6-3 Super Majority Court: Polarization in Super-Majority United States Supreme Court

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The current Supreme Court of The United States of America faces a never seen 6-3 supermajority court coalition. Literature and research suggest that supreme court justices are not immune to polarization. Median justices also play a big impact on the decision directions the court takes on landmark cases. In this thesis, we will explore the role of median justices throughout different recent court terms over the last ten years and how they affect policy output. We will analyze a trend in landmark decision making in the absence of a median justice and delve into the effect this has had on supreme court decisions. This thesis aims to analyze the effects that a median Justice Kennedy (and lack of) has had in recent decision outputs that have altered the direction of our nation from a previously liberal to a more conservative direction.

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Introduction

The day is September 26, 2020 and millions of Americans are tuned in to watch American President Donald J. Trump 's nomination of Amey Coney Barrett to serve as a future justice on the supreme court following the death of Justice Ruth Bader Ginsberg. We are living in the most polarized America that we have ever seen, where the country is divided in two and neither side get along. The political climate in America is not what it was 15 years ago, we have each side at war with each other over, politicians publicly bashing each other on social media, and an overall unfriendly political climate. At this point in time, there are five conservative justices on the supreme court and the confirmation of Amy Coney Barret would change that to the supermajority 6-3. This would automatically ensure excessive control of the conservative republican party over policy in America for the next couple of terms. Americans everywhere knew that this appointment was the proxy to what themes would be visited by the court. Americans understood what this nomination meant. This nomination meant the upcoming visitation of cases like abortion, same sex marriage, and other controversial topics that a conservative court was sure to visit especially when their decision would be uncontested. We understood that this decision would change the direction of our nation as we knew it.

Typically, the nomination of a supreme court justice doesn't capture mass media attention, but this year was different. This year was not only a presidential election year, but for the week following Justice Ginsberg's death, the media and our politicians had been completely divided on which president would get to nominate the justice that would fill the recent vacancy. The question of which president would get to nominate the new justice was invoked due to the prior 2016 election where in an election year, Justice Antonin Scalia perished leaving an opening on the United States Supreme Court. This is where the Obama administration had the choice to nominate a candidate or leave it up to the winner of the 2016 election in the form of "letting the people decide". However, this decision-making process was not upheld for the 2020 election year. On October 26,2020 Amy Coney Barrett was confirmed as an Associate Justice of the Supreme Court of the United States (U.S Senate Committee on the Judiciary, 2020). This was such a significant decision because this shifted the court from a 5 conservative- 4 liberal court to a 6 conservative, 3 liberal justice court. This sparked public backlash since the people expected the coming president and winner of the 2020 election to nominate the recent vacancy. However, history shows that despite public backlash, an appointment to pack the court in the favor of one side persist (Cameron, Charles, 2011, Jee-Kwang Park, 2011).

The political climate of the United States has drastically changed compared to how it was a decades ago. Given that the court is predominantly conservative, and not in a slightly majority way but in a an overwhelmingly majority way, we have the most conservative court we have had in decades, and this is reflecting on the kinds of cases they grant cert to and the outcomes of those cases.

The question addressed in this thesis is: *Has the shift to a more conservative supreme court lead us to a court where the median justice is less moderate and assuming this happened, does this lead to a heavily polarization in decisions rendered by the court on cases we consider landmark cases?*

Concerning the median justice, we are targeting if the median justice has any effect on decision making now that the court is majority conservative by a 6-3 majority. They could have less of an effect now that even if they vote against the majority, the majority will amount to more the number of votes of the minority. The median justice in the supreme court is typically supposed to be the make-or-break decision in split cases. There are no split decisions when the majority and minority have equal number of votes. In a majority conservative court, it is not likely that the median justice is influential at all.

Assuming the median justice has little influence if not any at all, with a conservative court of 6-3, this could lead a change in pattern from previous decades in the kinds of cases they grant certiorari to and change the outcome of those cases. When a case is one that has great importance to the majority, they are known as landmark cases. These

kinds of cases are often followed by mass media attention and are often where the Public is split by ideology in the support for either outcome. Landmark cases include cases surrounding topics like LGTBQ rights, immigration laws, abortion rights, or affirmative action. This thesis attempts to explore if having a majority conservative court, with a less moderate, or less influential median justice influence which cases they hear and what the outcome of those cases are.

Okay, but why is it important? Is the question many of American's may ask themselves as they casually see that another supreme court justice has been nominated. Many don't see reason to care. This topic is up and coming in the field of political science since we have yet to see the long-term effects of the court. The importance of the research I am conducting lies in the fact that the supreme court is the most powerful branch in our government system. Some may say that the president is the most powerful branch in our government not considering that any action taken by the president can be vetoed by the supreme court. Others may argue that our legislative branch is the most powerful since they oversee drafting up and passing legislation in our nation. Not considering that the supreme court can determine whether a law passed is unconstitutional. The supreme court also holds supervisory power over inferior courts. This power is unique to the supreme court due to the famous landmark case of *Dickerson V. United States* (Barrett 2006). Where it was concluded the supreme court does in fact have supervisory powers over federal courts. In simple terms, their decision holds the ultimate say.

Since, the supreme court holds the ultimate say in our government that is precisely why the court being a 6-3 is a problem. We cannot have a court that is a 6-3 majority without there being heavy polarization due to the liberal justices not having a fighting chance to vote on cases. They are outnumbered in a way where not even a median justice, would make a difference.

In recent years, it has been argued that the American democracy, including the Supreme Court, has been plagued by partisanship (Foley 2023). Having a majority conservative court, where the median justice wouldn't make a difference, leads to a more polarization in what kinds of cases they grant certiorari to and their outcomes. Today's supreme court is ideologically driven and that is reflected in the kinds of landmark cases they hear and their decisions on those cases. Especially in a 6-3 court where the median justice wouldn't make a difference in an overwhelming conservative court, being openly ideologically driven goes against the very principles of our democracy and their roles of Supreme Court Justices. Now, I understand how some, like U.S Chief Justice John Roberts may say that the court was appointed in a constitutional manner therefore the decisions cannot possibly be biased, and the judges rule based on merit and not on party affiliation (Chung, Andrew 2019). However, when we put into consideration that this court was appointed in a heavily polarized America, that grants certiorari to controversial cases resulting in openly biased decisions, we can make the conclusion that the "impartial" court is not indeed, impartial. There has been overturning of cases that would not have been passed 15 years ago.

When the time came in 2016 to pick a new justice, this nomination would switch the court to a 5 majority- 4 minority on the court. The reason why this was so important is because which president got to choose the new justice was up for debate. This was a battle between the parties with clear split partisanship because this was an opportunity to pack the court and flip the majority. Elections now mattered more than ever before. The death of Justice Antonin Scalia opened the door for the controversy over who got to choose the next justice and the demand for the litmus test to be integrated began (Devins, Neal,2016, Lawrence Baum 2016). The litmus test is an examination of the political ideology of a nominated judge. Supreme court appointments are typically used as a strategy by presidents to add a justice to the court that will rule in favor of their party. This usually results in excessive gridlock or excessive policy responsiveness (Krehbiel, Keith 2007). As we all know by now, President Barak Obama did not nominate a candidate that year and when President Donald J. Trump won the

2016 election, he got to decide the next judge.

During the presidency of President Donald J. Trump, he nominated 3 US Supreme Court Justices beginning with the nomination of Justice Neil Gorsuch in 2017, Justice Brett Kavanaugh in 2018, and Justice Amy Coney Barrett in 2020. This is known as "packing the court" which is a tactic used by U.S Presidents who nominate candidates to be confirmed by the senate, which happened to be controlled through majority by the republican (typically conservative) party. It is important to know that each party is associated with partisanship in which the republican party holds conservative ideologies and platforms, while the democratic party holds liberal ideologies on the political spectrum. After the confirmation of Justice Gorsuch and Justice Kavanaugh, the supreme court saw a completely new conservative majority. This represented a victory for the republican party (Feldman, Adam 2018). At this point in time, more than ever before studies show that supreme court justices are likely to vote along their party lines. This poses grave danger to the legitimacy of the court (Epps, Daniel, 2019, Ganesh, Sitaraman 2019). The step of confirming Justice Amey Coney Barret was a step towards a more unconventional court. The Roberts court is the most unconventional court in history. Supreme Court Chief Justice Roberts sticks by the statement that the court is fair and unbiased. However, when the court is 6 majority 3 minority split in ideology, it is unlikely that partisanship is not taking place in this court (Castillejos-Aragon, Monica, 2020). This reflects on the kinds of cases they grant certiorari to and their outcomes which we will come back to later in the paper.

The research I will conduct will consist of looking at the supreme court the last 3 court makeups. One with a moderate median justice, one with a non-moderate median, and the latest court with no median at all because it is 6-3. I will examine the outcomes of the cases they grant certiorari to.

Literature Review

In this literature review, we will be discussing ideology and polarization in the supreme court, the median justice, and ideology in the certiorari process. When discussing ideology in the court, we will explore how ideology and party polarization plays a role in how justices are nominated. Then, we will explore how once a justice is nominated, the makeup of the court determines if there is a median justice that is moderate or non-moderate and what that entails for coalition polarization. Finally, we will explore polarization in the certiorari process and how polarization in the court may serve as a proxy to what cases are granted certiorari and their outcomes.

Ideology in the Court

For this paper, ideology refers to whether a justice on the supreme court leans towards the right (conservative) or to the left (liberal) on the political spectrum. This means they are likely to vote rooted in the values of whichever side they lean towards. It is common understanding that the supreme court justices are likely to be influenced by partisan figures. The supreme court is not immune to partisan ties. Partisan hostility in political branches affect the non-partisan activity of the judicial branch (Armaly, Miles T., 2020).

Part of the literature suggests that party polarization has turned the supreme court into a partisan court. Even before the court was a 6-3 majority, even a court that was five democratic nominated justices would reach decisions very differently than a court with five republican justices would reach (Krehbiel, Keith 2007). The supreme court suffers from systematic bias. Their outcomes are a predictable outcome consequently to their bias.

For example, when deciding whether to grant certiorari to a case, supreme court justices will consider their ideology and that of their party. Supreme court appointments are a way of indirectly changing policy. The president plays the role of monopoly power for presidential agenda setting. Supreme court judges will tend to grant certiorari to cases where they perceive the previous rulings of those cases to be ideologically incorrect. A judge will assert or revise a decision on if it means that their party agrees. McGuire and Vanberg (2009) have shown through

experimental research that the U.S supreme court is systematically biased. Researchers typically use the ideological direction of a justice on the supreme court to proxy for rationale in their decision making (McGuire, Kevin T., 2009). Essentially, when deciding whether the justice is liberal, or conservative can tell you how that justice will decide. When presidents pack the court, they pack them with judges that will predictably rule with their party. This is why it is a race to pack the court because packing a judge with a conservative judge means another vote that will lean conservatively (Boucher, Robert L., 1995., Jefferey A. Segal, 1995.).

Although the court was packed in a constitutional way, a 6-3 majority poses a threat to our democracy. When we consider the very foundation of our democracy and two-party system is set up to ensure that no one party has complete control of the government, this 6-3 court fails the very foundation set up by our founding fathers. If we frame the narrative to 2020 after the nomination of Justice Barrett, we have a conservative president who appoints the judges, with a 6-3 conservative court that is the only check on the president and frames landmark laws for our nation, confirmed by a majority conservative senate. Typically, scholars will try to argue that what is wrong with our government is that our two-party system is what causes us to always we stuck in gridlock (Jones, David R., 2001). However, gridlock would involve two parties, and, in this case, there is one that overwhelmingly controls our government via the supreme court. Others may say that whether you think the supreme court is heavily polarized will be determined by your own individual ideological stance and the way you react to their cases and outcomes will also be determined by your own ideology (Christenson, Dino 2019). To those, I say this: regardless of where you stand on the political spectrum, a 6-3 court does not give a fighting chance to any decision that isn't that of the supermajority. When the super majority is made up of only conservative justices, you can predict the way the court will rule. In a 6-3 court, even a median justice like the ones we have seen in previous majority conservative courts would not make a difference in coalition decision making.

The Median Justice

The median justice prior to Justice Brett Kavanaugh's confirmation in 2018 used to be a powerful role in the supreme court. Median justices throughout the history of the United States Supreme Court have always held the make-or-break decision on cases that are typically split decision cases. The power of the median justice is determined by the makeup of the court. It is empirical that the court have an even number of justices of each side for the median justice to have that make-or-break vote (Krehbiel, Keith 2007). The vote of the median justice is known as a "swing vote" since they can vote with either side on any given case resulting in a win for a specific ideology. Some median justices are stronger than others. The amount of power the held by the median justice is determined by how close they are to the (moderate) center. When they are remote from the rest of their colleagues, they emerge as super medians. They have the make-or-break decision in the court. When they are closer to their colleagues, they are far less dominant as then there is a court coalition of one ideology and their vote is predicted. The median justice of a majority polarized court doesn't have dominance over the court as an individual because regardless of the way they vote, the majority will prevail (Epstein, Lee.,2008, Tonja Jacobi.,2008). The median justice is not only influential but particularly influential when they are part of the majority coalition. The median justice must resolve a concrete dispute and they have a preference over which party wins specific cases. The bargaining power of the courts median shift influence towards the coalition median (Carrubba, Cliff, 2007). This means that the wing vote, has the ultimate say in a divided court.

Not only do median justices have the final vote on a case but also control what becomes court policy and the contents of that policy (Bonneau, Chris. 2007). Despite opinions that may have suggested the median justice is not very influential, the bargaining process enables the median justice in the majority coalition to control holding of a case and its policy content (Khun,

James.,2017).

Based on Previous discussed literature on Supreme Court Median Justices, I argue that medians have lost their power in the current court compared to prior courts. Looking at the last three median justice we have had over the last 10 years: In 2016, The supreme court was made up of 4 liberal justices and 3 conservative justices with a moderate median justice Kennedy. Here, Justice Kennedy was known as a super median since he was remote from his colleagues on ideology and typically held an unpredictable vote that could go towards either side. This followed the death of Justice Antonin Scalia a former consistent conservative whose vacancy was to be filled by the winner of the 2016 presidential election in. 2016. Prior to Justice Scalia's death the court was 4 liberal, 4 conservative, with a moderate median justice. However, once President Donald J. Trump nominated Justice Neil Gorsuch in 2017, to fill in the vacancy, the conservatives resumed their 4-justice standing. In 2018, Justice Kennedy retired leaving President Donald J. Trump to fill another vacancy in the court. He nominated Justice Brett Kavanaugh to the supreme court filling the previous moderate seat with a justice second to the farthest right. This skewed the median to right creating a non-moderate median Justice Thomas. This created a heavily conservative court with a good prediction of how the court's median justice would rule. Later, in 2020 following the death of liberal Justice Ruth Bader Ginsberg, President Donald Trump nominates Conservative Justice Amy Coney Barret to fill the vacancy shifting the court to a 6-3 majority conservative court with no moderate median.

This means that even if we had a moderate median who voted for the minority, the median would still be overpowered by the majority coalition.

When the conditions like the ones that arose in 2016 to move the median justice occurred, long term policy change in the court will occur (Krehbiel, Keith 2007). However, policy change in the court can only occur once the court determines which kinds of cases they will hear in the following term.

Ideology and Certiorari Process

Before the supreme court can get to enacting policy, they grant certiorari to the kinds of cases they want to hear throughout their term. Pre-existing institutional loyalty shapes perceptions of and judgements about court decisions and events (Gibson, James L., 2009, Gregory A. Caldiera., 2009). The systematic bias the court suffers from extends to the kinds of cases they grant certiorari to. As a result, their outcomes are a predictable consequence. Judges grant cert to cases that they believe are ideologically incorrect. Judges will assert or reverse a decision if it means that their party agrees. The most common reason that members of the court grant certiorari is that they doubt the correctness of the decision of the lower court and this rests on the location of the justice ideologically related to the case. Justice vote based on their ideology as opposed to strictly legal reasons. (Boucher, Robert L., 1995, Jeffrey A. Segal.,1995).

Judges will grant certiorari more often to reverse the lower courts decisions than to affirm it. This is due to their ideological bias that serves as a proxy to how they will rule in their cases. Justice will issue judgement for the party that prevails under the rule of the lower court. Then, they will affirm it. If it is not in the favor of their party, then justices will reverse the decision of the lower court. (McGuire, Kevin T., 2009). When petitioners can confidently conclude how the supreme court will vote, more times than often, they will win more than they lose.

Justices grant certiorari to cases that they deem important as lobbied by interest groups that campaign towards their party's interest. The court treats cases different depending on the litigant and interest group that brings the case before them (McGuire, Kevin T., 1993). Litigants will fill their amicus curiae briefs (prior to the decision on certiorari) significantly in the interest of the majority coalition to increase the chances of justices granting certiorari to their cases (Gregory A. Caldiera,.1988). When petitioners already know the supreme court will rule and certiorari is granted, the outcomes of those cases are also heavily polarized.

Case Outcomes

Policy outputs are consequential to polarization. Ideological preferences are what drive the justice's decision making and this reflects in the outputs they issue. Their definitive decision-making process will align with their ideology. This is why median justices are important but in a court with 6-3, the polarization of the coalition majority will emerge in policy outputs (Clark, Tom S., 2009). The supreme court is a counter majoritarian institute by design; however, they rely on public opinion for legitimacy. Public support for the court decreases when the court's policy content reflects on a majority coalition ideology as opposed to where majority public support lies (Malhotra, Neil. 2014, Stephen A. Jesse. 2014). Supreme court appointments have important consequences for public policy in the long-term. judicial decisions are so heavily constrained by the power of other institutions and actors that those decisions simply mirror the preferences of other actions (Piles, Richard H. 2011).

The policies that have been enacted by the 6-3 court are policies that would not have passed 20 years ago (Bonventre, Vincent M., 2023). Recently, we have had landmark cases that have to do with topics like abortion rights, immigration rights, and many other controversial cases that have decided conservatively by a super majority. These are all reflections of a 6-3 majority conservative court.

Research Methodology

In recent years there has been an increase in conservative Supreme Court Justices on the United States Supreme Court emerging a non-moderate median, resulting in polarization in the kinds of cases the supreme court will grant certiorari to. Through a case study approach, divided into three cases, we will be analyzing the ideology of the median justice and analyze the kinds of cases these three courts grant certiorari to. We will be pulling from the national data collected on the supreme court's makeup and the cases that court granted Certiorari to. We will be analyzing factors like the ideology of the median justice, the kinds of cases they grant certiorari to, and their outcomes. These factors contribute to a demonstration of how the supreme court is polarized as a result of a non-moderate median justice.

This method seems to be appropriate for the research question: *Has the shift to a more conservative supreme court lead us to a court where the median justice is less moderate and assuming this happened, does this lead to a heavily polarization in decisions rendered by the court on cases we consider landmark cases?*

For this paper I will be conducting 3 case studies to demonstrate heavy polarization in the current court. These case studies will place all the justices on an ideological spectrum over the last three court changes, one in 2014 with a moderate median Justice Kennedy, one in 2017 with a non-moderate median Justice Thomas, and one in 2022 with 6-3 majority. Here, we will demonstrate the shift of the median justice from the middle to the far right. Once we demonstrate that, we will be looking at the kinds of cases that these three courts grant certiorari to and their outcomes.

Previous research on the median justices throughout the history of the supreme court indicate that the median justice is only influential the farther the farther they are from their peers in their ideology. Other studies have shown that the median justice is only influential when moderate (Krehbiel, Keith 2007). There has also been research before that demonstrates that when there is a majority coalition in the court, their outcomes are biased in the cases they hear Armaly, Miles T., 2020). These studies are the proxies to the next step in the research, analyzing a supreme court with a nonmoderate median in a majority coalition and what kinds of cases this court grants certiorari to.

First, we will be dividing the cases up into three courts to account for relativity and generalization. Next, when analyzing the ideology of the justices on the court in our case study, we will be organizing them by court in order of their ideology and analyze how far from the middle the median justice lies. This will dictate whether that court had a moderate or non-moderate justice. I will also be providing the justices of all three courts with their Martin Quinn score. This score places the justices on the ideological spectrum. The lower the score, the more liberal the justice.

The higher the score, the more conservative the justice is. We will be using their scores to demonstrate the ideological pinpoint of the median justice of that court.

Up next, we will be analyzing the kinds of cases that court grants certiorari to and the outcomes of those cases national records on cases the supreme court heard those years. For each case study, this paper will be looking at what kinds of cases the court granted certiorari to and judge the outcome based on whether they overturned precedent in their rulings for that term.

The court we will be analyzing has drastically changed over the last 19 years since its beginning. The John Roberts Court from 2005 to present is a deeply conservative court with a present makeup of a supermajority conservative coalition.

Research and Case Studies

Justice Sotomayor (-3) L	Justice Ginsberg (-2.56) L	Justice Kagan (-1.68) L	Justice Breyer (-1.58) L	Justice Kennedy (-0.23) Moderate	Justice Roberts (0.59) C	Justice Scalia (1.52) C	Justice Alito (1.77) C	Justice Thomas (3.17) C

These case studies will place all the justices on an ideological spectrum over the last three court changes, one in 2014 with a moderate median Justice Kennedy, one in 2017 with a non-moderate median Justice Thomas, and one in 2022 with 6-3 majority. We will be determining landmark cases in this study as heavily polarized cases that are surrounded by controversy. These cases are typically divided issues between conservatives and liberal justices (at all levels) and the outcome of the case will favor one side over the other. Landmark cases usually address polarized issues on cases like but not limited to: Fourteenth Amendment, Equal Protection, Fifth Amendment, and Second Amendment rights.

Case Study One (SCOTUS 2014-2015)

This case study will be analyzing the Supreme Court of the United States of America for their 2014-2015 term. The reason I particularly chose the 2014-2015 court is because these nine justices then continued to serve on the court until 2016. In hopes of not skewing the data analyzing the entirety of the terms this same court served on, I decided to keep this court specific to their 2014-2015 term.

This court made up of nine Supreme Court Justices. The members consist of: Justice John G. Roberts, Jr., Justice Antonin Scalia, Justice Anthony M. Kennedy, Justice Clarence Thomas, Justice Ruth Bader Ginsberg, Justice Stephen G. Breyer. Justice Samuel Alito, Jr., Justice Sonia Sotomayor, and Justice Elena Kagan. Below, these justices will be ranked based on their Mark Quinn score from left (liberal) to right (conservative) on the ideological spectrum.

Court Composition and the Median

This nine-justice court has about equal liberal as conservative justices. There are four justices on each side with Justice Kennedy emerging as the Median Justice for this court. However, he holds a lot of power in his votes for this term since he is the deciding vote on any split cases ending in 5-4 decisions. Prior research explored in this paper indicates that how much power the median justice of a court has, is determined by how evenly the justices are distributed on each side of the spectrum (Krehbiel, Keith 2007). Since this court has even number of justices on each side (excluding the median), Justice Kennedy emerges as a "Swing Vote" meaning his vote can swing the decision to either side. Ideologically speaking, Justice Kennedy also happened to be a moderate justice in comparison to his 4 Conservative fellow Justices.

Now that we have established that this court demonstrates the perfect example of a split court with a moderate median, we can begin to explore how this court is perceived historically and delve into an analysis of their landmark cases that year and study the trends in the decision of those cases.

General Decision Trends

At this point in time, the Roberts Court (2014-2015) term was seen as a historical year full of landmark cases that altered the course of United States History. Throughout their term, they heard 152 cases. 80 of them had liberal outcomes. 70 of them were conservative outcomes. General decision trend was Liberal.

Landmark Cases& Overturning Precedent Landmark cases are cases that have to do with our constitutional rights. Landmark decisions establish a new legal principle or concept or otherwise that substantially changes the interpretation of existing law. ("Landmark Cases | CONNECTIONS - United States Courts") We will be using the overturning of precedent as an indication of a change in existing law.

The following three cases are considered landmark cases that were heard and decided by the supreme court resulting in an overturning of precedent.

Johnson v. United States (576 U.S. 591)

What can be considered one of the landmark cases of this term. This case had to do with our 5th amendment and its due process clause. This case was considered a landmark due to its liberal take on a formerly conservative case.

This case discussed a 2010 Federal Bureau of Investigation on Samuel Johnson based on his involvement in an organization. He admitted to an FBI agent that he manufactured napalm, silencers, and other explosives. He also processed an AK-47 rifle, several semi-automatic weapons, and a large cache of ammunition. Johnson was then arrested in 2012 for admitting to possessing some of the previously mentioned weapons to his probation officer. Per a grand jury, Johnson was charged with six counts of firearm possession, he was classified as an armed career criminal. He earned this classification due to his three prior felony convictions that the district court evaluated as "violent felonies." The Armed Career Criminal Act (ACCA) was used to subject Johnson to 15 years. Johnson argued that his convictions should not be considered violent, and that the ACCA is unconstitutionally vague. This decision was by the district court and confirmed by the US Court of Appeals for the eight Circuit.

The question being discussed in the Supreme Court on November 5, 2014, was "Is the definition of violent felony in the armed career criminal act unconstitutionally vague?".

Given his prior charges were related to possession of firearms, this makes this case a gun control related issue. This is a typically conservative issue. A liberal vote would rule that the Criminal Career Act is unconstitutionally vague. A conservative decision would rule that it is not unconscionably vague and rule according to the law/ uphold precedent.

This court in a vote coalition of 8-1, voted in a liberal direction. The court decided that yes, the residual clause of the Armed Criminal Career Act is unconstitutionally vague. Prior to this, the ruling was that laws don't give ordinary people fair notice of what conduct is punished or can be enforced arbitrarily violate the Due Process Clause of the Fifth Amendment. The clause gives no guidelines were not specific and opens a window of unpredictability on what constitutes as serious risk of physical injury which qualifies as a violent felony charge. This means there can arbitrary enforcement in violation of the due process clause. The court argued that they would not uphold precedent since this case demonstrated that judicial interpretation of this clause was not predictable. They decided in a liberal direction to go about voting.

In the plurality were Justices: Scalia, Ginsburg, Breyer, Roberts, Sotomayor, and Kagan. Justices Kennedy and Thomas also voted in the liberal direction but had special concurrences for this case. Justice Alito chose to dissent in a conservative direction. What does it mean?

This decision overturned a previously conservative issue in a liberal direction. This case also met the criteria for this case study since

it was regarding the Fifth Amendment Due Process Clause. This makes this a landmark case. This case was an overturning of precedent in a liberal direction given the 5-4 court makeup. This case is a demonstration of the way a supreme court will rule when there is a moderate median. There are no apparent signs of ideological bias or majority coalitions even when there is a 5-4 majority. Even though this was a special case where there was a majority coalition, the overturning of a conservative decision by a court that could have voted conservatively and won by majority, is a clear indication of a healthy court where ideological bias is not at play and our justices decide based on our constitution. This is not seen today.

Ruling Direction: Liberal

Obergefell v. Hodges (576 U.S. 644)

What can be recognized as one of the (if not the) most liberal United States Supreme Court decision in the history of its existence, the landmark case of Obergefell V. Hodges tackled conservative America by storm when they deemed that all bans on same sex marriage across all 50 states, unconstitutional. This took our nation by storm due to the typically Christian nature imbedded in American culture. This was what at the time, seemed like a more progressive direction of our nation. This was a clearly heavily polarized issue.

This case was discussed in April of 2015 and decided in June of 2015. Groups of same sex couples sued agencies in Ohio, Michigan, Kentucky, and Tennessee to challenge these state's refusal to recognize same sex marriage and issue licenses for same sex marriages. They argued that under the Equal Protection Clause of the Fourteenth Amendment (historically known for its role in liberally decided cases) and the Civil Rights Act, these states and their agencies are in violation of these rights by banning same sex marriage and not issuing out marriage licenses for same sex marriages as well as the nullification of these licenses from other states. The trial court was in favor of the plaintiffs, The U.S Court of Appeals for the Sixth Circuit reversed that decision and found that these rights were not being violated by agencies or the states licenses being refused in other states.

They decided to address two questions:

Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?

Does the fourteenth amendment require a state to recognize a marriage between two people of the same sex that was legally licensed and performed in another state?

It was a 5-4 decision with the decision direction being liberal. Those who voted with the majority, or the plurality were liberal justices Ginsburg, Breyer, Sotomayor, and Kagan alongside moderate median Justice Kennedy. This major decision was dissented by conservative justices Scalia, Thomas, Roberts, and Alito. This was a split decision with moderate median Justice Kennedy as the final vote that determined the direction of this case. This swing vote only holds power when the court is split on a divided issue (usually a polarized issue). In this case, moderate median Justice Kennedy was that deciding swing vote, throwing the majority vote to the liberal justices with his liberal decision.

This decision indicates that even in a court that is 5-4 majority, the minority still has a chance to have decisions in their direction so long as the median is moderate. This case meets the criteria of this case study as demonstration of a functioning court and an example of how this court decides with a moderate median. This case was regarding equal protection, the 14th amendment, and civil rights protections. This case being an overturning of precedent in a liberal direction means that although this court makeup is 5 conservative- 4 liberal justices, there is no indication of ideological bias from the judges in their decision making. There was an overturning of conservative precedent with a slit decision vote. There is no supermajority power coalition even if there is a 5-4 majority.

Ruling Direction: Liberal

Hurst v. Florida (577 U.S. 92)

What can be considered a landmark case for this term, much like the first two cases in this study, this case was a formerly decided in a

conservative direction but was overturned during this term to a liberal direction. This case involved our constitutional 6th amendment, the right to a trial by jury.

Timothy Hurst was charged and convicted of killing Cynthia Harrison, a coworker of Hurst. He was sentenced to death. He later appealed and was granted a new sentencing trial since the Supreme Court of Florida dictated that the counsel assigned to hurst should have presented evidence that hurst was not in his mental capacity and had brain damage. The new trial concluded that Hurst had mental retardation evidence, but this evidence was presented as mitigating evidence and not as evidence that rules the death penalty out. The jury then decided to award him the death penalty in a 7-5 vote, and the Supreme Court of Florida affirmed this sentencing. However, in 2002 the supreme court decided the case Ring V. Arizona (576 U.S. 591) The ruling of this case by the Supreme Court was that the Sixth Amendment needed the presence of aggravating factors. Previously the Supreme Court of Florida held the ring decision did not apply to Florida's death penalty sentencing scheme and did not require the jury's recommendation of the death penalty to be unanimous, nor could they determine a defendant's mental capacity. This case was granted and discussed in 2015. This brings us to the question of the case:

Due to the decision in Ring (576 U.S. 591), does the Florida death sentencing scheme, which doesn't require the jury to have a unanimous death sentence or require a jury to determine whether the defendant has mental retardation, violate the Sixth Amendments jury trial guarantee or the Eighth Amendment's prohibition against cruel and usual punishment?

The court decided that Florida's death sentence scheme did violate the Sixth Amendment due to their decision in Ring (576 U.S. 591). There was an 8-1 majority ruling. The court held that the sixth amendment requires the jury itself to find each element necessary to determine if they will impose the death penalty. Even if the jury could recommend it to the judge, it was only to be taken into consideration, not a defining factor. In Ring, the court concluded that the sixth amendment required a jury to consider anything needed to determine if they will impose the death penalty, and the Florida scheme violates that. In addition, Justice Breyer wrote that the Eight Amendment required jury to sentence in capital cases. This case was voted liberally by every justice with the exemption of Justice Alito who dissented the case.

Again, we see a previously conservative decision overturned in a 5-4 majority court in a liberal direction. This is an indication that even if the court is majority conservative, the justices of the court don't appear to vote based on their ideology but based on their interpretation of the constitution (even on an ideologically controversial issue). The death penalty, usually in association with the 6th and 8th amendments in our constitution, are issues that divide Americans in half based on their ideology. For our (at the time), conservative court to rule in a liberal direction qualified this case as a landmark case. This is a healthily functioning court.

Ruling Direction: Liberal

Case Study Two (SCOTUS 2017-2018)

This case study will be delving into the Supreme Court of The United States for their 2017-2018 term. I chose this year for the term because there has been a change in the make-up of the Roberts court since their 2014-2015 term.

This 9 Justice court is made up of: Justice John G. Roberts, Justice Anthony M. Kennedy, Justice Clarence Thomas, Justice Ruth Bader Ginsberg, Justice Stephen G. Breyer, Justice Alito, Jr., Justice Sonia Sotomayor, Justice Elena Kagan, and Justice Neil Gorsuch. At this point in time, conservative Justice Antonin Scalia (who served on the court for case study one), had passed away and the vacancy was filled with Justice Neil Gorsuch nominated by former President Donald J. Trump and confirmed by the senate in 2017. This case study is focusing on this term since it will be this courts first term with Neil Gorsuch. His appointment and confirmation to the supreme court begin to change the makeup of the court due to his placement on the ideological spectrum. Below, these justices will be ranked based on their Mark Quinn score from left

(liberal) to right (conservative) on the ideological spectrum.

Court Composition and the Median

This court is made up of 5 conservative justices and 4 liberal justices. Justice Kennedy strays away from his title of moderate median since his mark Quinn score went up (more conservative) during this term meaning he voted more conservatively on the ideological spectrum. His score went from being in the negatives as featured in case study one and is now, to a more conservative score of 0.4. However, this is still not a case where the median is so skewed to one ideology that the median doesn't matter. Justice Kennedy is still the median justice of this court and can hold swing votes but according to his score, he is mor likely to vote conservatively.

This court demonstrates a split court with a conservative median Justice Kennedy.

General Decision Trends

During the 2017-2018 term, the Roberts court heard many cases ranging from privacy, gerrymandering, and organized labor. This historic term heard many landmark cases and had many precedents overturned. These landmark cases as seen as some of the most controversial cases that has been heard by the court. Each case had mass public backlash and were topics typically split by ideology. Throughout their term they had 69 liberal decision outcomes. They also had 69 conservative case outcomes. They heard Only 3 cases had a reversal of precedent and all were in favor of a conservative direction. The general decision trend for this period is conservative.

Landmark Cases and Overturning Precedent

The following three cases were landmark cases that overturn precedent during the 2017-2018 term.

Janus v. American Federation of State, County, and Municipal Employees COuncil, 31 (138 S. Ct. 2448)

This case dealt with First Amendment issues of (speech, press, and assembly). This was the case for both provisions decided in this case. This case originated in Illinois Northern U.S. Court District. It was then reviewed by the U.S. Court of Appeals, Seventh Circuit. It was argued in 2018 and decided in 2018 (still the 2017-2018 term). In 19977, the supreme court held in Abood V. Detroit Board of Education (431U.S.209) against first amendment challenge of a Michigan law that allows public employer whose employees were represented by a union to require employees that did not join the union themselves, to pay fees for it because they benefitted from the unions collective bargaining agreement with the employers. Illinois, with a similar law then had its governor bring a lawsuit challenging this law on the grounds that it violates the first amendment by compelling employees who disapproved of the union to contribute to it. The district court turned the complaints down since the governor lacked standing to sue since he was not personally offended by this law. Two public employees then intervened and took action to see that Abood (431U.S.209) was overturned. The district court dismissed the claim, and the seventh Circuit affirmed this decision. The question that was then asked was whether the court's decision in Abood V. Detroit Board of education be overturned so that public employees who do not belong to a union cannot be required to pay a fee to cover the unions costs to negotiate a contract that applies to all public employees, including those who not union members are.

What makes this case a matter of liberal v. conservative is that those who favor the liberal approach would argue that the fees are to be paid by anyone who benefits from the union since they are paying for a collective good. Conservatives would argue that those who are not part of the union but are forced to pay the fee are having their rights violated in favor of the individual good.

This was a vote coalition of 5-4. For the first provision the court decided in a conservative direction. The justices in the plurality were Justices Kennedy, Thomas, Roberts, Alito, and Justice Gorsuch. This decision as followed by dissents from all liberal justices on the court, Justices Ginsberg, Breyer, Sotomayor, Kagan. Conservative median Justice Kennedy held the swing vote for this case and decided in favor

of a conservative direction in a clearly split and polarized issue. We have all liberal justices on one side and all conservative justices on the other. For the second legal provision, the court decided to go with a more liberal direction with the same 5-4 makeup as the first. The court argued that not only states collection of agency fees from public employees who do not consent to having these fees was a violation of the first amendment. They decided that the liberal decision of Abood was not constitutional. The court argued that that requiring individuals to endorse ideas they may not agree with counters the First Amendment principles. The Illinois scheme could not pass. They argued that the holding of Abood for agency fees: maintaining labor peace and eliminating the risk of free riders could be mitigated differently in ways that didn't require fees. The court believed that Abood was poorly reasoned and was skewed from their First Amendment's jurisprudence. From then forward, no agency fees were to be collected for public sector unions from employees who did not consent.

This means that we are seeing a conservative median justice, side with the majority coalition defining a split vote, split by ideology. This is our clear example of the power of the swing vote, and we are seeing an overturning of liberal precedent to a more conservative direction on the case. The overturning of Abood which had a liberal outcome in favor of the collective good, created the now conservative decision of Janus in favor of the individual's rights.

Ruling Direction: Conservative

South Dakota v. Wayfair Inc. (138 S. Ct. 2080)

This case was heard in June of 2018 and decided in April of 2018. This case concerned Economic activity on Article I, section 8, Paragraph 3 (interstate commerce clause). The Dormant Commerce Clause of the US Constitutions prohibits states from imposing excessive burdens on interstate commerce without congressional approval. The US Supreme Court previously held that a state cannot require an out of state seller who was not there physically in the state to collect and remit races for goods sold or shipped into the state. The court heard a different case with similar facts, and they upheld their decision for this specific clause. Justice Kennedy in his concurring opinion in 2015 when a similar case was revisited paved a pathway to the idea that the court may be open to ruling differently since he expressed doubt in the upholding of the clause. Considering the doubt surrounding the case, South Dakota then passes a law that requires sellers of personal property in the state who aren't physically in the state to remit sales tax just as if they were in the state. The act limited the obligation to those sellers who made (gross) revenue of $100-200,000 per year. This law defied the supreme courts jurisprudence under the allegations that its inability to maintain state revenue considering internet sales and sales tax collection. At this point in time, the case was formerly liberally decided by having sellers who are not physically in the state not require the sales tax.

What makes this a liberal v. conservative issue is a conservative decision would hold that those who are not physically in the state cannot have taxes collected from them for any good they sell or bring in the state because they do not live in the state. This is in favor of the individual. A liberal decision would rule that taxes are to be paid in interstate commerce regardless of if the seller is in the state or not since this would aid the collective good and eliminate any unfair disadvantage to some sellers. The state then acted seeking a declaration that some internet sellers subject to the law must comply with this law. The question arose: should the court hold the decision in Quill Corp. V. North Dakota and in National Belles Hess, Inc. V. Department of Revenue of Illinois that dormant commerce clause prohibits states from requiring sellers with no physical presence in the state to collect and remit sales tax for goods sold in the state?

This was a 5-4 decision. This decision went from a previously conservative decision to a more liberal direction. Justices Kennedy, Ginsburg, Alito, Thomas, and Gorsuch all voted in the plurality. Alongside dissents from Justices Breyer, Roberts, Sotomayor, And Kagan. The court held that the seller who has significant

quantity of business within the state may be required to collect and remit taxes even if they aren't in the state. They overturned previous cases which stated otherwise. The court reasoned that the physical presence that was required in the Quill case was not necessary and the idea that the state tax must be applied to an activity with that state was not accurate. They also found that the rule in Quill created market distortions and put Physical presence onto a business as a competitive disadvantage to some sellers who do work physically in the state. The rule in quill was seen as outdated and not a reflection of the Courts modern commerce clause.

This is an indication of a healthy court with justices on from both sides in both the plurality and the dissents with. Again, Median Justice Kennedy held the swing vote, but in this case, it was not a split decision by ideology. There was a difference of opinion, but the court did agree that the two previous ruling were unconstitutional in favor of a more liberal decision. Justice Clarence Thomas filed a concurring opinion with a backtrack of how he should have added to Justice Whites dissenting opinion in the quill case. Justice Neil Gorsuch also filed an opinion critiquing the dormant commerce clause. Chief Justice Roberts filed a dissenting opinion joined by Justice Breyer, Sotomayor, and Kagan. They argued in favor of the previous rulings since taxing sellers who are not in the state would disrupt a segment of the economy that should be tackled by congress.

Ruling Direction: Liberal

Trump, President of the U.S. v. Hawaii (138 S. Ct. 2392)

This case was heard in April of 2018 and decided in June of 2018. It began in the District Court of Hawaii. It was reviewed by the U.S. Court of Appeals, Ninth Circuit. This was an issue regarding Civil Rights: Immigration and Naturalization: Miscellaneous. Provision two of this case dealt with First Amendment establishment of religion rights. On January 27, 2017, then President Donald J Trump signed executive order No. 13,769 (EO-1) which suspended the entry for 90 days of foreign nationals from seven countries that were identified by congress or as the executive as high risk for terrorism attacks. This executive order was challenged in the federal district court and the judge declared a nationwide restraining order enjoining its provisions. A panel of the Ninth Circuit denied the governments emergency motion to stay the order. The government then issues a new order. Executive Order No. 13,780 (EO-20 was issued on March 6,2017. Section 2C of this order stated that entry of nationals from six of the seven countries from Executive order 13,789 are suspended for 90 days to ensure enough time to take counter terrorism measures against foreign terrorists who would try to infiltrate our state. Section 6A of this executive order also stated that any refugees of travel or refugee status were to be suspended for 120 days to review the adequacy of their applications. This reviewing of applications through the United Refugee Admissions program (USRAP) is the agency that administers all foreigners inquiring about legal status applications in the United States. Section 6B of that same executive order suspended any individual and their application through the USRAP once 50,000 applications were submitted for the fiscal year. Much like the first executive order, this order was followed by legal battles.

This is a heavily polarized issue where if we consider the political state of America at the time, President Donald Trump had previously run a very conservative political campaign as the republican party (who is typically but not limited to, a conservative party)'s runner up. He based his campaign on anti-immigration with slogans like "Make America Great Again" and "Build the Wall" which was a straightforward proposition to limit immigrants entering the country from central America through our southern boarders. Heavy sentiments of anti-immigration went hand in hand with the republican party at this time. As we learned previously in our literature review for this thesis, presidents will use the supreme court as monopoly players since they can review his executive orders (Boucher, Robert L., 1995., Jefferey A. Segal, 1995.). This case was a clear demonstration of that. Supreme Court Justices are placed on the supreme court by the president

to skew favor in the outcome of their party. In this case, it was a republican party goal to limit the immigration into the United States from the central American countries below us since this is what got Donald Trump mass support for his campaign from conservative Americans to begin with. This case was a manifestation of the intentions Donald trump had set during his campaign.

This is a typically divided issue where those who vote in favor of a liberal decision would vote that this executive order especially provisions 6A and 6B were unconstitutional and usually pro-immigration. Those who are in favor of a conservative decision are not in favor of immigration of others into our country and would vote to uphold this executive order. However, that is background for this case.

The court then issues a per curium opinion as well as granting certiorari to this case. The court allows for the two sections of the executive order to take place and enforcement of those provisions was cleared. The court held that during this time 6A and 6B were to be enforced unless it came to the application of a refugee who can prove their relationship with an individual or entity in the United States.

Once the second executive order was expiring, President Trump then issues a proclamation that restricts travel into the United States from citizens of 8 countries. This proclamation was met with large backlash as it was challenged in federal courts as the president exercising power that was not vested in him by either congress or the constitution. The ninth circuits struck down President Trump's proclamation and the supreme court then moved forward with their review. The questions that were being asked were: Are the plaintiffs' claims challenging the president's authority to issue the proclamation reviewable in federal court?

Does the president have the authority to issue a proclamation like that? Is there global injunction barring enforcement of parts of the proclamation impermissibly overboard?

Does the proclamation violate the establishment clause (prevents the establishment of religions) of the constitution?

If this case was to be voted in a conservative direction, they were to uphold the proclamation.

This court had a 5-4 decision. Both provisions were voted on in a conservative direction with a split decision by ideology with Justices Roberts, Alito, Gorsuch, Kennedy, And Thomas voting in the plurality. Justices Ginsburg, Breyer, Sotomayor, and Kagan dissented and were the 4 votes in the minority. The court decided and did not decide if the plaintiffs' claims are justiciable. They also held that the proclamation issued by President Trump does not violate his authority or the establishment clause. They also did not answer whether the district courts global injunction is impermissibly overboard.

Most of the court decided that the at first, they did consider Hawaii's position that the 2017 order did overstep the president's authority on immigration. They used the section 1182 F under the Immigration and Nationality Act, where the president has broad discretion to suspend the entry of non-citizens into the United States. Their reasoning was that Trump's Proclamation stemmed from a multi-agency review that concluded that entry by non-US Citizens can be detrimental to the United States. Therefore, the president issuing this ban was within his power since it was in the best interest of the nation. They also argued that the proclamation does not violate section 1152A1A which prevents discrimination based on nationality when it came to visas. It is there to protect from discrimination, but it does block the entry of nationals from some country if it's within the countries interest. Trump would not be the first president to do this. The court then tackled the establishment clause question where they concluded that the proclamation does not target or favor any religion. They argued many Muslim countries were not on the restriction list and this meant the restrictions were not based on anti- Muslim sentiments but rather on national security. Justice Kennedy, being part of the majority argued that the executive must be afforded deference in their decisions.

The dissenting justices (Breyer, Kagan, Sotomayor, and Ginsburg) did not agree with the ruling. Breyer and Kagan questioned whether

the government is applying the exemptions and would advise that the order be on hold until it is guaranteed. Justices Sotomayor and Ginsburg dissented and stated that this decision was ignoring the damage this proclamation was doing to certain groups that are currently already US citizens. They argued that this proclamation was a targeted scheme to not allow entry to Muslims entering the country. According to Justice Ginsberg and Justice Sotomayor this was a "misconstruction of legal precedent".

This shows us a court split by ideology with the conservative median justice voting with the majority coalition in overturning liberal precedent and redirecting it in a more conservative direction. We once again, see a decision split by ideology where the conservative median votes in favor of their ideology. This case was a very clear example of a ruling that turns a blind eye to countless details of the case that indicate that there was an overstepping of the president and his authority for the sake of discriminating and marginalizing certain ethnic and religious groups.

Ruling Direction: Conservative

Case Study Three (SCOTUS 2021-2022)

This case study will be analyzing the Supreme Court of the United States of America for their 2021-2022 term. The reason I chose this specific term is because in the 2021-2022 there was a big significant change in the makeup of the court. There were 2 new additions to this court that were not in any former court term explored in this case study.

Court Composition and the Median

What was formerly a 5-4 majority court shifted to a 6-3 majority court. This 6-3 shift not just changed the makeup of the court but therefore skewed the median justice so far right. This also rendered the median justice incapable of having s wing vote since swing votes only occur in courts with a 5-4 makeup. The addition of 2 new conservative justices occurred when former Republican President Donald J. Trump nominated Brett Kavanaugh in July of 2018 and was confirmed in October of 2018. Following this confirmation, after the death of Justice Ruth Bader Ginsberg, President Trump nominated Amy Coney Barrett who was then confirmed in October of 2020. These two appointments left a 6 conservative, 3 liberal court makeup. Below, these justices will be ranked based on their Mark Quinn score from left (liberal) to right (conservative) on the ideological spectrum.

This change in the make-up of the court is significant. The shift to a 6-3 majority moves the median from former moderate median-then conservative median Justice Kennedy, to very conservative Justice Brett Kavanaugh. The median is now in the far right and this means that even if there were conservative justices who sided with the liberal justices, it would still not be enough for the decision to sway in a liberal direction. When faced with a split decision, by ideology, the minority does not appear to matter, even if a median sided with them. This is called a super majority coalition and as we learned previously in this paper, the median is rendered useless if he is part of the supermajority coalition. Especially one that's makeup outnumbers the swing vote in a split decision.

General Decision Trends

This court is historically known for its decisions leading America and our policies in a very conservative direction. This term of 2021-2022 heard many landmark cases and is historically a very conservative term. They had a total of 47 liberal outcomes in the cases they heard that term. They also had a total outcome of 69 conservative decision directions for this term. Their general decision trend was overwhelmingly conservative. This is the biggest change in differences between their decision trends out of all 3 case studies. This change is more drastic than the other case studies.

Landmark Cases and Overturning Precedent

The following three cases were landmark cases heard in the 2021-2022 term that overturned precedent.

Shinn v. Ramirez (142 S. Ct. 1718)

This case was argued in December of 2021 and decided in May of 2022. It began in the

Arizona U.S. District Court and was reviewed by the U.S. Court of Appeals, Ninth Circuit. This court addressed Habeas Corpus under Federal Statute 28 U.S.C. 2241-2255. David Ramirez was sentenced to death for the murder of his girlfriend and her daughter. The Arizona Supreme Court held this decision. The Supreme court then denied certiorari since it was a very straight forward case. Ramirez filed a petition for post-conviction relief and alleged that he had ineffectiveness by his trial counsel. The state court and the state (Arizona Supreme Court) supreme court denied his petition. Ramirez filed a petition for Habeas relief in the federal district court and they issued him new counsel due to concerns of representation. The court found the claim defaulted procedurally since it was not an issue raised earlier. Later in 2012, Ramirez's appeal was pending before the U.S. Court of Appeals for the Ninth Circuit. In an earlier case of Martinez V. Ryan, the outcome was that federal court cannot consider evidence outside of the state court records when reviewing. Due to the decision in Martinez, the Ninth Circuit Court reconsidered whether post-conviction counsel's effectiveness was to overcome procedural default of the ineffectiveness of counsel. The district court denied Ramirez and his request for more evidence. The ninth circuit court reversed this finding Ramirez did demonstrate cause to procedural default via his ineffective trial counsel.

This was a heavily polarized issue since to vote liberally meant to vote in favor of Ramirez and think that an ineffective counsel calls for a reconsideration of evidence above procedural ineffectiveness. They should reopen the case to new evidence since the first was ineffective due to its counsel. To vote conservative, is to vote that the procedural aspect of things beats the importance of the presentation of new evidence for a retrial since the first trial had ineffective counsel. They are more likely to reverse the previous decision.

The question faced by the supreme court was: Does the court's decision in Martinez V. Ryan render the Antiterrorism and Effective Death Penalty Act of 1996 inapplicable to federal courts merits review of a claim for habeas relief?

This was a vote coalition 6-3 decision. The direction of this case was conservative. This case overturned a previously liberal decision. In the plurality were all conservative Justices Thomas, Roberts, Alito, Gorsuch, Kavanaugh, and Barrett. In the minority were all liberal judges Breyer, Sotomayor, and Kagan. They all dissented this ruling. The court ruled that under 28 U.S.C. s 2254 (e)(2), a federal habeas court may not conduct evidence beyond the state court record based on the ineffectiveness of counsel. The court ruled that federal habeas relief is there because it overrides state power to enforce criminal law and incurs certain costs. A federal order is above a state order. Federal habeas relief is an extraordinary remedy that guards against extreme errors in the state criminal justice system. As for AEDPA, it requires prisoners to exhaust all their state remedies before taking it to a federal court. The federal courts can excuse procedural errors in very rare circumstances. Attorney error does not qualify as a cause. They also stated that the states postconviction counsel was ineffective and there is no right to counsel in state post-conviction proceedings.

In Justices Sotomayor's dissent where justices Breyer and Kagan joined, they described that the court is ignoring that the two precedents established on this manner note that a habeas petitioner is not at fault for an ineffective counsel Ignoring this takes power from congress since they created a balance between state interests and individual constitutional rights.

This case is a clear example of the majority coalition being in complete control of the direction of the decision in cases that are split by ideology. Even if the median justice sided with the liberal justices, there would be no effect as it would still be a 5-4 majority coalition vote. There is no median justice as having a 6 conservative justice court skews the median completely conservative. This issue was split between ideology as the conservative side prioritized procedural errors and the liberal side prioritized the ineffectiveness of counsel.

Ruling Direction: Conservative

Dobbs v. Jackson Women's Health Organization (142 S. Ct. 2228)

This case was heard in December of 2021 and decided in June of 2024. This began in the Mississippi Southern U.S. District Court and was later reviewed in the U.S. Court of Appeals, Fifth Circuit. This case began in 2018 when the state of Mississippi passed a law called the Gestonial Age Act that prohibited all abortions with very few exceptions after the 15-week mark. Jackson's women's health organization which was the only licensed center for abortions in the state and one of the doctors began their lawsuit in the federal district court challenging this law and requesting emergency restraining order. The district court granted the restraining order on this law while litigation ensued. The district court enjoined Mississippi from enforcing the law since the state could not prove the fetus was viable at 15 weeks. Supreme Court Precedent prohibited states from banning abortions if the fetus was not yet viable. The US court of appeals affirmed this decision of the court.

This case has been the most controversial case heard by this court to date. This decision was a case the entire nation was paying attention to since it concerned reproductive rights being decided by a conservative court. The decades long debate of conservatives and liberals of any party across the nation has divided Americans on their stance on this issue. This case visited the constitutional fourteenth amendment. What made this such a polarizing case is that liberal sentiments are pro-choice which allows women the freedom and access to medical pregnancy termination options. Conservative sentiments are pro-life which rally around abortion being murder and even medical practice of abortions is wrong. What party the justices belong to matter when looking at this case since both parties take opposing stances on this issue with the republican party being pro-life and the democratic party being pro-choice.

Prior in history, the famous Roe V. Wade (410 U.S. 113) case had granted the right to abortion under the due process clause of the fourteenth amendment as a fundamental right to privacy. This leaves abortions to the discretion of the mother. This was in place until this case took place. The other landmark abortion case heard before the supreme court was Planned Parenthood of Southeastern Pennsylvania V. Casey (505 U.S. 833) where the court reaffirmed the decision in Roe.

The question this case was asking was: Is the Mississippi law banning abortions after 15 weeks unconstitutional?

In a 6-3 decision, the court opted for a more conservative direction for this case. Justices Alito, Gorsuch, and Barrett all voted with the majority with regular concurrences from Justices Thomas and Kavanaugh accompanied by a special concurrence by Justice Roberts. The court ruled that the right to an abortion as decided in Roe V. Wade (410 U.S. 113) and Pennsylvania V. Casey (505 U.S. 833) was overruled. They argued that the constitution does not mention abortion. That right is not deeply rooted in the country's history or an essential ordered liberty. There were five factors to consider when making this decision and that were:

1. They were short circuited in the democratic process.
2. Both lacked grounding in the constitution's text
3. The test they established for abortion law restrictions were not workable.
4. They caused distorted laws.
5. Overruling these outcomes wouldn't concrete reliance interests.

What does this mean?

This decision again overturned a historically liberal 1973 landmark case Roe V. Wade (410 U.S 113) which allowed for abortions and women's health care to be considered constitutional under the right to privacy. This decision was again the majority coalition outnumbering the minority by a landslide. Given this case was a decision that would normally be a split decision in a 5-4 majority court, is now a definitive decision by a majority coalition. There was no debate in overturning a freedom protected under the constitution.

This was a very big win for conservatives in this heavily polarized issue. Now, abortion laws that protect states from creating laws making abortions illegal is not protected anymore.

Ruling Direction: Conservative

Kennedy V. Bremerton School District (142 S. Ct. 2407)

This case was argued in April 2022 and decided in June of 2022. It began in the Washington Western U.S District Court and was revisited by the U.S. Court of Appeals, Ninth Circuit. This case had to do with First Amendment rights on establishment of religion. The decision had two provisions.

This case surrounded Joseph Kennedy, a high school football coach who prayed with his students during and after school games. The Bremerton school district asked he discontinued this practice to protect the school from a lawsuit based on a violation of the establishment clause. Kennedy did not comply and gained mass media attention due to this incident.

Kennedy then sued the school for violating his rights under the First Amendments and the Title VII of Civil Rights Acts of 1964. The court held that the actions were justified since they were to prevent liability. Kennedy appealed and the U.S court of Appeals for the Ninth Circuit affirmed.

This issue became heavily polarized as liberal sentiments would vote in favor of the school and its actions. Conservative sentiments would vote in favor of the individual's right to exercise his religion. Conservatives are more in favor of religion than practicality.

This decision was a 6-3 majority conservative. All the conservative justices voted in the majority coalition. This includes Justices Roberts, Gorsuch, Kavanaugh, and Barrett.

The court argued that the free exercise and free speech clauses of the first amendment protect the individuals and their engagement in personal religious practices. The constitution doesn't mandate or permit the government to suppress religious expression. They argued that Coach Kennedy was praying without his students and disciplined three separate times in October of 2015 and as a result, the school was burdening his right to free exercise. Since he was praying with his team in a grace period post game where coaches were not obligated to be there, and neither were students., he was operating on personal time. He did not offer his prayers while completing his duties. The court opted to replace the Lemon Test (test that determine if laws violate the first amendment) and replace it with consideration of "historical practices and understandings" (142 S. Ct. 2407).

This decision was dissented by Justices Breyer, Sotomayor, and Kagan. For the second provision on the free exercise of religion, they voted in a more liberal direction but with again a 6-3 split decision amongst the judges.

Once again, this was an ideologically a split decision with a majority coalition to one side and a reversal in a previously liberal decision to a more conservative direction. They aimed for a dismissal of a test that was in place to determine if someone's religious freedom is being infringed upon and replaced it with a test that identifies if these freedoms of expression identify with more historical practices and understandings. In a country who has a history of conservative Christianism, this is a very big shift from a broader more liberal openness to religion to a more conservative practical approach to religion in our country.

Ruling Direction: Conservative

Findings and Analysis

Per this case study, I can confirm my argument that a 6-3 super majority supreme court, leads to non-moderate median which causes heavy polarization in the decisions rendered by the United States Supreme Court.

Each term was evaluated based on the cases where overturning of precedent occurred. The overturning of precedent means a change in the direction of the law previously upheld. This indicates a change in a re-evaluated decision if there is reinterpretation of the law.

To summarize my findings, I noted that for each term, the median justice did play a role in split decisions as over time, when the court shifted to a conservative 6-3 majority, there were more policy outputs that reversed previously liberal decisions into conservative decisions. This indicates heavy polarization in a court that has a 6-3 super majority (20221-2022) compared to a court that has a moderate median (2014-2015).

The hyper focus of this study on landmark cases may inspire some to question if the findings of this research cannot be generalized due to the lack of an analysis of every single case heard for that term. The use of landmark cases for this study was to weed out any cases that were not heavily polarized since they may have to do with issues that would have no division between the ideologies. The focus on landmark cases was on an attempt to weed out any cases heard by the term that have no relevance to the ideology polarization that takes place within our supreme court. These landmark cases all have to do with constitutional rights that cause a clear split between ideologies in our country. Others may argue that there was only one median justice (Justice Kennedy) that was counted for in my research so we cannot generalize that all median justices have a heavy role in the outcomes of cases that are considered landmark cases.

To this, I agree that my study is limited to the exclusive median justice behavior of Justice Kennedy specifically to these three courts in their respective time periods. There is more research to be conducted on median justices across time as it would be merely impossible to analyze every median justice and not skew the results of this specific study. It was empirical that we see the change over time of Justice Kennedy from Moderate Median to Non-Moderate Median, to a part of the supermajority coalition. The purpose that my study on general decision trends served in this case study was to point out how even if we only analyzed landmark cases, their overall decision trend also indicates a shift to a more conservative direction.

The Chief Justice

Some may argue that the Chief Justice (Justice Roberts) only votes the way he does not to reflect his personal ideology, but to legitimize the court in the eyes of the public. His vote is typically swayed by anticipation of backlash rather than his personal choices since it is within his duty to make the court look good. However, Chief Justice Roberts finds himself in the majority coalition for these landmark cases to which even if he voted differently, after the 2014-2015 term, his vote wouldn't have changed the outcome of the cases. Since he finds himself in the majority coalition, his reason for voting does not apply to the findings of this case study.

Analysis

My research indicates that the lack of a median justice, allowing for a supermajority court like the one that currently exists today, does have an effect in the decisions rendered by the court in landmark cases. We saw how over time of Justice Kennedy went from Moderate Median to Non-Moderate Median, to a part of the supermajority coalition and observed how over time, his vote as the swing vote lost power the closer he got to his party's coalition. Just as research suggests, the closer he got to his peers, the less power his swing vote had. Overall, it is not just landmark cases that are in a new conservative direction, but their overall decision trend making is also taking a drastic turn towards a conservative direction.

Further Direction

In hopes of someday being in a 5-4 split court again, the only potential reversal of this conservative direction our country is taking is for the democratic (mostly liberal) party via the president to attempt to pack the court with more liberal justices. In order to influence supreme court policy, we must play the long-term game and reinstate balance in future policy via the addition of more liberal justices. This can bring some balance to the court makeup and a median justice may someday emerge again.

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