

TO: Interested Parties
FROM: Guy Molyneux, Hart Research
DATE: September, 2012
RE: The Supreme Court and 2012

On behalf of Alliance for Justice Action Campaign, The Leadership Conference on Civil and Human Rights, and People for the American Way, Hart Research has conducted opinion research on the potential impact that the issue of Supreme Court nominations could have on the 2012 presidential election. A national online survey of 1,007 registered, likely voters was conducted August 24-30, 2012, followed by two focus groups in Philadelphia.

1) The issue of Supreme Court nominations is an important voting consideration for registered voters, including a substantial portion of swing voters.

Fully 63% of voters say that the issue of nominating justices to the Supreme Court will be an important consideration in their voting this year. That includes 30% who say "very important" consideration. As we would expect, strong partisans assign the greatest weight to the issue, but substantial numbers of independent voters (55%) and presidential swing voters (54%) also report a significant level of concern about the Supreme Court issue. Moreover, after survey respondents hear information about Mitt Romney's positions on judicial issues and his model for judicial nominations, they rate the importance of the Court even more highly: 71% say it will be an important voting consideration, including 39% (a 9-point increase) who say very important.

2) Voters have more confidence in President Obama than Mitt Romney with respect to Supreme Court nominations.

Voters say that they have more confidence in Barack Obama (46%) than Mitt Romney (41%) to select good federal judges and Supreme Court justices. Obama is trusted on judicial nominees much more than Romney among the voters who will likely determine the outcome of the presidential election. Independent voters prefer Obama by an 8-point margin (39% to 31%), and Obama's advantage grows to an impressive 18 points (42% to 24%) among presidential swing voters (those undecided or weakly committed to a candidate). Women in the center of the electorate strongly prefer Obama, as he enjoys a 19-point edge with independent women (43% to 24%) and a 26-point advantage among swing women (44%-18%).

The president's advantage over Romney rests on two main elements. First, voters believe Obama (61%) is much more likely than Romney (39%) to

appoint justices who “would uphold the progress we have made on civil rights and women’s rights.” Second, most voters trust Obama (59%) rather than Romney (41%) to choose justices who “will protect the rights of average people, not just the wealthy and powerful.” Among swing voters, Obama enjoys commanding advantages of 55 points and 49 points, respectively, on these two dimensions.

3) The most compelling criticism of Mitt Romney regarding the Supreme Court is that his nominees will be *biased in favor of corporations over average Americans.*

The survey results reveal that what most concerns voters about the prospect of Mitt Romney nominating future justices is the notion that his nominees will consistently favor corporations over ordinary Americans. Fully 54% worry that Romney will appoint this kind of justice, far more than any other single concern (for example, 43% worry that Romney’s justices will “turn back the clock on civil rights and women’s rights”). Similarly, when voters are asked which of several criticisms of Romney concern them the most, the prospect of pro-corporate justices is the top choice for swing voters (30%), far ahead of limiting legal abortion (17%), turning back the clock on rights (17%), and other factors. And later in the survey, after voters have learned about Romney’s positions on a range of judicial issues, swing voters say their single biggest concern about Romney’s justices is they will favor corporate interests over average Americans (followed by the similar idea that they will “favor millionaires over the middle class”).

- In the focus groups, voters gave very high ratings to a flyer focused on the theme that Romney will appoint justices who favor corporations over average Americans, and citing Romney’s embrace of justices who voted to give immunity to corporations that defraud consumers [AT&T], to protect corporations that pay women less than men [Wal-Mart, Ledbetter], and allow corporations to spend unlimited amounts on negative political ads [Citizens United]. Swing voters worry most that Romney justices will be “biased,” followed by their concern that Romney justices would be “too conservative.”

4) The single best “proof point” for the claim that Romney’s nominees will favor corporations is his support for *Citizens United*, which has already led to corporations and billionaires spending millions of dollars on negative political ads this year. Other powerful evidence includes the *AT&T*, *Wal-Mart*, and *Ledbetter* cases.

The research findings indicate that the single best way to demonstrate that Romney would appoint pro-corporate justices is to focus on his support for the Court’s decision [Citizens United] which opened the door for corporations and the wealthy to spend unlimited amounts to influence elections. Linking that decision to what citizens are already experiencing

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– a huge number of negative political ads funded by corporations and individuals – gives this issue real salience now.

Mitt Romney does not have an extensive track record of taking positions on most other Supreme Court cases, but he has been clear about the kind of justices he would appoint: judges “in the mold of Clarence Thomas, Antonin Scalia, and Samuel Alito.”

As seen in past research, the *AT&T*, *Wal-Mart*, and *Ledbetter* decisions all trouble voters. Here is how they were described in the survey, each of them raising significant concerns about Romney:

- Allow a company to use the fine print of its consumer contracts, such as for cell phones, to immunize itself from class-action lawsuits, even in cases in which the company knowingly defrauded its customers;
- Deny female employees of a large national company who have been systematically paid less than men and denied promotions given to men the right to join together and go to court to stand up for their rights;
- A woman could not file a discrimination suit against her employer for paying her less than men at her company for the same work for 20 years because she failed to file her suit within 180 days of her first paycheck, even though she had no way of knowing at that time that she was being discriminated against.

5) The concern that Romney will appoint anti-choice justices also has power with many voters.

Both the survey and focus groups reveal that Romney’s commitment to appoint anti-choice justices concerns many voters. In the survey, 59% of voters (and 62% of swing voters) say Romney’s belief that women have no constitutional right to have an abortion gives them less confidence in Romney.

- The survey reveals that more voters are concerned when told that Romney believes there is no constitutional right to have an abortion than when informed simply that he favors “overturning *Roe v. Wade*,” suggesting that some voters do not fully understand the latter formulation in isolation.
- When presented with two television ads concentrated on the choice issue, focus group participants indicated significant concerns about Romney among both independents (mean rating of 6.1 on scale of 1 to 10) and liberal Democrats (9.1).

6) Voters’ recognition of the importance of judicial nominees in evaluating Romney and Obama is greatly heightened when we remind them that justices serve for life.

- Voters responded especially strongly to this formulation: “When you vote in November, you’re not just voting for the next four years – you’re voting for a generation.”