

# Supporting Information for “How Public Opinion Constrains the U.S. Supreme Court”

Christopher J. Casillas

Peter K. Enns

Patrick C. Wohlfarth\*

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\*Christopher J. Casillas is a Ph.D. Candidate in the Department of Government, Cornell University, 214 White Hall, Ithaca, NY 14853-7901 (cjc76@cornell.edu). Peter K. Enns is Assistant Professor in the Department of Government, Cornell University, 214 White Hall, Ithaca, NY 14853-7901 (pe52@cornell.edu). Patrick C. Wohlfarth is Post-Doctoral Fellow in the Department of Political Science, Washington University in St. Louis, Campus Box 1063, One Brookings Drive, St. Louis, MO 63130-4899 (patrickw@wustl.edu). Data needed to replicate the analyses presented in this paper can be found at: <http://dvn.iq.harvard.edu/dvn/dv/Enns>.

This Supporting Information File contains supplementary discussion and analysis for the manuscript, “How Public Opinion Constrains the U.S. Supreme Court”. The first section elaborates on the logic of using reversals as the dependent variable in the analysis. The second section presents additional analysis regarding the relationship between dynamic changes in justice ideology and case outcomes. The third section presents additional results which speak to the dynamic relationship between public opinion and case outcomes. The fourth section estimates additional models as a set of robustness checks. The common theme across all analyses presented in this appendix is that, whether we analyze all cases or non-salient cases, a significant relationship exists between public opinion and the Supreme Court’s case outcomes.

## The Logic of Using Reversals

Our decision to focus on case reversals follows the work of McGuire and Stimson (2004) and McGuire, Vanberg, Smith, and Caldeira (2009). McGuire et al. (2009, 28) argue, “*If the ideological direction of the Supreme Court’s decision is taken as a proxy for the ideological content of the decision...then affirmances should be excluded because they are likely to introduce systematic bias into this particular proxy measure*” (italics in original). This conclusion stems from three considerations. First, litigants will be more likely to appeal to the Supreme Court when they believe that the Court will overturn lower court rulings. Second, in general, reversals reflect the litigant’s accurate assessment of the Court’s position relative to the lower court’s ruling, and affirmances reflect inaccurate assessments. Third, due to litigants’ strategic considerations, more liberal cases will be brought when the Court is perceived to be liberal, and more conservative cases will be brought when the Court is perceived to be conservative, leading the volume of liberal (or conservative) reversals and affirmances to vary according to the leanings of the Court. Thus, as McGuire and Stimson

(2004, 1024-1025) note, “when the Court becomes more conservative, more of the reversals (i.e., the accurate estimates) will be decided in a conservative direction *and* more affirmances (i.e., the inaccurate estimates) will be decided in a liberal direction. In other words, the accurate estimates will reflect the prevailing ideology on the Court, while the inaccurate estimates will run counter to it.”

Another advantage of the use of reversals is that this measure helps to address Baum’s (1988) argument that changes in the Court’s docket might unduly influence the percentage of liberal rulings. Baum’s concern rests on the possibility that a reduction in the percentage of liberal decisions could result because the new docket included more moderately conservative (as opposed to extremely conservative) lower court decisions that the Court affirmed. These affirmances would be coded as conservative decisions, reducing the percentage of liberal decisions. However, since we do not include affirmances, our percentages are not biased by this type of scenario.

Although we believe there are strong theoretical and empirical reasons for only analyzing reversals, we also recognize that this is a relatively novel approach. Thus, we also estimated our models using all cases (reversals and affirmances) to assess whether our findings were sensitive to using the reversals measure. The results are reported below in Table A-1. Consistent with expectations, for all cases and non-salient cases, we observe a significant short-term relationship between public opinion and Supreme Court decisions. Although the dynamics are slightly different than those reported in the text (i.e., we do not observe a significant long-term effect), our conclusion that public opinion influences case outcomes would not change if we analyzed all cases instead of reversals. Also consistent with the results reported in the text, the relationship between public opinion and case outcomes is not significant among only salient cases.

Table A-1: The Influence of Public Opinion on Supreme Court Decisions while Controlling for Attitudinal Change: Using All Cases (Reversals & Affirmances), 1956-2000

	All Cases (1)	Non-Salient (2)	Salient (3)
<i>Short-Term (Immediate) Effects</i>			
$\Delta$ Public Mood	1.13* (0.51)	1.25* (0.52)	0.56 (1.56)
$\Delta$ Court Ideology	7.34* (2.65)	9.13* (2.66)	4.05 (8.53)
$\Delta$ Social Forces (IV)	7.84* (2.16)	7.45* (2.13)	9.57 (6.94)
<i>Long-Term Effects</i>			
Public Mood <sub>t-1</sub>	0.12 (0.28)	0.18 (0.28)	-0.03 (0.83)
Court Ideology <sub>t-1</sub>	5.63* (1.51)	6.79* (1.50)	6.63 (4.69)
Social Forces (IV) <sub>t-1</sub>	1.55 (1.50)	0.93 (1.45)	8.13* (4.32)
<i>Error Correction Rate</i>			
Percent Liberal <sub>t-1</sub>	-0.80* (0.14)	-0.96* (0.13)	-1.15* (0.15)
Constant	34.41* (16.01)	37.84* (16.01)	67.87 (51.09)
R <sup>2</sup>	.68	.72	.59

The dependent variable represents the change in the percentage of liberal decisions issued by the Supreme Court during each term, among all cases. N=45 for all columns. \* =  $p < .05$  (one-tailed tests), Standard errors in parentheses.

## Enduring Ideology or Attitudinal Change?

We reported in the text that even though the relationship between social forces (i.e., the instrumented Martin–Quinn scores) and Supreme Court decisions was not significant, we could not definitively rule out the potential effect of attitudinal change. This statement follows from the fact that the Segal–Cover scores and the instrumented Martin–Quinn scores are moderately correlated and that the significant coefficient on the Segal–Cover variable may reflect some of the influence of the instrumented social forces. To assess this possibility, Table A-2 estimates two models. In both models, the dependent variable is the change in the proportion of liberal reversals. In the first column, we include mood and the *actual* Martin–Quinn median scores. As expected, the relationship between public opinion and Court outputs remains significant. We also see that when the Segal–Cover measure of ideology is not in the model, the long–term relationship between the Martin–Quinn scores and Supreme Court decisions is statistically significant. In column 2, we use TSLS and replace the actual Martin–Quinn scores with our instrumented measure of social forces. Again, both mood and the long–term effect of the instrumented Martin–Quinn scores are statistically significant. The significant relationship between the instrumented social forces variable and case outcomes is consistent with the expectation that the justices’ changing attitudes influence Court outputs. Due to collinearity, we simply cannot effectively separate the impacts of justice ideology upon entering the Court (measured by the Segal–Cover scores) and the influence of shifting ideology while on the Court (measured by the instrumented Martin–Quinn scores). Yet, we can still be confident that public opinion directly affects the Court’s decisions since public mood exhibits a statistically significant effect in each model specification.

Table A-2: The Influence of Public Opinion on Supreme Court Decisions *Only* Controlling for Attitudinal Change, 1956-2000

	(1)	(2)
	Martin-Quinn	Instrumented Martin-Quinn
<i>Short-Term (Immediate) Effects</i>		
$\Delta$ Public Mood	2.84*	2.76*
	(0.74)	(0.74)
$\Delta$ Court Ideology	2.37	—
	(2.24)	
$\Delta$ Social Forces (IV)	—	1.02
		(3.41)
<i>Long-Term Effects</i>		
Public Mood <sub>t-1</sub>	1.46*	1.41*
	(0.43)	(0.42)
Court Ideology <sub>t-1</sub>	4.82*	—
	(1.60)	
Social Forces (IV) <sub>t-1</sub>	—	3.80*
		(2.21)
<i>Error Correction Rate</i>		
Percent Liberal <sub>t-1</sub>	-0.56*	-0.51*
	(0.11)	(0.13)
Constant	-57.47*	-57.01*
	(21.81)	(20.84)
R <sup>2</sup>	.36	.43

The dependent variable represents the change in the percentage of liberal decisions issued by the Supreme Court during each term, among all reversals. N=45 for all columns. \* =  $p < .05$  (one-tailed tests), Standard errors in parentheses.

## Opinion Dynamics

One advantage of the single-equation error correction model is that it estimates both short- and long-term effects. However, we can gain a further understanding of the dynamic relationship between public opinion and the Supreme Court by estimating various lagged values of mood. In order to assess how quickly the dynamic effect of public opinion filters into case outcomes, in addition to measuring public mood by the year (thus creating a nine-month lag between changes in mood and the Court's decisions), we also estimated a model where public mood corresponds to the Court term. As shown in Table A-3, using this contemporaneous mood measure, we still observe a statistically significant long-term relationship between mood and Court outputs. The lack of short-term effect suggests that current case outcomes do not reflect current opinion. Perhaps this is not surprising given the fact that cases enter the docket prior to when the term (and this measure of public opinion) begins. However, opinion during the previous term does influence the subsequent term. This result is consistent with the results reported in the text where both the short- and long-term effects of mood (measured on the calendar year) are significant. We also estimated a second model with the mood predictor lagged by one year. The relationship was not significant, suggesting that changes in percentage of liberal decisions respond relatively quickly to shifts in public opinion. Because justices may respond to social forces at a different rate than the mass public, we also estimated the first-stage regressions with various lagged and contemporaneous specifications. In no case did the specification substantively alter the importance of mood in the second-stage regression.

Table A-3: The Influence of Public Opinion on Supreme Court Decisions while Controlling for Attitudinal Change: Using Contemporaneous Mood, 1956-2000

	All Reversals (1)	Non-Salient (2)	Salient (3)
<i>Short-Term (Immediate) Effects</i>			
$\Delta$ Public Mood (By Court Term)	0.92 (0.61)	0.76 (0.63)	1.94 (1.34)
$\Delta$ Court Ideology	10.09* (4.67)	9.39* (4.83)	5.41 (10.10)
$\Delta$ Social Forces (IV)	6.86* (3.92)	4.81 (3.99)	14.84* (8.45)
<i>Long-Term Effects</i>			
Public Mood (By Court Term) <sub>t-1</sub>	1.10* (0.52)	1.05* (0.53)	1.71 (1.14)
Court Ideology <sub>t-1</sub>	8.23* (3.39)	6.31* (3.49)	12.95* (6.13)
Social Forces (IV) <sub>t-1</sub>	3.48 (2.22)	2.34 (2.21)	11.72* (4.95)
<i>Error Correction Rate</i>			
Percent Liberal <sub>t-1</sub>	-0.87* (0.15)	-0.75* (0.15)	-1.28* (0.15)
Constant	-15.77 (30.16)	-19.56 (31.21)	-24.64* (64.83)
R <sup>2</sup>	.49	.44	.65

The dependent variable represents the change in the percentage of liberal decisions issued by the Supreme Court during each term, among reversals. N=45 for all columns. \* =  $p < .05$  (one-tailed tests), Standard errors in parentheses.



## Robustness Checks

We have argued that TSLS allows us to control for the social forces that influence public opinion *and* Supreme Court justices. A less parsimonious approach would simply involve including all of the social forces variables, differenced and lagged, in our actual model. Below, we report the results of this analysis. Models of judicial behavior commonly utilize the Segal–Cover median score (measured at the time of confirmation) to control for justice ideology. Unfortunately, including this measure with the social forces variables introduces extreme collinearity. For example, when analyzing all reversals, the variance inflation factor for the Segal–Cover predictor is 57.35. Contrast this with the variance inflation factor for the Martin–Quinn median score, which is only 3.59. Thus, we use the Martin–Quinn median ideology score in place of the Segal–Cover score as the control for ideology. Furthermore, because the Martin–Quinn estimates are based on actual votes and vary by term, this should offer a more conservative empirical test. Of course, the Martin–Quinn scores introduce a potential circularity problem (hence the use of TSLS in the text analysis) and the inclusion of all of the social forces variables still introduces a high degree of collinearity in the model (just not as severe as if we used the Segal–Cover score).<sup>1</sup> Nevertheless, the short- and long-term effect of public opinion remains significant for all reversals and non-salient reversals. This result provides strong evidence that the results reported in the text are generally robust to model specification.

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<sup>1</sup>The average variance inflation factor for the model specifying the Martin–Quinn median ideology score is 10.9, as opposed to the average variance inflation factor of 17.8 for a model utilizing the Segal–Cover scores to measure ideology.

Table A-4: The Influence of Public Opinion on Supreme Court Decisions while Controlling for Attitudinal Change: Using All Social Forces Variables, 1956-2000

	(1) All Reversals	(2) Non-Salient Reversals	(3) Salient Reversals
<i>Short-Term (Immediate) Effects</i>			
$\Delta$ Public Mood	2.18* (1.04)	2.81* (1.09)	0.19 (2.26)
$\Delta$ Court Ideology	3.22 (2.63)	2.05 (2.80)	5.73 (5.49)
$\Delta$ Inflation	186.42 (119.25)	152.04 (127.25)	206.31 (273.07)
$\Delta$ Unemployment	1.32 (2.58)	0.71 (2.67)	2.44 (5.50)
$\Delta$ Policy Liberalism	-0.26 (0.62)	-0.69 (0.64)	2.17 (1.41)
$\Delta$ Defense Spending	0.20 (0.80)	-0.16 (0.85)	0.33 (1.53)
$\Delta$ Inequality	235.40 (240.09)	199.67 (264.47)	-65.44 (530.75)
$\Delta$ Homicide Rate	-5.57 (3.72)	-3.31 (3.94)	-18.59* (8.01)
<i>Long-Term Effects</i>			
Public Mood <sub>t-1</sub>	1.87* (0.72)	1.78* (0.76)	1.78 (1.55)
Court Ideology <sub>t-1</sub>	5.65* (2.02)	5.46* (2.13)	5.47 (4.52)
Inflation <sub>t-1</sub>	-1.57 (155.40)	-52.18 (164.79)	197.32 (352.35)
Unemployment <sub>t-1</sub>	-1.21 (2.20)	-0.58 (2.33)	-4.11 (4.95)
Policy Liberalism <sub>t-1</sub>	0.10 (0.42)	0.08 (0.44)	0.04 (0.91)
Defense Spending <sub>t-1</sub>	0.41 (0.58)	0.12 (0.63)	0.53 (1.08)
Inequality <sub>t-1</sub>	25.00 (225.61)	-14.74 (243.87)	-147.54 (487.17)
Homicide Rate <sub>t-1</sub>	-2.62 (2.97)	-1.44 (3.10)	-8.02 (6.60)
<i>Error Correction Rate</i>			
Percent Liberal <sub>t-1</sub>	-1.03* (0.22)	-0.84* (0.23)	-1.47* (0.18)
Constant	-50.03 (115.36)	-43.49 (124.80)	95.34 (253.62)
Adj. R <sup>2</sup>	.46	.36	.59

The dependent variable represents the change in the percentage of liberal decisions issued by the Supreme Court during each term, among reversals. N=45 for all columns. \* =  $p < .05$  (one-tailed tests), Standard errors in parentheses.

## References

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