

May 5, 2010

The Next Supreme Court Justice

To: Interested Parties

From: MoveOn.org
Greenberg Quinlan Rosner

President Obama's nominee will be vetted on experience, scholarship, ideology, judicial philosophy, and a host of other issues. But what average voters most want is a nominee willing to stand up for average people, a nominee who will ensure a fair hearing even against the most moneyed and powerful corporations and individuals. Most notably, in an age of intense partisan polarization, this preference is expressed in near-equal numbers by both Democratic and Republican voters.

This memo is based on a national telephone survey of 801 likely voters taken April 29-May 3, 2010 by the polling firm Greenberg Quinlan Rosner.¹ The survey was commissioned by MoveOn.org. The survey carries a margin of error of +/- 3.46 points at a 95 percent confidence interval.

Main Findings

- While the Supreme Court enjoys the respect of average voters, its standing is colored by a majority of voters who believe that the Court favors big corporations over individuals. Such views of the court are shared by Democrats and Republicans.
- The perception of corporate bias is underscored by broad disagreement with many recent Supreme Court decisions, the *Citizens United* case among them.
- By a 20-point margin, voters believe that when Senators evaluate the President's nominee, they should focus on the nominee's understanding of the impact that legal decisions have on the lives of everyday Americans, rather than focusing solely on the nominee's experience and qualifications. A 61 percent majority of Democrats feel this way, as do 60 percent of Republicans.
- Similarly, the most appealing description of a potential nominee tested in this survey is someone who will "be fair so that individuals and families get an impartial hearing and not give preferential treatment to powerful individuals and big corporations."

¹ To account for the growing number of people who do not have or use a landline phone, the survey included a cell phone sample of 123 cases.

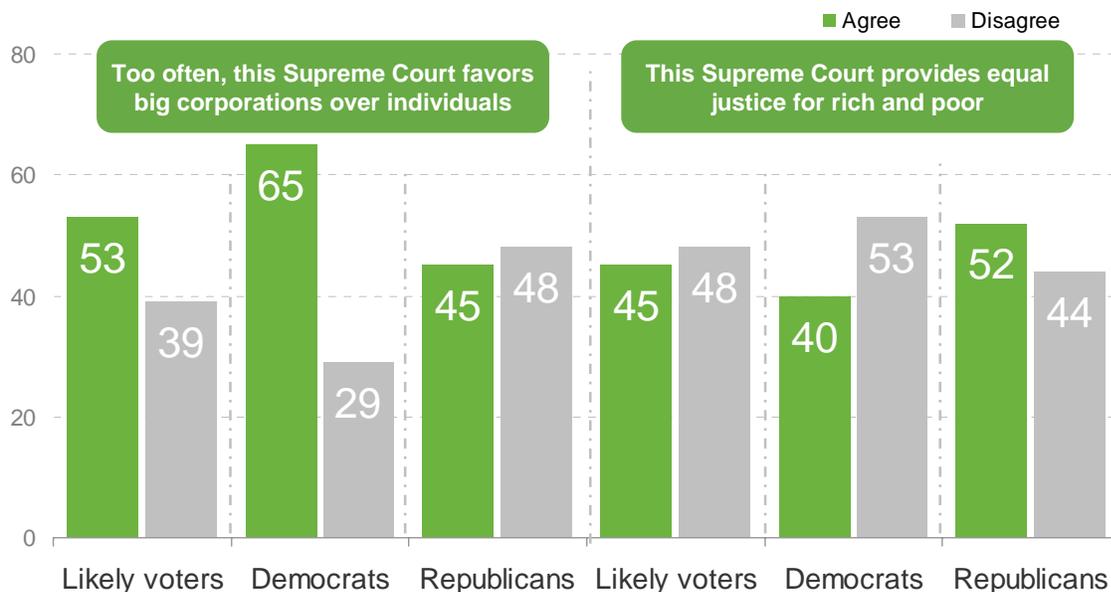
The Supreme Court is Respected, But Also Viewed With Corporate Bias

The Pew Research Center recently issued survey findings showing almost every government institution and department struggling with record-low approval levels; here, negative impressions of Congress outweigh positive impressions by a two-to-one margin. In this context, it is notable that the Supreme Court enjoys a 54 percent positive, 17 percent negative favorability rating. Moreover, Democrats (60 percent positive, 14 percent negative) and liberals (56 – 18 percent), as well as Republicans (48 – 17 percent) and conservatives (51 – 17 percent) deliver favorable reviews of the Court.

But despite this result, a 53 percent majority of likely voters agree with the statement, “[t]oo often, this Supreme Court favors big corporations over individuals,” while just 39 percent disagree. A 65 percent majority of Democrats agree, but Republicans also divide fairly evenly (45 percent agree, 48 percent disagree). Similarly, voters divide relatively equally when reacting to the statement, “[t]his Supreme Court provides equal justice for rich and poor (45 percent agree, 48 percent disagree).”

Figure 1: Respondents Believe Supreme Court Favors Big Corporations

Now let me read you some statements about this United States Supreme Court. After each one I read, please tell me if you agree or disagree.



Voters Disagree with Many Recent Decisions

Voters' reactions to a number of decisions underscore the perception that this Court too often favors corporations at the expense of individuals. After being provided a neutral description, voters sharply disagree with the Court's decision on *Citizens United v. Federal Election Commission*, a decision which opened the flood gates for corporate spending in our democracy (65 percent disagree, 47 percent strongly disagree).² A 71 percent majority of Democrats disagree with this decision, as do a 56 percent majority of Republicans. Voters' reaction to this decision reflects their belief that corporate donations should be restricted and should not be afforded the same First Amendment protections as individuals. The *Citizens United* case is but one of a number of instances where voters disagree with controversial Court decisions.

■ Figure 2: Voter Disagreement with Supreme Court Decisions

Now let me read you brief descriptions of other decisions by the Supreme Court. After each one I read, please tell me if you agree or disagree with this decision.

| | Total Disagree |
|---|----------------|
| The Supreme Court decided that a consumer injured by a defective product could not sue the manufacturer if this product had been approved by federal regulators, even if the company knew the product was defective | 83 |
| The Supreme Court decided that the local governments have the right to seize private property and sell it to private developers, as long as they justly compensate the original owners of the property. | 78 |
| The Supreme Court allowed Exxon to escape full financial liability for damage from the Exxon-Valdez oil spill. | 72 |
| The Supreme Court ruled that a woman who had been paid less than her male peers has no right to bring a lawsuit for equal pay because she failed to file a suit within 180 days of being discriminated against. | 69 |
| The Supreme Court decided the Clean Water Act does not apply to many waterways, restricting the ability of the Environmental Protection Agency to investigate pollution. | 65 |
| The Supreme Court decided that states have the right to ban partial birth abortion, even in cases where the mother's health is in danger. | 60 |
| The Supreme Court decided the ban on handguns in Washington D.C. was unconstitutional. | 44 |

² Question language read as follows: "Recently, the Supreme Court ruled on a case brought by the group Citizens United that changed campaign finance laws and will allow corporations, unions and other groups to use general treasury funds on elections. Before the decision, the law restricted money corporations and unions could spend directly on political advertising. The Supreme Court overturned this previous law and ruled that corporations and unions have the right to spend money to support or oppose specific candidates. Do you agree or disagree with this decision?"

Voters Want a Nominee with a Record of Fair Justice for Individuals

Voters want a nominee who focuses more on the impact of Supreme Court decisions on individuals. They want a nominee who will provide justice to average Americans, not preferential treatment to big, powerful corporations. This vision is not ideological or partisan; Democrats and Republicans, in fairly equal numbers, make this preference plain.

By a 57 to 37 percent margin, voters believe that, when evaluating President Obama’s pick, the Senate should focus on issues like the nominee’s understanding of the impact legal decisions have on the lives of everyday Americans—not simply on issues of the nominee’s experience and qualifications.

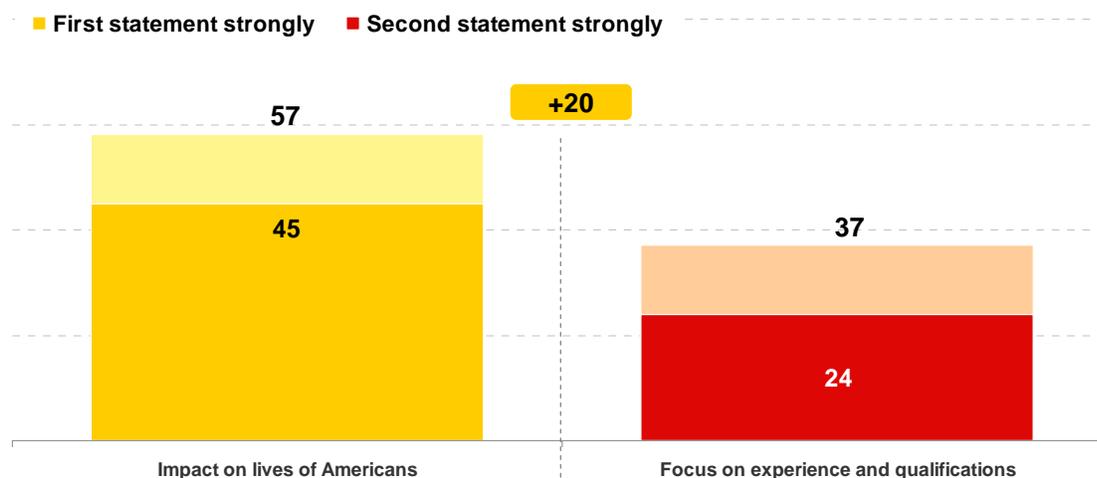
A 61 percent majority of Democrats prefer that the Senate focuses on a nominee’s understanding of his or her impact on everyday Americans, as do 60 percent of Republicans.

Figure 3: Nominee Evaluation

Now I'm going to read you some pairs of statements. After I read each pair, please tell me whether the FIRST statement or the SECOND statement comes closer to your own view, even if neither is exactly right.

First Statement: Among other things, when evaluating President Obama’s nominee for Supreme Court Justice, the Senate should focus on issues like the nominee’s understanding of the impact of legal decisions on the lives of everyday Americans.

Second Statement: When evaluating President Obama’s nominee for Supreme Court Justice, the Senate should ONLY focus on issues like his or her experience and qualifications



We provided voters with short descriptions of judicial nominees. While it is true that Democrats favor a candidate who will protect civil rights and Republicans favor a candidate who will show judicial restraint, the description that both right and left can agree on is one of a nominee who will be fair, so that individuals and families get an impartial hearing, and of a nominee who will not give preferential treatment to powerful individuals and big corporations.

Figure 4: Most Important Characteristics of Nominee

Now let me read your brief descriptions of a potential nominee for the Supreme Court. After each one I read, please tell me whether this description makes you much more likely to support this nominee, somewhat more likely, a little more likely, no more likely or less likely to support this nominee?

| | Much More Likely | Total More Likely |
|--|-------------------------|--------------------------|
| This nominee will be fair so that individuals and families get an impartial hearing and not give preferential treatment to powerful individuals and big corporations | 54 | 77 |
| This nominee believes in a fair and impartial reading of the law, not an activist judge who legislates from the bench | 53 | 76 |
| This nominee has a strong record of defending civil rights and women's rights | 46 | 74 |
| This nominee is independent from partisan politics | 47 | 70 |
| This nominee supports legal access to abortion | 19 | 37 |

Conclusion

Most voters see a Court they deeply respect and admire, but also a Court growing more and more distant from the concerns of everyday Americans and closer and closer to interests of big corporations and powerful individuals. For them, this is not a partisan response, but a citizen response.

Their priority is a nominee who will fix that problem.