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The American Public and Lawyers Agree that the Supreme Court Confirmation Process has Become Increasingly Political, According to Annenberg Public Policy Center Survey.

Eight out of ten Americans and 94 percent of lawyers feel that the process of confirming judges to the Supreme Court has become increasingly political, according to a national survey conducted by the University of Pennsylvania's Annenberg Public Policy Center.

Almost half, 46 percent, of the 859 lawyers polled between March 18 and May 16, 2005 who have been admitted to practice before the Supreme Court or the US Courts of Appeals say that the political parties are responsible for the politicization. Twenty-seven percent of the lawyers polled cite interest groups while 17 percent blame the White House (see Table 1).

Lawyers also feel that a written record of a nominee's views in past rulings is an obstacle to the Supreme Court. Specifically, 89 percent of lawyers agree that nominees who are well qualified but have an extensive written record of legal opinions or views will have a more difficult time getting on the Supreme Court than someone with less of a record. Seventy-seven percent of these lawyers say that this is a somewhat or very serious problem for appointing qualified people to the court.

However, a majority, 64 percent, of lawyers agree that the use of filibuster to block nominees is a Senate tradition compared to 33 percent of lawyers who feel that the filibuster is a violation of the democratic principle of majority rule.

Trust in Court Widespread

Although the American public and lawyers view the nomination process as politicized they do trust the Supreme Court. A solid majority, 75 percent, of the 1500 adult Americans polled between March 17 and April 18, 2005 trust the Supreme Court to operate in the best interest of the American people. Likewise 90 percent of the lawyers polled trust the Supreme Court.

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Asked if it would be better to do away with the Supreme Court, a solid majority rejected this notion. Specifically, 75 percent of Americans disagree with the statement that it might be better to do away with the Supreme Court altogether if it started making a lot of rulings that most Americans disagree with. Likewise, 93 percent of lawyers disagree with the statement that Congress should take away the right of the Supreme Court to decide certain types of controversial issues.

Perceived Influences on the Court

On the other hand, both the American public and lawyers feel that the Supreme Court is influenced by outside groups. Roughly three fourths of Americans and lawyers feel that the president and Congress influence the decision making of the Supreme Court to at least a small extent. Fifty-seven percent of the American people and 36 percent of lawyers believe that the president has a moderate or great influence. Likewise, 60 percent of the American public says Congress has a moderate or great influence compared to 33 percent of lawyers who feel this way (see Table 2).

Concerning the influence of conservative and liberal interest groups, 55 percent of the public and 38 percent of lawyers feel that conservative interest groups have a moderate or great influence. Slightly less than half, 49 percent, of the American public say that liberal interest groups have a moderate or great influence compared to only 14 percent of the lawyers polled who feel this way.

Perceived Ideology of the Court

Respondents in both samples were asked if the Supreme Court is generally conservative, generally liberal, or making decisions more on a case-by-case basis. Roughly half, 51 percent, of the American public feel that court is making decisions on a case-by-case basis. Twenty-two percent say generally conservative and 17 percent say generally liberal.

Lawyers were more likely than the public to view the court as conservative. Half of the lawyers polled, 50 percent, feel that the Supreme Court is generally conservative. Only 7 percent of lawyers say that the court is generally liberal and 42 percent believe that the court makes decisions on a case-by-case basis (see Table 3).

These ratings by lawyers are dependent on ideology. A solid majority of self-described liberal lawyers, 71 percent, say the court is generally conservative. Roughly half, 48 percent, of self-described moderate lawyers say the court is conservative with the other half, 46 percent, reporting that the Supreme Court makes decisions on a case-by-case basis. Few conservative lawyers, 27 percent, see the Supreme Court as conservative with a slight majority, 54 percent, saying that the court makes decisions on a case-by-case basis (see Table 4).

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Views on Mandatory Retirement Age

Asked if there should be a mandatory retirement age for Supreme Court justices, almost 6 in ten Americans, 57% said yes. Lawyers, on the other hand, did not agree with 62 percent of them saying no. If there was a retirement age, 46 percent of public said it should be between 65 and 70 years old, 15 percent said 64 years and younger, 15 percent said between 71 and 75 years old, and 11 percent said over 75. Although 29 percent of the lawyers refused to answer this question, 35 percent said the retirement age should be over 75 years old, 27 percent said between 71 and 75, and 10 percent said between 65 and 70 years old.

Methodology

The survey of lawyers was conducted by Princeton Survey Research Associates International between March 18 and May 16, 2005. Its subjects were 859 lawyers who have been admitted to practice before the Supreme Court or the U.S. Courts of Appeals and a small group of law professors who previously clerked for a justice. Telephone interviews were conducted by Princeton Data Source, LLC. Online interviews were administered by PSRAI. For results based on the total sample, the error attributable to sampling is plus or minus 4 percentage points.

The public survey was conducted by telephone between March 17 and April 18, 2005, using a nationally representative sample of 1,500 adults aged 18 years and older. The error attributable to sampling is plus or minus 3 percentage points.

In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of opinion polls.

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Table 1. Who is most responsible for the politicization of the nomination process—the political parties, the White House, interest groups, the news media or the Supreme Court itself?

| | Lawyers (N = 859) (%) |
|-------------------|--------------------------------------|
| Political parties | 46 |
| Interest groups | 27 |
| White House | 17 |
| News media | 5 |
| Supreme Court | 1 |
| Don't know | 1 |
| Refused | 2 |

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Table 2. To what extent do you think the current Supreme Court is influenced by [the groups below] when making their decisions?

| | President (%) | Congress (%) | Liberal Interest Groups (%) | Conservative Interest Groups (%) |
|--------------------------|--------------------------|-------------------------|--|---|
| Public (N = 1550) | | | | |
| Great extent | 20 | 18 | 16 | 19 |
| Moderate extent | 37 | 42 | 33 | 36 |
| Small extent | 20 | 20 | 27 | 22 |
| Not at all | 18 | 14 | 16 | 14 |
| Don't know | 4 | 5 | 8 | 8 |
| Refused | * | * | 1 | * |
| | | | | |
| Lawyers (N = 859) | | | | |
| Great extent | 5 | 4 | 2 | 11 |
| Moderate extent | 31 | 29 | 12 | 27 |
| Small extent | 39 | 42 | 42 | 36 |
| Not at all | 22 | 22 | 41 | 23 |
| Don't know | 1 | 1 | 1 | 1 |
| Refused | 2 | 2 | 2 | 2 |

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Table 3. Judging by its recent decisions, do you think the Supreme Court is generally liberal, generally conservative, or is it making decisions more on a case-by-case basis?

| | Public (N = 1500) (%) | Lawyers (N = 859) (%) |
|--|-------------------------------------|-------------------------------------|
| Generally conservative | 22 | 50 |
| Generally liberal | 17 | 7 |
| Making decisions on a case-by-case basis | 51 | 42 |
| Don't know | 9 | 1 |
| Refused | 1 | 1 |

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Table 4. Judging by its recent decisions, do you think the Supreme Court is generally liberal, generally conservative, or is it making decisions more on a case-by-case basis?

| | Liberal Lawyers (N =263) (%) | Moderate Lawyers (N =392) (%) | Conservative Lawyers (N =186) (%) |
|--|--|---|---|
| Generally conservative | 71 | 48 | 27 |
| Generally liberal | 1 | 4 | 18 |
| Making decisions on a case-by- case basis | 27 | 46 | 54 |
| Don't know | * | 1 | * |
| Refused | 1 | * | * |

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