

Study: Obama Had Worst Record in Supreme Court in Modern History

Former president won just half of cases argued before Court, significantly lower than other administrations

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President Barack Obama had the worst record before the Supreme Court in modern history, losing half of the cases argued before the High Court in his two terms, according to a new study.

While liberals point to legalizing same-sex marriage and the upholding of Obamacare subsidies as cementing the former president's legacy, the study reveals Obama had a much weaker record with the Supreme Court than previous presidents.

The academic study written by Washington University professor Lee Epstein and University of Chicago law professor Eric Posner found Obama had the "worst record of any President" since Franklin D. Roosevelt. In fact, his presidential performance before the Supreme Court "may be the worst since the Zachary Taylor administration" in the 19th century.

"To assess presidential performance in the U.S. Supreme Court, we created a dataset of cases of concern to the president," Epstein and Posner wrote. "The dataset covers Presidents Franklin D. Roosevelt through Barack Obama (1932-2015 terms), which amounts to 84 Court terms and 13 presidents."

The results were presidents "prevailed in nearly two-thirds of their cases; and captured over 60 [percent] of all votes cast."

However, Obama's success rate is "significantly lower" at just 50.5 percent, the lowest Epstein and Posner found.

"A few commentators have noticed Obama's problems in the Court, attributing them to Obama himself," they said.

The Supreme Court ruled on 186 cases during Obama's presidency where the United States, the president, or the attorney general was a party; or the solicitor general represented the petitioner or respondent in the case.

The study also suggests that presidents have had less success in the Supreme Court since the Reagan administration, when Ronald Reagan won 75 percent of cases before the Court.

Since the data revealed a “downward secular trend in presidential success ever since the Reagan years, it may be that the Obama administration is just the latest victim of a Court that has gradually been losing confidence in the executive branch,” Epstein and Posner said.

Even still, Obama’s record was an outlier.

“On the one hand, the data seem to confirm a story that scholars have long told: When the president goes to Court, he wins,” the study said. “Over the course of the 84 terms and 13 presidents in our dataset, presidents prevailed in nearly two-thirds of their cases (and captured 60 [percent] of all votes). By comparison, the states won significantly fewer of their cases during the same period (53 [percent]).”

Comparatively, Obama’s performance was “especially poor.” “He prevailed in just 50.5 [percent] of his cases—a percentage slightly lower than the states’ win rate while Obama was in office (55.4 [percent]).”

Noteworthy losses during Obama’s presidency included the blocking of an executive action giving work permits to 5 million illegal immigrants, “effectively ending what Mr. Obama had hoped would become one of his central legacies,” the *New York Times* reported.

The Court also handed a “humiliating” loss to Obama in his attempt to make recess appointments to the National Labor Relations Board while the Senate was in session.

“Indeed the case was so clear-cut one can only conclude that the president didn’t care what the Constitution said,” the *Washington Post*’s Jennifer Rubin observed at the time.

Experts have argued that executive overreach by President Obama led to more losses in the High Court.

In the 2016 term, the Obama administration argued 10 cases that resulted in unanimous decisions against the government, meaning the president did not receive a vote from his own justices he appointed to the Court, Sonia Sotomayor and Elena Kagan.

“[T]he reason this president has done so poorly at the high court is because he sees no limits on federal—especially prosecutorial—power and accords himself the ability to enact his own legislative agenda when Congress refuses to do so,” wrote Ilya Shapiro, a senior fellow in Constitutional Studies at the Cato Institute.

Epstein and Posner note that since the Reagan administration, presidents have averaged a 60 percent win rate before the Supreme Court, five points lower than in years’ prior.

According to the study, one explanation to presidents’ declining win rates is the arrival of more skillful attorneys who now practice for the Court.

“The president’s win rate has declined as the quality of this group has increased,” they said.

