



# DEMOCRATIC VOTERS APPROVE OF COURT EXPANSION

May 8, 2019

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**FROM: Sean McElwee, Director of Polling, Take Back The Court, John Ray, Senior Political Analyst at YouGov Blue**

**TO: Take Back the Court**

**RE: Supreme Court Message Tests**

## **Take Back The Court-YouGov Blue Supreme Court Messaging Experiments**

On behalf of Take Back The Court, YouGov Blue fielded multiple surveys of US registered voters nationwide. This memo focuses on the results of these surveys, including several message experiments embedded within them. Additional details on the fielding methodology are included in the Methodology section at the end of this memo.

### **Executive Summary**

- While voters respect the institution of the Supreme Court, they respond to information reminding them that Supreme Court Justices are people with their own partisan biases
- After hearing about the role of corporate interests in the appointment of recent Republican Supreme Court Justices, a majority of Democrats are in favor of Court expansion
- Advocates should focus on the danger the current Court poses to entrenched rights and legislation such as Roe v Wade and the Affordable Care Act, rather than the possibility of the Court striking down future legislation
- Advocates should portray the Justices as partisan individuals seeking to exercise their own anti-democratic agenda
- Across message tests, Democrats tend to respond to statements characterizing the Court as a partisan body, while Independents respond more to the role of money in politics and other malfeasance not directly tied to one party or the other

In the surveys discussed here, we focused on a series of message tests designed to uncover underlying measures of support for reforming the Supreme Court. Here, we focused on the most major reform to the Court currently being discussed in the progressive policy space: expanding the number of Justices on the Supreme Court. Each of these tests is based on prior research conducted by Data for Progress and YouGov Blue, and on other research on the nature of persuasion in the domain of institutional change.

In this memo, we review each of these message tests. We focus on the treatment effects across the full sample of US voters, and on how those effects differ across party identification. Party identification is the most important predictor of political attitudes in the modern era, and it is important for advocates of reform to understand where Democrats, Republicans, and Independents currently are on this issue.

## Message Tests

As part of a pilot program for several Supreme Court messaging tests, Take Back The Court constructed a message test centered around the characteristics of individual Justices on the Supreme Court. Those messages included a follow-up asking respondents if they supported or opposed expanding the Court. Each respondent was assigned to receive one of three treatment statements.

The first statement characterized the Supreme Court as an institution adversely manipulated by Senate Republicans. It read,

*Through control over the nomination process, in 2016 Senate Republicans effectively changed the number of Justices on the Supreme Court to eight by denying President Obama a chance to nominate moderate Justice Merrick Garland, and a year later, they changed it back to nine for President Trump. One side chose to shatter the norms of the Court, and it is up to the other side to restore those norms. Adding seats is a commonsense way to restore equity to the Supreme Court. **(restore)***

The second statement characterized Supreme Court Justices as ordinary people with their own political biases. It read,

*The Supreme Court is composed of nine people, all of whom were educated in the Ivy League. At least one has served as a political lobbyist, most of them have worked in partisan politics, and many take paid speaking engagements from ideological groups like the Heritage Foundation and Planned Parenthood. It is time to look past the Supreme Court as an institution and look at it as a group of nine people with political biases. Expanding the Court will ensure that the people on that Court conform to the political standards of our time. **(people)***

A third, smaller control group (n=200, compared to treatment groups of 400 apiece) was read a control statement describing what the Supreme Court does on a day to day basis.<sup>1</sup> After receiving the message to which they were assigned, respondents were asked if they would strongly support, somewhat support, neither support nor oppose, somewhat oppose, strongly

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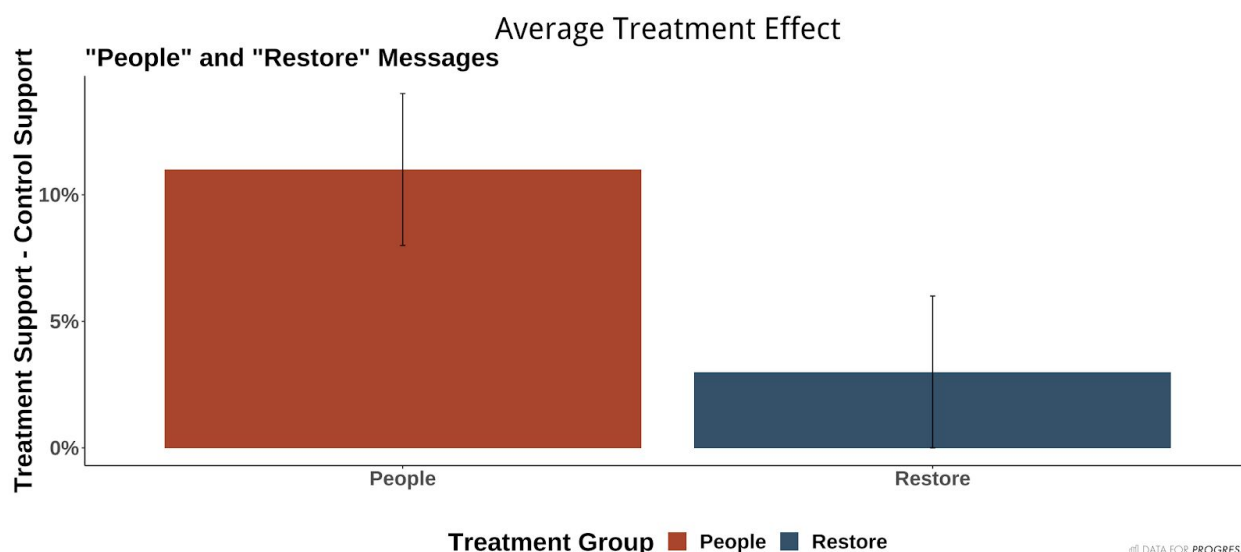
<sup>1</sup> "The Supreme Court is a branch of the Federal government consisting of nine Justices. Those Justices are nominated by the President of the United States, and confirmed by the Senate. Supreme Court Justices receive a lifetime appointment. The task of the Supreme Court is to engage in what is known as "constitutional review," in which the Justices decide by a majority vote whether laws are permissible under the Constitution." **(control)**

oppose, or were unsure how they felt about adding additional seats to the Supreme Court. Specifically, we asked,

*Given what you just read, would you say you [support or oppose] the next President reforming the Supreme Court by expanding the number of seats?*

- <1> Strongly support
- <2> Somewhat support
- <3> Neither support nor oppose
- <4> Somewhat oppose
- <5> Strongly oppose
- <6> Not sure

The following plot shows the average treatment effect of each statement on support for expanding the Court. The “people” condition is associated with a just over 10 percent improvement in support for expanding the Court, from 24 percent to 34 percent support. The “restore” condition is associated with a just over 2 percent improvement in support, from 24 percent to 26 percent. The effect of the “people” statement is large and statistically significant, while the effect of the “restore” statement is narrowly not statistically distinguishable from zero.

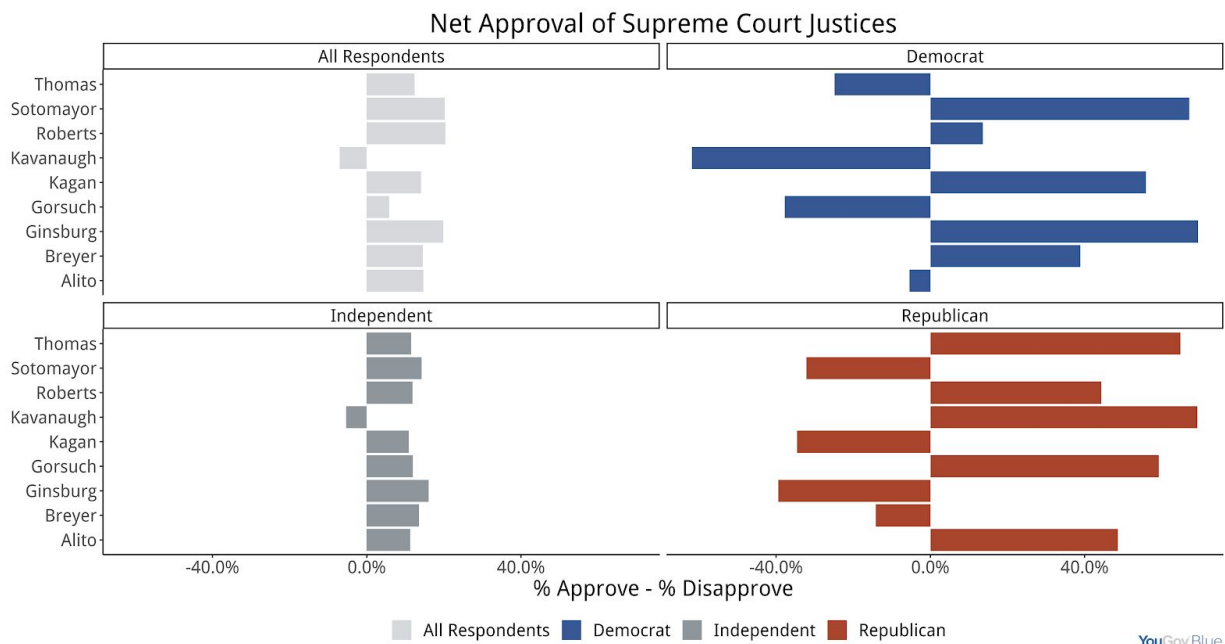


After receiving the control condition, 24 percent of voters somewhat or strongly supported adding additional seats to the Court, and 44 percent of voters somewhat or strongly opposed adding additional seats to the Court, or a net level of support of -20 percent. In the “restore” condition, 26 percent supported and 50 percent opposed adding seats, or a net level of support of -24 percent. In the “people” condition, just over 34 percent of respondents supported adding seats, compared to 37 percent who opposed expanding the Court, or a net level of support of -3 percent.

In past work conducted by Take Back The Court, we have found that voters of all stripes think about the conduct of the current Court and the institution of the Supreme Court as a whole differently. Differentiating between the two is an important component of Court reform. Voters are more willing to take steps to protect the role of the Court from the actions of a few bad actors than to subvert the perceived role of the Court in our political process for another set of political ends.

## John Roberts Message Tests

Prior research from Take Back The Court and others suggests that John Roberts is an outlier in popularity among Supreme Court Justices. The following plot, based on estimates from a February, 2019 survey, summarizes net approval of the Supreme Court Justices by party identification. Note that of all the Justices, John Roberts is the only “off-type approved” Justice -- that is, Republicans approve of all the conservative Justices on net and disapprove of all the liberal Justices on net, and vice versa for Democrats with the exception of John Roberts, of whom they approve on net.



*Based on a February 2019 survey of 1,300 US voters fielded by Data for Progress and YouGov Blue.*

The survey Take Back The Court fielded from 4/29-5/3/19 included a message test designed to appraise potential vulnerabilities in John Roberts’ popularity. The first such message test concerned an anonymized but reasonably unambiguous appraisal of the career of Supreme Court Justice John Roberts. This message test was divided into three groups. Each respondent

saw either a single treatment message, or a control message. Each treatment statement was posed to 400 voters apiece, and the control statement was posed on a subset of 200 voters.

**“Partisan” treatment**

*The nominee was educated at an elite Ivy League law school and then clerked for a strongly partisan Justice. He then took a political appointment in a Presidential Administration. After that Administration left office, the nominee entered private practice for a global lobbying firm. Years later, the nominee was voted onto the Court by politicians who shared his ideological partisanship.*

**“Ideologue” treatment**

*The nominee spent his entire life pursuing a Supreme Court seat. After getting a degree from an Ivy League school he immediately pursued a clerkship with a prestigious and notoriously ideological Justice. His political connections paid off, and he soon moved to a partisan political appointment in a Presidential Administration. From day one of his career, the candidate relentlessly pursued a Court seat, and as soon as he got it, he began implementing his ideological agenda.*

**Control condition**

*The nominee is from the town of Buffalo, New York and currently lives in Washington, DC. The nominee has a college and a law degree, and has held both government and private legal jobs.*

Voters were then asked if they would support this “theoretical” nominee for a seat on the Supreme Court. Specifically, we asked voters,

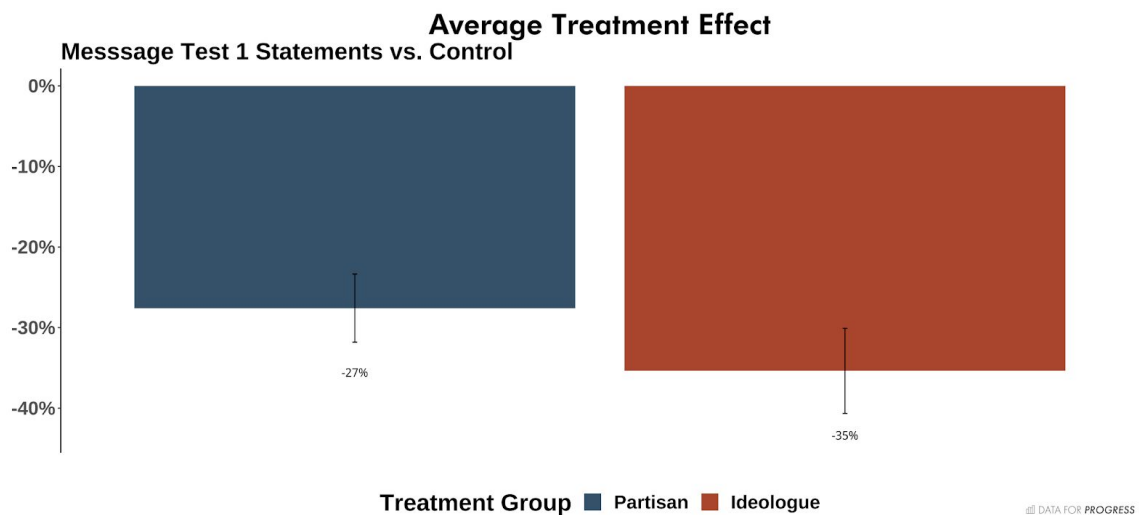
*Given what you just read, how likely are you to support this candidate's nomination to the Supreme Court?*

- <1> Very likely*
- <2> Somewhat likely*
- <3> Neither likely nor unlikely*
- <4> Somewhat unlikely*
- <5> Very unlikely*
- <6> Not sure*

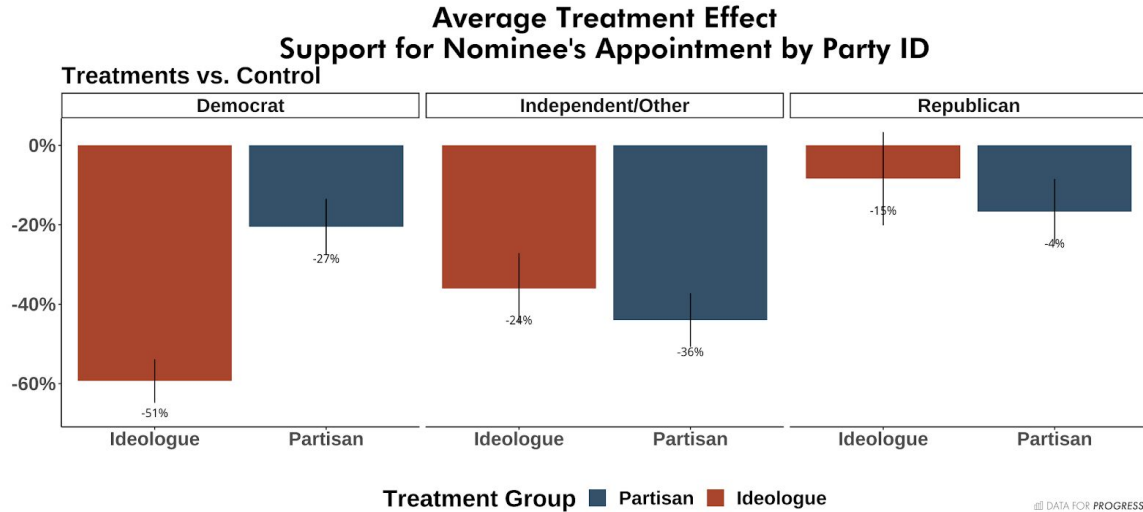
Both statements successfully moved respondents away from the nominee on average, with the “ideologue” condition producing a larger average treatment effect. Among all respondents, 19 percent in the control condition they were “somewhat likely” or “very likely” to support the candidate’s nomination, and 11 percent said they were “somewhat likely” or “very unlikely” to support the candidate’s nomination. In the “ideologue” condition, 17 percent of voters said they

were somewhat or very likely to support the nominee, and 44 percent said they were somewhat or very unlikely. In the “partisan” condition, 17 percent of respondents said they were likely to support the candidate, and 36 percent of respondents said they were unlikely to support the candidate.

Thus, from a +8 support advantage in the control condition, the the theoretical nominee falls to a -19 support gap in the “partisan” condition and a -27 support gap in the "ideologue" condition. The following plot shows the average treatment effect of net support for the candidate’s nomination across each condition. The lower bars indicate farther movement from zero against the candidate’s nomination, i.e., a larger effect.



Perhaps curiously, the outside effect of the "ideologue" condition was driven by Democratic respondents, who responded much more clearly to the statement than to the “partisan” condition. At the same time, Independents were statistically split between the two conditions and Republicans were as well, with the "ideologue" statement not having a statistically detectable effect on Republicans at all.



### “Threats to Past vs. Future Progressive Reforms” Message Test

Next, respondents were given a statement concerning the way the Supreme Court may decide future cases. One treatment focused on the *Roe vs. Wade* ruling and the Affordable Care Act, and the nature of the threat the current Court poses to each. The second treatment focused on the threat the Court poses to potential future progressive reforms. Specifically, the message concerned major legislation on the horizon like the Green New Deal and Medicare for All. The control condition described the process through which the Supreme Court takes on new cases, regardless of political content. The text of the statements follows.

#### “Progressive past” condition

*Many voters don't realize it, but sitting Supreme Court Justices have already done major damage to past rulings like Progressive past and legislation like the Affordable Care Act. The Court has ruled that states need to provide only bare minimum access to safe and legal abortion, that it is permissible for doctors and nurses to urge women not to get an abortion on the basis of their own personal ideology, and that religious objections trump the law when it comes to providing healthcare to women. The blind partisanship of the current Court has allowed the Justices to do major damage to Progressive past and the Affordable Care Act, which both are supported by a majority of the public. (past)*

#### “Progressive future” condition

*Many voters don't realize it, but the current Supreme Court Justices already pose a major threat to the future of the Progressive future. Legal experts are concerned that the current Court has signaled it will overturn popular worker protections,*



*Federal programs that ensure clean air and water, and any new major government programs like the Green New Deal or Medicare For All, even though they are popular among voters. The blind partisanship of the current Court has allowed the Justices to put the will of the people in jeopardy. (future)*

**Control condition**

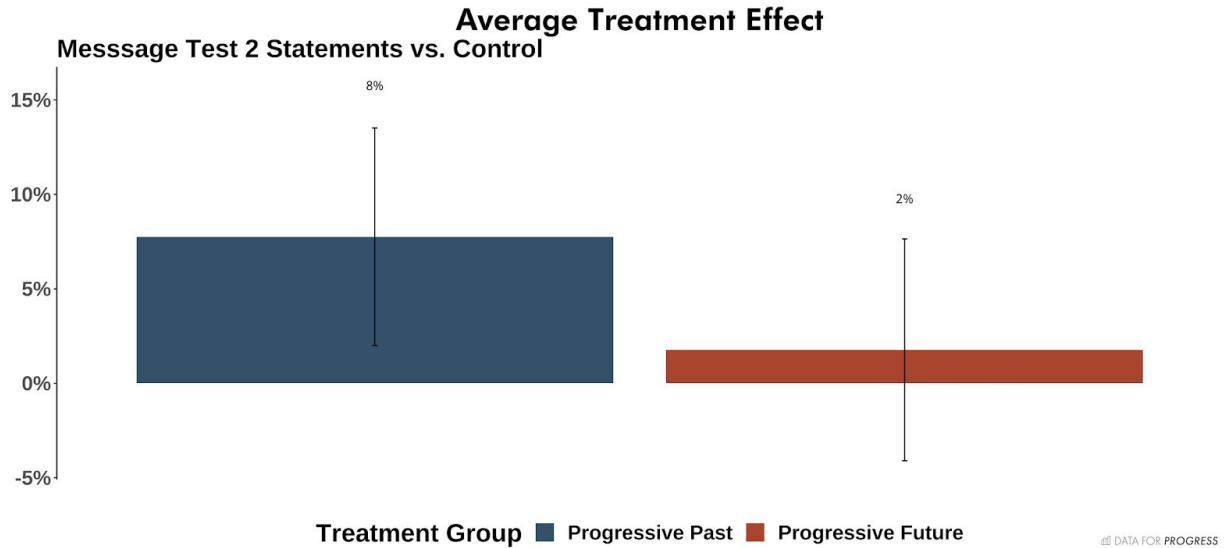
*The Supreme Court will see seventy-five cases in total in the 2018-2019 session. The Supreme Court typically chooses to review cases on their Constitutional merit if they believe that clarification or change to an existing ruling is necessary. The current Supreme Court consists of nine members, who may vote to uphold or to strike down the case brought before them. A majority of 5 or more justices is typically needed for a new ruling.*

After reading the statements, respondents were asked about their support for Court reform. Specifically, we asked,

*Given what you just read, would you say you [support or oppose] the next President reforming the Supreme Court by expanding the number of seats?*

- <1> Strongly support*
- <2> Somewhat support*
- <3> Neither support nor oppose*
- <4> Somewhat oppose*
- <5> Strongly oppose*
- <6> Not sure*

Both of the statements produced an improvement in support for Supreme Court reform over the control, with the effect of the “Progressive past” statement being statistically distinguishable from zero. In the “Progressive past” condition, 30 percent of voters supported “reforming the Supreme Court by expanding the number of seats” and 33 percent opposed such a reform. In the “Progressive future” condition, 31 percent supported and 43 percent opposed such a reform, and in the control condition, 31 percent supported and 44 percent opposed the reform. On average, the treatment effect of the “Progressive past” statement narrowed the gap by about 8 percentage points, and the “Progressive future” condition narrowed the gap by about 2 percentage points.



Perhaps surprisingly, this effect was driven by Independent voters. In the “Progressive past” condition, 23 percent of Independents supported and 38 percent opposed expanding the Court. About 30 percent in the “Progressive future” condition supported Court reform and 44 percent opposed, and in the control condition, about 25 percent of Independents supported Court reform and 51 percent opposed. Net support for Court expansion in the “Progressive past” condition was -15, compared to -14 in the “Progressive future” condition and fully -26 in the control condition. Perhaps unsurprisingly, Republicans compensated for the different in the “Progressive future” condition, overwhelmingly opposing Court reform 21-59 when given the message that the current Court posed a danger to progressive policies.

Among just Democrats, 43 percent of respondents in the “Progressive past” condition and 22 percent oppose expanding the Court. About 41 percent supported and 22 percent opposed Court expansion in the “Progressive future” condition, compared with 46 percent supporting and 18 percent opposing Court reform in the control condition. Thus, the net approval for Court packing among Democrats in the “past” statement was +21, was +19 in the “future” condition, and was “+28” in the control condition!

### **“Republican Interests vs. Corporate Interests” Message Test**

The next set of message tests concerned the politicization of the Courts. Specifically, in one message test, we posed the current state of the Court as stemming from Republican malfeasance, and in the second condition, we posed the problem as stemming from corporate interests. Past work with Take Back The Court has shown that while the “Republican” framing has clear partisan implications, the perceived outsized role of corporations in America’s politics is much more universally reviled. The full wording of each condition follows.

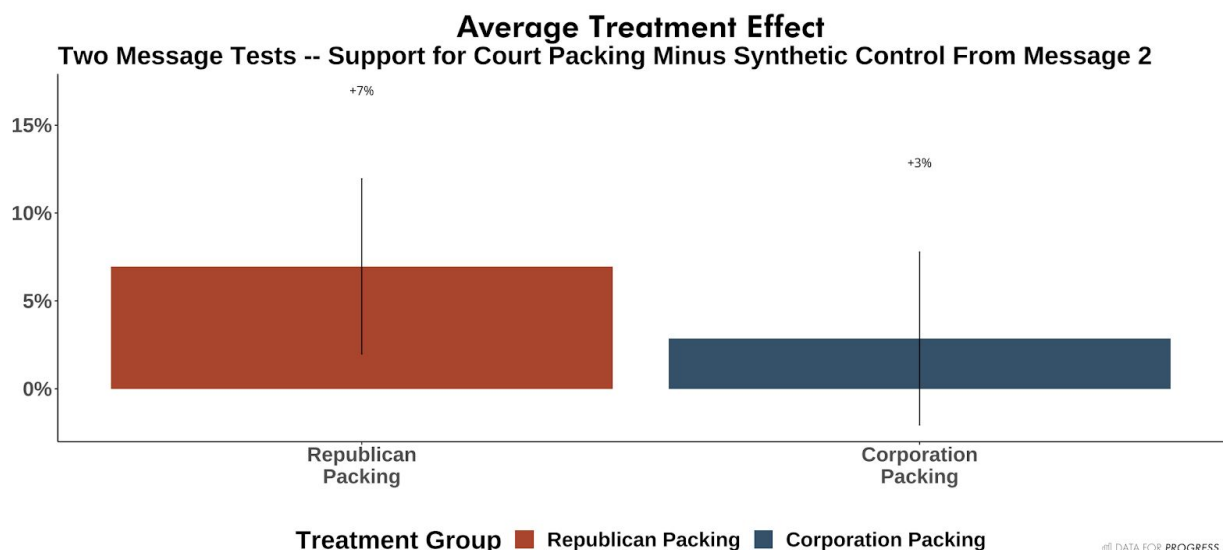
#### **“Republican packing” condition**

*Over the past few decades, Republicans have packed the Courts by denying seats to Democrats and shattering the norms of the process. Democrats needs to expand the Court to compensate for past Republican abuses of power. (republican)*

**“Corporation packing” condition**

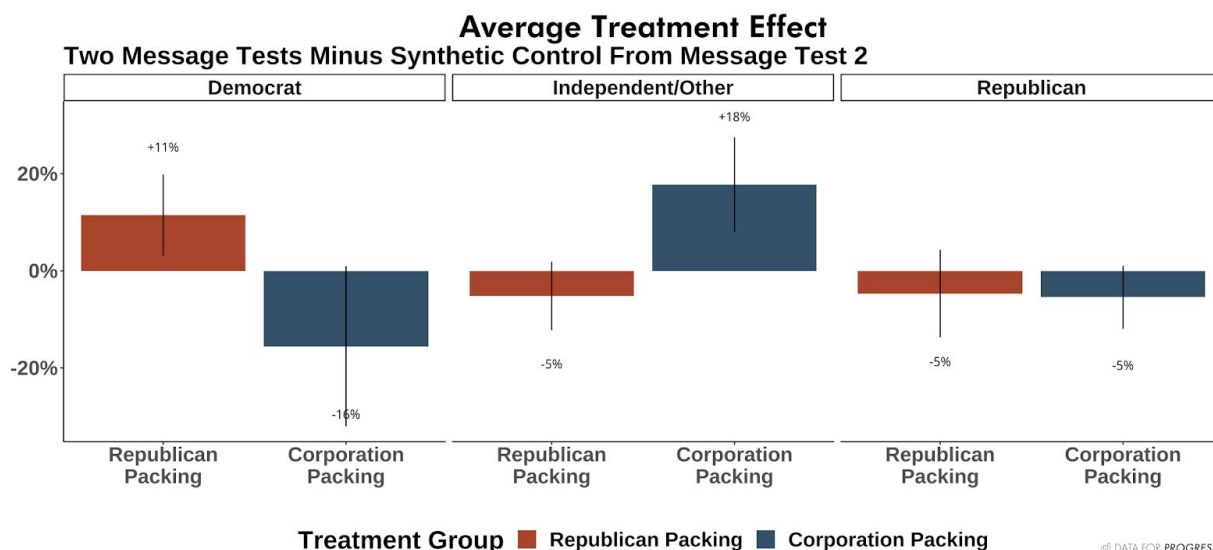
*Over the past few decades, corporations have taken over the Court to pass their unpopular agenda by funding extremist groups that push ideological judges up through the system. The next President should expand the Court to balance the will of the people with these special interests. (corporation)*

Note that due to the nature of the question, a control condition would not necessarily be sensible in this case. In this test, Take Back the Court was interested in which framing of the role of political interests in the present state of the Courts would elicit the strongest response not just from Democrats, but from Independents and Republicans as well. To compensate, we constructed a control group from the results of the second message test. To compute treatment effects, we subtracted support for Court reform from support for Court reform in the control condition of the previous message test, for all voters, and then for Democrats, Republicans, and Independents, respectively.



While across all voters the effects of each statement were narrowly within the confidence intervals of one another, making it difficult to differentiate their true effects from one another, each statement clearly had different impacts on Democrats and Independents. In order to provide a sense of what the difference in outcomes would be had there been a control group, here we substitute in the result of the control statement in the previous message test. In that condition, 21 percent of respondents reported supporting packing the Courts, and so here we

present the average treatment effect as the difference between the observed levels of support in this message test for Court expansion and 21 percent.



Here, we see that the “Republican packing” statement is associated with a large and statistically detectable improvement over the “Corporation packing” statement among Democrats. However, when primed with the notion of balancing corporate and personal interests, Democrats may have actually moved slightly *against* Court reform, though the effect is not statistically distinguishable from zero. At the same time, Independents clearly responded more to the “Corporation packing” statement. While Independents remain on net opposed to Court expansion, the role of corporate malfeasance in its present composition seems to move them significantly in favor of reform.

## Conclusion

These message tests were designed to inform a way forward on the cause of institutional reform of the Supreme Court. We found that Democrats and Independents responded in systematically different ways to messaging on Court reform, while Republicans by and large are not responsive. Much of this is because several of our messages had a clear partisan implication, though the differential is also likely due to differences in how various groups react to any proposed reform at all. Going forward, we have found that targeting Democrats and Independents are plainly different exercises, with Democrats concerned about a partisan takeover of the Court, and Independents concerned about a corrupt process overall.

## Appendix: Methodological Note

On behalf of Take Back The Court, YouGov Blue fielded a survey of US registered voters nationwide. The survey fielded 4/29/19-5/3/19 on 1,095 US voters. Responses were weighted to

be representative of the national population of US voters by age, race, sex, education, US Census region, and 2016 Presidential vote choice. Additionally, we report on message tests from a previous survey fielded with YouGov Blue from April 16, 2019 to April 18, 2019 as part of its National Voter Omnibus project. The survey included 1,071 US voters. The results were weighted to be representative of the US population by age, race, sex, education, Census region, and 2016 US Presidential vote choice using an August, 2018 registered voter frame.