarized.

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