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**ARTICLE**

# Can the Supreme Court Generate Public Acceptance of Election Rulings? Politicized Appointments, Elite Norm Violations, and the 2020 Election

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**Abstract**
We argue that the controversial Barrett appointment and President Trump's norm-violating rhetoric posed risks to the Supreme Court's ability to generate acceptance of a 2020 election intervention. We fielded four nationally-representative survey experiments to measure the Court's ability to generate public acceptance of an election intervention across key events during the election period. Results show that public acceptance changed substantially across events. The Court lacked the ability to induce acceptance, particularly among Democrats, after the election. Only after the Court dismisses the Republican-led election challenge does acceptance rebound. The Court's ability to generate public acceptance regarding election disputes appears tenuous.

**Keywords:** Supreme Court and public opinion; public acceptance of judicial rulings; 2020 election; courts and elections; Supreme Court legitimacy

"Let there be no doubt, while I strongly disagree with the Court's decision, I accept…the finality of this outcome which will be ratified next Monday in the Electoral College. And tonight, for the sake of our unity of the people and the strength of our democracy, I offer my concession."
- Al Gore, concession speech after *Bush v. Gore* (December 13, 2000)

"This is a great and disgraceful miscarriage of justice. The people of the United States were cheated, and our Country disgraced. Never even given our day in Court! The Supreme Court really let us down. No Wisdom, No Courage."
- Donald Trump, after the Supreme Court dismissed *Texas v. Pennsylvania et al.* challenging electoral votes in four states (December 12, 2020)

Democracy requires peaceful acceptance of election results by the losers. In the absence of such acceptance, democracy requires that *courts* settle election disputes. High courts around the world are increasingly being called upon to play this role (e.g., Bartels, Horowitz, and Kramon 2023). Such episodes pose critical tests of a court's ability to induce acceptance of its rulings – even rulings many oppose. Public support for a court's power to resolve conflicts in society builds *legitimacy* – its rightful authority to render declarative rulings for the nation – and facilitates compliance by elected officials. A court induces acceptance when those who agree *and* disagree with the outcome defer to the ruling as rightful and binding (e.g., Gibson 2015; Bartels and Johnston 2020). When courts lack this capacity, democracy is vulnerable, as disputes become more likely to be settled through violence and other extra-legal means.

While prevailing wisdom suggests that the US Supreme Court maintains a robust capacity to induce public acceptance of its rulings (see Salamone 2018, 25), judicial interventions in election disputes in today's climate – marked by high salience and politicized Supreme Court appointments – are prime candidates for exhibiting *polarizing* effects on public acceptance (e.g., Franklin and Kosaki 1989; Fontana and Braman 2012; Nicholson and Hansford 2014; Salamone 2018). Polarizing effects occur when "policy or partisan losers" are less likely to accept the Court's ruling than "winners," thus connecting to research on the effect of policy or partisan disagreement on diffuse support and legitimacy (Bartels and Johnston 2013, 2020; Christenson and Glick 2015b; Clark and Kastellec 2015; Badas 2019; Clark et al. 2024; Gibson 2024b; Levendusky et al. 2024). Such effects imply that preexisting legitimacy does *not* condition citizens' evaluations of issues on which the Court rules. Moreover, research showing that the Court emerges with its legitimacy intact after election involvement (Gibson, Caldeira, and Spence 2003; Nicholson and Howard 2003; Gibson 2024a) does not foreclose the possibility that the Court's capacity to generate public acceptance of an election ruling *in the midst of election drama* can be at risk. Existing theory thus leaves open the question of whether the Court can generate public acceptance of election-related rulings *within* an election period.

We address this question by studying the case of the Supreme Court's role in the 2020 election. While the partisan stakes of elections pose a difficult test of a court's ability to induce acceptance, 2020 included events beyond the Court's direct control – the politicized appointment of Justice Amy Coney Barrett securing a conservative supermajority and Trump's norm-violating rhetoric about his nomination aiding his electoral fortunes – that we suggest preemptively threatened the Court's capacity to induce public acceptance before the Court had even taken any action on election disputes. This capacity was harmed before the Court was called on to address election-related disputes.

Empirically, we measure the Court's ability to induce public acceptance of an election intervention throughout the 2020 election period. We innovate methodologically by conducting four nationally representative survey experiments – from October to December 2020 – evaluating citizen acceptance of judicial rulings related to election disputes in a rolling cross-sectional research design. In the survey experiment, we measure subjects' willingness to accept election rulings, randomly assigning whether Biden or Trump was on the losing end of the decision. We generate a hard test of public acceptance by estimating a copartisan candidate effect: Whether Democrats and Republicans would be less likely to accept a Supreme Court ruling in which their copartisan candidate was on the losing relative to winning end. Each survey generates a causal estimate of this effect. Given the credible chances of the

Court ruling on the 2020 election (which it eventually did), the design generates indicators of the Court's ability to induce acceptance during a contested election featuring unfounded allegations of election fraud and numerous legal challenges. We illustrate how public acceptance evolved across the election period: before and after the Barrett appointment and President Trump's norm-violating rhetoric about the appointment, the election result itself, and the Court's unanimous dismissal of a Republican-led, Trump-backed legal challenge to the election.

The results suggest that the Supreme Court lacked sufficient capacity to induce widespread public acceptance of election rulings, *especially in the moments it mattered most.* First, we provide evidence that the Court lacked such capacity among a meaningful share of the nation. A robust copartisan candidate effect exists among both Democrats and Republicans over time; it is generally larger among Democrats, which is sensible given the external actions and rhetoric of Republican elites who held sway (Armaly and Lane 2023; Glick 2023). Second, the Court's capacity to generate acceptance changed dramatically across the electoral period. Public acceptance of a Court intervention erodes as the election becomes more proximate, reaching a low point after Biden is declared the election winner. At this point, fewer than 50% of Democrats and fewer than 40% of strong Democrats believed that Biden should accept a Court ruling if he were to lose that ruling. While these low levels of acceptance could be driven by strong partisan disagreement, they could also reflect a lack of faith in the Court's procedural integrity, which also undermines the Court's capacity to generate acceptance. Given the Barrett appointment, Trump's rhetoric, and the lack of evidence for Trump's fraud allegations, many Democrats were likely fearful that the Court might unjustly interfere with the results of a democratic election. The implication is that any Court ruling in Trump's favor could have triggered a legitimacy crisis.

Only after the Supreme Court dismisses the Republican-led challenge to the election results – thus demonstrating some impartiality with respect to Trump – does acceptance related to the election rebound for Democrats, though it then declines somewhat for Republicans, particularly strong identifiers. While the decline among Republicans is modest, events following the election illustrate how the Court's inability to induce widespread acceptance, even among a minority, can be politically consequential. Combined with Trump's persistent refusal to concede the election, the inability of the courts to serve as a final arbiter arguably contributed to deleterious outcomes, including the January 6, 2021 attack on the Capitol, widespread Republican beliefs in election fraud, restrictive state voting laws, and harassment of local election officials.

Our work makes multiple contributions. First, our dynamic analysis shows that the Court's ability to induce public acceptance of its decisions can change quite suddenly – by party – over a short period of time during an election. Had we measured it only before the Barrett appointment and after Biden was inaugurated, the risks of a legitimacy crisis that we detected immediately after the election would have gone unnoticed. In fact, after Biden's inauguration, support for the Court deciding election disputes is robust, stable, and elicits modest partisan divisions. This finding complements Gibson's (2024a) analysis showing that election events did not diminish the Court's legitimacy over a longer time period – between June 2020 and December 2020/pre-January 6. But we measure public acceptance *within* that period amid the critical events around which the Court could have ruled on a dispute. While the Court's diffuse support may show stability over the long term (see also

Nelson and Tucker 2021), public acceptance of Supreme Court interventions in elections changes substantially in the short term.

Second, and distinct from the literature's focus on internal factors within the Court's control (see, though, Armaly 2018; Bartels and Johnston 2020, Chapter 6), we highlight the impact of *external* factors beyond the Court's direct control in shaping views toward the Court. This focus contributes to important work on how and why appointment-related events can shape judicial legitimacy (Rogowski and Stone 2021; Armaly and Lane 2023; Glick 2023; Gibson 2024a) and evaluations of judicial nominees (Krewson 2023).

Finally, the sizable changes we see in public acceptance of Supreme Court interventions are emblematic of elections being a *salient issue* that engenders a high degree of public awareness with clear partisan political stakes (e.g., Franklin and Kosaki 1989; Fontana and Braman 2012; Clark et al. 2024; Gibson 2024b; Levendusky et al. 2024). The poster child of salience is, of course, abortion, on which the literature places a large focus (Franklin and Kosaki 1989; Johnson and Martin 1998; Clark et al. 2024; Gibson 2024b). But cases on elections (e.g., *Trump v. Anderson*, 2024) and also presidential power (e.g., *Trump v. U.S.*, 2024) may pose special risks for the Court because they invoke fundamental considerations over *democracy and the rule of law*, which citizens value when evaluating the Court (e.g., Gibson 2007). Citizen disagreement with these types of decisions may not be exclusively rooted in partisanship or policy but also in perceptions that the Court is acting inappropriately or without integrity – even undermining democracy (see, e.g., Graham and Svolik 2020). Our work can spur future research on related issues that invoke regime-level considerations such as democracy and the rule of law.

## Public acceptance of Supreme Court rulings

Via the Supreme Court's "Republican Schoolmaster" role (see, e.g., Franklin and Kosaki 1989), the Court can move the public in response to its decisions in two related ways. First, its rulings can persuade people – even those predisposed to disagree – to change their policy preferences in the direction of the Court's ruling. The ruling often induces an aggregate increase in preferences for the Court-endorsed policy. Second, the Court can induce *acceptance* of a ruling even among those who disagree with the policy outcome. When the public acknowledges the Court's power to rule on such issues regardless of policy disagreement, the Court confers "policy legitimacy" on that issue (Mondak 1990, 1992, 1994). In essence, preexisting Court legitimacy conditions citizens' evaluations of issues on which the Court rules.

As summarized by Salamone (2018, 24–25), many studies find evidence for the Court's ability to legitimize outcomes in various policy areas (e.g., Mondak 1990, 1992, 1994; Clawson, Kegler, and Waltenburg 2001; Bartels and Mutz 2009; Zink, Spriggs, and Scott 2009; Boddery and Yates 2014), or at least under certain conditions (e.g., Stoutenborough, Haider-Markel, and Allen 2006; Christenson and Glick 2015b; Zilis 2015; Woodson 2019; Fontana and Krewson 2023). Such findings complement a different type of analysis of the 2000 (Gibson, Caldeira, and Spence 2003) and 2020 elections (Gibson 2024a), showing that institutional legitimacy emerges unscathed despite Court-related involvement in elections (both the 2000 and 2020 elections).

An alternative response process is *polarization*, in which people's preexisting preferences influence their response to a Court ruling (Franklin and Kosaki 1989;

Fontana and Braman 2012; Salamone 2018; Woodson 2019). While people predisposed to agree with the Court's policy move their policy preferences in the direction of the Court's ruling, those predisposed to disagree move their preferences even farther away (a policy backlash) from the Court's ruling. Individual changes occurring in opposite directions sometimes offset each other, which gives the appearance of aggregate stability (e.g., Fontana and Braman 2012; Christenson and Glick 2015a; Bartels and Johnston 2020; Marshall 2022), but one would hardly say that opinions are not changing. When it comes to acceptance of a ruling, polarization occurs when those who disagree with the policy are significantly less accepting than those who agree (e.g., Nicholson and Hansford 2014; Salamone 2018). This polarization occurs in salient issues – abortion (Franklin and Kosaki 1989; Johnson and Martin 1998), same-sex marriage, and gun rights (Fontana and Braman 2012).

Polarization poses a threat to the Court's ability to legitimize outcomes because acceptance of the Court's power to settle an issue is a function of *policy or partisan disagreement.* It implies that preexisting legitimacy does *not* condition citizens' evaluations of issues on which the Court rules because (1) preexisting legitimacy is not sufficiently robust to move those who disagree and/or (2) people prioritize policy and partisan considerations over deference to the Court's authority. This mechanism related to public acceptance of Court rulings complements a sizable literature showing how policy and partisan disagreement with the Court (Bartels and Johnston 2013, 2020; Christenson and Glick 2015a; Badas 2019; Jessee, Malhotra, and Sen 2022; Clark et al. 2024; Gibson 2024b; Levendusky et al. 2024) and partisan wrangling over appointments (Rogowski and Stone 2021; Armaly and Lane 2023; Glick 2023) decreases diffuse support and institutional legitimacy.

## Applying theory to the 2020 election context

We present a theoretical framework explaining the conditions under which the Supreme Court faces risks to its ability to induce public acceptance of its rulings over election disputes. When it comes to elections, the Supreme Court does not rank as highly in voters' minds compared to bread-and-butter issues (Badas and Simas 2022; Davis and Hitt 2024). However, Supreme Court interventions in elections have the potential to activate partisan disagreement with the Court because of the high-stakes features of elections that match salience levels of the aforementioned issues – abortion, same-sex marriage, and gun rights. Such disagreement poses a risk to the Court's ability to induce public acceptance of Court interventions in elections. The 2020 election highlights the impact of external events and actions by elected officials – beyond the Supreme Court's direct control – that alter citizens' expectations about how the Court might rule over election-related issues, which in turn affects public acceptance of a Court intervention.

### *External events change expectations and beliefs over public acceptance*

#### *Politicized appointment process and norm-violating elite rhetoric*

Elected officials have increasingly politicized Supreme Court appointments (e.g., Cameron and Kastellec 2023). As elite cues can diminish Court support (Armaly 2018; Bartels and Johnston 2020), this politicization matters for the Supreme Court's ability to generate public acceptance because it elevates public perceptions of judicial

appointments as a means to partisan political ends and of a Court that is divided by ideology and party. This politicization came to a head in 2020. After the September 18 death of Justice Ruth Bader Ginsburg – one of the Court's four remaining liberals – Senate Republicans announced they would vote on a Trump nominee before the election. This controversial about-face on confirming election-year appointments – Republicans refused to consider an Obama nominee (Judge Merrick Garland) nine months before the 2016 election – unleashed Democratic ire due to the two purported "stolen" Supreme Court seats. Senate Republicans confirmed Justice Barrett on October 26, just eight days before the election, with the appointment (Trump's third) solidifying a *six-justice conservative Republican supermajority.*

The second external factor is elected officials increasingly violating democratic norms by linking the Court – designed to be a neutral legal arena – to the prospect of favorable partisan outcomes. President Trump's rhetoric during the appointment process violated traditional norms about politicizing the Court's neutrality for partisan, electoral, and personal gain. Trump explicitly tied a pre-election Ginsburg replacement to his political fortunes by pitching it as an insurance policy should he lose the election. On September 22, 2020 (shortly before the Barrett nomination), Trump justified the Republican about-face on election-year appointments in the context of an election fraud case potentially coming before the Court: "With the unsolicited millions of ballots that they're sending, it's a scam; it's a hoax…. So you're going to need nine justices up there. I think it's going to be very important. Because what they're doing is a hoax, with the ballots."[1]

Trump predicted that a case would come before the Court, adding further justification for confirming his nominee before the election.

> I think it's better if you go before the election because I think this scam that the Democrats are pulling…will be before the United States Supreme Court. And I think having a 4-4 situation is not a good situation. If you get that. I don't know that you'd get that. I think it should be eight-to-nothing or nine-to-nothing, but just in case it would be more political than it should be.

Trump was signaling that confirming his nominee before the election was necessary to ensure that the Court rule in his favor in a prospective election dispute.

We posit that these controversial events polarized partisan-based expectations about the Court, thus posing risks to the Court's ability to generate public acceptance over the election even before the Court took any action. For instance, a September 30–October 4, 2020 Marquette University Law School poll showed that 83% of Republicans but just 7% of Democrats said that the Senate should vote on the nomination before the presidential election.[2] Moreover, research by Armaly and Lane (2023) and Glick (2023) shows that perceptions of Supreme Court legitimacy among Democrats decreased after this controversy. Gibson (2024a, Chapter 3) reports that by December 2020 (and before January 6, 2021), Democrats were substantially less likely than Republicans to evaluate the Barrett appointment process as "appropriate for our democracy." The salience of these events was also high, with Gibson (2024a, Chapter 3) finding that 81% of Americans were at least somewhat aware of this process.

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[1] https://abcnews.go.com/Politics/trump-argues-nominee-needed-supreme-court-time-vote/story?id=73192756.

[2] https://law.marquette.edu/poll/wp-content/uploads/2020/10/MLSP64CrosstabsLV_pdf.pdf, 116.

Many Democrats called on Biden and congressional Democrats to "pack the Court" in order to offset the purported stealing of two Court seats. Given the proximity to the election itself, the controversial appointment and rhetoric could have sown Democrats' doubt in the Supreme Court's ability to decide an election dispute fairly (see Armaly and Lane 2023; Glick 2023). Would a "Trump Court" do Trump's bidding? Elected politicians further calibrated citizens' partisan-based expectations – via the creation of a 6-3 conservative Republican supermajority – about how the Supreme Court might decide such cases. We would expect these external actions to elevate risks, particularly among Democrats, to citizens' willingness to tolerate, let alone accept, a Supreme Court intervention into the election.

### The election result

The news networks declared Joe Biden the winner four days after the election. Most elections in modern times are "final" after an election is called (typically on election night) because the presumptive loser *concedes* the election. The Electoral College and congressional certification are then ceremonial, even though they officially mark the election's finality. When Biden was on the verge of being declared the victor, President Trump tried to declare victory.[3] After Biden was declared the winner, Trump refused to concede, continued to claim that he won, and pursued court challenges based primarily on unfounded conspiracy theories and fraud allegations. Even before the election, Trump relied on these considerations for expediting the replacement of Justice Ginsburg. Presumptive losers have the right to challenge election results in court, but they must comply with judicial rulings that go against them.

After the election was called for Biden and Trump's refused to concede, we expect that polarization between Democrats and Republicans over tolerating or accepting a Court intervention in the election was now maximized due to Democrats' fears that the conservative Republican Court might rule in Trump's favor. What if the Court were to steal Biden's presumptive victory, leading Trump to "snatch victory from the jaws of defeat?" A ruling favoring Trump – even to a small extent – could have triggered a legitimacy crisis because many Democrats might not have accepted a judicial ruling due to how Trump and Republicans stacked the Court with a sixth conservative Republicans just eight days before the election.

Though we cannot directly test some of these mechanisms, some of our expectations are subtly distinct from what a classic policy-based theory would predict – that is, a refusal by Democrats to accept a pro-Trump ruling is based on a prioritization of partisan political advantage over deference to the Court's authority. Another mechanism, or one that may operate concurrently, is that the external events themselves recast such behavior as supporting democracy and the rule of law – or at least fearing that Trump, Republican elites, and the "Trump Court" might trample on democracy and the rule of law.

### Supreme Court ruling

Not even sixty-one judicial decisions rejecting Republican challenges to the election could prevent Trump and Republicans from advancing unfounded conspiracy

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[3]https://www.usatoday.com/story/news/politics/elections/2020/11/04/donald-trump-falsely-claims-he-won-election-ballots-not-counted-yet/6102366002/.

theories about a stolen election.[4] The Supreme Court would hand Trump and Republicans a final judicial defeat when it unanimously dismissed a Republican-led challenge to the election in *Texas v. Pennsylvania et al.* (December 11, 2020). In that case, Texas sued four states that Trump lost, claiming they exploited the COVID-19 crisis to engage in election fraud, the legitimate winner was unknown, and the Supreme Court must invalidate those states' electoral votes before the Electoral College vote on December 14. The Supreme Court dismissed Texas's suit due to the absence of legal standing. Trump expressed his disagreement via the quote in the introduction. This ruling followed a less major Court dismissal (December 8) of a Republican effort to block Pennsylvania's election certification based on allegations of illegal expansion of mail-in ballots.

A Supreme Court intervention into a dispute can recalibrate citizens' beliefs. If the Court makes a decision in line with partisan or policy expectations, it can further polarize opinion, which poses further risks to the Court's ability to induce public acceptance. If a ruling defies expectations, it can attenuate prior divisions and increase its ability to settle a dispute. The Court's dismissal of this case surely alleviated Democrats' suspicions that the "Trump Court" might do Trump's bidding and take Biden's victory away. We expect that public acceptance of a Court election intervention to be replenished, though not completely, *only after* the Court dismisses this suit and shows impartiality regarding Trump. Because of prior events that strongly favored Republican interests, we expect that the Court carried considerable capital with Republican voters both after the election and after the Court's ruling. However, the Court delivered a loss to Republicans' candidate, which might decrease Republicans' acceptance of the Court's role in elections. Though we cannot confirm a specific mechanism, Republicans' deference to the Court, particularly given the weakness of this lawsuit, may have taken priority.

## Research design and data

To evaluate these expectations, we fielded four nationally representative survey experiments via Ipsos's (formerly Knowledge Networks/Gfk) "KnowledgePanel" in October through December 2020. Each survey is a fresh cross-section/sample. The Knowledge-Panel is an online, probability-based sample of the adult US population. We fielded two additional observational surveys after President Biden's inauguration to evaluate whether support for the Supreme Court's role in elections was less divided by party and less volatile after the election drama. Each survey randomly samples about 1,000 respondents. Ipsos is committed to human subjects research principles including informed consent, voluntariness, confidentiality, and fair compensation. Supplementary Material (SM) A (1) includes additional survey and human subjects details.

Our survey experiments combined with a rolling cross-sectional design allow us to present a dynamic portrait of public acceptance pertaining to election rulings across the election period. Unlike a panel design, which tracks the same individuals over time, our design tracks different snapshots (cross-sections) of the public over time to examine how public acceptance of a Supreme Court intervention changes across key events by party. Our design differs from, for example, Christenson and Glick's

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[4]See: https://www.usatoday.com/in-depth/news/politics/elections/2021/01/06/trumps-failed-efforts-overturn-election-numbers/4130307001/.

**Table 1.** Timeline of Surveys and Events

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|---|
| September 18, 2020: Justice Ginsburg's death |
| September 26, 2020: President Trump nominates Judge Amy Coney Barrett |
| **October 9–19, 2020: Survey Round 1** (N = 1,002) |
| October 26, 2020: Justice Barrett confirmed by US Senate |
| **October 27–Nov. 2, 2020: Survey Round 2** (N = 1,014) |
| November 3, 2020: Election Day |
| November 7, 2020: Joe Biden declared winner (by news networks) |
| **November 9–14, 2020: Survey Round 3** (N = 1,015) |
| December 11, 2020: Supreme Court dismisses Republican-led *Texas v. Pennsylvania et al.* suit seeking to invalidate electoral votes in four states. |
| December 14, 2020: Electoral college elects Biden president |
| **December 18–29, 2020: Survey Round 4** (N = 1,006) |
| January 20, 2021: President Biden inaugurated |
| **January 22–29, 2021: Survey Round 5** (post-inauguration, N = 1,012) |
| **April 23–May 2, 2021: Survey Round 6** (post-inauguration, N = 1,013) |

(2015a) panel design that analyzed individual change in legitimacy perceptions before and after the Court's Affordable Care Act ruling in response to change in ideological disagreement. The repeated use of our experimental component (discussed below) to measure public acceptance of Court interventions in election disputes makes our rolling cross-sectional design ideal; we also do not have to account for panel attrition.

Table 1 summarizes the timeline of surveys and key events. We fielded our four core surveys (with survey experiments) after four key events: (1) the Barrett nomination, (2) the Barrett confirmation (pre-election), (3) the news networks' declaration of Biden as winner, and (4) the Supreme Court ruling (*Texas v. Pennsylvania et al.*). We fielded the last two observational surveys (rounds 5 and 6) in late January 2021 and late April to early May 2021.

We note that this rolling cross-sectional design cannot definitively rule out that other events or factors (aside from those in Table 1) are driving change in public acceptance across time. However, the surveys were implemented in relatively close temporal proximity to events, and the election and Court-related events were highly salient to the public at the time. We therefore believe it is reasonable to conclude that these events were of importance. It is also useful to interpret our design as being able to shed light on the impact of the entire 2020 electoral context, which included the highly public appointment process, the contentious campaign period, and the post-election uncertainty given Trump's refusal to concede.

We embedded a question wording experiment in each of the first four surveys. For the first three surveys, each occurring before the Supreme Court's dismissal of the Republican-led challenge to the election, we asked the following:

"If the U.S. Supreme Court ends up ruling on the outcome of the presidential election, [randomize] Donald Trump [-or-] Joe Biden should accept that ruling, even if he loses."

We randomize whether respondents are presented with "Donald Trump" or "Joe Biden." We are thus able to compare how Democrats and Republicans respond to this question when they are on the winning or losing end of a potential Court outcome. We used a four-point agree–disagree scale. We collapse the variable into a binary dependent variable (agree candidate should accept ruling = 1, disagree = 0); results using the four-category variable are substantively similar (SM B, Figures B1 and B2, 5–6). Our measure captures citizen acceptance of a Supreme Court ruling on the

election, even if one of the candidates loses at the Court. In the fourth survey, after the Supreme Court's dismissal of the Republican-led challenge, we changed the question wording:

"[Randomize] Donald Trump [-or-] Joe Biden should accept all Supreme Court decisions on the presidential election, even for cases he loses."

Since we randomly assigned respondents to either "Trump" or "Biden" in each survey round, we can estimate a causal "copartisan candidate effect" – whether respondents are significantly less likely to agree that their copartisan candidate should accept a Court ruling, even if he loses, relative to the outpartisan candidate. This randomization facilitates a critical test of public acceptance of Court interventions in the election: (1) Whether citizens are willing to accept a Court ruling on the election *even in the face of a loss by their copartisan candidate* and (2) whether acceptance is different by partisanship across events. The measure makes connections to Gibson's (2015) "legitimacy is for losers" framework – acceptance of the Court's authority even in the face of loss as a critical test of the Court's legitimacy (see also Gibson, Caldeira, and Spence 2005; Gibson, Lodge, and Woodson 2014). Though we do not measure legitimacy directly, our measure and design have implications for whether legitimacy is sufficiently robust to move those who disagree (see also Nicholson and Hansford 2014).[5]

Party identification is measured using the standard seven-point scale. We operationalize party as nominal with three categories (Democrat, Republican, Independent); independent leaners are categorized as Democrats or Republicans. We also account for standard controls. Age is measured in years. Race is a four-category nominal variable (white, black, Hispanic, other race). Female = 1, male = 0. Family income is measured using twenty-one income bands. Education is a four-category ordinal variable (no high school, high school graduate, some college, and bachelor's or higher). All control variables are coded to range from 0 to 1.

An alternative measure to party would be intended (pre-election) or actual (post-election) vote choice. We designed the study around party because our goal is to examine partisan differences in public acceptance for the entire citizenry regardless of actual or intended voter turnout. Surveys are known to overreport voter turnout, mainly due to respondents' social desirability considerations (e.g., Jackman and Spahn 2019). While we expect that partisans are on average more sympathetic to their copartisan candidate than the outpartisan candidate, our use of party might be more tenuous if partisan unity for copartisan candidates is low. Data from the 2020 American National Election Studies (ANES) alleviate concerns about using party over vote choice. Democratic support for Biden is 93.2% before and 95.4% after the election.[6] Republican support for Trump is 87.5% before and 87.6% after the election. We think the use of vote choice would generate very similar – perhaps stronger – results to those using party.

While we randomize the candidate – that is, Trump versus Biden – in the survey question measuring our dependent variable, we reoperationalize it so we can generate

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[5]One potential issue with survey items like these (including diffuse support items) is respondents engaging in expressive responding, or "cheap talk," that may not necessarily reflect beliefs or behavior in real-world setting. While we cannot fully rule this out, we would argue that the relative changes we report across survey rounds, which correspond with theoretical expectations, help to guard against this alternative explanation (see also Bartels and Johnston 2020, 262–263).

[6]Before the election, about 90% of respondents reported that they intended to or already voted. After the election, 73% reported voting in the election.

a "copartisan candidate effect." Thus, we generate the more pertinent "copartisan candidate" variable: 1 = one's copartisan candidate (Biden if Democrats, Trump if Republicans) should accept a Supreme Court ruling, even if he loses that ruling; 0 = the outpartisan candidate should accept a ruling, even if he loses. Since we interact party with the copartisan variable, the recoding does not alter the underlying model relative to the original "Trump/Biden" coding. It merely puts the copartisan candidate effect on the same scale for both Democrats and Republicans, thus facilitating interpretation. We estimate this effect across the four survey rounds.

What about independents? Recall from above that we categorize "independent leaners" as Democrats or Republicans. The fraction of "pure independents" in our first four survey rounds is just 3% (116 individuals out of 4,010, or about twenty-nine per survey round).[7] Because of this small fraction, all model estimates exclude these pure independents. Including them, however, generates almost identical results. Moreover, SI A (2) includes the percentage of Democrats (54% on average) and Republicans (42% on average) across the first four survey rounds.

Our copartisan candidate effect is a causal indicator of the Court's ability to induce acceptance of an election ruling in the face of partisan loss. If the Court possessed this ability, this effect would be indistinguishable from zero, or at least quite small. For example, Democrats would agree that both Trump *and* Biden should accept Court rulings over the election, even if they lose. They would reason that the Court would have good reason to make their decisions or would be worthy of deference even in the face of disagreement. By contrast, an increasingly negative copartisan effect – copartisan candidate less willing to accept relative to the outpartisan candidate – suggests that the Court's ability to induce acceptance of its ruling is reduced.

After Biden's inauguration (January 20), we fielded two additional survey rounds asking a different question (since the election was over) regarding general judicial power over elections:

"Do you support or oppose the Supreme Court's ability to make decisions on presidential election disputes?"

We employed a four-point support/oppose response scale. These data allow us to evaluate attitudes after the immediate conflict and to underscore the importance of measuring public acceptance of judicial rulings at the times it matters most – in the midst of the election drama – as opposed to only well before and well after key election events.

## Results

Figure 1 reports the raw percentage of respondents in the four core survey rounds who believe Biden or Trump should accept a Supreme Court ruling on the election, even if he loses in that ruling.[8] These estimates use post-stratification survey weights; results are very similar without weights. Figure 1A displays whether one believes their *copartisan candidate* (Biden for Democrats, Trump for Republicans) should accept such a ruling. Figure 1B shows these results for the *outpartisan candidate*. Figure 2 reports estimates of the *copartisan candidate effects* by party across the four survey

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[7]We note the fraction of pure independents is smaller in our samples than other surveys. In the 2020 ANES referenced above, that fraction is 12%. Though independent leaners are known to be "closet partisans" (e.g., Keith et al. 1992), one robustness check for this issue is to compare our core results that include leaners to results excluding leaners, which we do in SM C (p. 7–9). The results are very similar to our core results.

[8]Figure B1 (SM B, 5) displays means using the four-category dependent variable that generate substantively similar results.
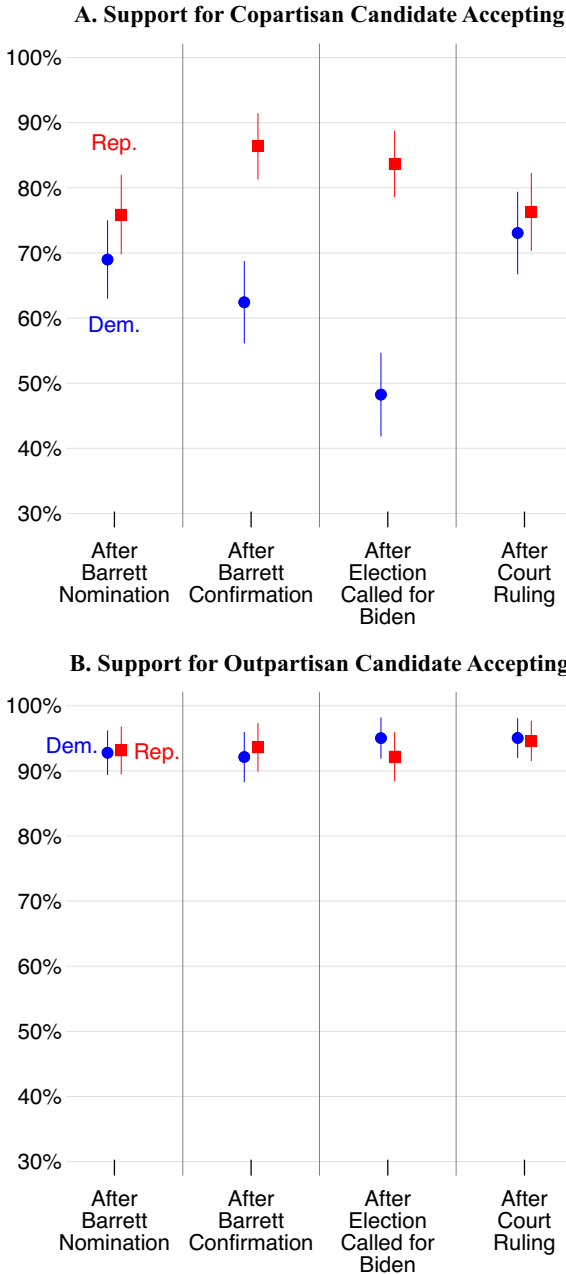
## A. Support for Copartisan Candidate Accepting



## B. Support for Outpartisan Candidate Accepting



**Figure 1.** Support for Biden or Trump Accepting a Supreme Court Ruling on Election.
**A.** Support for Copartisan Candidate Accepting.
**B.** Support for Outpartisan Candidate Accepting.
*Note:* Figure A reports the percentage of individuals who agree that their copartisan candidate (Biden for Democrats, Trump for Republicans, which was randomly assigned) should accept a Supreme Court ruling on the election, even if he loses. Figure B reports this percentage for the outpartisan candidate (Trump for Democrats, Biden for Republicans). Estimates are weighted using post-stratification weights. 95% confidence intervals are reported for each percentage.

rounds. Each effect is an indicator of the Court's ability to induce public acceptance of an election ruling even when citizens face partisan loss. Larger sizes in the negative direction capture lower public acceptance. The estimates from Figure 2 are from four separate OLS linear probability models (with robust standard errors) that include an interaction between the copartisan candidate variable and party, as well as control variables. Because we estimate experimental treatment effects, these models do not use post-stratification survey weights (see Franco et al. 2017; using weights yields very similar results). Table B1 in SM B (4) includes full model results.[9] Thus, the estimates in Figure 2 are marginal effects for the copartisan candidate variable conditional on party. Note that while the models use a binary dependent variable, Figure 2 reports the copartisan effect in percentage terms (instead of proportions) to maintain comparisons to Figure 1. Results using logit generate very similar substantive findings; see SM D (Table D1 and Figure D1, 10–11).

The first glaring pattern in Figure 1 is the differential by copartisanship in acceptance of a Supreme Court ruling on the election. In general, as shown in Figure 1B, support for one's outpartisan candidate accepting a Court ruling is consistently high (>90%) for both Democrats and Republicans. That is, nearly all Democrats believe Trump should consistently accept such rulings, and Republicans believe that Biden should. However, Figure 1A shows that support for one's copartisan candidate accepting a Court ruling, even if he loses, is consistently lower than the respective outpartisan number. This gap between respective copartisan (Figure 1A) and outpartisan (Figure 1B) acceptance is the candidate copartisan effect that we directly estimate in Figure 2. Given the stable and high acceptance levels in Figure 1B, acceptance of the Supreme Court's intervention in the election in the face of potential loss (i.e., if the copartisan candidate were to lose at the Court), as reported in Figure 1A, will actually resemble the copartisan candidate effects in Figure 2.

Figure 1A also provides evidence of important changes over time in acceptance of a Supreme Court election intervention as the events unfolded and partisan fortunes changed. Perhaps most importantly, as highlighted in both Figure 1A and Figure 2, the Court's ability to induce public acceptance in the face of partisan loss among citizens erodes significantly during the election period and only rebounds after the Supreme Court's dismissal of the Republican-led election challenge and the Electoral College vote. The partisan gap rises and falls across time in conjunction with changing circumstances triggered by external events.

Figure 1A shows that after President Trump nominated then-Judge Barrett in early October, about 69% of Democrats agreed that Biden should accept a Supreme Court election ruling. After Barrett's official confirmation, this number drops to about 62%.[10] Examining analogous numbers for Republicans, 76% agree that Trump should accept a judicial ruling on the election after Trump's nomination of Barrett. One explanation for this higher number among Republicans is that judicial capital is riding high in anticipation of securing a six-justice conservative supermajority. Even

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[9]Table B1 (SM B, 4) also includes model results for the four-category dependent variable. Though the results are substantively similar, we prefer the binary measure because of the clearer presentation of "percent support or oppose" relative to presenting means of a four-category ordinal variable.

[10]We are hesitant to put too much stock in statistical significance tests of changes *between* survey rounds due to the survey experiments potentially carrying different meanings across rounds. However, we can generate such significance tests by estimating a single model combining all rounds and interacting the survey round dummy variables with each independent variable (including controls), which provides equivalent estimates to the those from separate models used to generate Figure 2. This Democratic change is statistically insignificant (p = 0.12).

though many Republicans may have disliked the idea of Trump accepting an adverse ruling on the election, they likely had very positive views about the Court in that moment. After Barrett is confirmed, Republican agreement that Trump should accept a ruling (even if he loses) increases to 86%.[11]

Figure 2 highlights how proximity to the election generates diverging copartisan candidate effects – and therefore estimates of public acceptance even in the face of partisan loss – between Democrats and Republicans that are consistent with the polarization perspective discussed above. In the first period, after Barrett is nominated but before she is confirmed, the copartisan effect is −24% for Democrats and −17% for Republicans. Each effect is statistically significant, as seen in Figure 2. Democrats were less likely (by 24 percentage points) to agree that Biden should accept a Supreme Court ruling, even if he loses, relative to Trump. Republicans were less likely (by 17 percentage points) to agree that Trump should accept a ruling relative to Biden. However, the *difference* in these effects between Democrats and Republicans is not statistically significant in this first period (p = 0.18),[12] thus suggesting a lower partisan divergence in public acceptance of Court intervention.
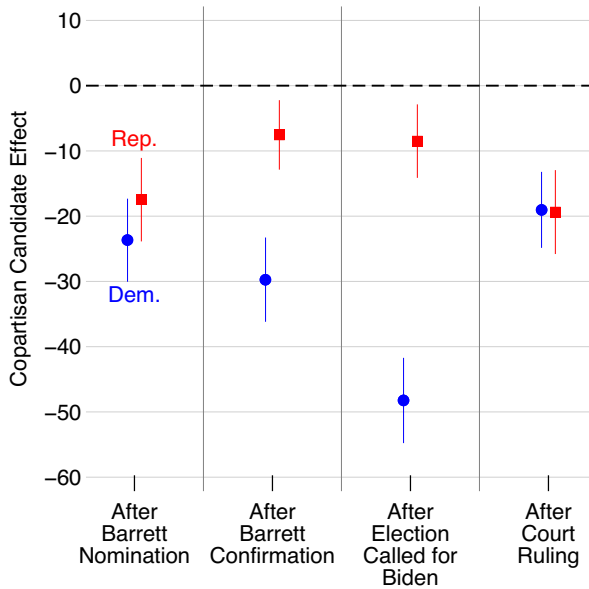


**Figure 2.** Estimates of Copartisan Candidate Effects.
*Note:* The figure reports the copartisan candidate effect (percent supportive of one's copartisan candidate accepting a Court ruling minus percent supportive of one's outpartisan candidate accepting a ruling) and 95% confidence intervals. Effects for each round are marginal effects for the copartisan candidate variable conditional on party; they are derived from the first four models (linear probability models) in SM B, Table B1 (4). We report effects here in percentage terms (as opposed to probabilities) to maintain comparability to Figure 1. Increasing copartisan effects in the negative direction represent lower public acceptance of rulings on election interventions.

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[11]This change is statistically significant (p = 0.01).
[12]This significance test is derived from the same model described in footnote 10.

After Justice Barrett is confirmed (just eight days before the presidential election), the copartisan candidate effects for Democrats (−30%) and Republicans (−8%) are each statistically significant, as shown in Figure 2. Importantly, divergence in the copartisan candidate effect between Democrats and Republicans grows larger, as it becomes stronger for Democrats and weaker for Republicans. Unlike in the first period (before the Barrett confirmation), the difference in effects between Democrats and Republicans (22%) after confirmation is statistically significant (p < 0.01). One explanation for this result is that Democrats perceived the Barrett appointment as "bad process," while Republicans perceived it as "beneficial process," having secured a six-justice conservative Republican supermajority (see Gibson 2024a, Chapter 3). The consequence of this politicized appointment process is to drive a partisan wedge in deference to the Supreme Court's authority over the prospects of a disputed election, which was a live possibility at this point.

After Biden is declared the election winner on November 7, Figure 1a shows that just 48% of Democrats believe Biden should accept a Court ruling on the election, even if he loses in such a ruling.[13] When distinguishing by partisan strength, just 38% of "strong Democrats" believe Biden should accept a Court ruling. Republicans drop only slightly in their belief that Trump should accept a Court ruling.[14] Moreover, the copartisan effect among Democrats (Figure 2) grows to a very large −48% (statistically significant), while the copartisan effect for Republicans remains smaller (though statistically significant). Democrats are less likely, *by 48 percentage points*, to agree that Biden should accept a Court ruling on the election relative to Trump. The divergence in these effects between Democrats and Republicans in this third period is maximized at 40%, a difference that is statistically significant (p < 0.01). Once again, this evidence generally coincides with the polarization perspective discussed above.

With Biden declared the winner, many Democrats likely would have viewed a Court ruling against Biden (and for Trump) as illegitimately taking the election from him. Recall, though, that at this time, Trump was in the process of challenging the election results in the courts and had not conceded the election. In light of these challenges, many Democrats may not have accepted a pro-Trump ruling because of suspicions that the conservative majority would do Trump's bidding and overturn the results of an election, particularly given the tenuous grounds of Trump's challenge. Another explanation is that Democrats simply thought that "Biden won" – those who believe their candidate has just won are naturally resistant to have that victory taken away, regardless of whether the presumptive loser is challenging the results. Our results imply that any Court ruling in favor of Trump could have ignited a legitimacy crisis for the Court. Public acceptance of Court rulings on the election among Democrats dropped to a low level *in the moments when such acceptance would have mattered most*: after Democrats perceived Biden was the rightful winner, in the midst of Trump mounting a legal challenge to the election result, and before the Supreme Court made a decision related to the election.

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[13]The change for Democrats from round 2 to round 3 is statistically significant (p < 0.01).

[14]That decrease from round 2 to 3 for Republicans is not statistically significant (p = 0.49).

Our focus on how external events and actions by politicians that politicize the Court for partisan political gain also sheds light on the meaning of declines in public acceptance concerning Supreme Court election interventions, particularly in the moments it mattered most. Such declines possibly reflect a fear of perceived improper behavior by the Court and thus a defense of the rule of law and even democracy itself. As a result, in 2020, Democrats' tolerance of a Supreme Court intervention into the election dispute decreases precipitously.

As Figures 1A and 2 show, only *after* the Court dismisses the Republican-led challenge to Biden's win does public acceptance of a Court intervention rebound, with 73% of Democrats willing to accept Court rulings on election disputes.[15] Interestingly, when compared to post-election figures, that number is about equal for "strong Democrats" (74%) relative to "not strong Democrats" (72%). The spillover effects of "bad process" induced by the rushed, politicized Barrett appointment are subsequently offset by the Supreme Court's demonstration of impartiality with respect to Trump. This finding shows how internal events by the Court itself – and a ruling that in this case altered beliefs about the Court among Democrats – can neutralize some of the negative effects of external events that politicize the Court.[16]

As Figure 1A shows, Republican support for Trump accepting a Court ruling drops back down to 76%[17] – after the Supreme Court dismisses the Republican-backed *Texas v. Pennsylvania et al.* case, which combined with the Electoral College vote all but assured the finality of Biden's victory. The copartisan candidate effect among Republicans also becomes enhanced (−19%), implying a drop in public acceptance among Republicans after the ruling. Republican levels in October may have been driven by positive affect toward the Court given the Barrett confirmation and perceptions that the Court would side with them – that perhaps the enhanced conservative supermajority would give them the insurance policy as signaled by Trump. When the Court rules against them, these high levels start to decrease. One mitigating factor against even more drastic drops among Republicans is that Republican unity for Trump is lower than Democratic unity for Biden, as shown in the prior section that summarized ANES data.

As shown in Figure 2, the divergence between Democrats and Republicans in public acceptance that increased with proximity to the election now disappears (and is statistically insignificant). Democrats and Republicans exhibit almost identical levels of public acceptance regarding the election after both the Supreme Court ruling and the Electoral College vote.

While our results suggest that a Court ruling in favor of Trump after the election could have triggered a legitimacy crisis, does the Court's ruling that goes against Trump actually settle the election outcome? Certainly, the aforementioned rebound among Democrats tends toward an affirmative response. However, the drop in public acceptance among Republicans following *Texas v. Pennsylvania et al.* is most pronounced among those who report being strong Republicans – about 34% of this group did not believe Trump should accept Court decisions on the election. The January 6 insurrection shows that resistance, even among a group this size, can be politically consequential. That dynamic then snowballed into supermajority Republican sentiment that the

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[15]This number represents a statistically significant increase (p < 0.01) from the prior round.

[16]We think that the changes we see among Democrats in particular, from post-election to post-Court dismissal, go against the type of "expressive responding" discussed in footnote 5.

[17]The drop from round 3 to 4 is statistically significant (p = 0.02).

2020 election was fraudulent,[18] restrictive state voting laws designed to stop purported election fraud,[19] and threats toward local election officials.[20] These events, as well as Trump's refusal to concede and his efforts to overturn the election result, would point in the direction of a diminished ability for the Court to induce public acceptance over elections that are challenged by one of the candidates.

On one hand, it may be too much to ask for this particular Court ruling, which dismissed a weak lawsuit on procedural grounds and did not draw substantive conclusions on the merits, to settle the election dispute and assuage tensions among Democrats and Republicans. On the other hand, as the 2000 episode demonstrated, the Supreme Court was *the last resort* for Trump and Republicans to seek relief in their challenge to the election result. The Supreme Court unanimously rejected that request, meaning this ruling should have marked the end of the road for Trump's challenges. The fact that it did not have that effect but instead elicited Trump's public tweet quoted at the beginning of this paper implies that the Court's ability to settle future election results, particularly in the politically contentious moments when it matters most, appears tenuous. On the other hand, Trump's victory in the 2024 election and an immediate concession by Vice President Kamala Harris have assuaged, for now, tensions about the 2020 election that brewed for four straight years.

How did the public perceive the Supreme Court's power over elections *after* the heated 2020 election period and even after the January 6 insurrection at the Capitol? Figure 3 shows that after Biden's inauguration, support for judicial power over election disputes is generally high among both Democrats and Republicans, and volatility and partisan tensions appear to dissipate relative to the October–December 2020 period. One explanation is that the Court emerges from this post-election period relatively unscathed, particularly relative to the other branches (see Gibson 2024a).

Figure 3 shows that Republicans, falling back on their 6-3 Republican supermajority, are more supportive of the Court's power over election disputes than Democrats. We would contend that this modest partisan gap could flare up given the right circumstances in a future election or on a related issue. Moreover, these results validate our approach of analyzing public acceptance of Court interventions in the moments it matters most – in the midst of the appointment and election context – as opposed to only well before and well after an election dispute. While Gibson's (2024a) important analysis highlights how the Court's legitimacy emerged unscathed from election-related events (from June 2020 to December/pre-January 6), that finding essentially averages over any volatility that may have occurred across the events at the center of our analysis. Had we done the same, we would not have detected the points during which the Court's ability to induce public acceptance of its rulings appeared quite tenuous. While some work thus shows stability in aspects like diffuse support over longer time periods (e.g., Nelson and Tucker 2021; Gibson 2024a), our findings highlight a high degree of short-term volatility in public acceptance across contentious events.

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[18] https://www.npr.org/2021/11/01/1050291610/most-americans-trust-elections-are-fair-but-sharp-divides-exist-a-new-poll-finds.

[19] https://www.usnews.com/news/best-states/articles/2021-07-02/17-states-have-passed-restrictive-voting-laws-this-year-report-says.

[20] https://www.reuters.com/legal/government/reuters-unmasks-trump-supporters-terrifying-us-election-workers-2021-11-09/.
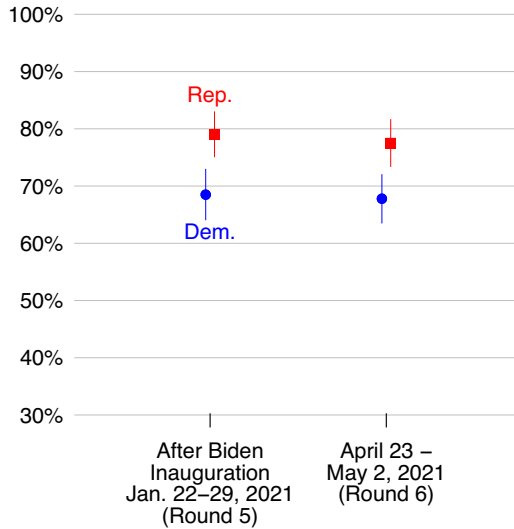
**Figure 3.** Support for Judicial Power Over Elections, Post-Inauguration.
*Note:* The figure shows percent support for the "Supreme Court's ability to make decisions on presidential election disputes" at two time points after President Biden's inauguration. Estimates are weighted using post-stratification weights. 95% confidence intervals are reported for each percentage.

## Conclusion

High courts around the world are increasingly being called upon to adjudicate election-related disputes and thus contribute to democratic stability. In 2020, our results indicate that the US Supreme Court lacked sufficient capacity to induce public acceptance of interventions in the election with a politically consequential share of the population during different moments where the risk of crisis was heightened. Our findings present a rare, dynamic view in real time of what happens to the Court's capital in election controversies when political elites forsake forbearance norms and politicize the Supreme Court for partisan political advantage. We think "elections" are in a class of highly salient issues – high public awareness with clear partisan political stakes – that trigger the types of changes we observe.

Our theory and findings have focused on and have implications for how and why external events and actions that politicize the Supreme Court for partisan political gain can shape expectations and beliefs about the Court's decisions. When interpreting variation in citizen acceptance of Supreme Court interventions, context matters. Events and actions taken by politicians matter (see also Armaly and Lane 2023; Glick 2023; Krewson 2023). Not only are election issues in a class of salient issues, they may also pose special risks to the Court's ability to induce public acceptance because they invoke fundamental considerations over democracy and the rule of law that citizens value when evaluating the Court (e.g., Gibson 2007). Would the Supreme Court do Trump's bidding on election matters after Trump delivered a conservative supermajority on the Court? Our work has implications for future research on related issues in which people may question whether the Court is undermining

democracy or the rule of law itself, and people may prioritize those regime-level considerations over traditional party or policy disagreement. We think this is a critical avenue for future research as the field continues to push theoretical boundaries on the foundations of public acceptance of judicial authority and ultimately legitimacy.

Our work also demonstrates the importance of measuring public acceptance of Court rulings over elections or other matters as events unfold. Had we only captured such acceptance well before or well after the election, we would not have observed that acceptance of a Court intervention in elections had eroded among Democrats right in the moment it would have mattered most. Though this acceptance rebounds for Democrats after the Court dismisses the Republican-led challenge to the election, conditions were at one point ripe for a legitimacy crisis. Moreover, the Court's ruling does not exactly settle the election for Republicans. Legitimacy crises arise from short-term shocks, and we only observe the actual outcome, not the counterfactual that could have occurred given the right circumstances.

Though the Court did not experience a legitimacy crisis, a finding central in Gibson's (2024a) important research, we show that conditions were ripe for a crisis had the Court issued a ruling in Trump's favor in the midst of election drama. While Gibson (2024a) reports stability in Court legitimacy over the longer term (from before to after the election, and also after the insurrection), we report volatility in public acceptance of Supreme Court interventions in the short term once one zooms in on critical events surrounding the election. Thus, our work shows how acceptance of Court interventions in elections evolves over even short periods of time and in response to political events, many of which are outside the Court's control. Our results also contribute to the literature by highlighting the role of elite behavior in shaping the Court's ability to settle contentious political situations.

Because of the Supreme Court's importance and impact in American politics, the Supreme Court will maintain an integral role in election contexts (see Badas and Simas 2022; Davis and Hitt 2024). More centrally, courts in the US and beyond will continue to play a critical role in resolving election disputes and other conflicts arising from democratic competition (Kerr and Wahman 2021; Bartels, Horowitz, and Kramon 2023; Gibson 2024a). Our results demonstrate how dangerous it can be when elites forsake forbearance norms against both attacking and politicizing high courts. Courts bear responsibility to remain neutral arbiters of disputes in the face of such politicized rhetoric and behavior. They cannot succumb to it if they want their authority to be recognized as rightful, binding, and declarative for the nation. Yet political pressure on Courts can constrain their independence and power. It is a delicate balance to be sure. Into the future, our work suggests that the Supreme Court's authority in the political system is not immune from these types of dynamics.

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