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Supreme Court May Be Most Conservative in Modern History

By [NATE SILVER](#)

If President Obama's health care bill is stricken by the Supreme Court, liberals will take it as evidence of judicial overreach, or at least that the court has shifted far to the right. One statistical method for analyzing the Supreme Court, in fact, already finds that the current court is the most conservative since at least the 1930s.

The method, called the [Martin-Quinn Scores](#) for the two scholars that developed it, Andrew D. Martin of the Washington University School of Law and Kevin M. Quinn of the Berkeley School of Law, estimates the court's ideology by evaluating the combinations in which different justices vote with one another and how this changes over time. Their technique is similar to the well-regarded [DW-Nominate method](#) that is used to estimate the ideology of members of Congress based on their voting records.

Under the Martin-Quinn method, justices receive a score on a one-dimensional scale that runs from liberal to conservative, with negative values representing liberal justices and positive values representing conservative ones. The scores for individual justices can change over time if their voting behavior changes.

In the chart below, I've reproduced the Martin-Quinn scores for the period since 1937, when their data set begins. For each year, I've sorted the nine justices on the court from the most liberal to the most conservative in that year. To keep the number of justices constant at nine, I extended the term of the most recently retired or deceased justice in the case of a prolonged vacancy.

The most liberal justice at any given time is represented by the leftmost line on the chart and the most conservative justice by the rightmost one. Then, there are further lines to represent the second, third and fourth most liberal justices, and so forth.

The thick black line in the center of the chart, however, is the important one. This line represents the median justice, currently Justice Anthony M. Kennedy, whose vote would ordinarily be decisive in a 5-to-4 decision.

As you can see from the chart, Mr. Martin and Mr. Quinn rate the current court (based on data up through late 2010) as the most conservative in their database based on the positioning of the median justice, the previous high having come in the early 1950s. Although Justice Kennedy is not extraordinarily conservative relative to all other justices who have served on the court, he is very conservative by the standards of the median justice, who has typically been more of a true

moderate.

The Martin-Quinn scores also imply that, on the basis of its median justice, the current court is farther from the ideological center than any recent court. For instance, it is farther from the center than the liberal courts of the late 1960s that were under Chief Justice Earl Warren.

The next chart presents the same data, but focuses only on the fourth, fifth and sixth most liberal justices — that is, the median justice (Justice Kennedy) and the ones immediately to his left and his right. In this case, the Martin-Quinn method rates Justice Sonia Sotomayor as being the fourth most liberal justice, and it rates Chief Justice John G. Roberts as being the sixth most liberal one.

However, there is an usually wide gap between Justice Kennedy his two closest counterparts, Justice Sotomayor and Chief Justice Roberts. What this means is that Justice Kennedy is extremely likely to be the deciding vote on most issues; his reputation for being the “swing justice” is well deserved. Although Chief Justice Roberts might be marginally more likely to side with with the liberals than others like Justice Antonin Scalia, it would usually only be in cases where Justice Kennedy was already on the liberal side, meaning that Chief Justice Roberts would give them a 6-3 majority rather than being the decisive vote. It should be noted, however, that a few court watchers have suggested that health care could be one of the rare exceptions in which Chief Justice Roberts sides with the liberals but not Justice Kennedy.

The Martin-Quinn method suggests that there has been some overall rightward drift among almost all members of the court, including the more liberal justices, since Chief Justice Roberts took over for Chief Justice William H. Rehnquist.

Although Chief Justice Roberts is not especially more conservative than Chief Justice Rehnquist under their system, chief justices can sometimes exert an overall pull on the court based on the way they manage it, and this may be one of those cases.

The replacement of Justice Sandra Day O’Connor with Justice Samuel L. Alito, of course, has also had some influence, as Justice Alito rates as substantially more conservative than she did.

Like other statistical approaches toward estimating ideology, the Martin-Quinn method should be [approached with some caution](#). Most notably, it does not consider the subject matter of what the justices are voting upon, when in reality the Supreme Court has a lot of discretion about the types of cases it undertakes. A substantial change in the types of cases the court is deciding upon could potentially affect the accuracy of their ratings.