

A Polarizing Supreme Court?: Judicial Decisions in a Red/Blue America

Kevin J. McMahon

Trinity College

The cover of the July 9 & 16 *New Yorker* seemly told the whole story. It featured a cartoon version of President Barack Obama dressed in physician's garb and smilingly broadly. What was the reason for the president's joy? The Supreme Court had recently—and by most accounts unexpectedly—upheld the Affordable Care Act of 2011. With their decision, the justices had affirmed the constitutionality of the most significant piece of legislation passed by a Democratic Congress and signed by a Democratic president since the 1960s. In an era defined by political polarization, the Court—filled with five conservative justices appointed by Republican presidents and four liberal justices appointed by Democratic presidents—had failed to fulfill its expected role as denier of this historic Democratic accomplishment. Put another way, there would not be another *Bush v. Gore*, a ruling widely denounced as one reached on ideological rather than doctrinal grounds. But, of course, only one justice had veered off his ideological course in the health care case. In what apparently was a very difficult decision for him, Chief Justice joined his four most liberal colleagues in reaching a ruling that upset conservatives across the land. But what does this single decision tell us about the Court's role in the exacerbation or mollification of political polarization in the United States? In this chapter, I consider this question specifically and more broadly with regard to the role judicial decisions have played in shaping the debate over the deeply divisive social issues that so often consume a great deal of attention during campaign season.

Academic Biography:

Kevin J. McMahon is the John R. Reitemeyer and Charles A. Dana Research Professor of Political Science. His research examines the presidency and the political origins and consequences of Supreme Court decisions, covering a range of areas, including civil rights and liberties, constitutional law, school desegregation, political parties, and elections. His most recent book, *Nixon's Court: His Challenge to Judicial Liberalism and Its Political Consequences* (University of Chicago Press), was published in October 2011. His book, *Reconsidering Roosevelt on Race: How the Presidency Paved the Road to Brown* (University of Chicago Press, 2004), won the American Political Science Association's Richard E. Neustadt Award for the best book published on the American presidency in 2004. He is also the co-author/co-editor of three books on the presidency and presidential elections and author of several book chapters and journal articles.